

**HB**

**552**

**HFIN**

**FILE**

Alaska State Legislature  
House Finance Committee

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**DIFFERENCES BETWEEN HB 552 AND WORK DRAFT  
23-LS1802I, dated 4-20-04**

**Deleted all references** to the Alaska Gaming Commission and its supervision of charitable gaming found in or related to AS 05.15.

**Deleted Section 2 from the original bill** that gave authority to the Alaska Gaming Commission to suspend a license or permit for a violation of AS 05.15.

**Deleted Section 3 from the original bill** that gave authority to the Alaska Gaming Commission to administer the provisions of AS 05.15.

**Deleted Section 4 from the original bill** that provided a definition of the Alaska Gaming Commission under AS 05.15.

**Page 2, line 21:** Provided a definition of a public officer of the state and gave it the same definition found in AS 39.52.960.

**Page 3, line 2:** Further defined the grounds for removal of a commissioner. This includes the failure of a commissioner to attend at least 50% of the meetings in any 12-month period.

**Page 5, line 27:** Provided an appeals process which allows a person to seek judicial review of a final administrative order of the commission as defined in AS 44.62.560 and 44.62.570 (judicial review under the Administrative Procedures Act).

**Deleted subsection 10 on page 10 of the original bill** that required a person applying for an owner's or supplier's license to provide information of the amount, date and method of payment of political contributions, loans, donations or other payments to a candidate or office holder for the previous five years before the date the person applied for a license.

**Page 11, line 13:** Added subsection (i). Requires an applicant for a license to submit to the commission, fingerprints and fees required by the Department of Public Safety for

criminal justice information and a national criminal history record check. The commission is then required to forward fingerprints and fees to the department for a report of criminal justice information under AS 12.62 (Criminal Justice Information Systems Security and Privacy) and a national criminal history record check. The results will be used to then evaluate applicants.

**Page 16, line 5:** Clarified language that any income earned on the principal of a cash or negotiated securities bond will be paid to the benefit of the licensee.

**Page 16, line 25:** Rewrote subsection (h) for clarity purposes.

**Page 30, line 22:** Added security and surveillance services and supplies and money counting services and supplies to the definition of supplier's license.

**Deleted Sections 10 and 11 from the original bill.** Section 10 repealed the definition of department (Department of Revenue) since the commission was to provide supervision of charitable gaming activities. Section 11 instructed the revisor to change references to the commissioner and department in AS 05.15 to commission.

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**SPONSOR STATEMENT**

**HOUSE BILL 552: "An Act relating to gambling and gaming."**

House Bill 552 establishes an Alaska Gaming Commission, designed to regulate, oversee and enforce statutes pertaining to gaming, as defined under AS 05.15, and gambling, which is established within this bill.

The bill also sets in place new statutes that authorize the commission to issue a license to own and conduct gambling games at a specified gambling facility in any municipality within the state with a population of at least 150,000.

The commission through a new chapter, AS 05.18 provided within the bill, would administer, regulate and enforce licensing for a gambling facility, its employees and suppliers. Fees and taxes will be collected by the commission and placed into the state gaming fund which would consist of all revenue received from gambling activities. This fund would then be used to pay for any activity conducted by the commission and other agencies as it related to gaming and gambling.

The state would collect a seventeen percent tax on adjusted gross receipts received from gambling games. The municipality where the gambling facility is located is also able to collect a tax of not more than three percent of the amount of adjusted gross receipts.

House Bill 552 established new Class C felonies and Class A misdemeanors for crimes related to associated gambling operations and activities.

Currently, 48 of the 50 states have some form of legalized gambling and over half have casino gambling. This proposed legislation is intended to provide the tools to ensure strict supervision of any gambling and gaming activity authorized by the Alaska Gaming Commission.

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### SECTIONAL ANALYSIS

#### HOUSE BILL 552: *"An Act relating to gambling and gaming."*

**Section 1:** Intent language stating that this bill is intended to benefit the people of Alaska by promoting economic development and tourism. Further states that the public trust and confidence will be maintained through comprehensive law enforcement supervision and strict regulation of facilities, persons, associations and gambling operations under AS 05.18.

**Section 2:** Amends AS 04.11.370(c). Suspension and revocation of licenses and permits. Replaces Department of Revenue with Alaska Gaming Commission.

**Section 3:** Amends AS 05.15.010. The Department of Revenue to administer this chapter. Replaces Department of Revenue with Alaska Gaming Commission.

**Section 4:** Adds a new paragraph to AS 05.15.690. Definitions. Adds Alaska Gaming Commission to the definitions section.

**Section 5:** Adds a new chapter to AS 05. The new chapter is AS 05.18, Gambling and the Alaska Gaming Commission.

#### **Sec. 05.18.010. Gaming Commission established; membership.**

- (a) Establishes the Alaska Gaming Commission within the Department of Revenue.
- (b) Commission consists of three members appointed by the governor with one designated by the Governor as chair. One member shall have law enforcement and criminal investigation experience and one member shall be a certified public accountant with experience in accounting and auditing. Not more than two members may be with the same political party or affiliation.
- (c) Term of office is three years and is eligible to reappointment.
- (d) Commission members entitled to receive a salary for each day the member attends a meeting or conducts a hearing and per diem and travel expenses.
- (e) A person may not be appointed to the commission or continue as a commissioner if the person or person's spouse, child or parent is a member of a board of directors or financially interested in a gambling operation.

- (f) Disallows a commission member from holding public office for which compensation other than travel expenses or incidental expenses are incurred.
- (g) Outlines the conditions under which a person may not serve on the commission.
- (h) Grounds for removal from the commission.
- (i) Directs each member of the commission to provide a bond to the state in the amount of \$25,000. The bond must be approved by the governor and recorded in the lieutenant governor's office. A commission member who does not provide the required bond within 30 days after being appointed or fails to renew the bond within 30 days after the governor requires a renewal shall be removed from the commission.

**Sec. 05.18.020. Staff support; personnel.**

- (a) Allows commission to hire staff to carry out the commission's duties. A person may not be employed as a staff to the commission if the person's spouse, parent or child is a member of a board of directors or financially interested in a gambling operation.
- (b) Allows the commission to employ or contract inspectors and agents required to carry out the duties of this chapter. The costs incurred by the commission are reimbursable by the licensed owner.

**Sec. 05.18.030. Executive director; compensation; duties.**

- (a) The executive director of the commission appointed by the governor and serves at the pleasure of the governor. The governor approves the salary annually.
- (b) The executive director performs duties as assigned by the commission.
- (c) Outlines the statutory duties of the executive director.

**Sec. 05.18.040. Meetings; records.**

- (a) States the commission will meet quarterly.
- (b) The commission may call special meetings but 72 hours written notice must be provided to each member prior to the meeting.
- (c) Two members constitute a quorum. Two affirmative votes are required to take official action.
- (d) The commission is to keep a complete and accurate record of its meetings. These records are to be available to the public and accurately reflect all commission proceedings.

**Sec. 05.18.050. Annual report.**

- (a) The commission will file an annual report before March 1 of each year. The governor may request additional reports.
- (b) Lists what is to be included in the annual report.

**Sec. 05.18.060. Hearings.**

- (a) If a majority of the commission approves, an administrative law judge appointed by the commission or a commission member may conduct a hearing and recommend findings of fact and conclusions of law to the commission.

- (b) Describes that the rights, powers and duties of a commission member or an administrative law judge are the same as those granted to the commission. The commission may not limit the number of speakers who may testify but it may set reasonable time limits on the length of testimony or the total amount of time allotted to opponents and proponents of an issue before the commission.

**Sec. 05.18.070. Administration, regulation and enforcement.**

- (a) Sets out the powers and duties of the commission for the purpose of administering, regulating and enforcing the gambling operations authorized under AS 05.18 and AS 05.15.
- (b) Assistance provided by the attorney general and the Department of Public Safety to conduct background investigations of applicants. Costs incurred by these state agencies to be reimbursed by the commission from fees collected from applicants.
- (c) Preferential hiring of residents.

**Sec. 15.18.080. Violations; fees and taxes; inspections.**

- (a) Establish and collect license fees and taxes imposed under this chapter and deposit fees and taxes into the state gaming fund. Levy and collect penalties to be deposited into the state gaming fund. Be present through the commission's inspectors and agents during the time gambling operations are conducted.
- (b) Allow the commission to enter an office, gambling facility or other premises of a person holding an owner's or supplier's license where evidence of compliance or noncompliance is likely to be found.

**Sec. 15.090. Licensing.**

- (a) Adopt standards for persons regulated under this chapter and electronic or mechanical gambling games.
- (b) Require that records, including financial statements, of a licensee owner or supplier be maintained in a manner prescribed by the commission.
- (c) License may not be issued to a person convicted of a felony.
- (d) Establishes information that must be provided by an applicant to the commission.
- (e) Review by the commission and approve or disapprove applications promptly and in reasonable order of applications.
- (f) Party aggrieved by a commission action denying, suspending, revoking, restricting or refusing a license may request a hearing before the commission. The request must be in writing and not more than 10 days after service of notice of the commission's action.
- (g) Notice of the commission's action must be made by personal delivery or certified mail.
- (h) All requested hearings shall be conducted promptly and in reasonable order.

**Sec. 05.18.100. Ejection or exclusion from facilities.**

- (a) Criteria under which a person may be ejected or excluded from a gambling facility.
- (b) Allows a person who is ejected or excluded from a gambling facility the right to petition the commission for a hearing.

**Sec. 05.18.110. Violations of chapter; fraudulent acts.**

Actions the commission may take if a licensee or employee violates this chapter or engages in a fraudulent act.

**Sec. 05.18.120. Investigative procedure; complaints.**

- (a) The commission shall review and make a determination on a complaint by a person who has been issued an owner's license concerning an investigative procedure that the licensee alleges unnecessarily disrupts gambling operations.
- (b) The licensee filing a complaint must prove by clear and convincing evidence that the investigative procedure does not have a reasonable law enforcement purpose and is so disruptive that it unreasonably inhibits gambling operations.

**Sec. 05.18.130. Transfer of licenses; rules of procedure; prohibitions.**

- (a) The commission must approve the transfer, sale or purchase of an owner's license. A licensed owner may not lease, hypothecate or borrow or loan money against an owner's license.
- (b) Allows the commission to adopt regulations to establish procedures for the transfer, sale or purchase an owner's license.

**Sec. 05.18.140. Suspension of license without notice or hearing; revocation of license.**

- (a) A license may be suspended without notice if it is determined that the safety or health of patrons or employees is threatened by the continued operation of the gambling facility. The opportunity for a hearing will be provided within a reasonable amount of time following a suspension.
- (b) A suspension may remain in effect until the commission determines that the cause for suspension has been abated. The commission may revoke the license if the commission determines that the owner has not made progress in remedying the problem.

**Sec. 05.18.150. Commission records.**

- (a) Details what information must be provided to a person who makes a written request.
- (b) Allows the commission to assess fees for copying information that is requested.

**Sec. 05.18.160. Owner's license.**

- (a) Gives the commission the authority to issue a license to own and conduct gambling games at a specified gambling facility in any municipality in the state that has a population of at least 150,000. Restricts a person to one owner's license at any time and allows only one owner's license within a municipality.
- (b) An applicant must pay a nonrefundable application fee to the commission. The commission determines the fee.
- (c) Requires an applicant to submit information as provided under AS 05.18.090 and two sets of fingerprints from an individual owner or two sets of fingerprints from each officer and director if a group applies for a license.

- (d) The commission is to review applications for an owner's license and inform each applicant of their decision.
- (e) Investigation costs of an applicant are to be included in the application fee.
- (f) All additional costs associated with the investigation of an applicant that exceed the portion of the application fee are to be paid by the applicant.
- (g) The commission may not issue an owner's license to a person if the person has been convicted of a felony, has knowingly or intentionally submitted an application containing false information; is a member of the commission; an officer, director, or a managerial employee of a person who has committed a felony or submitted an application with false information; or, employs an individual who has committed a felony, has knowingly or intentionally submitted an application containing false information or is a member of the commission.

**Sec. 05.18.170. Factors considered in granting owner's licenses; submission of design.**

- (a) Criteria the commission will consider in determining whether or not to grant an owner's license.
- (b) Requires the applicant to submit to the commission a proposed design of the gambling facility.

**Sec. 05.18.180. Issuance of license; fee; bond.**

- (a) The commission may issue an owner's license if the person pays an initial license fee of \$50,000 and posts a bond.
- (b) A licensed owner is required to post a bond with the commission at least 60 days before starting the construction of a gambling facility or gambling, whichever is earlier. Describes the type of bond that is to be furnished.
- (c) If a bond is furnished in cash or negotiable securities, the principal shall be placed without restriction at the commission's disposal, however, income earned on the principal shall benefit the licensee.
- (d) The commission must approve the bond which is payable to the commission for use by the commission in satisfaction of the licensed owner's financial obligations to the community, state and other parties as determined by regulation established by the commission.
- (e) If, following a hearing held after at least 5 days written notice, the commission determines that the amount of the bond is insufficient, the licensed owner shall file a new bond after the commission provides a written demand for such.
- (f) The commission may require an owner to file a new bond in the same form and amount if liability on the old bond is discharged or reduced or in the opinion of the commission, a surety on the old bond becomes unsatisfactory.
- (g) If a new bond is unsatisfactory, the commission shall cancel the owner's license. Should the new bond be satisfactory, the commission shall release the surety on the old bond from any liability accruing after the date of the new bond.
- (h) A bond is released on the condition that the licensed owner remains at the site for which the license is granted for the lesser of five years or the date on which the commission grants a license to another licensed owner to operate from the site for which the bond was posted.

- (i) A licensed owner who does not meet the requirements of the above section (h), forfeits a bond. The bond proceeds are paid to the commission for the benefit of the local governmental unit where the gambling facility is operated.
- (j) The liability of the surety of a bond is limited to the amount specified in the bond. The continuous nature of the bond may not be construed as allowing for the surety under a bond to accumulate each time the bond is approved.
- (k) A bond filed under this section is released 60 days after the time has run and a written request for release is submitted.

**Sec. 05.18.190. Term of a license.**

An owner's initial license expires five years after the effective date of the license and may be renewed for additional five-year periods.

**Sec. 05.18.200. Revocation of owner's license for delay.**

A license may be revoked if an owner begins operations more than 12 months after receiving the commission's approval of the application and the commission determines the revocation is in the best interest of the state.

**Sec. 05.18.210. Renewal of owner's license; compliance investigations.**

- (a) Unless the commission determines an owner does not qualify to hold a license, the owner's license shall be renewed for an additional five-year period after a \$50,000 renewal fee is paid.
- (b) The commission must undertake a complete investigation of an owner every five years to determine the owner is in compliance with this chapter.
- (c) The commission may investigate an owner at any time the commission determines necessary to ensure the owner is in compliance.
- (d) The cost of the investigation or reinvestigation is borne by the owner.

**Sec. 05.18.220. Other licenses.**

A licensed owner may apply for other licenses necessary to the operation of a gambling facility to include preparation and serving of food and any other necessary licenses.

**Sec. 05.18.230. Gambling equipment, devices, and supplies.**

A licensed owner may own gambling equipment, devices and supplies and will file an annual report listing the inventories.

**Sec. 05.18.240. Schools for training occupational licenses.**

No prohibition for a licensed owner to operate a school for the training of those who need an occupational license.

**Sec. 05.18.250. Nature of license.**

An owner's license is a revocable privilege granted by the state and is not a property right.

**Sec. 05.18.260. Supplier's license; requirements.**

Gives the commission the authority to issue a supplier's license based on the commission's determination that the person is eligible and the applicant follows procedures outlined in this chapter.

**Sec. 05.18.270. Gambling equipment and supplies; distribution.**

- (a) Person who has a supplier's license may sell, lease and contract to sell or lease gambling equipment and supplies to a licensee of a gambling facility.
- (b) Gambling supplies and equipment must conform to standards adopted by the commission before distribution.

**Sec. 05.18.280. Restrictions on issuance of supplier's license.**

Defines who may not receive a supplier's license.

**Sec. 05.18.290. Necessity of supplier's license; exception.**

- (a) A person is required to have a supplier's license before furnishing gambling equipment, devices or supplies to a gambling operation except as provided in the following subsection.
- (b) A person with a valid license to deal in alcoholic beverages does not need a supplier's license in order to supply alcohol to a gambling operation.

**Sec. 05.18.300. Sale or lease of equipment, devices, and supplies; information furnished to commission.**

- (a) Requires a supplier to furnish to the commission a list of all equipment, devices and supplies offered for sale or lease in connection with gambling games.
- (b) Supplier must keep records for the furnishing of equipment, devices and supplies to gambling operations separate from records of other business operated by the supplier.
- (c) Supplier to file quarterly return to the commission listing all sales and leases.
- (d) Supplier's name is to be permanently affixed to all the supplier's devices, equipment and supplies for gambling operations.

**Sec. 05.18.310. Forfeiture of equipment, devices, and supplies.**

Supplier's equipment, devices and supplies used in unauthorized gambling operations are to be forfeited to the state.

**Sec. 05.18.320. Repair of equipment, devices, and supplies.**

Gambling equipment, device and supplies provided by a supplier may be repaired in the gambling facility or removed for repair to a facility owned by the supplier.

**Sec. 05.18.330. Renewal of supplier's license; compliance investigations.**

- (a) Supplier's license may be renewed upon payment of a renewal fee if the commission determines the supplier is in compliance and the supplier's license is not revoked, expired or suspended.
- (b) Supplier is to undergo a complete investigation every 5 years to determine compliance.

- (c) Commission may investigate a supplier any time deemed necessary by the commission.
- (d) Costs of any investigation are borne by the supplier.

**Sec. 05.18.340. Occupations requiring license.**

Commission to determine which occupations related to gambling will be required to have a license.

**Sec. 05.18.350. Occupational license; requirements; fees; duration; renewal; compliance investigations.**

- (a) Criteria for issuance of an occupational license.
- (b) A licensed owner or supplier required to pay application and renewal fee for an individual applying for or renewing an occupational license. The owner or supplier may seek reimbursement of the application fee or annual license fee.
- (c) License for occupational license valid for one year.
- (d) The occupational license may be renewed annually upon payment of the fee if the licensee is in compliance and the license is not suspended, expired or revoked.
- (e) Commission may investigate the holder of an occupational license at any time.
- (f) The cost of an investigation of the person holding an occupational license is borne by the owner or supplier who may seek reimbursement from the occupational license holder.

**Sec. 05.18.360. Qualifications for occupational license.**

Individual requirements for an occupational license.

**Sec. 05.18.370. Application for occupational license.**

- (a) The commission will prescribe forms for an occupational license containing all information required by the commission.
- (b) Information to be provided for an applicant seeking an occupational license.
- (c) Two sets of fingerprints required with an application for occupational license. The commission will charge each applicant the fee set by the Department of Public Safety for fingerprint searches.

**Sec. 05.18.380. Restrictions on issuance of occupational license.**

Conditions under which the commission may refuse to issue an occupational license.

**Sec. 05.18.390. Suspension, revocation, or restriction of licenses.**

Conditions under which the commission may suspend, revoke or restrict an occupational licensee.

**Sec. 05.18.400. Schools for training occupational licensees.**

- (a) No prohibition for a licensed owner from entering into an agreement with a school approved by the commission for the training of an occupational licensee.
- (b) Training offered by a school must be in accordance with a written agreement between the owner and school and approved by the commission.

**Sec. 05.18.410. Training locations.**

Training for an occupational licensee may be conducted in a gambling facility or at a school with which the owner has entered into an agreement.

**Sec. 05.18.420. Convicted felons; rehabilitation; waiver.**

- (a) An individual applying for an occupational license who is disqualified due to a felony conviction may apply for a waiver of that disqualification. A license may be issued if the commission determines that the individual has demonstrated their rehabilitation by clear and convincing evidence.
- (b) Factors that the commission must consider when determining whether an individual has demonstrated rehabilitation.
- (c) Felony convictions that disallow a waiver.

**Sec. 15.18.430. Gambling permitted in gambling facilities.**

Gambling operations will only be conducted by a licensed owner in a gambling facility.

**Sec. 05.18.440. Minimum and maximum wagers.**

Commission to determine minimum and maximum wagers on gambling games.

**Sec. 05.18.450. Inspection of gambling facilities.**

Employees of the commission or officers of the Department of Public Safety may inspect a gambling facility at any time.

**Sec. 05.18.460. Presence of commission employees in gambling facilities.**

Commission employees have the right to be present in a gambling facility or adjacent facilities under the control of an owner.

**Sec. 05.18.470. Gambling equipment and supplies; purchase or lease.**

Gambling equipment and supplies used in conducting gambling operations may be purchased or leased only from licensed suppliers.

**Sec. 05.18.480. Permitted forms of wagering.**

Only gambling games permitted under this chapter are allowed.

**Sec. 05.18.490. Presence required for wagering.**

Wagers may be received only from a person present in the facility. A person may not make a wager on behalf of another person who is not present in the facility.

**Sec. 05.18.500. Wagering prohibited with negotiable currency.**

Wagering may not be conducted with money or other negotiable currency.

**Sec. 05.18.510. Persons under 21 years of age; presence in gambling area.**

- (a) A person under 21 years of age may not be present in the area where gambling is conducted except as provided in (b) of this section.
- (b) A person who is at least 18 years old and is employed by the gambling facility may be present in an area where gambling is conducted. However, a person under

21 years of age may not perform a function involving gambling or the sale and distribution of alcohol.

**Sec. 05.18.520. Persons under 21 years of age; wagering prohibited.**

A person under 21 years of age may not make a wager.

**Sec. 05.18.530. Tokens, chips, or electronic cards; purchase.**

- (a) All tokens, chips or electronic cards used to make wagers must be purchased while in the gambling facility or at facility adjacent to the gambling facility that is approved by the commission.
- (b) Tokens, chips or electronic cards may be purchased under an agreement under which the owner extends credit to the patron.

**Sec. 05.18.540. Crimes.**

- (a) Class A misdemeanors.
- (b) Class C felonies.

**Sec. 05.18.550. Possession of cheating devices; presumption.**

Possession of more than one of the devices described in AS 05.18.340(b) as cheating devices creates a rebuttable presumption that the possessor intended to use the devices for cheating.

**Sec. 05.18.560. Convicted felons; entering gambling facilities prohibited.**

Person convicted of a felony described in AS 05.18.540(b) is barred for life from any gambling facility within the state.

**Sec. 05.18.570. State gaming fund.**

State gaming fund created in the general fund, consisting of all revenue received from gambling activities created under this chapter and other money credited or transferred to the fund from another source.

**Sec. 05.18.580. Adjusted gross receipts tax; rate; payment.**

- (a) Seventeen percent tax imposed on the adjusted gross receipts received from gambling games.
- (b) Tax to be remitted to the department before the close of the business day following the day the wagers are made.
- (c) Department may require payment to be made by electronic funds transfer.
- (d) If an electronic funds transfer is required, the department may allow the owner to file a monthly report to reconcile the amounts remitted to the department.
- (e) Municipality in which a gambling facility is located may not impose a tax of more than three percent on adjusted gross receipts.

**Sec. 05.18.900. Definitions.**

Definitions of terms used in this chapter.

**Section 6:** Amends AS 11.66.280(2). Definitions. Adds Alaska Gaming Commission and AS 05.18 to the definition of what is to be excluded from the definition of the crime of gambling.

**Section 7:** Adds a new subsection to AS 18.65.080. Powers and duties of department and members of state troopers. Authorizes the Department of Public Safety to investigate and ascertain whether a commissioner has been convicted of a crime set out in AS 05.18.010(g).

**Section 8:** Amends AS 39.50.110(11). Exempt service. Adds the Alaska Gaming Commission to those in exempt service.

**Section 9:** Adds a new paragraph to AS 39.50.200(b). Definitions. Adds Alaska Gaming Commission to state commissions or boards.

**Section 10:** Repeals AS 05.15.690(9). Definitions. Deletes "department means the Department of Revenue;"

**Section 11:** Adds a new section to uncodified law. Instructs the revisor of statutes to change references to the commissioner and department in AS 05.15 to commission unless it is clear from the context that commissioner refers to a commissioner other than the commissioner of revenue and department refers to a department other than the Department of Revenue.



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# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number \_\_\_\_\_  
Bill Version HB 552  
( ) Publish Date \_\_\_\_\_

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Revenue  
Title Gambling RDU Revenue Programs & Services  
Component Tax Division  
Sponsor House Finance Committee  
Requester House Finance Committee Component No. 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>	*	*	*	*	*	*
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<b>CHANGE IN REVENUES ( )</b>	*	*	*	*	*	*
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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						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 00  
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

**ANALYSIS:** (please see attached for more analysis)  
 \* We have not included projections because of the lack of information on the size of the casino, choice of the mix of games and location for the proposed Casino. Although the city location is known because the only city in the state "with at least 150,000 in population" is Anchorage, the exact location of the facility is unknown. There has been some speculation about the former Alaska Seafood International plant (Juneau Empire - April 7, 2004) but the bill does not include any specific reference to a particular site.  
 The American Gaming Association lists eleven states with commercial casinos, six states with tribute casinos and 23 states with American Indian casinos. The number of casinos in each state varies between 2 in Michigan to 249 casinos with gross revenues (after-price income) of at least \$1 million in Nevada. Gross revenue for commercial casinos varies between \$65 million in South Dakota (38 casinos) and \$9.4 billion in Nevada.  
 (continued)

Prepared by Larry Meyers and Brett Fried Phone 907-259-1222  
Division Tax Division Date/Time 4/19/04 7:00 AM  
Approved by Steve Porter Deputy Commissioner Date 4/19/2004  
Agency Department of Revenue

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB 552

### ANALYSIS CONTINUATION

Finding a state or casino that is a proxy for Alaska is complicated by differences in state and local statutes and regulations, choice of gaming mix, population densities, availability of substitutes, income levels and many other factors. However, below we provide some very rough estimates of expenditures and revenues.

#### **Expenditures**

We based our operating costs on a similar organization of auditor and investigator staff as found in South Dakota. South Dakota casino revenue closely approximates what we are estimating for Alaska. Most other states have much higher casino related expenses and would not be appropriate as a model for Alaska. It is expected that the Alaska Gaming Commission would consist of three (3) gaming commissioners, nine (9) new positions and seven (7) charitable gaming positions transferred from the Department of Revenue. It is difficult to project the operating costs under this legislation as some costs will be funded or reimbursed by fees set by the Commission.

Overall funding request of \$1.7 million in FY 05 and \$1.5 million in the following fiscal year includes \$548,000 General Fund Program Receipts currently in the Governor's FY05 budget request for charitable gaming. Because the Commission has the power to set fees and investigations are reimbursed, it is possible that most of the costs would be paid by the Casino.

Personal service costs include the Executive Director, seven audit staff, four investigators, an analyst programmer and three technical and administrative staff. Travel costs include travel to hearings, Commissioner per diem, and audit and investigator staff travel. Contractual costs include professional services for background investigations, and associated staff costs for communications, leased vehicle, advertising, printing, training and professional memberships. Supply costs include office data needs and desk peripherals for each year. Equipment costs are a one-time projection for FY05 or first year of operation for necessary office setup and equipment.

#### **Revenues**

There are two variables that normally enter into the estimation of potential revenues from casinos. The first is the size of the facility or the number of gaming devices and tables and the second is the distance from potential gamers. Cummings Associates (2004) found that these are the two most important determinants in predicting gaming facility revenues. The Bear Stearns 2002 North American Gaming Almanac includes participation rates (number of visits per adult population) for ten states and 34 communities. Statewide rates vary from 3.2 in Oregon to 6.2 in New Mexico. The problem with statewide participation rates is that they reference multiple casinos. Bear Stearns shows 8 tribal casinos in Oregon and 12 tribal casinos and 4 racinos in New Mexico. Clearly, multiple casinos will have an effect on the participation rate in a State. Consequently, we used the following two criteria in our choice of communities: (1) the market potential adult population within 100 miles (as determined by Bear and Stearns) had to be less than 500,000 and (2) the market had to be served by only one casino.

#### **Bear and Stearns**

We used the "2002-2003" North American Gaming Almanac produced by Bear and Stearns to find casinos that met the criteria discussed above. We found five casinos that fit the criteria and then we used the median and high participation rate and median and high revenue per visit to estimate potential revenues from a casino in Anchorage. After including tourists and Alaskans on and off the road system we developed a range from \$5.5 to \$10.4 million a year after the casino is fully operational.

#### **Substitution**

The after-prize income from Anchorage pull-tabs is approximately \$13 million with \$5.6 million going to charities. We do not know how much charitable gaming revenues will decline as a result of a casino in Anchorage.

#### **Visitors**

Given that we have over 1.5 million visitors to our state annually, the number of casino visits from tourists is 131,214. That seems low. However, it is necessary to consider that approximately 750,000 of these visitors arrive or depart by cruise ship and already have full casino facilities available on board. In addition, approximately 60 percent of cruise ship passengers just cruise through to passage and never go to Anchorage. Alaska tourism is a very highly seasonal with about 64 percent of the visitors arriving in the Summer months. It seems unlikely that tourists whose primary purpose of traveling is to game would not choose the more highly developed gaming areas where the casinos include hotel and resort amenities. The tourist participation rate we derived for Washington (17 casinos) and Oregon (8 casinos). These casinos are often located on very busy highways and are not easily accessible by air so tourism participation in Alaska could easily be lower.

ANALYSIS CONTINUATION

Income

One of the shortcomings of the above analysis is that all of the small casinos used as proxies for the Anchorage casino are in areas where incomes are relatively low. Per-capita income in Alaska is approximately 44 percent higher than in Mississippi, 14 percent higher than in Iowa and 11 percent higher than in Missouri. In a 2004 report by Cummings Associates, Cummings refines his model by using "less critical" parameters such as per capita income, urban/rural mix and relative reach of other casinos. On per capita income he argues that "higher is not necessarily better, but lower-income areas appear to spend less." All of these "less critical parameters" would argue for a revenue estimate at the higher end of the suggested range.

Alaska Department of Revenue - Tax Division

Bear and Stearns Representative Casinos								
City	Pop.	Participation Rate <sup>2</sup>	Gamer Visits	Gaming Revenue	Revenue Per Visit	Casino Sq. Ft.	Slots	Tables
	Market <sup>1</sup> 0-100 Miles							
Caruthersville, Missouri <sup>3</sup>	234,197	2.8	655,752	\$26,200,000	\$40	20,000	753	15
Fort Madison, Iowa <sup>4</sup>	191,526	3.6	679,967	\$33,300,000	\$49	14,021	532	26
Natchez, Mississippi <sup>5</sup>	217,712	3.7	804,231	\$41,600,000	\$52	15,783	702	18
Boonville, Missouri <sup>6</sup>	458,692	3.9	1,780,592	\$89,000,000	\$50	28,000	900	27
La Grange, Missouri <sup>7</sup>	151,913	4.1	622,843	\$34,000,000	\$55	10,000	450	15

\* Note - Communities with only one casino and a market population area less than 500,000

	Anchorage Estimates using High and Median Revenue per Visit and Participation Rate								
	Population (21+ Alaska)	Participation Rate		Visits		Rev. Per Visit		Revenue	
		Median	High	Median	High	Median	High	Median	High
Anchorage <sup>8</sup>	253,132	3.7	4.1	936,588	1,037,841	\$50	\$55	\$46,829,420	\$57,081,266
Out of Market Fairbanks <sup>9</sup>	57,055	0.6	0.6	34,233	34,233	\$50	\$55	\$1,711,637	\$1,882,801
Out of Market Alaska <sup>10</sup>	114,017	0.1	0.1	11,462	11,462	\$50	\$55	\$573,086	\$630,395
Total Tourists <sup>11</sup>	1,562,700	0.2	0.02	31,254	31,254	\$50	\$55	\$1,562,700	\$1,718,970
Totals				1,013,537	1,114,790			50,676,844	\$61,313,432
State Tax @ 17 percent								8,615,063	10,423,283

Source: Ader, N Jason. Bear Stearns 2002-2003 North American Gaming Almanac. Huntington Press - Las Vegas, Nevada.

<sup>1</sup> The population is an estimate by Bear and Stearns for 2006 of the market for a particular casino within a 100 mile radius. Casinos were only chosen if there was only one casino in the market area and the market potential within 100 miles was less than 500,000 adults.

<sup>2</sup> Participation rate is the estimate of the number of visits per person.

<sup>3</sup> The Caruthersville market has one riverboat property, Casino Azlar. The adult population within 100 miles is almost 1.8 million but the market potential adult population estimate for 2006 is 234,197.

<sup>4</sup> The Fort Madison market has a single casino called Catfish Bend. Although the adult population within a 100 mile radius is over a million, the market potential adult population estimate for 2006 is 191,526.

<sup>5</sup> The Natchez market has a single Isle of Capri casino. The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 217,712. The participation rate is a weighted average for each 50 mile increment.

<sup>6</sup> The Boonville market has one Isle of Capri riverboat property. The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 458,692. The participation rate is a weighted average for each 50 mile increment.

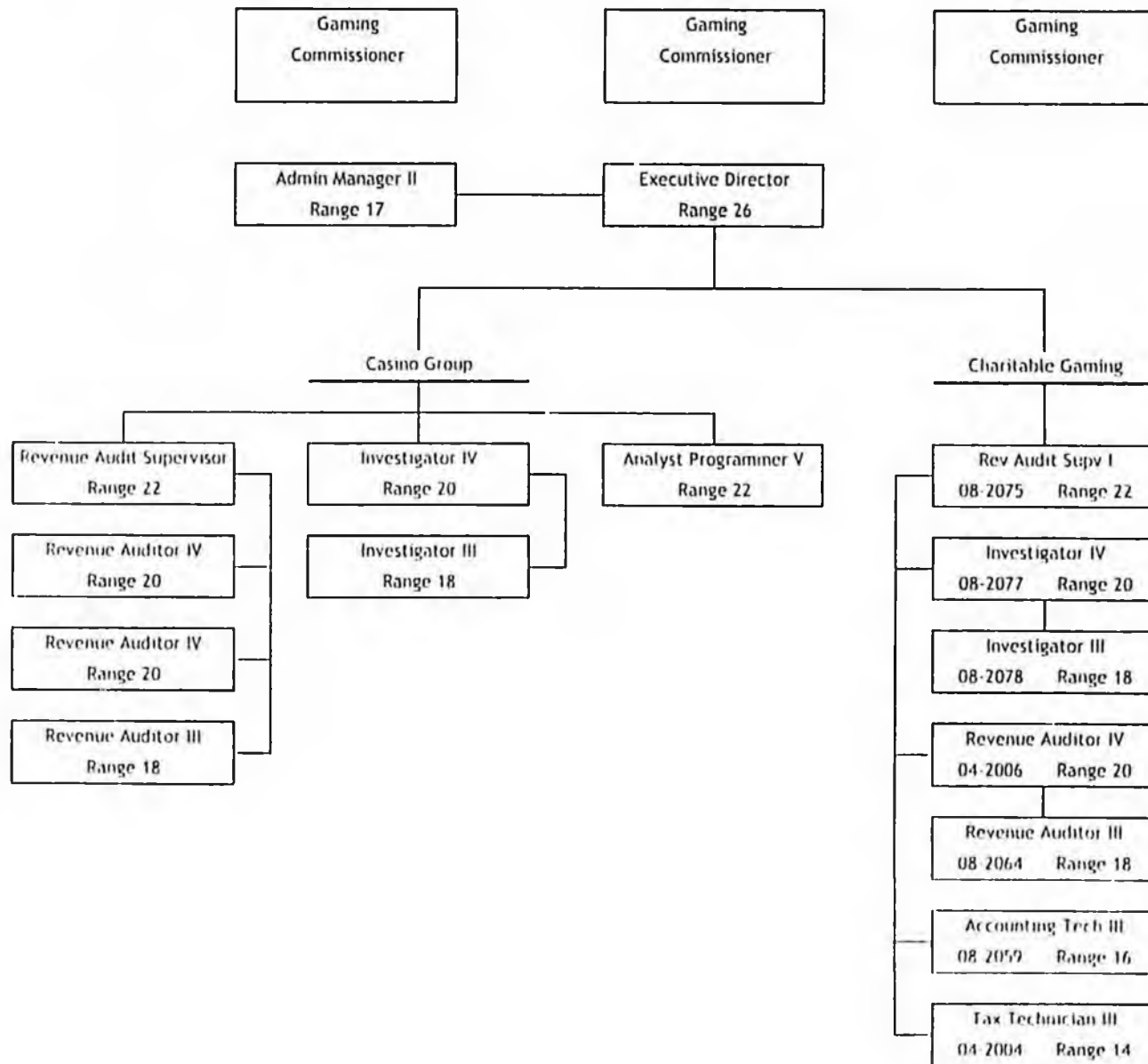
<sup>7</sup> The La Grange market has the Mark Twain Riverboat Casino. The adult population within a 100 mile radius is about 1.0 million but the market potential adult population estimate for 2006 is 151,913. The participation rate is a weighted average for each 50 mile increment.

<sup>8</sup> Because the only legal competition for the casinos with a 100 mile radius of Anchorage are bingo halls and pull tabs, it is assumed that the market population is equivalent to the adult population of Anchorage, Mat Su and the Kenai Peninsula Borough.

<sup>9</sup> The adult population of Fairbanks and Denali are included at a higher participation level than others outside of the 100 mile radius because of road access.

<sup>10</sup> The remaining adult Alaska population is shown at the level of access in Detroit outside of the 100 mile but within 150 miles. This is probably generous given the lack of road access and only one not three large casinos.

<sup>11</sup> Total visitors to Alaska is from Northern Economics visitor statistics for Summer 2003 and Fall/Winter 2002-2003 statistics. Participation rate is for Washington and Oregon tourist participation where there are eight and seventeen casinos, respectively.



HB 552 Expenditures	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
<b>PERSONAL SERVICES</b>						
Executive Director	106.0	106.0	106.0	106.0	106.0	106.0
Administrative Manager II	65.7	65.7	65.7	65.7	65.7	65.7
<i>Casino Group</i>						
Revenue Audit Supervisor I	92.0	92.0	92.0	92.0	92.0	92.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor III	70.1	70.1	70.1	70.1	70.1	70.1
Investigator IV	81.0	81.0	81.0	81.0	81.0	81.0
Investigator III	70.1	70.1	70.1	70.1	70.1	70.1
Analyst Programmer V	92.0	92.0	92.0	92.0	92.0	92.0
<i>Charitable Gaming</i>						
Revenue Audit Supervisor I	99.9	99.9	99.9	99.9	99.9	99.9
Investigator IV	92.2	92.2	92.2	92.2	92.2	92.2
Investigator III	72.9	72.9	72.9	72.9	72.9	72.9
Revenue Auditor IV	84.2	34.2	84.2	84.2	84.2	84.2
Revenue Auditor III	84.8	84.8	84.8	84.8	84.8	84.8
Accounting Technician III	59.3	59.3	59.3	59.3	59.3	59.3
Tax Technician III	52.6	52.6	52.6	52.6	52.6	52.6
	1,284.8	1,284.8	1,284.8	1,284.8	1,284.8	1,284.8
<b>TRAVEL</b>						
Staff Travel	41.4	41.4	41.4	41.4	41.4	41.4
Commissioner Meetings/Hearings <sup>(A)</sup>	31.2	31.2	31.2	31.2	31.2	31.2
	72.6	72.6	72.6	72.6	72.6	72.6
<b>CONTRACTUAL</b>						
Professional Services	184.0	92.0	92.0	92.0	92.0	92.0
Communications (Phones, Postage, Data)	5.4	5.4	5.4	5.4	5.4	5.4
Leased Vehicle Costs	5.8	5.8	5.8	5.8	5.8	5.8
Advertising, Printing	3.0	3.0	3.0	3.0	3.0	3.0
Equipment Maintenance	3.0	3.0	3.0	3.0	3.0	3.0
Training Costs	5.0	3.0	3.0	3.0	3.0	3.0
Memberships, Conference Costs	2.0	2.0	2.0	2.0	2.0	2.0
	208.2	114.2	114.2	114.2	114.2	114.2
<b>SUPPLIES</b>						
Office and Data Supplies	40.0	40.0	40.0	40.0	40.0	40.0
	40.0	40.0	40.0	40.0	40.0	40.0
<b>EQUIPMENT</b>						
9 Positions - Offices, Equipment <sup>(B)</sup>	72.0	0.0	0.0	0.0	0.0	0.0
	72.0	0.0	0.0	0.0	0.0	0.0
<b>FY TOTALS</b>	<b>1,677.6</b>	<b>1,511.6</b>	<b>1,511.6</b>	<b>1,511.6</b>	<b>1,511.6</b>	<b>1,511.6</b>

<sup>(A)</sup> 31.2 = 3 Commish \* \$200 @ 52 mtgs/hrgs<sup>(B)</sup> Base estimate @ \$80/Position

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number HB552-LAW-CDCO-4-19  
Bill Version: HB 552  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept Affected LAW  
Title "An Act related to gambling and gaming" RDU CRIMINAL & CIVIL  
Component Criminal Justice Litigation  
Sponsor House Finance Committee Component Commercial and Fair Business  
Requester House Finance Committee Component No. 2202

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*****	*****	*****	*****	*****	*****
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2004) cost: 00

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill creates the Alaska Gaming Commission to oversee and license legal gambling in Alaska. The bill creates several new crimes involving participants in the gambling operation and the players themselves. The number and type of these crimes may depend on how well-run and how well-regulated the casino turns out to be in actual operation. However, the lure of easy money and new forms of gambling technology make it difficult to predict the effect of such cases on the Criminal Division of the Department of Law until more experience is gained.

There is evidence that casinos may increase the level of crime in the surrounding area, the extent of the increase cannot be known at the present time. Additionally, some level of indeterminate additional legal services will be needed to assist the Commission in its function.

Prepared by Kathryn A. Daughhete Director Phone 465-7673  
Division Administrative Services Date/Time 4/19/04 4:14 PM  
Approved by Kathryn Daughhete for Gregg D. Renkes Attorney General Date 4/19/2004  
Agency Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB552CS-DPS-CRI-4-22-04  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DPS  
 Title Gambling & Gaming RDU Statewide Support  
 Component Criminal Records & ID  
 Sponsor H. Finance  
 Requester H. Finance Component No. 1190

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>	*	*	*	*	*	*
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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						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

**ANALYSIS:** (Attach a separate page if necessary)

The bill requires criminal record checks for gambling licensure. The gambling commission within the Department of Revenue will collect fees from license applicants to pay DPS for the record checks.

The department charges \$59 for each fingerprint-based check of state and national criminal records. The fee includes \$35 for a check of state criminal records plus \$24 (set by the FBI) to check national criminal records. The department retains \$2 of the FBI's fee for handling. The department will seek an increase in authority to receive funds from the gambling commission to accommodate the increase in workload when the volume of criminal record checks can be determined.

Prepared by: Diane Schenker, Criminal Justice Planner Phone 907-269-5092  
 Division: Statewide Services Date/Time 4/22/04 9:23 AM  
 Approved by: Commissioner William Tandeske Date 4/22/2004  
 Agency: Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB552CS-DPS-ABI-4-22-04  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Act related to gambling and gaming RDU Alaska State Troopers  
 Component Alaska Bureau of Investigation  
 Sponsor (H) Finance  
 Requester (H) Finance Component No. 2744

**Expenditures/Revenues** (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 At this point in time, in order to determine the fiscal impact to the Department of Public Safety (DPS) if HB 552 were to become law, consideration is only being given to the tasks of criminal history checks and background investigations. Because there are different levels or types of background investigations and criminal history checks that can be conducted, consideration must be given to the type and to what degree each applicant, owner, employee, and Alaska Gaming Commission member and staff member will be investigated.

**Alaska Gaming Commission:**  
 As the Alaska Gaming Commission members are selected by the Governor, each member will undergo a background investigation to include a fingerprint based criminal history check, a credit check, and other actions as deemed appropriate.

Prepared by: Lt. Al Storey Phone 269-4532  
 Division Alaska State Troopers Date/Time 4/22/04 9:00 AM  
 Approved by: Commissioner William Tandeske Date 4/22/2004  
 Agency Department of Public Safety

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB552CS-DPS-ABI-4-22-04

### ANALYSIS CONTINUATION

At a minimum, this will take an estimated 8 to 12 staff-hours each to accomplish assuming that no issues are discovered that need additional investigation.

As the Alaska Gaming Commission comes into being, it will need an executive director, auditors, investigators, and administrative support. Those state employees will also require a fingerprint based criminal history check, a credit check, and other investigative efforts to insure that no issues are left unanswered as to the credibility of the employees. It is estimated that such investigations will take 6 to 8 staff-hours each to accomplish.

Also, based on the organizational chart proposed by the Department of Revenue in their fiscal analysis, seven state employees that will be assigned within the casino group, which is in turn subordinate to the executive director of the commission. All totaled, not counting the three gaming commissioners themselves, 9 state employees will need background investigations due to their employment with the Alaska Gaming Commission.

#### **Owners, Managers, and Key Employees:**

Based on input from other states, it is believed that at a minimum, all owners or partners of a gambling facility, all managers, and select key employees should have an expanded background investigation to include a fingerprint based criminal history check, a credit check, interaction with other state and local law enforcement agencies, and other appropriate investigative efforts as necessary to insure that the individuals are legitimate members of the business community.

Background checks will take a minimum of 8 to 12 staff-hours to accomplish. If information of a negative nature is discovered, additional investigative effort will be needed to insure that all concerns are properly addressed. It is not clear at this point how many of these types of background checks will be required. The number of these types of inquiries can also vary depending on the regulations that will be promulgated if this bill becomes law.

#### **Occupational Licensing and Other Employees:**

As provided for in the proposed legislation, others associated with the operation of the gambling facility will require occupational licensing. Based on the regulations that will be promulgated as a result of this legislation, it is believed that as part of the occupational licensing process, fingerprint based criminal history checks will be required in order to obtain an occupational license. The majority of these types of employees will be able to have their fingerprint based criminal history checks accomplished through a process that already exists as described in the fiscal analysis prepared by the Statewide Services Division of the Department of Public Safety. There are other considerations that must be looked at when making a finding of suitability as it relates to those involved in the sale, transfer, or offering for use or play of gambling associated equipment. Those considerations include, but certainly are not limited to, a credit check of individuals involved in the enterprise as well as past business practices.

#### **Summary:**

While HB 552 provides for the commission to reimburse the DPS for costs incurred in conducting background investigations from fees collected from applicants for licenses, the total number of people that will be required to obtain a complete background investigation and the amount of time and effort needed to complete each investigation are not immediately known. Therefore, the fiscal impact to the DPS cannot be determined at this time.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 21, 2004

**SUBJECT:** CSHB 552(FIN), Indian Gaming, and Indian Gaming Regulatory Act (Work Order No. 23-LS1802U)

**TO:** Representative Bill Williams  
Attn: Pete Ecklund

**FROM:** Gerald P. Luckhaupt *GLP*  
Legislative Counsel

You have asked various questions about Indian gaming, the Indian Gaming Regulatory Act, and the effect of this bill on Indian gaming in Alaska. Due to the time constraints of the request and of other work, I have been unable to engage in the extensive research I would normally provide for a request like this.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., provides Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act divides gaming into three classes:

- (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
- (2) 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;<sup>1</sup> and
- (3) 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.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight

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<sup>1</sup> Class II gaming does not include:

- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(b).

by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact. We all know now that this "shall" is limited by the Eleventh Amendment immunity of the states as discussed in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996)<sup>2</sup>

Who negotiates compacts?

In *State ex rel. Stephan v. Finney*, 251 Kan. 559, 836 P.2d 1169 (1992), the Kansas Supreme Court was confronted with this question. In that case the Attorney General of Kansas sued the Kansas Governor challenging the authority of the governor to negotiate and enter into a binding tribal-state compact under IGRA. The court in deciding whether the governor had such power looked to the Kansas Constitution (the governor has the power to execute the laws - the legislature the power to make the laws), statutes (there

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<sup>2</sup> IGRA provided that a state that refused to negotiate in good faith could be hauled into federal court where a mediator would choose a compact between those proposed by the tribe and the state. The *Seminole* court found this procedure unconstitutional. The implications of this decision are unclear and I see it as a double-edged sword. While a state may not be forced into court without its assent the remedy in the IGRA provided to a tribe when a state refuses to negotiate in good faith has now been excised from the act. At least five states have asserted an 11th Amendment immunity from IGRA suits, Alabama, Florida, Kansas, Nebraska, and Washington. Are tribes without any remedy at all? The 11th Circuit in deciding *Seminole* didn't think so. The court said that if the state claims 11th Amendment immunity then the tribe is to notify the Secretary of Interior who will then prescribe regulations governing class III gaming on the tribe's lands within the state. *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016, 1029 (11th Cir. 1994). This remedy may be worse for the state than the IGRA provision of being summoned to court. The state may have no say in the tribal class III gaming within the state. The Supreme Court in *Seminole* specifically refused to disavow this substitute remedy. Congress for many years passed a rider to prevent the Secretary of the Interior from adopting such regulations. The Department of the Interior finally passed such regulations and at least two states, Florida and Alabama, have filed suit to contest those regulations. Another remedy for the tribes is even worse for the state. In that situation the tribe just decides to engage in class III gaming without any authorization from anyone and without a compact. At least one federal court has refused to allow federal enforcement actions against a tribe engaging in illegal class III gaming because of the *Seminole* decision. *U.S. v. Spokane Tribe of Indians*, 139 F.3d 1297 (9th Cir. 1998).

was no clear grant of authority for the governor to enter into negotiations and bind the state thereby), and the compact itself. The compact was important in that case because it greatly expanded state agency operations beyond those authorized by the legislature, including the hiring of staff and the creation basically of a new state office. These actions, the court concluded, operated as the enactment of new laws and the amendment of existing laws as such legislative approval or authorization for the actions were necessary. Therefore,

[o]n the narrow issue presented, we concluded the Governor had the authority to enter into negotiations with the Kickapoo Nation, but, in the absence of an appropriate delegation of power by the Kansas Legislature or legislative approval of the compact, the Governor has no power to bind the state to the terms thereof.

*State ex rel. Stephan, supra*, at 1185.

The analysis used by the Kansas Supreme Court appears equally valid in Alaska. In Alaska the executive power of the state is vested in the governor. Article III, § 1 of the Alaska Constitution. The governor is "responsible for the faithful execution of the laws." Article III, § 16. Meanwhile, the legislative power of the state is vested in the legislature. Article II, § 1. My review of the statutes has not revealed any grant of authority by the legislature to the governor so as to enable the governor to enter into binding negotiations with an Indian tribe for a state-tribal compact under IGRA.

The experience in New Mexico is also significant. In New Mexico the governor concluded compacts with a number of tribes some of whom were already illegally operating class III gaming in the state. Members of the legislature sued, arguing that the governor's execution of the compacts violated the state constitution by usurping the power of the legislature. The New Mexico Supreme Court agreed finding the governor's actions to have been the creation of law, a legislative power, rather than the mere execution of the law as delegated to the executive branch. *New Mexico ex rel. Clark v. Johnson*, 904 P.2d 11 (N.M. 1995). The tribes and the federal government later argued in federal court that the tribes and the federal government had the right to rely on the now discredited compacts and that federal approval of the compacts allowed the tribes to continue to game as permitted in the compacts. The 10th Circuit rejected this argument finding that the question of who has a right to enter into compacts on behalf of the state is a question for the state courts and the New Mexico court decision finding the compacts invalid meant that the tribes and federal government could not rely upon them. *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).<sup>3</sup>

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<sup>3</sup> The New Mexico situation is also significant as the legislature finally authorized the governor to enter into compacts with the tribes under certain terms as prescribed by the legislature including a requirement that the tribes share a portion of their gaming revenues with the state. At least some of the tribes are now refusing to pay the state as required under the compact arguing that revenue sharing is illegal under the IGRA. This issue is currently being litigated in federal court in New Mexico.

Even though there are no state laws that clearly provide that the governor may negotiate with a tribe under IGRA, I conclude that it seems reasonable for the governor to inherently have the authority as the executive authority for the state to represent the state in its interaction with the tribe under the federal law. The governor, though, may not bind the state to a compact he has negotiated, without the legislature's approval of that compact or the legislature's grant of authority to the governor to so bind the state.<sup>4</sup>

What types of games?

Also important are the types of class III games that are allowed in a state. Some courts have held that if a state allows any type of class III game they must negotiate with the tribes on all class III games. Closely connected with this view is the issue of how the games are permitted. The most famous example of this view arose in federal court in Connecticut. Connecticut allowed charities to conduct fund-raising "Monte Carlo" or "Las Vegas" nights, once each year, at which charities were allowed to use dice, cards, and numbers wheels for games that participants purchased scrip and used that scrip to bet on the games and then could exchange the scrip for prizes during the evening. In other circumstances the use of dice, cards, and numbers wheels was illegal in Connecticut. The federal courts held that allowing the use of dice, cards, and wheels required Connecticut to negotiate with the tribes with regard to those games and all other class III games without restriction.<sup>5</sup> See *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, at 1031 - 1032 (2nd Cir. 1990); *Mashantucket Pequot Tribe v. Connecticut*, 737 F.Supp. 169, at 173 - 176 (D. Conn. 1990). Thus, the largest casino in the world was born in Connecticut. In response to this decision the Idaho legislature repealed similar "Las Vegas" night authority and the Alaska Legislature did the same several years ago. See ch. 105, SLA 1995.

The 9th Circuit has adopted a somewhat different view. In *Rumsey Indian Rancheria v. Wilson*, 62 F.3d 1250 (9th Cir. 1994), the court held that the state need only negotiate with a tribe over those games that the state permits to operate within its borders and "need not give tribes what others cannot have." *Id.*, at 1258. Thus, even though Alaska allows charities to operate lotteries (any of the myriad forms of ice, rain, mercury and other classics authorized under AS 05.15 are probably lotteries) this should not require the state to negotiate with the tribes over other types of class III games. If Alaska still allowed charities to conduct casino nights the state would certainly be obliged to negotiate and permit those games if the state did not avail itself of the Seminole decision.

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<sup>4</sup> I have some questions about whether the legislature can delegate to the governor the authority to enter into a compact that actually changes or alters the laws of the state, as such could be construed as an unconstitutional delegation of the legislature's law making power.

<sup>5</sup> Connecticut contended that they only had to negotiate with the tribes to allow those games to be played with the use of scrip. The federal courts disagreed.

Representative Bill Williams

April 21, 2004

Page 5

See, e.g., *Coeur d'Alene Tribe v. Idaho*, 842 F.Supp. 1268 (D. Idaho 1994), *aff'd*, 51 F.3d 876 (9th Cir. 1995).

CSHB 552(FIN) would allow full scale casino gaming in Alaska, therefore, Alaska tribes would be entitled to negotiate with the state to conduct all of those types of games. The proverbial "door" would be open.

What are Indian lands for purposes of the IGRA?

This is the troublesome part of "opening the door." It is impossible, in my opinion, for anyone to say that gaming will be limited to certain clearly identified portions of land or areas of this state. No one knows exactly how much Indian land there is and where that Indian land is for purposes of Indian gaming in Alaska. It is clear, though, that the *Venetie* decision does not provide the answer or comfort that some have alluded to in this regard.

The IGRA does not confine its reach to lands normally considered as "Indian country" as that term has been defined and applied. The IGRA applies to Indian lands which are defined in the act to be:

- (A) all lands within the limits of any Indian reservations; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any 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.

25 U.S.C. § 2703. The boundaries of this definition have not been sufficiently explored. Obviously the first part of the definition has limited utility in Alaska as only the Metlakatla Indian Community is a true reservation. There are several parcels of land in Alaska (in or near Klawock, Angoon, and some other places) that are held in trust by the United States for an Indian tribe that seemingly meet the requirements of the second part of the definition. The United States government also holds land in trust for various individual Alaska natives under Native allotment and townsite acts. Such land, even if it is located off reservation and not otherwise contiguous or adjacent to a reservation, has been found in other states to qualify as Indian land and as Indian country.<sup>6</sup> Otherwise it is not clear what fits or does not fit within the second part of the definition.

It is clear, I believe, that the second part of the definition does not require a finding that these lands are Indian country. While some people seem to think that the *Venetie*<sup>7</sup> decision ended discussion as to the potential reach of the IGRA in Alaska, that view

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<sup>6</sup> See, e.g., *Tempest Recovery Services, Inc. v. Belone*, 74 P.3d 67(N.M. 2003). This case is interesting because the New Mexico Supreme Court cites *Venetie* as requiring reversal of prior New Mexico decisions that off reservation allotments were not Indian country.

<sup>7</sup> *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

ignores the fact that the definition of Indian lands in the IGRA is not dependent upon a finding that the land is Indian country. The only relevance *Venetie* has in the gaming area is that ANSCA land is not Indian country. But it does not mean that ANSCA land may never qualify as Indian land for IGRA purposes or that other land may not qualify as Indian land for IGRA purposes. In any event, I have not seen any definitive attempt in Alaska to determine exactly what lands (and their locations) meet this portion of the definition. To date, the only discussions I have seen have limited themselves to only looking at Indian country locations and have ignored the fact that off reservation allotments could qualify as Indian lands under the second part of the IGRA definition for Indian gaming as has been done in other states.

Further, 25 U.S.C. § 2719 allows for taking of additional lands into trust by the United States and the use of those lands for gaming under the requirements of that section. This provision has been highly controversial as tribes in the 48 contiguous states have sought, in some cases, to move their gaming activities closer to large population centers. Many areas of Indian lands are in remote sites and their utility for gaming is somewhat limited. Not surprisingly there has been pressure placed upon the United States to take lands into trust for gaming purposes. While in some cases 25 U.S.C. § 2719 requires the state to be consulted and the governor to approve the proposal, in other situations no such consultation and approval is required.<sup>8</sup> These other situations are especially worrisome as they allow land to be taken into trust and used for gaming purposes without the approval of the governor.

What has also occurred in other states involves tribes asking the federal government to take land into trust for other than gaming purposes. This process, while not necessarily simple, is much easier than asking for the land to be taken into trust for gaming. Once the land is taken into trust the tribe then installs gaming equipment and opens a casino without obtaining the approval that otherwise would have been necessary.<sup>9</sup> Finally, except for Metlakatla Alaska tribes do not have reservation land. The tribes though could seek land to be restored to them for gaming purposes in areas that are within their traditional boundaries. Tribes in other states have been successful in having restored lands<sup>10</sup> qualify for gaming purposes.<sup>11</sup>

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<sup>8</sup> For example, lands can be taken back into trust and used for class III gaming if

the Indian tribe has no reservation on October 17, 1988, and

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such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

<sup>9</sup> I have enclosed a news story that describes how various Oklahoma tribes have accomplished this.

<sup>10</sup> I am not saying that Alaska tribes would be successful in gaining restored lands but that the possibility exists and it has been done in other states for tribes without reservations or land.

If State authorized class III gaming is limited to certain areas - is Indian gaming similarly limited under IGRA? The answer is clearly no. Just because the state may limit gaming to certain defined and geographically limited areas, or in this case certain population centers, does not limit the authority of tribes to conduct class III gaming on their lands wherever they might be within a state. The Indian Gaming Regulatory Act is clear that if the state allows anyone to conduct class III gaming within the state then the tribes may game on Indian lands within the state.

Subsequent repeal of state laws authorizing class III gaming. It is not clear what happens if a state subsequently repeals the authority of persons to conduct class III gaming after a tribe has commenced gaming in the state. I have not found an instance where the subsequent change of law has resulted in Indian gaming actually stopping.

The Connecticut General Assembly considered legislation the last two years<sup>12</sup> that would repeal charity "Monte Carlo" nights discussed earlier in this memorandum. If "Monte Carlo" nights were repealed, the state of Connecticut would no longer authorize anyone to conduct class III gaming in the state. The effect, as discussed in the press by the proponents of the legislation, would be to prevent additional tribes from starting class III gaming beyond those two tribes that already conduct casino gaming in Connecticut. The rationale being that those that already started casinos did so while class III gaming was allowed in the state, and that authority to conduct casino gaming (subsequently recognized by a compact between the state and the tribe) cannot be revoked. The tribes that would be shut out of gaming under the legislation believe that they will still be permitted to conduct class III gaming because the other tribes will still be conducting class III gaming within the state pursuant to the compact and therefore Connecticut will still be allowing persons to conduct class III gaming within the state.<sup>13</sup>

In 1993, the people of the state of Wisconsin passed a constitutional amendment that specifically identified the types of gaming allowed in the state and prohibited casinos and casino gaming. Indian casinos are still operating in Wisconsin as the governor has continued to renew compacts with the tribes conducting class III gaming. There is at least one lawsuit pending that challenges the authority of the tribes to continue to operate casinos and the governor's authority to continue to renew compacts with those tribes.

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Enclosure

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<sup>11</sup> See, e.g., the attached National Indian Gaming Commission memorandum.

<sup>12</sup> See HB 7501, 2003 Regular Session, Connecticut General Assembly.

<sup>13</sup> In a research report the Office of Legislative Research of the Connecticut General Assembly reached a similar conclusion. See research report 2000-R-699.

Indianz.Com. In Print.

URL <http://www.indianz.com/News/show.asp?ID=2003/04/23/chickasaw>

Okla. tribe leaps over Indian gaming hurdles  
WEDNESDAY, APRIL 23, 2003

The Chickasaw Nation of Oklahoma has expanded its multi-million dollar gaming empire by exploiting loopholes in federal law, according to a review of government documents and interviews.

By skirting rules on the controversial land-into-trust process, the tribe is able to avoid lengthy reviews by Washington, D.C., bureaucrats. Approval instead occurs at the local level with little or no public comment -- and no consultation with affected tribal and state governments. In at least one case, the sign-off took just one day and the land was pulled from county tax rolls.

More importantly, the tribe is able to thwart prohibitions on gaming that occurs on land taken into trust after 1988. The Indian Gaming Regulatory Act (IGRA), passed that year, generally frowns upon such expansions and sets up hurdles that few tribes elsewhere are able to meet.

Free of the restraints, the tribe has emerged as a major player in the \$12 billion and growing tribal gaming industry. According to a study by the Oklahoma Indian Gaming Association, the Chickasaw Nation has more casino facilities and casino machines than any other in the state.

From 1988 to 2001, the tribe opened at least 11 casino facilities on newly acquired trust lands. The growth -- unparalleled in Oklahoma tribal circles -- helped bring in more than \$1 billion in revenues last year alone.

But the success hasn't come without prying eyes. Last summer, the National Indian Gaming Commission asked tribes in Oklahoma to prove their casinos are operating legally. Richard Schiff, the agency's chief of staff, said the review is ongoing.

Chickasaw Nation Gov. Bill Anoatubby insists the tribe's business practices are within the law. In a June 2002 interview, he described how the process works: the local Bureau of Indian Affairs agency approves the tribe's land-into-trust request and the tribe opens a gas station, tobacco shop or other non-casino enterprise. At some point in the future -- it could be years, said Anoatubby -- gaming machines are added, turning a staid travel plaza into a bustling gaming center.

"We have not tried to go around the rules," Anoatubby said.

Since the tribe doesn't say the land is for gaming purposes, IGRA's tough rules never kick in, allowing the tribe to escape scrutiny that can often take several years to resolve. An examination of government records confirmed that the BIA

simply took the land into trust with little questions asked.

"We rely on the BIA to tell us what we need to do to put the land into trust," Anoatubby noted.

At the time, Anoatubby blamed the doubts about the tribe's casinos on the NIGC, then headed by former commissioner Montie R. Deer, a Clinton appointee. "I wish they would come and talk to us instead of going to the press," he said.

Anoatubby has since failed to respond to requests for comment.

Not everyone thinks the Chickasaw Nation is doing anything out of the ordinary. Kevin Gover, who headed the BIA during the last three years of the Clinton administration, said the bloated land-into-trust process almost forces tribes to take matters into their own hands.

"The tribe can either go to the Department of Interior and ask for a solicitor's opinion and ask for an OK," he said. "or they can go out and start a casino and dare somebody to stop them. It's worked a lot."

The Grand Traverse Band of Ottawa and Chippewa Indians, he recalled, opened a casino on land taken into trust post-1988. DOI officials and solicitors argued that the casino violated IGRA's blanket prohibition. But the tribe, based in Michigan, eventually prevailed in court by clearing one of the law's hurdles.

"It's a risky strategy," Gover said, "but one that works."

Other tribes aren't as lucky even when they go through normal channels. In western Oklahoma, the BIA has strongly enforced the post-1988 ban even when tribes have a credible argument for satisfying what is known as a "Section 20" exemption, named for the section of IGRA outlining the procedure.

In one example, the Fort Sill Apache Tribe has waited more than seven years on a request to open a gaming facility on an Indian-owned allotment. The parcel is held in trust for another tribe and the Apaches are seeking a transfer.

But the matter has bounced back and forth between D.C. and BIA officials in Oklahoma so many times that the tribe has never been given a clear answer.

In another instance, the Cheyenne-Arapaho Tribe asked the BIA to approve a trust land acquisition for gaming purposes. For the Chickasaw Nation in eastern Oklahoma, this can occur in as little as a day, according to government records bearing signatures of Gov. Anoatubby and BIA officials.

But the superintendent of the agency serving the Cheyenne-Arapaho Tribe refused to even consider the request unless tribal officials adopted a resolution stating they would not open a casino on the land.

"They are entitled to prompt and definitive decision," Gover said of the tribes in limbo. "I don't think they got one from us. That's not fair."

Former assistant secretary Neal McCaleb is a member of the Chickasaw Nation. He currently heads up the tribe's business development unit, a position he took when he left the Bush administration earlier this year.

During his tenure, he was recused from all matters affecting the tribe, a standard practice in the Indian-heavy BIA. But while at the agency, he instituted a change in policy that requires all land-into-trust requests for gaming purposes to be approved in Washington, D.C.

Breaking from earlier practice, the Chickasaw Nation has asked for one of these Indian land determinations, said Nedra Darling, a BIA spokesperson. The request has been sent to the Office of Indian Gaming Management, headed by George Skibine, a career bureaucrat, and is still under consideration more than a year after the request was made. Through Darling, Skibine confirmed that none of the other post-1988 Chickasaw facilities went through this rigorous process.

The gaming office, through a memorandum of understanding, works in conjunction with the NIGC to make the Indian land determinations. Clearing IGRA's hurdles, however, is difficult. According to the Senate testimony of former deputy commissioner Sharon Blackwell, the BIA has only approved about 20 exemptions since 1988. None of them were for Chickasaw facilities.

In a recent speech, Aurene Martin, the acting assistant secretary, acknowledged the BIA's role in ensuring that tribal gaming occurs within the law. But she said there are no plans to adopt new regulations for land-into-trust that impose standards on the agency.

"The Department [of Interior] has certain responsibilities under the Indian Gaming Regulatory Act and is responsible for reviewing compacts and placing land into trust which may be intended for gaming purposes," she said on April 10, "We will continue to conduct those activities in a manner that is consistent with federal law."

#### Relevant Links:

Chickasaw Nation - <http://www.chickasaw.net>

National Indian Gaming Commission - <http://www.nigc.gov>

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## MEMORANDUM

To: Assistant Secretary – Indian Affairs

From: Associate Solicitor, Division of Indian Affairs

Date: December 5, 2001

Subject: Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F.Supp 2d 155 (D.D.C. 2000) in regard to proposed gaming on the Hatch Tract in Lane County, Oregon.

### Introduction

This memorandum is in response to the above referenced decision in Confederated Tribes in which the court remanded this case to the Department for further consideration of the Department's interpretation of 25 U.S.C. § 2719(b)(1)(B)(iii). Section 2719(b)(1)(B)(iii) exempts land taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." This section is part of an overall statutory scheme set forth in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et. seq.* (IGRA), that prohibits gaming on land acquired into trust after October 17, 1988 unless certain exemptions are met.

We have carefully reviewed the Administrative Record in Confederated Tribes, the court's opinion, and additional materials submitted by counsel for the Tribes. In addition, we have taken into consideration the decision issued on August 31, 2001 by the National Indian Gaming Commission (NIGC) to Judge Hillman entitled "Whether the Turtle Creek Casino site that is held in trust by the United States for the benefit of the Grand Traverse Band of Ottawa and Chippewa Indians is exempt from the Indian Gaming Regulatory Act's general prohibition on lands acquired after October 17, 1988." (GTB Decision).

After careful consideration, we conclude that the Hatch Tract falls within the requirements of § 2719(b)(1)(B)(iii), the restored lands exception to the prohibition to gaming on lands acquired after October 17, 1988. It must be noted, however, that this opinion will only address the unique factual and legal circumstances related to the Confederated Tribes.

### Background

On October 19, 1999, Solicitor John Leshy issued an opinion regarding whether the "Hatch Tract is exempt from the general prohibition against gaming on land acquired into trust after October 17, 1988, as set forth in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2702 *et. seq.* (IGRA)." At issue here are two tracts of land – the Hatch Tract and the Peterman Tract. The Peterman tract is a contiguous

driveway to the Hatch tract. [1] Congress, in 1998, added the Peterman tract to the Tribe's statutory reservation. The Department took the Hatch tract into trust for the tribes in 1998.

In the 1999 opinion, we examined two exceptions to IGRA's requirement for a two-part determination and the Governor's concurrence for off-reservation gaming. The two exceptions we analyzed were the restored lands for restored tribes and the contiguous land exception.[2] We found that the Hatch Tract met neither exception. In the opinion the Solicitor concluded:

We believe that "restored lands" under section 20(b)(1)(B)(iii) include only those lands that are available to a restored tribe as part of its restoration to federal recognition. The statute that restores the Tribe's Federal recognition status must also provide for the restoration of land, and the particular parcel in question must fall within the terms of the land restoration provision. Here, the Confederated Tribes were restored to Federal recognition pursuant to their Restoration Act of 1984 and Congress specifically described the parcels to be acquired. The only lands which constitute "restored" lands for the Confederate Tribes are those parcels in section 7.

October 19, 1999 Memorandum from the Solicitor to the Assistant Secretary – Indian Affairs at 3.

On September 24, 1999, the Tribes filed suit in the U.S. District Court for the District of Columbia challenging the Department's decision to deny certification for the Hatch Tract.[3] The parties thereafter filed cross-motions for summary judgment.

On September 29, 2000, the court ruled in the Department's favor on three of four claims. However, the district court also ruled that the Department had adopted an unduly narrow interpretation of the "restored lands" exception in § 2719(b)(1)(B)(iii) and remanded that single issue for further administrative review. Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F.Supp.2d 155 (D.D.C. 2000).

In pertinent part, the court disagreed that the technical meaning of the term "restoration of lands" included only those lands were available to a restored tribe as part of its legislative restoration to Federal recognition by Congress. Instead, the court found that the plain meaning of "restoration of lands" could be construed as those lands that place a tribe back its position prior to termination. Id. at 163. The court also found that the Department's requirement for specific legislative direction regarding restored lands sought "to graft procedural and temporal limitation onto section 2719(b)(1)(B)(iii)." Id. The court also rejected our argument that giving the statutory language this plain, broad, reading would result in opening the door to permitting gaming on any after-acquired tribal lands. Id. Given the various possible meanings of the section, the court concluded that we had applied "an unduly restrictive analysis" and that we should consider on remand the application of the Indian-favoring canons of construction and the particular factual circumstances surrounding the Hatch Tract. Id. However, the court did agree with Judge Hillman in Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney, 46 F. Supp.2d 689 (W.D. Mich. 1999) that "the term 'restoration' may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." Id. at 164, quoting Grand Traverse at 700.

## Legal Analysis

Lands that are taken into trust as part of the "restoration of lands for an Indian tribe that is restored to Federal recognition" are exempt from the prohibition against gaming on lands acquired into trust after October 17, 1988 25 U.S.C. § 2719(b)(1)(B)(iii). This section requires a two-pronged analysis. First, the tribe must be "restored" within the meaning of IGRA. Second, the land to be acquired must be "restored" within the meaning of IGRA.

At issue here is the Department's interpretation of "restored" as applied to land in the context of 25 U.S.C. § 2719(b)(1)(B)(iii). Two district courts have opined that the Department's interpretation of this subsection is too narrow. The court in Confederated Tribes found that the Department failed to apply the canons of construction that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Id.* at 158, citing Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1444-45 (D.C. Cir. 1988) (further internal citations omitted.)

The Department has issued several opinions regarding the application of § 2719(b)(1)(B)(iii) to specific facts.[4] Since that time two courts and the NIGC have issued decisions analyzing the restored lands exception. In addition, none of the Department's previous opinions have included an analysis of the Indian canons of construction. In this opinion, we will re-examine our interpretation of IGRA in light of the foregoing. By applying the Indian canons of construction along with the Department's expertise in interpreting the statute it is charged with implementing, we find that the Hatch Tract constitutes restored lands.

1. **The restored lands exception within § 2719(b)(1)(B)(iii) is ambiguous.**

Before reaching any of the canons of construction, we must decide whether "the restoration of lands for an Indian tribe that is restored to Federal recognition" is ambiguous. If "Congress has directly spoken to the precise question at issue," then the Department must yield to the plain meaning of the text. Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842 (1984). However, if the provision is ambiguous, then the Department can apply the Indian canons of construction as well as our expertise in interpreting IGRA, to determine the proper application of the restored lands provision.[5]

In Confederated Tribes the court found that § 2719(b)(1)(B)(iii) is ambiguous. [6] The court found that "part of the ambiguity of the provision stems from the use of the phrase: "that is restored to federal recognition." *Id.* at 162. The court opined that the question boils down to whether the word "restored" in the phrase "Indian tribe that is restored" is intended as a verb (that is, the activity of restoring, in which case the timing should be limited to the congressional action) or as a noun (*sic.*) (that is, the state of being restored, in which case the timing should extend to completion of the land restoration process whether through later legislative or administrative action). *Id.* Thus the court found that "the varying possibilities highlight the ambiguity of § 2719(b)(1)(B)(iii)." *Id.*

The courts in both Confederated Tribes and Grand Traverse Band found that the terms "restore" has no independent legal significance in either IGRA or in other Acts. Confederated at 162-163 and Grand Traverse at 696. Nor does the plain meaning resolve the matter. Merriam-Webster's Collegiate Dictionary at 999 (10<sup>th</sup> ed. 1999) (the word restored is generally understood as "to bring back to or put back into a former or original state"). The Grand Traverse court held that the language of the "restoration of lands" exception "implies a process rather than a specific transaction, and most assuredly does not limit restoration to a single event." *Id.* at 701. As explained by the court: "Congressional use of the words appears to have occurred in

a descriptive sense only, in conjunction with action taken by Congress to accomplish a purpose consistent with the ordinary meaning of the words. In no sense has a proprietary use of 'restore' or 'restoration' been shown to have occurred." *Id.* at 698.

Thus, we believe that § 2719(b)(1)(B)(iii) is ambiguous and has no independent specific legal significance.[7]

## 2. Indian Canon of Construction

The Indian canons of construction provide that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit ..." Montana v. Blackfeet Tribe of Indians, 471 U.S. 759, 766 (1985). This canon is rooted in the unique trust relationship between the United States and Indian tribes, and Congress's obligation to act on behalf of these "dependent and sometimes exploited Indian nations." Albuquerque Indian Rights v. Lujan, 930 F.2d 49, 58 (D.C. Cir. 1991) (citing Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942)).[8] In the D.C. Circuit, where this case is being litigated, the Court in Coos cited Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1445 (D.C. Cir. 1988) which provides that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Id.* at 1444-45, Coos at 116 F.Supp.2d 155, 157.

## 3. Department's interpretation of § 2719(b)(1)(B)(iii)

Both the court in Confederated Tribes and Grand Traverse applied the dictionary definition to "restored." Confederated Tribes at 162, Grand Traverse at 696. The dictionary definition of "restore" is: (1) to give back (as something lost or taken away); return . . . 2: to put, or bring back (as into existence or use) . . . 3: to bring back or put back into former or original state . . . Webster's Third New International Dictionary, p. 1936 (G. & C. Merriam Co. 1976).

We believe, however, that to apply dictionary definition to the restored land provision without temporal or geographic limitations would give restored tribes an unintended advantage over tribes who are bound to the limitations in IGRA that prohibit gaming on lands acquired after October 17, 1988. Moreover, we believe that, in examining the overall statutory scheme of IGRA, Congress intended some limitations on gaming on restored lands.

Because there is no legislative history regarding § 2719, one must look elsewhere to glean some indication of the Congress' view regarding off-reservation gaming. IGRA was enacted in the wake of California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) which held that the State of California had no authority under Public Law 280 to enforce its bingo and card game statutes on Indian reservations because such laws are regulatory and not prohibitory. For three years prior to that decision, bills had been introduced in Congress aimed at regulating gaming on Indian reservations. None of these bills passed because no agreement could be reached on the kinds of games tribes should be permitted to operate.

Congress did hear testimony as part of the previously failed bills. Rep. Bereuter of Nebraska, who had introduced one of the failed bills, testified that he did not believe that it was "good public policy" to establish Indian gaming operations on lands that were not contiguous to a reservation against the wishes of the directly affected political subdivisions. Indian Gambling Control Act, Part II, Hearings before the House Interior and Insular Affairs Committee, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 20, 21 (1985) (H.R. 3130 Testimony.) Rep. Bereuter considered it inappropriate for the Secretary to put new lands into trust for gaming because to do so would circumvent State law enforcement and result in lost revenues to State and local governments. *Id.* Thus, when IGRA was

introduced, it was with a backdrop of political pressure to limit off-reservation gambling without the concurrence of directly affected political subdivisions. It must be noted, however, that as enacted IGRA differed from previous bills.

As one compelling manifestation of the prevailing congressional will, the enacted § 2719 includes a requirement that gaming on most off-reservation, newly acquired lands must be subjected to the two-part determination if § 2719(b)(1)(A), i.e., the Department must find that gaming on newly acquired land is in the best interest of the tribe and its members and not detrimental to the surrounding community, and then the tribe must receive the Governor's concurrence. As with the previous failed bills, Congress intended to give the Department and the local political community a voice in deciding whether to allow gaming. More importantly, it gave the Governor of the State a veto. However, unlike the failed Indian gaming bills, IGRA contains exceptions to this provision.

Section 2719(b)(1)(B) contains three exceptions to the high political hurdle of a Governor's veto.[9] These three exceptions are: (i) the settlement of a land claim; (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process;[10] and (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition. Clearly, one compelling reason for providing such exemptions is to provide all tribes with at least one opportunity for the economic advantages of gaming without having to seek the Governor's concurrence. If Congress had limited gaming on lands within known reservation boundaries, then newly acknowledged tribes or tribes that settled land claims would have been denied the opportunities that IGRA provides.

In enacting the restored lands for restored tribes exception, Congress could have enacted an exception for tribes that had been congressionally or legislatively recognized. Moreover, it could have limited the definition of restored lands to former reservation boundaries as it did in § 2719(a)(2)(A)(ii). Congress did neither. Instead it enacted a broad, albeit ambiguous section, that exempts restored lands for restored tribes.

However, because IGRA provides certain temporal (i.e., the October 17, 1988 limitation for reservation boundaries) and geographic limitations (i.e., land within or contiguous to the tribe's reservation) we cannot view § 2719(b)(1)(B)(iii) to allow gaming on after-acquired lands with no limitations. Consequently, we do not use a dictionary definition of restored to include all land "restored." It also seems clear that restored land does not mean any aboriginal land that the restored tribe ever occupied. Tribes that were not terminated and thereby not capable of being "restored," lost vast amount of land and were forced to move all over the country such that their reservations on October 17, 1988, are vastly different than their aboriginal land.

We agree with Judge Hillman's finding in Grand Traverse that § 2719(b)(1)(B)(iii) could be read "in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." Grand Traverse at 700. However, because this opinion is related solely to the Confederated Tribes, we will not opine as to the possible temporal or geographic or other limitations of the restored land subsection.[11]

Further, applying the Indian canons of construction to assist us in determining the scope of § 2719(b)(1)(B)(iii) means not only that we may draw all applicable inferences in favor of the Tribes, but also that we should not apply the canon such that it benefits a certain group of tribes to the disadvantage of other tribes. Confederated Tribes of Chehalis v. State of Washington, 96 F.2d 334 (9<sup>th</sup> Cir. 1996).[12]

## Analysis of Hatch Tract

The Tribes of Coos, Lower Umpqua & Siuslaw Indians (now the "Confederated Tribes") were terminated by the Western Oregon Termination Act of 1954. Congress restored the Confederated Tribes on October 17, 1984, 25 U.S.C. § 714 et seq. (1998).

### 1. Background of the acquisition of the Hatch Tract

The Department took the Hatch Tract into trust in January 1998.<sup>[13]</sup> The tract is about 98 acres and is the site of a former Siuslaw village and its adjacent to an important Indian cemetery which contains the remains of tribal ancestors.

After the court's ruling, the Tribes supplemented the record with "The Hatch Tract: A Traditional Siuslaw Village Within the Siletz Reservation, 1855-75." December 4, 2000, Dr. Stephen Dow Beckham ("Beckham Supplemental Report"). In his report, Dr. Beckham writes:

The Hatch tract was first identified as a "Siuslaw Village" by Capt. John F. Reynolds of the U.S. Army in July 1856. The site, known as Ka'aich, was the location of the ceremonial lodge of the Earth Lodge Cult, a version of the Ghost Dance, in 1877. A part of the Ka'aich was issued to Jesse Martin, a Coos Indian, as an allotment in 1892, pursuant to the allotment agreement with the Indians of the Siletz Reservation resolved that year. Another portion of the Ka'aich, the site of the tribal cemetery, was allotted to Tom Johnson, a Lower Umpqua Indian. These are non-taxed Indian properties. The heirs Jesse Martin's granddaughter, Hattie (Martin) Hatch, sold that allotment to the Confederated Tribes in 1995. The heir of Tom Johnson, Elizabeth Anne (Macy) Campbell, a tribal member, retains a portion of that non-taxed allotment, including the tribal cemetery. The Peterman tract, another portion of the Tom Johnson allotment, was deeded to the United States in 1947 to provide a right-of-way into the tribal cemetery. The Bureau of Indian Affairs affirmed the trust status of the Peterman tract in 1997.

Id. at page "i"

Dr. Beckham's report finds that in 1859 the Coos and Lower Umpqua wanted to remain where they were located instead of moving to the newly created Siletz Reservation. Id. at 9-13.

In March 1998, the attorney for the Confederated tribes wrote to the Portland Area Director discussing the history of the acquisition of the Hatch Tract and the tract itself.

According to counsel for the Confederated Tribes, sometime in 1996 the Tribes began to search for a site for a gaming operation with the assistance of its counsel, Mr. Whittlesey, and tribal historian Dr. Beckham. Dr. Beckham and Mr. Whittlesey considered on-reservation gaming in the Empire section of Coos Bay, Oregon. However, the Coquille Tribe operated a close-by casino in North Bend. In March 1998 counsel for the Confederated Tribes wrote of the Hatch Tract:

Independent of the project being handled by Dr. Beckham and me, the Confederated Tribes were given the opportunity to acquire the Hatch Tract approximately two years ago. This tract was a public domain allotment which was deeded to the ancestor of a tribal member and which had never been on the Oregon or Lane County tax rolls. The tract was adjacent to the old Indian cemetery just east of Florence in Lane County, and

more importantly, was known to encompass the site of an old Siuslaw Indian village.

The land was owned by the heirs of Hattie Hatch and had been occupied until only a few years ago by a tribal member who had recently died. The family had a desire to see the site transferred to tribal ownership and the price agreed upon was considered very attractive from the Confederated Tribes' viewpoint. (The land was acquired and accepted into trust for the Confederated Tribes in early March 1998.)

March 23, 1998 Letter to Stan Speaks, Portland Area Director, BIA from Dennis J. Whittlesey.

The Hatch Tract was taken into trust for historical, cultural, and economic self-sufficiency. At the time of the land being taken into trust, the tribes were not considering it for gaming purposes.[14] The Tribes decided to focus on the Hatch tract for its planned gaming operation because they were concerned that two casinos could not be operated at a profit in the Coos Bay area and the Coquille casino was already established. The Confederated Tribes wanted to maximize their economic development opportunities.

## **2. Historical significance of the Hatch Tract to the Confederated Tribes**

As part of the previous litigation, the Tribes submitted an affidavit from its historian, Dr. Stephen Dow Beckham. Dr. Beckham is a Professor of History at Lewis & Clark College in Portland, Oregon. In addition, as previously noted, the Tribes supplemented the record with the Beckham Supplemental Report.

According to Dr. Beckham's Affidavit, the Hatch tract is historically significant to the Confederated Tribes. Dr. Beckham testifies in his affidavit:

I have also researched the Hatch Tract at the western side of the confluence of the North Fork with the main Siuslaw River, land lying in Sections 25 and 26. This property was confirmed in July 1856, by Captain John F. Reynolds of the U.S. Army as the site of a large Indian village and was so denominated on his map of a reconnaissance from Umpqua River to Cape Perpetua. In 1892, Jesse Martin, a Coos Indian, secured this property as Fourth Section Allotment under the provisions of the General Allotment Act of 1887. The land passed successively to his son, Ike Martin, and his granddaughter, Hattie (Martin) Hatch. In 1997 the heirs of Hattie Hatch own(ed) the allotment. The land is deemed "non-taxed Indian land" by Lane County and there is no record that his land has ever left Indian tenure or been subject of taxation.

December 17, 1997 Affidavit of Stephen Dow Beckman.

The Beckham Supplemental Report reinforces that the Hatch Tract was the site of an aboriginal village. In addition, the report shows that the Hatch Tract was within the boundaries of the Siletz reservation created on November 5, 1855 by President Franklin Pierce. Also, the Hatch Tract remained within the reservation boundaries when it was reduced by Executive Order in December 20, 1865. Id. (Recall that in 1862 the Coos, Lower, Umpqua, and Siuslaw Indians were removed to the Siletz Reservation. Id. at 9-13.)

Also, the Peterman Tract is contiguous to the Hatch Tract. While the court agreed with the Department's view that the Peterman Tract was not part of the reservation as of October 17, 1988, the history of the Peterman tract sheds light on the history of the Hatch Tract. In the Administrative Record is the Bill of Sale dated June 24, 1944. A.R. 00128. This Bill of Sale for Allotment No. 113 which was owned by Mr. Johnson. This bill of sale reserves 12 acres of the Allotment for use as "Indian burial

and cemetery ground." Id. In 1945 the Superintendent wrote to the Commissioner of Indian Affairs that "we do not see how we can keep faith with the Indians of the area, who from time immemorial have used this land for burial grounds, if we do not see that an instrument is executed at the time of the sale to insure them of the continued use of their cemetery." A.R. 00138. The remaining portions of the Allotment were sold. Id.

Thus, near the time of termination, the BIA recognized the significance of the cemetery site and reserved it and a right-of-way to it. In addition, in 1943, the Grand Ronde-Siletz Agency reported in its fiscal year report that "a second community building should be built for the Indian people centered around the town of Florence. There are about fifteen families in this area. However, suitable land for the construction of such a community building must first be made available." Id. at 00121.

In addition, on October 14, 1998, Congress amended the Restoration Act through a technical correction bill. Pub. L. No. 105-256. This bill added the Peterman tract to section 7, the Establishment of the Reservation. Id. § 5. However, this bill did not add the Hatch Tract.

### 3. Hatch Tract is restored land

At issue is whether the Hatch Tract meets the exception found in § 2719(b)(1)(B)(iii) for restored lands for restored tribes. There is no question that the Confederated Tribes are a restored tribe. The only question here is whether the Hatch Tract constitutes "restored lands."

We agree with NIGC's interpretation in its GTB Decision that:

Congress likely did not intend to substantially undercut the general prohibition on gaming on lands acquired after IGRA's passage. Although Congress did not limit the definition of restored lands to former reservation boundaries as it did, for example, in section 2719(a)(2)(B), we believe the phrase "restoration of lands" is a difficult hurdle and may not necessarily be extended, for example, to any lands that the tribe conceivably once occupied throughout its history.

Id. at 15.

The Confederated Tribes were restored by Congress to Federal recognition in 1984, well before IGRA was enacted. The Restoration Act established a reservation for the Tribes, see § 713f and § 714e. However, since this was prior to the passage of IGRA, the Tribes and Congress had no reason to believe that this could limit the Tribes' future economic development. The court in the Coos decision found that Department's requirement for specific legislative direction regarding restored lands sought "to graft a procedural and temporal limitation onto section 2719(b)(1)(B)(iii)." Id. Thus, we believe that it is a reasonable interpretation that since the Restoration Act was passed prior to the passage of IGRA, that the land identified in the Restoration Act may not be the only land that meets the restored lands provision.[15]

Congress, in restoring the Tribes, also wanted to make sure that the boundaries of the reservation did not limit who would receive Federal services. The Restoration Act included a provision for services for members of the Confederated Tribes located in several counties. The Act provides that:

Notwithstanding any provision to the contrary in any law establishing such services and benefits, eligibility of the Tribe and its members for such Federal services and benefits shall become effective upon passage of this subchapter without regard to the existence of a reservation for the Tribe or the residence of the members of the Tribe

on a reservation for such members who reside in the following counties or Oregon: Coos, Lane, Lincoln, Douglas, and Curry.

25 U.S.C. § 714a. Thus members living on the Hatch tract, located in Lane County, were eligible for Federal services.

The next question is whether there is a temporal and/or a geographic nexus between the restoration of the Confederated Tribes and the Hatch Tract. We believe that the land has a geographic nexus to the Tribes. We do not believe that the Tribes are seeking to game on far-flung land. Another consideration is that the tract was a public domain allotment which was deeded to the ancestor of a tribal member and which has never been on Oregon or Lane County tax rolls. The local community has known for years that this land is closely tied to the Tribes. There is also a modern nexus under the Restoration Act because the member, Hattie Hatch who occupied the land until her death, was eligible for services since she lived in the "service area" defined by 25 U.S.C. § 714a.

Moreover, Congress believes that land contiguous to the Hatch Tract, the Peterson Tract, should be part of the Tribes' reservation. While it could be argued that since Congress only restored the Peterson Tract, it suggests that Congress did not intend the Hatch Tract to be considered restored lands we have no indication that Congress ever considered and decided against the Hatch Tract as part of its technical amendments. Therefore, even if the technical amendment was intended only as a clear indication of Congressional intent that the Federal government should view the Peterson Tract as restored lands, it does not preclude the conclusion that the Hatch Tract is restored land especially when viewed in light of weight of the other significant evidence.

Also, we find it significant that near the time of termination the Tribes had a presence in the area and the BIA was considering building community buildings. While we cannot say that this land would have been part of the Tribes' land base had it not been terminated, it does appear that it meets the geographic limitations we believe are implicit in a reasonable interpretation of § 2719(b)(1)(B)(iii).

For the temporal nexus, the Tribes were restored in 1984 and the Hatch Tract was taken into trust in 1998. The acquisition of the lands into trust 14 years after the Tribes' restoration is a significant period of time. In considering whether this is a sufficient temporal nexus, however, several factors must be considered.

One consideration is that Congress allowed 14 years to elapse before restoring the Peterson Tract to the Tribe. Thus, in this particular instance, without some relevant attenuation, the mere passage of time should not be determinative. Also, it is not improper for the Department to take account of the practical effect of the passage of the restored lands exception. For instance, it will often be the case that newly restored tribes will, out of practical necessity, take some time to acquire land.<sup>[16]</sup> The Department recognizes, as Congress surely did, that newly restored tribes do not have readily available funds for land acquisition, that land is not always available, and the process of land acquisition is time consuming. Another consideration is that the Tribes acquired the land as soon as it was available upon the death of the owner. Thus, the Tribes quickly acquired the land as soon as it was available and within a reasonable amount of time after being restored.<sup>[17]</sup>

Based on all of the foregoing, we believe that it is a reasonable interpretation of 25 U.S.C. § 2719(b)(1)(B)(iii) that the Hatch Tract constitutes restored lands for a restored tribe.

### Conclusion

We have considered the fact that the Confederated Tribes were recognized before IGRA was enacted and that it is seeking to game on land which has been historically tied to the Tribes and has a close geographic proximity to the Tribes. Thus, applying the Indian canons of construction and our expertise in IGRA we find that the Hatch Tract is restored land.

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[1] See attached map.

[2] The court rejected Confederated Tribes' alternative argument that the Hatch Tract qualified for the exception for lands contiguous to the boundaries of the reservation on October 17, 1988. The court did not remand this issue to the Department; therefore, we have no need to address it in this opinion.

[3] The Tribes' complaint raised four claims for relief under the APA: (1) the Hatch Tract qualifies for gaming under § 2719(a)(1) (contiguous lands); (2) the Hatch Tract qualifies for gaming under § 2719(b)(1)(B)(iii) (restored lands for restored tribes); (3) the Assistant Secretary's decision deviated from prior agency practice without reasoned explanation; and (4) the Assistant Secretary's decision was arbitrary and capricious because it was made without considering certain pertinent materials relating to the relevant history of the Hatch Tract.

[4] See Memorandum dated August 5, 1999, from Associate Solicitor – Indian Affairs to Director, Indian Gaming Management Staff concerning the Little Traverse Bay Bands of Odawa Indians; Letter dated August 3, 1998, from the Solicitor, U.S. Department of the Interior, to the Congressman Vic Fazio concerning the Mechoopda Tribe of the Chino Rancheria; Memorandum dated March 16, 1998, from Associate Solicitor – Indian Affairs to Acting Director, Indian Gaming Management Staff concerning the Little River Band of Ottawa Indians; Memorandum dated November 12, 1997, from Associate Solicitor – Indian Affairs to Deputy Commission for Indian Affairs concerning the Little Traverse Bay Bands of Odawa Indians; Memorandum dated September 19, 1997, from Solicitor, U.S. Department of the Interior to the Secretary, U.S. Department of the Interior concerning the Okagon Band of Potawatomi Indians; Letter dated March 14, 1995, from Assistant Secretary – Indian Affairs to Delores Pigsley, Chairman of the Confederated Tribe of Siletz Indians concerning "restored land" and Tribal-State Compact approval; Memorandum dated March 6, 1995, from the Regional Solicitor, Pacific Northwest Region, to Director, Indian Gaming Management Staff, concerning the Confederated Tribe of Siletz Indians; Memorandum dated February 1, 1994, from Associate Solicitor – Indian Affairs to Deputy Director for Legislative and Intergovernmental Affairs concerning the "restored land" exception for the Confederated Tribes of the Grand Ronde Community of Indians; Letter dated October 15, 1993, from Assistant Secretary – Indian Affairs to Mark Mercier, Chairman of the Confederated Tribes of the Grand Ronde Community of Indians, concerning "restored land" and the Tribal-State Compact disapproval; Memorandum dated September 27, 1993, from the Associated Solicitor – Indian Affairs to Pacific Northwest Region Assistant Regional Director. Confederated Tribes Administrative Record at 00178-00214.

[5] In its analysis in the GTB decision, the NIGC found § 2719(b)(1)(B)(iii) to be ambiguous. Id. at 12.

[6] In Grand Traverse the court found the Department should give the term "restored" its plain, dictionary meaning. Id. at 696. However, the court said that even if the "government's definition could be considered plausible, a conclusion I reject, the Band's

construction should be given preference. Id. at 700. The court then cited Bryant v. Itasca County, 426 U.S. 373 (1976) holding that ambiguities in a statute dealing with Indians should be construed to their benefit.

[7] The Department recognizes, as the NIGC recognized in its GTB Decision, that since we are not proceeding through formal administrative adjudication or formal rulemaking, this opinion is not entitled to the fullest measure of deference. See United States v. Mead Corp. 121 U.S. 2164 (2001). GTB Decision at 7. Nevertheless, we have tried to exercise care, experience and informed judgment, including reviewing materials submitted by the Tribes and the NIGC. Moreover, the Department has used its expertise in the area of Indian lands and Indian gaming in reviewing this question.

[8] The circuits are in conflict regarding the application of the canons of construction. In the 9<sup>th</sup> Circuit the court has declined to apply the Indian canons of construction in light of the competing deference given to an agency charged with the statute's administration pursuant to Chevron USA, Inc., 47 U.S. at 842-44. Chugach Alaska Corp. v. Lujan, 915 F.2d 454 (9<sup>th</sup> Cir. 1990), Seldovia Native Ass'n v. Lujan, 904 F.2d 1335, 1342 (9<sup>th</sup> Cir. 1990) and Haynes v. United States, 891 F.2d 235, 238-39 (1989). However, the 10<sup>th</sup> Circuit, takes a different view finding that the canon of construction trumps the agency's interpretation of a statute. See, Ramah Navaajo Chapter of the Navaajo Nation v. Lujan, 112 F.3d 1455 (10<sup>th</sup> Cir. 1997).

[9] We should not ignore that the Department's regulations for taking land into trust, 25 C.F.R. Part 151, provide for notice to the state and local government. Thus, while the Governor does not have a veto, the local community still has an opportunity for involvement while the land is being considered for trust status.

[10] However, as Judge Hillman points out, there can be situations like Grand Traverse in which a tribe restored through the acknowledgment process can still be considered restored for purposes of § 2719(b)(1)(B)(iii). Grand Traverse at 699.

[11] We believe that the better approach is for the Department to engage in Notice and Comment Rulemaking to determine the factors it will consider in determining whether other parcels of land meets the restored land exception.

[12] We also note that the court in Confederated Tribes and the court in Grand Traverse recognize that the more expansive interpretation of § 2719(b)(1)(B)(iii) would benefit restored tribes vis-à-vis other tribes. Confederated at 164, Grand Traverse at 700.

[13] As noted by the court, the Hatch Tract is formally described as two portions of Government Lots 1 and 2 in Section 25 and portions of the E1/2NE1/4 and Lot 1 in Section 26, township 18 South, Range 12, West, Willamette Meridian, contain 98.165 acres more or less.

[14] In Mr. Whittlesey's letter of March 23, 1998, he says that while he and Dr. Beckham were considering it, they had not provided their report to the tribal council until after the land was taken into trust. Id. at 2-4.

[15] Since we only have before us a tribe who was restored prior to IGRA, we are not opining whether a tribe restored after the enactment of IGRA is limited to the land identified in the legislation restoring the tribe.

[16] In the proposed revisions to the regulations governing the Acquisition of Title to Land into Trust, 25 C.F.R. § 151, the Department considered 25 years as a

reasonable period of time to acquire land in the proposed Tribal Land Acquisition Area. While the Department withdrew these regulations on unrelated grounds, this is an indication of a reasonable time to acquire restored lands.

[17] While not before us, we may apply a narrower temporal connection if a tribe already has a gaming establishment and is seeking to expand.

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testified 4-19-04

My name is Guy Warren. I am the Stated Clerk of the Presbytery of Alaska.

On behalf of the Presbytery, I come before this Committee to express our sincere opposition to the approval of House Bill 552.

The Presbytery of Alaska consists of the 15 member churches of the Presbyterian Church (U.S.A.) from Yakutat in the north, to Metlakatla in the south.

We believe that this bill represents a significant step towards situations which will not be in the best interest of the state government or the citizens which it serves.

While we know that approval of this legislation could provide new funding to meet the state's financial needs and perhaps new employment, we also believe that the costs the state will incur attempting to repair the social ills that gambling brings with it will more than consume that new funding, and remove any real benefit from any new employment. These social ills include increased domestic violence, various psychological and social problems and an increased incidence of suicide. These are all issues that trouble our state enough, and certainly no additional encouragement for these are needed.

We understand that our concerns about these costs are only beliefs and that some might disagree. We however, believe it would be prudent and only right for the legislature to seek detailed and independently researched estimates on these costs before taking the steps which would force the state to pay them. This legislation will see serious casino gambling introduced to our state prior to this research.

The presbytery submitted a resolution approved by us last fall, to the members of the legislature earlier in the session expressing our specific opposition to video gambling. Our reasons for doing so are given in that resolution, additional copies of which will be made available to the members of the committee.

While this resolution concerns itself only with video poker, our opposition certainly extends to more extreme forms of gambling which the bill before your body would propose.

The presbytery met again, just this last weekend, in our regular Spring meeting, and while no specific resolution on these matters was considered at that meeting, a discussion with a member of the State Senate who briefly visited us more than amply demonstrated that our opposition to increased gambling within the state remains.

Finally, we would strongly urge the members of the legislature to remember who they represent, namely the people of Alaska. The people of the state have spoken on the matter of gambling and they spoke loudly. A proposal to set up an Alaska Gambling Board was presented to the people in 1990. This measure was defeated by over 40,000 votes, almost a 2-1 margin. We would hope that the legislature would step carefully before turning their back on such a clear mandate from the people.

**A Resolution by the Presbytery of Alaska Delegates in Sitka, Alaska, October 2003  
In Opposition to Video Poker in Alaska.**

WHEREAS, as followers of Jesus Christ, we are called to work toward healing of persons afflicted with gambling addictions and to protect vulnerable populations from becoming addicted, and

WHEREAS, gambling addiction is increasing in the United States and over 8.1 million Americans have a gambling problem, and

WHEREAS, 66% of individuals suffering from pathological gambling turn to crime, one out of five attempt suicide, and many face bankruptcy, divorce and other family problems, and

WHEREAS, gambling addiction is more prevalent among the poor, various ethnic groups, and youth, and

WHEREAS, the gambling industry and some members of the Alaska State Legislature are promoting bringing video poker into the State of Alaska as a source of income, and

WHEREAS, video poker has been called "the crack cocaine of gambling" and is the most dangerous and most addictive of all current forms of legalized gambling, and

WHEREAS, since video poker was introduced in Oregon in 1991, the number of Gamblers Anonymous groups has grown from 3 to 30, and

WHEREAS, 81% of the problem gamblers in Oregon's state-subsidized gambling treatment programs gambled primarily on video poker and had an average gambling debt of \$16,000, which was more than half the average annual income of the group, and

WHEREAS, video poker is rejected by communities faster than any other form of gambling;

THEREFORE, LET IT BE RESOLVED that the Presbytery of Alaska declares opposition to the practice of video poker in the State of Alaska, whether it be publicly or privately operated;

FURTHERMORE, BE IT RESOLVED that Governor Frank H. Murkowski and members of the Alaska State Legislature be urged to oppose the establishment of video poker in Alaska.

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**Subject:** Fw: Opposition to HB522, HB509, and HB240**From:** JoAnn Shore and Walt Hays <haysshore@alaskalife.net>**Date:** Sun, 18 Apr 2004 22:16:57 -0800**To:** Dick Heacock <akimpact@mosquitonet.com>**X-UIDL:** 33949-1045901267**X-Mozilla-Status:** 0001**X-Mozilla-Status2:** 00000000**Return-path:** <haysshore@alaskalife.net>**Received:** from malik.acsalaska.net (malik.prv.nwc.acsalaska.net [10.0.0.41]) by ims02.prv.nwc.acsalaska.net (iPlanet Messaging Server 5.2 HotFix 1.10 (built Jun 23 2003)) with ESMTP id <0HWF002CMMS5PN@ims02.prv.nwc.acsalaska.net> for akimpact%mosquitonet.com@ims-ms-daemon; Sun, 18 Apr 2004 22:16:53 -0800 (AKDT).**Received:** from mmp-1 (mmp-1.gci.net [208.138.130.80]) by malik.acsalaska.net (8.12.11/8.12.11) with ESMTP id i3J6Gp1M074762 for <akimpact@mosquitonet.com>; Sun, 18 Apr 2004 22:16:51 -0800**Received:** from computer (171-124-237-24.gci.net [24.237.124.171]) by mmp-1.gci.net (iPlanet Messaging Server 5.2 HotFix 1.14 (built Mar 18 2003)) with SMTP id <0HWF00681MRYVI@mmp-1.gci.net> for akimpact@mosquitonet.com; Sun, 18 Apr 2004 22:16:52 -0800 (AKDT)**Message-Id:** <004201c425d5\$ec74dd00\$ab7ced18@computer>**MIME-version:** 1.0**X-MIMEOLE:** Produced By Microsoft MimeOLE V6.00.2800.1165**X-Mailer:** Microsoft Outlook Express 6.00.2800.1158**Content-type:** multipart/alternative; boundary="Boundary\_(ID\_GiBnbSGdPnGkEppmmXJK3g)"**X-Priority:****X-MSMail-priority:** Normal**X-ACS-Spam-Status:** no**X-ACS-Scanned-By:** MD 2.37; SA 2.63; spamdefang 1.93.**Original-recipient:** rfc822;akimpact@mosquitonet.com

----- Original Message -----

**From:** JoAnn Shore and Walt Hays**To:** [Representative John Harris@Legis.state.ak.us](mailto:Representative_John_Harris@Legis.state.ak.us); [Representative Bill Williams@Legis.state.ak.us](mailto:Representative_Bill_Williams@Legis.state.ak.us)**Cc:** [Representative Kevln Meyer@Legis.state.ak.us](mailto:Representative_Kevln_Meyer@Legis.state.ak.us); [Representative Mike Chenault@Legis.state.ak.us](mailto:Representative_Mike_Chenault@Legis.state.ak.us);[Representative Hugh Fate@Legis.state.ak.us](mailto:Representative_Hugh_Fate@Legis.state.ak.us); [Representative Mike Chenault@Legis.state.ak.us](mailto:Representative_Mike_Chenault@Legis.state.ak.us);[Representative Mike Hawker@Legis.state.ak.us](mailto:Representative_Mike_Hawker@Legis.state.ak.us); [Representative Richard Foster@Legis.state.ak.us](mailto:Representative_Richard_Foster@Legis.state.ak.us);[Representative Bill Stoltze@Legis.state.ak.us](mailto:Representative_Bill_Stoltze@Legis.state.ak.us); [Representative Eric Croft@Legis.state.ak.us](mailto:Representative_Eric_Croft@Legis.state.ak.us);[Representative Rennle Joule@Legis.state.ak.us](mailto:Representative_Rennle_Joule@Legis.state.ak.us); [Representative Carl Moses@Legis.state.ak.us](mailto:Representative_Carl_Moses@Legis.state.ak.us)**Sent:** Sunday, April 18, 2004 6:45 PM**Subject:** Opposition to HB522, HB509, and HB240

**To: Member of House Finance Committee:** Perry Green was recently quoted on our evening TV news to the effect that "the proposed new gambling casino for Anchorage will generate 1,000 jobs." Perry may have been conservative in his estimate; he forgot to include the dozens- perhaps hundreds of jobs -- that will be added at the payday loan companies, pawn shops, shelters for abused women and children, food banks, paralegals, attorneys and court workers that process individual bankruptcy and family counseling agencies. **My point: liberalization of Alaska's gaming**

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**laws will exact a significant economic and social cost - most of it born on the backs of those who can least afford it.**

I would ask you to consider the following FACTS as you consider this and related pending legislation: (You may want to have your staff reference the sources I am providing).

**The CHAR Legislative Priorities.** This booklet distributed by CHAR to every legislator is misleading and inaccurate! I would refer you to page 5. The final sentence of the first paragraph is either very creative copywriting or just plain "twisting the truth". The statement would infer that "the Department of Public Safety, the Anchorage Assembly, the Anchorage School Board, the Anchorage Education Association AND the Anchorage Baptist Temple were part of this concept and at least tacitly endorsed HB240 for electronic gaming machines (EGM's). This is not the case! I know for a fact that the Anchorage Assembly turned down flat the appeal of a CHAR board member this past fall when a request for endorsement of video gaming legislation was presented. **HAVE YOU STAFF FOLLOW UP WITH THESE GROUPS TO GET AT THE TRUTH OF THIS STATEMENT.** Note: CHAR quotes the National Gambling Impact Study to soften the argument about negative impacts. This is a massive, landmark study. CHAR did not share the MAJOR FINDINGS that call for a pause in or nbling expansion. The study found that:

- . 15 million Americans were "at risk" gamblers.
- . 2.5 million Americans were "pathological gamblers"
- . pathological gambling occurred pro-fortunately more often among the young, less educated and poor.
- . gambling leads to destructive behaviors affecting families and communities and played a part in some 2 million divorces.
- . About one in five compulsive gamblers attempt suicide – and the actual suicide rate is higher than for victims of any other type of addiction.

**RECENT ACTION IN GA & SC.** In GA the state supreme court upheld a legislative prohibition on video gaming. The legislature had authorized the removal of 15,000 - 20,000 EGM's in June of 2002 due to the public outcry of the negative, addictive impact that they were having on the poor in a number of counties. SC also has banned video gaming and this action was upheld by the US Supreme Court. (Source: (BP) News. <http://www.bpnews.net/bpnews.asp?ID=5723>.)

**Reports from LA and MT.** In recent months LA has unplugged 4,683 video poker machines. Since the introduction of video gaming in MT, 60 meetings of Gamblers Anonymous are held each week. MT has concluded that each 1 million in gaming tax revenue accounts for 172 additional crimes in the state. (Source: Video Lottery Terminals (VLT's) and Electronic Gaming Devices by Chad Hills. This is a well researched article with over 40 footnotes from the Focus on the Family website. <http://www.family.org/cforum/fost/gambling/facts/a0028806.cfm>. Note: The host of Focus on the Family is Dr. James Dobson who has a daily radio audience of 2 million; Dr. Dobson was a member of the National Gambling Impact Study Commission.)

**Casinos & Bankruptcies.** Creighton University undertook a major study that essentially took two snapshots of counties throughout the nation (one in 1990 and the other in 1999); then they compared those with and without casino gambling. It found that personal bankruptcy rates were twice as high as the rate in comparable counties without casino gambling. (Source: Christian Science Monitor (03/19/04), feature story by Alexandra Marks. (<http://www.csmonitor.com/2004/0319/n02s01-ussc.html>).

**The National Trend. The tide has turned.** In 2003 with 47 states facing budget deficits, one would think that support "harmless" gambling revenue would have been a "slam dunk" NOT SO! Throughout the nation cities, counties and states defeated gambling expansion. Good public policy and the desire for a good quality of life defeated greed by a box score of 42 -3 in 30 states this past year. (Source: Summary report from the National Coalition against Legalized Gam g. 01/08/04.)

Recently, there was a headline in a major Chicago daily - "Time for Illinois to fold its hand, swear off

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**gambling"**

This wasn't from a liberal press but from the venerable voice of business for the state - Crain's Chicago Business. The editorial opposes the state approving the license for a 10th Casino. It questioned whether gambling was really worth it. The editorial related: "Gambling has been very lucrative for state government bringing in 617.8 million in taxes last year from nine existing casinos. But our state isn't in business to make a profit. How it spends money -- on schools, the environment, roads prisons - has a lot to do with the quality of life in Illinois. So, too, does how the state raises money. A few years back, Illinois did the easy thing and embraced gambling. It was a mistake. To provide the state with its \$617.8 million last year, gamblers had to lose 1.7 Billion at the casinos." The article goes on to relate that "Location matters a lot, and when casinos are nearby, people gamble a lot more." It closes with this telling phrase, "Legalized, widespread gambling coarsens society and saps the finances of too many families... we'd like to see the 10th casino license to remain dormant and, over time, to see the other nine retired as well. Illinois lived without gaming taxes before and, with some streamlining can do it again." (Source: Crain's Chicago Business, 03/01/04)

As a 40 year resident of Alaska, voter, home and rental property owner, father of three and grandfather of five and a person who has "paid his dues" in significant community service, I look to our public servants to craft good public policy for our state. Further liberalization of Alaska's gambling/gaming laws is bad public policy. The revenue raised will be at the expense of the poor and those on the margins of society. I hope you, as our leaders, can smell the coffee! Are we in Alaska so superior that we will avoid the negative impacts (addiction, corruption and bankruptcy) that have happened in GA, SC, MT, LA & IL? **No Way!**

In the wrap up report on gambling expansion cited above, those opposed to expansion were outspent by gambling interest in every contest but they won elections and court battles in 30 states because public opinion was on their side.

**I urge you to oppose HB 509, HB 240 and related legislation. Say no to CHAR and gambling interests and listen to the voice of educators, major church bodies, consumer protection groups and the editorials of our state's largest daily papers.**

Over 40 years ago our first legislature was courted by "big money" and outside interests that wanted to open up Alaska for "wide-open gambling". The state was young, fragile and poor BUT your predecessors saw the BIG PICTURE. They saw the promise of the new state and the responsibility that they shared. THEY DID NOT HAVE THE "CUSHION OF A CBR" BUT THEY DID HAVE THE GCS (Good Common Sense) to say no to gambling.

**The Bottom Line:** "How will you RAISE money?" Say no to greed and the "easy money" of gambling and craft responsible legislation for equitable taxation which is the real answer to Alaska's budget problems.

Walter L. Hays  
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# Gambling's Toll in Minnesota

When a state legalizes gambling, everybody pays

Condensed from  
MINNEAPOLIS STAR TRIBUNE  
CHRIS ISON WITH DENNIS J. MCGRATH

America is becoming a nation of gamblers. Once confined to Atlantic City, Las Vegas and Reno, gambling is now legal in 48 states—all but Hawaii and Utah—and casinos run full tilt in 24. Almost 100 million Americans bet \$400 billion last year and lost \$39 billion to the house.

To win legal status, the industry promised some tax-poor states a river of money for public programs. But along with the wealth came an alarming rise in suicides, bankruptcies and crime. Here

is the experience of one state, where the first full-service casino was welcomed in 1988.

**H**OUR AFTER HOUR, the blackjack cards flipped past, and still she played. Friday afternoon blurred into Saturday. Through the ringing of slot machines and chattering of coins dropping into tin trays, Catherine Avina heard her name paged.

"Are you coming home tonight?"

**READER'S DIGEST • APRIL 1996**

It was her 21-year-old son, Joaquin, on the phone. "Probably not," she answered.

Avina didn't go to Mystic Lake Casino in Prior Lake, Minn., as much as she escaped to it. That weekend in May 1994, the depressed 49-year-old mother of three was escaping the worst news yet--she was in danger of being fired after almost 11 years as an assistant state attorney general. On Monday--her fourth straight day at the casino--she dragged herself back to her St. Paul home, broke and more depressed than ever.

Two days later, Joaquin confronted his mother about her gambling, and they argued. The next morning, when she didn't come out of her bedroom, he peeked in. Two empty bottles of anti-depressants and a suicide note were near her body. Later the family found debts of more than \$7,000, and Avina was still making payments for gambling addiction therapy received a year earlier.

IN LESS THAN A DECADE legalized gambling in Minnesota--\$4.1 billion is legally wagered in the state each year--has created a new class of addicts, victims and criminals whose activities are devastating families. Even conservative estimates of the social toll suggest that problem gambling costs Minnesotans more than \$200 million per year in taxes, lost income, bad debts and crime.

Ten years ago only one Gamblers Anonymous group was meeting in the state, today there are 53 groups. According to research by the Center for Addic-

tion Studies at the University of Minnesota in Duluth, nearly 38,000 Minnesota adults are probable pathological gamblers. A 1994 *Star Tribune*/WCCO-TV poll found that 128,000 adults in Minnesota--four percent--showed signs associated with problem gambling and gambling addiction.

Many experts agree that the potential for gambling addiction among the young--the most vulnerable group--is worse. Teens are twice as likely as adults to become addicted.

Jeff Copeland, a 21-year-old from suburban Minneapolis, can't go to college because he's accumulated a \$20,000 gambling debt. "It ruins your life," he says. "And people don't really understand. I thought about suicide. It's the easiest way to get out of it."

**Pawnshop Boom.** Thousands of Minnesotans are burying themselves in debt because of gambling, borrowing millions they'll never be able to pay back. Bankruptcy experts estimate that more than 1000 people a year are filing for bankruptcy protection (average owed: \$40,000), at an estimated cost to creditors of more than \$2.5 million. "Compared with ten years ago, there are 20 times as many people who have gambling debts," says bankruptcy attorney Jack Prescott of Minneapolis.

One of these is Hennepin County Commissioner Sandra Hilary of Minneapolis. She filed for bankruptcy two days after admitting she was addicted to slot machines. She estimated she'd lost nearly \$100,000 gambling. After counseling, Hilary is now trying to reimburse her creditors.

Throughout the state, at least 17

new pawnshops have sprung up near casinos, with gamblers hocking possessions for far less than real value to support their gambling habits. In or near Cass Lake (pop. 923), four miles from Palace Bingo & Casino, there are four pawnshops. That's a pawnshop for every 231 people.

Police near casinos note an increase in bogus reports of thefts. These come from people who lie about the disappearance of a ring, video camera or other expensive item that they actually pawned to pay for their gambling.

**Easy Credit.** Minnesotans are also burning up welfare payments at casinos. Hundreds of thousands of taxpayer dollars that are meant to provide food, clothes and housing for the poor are being wagered on blackjack and in slot machines, and for residents of two Minnesota counties, the money is being made available from automated teller machines inside almost every casino in the state. During a typical month last year, welfare recipients from Hennepin and Ramsey counties withdrew \$39,000 in benefits from casino ATMs.

There are few incentives for casinos to regulate the availability of credit to gamblers. The casinos can't lose: they don't give the credit; they simply make the money.

Credit-card companies—there are now more than 7000—have made strong profits in recent years despite increasing bankruptcy and delinquent payments nationwide. Interest rates are so high—averaging 18 percent—they still make up for losses from bankruptcy. And the issuers pass much

### GAMBUNG'S TOLL IN MINNESOTA

of the loss on to consumers through higher rates, fees and penalties, says Ruth Susswein, executive director of Bankcard Holders of America, a non-profit consumer-education group.

"They're making so much money it's been worth it to them to keep offering credit," Susswein adds. Some casinos also rent space to companies that cash checks and provide credit-card advances for fees.

**Police Burden.** It seemed to take only minutes for Carol Foley to get hooked on video gambling machines. "Within two or three days," she says, "I was playing every day." To cover her losses, Foley, 43, forged \$176,000 in checks at her job at the E. M. Lohmann Co., a church goods dealer in St. Paul. Last September she was released from a correction center in Roseville, Minn., after serving eight months for forgery. She underwent counseling for her gambling addiction and is on a monthly payment plan with her former employer.

The high crime rate among problem gamblers has been well established. The National Council on Problem Gambling found that 75 percent of gamblers treated at in-patient centers had committed a crime.

Between 1988—when the first of Minnesota's 17 casinos began operating—and 1994, counties with casinos saw the crime rate rise twice as fast as those without casinos. The increase was the greatest for crimes linked to gambling, such as fraud, theft and forgery/counterfeiting.

Casinos are burdening local police. When Grand Casino Mille Lacs

**READER'S DIGEST • APRIL 1996**

opened on the Mille Lacs Indian Reservation in April 1991, county police responded to almost twice as many incidents of crime or people seeking help on the reservation.

Jean Mott, a 38-year-old mother of three, worked nights at a Kmart distribution center to help pay the family bills. But the bills began backing up when Mott headed to Mystic Lake Casino, rather than her Shakopee home, at the end of her shift.

Just before dawn one day in January 1995, having lost another paycheck to the casino, Mott drove to the Brooks' Food Market in Shakopee. Wearing a ski mask and with her hand in her pocket to simulate a gun, she stole \$233. Police easily traced the holdup to Mott because a patrol officer had run a registration check after he saw her car parked with its lights on just south of the store that morning. Mott was convicted of simple robbery, and served 30 days in jail and 30 days on electronic home monitoring.

Taxpayer Tab. The list of violent gambling-related crimes is also growing. Redwood Falls police officer Derek Woodford was shot by a gambler from Gary, Ind., who had broken into a local bank after a day of gambling at Jackpot Junction in Morton. Woodford spent 13 days in the hospital recovering from three bullet wounds.

Gambling has long been recognized, as well, as a root cause of embezzlement. In most gambling-related embezzlement cases, authorities say, the court file shows the same thing: no previous criminal record.

"Prior to 1990, we had zero cases

104

of gambling-related embezzlements," says William Urban, president of Loss Prevention Specialists, Inc., a Minneapolis company that helps employers deal with internal thefts. Since then the company has investigated gambling-related losses of well over \$500,000.

Reva Wilkinson, of Cedar, is now in federal prison for embezzling more than \$400,000 from the Guthrie Theater to support her gambling habit. Besides the money she stole from her Minneapolis employer, her case cost taxpayers over \$100,000 to investigate, prosecute and adjudicate.

In June 1993 Theresa Erdmann was charged with stealing nearly \$120,000 from the checking account and weekly offerings at St. Michael's Catholic Church in Madison. She said the money was blown on gambling, and now she's serving a three-year sentence in a state prison.

Hidden Suicides. More and more, some problem gamblers pay the ultimate price. The *Star Tribune* confirmed six gambling-related suicides in Minnesota—five in the past three years. Almost certainly, this is only a fraction of the total.

The victims are people like 19-year-old John Lee, a St. Paul college student who, in a three-month period, won about \$30,000 at blackjack. Then he started losing. Down to his last \$10,000, he lost it all one night. He returned home, put a shotgun to his head and killed himself. In addition, at least 122 Minnesota gamblers have attempted suicide, according to directors of the six state-

funded gambling-treatment centers.

Other deaths that may be related to depression over gambling losses are not listed as suicides at all. "So often, when people talk about suicide, they say, 'I'd just drive off the road. I'd drive into a tree,'" says Sandi Brustuen of the Vanguard Compulsive Gambling Treatment Program in Granite Falls, Minn. "They don't want anyone to know they committed suicide, and they want their families to collect the insurance."

The suicide rate among pathological gamblers nationally is believed to rival that of drug addicts. Ten to 20 percent of pathological gamblers have attempted suicide, and almost 90 percent have contemplated it.

Treatment experts, researchers and gamblers themselves say states can do more to reduce the negative consequences for gamblers. Here are some of the most frequently mentioned ideas:

- *Underwrite better research.* Many research efforts across the country have been criticized for failing to prove that treatment works, for failing to measure the social costs of gambling and for failing to implement a long-range plan to address problem-gambling issues. "We really don't know exactly how much problem gamblers cost society," says Henry Lesieur, editor of the *Journal of Gambling Studies* and a criminal-justice professor at Illinois State University in Normal.

On the federal level, the issue of gambling addiction only recently started to generate action. Last fall

### GAMBINO'S TOLL IN MINNESOTA

committees in the House and Senate held hearings on bills that would authorize a national commission to study the economic and social effects of legalized gambling.

- *Emphasize public awareness and education - especially among young people - about the risks of gambling.* Some suggest funding more in-school efforts, perhaps in conjunction with math and science classes or anti-drug programs. "Let people know what the odds are. The longer you gamble, the more you're going to lose," says Alan Gilbert, solicitor general of Minnesota.

- *Train casino employees to spot and discourage problem gamblers from betting irresponsibly.* Some casinos already do this. But they offer only anecdotal evidence that such efforts are used, and some say they've never barred a person for problem gambling unless the person asked to be barred.

GAMBLING has significant social and economic impact. It results in ruined lives, families and businesses; in bankruptcies and bad loans; in suicides, embezzlements and other crimes committed to feed or cover up gambling habits - and increases in costs to taxpayers for investigating, prosecuting and punishing those crimes.

Few of these problems have been documented as communities and states across the nation instead focus on gambling as a way to boost their economies and increase tax revenues. But for Minnesota the social costs of gambling are emerging in vivid and tragic detail.

Reprints of this article are available. See page 234.

Sec. 04.11.370. Suspension and revocation of licenses and permits.

(a) A license or permit shall be suspended or revoked if the board finds

(1) misrepresentation of a material fact on an application made under this title or a regulation adopted under this title;

(2) continuation of the manufacture, sale, or service of alcoholic beverages by the licensee or permittee would be contrary to the best interests of the public;

(3) failure on the part of the licensee to correct a defect that constitutes a violation of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or other laws after receipt of notice issued by the board or its agent;

(4) conviction of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010;

(5) conviction of an agent or employee of a licensee of a violation of this title, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that the agent or employee violates a law, regulation, or ordinance;

(6) failure of the licensee to comply with the public health, fire, or safety laws and regulations in the state;

(7) use of the licensed premises as a resort for illegal possessors or users of narcotics, prostitutes, or promoters of prostitution; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, or promoters of prostitution;

(8) occurrence of illegal gambling within the limits of the licensed premises;

(9) the licensee permitted a public offense involving moral turpitude to occur on the licensed premises;

(10) violation by a licensee of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010 ; or

(11) violation by an agent or employee of a licensee of a provision of this title, a condition or restriction imposed by the board, a regulation adopted under this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the board to have either knowingly allowed the violation or to have recklessly or with criminal negligence failed to act in accordance with the duty prescribed under AS 04.21.030 with the result that the agent or employee violates the law, condition or restriction, regulation, or ordinance.

(b) If the board finds that a licensee or permittee has been convicted of a violation of a criminal law related to gambling under AS 11.66.200 - 11.66.280, the board shall suspend the license or permit for a period of at least six months if the offense is the person's first conviction or violation and shall revoke the license or permit if the offense is the person's second or subsequent conviction or violation.

(c) If the board receives notice from the Department of Revenue that a licensee or permittee has violated a provision of AS 05.15 related to gambling, the board

(1) may suspend the license or permit; and

(2) shall suspend the license or permit for a period of at least 30 days if the offense is the person's second or subsequent violation of AS 05.15 related to gambling.

Sec. 05.15.010. Department of Revenue to administer chapter.

The Department of Revenue shall administer this chapter.

Sec. 05.15.690. Definitions.

In this chapter

(1) "adjusted gross income" means gross income less prizes awarded and state, federal, and municipal taxes paid or owed on the income;

(2) "authorizing permittee" means a municipality or qualified organization that authorizes an operator to conduct an activity subject to this chapter on its behalf;

(3) "bingo" means a game of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes, in the specific kind of game of chance sometimes known as bingo or lotto, played with cards bearing numbers or other designations, five or more in one line, the holder covering numbers when objects similarly numbered are drawn from a receptacle, and the game being won by the person who first covers a previously designated arrangement of numbers on the card;

(4) "canned salmon classic" means a game of chance where a prize of money is awarded to the closest guess of the total number of cases of canned salmon that will be packed at the Petersburg salmon canneries during a certain period of time and is limited to the canned salmon classic operated and administered by the Petersburg Chamber of Commerce;

(5) "charitable organization" means an organization, not for pecuniary profit, that is operated for the relief of poverty, distress, or other condition of public concern in the state;

(6) "civic or service organization" means any branch or lodge or chapter of a national or state organization that is a civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter, or articles of incorporation, or bylaws to engage in a fraternal, civic, or service purpose in the state;

(7) "contest of skill" means a contest or game in which prizes are awarded for the demonstration of human skills in marksmanship, races, and other athletic events;

(8) "deep freeze classic" means a game of chance where a prize of money is awarded to the closest guess of the date, time, and temperature of the lowest temperature recorded at a specific location in the Delta Junction area on the coldest day during December through February, inclusive, and is limited to the deep freeze classic operated and administered by the Delta Chamber of Commerce;

(9) "department" means the Department of Revenue;

(10) "distribute" means sell, distribute, furnish, or supply;

(11) "dog mushers' association" means a civic, service, or charitable organization in the state, not for pecuniary profit, formed exclusively to promote interest in the breeding and training of dog teams for work or recreational and racing purposes, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "dog mushers' contest" means a

(A) contest in which prizes are awarded for the correct guess of the racing time of a dog team or of team position in the race, including prizes to the race contestants; or

(B) a game of chance, conducted by a dog mushers' association, in which a prize of money is awarded for the closest guess or guesses of at least three elements of uncertainty about a sled dog race that cannot be determined before the commencement of the race; of the three elements of uncertainty, one element must be identified as the primary determinant of success, with the other two elements being used as secondary and tertiary determinants if there are multiple correct guesses of the primary determinant;

(13) "educational organization" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction;

(14) "established village" means an unincorporated community that is in

(A) the unorganized borough and that has 25 or more permanent residents; or

(B) an organized borough, has 25 or more permanent residents; and

(i) is on a road system and is located more than 50 miles outside the boundary limits of a unified municipality; or

(ii) is not on a road system and is located more than 15 miles outside the boundary limits of a unified municipality;

(15) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes, but does not include an organization formed or operated for gaming or gambling purposes;

05.15.690

(16) "fish derby" means a contest in which prizes are awarded for catching fish;

(17) "fraternal organization" means a civic, service, or charitable organization in the state, except a college and high school fraternity, not for pecuniary profit, that is a branch or lodge or chapter, of a national or state organization and exists for the common business, brotherhood, or other interest of its members;

(18) "fund raiser or consultant" means a person who provides advice or technical assistance in support of or concerning the conduct of gaming activities under this chapter, whether the person is or is not an employee of a licensee;

(19) "goose classic" means a game of chance where a prize of money is awarded for the closest guess of the time of the arrival of the first goose in spring to Creamer's Field in Fairbanks or to the Kenai River Flats near Kenai and is limited to the goose classics operated and administered

(A) jointly or by either the Fairbanks Montessori Association or the Friends of Creamer's Field; and

(B) by the Kenai Chamber of Commerce;

(20) "governing body" has the meaning given in AS 29.71.800 ;

(21) "gross receipts" means receipts from the sale of shares, tickets, or rights connected with participation in any activity permitted under this chapter or the right to participate, including admission, fee or charge, sale of equipment or supplies, and all other miscellaneous receipts;

(22) "ice classic" means a game of chance where a prize of money is awarded for the closest guess of the time the ice moves in a body of water or watercourse in the state and is limited to the Nenana and Chena Ice Pools in the same manner as they were conducted in 1959 and previous years, a Kuskokwim Ice Classic to be operated and administered by Bethel Community Services Foundation, Inc., a Kenai River Ice Classic to be operated and administered by the Kenai and Soldotna Rotary Clubs jointly or by either the Kenai Rotary Club or the Soldotna Rotary Club, a Yukon River Ice Classic to be operated and administered by the City of Fort Yukon, an Alaska-Soviet Ice Classic to be operated and administered jointly by CAMAI, Inc., and the City of Diomedea, a Big Lake Ice Classic to be operated and administered by the Houston Junior-Senior High School Booster Club and the Big Lake Chamber of Commerce jointly or by either the Houston Junior-Senior High School Booster Club or the Big Lake Chamber of Commerce, and a McGrath Ice Classic to be operated and administered by the Kuskokwim Public Broadcasting Company;

(23) "ideal net" means an amount equal to the total amount of receipts that would be received if every individual pull-tab ticket in a series were sold at face value, less the prizes to be awarded for that series;

(24) "king salmon classic" means a game of chance where a prize of money is awarded for the closest guess of the time of the arrival of the first king salmon of the year at a designated spot on the fish ladder in the Douglas Island Pink and Chum hatchery at Salmon Creek in Juneau and is limited to the king salmon classic operated and administered by the Greater Juneau Chamber of Commerce;

(25) "labor organization" means an organization, not for pecuniary profit, constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees;

(26) "managerial or supervisory capacity" means that the employee

(A) is responsible for gaming receipts;

(B) has the authority to hire employees or to dismiss or otherwise discipline them;

(C) prepares financial reports required under this chapter;

(D) is responsible for keeping the accounts for activities under this chapter;

(E) is responsible for conducting activities under this chapter, including the arranging for locations at which those activities will occur; or

(F) is a fund raiser or a consultant;

(27) "mercury classic" means a game of chance where a prize of money is awarded for the closest guess of the time the temperature reaches a certain degree and is limited to the

(A) [Effective January 1, 2004]. Homer Mercury Classic operated and administered by the Boys and Girls Club of the Kenai Peninsula; and

(B) mercury classic operated and administered by the Greater Fairbanks Chamber of Commerce or jointly, in the discretion of the Greater Fairbanks Chamber of Commerce, by the Greater Fairbanks Chamber of Commerce and the Fairbanks Convention and Visitors' Bureau;

(28) [Repealed, Sec. 8 ch 13 SLA 1995].

(29) "net proceeds" means the gross receipts from an authorized activity less the fee described in AS 05.15.020 (b), the expenses authorized by AS 05.15.160 , and the prizes awarded at the activity;

(30) "numbers wheel" means any electronic, mechanical, or other device with numbers or other figures that are selected randomly and used in a game of chance in which the outcome is determined by the number or figure selected by the device; not including games in which a hamster or other animal is placed in an enclosure with several numbered exit holes and the winner is determined by which hole the hamster or other animal exits, or slot machines or other devices that operate by insertion of a coin or other object that may entitle the person operating the machine to receive a prize by strict dependence on the element of chance;

(31) "operator" means a natural person who, or a municipality or qualified organization that, has obtained a license to conduct an activity subject to this chapter on behalf of a permittee;

(32) "permittee" means a municipality or a qualified organization that holds a valid permit under AS 05.15.100 ;

(33) "police or fire department and company" means a civic, service, or charitable organization in the state, not for pecuniary profit, consisting of members of a police department or fire company established by the state or a political subdivision of the state;

(34) "political organization" means an organization or club organized under or formally affiliated with a political party as defined in AS 15.60.010;

(35) "pull-tab game" means a game of chance where a card, the face of which is covered to conceal a number, symbol, or set of symbols, is purchased by the participant and where a prize is awarded for a card containing certain numbers or symbols designated in advance and at random;

(36) "qualified organization" means a bona fide civic or service organization or a bona fide religious, charitable, fraternal, veterans, labor, political, or educational organization, police or fire department and company, dog mushers' association, outboard motor association, or fishing derby or nonprofit trade association in the state, that operates without profits to its members and that has been in existence continually for a period of three years immediately before applying for the license or permit; the organization may be a firm, corporation, company, association, or partnership;

(37) "race classic" means a game of chance where prizes are awarded for the closest guess or guesses of the official winning times of a human race

or races, and is limited to the Mt. Marathon Race Classic operated and administered by the Seward Chamber of Commerce Convention and Visitors' Bureau.

(38) "raffle and lottery" means the selling of rights to participate and the awarding of prizes in a game of chance conducted by the drawing for prizes by lot;

(39) "rain classic" means a game of chance in that a prize is awarded for the closest guess of the amount of precipitation that is recorded at a certain location during a certain length of time;

(40) "religious organization" means an organization, church, body of communicants, or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship, and religious observances, or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place and that is recognized as a religious organization under the federal income tax laws and the selective service law;

(41) "salmon classic" means a game of chance, to be operated and administered by the

(A) United Fishermen of Alaska, in which a prize of money is awarded for the closest guess of the total number of salmon harvested commercially statewide, as determined by the Department of Fish and Game, during a certain period of time;

(B) Seward Chamber of Commerce Convention and Visitors' Bureau, in which prizes are awarded for the closest guess or guesses of the weight of the fish officially designated winner of the Seward Silver Salmon Derby Classic;

(C) Sterling Area Senior Citizens, Inc., in which a prize of money is awarded for the closest guess of the total number of sockeye salmon crossing the counter operated by the Alaska Department of Fish and Game on the Kenai River as of a certain day and time; or

(D) Bristol Bay Native Corporation Education Foundation, in which a prize of money is awarded for the closest guess of the total number of salmon harvested commercially in the five Bristol Bay commercial fishing districts between June 1 and September 30, as determined by the Department of Fish and Game;

(42) "series" means a unit of pull-tabs with the same serial number;

(43) "snow machine classic" means a (A) contest in which prizes are awarded for the correct guess of the racing time of a snow machine or of the

snow machine's position in the race, including prizes to the race contestants; or (B) game of chance where a prize of money is awarded for the closest guess or guesses of at least three elements of uncertainty about a snow machine race that cannot be determined before the commencement of the race; in this paragraph, "race" includes a race solely among snow machines or a race among teams consisting of a combination of a person involved in a contest of skill and a snow machine;

(44) "vendor" means a business whose primary activity is not regulated by this chapter but that

(A) is engaged in the sale of pull-tabs on behalf of a permittee;

(B) holds a business license under AS 43.70; and

(C) is an establishment holding a

(i) beverage dispensary license under AS 04.11.090 that has not been designated by the Alcoholic Beverage Control Board under AS 04.16.049(a)(2) - (3), has not been exempted by the Department of Labor and Workforce Development under AS 04.16.049 (c) and AS 23.10.355 , and if the establishment is a hotel, motel, resort, or similar business that caters to the traveling public as a substantial part of its business, does not allow the sale of pull-tabs in a dining room, banquet room, guest room, or other public areas other than a room in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are sold or served to members of the public for consumption;

(ii) package store license under AS 04.11.150 ;

(45) "veterans organization" means a civic, service, or charitable organization in the state, or a branch or lodge or chapter of a national or state organization in the state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States or persons who served in the Alaska Territorial Guard.

Sec. 11.66.280. Definitions.

In AS 11.66.200 - 11.66.280, unless the context requires otherwise,

(1) "contest of chance" means a contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor;

(2) "gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that that person or someone else will receive something of value in the event of a certain outcome; "gambling" does not include

(A) bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities and agreements to compensate for loss caused by the happening of chance, including contracts of indemnity or guaranty and life, health, or accident insurance;

(B) playing an amusement device that

(i) confers only an immediate right of replay not exchangeable for something of value other than the privilege of immediate replay; and

(ii) does not contain a method or device by which the privilege of immediate replay may be cancelled or revoked; or

(C) an activity authorized by the Department of Revenue under AS 05.15;

(3) "gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine; "gambling device" does not include

(A) lottery tickets, policy slips, or other items used in the playing phases of lottery or policy schemes; or

(B) an amusement device as described in (2)(B) of this section;

(4) "gambling enterprise" means a gambling business that

(A) includes five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business;

(B) has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross income of \$2,000 or more in any single day; and

(C) is not a municipality or a qualified organization under AS 05.15.690, except that, for purposes of this paragraph, no application for a license under AS 05.15 is required to be considered a qualified organization;

(5) "gambling record" means any writing or paper of a kind commonly used in the operation or promotion of unlawful gambling and includes lottery tickets, policy slips, or other writings or papers used in the playing phases of lottery or policy schemes;

(6) "player" means a person who engages in gambling solely as a contestant or bettor, believing that the risk of losing and the chances of winning are the same for all participants except for the advantages of skill and luck, without receiving or becoming entitled to receive any profit from gambling other than personal gambling winnings and without otherwise rendering any material assistance to the establishment, conduct, or operation of the particular gambling activity, except that, for purposes of this paragraph, a person who gambles at a social game on equal terms with the other participants does not "otherwise render material assistance" to the establishment, conduct, or operation by performing, without fee or remuneration, acts directed towards the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises for the game, or supplying cards or other equipment used in the game;

(7) "profits from gambling" means that a person, acting other than as a player, accepts or receives money or other property under an agreement or understanding with another person by which the person participates or is to participate in the proceeds of gambling;

(8) "promoting gambling" means that a person, acting other than as a player, engages in conduct that materially aids any form of gambling; conduct of this nature includes

(A) conduct directed toward the

(i) creation or establishment of the particular gambling activity or acquisition or maintenance of premises, paraphernalia, equipment, or apparatus used in the gambling;

(ii) conduct of the playing phases of gambling; or

(iii) arrangement of the financial or recording phase of gambling or toward any other phase of its operation; or

(B) having control or right of control over premises that are used with the defendant's knowledge for purposes of gambling and permitting the gambling to occur or continue without making an effort to prevent its occurrence or continuation;

(9) "social game" means gambling in a home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game;

(10) "something of value" means any money or property; any token, object, or article exchangeable for money or property; and any form of credit or promise directly or indirectly contemplating transfer of money or property or of an interest in money or property or involving extension of a service, entertainment, or privilege of playing at a game or scheme without charge;

(11) "unlawful" means not specifically authorized by law.

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "access device" means a card, credit card, plate, code, account number, algorithm, or identification number, including a social security number, electronic serial number, or password, that is capable of being used, alone or in conjunction with another access device or identification document, to obtain property or services, or that can be used to initiate a transfer of property;

(2) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(3) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(4) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(5) "cannabis" has the meaning ascribed to it in AS 11.71.900 (10), (11), and (14);

(6) "conduct" means an act or omission and its accompanying mental state;

(7) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(8) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(9) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(10) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(11) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(12) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense.

(13) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(14) "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(15) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(16) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(17) "deception" means to knowingly

(A) create or confirm another's false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression that the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance that the defendant does not intend to perform or knows will not be performed;

(18) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(19) "defensive weapon" means an electric stun gun, or a device to dispense mace or a similar chemical agent, that is not designed to cause death or serious physical injury;

(20) "drug" has the meaning ascribed to it in AS 11.71.900 (9);

(21) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(22) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(23) "felony" means a crime for which a sentence of imprisonment for a term of more than one year is authorized;

(24) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person carrying on functions of trust on behalf of another person or organization;

(25) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury;

(26) "force" means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, "force" includes deadly and nondeadly force;

(27) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(28) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(29) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

(30) "includes" means "includes but is not limited to";

(31) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(32) "intoxicated" means intoxicated from the use of a drug or alcohol;

(33) "law" includes statutes and regulations;

(34) "leased" includes "rented";

(35) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(36) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(37) "nondeadly force" means force other than deadly force;

(38) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(39) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(40) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(41) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(42) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(43) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(44) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(45) "physical injury" means a physical pain or an impairment of physical condition;

(46) "police dog" means a dog used in police work under the control of a peace officer;

(47) "possess" means having physical possession or the exercise of dominion or control over property;

(48) "premises" means real property and any building;

(49) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(50) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, an access device, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(51) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(52) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions,

procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(53) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political subdivision of the state, or another governmental instrumentality; in this subparagraph "person" includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) - (C) of this paragraph, but who does not occupy the position;

(54) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(55) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(56) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(57) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child;

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(58) "sexual penetration"

(A) means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts described in this subparagraph is considered to be engaged in sexual penetration;

(B) does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(59) "solicits" includes "commands";

(60) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520 (a)(1) - (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(61) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(62) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical possession or control for a sufficient period to have been able to terminate it.

Sec. 18.65.080. Powers and duties of department and members of state troopers.

The Department of Public Safety and each member of the state troopers is charged with the enforcement of all criminal laws of the state, and has the power of a peace officer of the state or a municipality and those powers usually and customarily exercised by peace officers. Each member of the state troopers may prevent crime, pursue and apprehend offenders, obtain legal evidence, institute criminal proceedings, execute any lawful warrant or order of arrest, make an arrest without warrant for a violation of law committed in the presence of the state trooper, and may cooperate with other law enforcement agencies in detecting crime, apprehending criminals, and preserving law and order in the state.

Sec. 39.20.180. Transportation and per diem expenses for members of boards, commissions, etc.

Except as otherwise provided by law, the provisions in this section relating to per diem and transportation govern exclusively with respect to a member of a state board, commission, committee, judicial council, or other similar body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) for transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 - 39.20.170;

(2) for reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member.

Sec. 39.25.110. Exempt service.

Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices, judges, magistrates, and employees of the judicial branch including employees of the judicial council;
- (3) employees of the state legislature and its agencies;
- (4) the head of each principal department in the executive branch;
- (5) officers and employees of the University of Alaska;
- (6) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 - 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;
- (7) certificated teachers employed by the Department of Education and Early Development as correspondence teachers, teachers in skill centers operated by the Department of Education and Early Development or by the Department of Labor and Workforce Development, or in Mt. Edgecumbe School;
- (8) patients and inmates employed in state institutions;
- (9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;
- (10) members of boards, commissions, or authorities;
- (11) the officers and employees of the following boards, commissions, and authorities:
  - (A) [Repealed, Sec. 13 ch 43 SLA 1994].
  - (B) Alaska Permanent Fund Corporation;
  - (C) Alaska Industrial Development and Export Authority;
  - (D) Alaska Commercial Fisheries Entry Commission;

- (E) Alaska Commission on Postsecondary Education;
- (F) Alaska Aerospace Development Corporation;
- (G) Alaska Natural Gas Development Authority;
- (12) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;
- (13) the state medical examiner, deputy medical examiner, and assistant medical examiners appointed under AS 12.65.015 and physicians licensed to practice in this state and employed by the division of mental health and developmental disabilities in the Department of Health and Social Services or by the Department of Corrections;
- (14) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Oil and Gas Conservation Commission, except for those employed in the division of geological and geophysical surveys in the Department of Natural Resources;
- (15) [Repealed, Sec. 1 ch 32 SLA 1999].
- (16) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040 ;
- (17) officers and employees of the state who reside in foreign countries;
- (18) employees of the Alaska Seafood Marketing Institute;
- (19) emergency fire-fighting personnel employed by the Department of Natural Resources for a fire emergency or for fire prevention and related activities conducted under AS 41.15.030 ;
- (20) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;
- (21) employees of the Citizens' Advisory Commission on Federal Areas in Alaska established under AS 41.37.010 ;
- (22) youth employed by the Department of Natural Resources under the Youth Employment and Student Intern programs;
- (23) [Repealed, Sec. 6 ch 28 SLA 2003].

- (24) students employed by the state institutions in which the students are enrolled;
- (25) the executive director and staff of the Alaska Science and Technology Foundation established under AS 37.17.010 ;
- (26) investment officers in the Department of Revenue;
- (27) [Repealed, Sec. 10 ch 29 SLA 1999].
- (28) persons engaged in employment or pre-employment training programs operated by the Department of Military and Veterans' Affairs;
- (29) [Repealed, Sec. 9 ch 115 SLA 1989].
- (30) a person employed as an actuary or assistant actuary by the division of insurance in the Department of Community and Economic Development;
- (31) the chief administrative law judge and any other administrative law judges appointed to the office of tax appeals of the Department of Administration under AS 43.05.400 - 43.05.499;
- (32) a participant in the Alaska temporary assistance program under AS 47.27 who holds a temporary position with the state in order to obtain job training or experience;
- (33) a person employed as a convener under AS 44.62.730 or as a facilitator under AS 44.62.760 related to a negotiated regulation making process under AS 44.62.710 - 44.62.800;
- (34) the chief executive officer and employees of the Alaska Mental Health Trust Authority employed under AS 47.30.026 (b);
- (35) the assistant adjutant general for space and missile defense appointed under AS 26.05.185 ;
- (36) the victims' advocate established under AS 24.65.010 and the advocate's staff;
- (37) employees of the Alaska mental health trust land unit established under AS 44.37.050 ;
- (38) the executive director and staff of the Council on Domestic Violence and Sexual Assault established under AS 18.66.010 ;
- (39) the executive director and employees of the Knik Arm Bridge and Toll Authority under AS 19.75.051 and 19.75.061.

Sec. 39.50.200. Definitions.

(a) In this chapter

(1) "assistant to the governor or the lieutenant governor" includes any executive, legislative, special, administrative, or press assistant to the governor or lieutenant governor, and any person similarly employed in a policy-making position;

(2) "child" includes a biological child, an adoptive child, and a stepchild;

(3) "commission" means the Alaska Public Offices Commission created under AS 15.13.020 (a);

(4) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage;

(5) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including the University of Alaska;

(6) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(7) "mother or father" includes a biological parent, an adoptive parent, and a step-parent;

(8) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;

(9) "public official" means

(A) a judicial officer;

(B) the governor or the lieutenant governor;

(C) a person hired or appointed in a department in the executive branch as

(i) the head or deputy head of the department;

(ii) the director or deputy director of a division;

(iii) a special assistant to the head of the department;

(iv) a person serving as the legislative liaison for the department;

(D) an assistant to the governor or the lieutenant governor;

(E) the chair or a member of a state commission or board other than physician members or alternates of the Alaska Teachers' Retirement Board appointed under AS 14.25.035 (a)(2) or of the Public Employees' Retirement Board appointed under AS 39.35.030 (d);

(F) state investment officers and the state comptroller in the Department of Revenue;

(G) [Repealed, Sec. 10 ch 29 SLA 1999].

(H) the chief procurement officer appointed under AS 36.30.010 ;

(I) the executive director of the Alaska Workforce Investment Board; and

(J) each appointed or elected municipal officer;

(10) "source of income" means the entity for which service is performed or that is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or domestic partner, or the person's dependent children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation, but, if the entity that is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

(b) In this chapter "state commission or board" means the

(1) [Repealed, Sec. 30 ch 81 SLA 2000].

(2) Alaska State Council on the Arts (AS 44.27.040 );

(3) Alcoholic Beverage Control Board (AS 04.06.010 );

(4) State Assessment Review Board (AS 43.56.040 );

(5) [Repealed, Sec. 1 ch 54 SLA 1981].

(6) Board of Education and Early Development (AS 14.07.075 );

- (7) Alaska Public Broadcasting Commission (AS 44.21.256 );
- (8) Alaska Public Offices Commission (AS 15.13.020 );
- (9) [Repealed, Sec. 16 ch 61 SLA 1995].
- (10) Alaska Commercial Fisheries Entry Commission (AS 16.43.020 );
- (11) Fishermen's Fund Advisory and Appeals Council (AS 23.35.010 );
- (12) [Repealed, Sec. 140 ch 4 FSSLA 1992].
- (13) State Commission for Human Rights (AS 18.80.010 );
- (14) [Repealed, Sec. 86 ch 59 SLA 1982].
- (15) Alaska Judicial Council (art. IV, Sec. 8, Alaska Constitution);
- (16) Commission on Judicial Conduct (art. IV, Sec. 10, Alaska Constitution);
- (17) [Repealed, Sec. 24 ch 22 SLA 2001].
- (18) Local Boundary Commission (AS 44.33.810 );
- (19) Occupational Safety and Health Review Board (AS 18.60.057 );
- (20) Board of Parole (AS 33.16.020 );
- (21) State Personnel Board (AS 39.25.060 );
- (22) [Repealed, Sec. 20 ch 110 SLA 1981].
- (23) Public Employees Retirement Board (AS 39.35.030 );
- (24) Regulatory Commission of Alaska (AS 42.04.010 );
- (25) University of Alaska Board of Regents (AS 14.40.120 );
- (26) Alaska Royalty Oil and Gas Development Advisory Board (AS 38.06.020);
- (27), (28) [Repealed, Sec. 86 ch 59 SLA 1982].
- (29) Alaska Teachers' Retirement Board (AS 14.25.035 );
- (30) [Repealed, 1983 Initiative Proposal No. 2, Sec. 6].

- (31) Workers' Compensation Board (AS 23.30.005 );
- (32) Alaska Commission on Postsecondary Education (AS 14.42.015 );
- (33) Alaska Municipal Bond Bank Authority (AS 44.85.020 );
- (34) [Repealed, Sec. 1 ch 54 SLA 1981].
- (35) Alaska Medical Facility Authority (AS 18.26);
- (36) Alaska Oil and Gas Conservation Commission (AS 31.05);
- (37) Alaska Housing Finance Corporation (AS 18.56.010 - 18.56.900);
- (38) [Repealed, Sec. 44 ch 24 SLA 2003].
- (39) [Repealed, Sec. 4 ch 75 SLA 1979].
- (40) Board of Fisheries (AS 16.05.221 (a));
- (41) Board of Game (AS 16.05.221 (b));
- (42) Board of Trustees, executive director, and investment officers of the Alaska Permanent Fund Corporation (AS 37.13.040 );
- (43) [Repealed, Sec. 69 ch 14 SLA 1987].
- (44) Alaska Seafood Marketing Institute (AS 16.51.010 );
- (45) Council on Domestic Violence and Sexual Assault (AS 18.66.010 );
- (46) [Repealed, Sec. 27 ch 18 SLA 1993].
- (47) [Repealed, Sec. 38 ch 168 SLA 1990].
- (48) [Repealed, Sec. 16 ch 33 SLA 1996].
- (49) [Repealed, Sec. 10 ch 29 SLA 1999].
- (50) [Repealed, Sec. 9 E.O. No. 84 (1993)].
- (51) [Repealed, Sec. 102 ch 21 SLA 2000].
- (52) Correctional Industries Commission (AS 33.32.070 );

(53) the board of directors and the executive director of the Alaska Aerospace Development Corporation (AS 14.40.821 );

(54) Alaska State Pension Investment Board (AS 37.10.210 );

(55) Alaska Workforce Investment Board (AS 23.15.550 );

(56) Board of Agriculture and Conservation (AS 03.09.010 );

(57) the board of directors and chief executive officer of the Alaska Natural Gas Development Authority (AS 41.41.020 ).

**PERRY GREEN LEASING**  
**130 West 4<sup>th</sup> Avenue, Anchorage, AK 99501**  
Phone:907/277-9595 Fax:907/272-2125

April 19, 2004

Representative John Harris, Co-chair  
Representative Bill Williams, Co-chair  
House Finance Committee  
State Capitol  
Juneau, AK 99801-1182

Re: HB 552-An Act relating to gambling and gaming.

Dear Representative:

Thank you for the opportunity to address HB 552, a bill that will create the Alaska Gaming Commission and allow them to issue a single site casino gaming license in Anchorage. As you know, it has been my dream for some time to develop a world-class casino operation in the vacant Alaska Seafood International (ASI) building that is currently owned and maintained, at a loss, by the state.

In a recent survey by KTUU Channel 2, they asked their viewers if they were in favor or opposed to the single site casino concept in Anchorage. I found the results startling, as 67% were in favor of the concept, 32% opposed and 1% were undecided. The over 500 respondents were informed viewers as they were watching the newscast and one must conclude they are people who know and appreciate the reality of the state's situation and what the future holds for Alaska. They care and understand, as I do, that the state needs sources of revenue and good jobs for her residents.

It is a fact that 48 states currently use gaming as revenue source with that new revenue and industry revitalizing cities, counties, and even states. Not one state that has established gaming has reversed their decision. After 5 years, for example, the state of Louisiana decided to have a referendum to determine if they should still continue gaming. Seventy-six percent of the voters approved the referendum, sending the message that gaming had operated successfully. Voters there understood that this environmentally clean industry afforded good jobs and the myths associated with gaming were just that.

In the very conservative state of Mississippi, gaming began in Tunica County, an area of over 25% unemployment. Today, unemployment is under 4.3% as well paying jobs were created for many residents who had never before had the opportunity to work. Food stamp recipients fell 70% and people who had been raised on welfare found employment and self-respect. The casino sponsored programs that educated these people on not only the importance of doing their jobs, but in life skills. They learned that being timely for their jobs, dressing properly and carrying out proper hygiene were not complicated but were necessary in order to get and keep a job. The mayors of these cities, be they fundamental Christian or conservative Catholic, realized that employment was far better for the souls of their citizens than welfare, and that the resulting benefits far out weighed any concerns they may have had.

You may ask what will the benefits be of just one casino in Alaska? I would offer the following estimates over the next 10 years:

1. The State of Alaska will receive a minimum of \$200,000,000 in revenue. The bill proposes a 17% tax on the adjusted gross receipts, more than double the amount currently collected by California (8.5%) and triple that of Nevada (6.7%).
2. The Municipality of Anchorage will receive \$50,000,000 in taxes which would include the assessed worth of the valuable ASI property. The bill allows the municipality to tax up to 3% on the adjusted gross receipts. The City currently receives no revenue from this state owned property.

Rep. John Harris  
Rep. Bill Williams  
April 19, 2004  
Page 2

3. Increased retail sales of \$3,000,000,000 statewide will result. Local sales taxes and bed taxes will increase for other communities from Ketchikan to Barrow, when these cities are visited by new tourists traveling to Alaska.
4. Without using any state funding, the casino would generate millions of dollars worth of marketing value by promoting this destination and our state to travelers in the Far East and other coveted markets.
5. During the renovation of the facility into a world-class Alaska-themed attraction, construction jobs worth over \$100,000,000 will be created.
6. An education program will be created in conjunction with South Central Foundation or established religious organizations for many Alaskans who currently have no working experience. Employment will be 98% Alaskan and those that are in need will learn life skills in addition to their job training. We will utilize the unemployed, the underemployed and senior citizens. We will train and employ young Alaskans who may have been incarcerated in the past and give them a good job for the first time in their lives.
7. A childcare facility will be established for working single parents on site, which will allow Alaskans who could not afford to work outside of their home previously because of concerns over the expense and quality of childcare, to seek employment.
8. Additional work will be available for many trained professionals, including local musicians and stagehands; as star attractions will be performing regularly in the facility.
9. Cost savings will be realized by local law enforcement agencies because existing illegal after-hours clubs will disappear with the onset of regulated legal casino gaming, not unlike during Prohibition.
10. Alaskan businesses will be given the opportunity to provide services and supplies to the casino.

One of the main reasons I have chosen the ASI facility for this project is to relieve the state of an expensive and underutilized facility. This proposal requires little from the state in the form of money or government jobs, as all costs of the Commission will be borne either by the license holder or through the taxes collected from the facility. It will create valuable new tourism infrastructure that can be of great benefit to everyone in our visitor industry. I feel that by allowing this proposal to go forward, we will have a wonderful opportunity to grow our statewide economy for the benefit of all Alaskans.

I understand that changes approved by the Committee will be incorporated into a Finance Committee Substitute. I would like to state for the record that it is not my intent to impact current charitable gaming statutes (AS 05.15) and I will work together with your staff to make the changes needed to reflect that position.

Thank you for the opportunity to continue this education process regarding the single site casino gaming issue. I look forward to working with you and the other members of the House as you enact these changes that will greatly enhance state revenues, provide 1,000 jobs and promote privately financed economic development for all of Alaska.

Most sincerely,

  
Perry Green

From Perry Green

4-19-04

Whenever gaming is brought up to some people their immediate response is one of fear and rejection. Fear for the ills of gaming is easy to understand, especially from people who have limited or no experience with gaming or living in an area that has no gaming. Las Vegas is one thing, but **not** for my city or community, is the general thought. Some of these people actually go, or have gone, to Las Vegas and enjoyed the fine dining, the 1<sup>st</sup> rate professional entertainment/shows produced, the general excitement. Still others enjoy playing cards or slot machines. Others haven't chosen, or just haven't had the opportunity, to enjoy the fun of this world famous entertainment location and that's understandable since they might fear the unknown.

There is another location that has six (6) casinos in a community of several hundred thousand residents that I am totally familiar with, as I spend a good deal of time there. That location is Palm Springs, California. It is much quieter and less famous, however, it's challenge is much the same as ours here in Alaska. It relies on tourism as a major source of government revenue and jobs. Palm Springs cannot be compared to Mt. McKinley or Kenai or the Inside Passage or world class sport fishing & hunting, but it does have the Bob Hope Classic PGA Golf Tournament and over 100 golf courses. Over 100,000 jobs depend upon the success of the Palm Springs tourism attraction and it is being effectively marketed and sold throughout the lower 48 and internationally. Palm Springs has to pull tourists, and their spending, to the isolated desert floor location just like Alaska has to pull people to it's location. Of course, their job is easier than Alaska since we are further away. One thing is for sure - the pulling power of both attractions needs to be as powerful as it can be and it must be sold to potential visitors aggressively.

The addition of six (6) casinos in Palm Springs increases the entertainment value of the attraction. Visiting Palm Springs for golf and sun during the day is augmented by exciting shows and gaming in the evening and this important strategy should apply to Alaska as well.

The attraction of Alaska must not be just marketed with ads. We must still sell Alaska by having additional attractions.

By the way, ask the residents of Palm Springs if the inclusion of six (6) casinos in their community has created problems for them. I don't believe you will get many negative comments and I don't think you will hear their residents being concerned about the ills of gaming. Quite the contrary, thousands of jobs and millions in government revenue are the benefits.

There is one big difference between Palm Springs gaming and what House Bill #552 will do for Alaska. It's not the jobs, it's not the entertainment, it's not the expansion of new marketing capability that will be created. The **BIG** difference calls for the State of Alaska to receive more than **DOUBLE** the percentage of revenue than either California or Nevada are now receiving.

My name is Guy Warren. I am the Stated Clerk of the Presbytery of Alaska.

On behalf of the Presbytery, I come before this Committee to express our sincere opposition to the approval of House Bill 552.

The Presbytery of Alaska consists of the 15 member churches of the Presbyterian Church (U.S.A.) from Yakutat in the north, to Metlakatla in the south.

We believe that this bill represents a significant step towards situations which will not be in the best interest of the state government or the citizens which it serves.

While we know that approval of this legislation could provide new funding to meet the state's financial needs and perhaps new employment, we also believe that the costs the state will incur attempting to repair the social ills that gambling brings with it will more than consume that new funding, and remove any real benefit from any new employment. These social ills include increased domestic violence, various psychological and social problems and an increased incidence of suicide. These are all issues that trouble our state enough, and certainly no additional encouragement for these are needed.

We understand that our concerns about these costs are only beliefs and that some might disagree. We however, believe it would be prudent and only right for the legislature to seek detailed and independently researched estimates on these costs before taking the steps which would force the state to pay them. This legislation will see serious casino gambling introduced to our state prior to this research.

The presbytery submitted a resolution approved by us last fall, to the members of the legislature earlier in the session expressing our specific opposition to video gambling. Our reasons for doing so are given in that resolution, additional copies of which will be made available to the members of the committee.

While this resolution concerns itself only with video poker, our opposition certainly extends to more extreme forms of gambling which the bill before your body would propose.

The presbytery met again, just this last weekend, in our regular Spring meeting, and while no specific resolution on these matters was considered at that meeting, a discussion with a member of the State Senate who briefly visited us more than amply demonstrated that our opposition to increased gambling within the state remains.

Finally, we would strongly urge the members of the legislature to remember who they represent, namely the people of Alaska. The people of the state have spoken on the matter of gambling and they spoke loudly. A proposal to set up an Alaska Gambling Board was presented to the people in 1990. This measure was defeated by over 40,000 votes, almost a 2-1 margin. We would hope that the legislature would step carefully before turning their back on such a clear mandate from the people.

**A Resolution by the Presbytery of Alaska Delegates in Sitka, Alaska, October 2003  
In Opposition to Video Poker in Alaska.**

WHEREAS, as followers of Jesus Christ, we are called to work toward healing of persons afflicted with gambling addictions and to protect vulnerable populations from becoming addicted, and

WHEREAS, gambling addiction is increasing in the United States and over 8.1 million Americans have a gambling problem, and

WHEREAS, 66% of individuals suffering from pathological gambling turn to crime, one out of five attempt suicide, and many face bankruptcy, divorce and other family problems, and

WHEREAS, gambling addiction is more prevalent among the poor, various ethnic groups, and youth, and

WHEREAS, the gambling industry and some members of the Alaska State Legislature are promoting bringing video poker into the State of Alaska as a source of income, and

WHEREAS, video poker has been called "the crack cocaine of gambling" and is the most dangerous and most addictive of all current forms of legalized gambling, and

WHEREAS, since video poker was introduced in Oregon in 1991, the number of Gamblers Anonymous groups has grown from 3 to 30, and

WHEREAS, 81% of the problem gamblers in Oregon's state-subsidized gambling treatment programs gambled primarily on video poker and had an average gambling debt of \$16,000, which was more than half the average annual income of the group, and

WHEREAS, video poker is rejected by communities faster than any other form of gambling;

THEREFORE, LET IT BE RESOLVED that the Presbytery of Alaska declares opposition to the practice of video poker in the State of Alaska, whether it be publicly or privately operated;

FURTHERMORE, BE IT RESOLVED that Governor Frank H. Murkowski and members of the Alaska State Legislature be urged to oppose the establishment of video poker in Alaska.

Adopted  
4.21.04

23-LS1802N  
Luckhaupt  
4/20/04

**CS FOR HOUSE BILL NO. 552(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE.- SECOND SESSION

**BY THE HOUSE FINANCE COMMITTEE**

Offered:  
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to gambling and gaming."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
4 to read:

5 **LEGISLATIVE INTENT.** This chapter is intended to benefit the people of Alaska by  
6 promoting tourism and assisting economic development. The public's confidence and trust  
7 will be maintained only through

- 8 (1) comprehensive law enforcement supervision; and
- 9 (2) the strict regulation of facilities, persons, associations, and gambling  
10 operations under AS 05.18.

11 \* **Sec. 2.** AS 05 is amended by adding a new chapter to read:

- 12 **Chapter 18. Gambling and the Alaska Gaming Commission.**
- 13 **Sec. 05.18.010. Gaming Commission established; membership.** (a) The  
14 Alaska Gaming Commission is established in the Department of Revenue.
- 15 (b) The commission consists of three members appointed by the governor.

1 Each member of the commission must be a resident of the state. At least one member  
2 shall be experienced in law enforcement and criminal investigation. At least one  
3 member shall be a certified public accountant experienced in accounting and auditing.  
4 Not more than two members may be affiliated with the same political affiliation or  
5 party. The governor shall designate one member to serve as chair.

6 (c) Except as provided in (b) of this section the term of office of a commission  
7 member is three years. Each member of the commission is eligible for reappointment  
8 at the discretion of the governor.

9 (d) Each member of the commission is entitled to receive

10 (1) salary as determined by the commission for each day the member

11 (A) attends a meeting of the commission; or

12 (B) conducts a hearing under this chapter;

13 (2) per diem and travel expenses authorized for members of boards and  
14 commissions under AS 39.20.180.

15 (e) A person may not be appointed to the commission or continue to be a  
16 member of the commission if the person or the person's spouse, child, or parent is a  
17 member of the board of directors of or financially interested in a gambling operation  
18 subject to the jurisdiction of the commission under this chapter or a permittee,  
19 licensee, or registrant under AS 05.15.

20 (f) A member of the commission may not be a public officer of the state  
21 except by the member's service on the commission. In this subsection, "public officer"  
22 has the meaning given in AS 39.52.960.

23 (g) A person may not serve on the commission if the person

24 (1) has knowingly provided false statements or information of a  
25 material nature to the commission;

26 (2) has been determined by the governor or the commission to be a  
27 person whose prior activities, criminal record, if any, or reputation, habits, and  
28 associations pose a threat to the public interest or to the effective regulation or control  
29 of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices,  
30 methods, and activities in the regulation of gaming; or

31 (3) has been convicted of or is under indictment for a felony under the

1 laws of any state in the United States, or of the United States.

2 (h) A member of the commission may be removed by the governor for

3 (1) neglect of duty, including lack of attendance at meetings of the  
4 commission; the failure of a member to attend at least 50 percent of the meetings in  
5 any 12-month period is prima facie evidence of neglect of duty under this paragraph;

6 (2) misfeasance, which is the improper performance of an act within  
7 the power of the member or the commission;

8 (3) malfeasance, which is the performance of an act not within the  
9 power of the member or the commission;

10 (4) nonfeasance, which is the failure to perform an act within the  
11 power of the member or the commission that should be performed;

12 (5) becoming unqualified to be a member of the commission under (e)  
13 - (g) of this section.

14 (i) Each member of the commission shall, before beginning the discharge of  
15 the duties of the member's office, provide a bond to the state that is in the amount of  
16 \$25,000, is approved by the governor, and is recorded in the office of the lieutenant  
17 governor. If the governor determines that the bond of a commission member has  
18 become or is likely to become invalid or insufficient, the governor shall immediately  
19 require the member to renew the member's bond. To be valid, a bond renewed under  
20 this section must be approved by the governor. The governor shall remove a member  
21 of the commission who does not provide the required bond within 30 days after the  
22 member is appointed to the commission or fails to renew the bond required by this  
23 subsection within 30 days after the governor requires the renewal. The commission  
24 may pay the cost of a bond obtained by a member of the commission under this  
25 chapter.

26 **Sec. 05.18.020. Staff support; personnel.** (a) The commission may hire  
27 staff to carry out the duties of the commission. A person may not be employed to  
28 serve the commission if

29 (1) the person or the person's spouse, parent, or child is

30 (A) an official of a licensee engaged in gambling operations or  
31 charitable gaming in the state; or

1 (B) a person with a financial interest in or a financial  
2 relationship with a licensee engaged in gambling operations or charitable  
3 gaming in the state; or

4 (2) the person is a spouse, parent, or child of a commission member.

5 (b) The commission may employ or contract with inspectors and agents  
6 required to carry out the duties required in this chapter. A licensed owner shall, in the  
7 manner prescribed by the rules of the commission, reimburse the commission for the  
8 salaries and other expenses of the inspectors and agents or other commission  
9 employees and contractors required to be present during the time gambling operations  
10 are conducted in a gambling facility.

11 **Sec. 05.18.030. Executive director; compensation; duties.** (a) The  
12 governor shall appoint an executive director of the commission to serve at the pleasure  
13 of the governor. The executive director is entitled to compensation at an amount to be  
14 approved annually by the governor.

15 (b) The executive director shall perform the duties assigned to the executive  
16 director by the commission.

17 (c) The executive director shall devote the executive director's full time to the  
18 duties of the office and may not hold another office or employment. The executive  
19 director shall

20 (1) keep records of all proceedings of the commission;

21 (2) preserve all papers, books, documents, and other records belonging  
22 to or held by the commission;

23 (3) supervise and manage the staff of the commission in accordance  
24 with the policies established by the commission;

25 (4) ensure the financial integrity of all aspects of the operations of the  
26 commission; and

27 (5) perform other duties the commission may from time to time  
28 delegate to the executive director.

29 **Sec. 05.18.040. Meetings; records.** (a) The commission shall meet at least  
30 quarterly.

31 (b) The chair or any member of the commission may call a special meeting. A

1 special meeting may be held not earlier than 72 hours after written notice has been  
2 sent to each member.

3 (c) Two members of the commission constitute a quorum of the commission.  
4 Two affirmative votes are required for the commission to take official action.

5 (d) The commission shall keep a complete and accurate record of the  
6 commission's meetings. The commission's records shall be available for public  
7 inspection and must accurately reflect all commission proceedings.

8 **Sec. 05.18.050. Annual report.** (a) The commission shall file a written  
9 annual report with the governor and the legislature before March 1 of each year. The  
10 commission shall file any additional reports that the governor requests.

11 (b) The annual report must include a statement describing

12 (1) the receipts and disbursements of the commission;

13 (2) licensing, enforcement, and other actions taken by the commission;

14 (3) any additional information and recommendations that the  
15 commission considers useful or the governor requests.

16 **Sec. 05.18.060. Hearings.** (a) If approved by a majority of the commission, a  
17 commission member or an administrative law judge appointed by the commission may

18 (1) conduct a hearing authorized under this chapter;

19 (2) recommend findings of fact and conclusions of law to the  
20 commission.

21 (b) A member of the commission or administrative law judge conducting a  
22 hearing has all the powers, rights, and duties granted to the commission. When  
23 conducting a public hearing, the commission may not limit the number of speakers  
24 who may testify. However, the commission may set reasonable time limits on the  
25 length of an individual's testimony or the total amount of time allotted to proponents  
26 and opponents of an issue before the commission.

27 (c) A person may seek judicial review of a final administrative order of the  
28 commission in the manner provided in AS 44.62.560 and 44.62.570.

29 **Sec. 05.18.070. Administration, regulation, and enforcement.** (a) The  
30 commission has the following powers and duties for the purpose of administering,  
31 regulating, and enforcing the gambling operations authorized under this chapter:

- 1 (1) all powers and duties specified in this chapter;
- 2 (2) all powers necessary to execute this chapter;
- 3 (3) jurisdiction and supervision over the following:
  - 4 (A) all authorized gambling operations in the state;
  - 5 (B) all persons in gambling facilities where gambling
  - 6 operations are conducted;
- 7 (4) the power and duty to investigate and reinvestigate applicants and
- 8 license holders and determine the eligibility of applicants for licenses and to require
- 9 applicants and license holders to reimburse the commission for the costs of the
- 10 investigation and reinvestigation;
- 11 (5) the power and duty to select from among competing applicants the
- 12 applicants that promote the most economic development and that best serve the
- 13 interests of the citizens of the state;
- 14 (6) the power and duty to take appropriate administrative enforcement
- 15 or disciplinary action against a licensee under this chapter;
- 16 (7) the power and duty to investigate alleged violations of this chapter;
- 17 (8) the power and duty to establish fees for the review and
- 18 investigation of applications for the licenses that are authorized under this chapter;
- 19 (9) the power and duty to adopt appropriate standards for the design,
- 20 appearance, aesthetics, and construction of gaming facilities;
- 21 (10) the power to conduct hearings;
- 22 (11) the power to issue subpoenas to compel the attendance of
- 23 witnesses and subpoenas duces tecum for the production of books, records, and other
- 24 relevant documents;
- 25 (12) the power to administer oaths and affirmations to witnesses;
- 26 (13) the power and duty to prescribe a form to be used by a licensed
- 27 owner as an application for employment by potential employees of the gambling
- 28 facility and licensees of the commission;
- 29 (14) the power to revoke, suspend, or renew licenses issued under this
- 30 chapter;
- 31 (15) the power to hire employees to gather information, conduct

1 investigations, and carry out other tasks under this chapter;

2 (16) the power to take any appropriate action to enforce this chapter,  
3 including the issuance of notices of violations of this chapter or regulations of the  
4 commission, orders to cease and desist, and closure orders;

5 (17) the power to adopt regulations for the implementation and  
6 enforcement of this chapter;

7 (18) the power to, through the office of the attorney general, apply to  
8 the courts for injunctive and declaratory relief in aid of any action or decision of the  
9 commission on any matter within the jurisdiction of the commission.

10 (b) The Department of Public Safety and the attorney general shall assist the  
11 commission in conducting background investigations of applicants. The commission  
12 shall reimburse the Department of Public Safety for the costs incurred by the  
13 department as a result of assistance provided to the commission. The commission  
14 shall make the payment from fees collected from applicants for licenses.

15 (c) The commission shall require any person holding an owner's license to  
16 adopt policies concerning the preferential hiring of residents of the state.

17 **Sec. 05.18.080. Violations; fees and taxes; inspections.** (a) The commission  
18 shall

19 (1) provide for the establishment and collection of license fees and  
20 taxes imposed under this chapter and deposit the license fees and taxes in the state  
21 gaming fund under AS 05.18.570;

22 (2) levy and collect penalties for noncriminal violations of this chapter  
23 and deposit the penalties in the state gaming fund under AS 05.18.570;

24 (3) be present through the commission's inspectors and agents during  
25 the time gambling operations are conducted in a gambling facility to do the following:

26 (A) certify the revenue received by gambling facilities as a  
27 result of gambling operations;

28 (B) receive complaints from the public;

29 (C) conduct other investigations into the conduct of the  
30 gambling games, the maintenance of the gambling equipment, and the  
31 operation of the gambling facility as the commission considers necessary and

1           proper.

2           (b) The commission may enter an office, a gambling facility, or other premises  
3 of a person holding an owner's or supplier's license where evidence of compliance or  
4 noncompliance with this chapter is likely to be found.

5           **Sec. 05.18.090. Licensing.** (a) The commission shall adopt standards for the  
6 licensing of

7                   (1) persons regulated under this chapter;

8                   (2) electronic or mechanical gambling games.

9           (b) The commission shall require that the records, including financial  
10 statements, of a person holding an owner's or supplier's license must be maintained in  
11 the manner prescribed by the commission.

12           (c) The commission may not issue a license to a person who has been  
13 convicted of a felony in this or another jurisdiction.

14           (d) An applicant for a license under this chapter shall provide the following  
15 information to the commission:

16                   (1) the name, business address, and business telephone number of the  
17 applicant;

18                   (2) an identification of the applicant;

19                   (3) the following information for an applicant that is not an individual:

20                           (A) the state of incorporation and any states where the  
21 corporation is registered to do business;

22                           (B) the names and addresses of all corporate officers;

23                           (C) the identity of

24                                   (i) any entity in which the applicant has an equity  
25 interest of at least one percent; the identification must include the state  
26 of incorporation or registration, if applicable; however, an applicant  
27 that has a pending registration statement filed with the United States  
28 Securities and Exchange Commission is not required to provide  
29 information under this item;

30                                   (ii) the shareholders or participants of the applicant; an  
31 applicant that has a pending registration statement filed with the United

1 States Securities and Exchange Commission is required to provide only  
2 the names of persons holding an interest of more than one percent of all  
3 shares;

4 (4) an identification of any business, including the state of  
5 incorporation and all states where the business is registered to do business, if  
6 applicable, in which an applicant or the spouse or children of an applicant has an  
7 equity interest of more than one percent of all shares;

8 (5) if the applicant has been indicted, been convicted, pled guilty or  
9 nolo contendere, or forfeited bail concerning a criminal offense other than a traffic  
10 violation under the laws of any jurisdiction, the applicant must include the following  
11 information under this paragraph:

12 (A) the name and location of the court, the arresting agency,  
13 and the prosecuting agency;

14 (B) the case number;

15 (C) the date and type of offense;

16 (D) the disposition of the charge;

17 (E) the location and length of incarceration, if any;

18 (6) if the applicant has had a license or certificate issued by a licensing  
19 authority in this state or any other jurisdiction denied, restricted, suspended, revoked,  
20 or not renewed, the applicant must provide the following information under this  
21 paragraph:

22 (A) a statement describing the facts and circumstances  
23 concerning the denial, restriction, suspension, revocation, or nonrenewal;

24 (B) the date each action described in (A) of this paragraph was  
25 taken;

26 (C) the reason each action described in (A) of this paragraph  
27 was taken;

28 (7) a statement of whether the applicant has filed or had filed against  
29 the applicant a proceeding in bankruptcy or been involved in a formal process to  
30 adjust, defer, suspend, or work out the payment of a debt, including the date of filing,  
31 the name and location of the court, and the case and number of the disposition;

1 (8) a statement of whether the applicant has filed or been served with a  
2 complaint or notice filed with a public body concerning a delinquency in the payment  
3 of or a dispute over a filing concerning the payment of a tax required under federal,  
4 state, or local law, including the amount, type of tax, taxing agency, and times  
5 involved;

6 (9) a statement listing the names and titles of public officials or  
7 officers of units of government and relatives of the public officials or officers who  
8 directly or indirectly have a financial interest in, have a beneficial interest in, are the  
9 creditors of, hold a debt instrument issued by, or have an interest in a contractual or  
10 service relationship with the applicant;

11 (10) the name and business telephone number of the attorney who will  
12 represent the applicant in matters before the commission;

13 (11) a description of a proposed or an approved gambling facility,  
14 including the following information:

15 (A) the expected economic benefit to local communities;

16 (B) the anticipated or actual number of employees;

17 (C) any statements from the applicant concerning compliance  
18 with federal and state affirmative action guidelines;

19 (D) the anticipated or actual number of patrons;

20 (E) the anticipated or actual gross receipts;

21 (12) a description of the product or service to be supplied by the  
22 applicant if the applicant has applied for a supplier's license;

23 (13) the following information from each licensee involved in the  
24 ownership or management of gambling operations:

25 (A) an annual balance sheet;

26 (B) an annual income statement;

27 (C) a list of the stockholders or other persons having at least  
28 one percent beneficial interest in the gambling activities of the person who has  
29 been issued the owner's license;

30 (D) any other information the commission considers necessary  
31 for the effective administration of this chapter.

1 (e) The commission shall review and approve or disapprove promptly and in  
2 reasonable order all license applications.

3 (f) A party aggrieved by an action of the commission denying, suspending,  
4 revoking, restricting, or refusing the renewal of a license may request a hearing before  
5 the commission. A request for a hearing must be made to the commission in writing  
6 not more than 10 days after service of notice of the action of the commission.

7 (g) Except as provided in AS 05.18.140, the commission shall serve notice of  
8 the commission's actions under this section on a party by personal delivery or by  
9 certified mail. Notice served by certified mail is considered complete on the business  
10 day following the date of the mailing.

11 (h) The commission shall conduct all requested hearings under this section  
12 promptly and in reasonable order.

13 (i) The commission shall require an applicant for a license to submit  
14 fingerprints and the fees required by the Department of Public Safety for criminal  
15 justice information and a national criminal history record check. The commission  
16 shall forward the fingerprints and fees to the Department of Public Safety for a report  
17 of criminal justice information under AS 12.62 and a national criminal history record  
18 check and shall use the results to evaluate applicants.

19 **Sec. 05.18.100. Ejection or exclusion from facilities.** (a) The commission  
20 may eject or exclude or authorize the ejection or exclusion of a person from a  
21 gambling facility if

22 (1) the person violates this chapter or a regulation adopted by the  
23 commission; or

24 (2) the commission determines that the person's conduct or reputation  
25 is such that the person's presence within the gambling facility may

26 (A) call into question the honesty and integrity of the gambling  
27 operations; or

28 (B) interfere with the orderly conduct of the gambling  
29 operations.

30 (b) A person may petition the commission for a hearing on the person's  
31 ejection or exclusion from a gambling facility under this section.

1           **Sec. 05.18.110. Violations of chapter; fraudulent acts.** If a licensee or an  
2 employee of a licensee violates this chapter or engages in a fraudulent act, the  
3 commission may

4                   (1) suspend, revoke, or restrict the license of a licensee;

5                   (2) require the removal of a licensee or an employee of a licensee from  
6 the gambling facility;

7                   (3) impose a civil penalty of not more than \$5,000 against an  
8 individual who has been issued an occupational license or a person who has been  
9 issued a supplier's license for each violation of this chapter;

10                   (4) impose for each violation of this chapter by a licensed owner a  
11 penalty of not more than the greater of \$10,000 or an amount equal to the licensee's  
12 daily gross receipts for each day of the violation.

13           **Sec. 05.18.120. Investigative procedure; complaints.** (a) The commission  
14 shall review and make a determination on a complaint by a person who has been  
15 issued an owner's license concerning an investigative procedure that the licensee  
16 alleges is unnecessarily disruptive of gambling operations.

17                   (b) A licensee filing a complaint under this section must prove by clear and  
18 convincing evidence that the investigative procedure

19                           (1) does not have a reasonable law enforcement purpose; and

20                           (2) is so disruptive as to unreasonably inhibit gambling operations.

21                   (c) For purposes of this section, the need to inspect and investigate a licensee  
22 shall be presumed at all times.

23           **Sec. 05.18.130. Transfer of licenses; rules of procedure; prohibitions.** (a)  
24 A licensed owner or another person shall apply for and receive the commission's  
25 approval before an owner's license is transferred, sold, or, purchased or a voting trust  
26 agreement or other similar agreement is established with respect to the owner's  
27 license. A licensed owner or another person may not lease, hypothecate, or borrow or  
28 loan money against an owner's license.

29                   (b) The commission shall adopt regulations governing the procedure a  
30 licensed owner or another person shall follow to take an action under (a) of this  
31 section. The regulations must specify that a person who obtains an ownership interest

1 in a license shall meet the criteria of this chapter and regulations adopted by the  
2 commission. A licensed owner may transfer an owner's license only in accordance  
3 with this chapter and regulations adopted by the commission.

4 **Sec. 05.18.140. Suspension of license without notice or hearing; revocation**  
5 **of license.** (a) The commission may suspend a license issued to the owner of a  
6 gambling facility without notice or hearing if the commission determines that the  
7 safety or health of patrons or employees would be threatened by the continued  
8 operation of the gambling facility. The opportunity for a hearing shall be provided  
9 within a reasonable time following a suspension.

10 (b) The suspension of a license under this section may remain in effect until  
11 the commission determines that the cause for suspension has been abated. The  
12 commission may revoke the license if the commission determines that the owner has  
13 not made satisfactory progress toward abating the hazard.

14 **Sec. 05.18.150. Commission records.** (a) Notwithstanding any other law,  
15 upon written request from a person, the commission shall provide the following  
16 information to the person:

17 (1) the information provided under this chapter concerning a licensee  
18 or an applicant;

19 (2) the amount of the adjusted gross receipts tax under AS 05.18.580  
20 paid daily to the state by a licensed owner;

21 (3) a copy of a letter providing the reasons for the denial of an owner's  
22 license;

23 (4) a copy of a letter providing the reasons for the commission's refusal  
24 to allow an applicant to withdraw the applicant's application.

25 (b) The commission may assess fees for the copying of information provided  
26 by the commission to a person requesting information under (a) of this section.

27 **Sec. 05.18.160. Owner's licenses.** (a) The commission may issue to a person  
28 a license to own and conduct gambling games at a specified gambling facility in any  
29 municipality of the state with a population of at least 150,000 according to the most  
30 recent federal census information. A person may not have more than one owner's  
31 license in effect at any time. Only one owner's license may be issued in a

1 municipality.

2 (b) A person applying for an owner's license under this chapter shall pay a  
3 nonrefundable application fee to the commission. The commission shall determine the  
4 amount of the application fee.

5 (c) An applicant shall submit the following on forms provided by the  
6 commission:

7 (1) the information required under AS 05.18.090;

8 (2) if the applicant is an individual, two sets of the individual's  
9 fingerprints;

10 (3) if the applicant is not an individual, two sets of fingerprints for  
11 each officer and director of the applicant.

12 (d) The commission shall review an application for an owner's license under  
13 this chapter and inform each applicant of the commission's decision concerning the  
14 issuance of an owner's license.

15 (e) The costs of investigation of an applicant for an owner's license under this  
16 chapter shall be included in the application fee paid by the applicant.

17 (f) An applicant for an owner's license under this chapter shall pay all  
18 additional costs that are associated with the investigation of the applicant that exceed  
19 the portion of the application fee paid by the applicant that is assessed for the  
20 investigation.

21 (g) The commission may not issue an owner's license under this chapter to a  
22 person if the person

23 (1) has been convicted of a felony under the laws of the state, the laws  
24 of another state, or laws of the United States;

25 (2) has knowingly or intentionally submitted an application for a  
26 license under this chapter that contains false information;

27 (3) is a member of the commission;

28 (4) is an officer, a director, or a managerial employee of a person  
29 described in (1) or (2) of this subsection; or

30 (5) employs an individual described in (1), (2), or (3) of this subsection  
31 and that individual participates in the management or operation of gambling

1 operations authorized under this chapter.

2 **Sec. 05.18.170. Factors considered in granting owner's licenses;**  
3 **submission of design.** (a) In determining whether to grant an owner's license to an  
4 applicant, the commission shall consider

5 (1) the character, reputation, experience, and financial integrity of

6 (A) the applicant;

7 (B) a person that

8 (i) directly or indirectly controls the applicant; or

9 (ii) is directly or indirectly controlled by the applicant

10 or by a person that directly or indirectly controls the applicant;

11 (2) the facilities or proposed facilities for the conduct of gambling;

12 (3) the highest prospective total revenue to be collected by the state  
13 from the conduct of gambling;

14 (4) the good faith affirmative action plan of each applicant to recruit,  
15 train, and upgrade minorities in all employment classifications;

16 (5) the financial ability of the applicant to purchase and maintain  
17 adequate liability and casualty insurance;

18 (6) whether the applicant has adequate capitalization to provide and  
19 maintain the gambling facility for the duration of the license;

20 (7) the extent to which the applicant exceeds or meets other standards  
21 adopted by the commission by regulation.

22 (b) In an application for an owner's license, the applicant must submit to the  
23 commission a proposed design of the gambling facility.

24 **Sec. 05.18.180. Issuance of license; fee; bond.** (a) The commission may  
25 issue an owner's license to an eligible person if the person pays an initial license fee of  
26 \$50,000 and posts a bond as required in this section.

27 (b) A licensed owner must post a bond with the commission at least 60 days  
28 before the commencement of the construction of a gambling facility or the  
29 commencement of gambling under the license, whichever is earlier. The bond shall be  
30 furnished in

31 (1) cash or negotiable securities;

1 (2) a surety bond with a surety company approved by the commission  
2 and guaranteed by a satisfactory guarantor; or

3 (3) an irrevocable letter of credit issued by a banking institution in this  
4 state that is acceptable to the commission.

5 (c) If a bond is furnished in cash or negotiable securities, the principal shall be  
6 placed without restriction at the disposal of the commission, but any income earned on  
7 the principal shall be paid to the benefit of the licensee.

8 (d) The bond is subject to the approval of the commission and must be payable  
9 to the commission for use by the commission in satisfaction of the licensed owner's  
10 financial obligations to the local community, the state, and other parties, as determined  
11 by regulations of the commission.

12 (e) If, following a hearing held after at least five days written notice, the  
13 commission determines that the amount of a licensed owner's bond is insufficient, the  
14 licensed owner shall, upon written demand of the commission, file a new bond.

15 (f) The commission may require a licensed owner to file a new bond with a  
16 satisfactory surety in the same form and amount if

17 (1) liability on the old bond is discharged or reduced by judgment  
18 rendered, payment made, or otherwise; or

19 (2) in the opinion of the commission, a surety on the old bond becomes  
20 unsatisfactory.

21 (g) If a new bond obtained under (e) or (f) of this section is unsatisfactory, the  
22 commission shall cancel the owner's license. If the new bond is satisfactorily  
23 furnished, the commission shall release, in writing, the surety on the old bond from  
24 any liability accruing after the effective date of the new bond.

25 (h) A bond is released on the condition earlier of

26 (1) five years from the effective date of the owner's license if the  
27 licensed owner remains at the site for which the owner's license is granted for the  
28 entire five-year period; or

29 (2) the date on which the commission grants a license to another  
30 licensed owner to operate from the site for which the bond was posted.

31 (i) A licensed owner who does not meet the requirements of (h)(1) of this

1 section forfeits a bond filed under this section. The proceeds of a bond that is in  
2 default under this subsection are paid to the commission for the benefit of the local  
3 unit of government from which the gambling facility is operated.

4 (j) The total and aggregate liability of the surety on a bond is limited to the  
5 amount specified in the bond, and the continuous nature of the bond may not be  
6 construed as allowing the liability of the surety under a bond to accumulate for each  
7 successive approval period during which the bond is in force.

8 (k) A bond filed under this section is released 60 days after the time has run  
9 under (h) of this section and a written request for release is submitted by the licensed  
10 owner.

11 **Sec. 05.18.190. Term of a license.** An owner's initial license expires five  
12 years after the effective date of the license and may be renewed for additional five-  
13 year periods under AS 05.18.210.

14 **Sec. 05.18.200. Revocation of owner's license for delay.** The commission  
15 may revoke an owner's license if

16 (1) the licensee begins regular operations more than 12 months after  
17 receiving the commission's approval of the application for the license; and

18 (2) the commission determines that the revocation of the license is in  
19 the best interests of the state.

20 **Sec. 05.18.210. Renewal of owner's license; compliance investigations.** (a)  
21 Unless the commission determines that a licensed owner does not qualify to hold a  
22 license under the terms of this chapter, the owner's license shall be renewed for an  
23 additional five-year period upon the payment of a \$50,000 renewal fee.

24 (b) A licensed owner shall undergo a complete investigation by the  
25 commission every five years to determine whether the licensed owner remains in  
26 compliance with this chapter.

27 (c) Notwithstanding (b) of this section, the commission may investigate a  
28 licensed owner at any time the commission determines necessary to ensure that the  
29 licensee remains in compliance with this chapter.

30 (d) The licensed owner shall bear the cost of an investigation or  
31 reinvestigation of the licensed owner and an investigation resulting from a potential

1 transfer of ownership.

2 **Sec. 05.18.220. Other licenses.** A licensed owner may apply to the  
3 commission for and may hold licenses that are necessary for the operation of a  
4 gambling facility, including a license to prepare and serve food for human  
5 consumption, and any other necessary license.

6 **Sec. 05.18.230. Gambling equipment, devices, and supplies.** A licensed  
7 owner may own gambling equipment, devices, and supplies. A licensed owner shall  
8 file an annual report listing the licensed owner's inventories of gambling equipment,  
9 devices, and supplies.

10 **Sec. 05.18.240. Schools for training occupational licensees.** This chapter  
11 does not prohibit a licensed owner from operating a school for the training of  
12 occupational licensees.

13 **Sec. 05.18.250. Nature of license.** An owner's license is a revocable privilege  
14 granted by the state and is not a property right.

15 **Sec. 05.18.260. Supplier's license; requirements.** (a) The commission may  
16 issue a supplier's license under this chapter to a person if the commission determines  
17 that the person is eligible for a supplier's license and the person has

18 (1) applied for the supplier's license and provided the information  
19 required under AS 05.18.090;

20 (2) paid a nonrefundable application fee set by the commission;

21 (3) paid a annual license fee set by the commission; and

22 (4) submitted the following on forms provided by the commission:

23 (A) if the applicant is an individual, two sets of the individual's  
24 fingerprints; and

25 (B) if the applicant is not an individual, two sets of fingerprints  
26 for each officer and director of the applicant.

27 **Sec. 05.18.270. Gambling equipment and supplies; distributor.** (a) A  
28 person holding a supplier's license may sell, lease, and contract to sell or lease security  
29 and surveillance services and supplies, money counting services and supplies or  
30 gambling equipment and supplies to a licensee involved in the ownership or  
31 management of a gambling facility.

1 (b) Gambling equipment and supplies may not be distributed unless the  
2 gambling supplies and equipment conform to standards adopted by the commission.

3 **Sec. 05.18.280. Restrictions on issuance of supplier's license.** A person may  
4 not receive a supplier's license if

5 (1) the person has been convicted of a felony under the laws of this  
6 state, the laws of another state, or the laws of the United States;

7 (2) the person has knowingly or intentionally submitted an application  
8 for a license under this chapter that contains false information;

9 (3) the person is a member of the commission;

10 (4) the person is an officer, a director, or a managerial employee of a  
11 person described in (1) or (2) of this section;

12 (5) the commission determines that the person does not have the  
13 character reputation, experience, and financial integrity necessary for a licensee;

14 (6) the person employs an individual described in (1), (2), or (3) of this  
15 section and that individual participates in the management or operation of gambling  
16 operations authorized under this chapter.

17 **Sec. 05.18.290. Necessity of supplier's license; exception.** (a) Except as  
18 provided in (b) of this section, a person may not furnish security and surveillance  
19 services and supplies, money counting services and supplies, or gambling equipment,  
20 devices, or supplies to a gambling operation unless the person possesses a supplier's  
21 license.

22 (b) A person holding a valid license to deal in alcoholic beverages may supply  
23 alcoholic beverages to a gambling operation without possessing a supplier's license.

24 **Sec. 05.18.300. Sale or lease of equipment, devices, and supplies;  
25 information furnished to commission.** (a) A supplier shall furnish to the  
26 commission a list of all services, equipment, devices, and supplies offered for sale or  
27 lease in connection with gambling games authorized under this chapter.

28 (b) A supplier shall keep books and records for the furnishing of services,  
29 equipment, devices, and supplies to gambling operations separate from books and  
30 records of any other business operated by the supplier.

31 (c) A supplier shall file a quarterly return with the commission listing all sales

1 and leases.

2 (d) A supplier shall permanently affix the supplier's name to all of the  
3 supplier's equipment, devices, and supplies for gambling operations.

4 **Sec. 05.18.310. Forfeiture of equipment, devices, or supplies.** A supplier's  
5 equipment, devices, or supplies that are used by a person in an unauthorized gambling  
6 operation shall be forfeited to the state.

7 **Sec. 05.18.320. Repair of equipment, devices, and supplies.** Gambling  
8 equipment, devices, and supplies that are provided by a supplier may be repaired in  
9 the gambling facility or removed for repair from the gambling facility to a facility  
10 owned by a licensed supplier.

11 **Sec. 05.18.330. Renewal of supplier's license; compliance investigations.**

12 (a) Unless a supplier's license is suspended, expires, or is revoked, the supplier's  
13 license may be renewed upon the payment of a renewal fee in an amount established  
14 by the commission and a determination by the commission that the licensee is in  
15 compliance with this chapter.

16 (b) A licensed supplier shall undergo a complete investigation by the  
17 commission every five years to determine whether the licensee is in compliance with  
18 this chapter.

19 (c) Notwithstanding (b) of this section, the commission may investigate a  
20 licensed supplier at any time the commission determines necessary to ensure that the  
21 licensee is in compliance with this chapter.

22 (d) A licensed supplier shall bear the cost of an investigation or reinvestigation  
23 of the licensee and an investigation resulting from a potential transfer of ownership.

24 **Sec. 05.18.340. Occupations requiring license.** The commission shall  
25 determine the occupations related to gambling that require a license under this chapter.  
26 The commission shall require that an individual applying for an occupational license

27 (1) to manage gambling operations under this chapter is subject to  
28 background inquiries and requirements similar to those required for an applicant for an  
29 owner's license under this chapter; and

30 (2) may manage gambling operations for only one licensed owner.

31 **Sec. 05.18.350. Occupational license; requirements; fees; duration;**

1 **renewal; compliance investigations.** (a) The commission may issue an occupational  
2 license to an individual if

3 (1) the individual has applied for the occupational license and provided  
4 the information required under AS 05.18.090;

5 (2) a nonrefundable application fee set by the commission has been  
6 paid on behalf of the applicant in accordance with (b) of this section;

7 (3) the commission has determined that the applicant is eligible for an  
8 occupational license; and

9 (4) an annual license fee set by the commission has been paid on  
10 behalf of the applicant in accordance with (b) of this section.

11 (b) A licensed owner, an applicant for an owner's license, or a licensed  
12 supplier shall pay the application fee of an individual applying for an occupational  
13 license to work at the licensed owner's gambling operation or for the licensed supplier.  
14 The licensed owner, applicant for an owner's license, or licensed supplier shall pay the  
15 annual occupational license fee on behalf of an employee or potential employee. The  
16 licensed owner, applicant for an owner's license, or licensed supplier may seek  
17 reimbursement of the application fee or annual license fee from an employee who is  
18 issued an occupational license by the commission.

19 (c) A license issued under this section is valid for one year after the date of  
20 issuance.

21 (d) Unless an occupational license is suspended, expires, or is revoked by the  
22 commission, the occupational license may be renewed annually upon the payment of  
23 an annual license fee by the licensed owner or licensed supplier on behalf of the  
24 licensee, or by the licensee in an amount established by the commission and a  
25 determination by the commission that the licensee is in compliance with this chapter.

26 (e) The commission may investigate the holder of an occupational license at  
27 any time the commission determines necessary to ensure that the licensee is in  
28 compliance with this chapter.

29 (f) A licensed owner, an applicant for an owner's license, or a licensed  
30 supplier shall pay the cost of an investigation or reinvestigation by the commission of  
31 a holder of an occupational license who is employed by the licensed owner or licensed

1 supplier. The licensed owner, applicant for an owner's license, or licensed supplier  
2 may seek reimbursement of the cost of an investigation or reinvestigation from an  
3 employee who holds an occupational license.

4 **Sec. 05.18.360. Qualifications for occupational license.** The commission  
5 may not issue an occupational license to an individual unless the individual

6 (1) is at least 18 years of age;

7 (2) has not been convicted of a felony under the laws of this state, the  
8 laws of another state, or the laws of the United States;

9 (3) has demonstrated a level of skill or knowledge that the commission  
10 determines is necessary to operate gambling games; and

11 (4) has met standards of character and fitness adopted by the  
12 commission for the holding of an occupational license.

13 **Sec. 05.18.370. Application for occupational license.** (a) An application for  
14 an occupational license shall be made on forms prescribed by the commission and  
15 contain all information required by the commission.

16 (b) An applicant for an occupational license shall provide the following  
17 information in the application:

18 (1) a statement of whether the applicant has held any other licenses  
19 related to gambling;

20 (2) if the applicant has been licensed in another state under any other  
21 name, the name under which the applicant was licensed in the other state;

22 (3) the applicant's age;

23 (4) if a permit or license issued to the applicant in another state has  
24 been suspended, restricted, or revoked, the date, duration, and nature of the  
25 suspension, restriction, or revocation.

26 (c) An applicant for an occupational license shall submit with the application  
27 two sets of the applicant's fingerprints. The applicant must submit the fingerprints on  
28 forms provided by the commission. The commission shall charge each applicant the  
29 fee set by the Department of Public Safety for state and national fingerprint record  
30 searches.

31 **Sec. 05.18.380. Restrictions on issuance of occupational license.** Unless a

1 person is granted a waiver under AS 05.18.420, the commission may refuse to issue an  
2 occupational license to an individual who

- 3 (1) is unqualified to perform the duties required of the applicant;  
4 (2) does not disclose or states falsely any information required by the  
5 application;  
6 (3) has been found guilty of a violation of this chapter;  
7 (4) has had a gambling-related license or an application for a  
8 gambling-related license suspended, restricted, revoked, or denied for just cause in  
9 another state; or  
10 (5) has not met standards of character and fitness adopted by the  
11 commission for the holding of an occupational license.

12 **Sec. 05.18.390. Suspension, revocation, or restriction of licenses.** The  
13 commission may suspend, revoke, or restrict an occupational licensee for

- 14 (1) a violation of this chapter;  
15 (2) a cause that, if known to the commission, would have disqualified  
16 the applicant from receiving the occupational license;  
17 (3) a default in the payment of an obligation or a debt due to the state;  
18 or  
19 (4) any other just cause.

20 **Sec. 05.18.400. Schools for training occupational licensees.** (a) This  
21 chapter does not prohibit a licensed owner from entering into an agreement with a  
22 school approved by the commission for the training of an occupational licensee.

23 (b) Training offered by a school described in (a) of this section must be in  
24 accordance with a written agreement between the licensed owner and the school and  
25 approved by the commission.

26 **Sec. 05.18.410. Training locations.** Training provided for occupational  
27 licensees may be conducted in a gambling facility or at a school with which a licensed  
28 owner has entered into an agreement under this chapter.

29 **Sec. 05.18.420. Convicted felons; rehabilitation; waiver.** (a) An individual  
30 applying for an occupational license who is disqualified under AS 05.18.360 due to a  
31 conviction for a felony may apply to the commission for a waiver of that

1           disqualification, and the commission may issue a license to the person if the  
2           commission determines that the individual has demonstrated by clear and convincing  
3           evidence the individual's rehabilitation.

4           (b) In determining whether the individual applying for the occupational  
5           license has demonstrated rehabilitation under (a) of this section, the commission shall  
6           consider

7                       (1) the nature and duties of the position for which the individual has  
8           applied;

9                       (2) the nature and seriousness of the offense or conduct;

10                      (3) the circumstances under which the offense or conduct occurred;

11                      (4) the date of the offense or conduct;

12                      (5) the age of the individual when the offense or conduct was  
13           committed;

14                      (6) whether the offense or conduct was an isolated or a repeated  
15           incident;

16                      (7) a social condition that may have contributed to the offense or  
17           conduct;

18                      (8) evidence of rehabilitation, including good conduct in prison or in  
19           the community, counseling or psychiatric treatment received, acquisition of additional  
20           academic or vocational education, successful participation in a correctional work  
21           release program, or the recommendation of a person who supervises or has supervised  
22           the individual;

23                      (9) the complete criminal record of the individual;

24                      (10) the prospective employer's written statement that

25                               (A) the employer has been advised of all of the facts and  
26           circumstances of the individual's criminal record; and

27                               (B) after having considered the facts and circumstances, the  
28           prospective employer will hire the individual if the commission grants a waiver  
29           of the requirements of this chapter.

30           (d) The commission may not waive the requirements of this chapter for an  
31           individual who has been convicted of committing any of the following:

- 1 (1) a felony in violation of federal law, as classified in 18 U.S.C. 3559;  
2 (2) a felony of fraud, deceit, or misrepresentation under the laws of this  
3 state or another jurisdiction;  
4 (3) a felony of conspiracy to commit a felony of fraud, deceit, or  
5 misrepresentation under the laws of this state or another jurisdiction; or  
6 (4) a felony related to gambling under the laws of this state or a crime  
7 in another jurisdiction in which the elements of the crime for which the conviction was  
8 entered are substantially similar to the elements of a felony related to gambling under  
9 the laws of this state.

10 **Sec. 05.18.430. Gambling permitted in gambling facilities.** Gambling  
11 operations shall only be conducted by a licensed owner in a gambling facility.

12 **Sec. 05.18.440. Minimum and maximum wagers.** Minimum and maximum  
13 wagers on gambling games shall be determined by the commission.

14 **Sec. 05.18.450. Inspection of gambling facilities.** The following persons may  
15 inspect a gambling facility at any time to determine if this chapter is being violated:

- 16 (1) employees of the commission;  
17 (2) officers of the Department of Public Safety.

18 **Sec. 05.18.460. Presence of commission employees in gambling facilities.**  
19 Employees of the commission have the right to be present in a gambling facility or any  
20 adjacent facilities under the control of a licensed owner.

21 **Sec. 05.18.470. Gambling equipment and supplies; purchase or lease.**  
22 Gambling equipment and supplies customarily used in conducting gambling  
23 operations may be purchased or leased only from suppliers licensed under this chapter.

24 **Sec. 05.18.480. Permitted forms of wagering.** A licensed owner may not  
25 permit any form of wagering on gambling games except as permitted under this  
26 chapter.

27 **Sec. 05.18.490. Presence required for wagering.** Wagers may be received  
28 only from a person present in a licensed gambling facility. A person present in a  
29 gambling facility may not place or attempt to place a wager on behalf of another  
30 person who is not present in the gambling facility.

31 **Sec. 05.18.500. Wagering prohibited with negotiable currency.** Wagering

1 may not be conducted with money or other negotiable currency.

2 **Sec. 05.18.510. Persons under 21 years of age; presence in gambling area.**

3 (a) Except as provided in (b) of this section, a person who is under 21 years of age  
4 may not be present in the area where gambling is being conducted in a gambling  
5 facility.

6 (b) A person who is at least 18 years of age and who is an employce of the  
7 gambling facility may be present in an area where gambling is conducted. However,  
8 an employee who is under 21 years of age may not perform a function involving  
9 gambling by the patrons or the sale and distribution of alcoholic beverages.

10 **Sec. 05.18.520. Persons under 21 years of age; wagering prohibited.** A  
11 person who is under 21 years of age may not make a wager under this chapter.

12 **Sec. 05.18.530. Tokens, chips, or electronic cards; purchase.** (a) All tokens,  
13 chips, or electronic cards that are used to make wagers must be purchased from the  
14 owner of the gambling facility while in the gambling facility or at a facility that is  
15 adjacent to the gambling facility and has been approved by the commission.

16 (b) The tokens, chips, or electronic cards may be purchased by means of an  
17 agreement under which the licensed owner extends credit to the patron.

18 **Sec. 05.18.540. Crimes.** (a) A person commits a class A misdemeanor if the  
19 person knowingly

20 (1) makes a false statement on an application submitted under this  
21 chapter;

22 (2) operates a gambling operation in which wagering is conducted or is  
23 to be conducted in a manner other than the manner required under this chapter;

24 (3) permits a person under 21 years of age to make a wager;

25 (4) aids, induces, or causes a person under 21 years of age who is not  
26 an employee of the gambling facility to enter or attempt to enter the gambling facility;

27 (5) wagers or accepts a wager at a location other than a gambling  
28 facility owned by a licensed owner;

29 (6) makes a false statement on an application submitted to the  
30 commission under this chapter; or

31 (7) enters or attempts to enter a gambling facility and is not an

1 employee of the gambling operation and is under 21 years of age.

2 (b) A person commits a class C felony if the person knowingly

3 (1) offers, promises, or gives anything of value or benefit

4 (A) to a person who is connected with the owner of a gambling  
5 facility, including an officer or an employee of a licensed owner or holder of  
6 an occupational license; and

7 (B) under an agreement to influence or with the intent to  
8 influence

9 (i) the actions of the person to whom the offer, promise,  
10 or gift was made in order to affect or attempt to affect the outcome of a  
11 gambling game; or

12 (ii) an official action of a member of the commission;

13 (2) solicits, accepts, or receives a promise of anything of value or  
14 benefit

15 (A) while the person is connected with a gambling facility,  
16 including an officer or employee of a licensed owner or a holder of an  
17 occupational license; and

18 (B) under an agreement to influence or with the intent to  
19 influence the actions of the person to affect or attempt to affect the outcome of  
20 a gambling game or an official action of a commission member;

21 (3) uses, or possesses with the intent to use, a device to assist in

22 (A) projecting the outcome of a game;

23 (B) keeping track of the cards played;

24 (C) analyzing the probability of the occurrence of an event  
25 relating to a gambling game; or

26 (D) analyzing the strategy for playing or betting to be used in a  
27 game, except as permitted by the commission;

28 (4) cheats at a gambling game;

29 (5) manufactures, sells, or distributes any cards, chips, dice, game, or  
30 device that is intended to be used to violate this chapter;

31 (6) alters or misrepresents the outcome of a gambling game on which

1 wagers have been made after the outcome is made sure but before the outcome is  
2 revealed to the players;

3 (7) places a bet on the outcome of a gambling game after acquiring  
4 knowledge that is not available to all players and that concerns the outcome of the  
5 gambling game that is the subject of the bet;

6 (8) aids a person in acquiring the knowledge described in (7) of this  
7 subsection for the purpose of placing a bet contingent on the outcome of a gambling  
8 game;

9 (9) claims, collects, takes, or attempts to claim, collect, or take money  
10 or anything of value in or from a gambling game with the intent to defraud or without  
11 having made a wager contingent on winning a gambling game;

12 (10) claims, collects, or takes an amount of money or thing of value of  
13 greater value than the amount won in a gambling game;

14 (11) uses or possesses counterfeit chips or tokens in or for use in a  
15 gambling game;

16 (12) possesses a key or device designed for opening, entering, or  
17 affecting the operation of a gambling game, a drop box, or an electronic or mechanical  
18 device connected with the gambling game or removing coins, tokens, chips, or other  
19 contents of a gambling game; this paragraph does not apply to a licensee or an  
20 employee of a licensee acting in the course of the employee's employment;

21 (13) possesses materials used to manufacture a slug or device intended  
22 to be used in a manner that violates this chapter.

23 **Sec. 05.18.550. Possession of cheating devices; presumption.** The  
24 possession of more than one of the devices described in AS 05.18.540(b) as cheating  
25 devices creates a rebuttable presumption that the possessor intended to use the devices  
26 for cheating.

27 **Sec. 05.18.560. Convicted felons; entering gambling facilities prohibited.**  
28 A person who is convicted of a felony described in AS 05.18.540(b) is barred for life  
29 from entering a gambling facility in this state.

30 **Sec. 05.18.570. State gaming fund.** There is created in the general fund the  
31 state gaming fund. The state gaming fund consists of all revenue received from

1 gambling activities under AS 05.18 and all other money credited or transferred to the  
2 fund from another fund or source.

3 **Sec. 05.18.580. Adjusted gross receipts tax; rate; payment.** (a) A tax is  
4 imposed on the adjusted gross receipts received from gambling games authorized  
5 under this chapter at the rate of 17 percent of the amount of the adjusted gross receipts.

6 (b) The licensed owner shall remit the tax imposed by this section to the  
7 department before the close of the business day following the day the wagers are  
8 made.

9 (c) The department may require payment under this section to be made by  
10 electronic funds transfer.

11 (d) If the department requires taxes to be remitted under this section by  
12 electronic funds transfer, the department may allow the licensed owner to file a  
13 monthly report to reconcile the amounts remitted to the department.

14 (e) A municipality in which a gambling facility is located may not tax the  
15 adjusted gross receipts received from gambling games authorized under this chapter at  
16 a rate of more than three percent of the amount of the adjusted gross receipts. This  
17 subsection applies to home rule and general law municipalities.

18 **Sec. 05.18.900. Definitions.** In this chapter,

19 (1) "adjusted gross receipts" means the total of all cash and property,  
20 including checks received by a licensee, whether collected or not, received by a  
21 licensee from gambling operations, minus the total of all cash paid out as winnings to  
22 patrons and uncollectible gaming receivables, not to exceed the lesser of a reasonable  
23 protection for uncollectible patron checks received from gambling operations or two  
24 percent of the total of all sums, including checks, whether collected or not, less the  
25 amount paid out as winnings to patrons; for purposes of this paragraph, a counter or  
26 personal check that is invalid or unenforceable under this chapter is considered cash  
27 received by the licensee from gambling operations;

28 (2) "cheat" means to alter the selection of criteria that determine the  
29 result of a gambling game or the amount or frequency of payment in a gambling game;

30 (3) "commission" means the Alaska Gaming Commission established  
31 by AS 05.18.010,

- 1 (4) "department" means the Department of Revenue;
- 2 (5) "gambling facility" means a structure in which lawful gambling is
- 3 conducted by a licensed owner;
- 4 (6) "gambling game" includes any of the following if approved by the
- 5 commission: baccarat, twenty-one, poker, craps, slot machines, videc games of
- 6 chance, roulette, Klondike table, punchboard, faro layout, keno layout, numbers ticket,
- 7 push card, jar ticket, pull tab, big six;
- 8 (7) "gambling operation" means the conduct of authorized gambling
- 9 games in a licensed gambling facility;
- 10 (8) "gross receipts" means the total amount of money exchanged for
- 11 the purchase of chips, tokens, or electronic cards by gambling facility patrons;
- 12 (9) "intentionally" has the meaning given in AS 11.81.900;
- 13 (10) "knowingly" has the meaning given in AS 11.81.900;
- 14 (11) "license" means a license issued by the commission under this
- 15 chapter;
- 16 (12) "licensed owner" means a person that owns a gambling facility
- 17 who is licensed under this chapter;
- 18 (13) "licensee" means a person holding a license issued under this
- 19 chapter;
- 20 (14) "owner's license" means a license issued under this chapter that
- 21 allows a person to own and operate a gambling facility;
- 22 (15) "supplier's license" means a license issued under this chapter that
- 23 allows a person to supply security and surveillance services and supplies, money
- 24 counting services and supplies, and gambling paraphernalia and equipment to a
- 25 licensed owner.

26 \* **Sec. 3.** ~~AS~~ 11.66.280(2) is amended to read:

- 27 (2) "gambling" means that a person stakes or risks something of value
- 28 upon the outcome of a contest of chance or a future contingent event not under the
- 29 person's control or influence, upon an agreement or understanding that that person or
- 30 someone else will receive something of value in the event of a certain outcome;
- 31 "gambling" does not include

1 (A) bona fide business transactions valid under the law of  
2 contracts for the purchase or sale at a future date of securities or commodities  
3 and agreements to compensate for loss caused by the happening of chance,  
4 including contracts of indemnity or guaranty and life, health, or accident  
5 insurance;

6 (B) playing an amusement device that

7 (i) confers only an immediate right of replay not  
8 exchangeable for something of value other than the privilege of  
9 immediate replay; and

10 (ii) does not contain a method or device by which the  
11 privilege of immediate replay may be cancelled or revoked; or

12 (C) an activity authorized by the Department of Revenue under  
13 AS 05.15 or by the Alaska Gaming Commission under AS 05.18;

14 \* Sec. 4. AS 18.65.080 is amended by adding a new subsection to read:

15 (b) The Department of Public Safety shall investigate and ascertain whether a  
16 person appointed by the governor to serve as a member of the Alaska Gaming  
17 Commission has been convicted of a crime set out in AS 05.18.010(g).

18 \* Sec. 5. AS 39.25.110(11) is amended to read:

19 (11) the officers and employees of the following boards, commissions,  
20 and authorities:

21 (A) [REPEALED

22 (B)] Alaska Permanent Fund Corporation;

23 (B) [(C)] Alaska Industrial Development and Export Authority;

24 (C) [(D)] Alaska Commercial Fisheries Entry Commission;

25 (D) [(E)] Alaska Commission on Postsecondary Education;

26 (E) [(F)] Alaska Aerospace Development Corporation;

27 (F) [(G)] Alaska Natural Gas Development Authority;

28 (G) Alaska Gaming Commission;

29 \* Sec. 6. AS 39.50.200(b) is amended by adding a new paragraph to read:

30 (58) Alaska Gaming Commission (AS 05.18).