

HB

552

# Alaska State Legislature

## House of Representatives



State Capitol, Rm. 214  
Juneau, Ak 99801-1182  
(907) 465-3764

Official Business

### COMMITTEE ON RULES Representative Norman Rokeberg, Chairman


#### MEMORANDUM

TO: Senator Ralph Seekins, Chairman  
Senate Judiciary Committee

FROM: Representative Norman Rokeberg, Chairman  
House Rules Committee

DATE: May 5, 2004

RE: SB 397/HB 563 - LEGISLATIVE PROCEDURE & ETHICS GUIDELINES



Thank you for scheduling Senate Bill 397 to be heard before your committee on Thursday, May 6, 2004, a companion measure to House Bill 563. Attached are the following:

1. SB 397
2. Sponsor Statement to HB 563
3. Sectional Analysis to HB 563
4. Copy of AS 24.60.037
5. January 13, 2004 – History of Open Meetings Guidelines for the legislature: since 1994. Prepared by Joyce Anderson, Staff, Select Committee on Legislative Ethics.
6. August 28, 2003 proposed Open Meetings Guidelines (from Select Committee on Legislative Ethics)
7. February 12, 2004 letter from Marston & Cole, P.C., to Skip Cook, Chair, Select Committee on Legislative Ethics
8. March 8, 2004, "Open meetings principles and political strategy discussions" opinion from Tamara Cook to Rep. Rokeberg.
9. March 4, 2004, "Open meetings guidelines applicable to the legislature" opinion from Tamara Cook to Rep. Rokeberg.
10. March 3, 2004 "Actions against legislators for violations of open meetings requires" opinion from Tamara Cook to Rep. Rokeberg.
11. November 25, 2003 letter from Rep. Croft to Herman G. Walker
12. November 21, 2003 Legal Opinion from Tamara Cook to Rep. Croft
13. August 11, 2000 letter to Senator President and Speaker of the House from Select Committee on Ethics (recommendations in first paragraph).

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#### SPONSOR STATEMENT HOUSE BILL HB 563 Open Meetings Guidelines

Current state law requires the Select Committee on Legislative Ethics to prepare Open Meetings Guidelines for submission and approval by the legislature. The Select Committee has been attempting, since 1994, to develop the guidelines for approval by the Legislature. This year, a subcommittee has again been convened to propose guidelines. But that subcommittee, despite months of meetings and debate, has been unable to reach agreement on the definition of the most basic terms relating to open meetings, including the terms "meetings" and "political strategy."

Despite the absence of any guidelines, the Select Committee has awkwardly asserted jurisdiction over Open Meetings complaints. Without applicable guidelines, Legislators and legislative staff who remain subject to the Legislative Standards of Conduct are left with nothing upon which to rely when deciding whether a meeting or caucus adheres to the "open meetings principles".

It is unreasonable to subject legislators and staff to rules of conduct that have never been established. HB 563 defines and sets out the Open Meetings Guidelines in statute. Additionally, the legislation defines terms such as "legislative body," "meeting," and describes what is included in "political strategy."

The bill also addresses some concerns about the Ethics Committee process:

1. In a public hearing, the Ethics Committee retains counsel to provide legal advice to the Committee, and then utilizes that same attorney as the "prosecutor" in the full Ethics hearing. The untenable situation presents a clear conflict of interest, which is awkward and unfair to the subject of the complaint.
2. Unless a subject of the complaint wants to waive confidentiality, the subject of the complaint is bound to keep quiet. The person filing the complaint is not. HB 563 addresses this situation by stating that if confidentiality provisions are not waived by the subject of the complaint and the person filing the complaint reveals information about the complaint, the complaint is to be dismissed. This is intended to avoid use of a complaint as a political attack.
3. Each body has two members and two alternates assigned to serve on the Ethics Committee. If a group complaint is filed against a number of legislators, HB 563 requires that both Majority and Minority have representation on any subcommittee considering a complaint.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 397  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title "An Act relating to open meeting guidelines BRU Legislative Council  
applicable to legislators, to the confidentiality of..." Component: Select Committee on  
 Sponsor Senate Rules Committee by Request Legislative Ethics  
 Requestor Senate Judiciary Component No. 2321

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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:** (Attach a separate page if necessary)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626  
 Division Administrative Services Date/Time 5/6/04 7:18 AM  
 Approved by: Pamela Varni, Executive Director Date 5/6/2004  
 Agency Legislative Affairs Agency

# Alaska State Legislature

## House of Representatives



Official Business

### COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

State Capitol, Rm. 214  
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#### SECTIONAL ANALYSIS HOUSE BILL 563

**Section 1:** Repeals the current statutory language indicating that the Select Committee on Legislative Ethics will propose Open Meetings Guidelines and send the Legislature the initial Guidelines for approval.

Places in statute Open Meetings Guidelines that describe when a meeting takes place (p. 1, lines 11-14) and what is not a "meeting" (p. 3, lines 15-19).

Places in statute that legislators may meet in a closed caucus or in private informal meetings to discuss and deliberate on political strategy. Describes what "political strategy" includes. States that these meetings are exempt from the Open Meetings Guidelines. (p. 2, line 1-9).

Places in statute that each subcommittee considering a case must have a Majority and Minority member permitted to attend the subcommittee hearings. Currently, each body has a Majority and Minority member and alternate. If a group complaint were filed, it is felt that the complaints should be divided so that the subcommittee considering that group would consist of the Majority or Minority member or alternate and that this representation would continue to be available at all times. (Page 2, lines 10-16).

Places in statute the fact that the Open Meetings Guidelines, which could be changed by a majority vote, are subservient to the Uniform Rules adopted by the Alaska State Legislature. Uniform Rules may be changed only upon the approval of 2/3 membership of each body – a much higher standard. The Uniform Rules covers items such as meeting notices, committee meetings, and executive sessions. (p. 2, lines 17-19).

Places in statute that the Open Meetings Guidelines set forth in statute are the ones to be used by the Committee when considering complaints filed regarding open meetings (page 2, lines 20-21).

Defines: "legislative body" (p. 2, line 22, page 3, line 14). Establishes that certain committees or groups are not a "legislative body" and thus not subject to the Open Meetings Guidelines.

**Section 2:** Amends current statutes to provide that a person hired by the Committee to provide legal advice about a case may not be the same person who prosecutes the case on behalf of the committee.

**Section 3:** Amends current law to require immediate dismissal of any case where the subject of the complaint has not waived confidentiality and the filer of the complaint makes the complaint and its contents public.

**Section 4:** Repeals the Guidelines section of the law adopted in 1994 (see attached).

Section 10, Chapter 69, SLA 1994

\* **Sec. 10. OPEN MEETINGS GUIDELINES.** (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representatives, and two public members appointed from the Select Committee on Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

**Sec. 24.60.037. Open meetings principles and guidelines.**

Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

(§ 4 ch 127 SLA 1992; am § 1 ch 69 SLA 1994)

**Cross references.** For provisions related to initial guidelines and legislative approval, see § 10, ch. 69, SLA 1994 in the Temporary and Special Acts.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

January 13, 2004

**History of Open Meetings Guidelines for the legislature: Since 1994**

The history of action on the guidelines during the 19th Legislature is as follows:

Based on the requirements set out in the Open Meeting Law (AS 44.62, amended 1994) the committee adopted proposed open meetings guidelines and submitted them to the legislature on January 15, 1995. The guidelines were published in the Joint Journal January 20, 1995. The committee later adopted and submitted Revised Proposed Guidelines, published in the Joint Journal February 21, 1995. The committee requested Senate Rules to introduce a resolution approving the revised guidelines. Senate Rules introduced SCR 8.

On February 28, 1995 the Senate passed a version of the resolution (See CSSCR 8(RLS)) that approved the revised guidelines, in part, but placed these specific limitations on its approval; the presiding officer of each body would be the final arbiter on any point of order and the terms "Go Between or Serial Meetings" must be defined before affirmation. Further, CSSCR 8(RLS) did not affirm the parts of the guidelines that address "Meetings Not Otherwise Described", political strategy sessions and non-legislative organizations.

On March 1, 1995 the House amended the resolution and approved the revised guidelines without limitation (CSSCR 8(RLS) am H). The Senate declined to concur in the House-passed version of the resolution.

A Conference Committee was established in 1996, comprised of Senators Rieger, Frank, Donley and Representatives Davis, Porter and Mackie. The Conference Committee issued a report, which passed the Senate 18 to 1 on May 4, 1996. The House read over the report and placed it under Unfinished Business. The House did not bring the report to the floor prior to the close of the regular session.

The Ethics Committee has proposed substantially the same guidelines to each legislature from 1995 through 2000. The committee then met several times in 2000 and 2001 to draft new proposed Open Meetings guidelines. The Ethics Committee adopted the guidelines, by a 6-3 vote on March 12, 2001. The committee then forwarded a request to the Senate and House Rules committees to introduce a concurrent resolution and to spread the Proposed Open Meetings Guidelines in the legislative journal. SCR 9 was introduced on April 11, 2001 and HCR 16 was introduced on April 6, 2001. SCR 9 was referred to the State Affairs and Judiciary committees but never heard. HCR 16 was referred to State Affairs, Judiciary and Finance committees. HCR 9 was heard in State Affairs on April 16, 2002. Ethics Committee Member Shirley McCoy gave testimony. No action was taken.

The Ethics Committee adopted the same guidelines on August 28, 2003 and forwarded a request to the Senate President and Speaker of the House in January 2004 to refer the guidelines to the appropriate committee for introduction.

## OPEN MEETINGS LAW

AS 24.60.037

In 1993, the legislature enacted AS 24.60.037, requiring legislators to abide by Open Meeting Principles. It reads:

Sec. 1. AS 24.60.037 OPEN MEETINGS LAW. Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

In the same Act, the legislature gave additional directions as to the adoption of the initial Open Meetings Guidelines. Section 10, chapter 679, SLA 1994 reads as follows:

Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The Legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representative, and two public members appointed from the Select Committee on Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

**The statute requires legislators to abide by Open Meeting Principles, whether or not guidelines have been approved under sec. 10.** The committee submitted proposed guidelines to the 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> legislatures for review but thus far, the guidelines have not received legislative approval. The law appears to require the committee to continue to submit proposed guidelines until guidelines are approved.

**Open Meetings Guidelines for the Alaska State Legislature**  
**as proposed by the**  
**Select Committee on Legislative Ethics**

**August 28, 2003**

**Sec. 1. General Rule.** Meetings of a legislative body shall be open to the public.

**Sec. 2. Meetings.** (a) For purposes of this guideline, a meeting occurs when a majority of the members of the legislative body is present and action is taken. A legislative body takes action when members of the body vote on or agree upon a course of action on a motion, bill, resolution, rule, or regulation.

(b) In this guideline, a legislative body

(1) includes

(A) the Senate;

(B) the House of Representatives;

(C) the Senate and the House of Representatives meeting in joint session;

(D) a committee of the legislature other than the Committee on Committees, including a standing committee, special committee, joint committee, conference or free conference committee, committee of the whole, or permanent interim committee;

(E) a delegation or caucus of legislators representing a geographic area or political subdivision;

(F) a legislative commission, task force, or other group; or

(G) a caucus of members of one or more of the bodies set out in

(A) - (F) of this paragraph; but

(2) does not include a Committee on Committees.

**Sec. 3. Executive sessions.** (a) A legislative body may call an executive session at which members of the public may be excluded.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the legislative body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Except as otherwise provided in this section, a legislative body may not make a decision in executive session.

(c) An executive session may be held for discussion of a matter

(1) the immediate knowledge of which would adversely affect the finances of a government unit;

(2) that tends to prejudice the reputation and character of a person;

(3) that is, by law, required to be confidential;

(4) involving consideration of government records that by law are not subject to public disclosure;

(5) that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court; a legislative body may, in executive session, decide on and give instructions to an attorney representing the legislative body or the state on issues arising out of or related to the representation.

**Sec. 4. Closed meetings for political strategy.** Legislators may meet in closed caucus or in a private, informal meeting to discuss political strategy but those meetings are exempt from the requirements adopted under sec. 5(b) of these Guidelines. This section does not permit a joint meeting of the House and Senate majority caucuses or of the House and Senate minority caucuses to be conducted in a closed session.

**Sec. 5. Uniform Rules.** (a) The legislature shall adopt Uniform Rules to implement this guideline.

(b) The Uniform Rules of the Legislature shall provide for posting notices of meetings, recording proceedings, and making the recordings and votes available to the public. The Uniform Rules may set different notice requirements for meetings of

(1) permanent interim committees of the legislature;

(2) standing, special, or joint committees held during

(A) a regular legislative session, including different notice requirements for meetings held in the first week of the session or after the date a conference committee has been chosen to consider the operating budget;

(B) a special legislative session; and

(C) the interim between legislative sessions.

Note: These are the same guidelines as proposed by the Committee on March 12, 2001.

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ERIN B. MARSTON  
BRENT R. COLE  
COLLEEN J. MOORE

February 12, 2004

Skip Cook, Chair  
Select Committee on Legislative Ethics  
P.O. Box 101468  
Anchorage, Alaska 99510-1468

Re: AS 24.60.037 Open Meetings Law  
Our File No. 656.005

Dear Mr. Cook:

The Select Committee on Legislative Ethics ("Committee") has asked for a legal opinion concerning how to proceed if and when it receives a complaint based on an alleged violation of open meetings principles and guidelines as set forth in AS 24.60.037. In your memo dated January 13, 2004, you asked four specific questions, each of which will be addressed in detail below.

In summary, however, it is our opinion that the Committee certainly has jurisdiction to hear any complaint alleging a violation of AS 24.60.037. In the absence of legislative approval of the Committee's proposed guidelines for compliance with open meetings principles, the Committee has the responsibility to determine what criteria to apply in order to determine whether there has been a violation, including consideration of the proposed guidelines, open meetings statutes that apply to other governmental entities, and any other treatises or materials that help the Committee define appropriate legislative conduct regarding open meetings. In other words, there are no definitive rules or statutes that guide the Committee in this area, and the Committee must determine the scope of the open meetings principles that apply to the Legislature and whether any specific conduct violates those principles.

1. **What Is The Legal Status Of The Guidelines That The Committee Has Developed Pursuant To AS 24.60.037 If They Have Not Been Adopted By The Legislature?**

The short answer to this question is that the guidelines that have been developed and submitted to the Legislature for approval have no legal status. As you know, AS 24.60.037 provides that "[t]he committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature." This statute goes on to require that "[i]n a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation." (Emphasis added.) However, there is also a provision of law that states, in pertinent part:

Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are [sic] subject to approval by the legislature as provided under this subsection.

1994 Temporary and Special Acts, Ch. 69, Sec. 10 (herein referred to as "Section 10") (emphasis added). Although this provision is found in the Temporary and Special Acts, it is nevertheless a recognized statute that has the authority of law and must be followed like any other statute. See AS 01.05.026 and .031.<sup>1</sup>

Section 10 is generally clear in its scope. It requires that the Legislature approve the guidelines proposed by the Committee before they are officially adopted (become effective). It also sets forth the general procedure for such approval. Although there has been some question in the past about how to proceed when the Legislature failed to vote on a concurrent resolution concerning proposed guidelines (see Memorandum from Teresa B. Cramer to Joe Donahue, Chair, dated 8.23.95), it appears that the Committee has taken the position that anything short of a concurrently passed resolution is a "failure to approve" the guidelines, requiring continued submission of proposed guidelines for approval. Accordingly, the Committee submitted proposed guidelines to the 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, and 22<sup>nd</sup> Legislatures for approval, each without success.

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<sup>1</sup> It is simply a matter of procedure that any section of the session laws that is temporary in nature is not included in the general statutory compilation and is placed, instead, into the Temporary and Special Acts. Because Section 10 applies only until the guidelines developed by the Committee are approved by the Legislature, it was not given a statutory number, but simply included in the Temporary and Special Acts section of the law.

Given that the Legislature has failed to approve the guidelines proposed by the Committee, the guidelines have no legal effect. However, that does not mean that the guidelines are useless. As will be discussed more fully in response to Questions 3 and 4, below, they may be used by the committee in its determination of any complaint that may be brought alleging a violation of AS 24.60.037, but they cannot be used as a basis to dismiss a complaint as contemplated in AS 24.60.037. }

2. What Is The Committee's Jurisdiction, If Any, Over A Complaint Filed Under AS 24.60.037?

The Committee clearly has statutory jurisdiction to hear and decide a complaint alleging a violation of AS 24.60.037. Alaska Statute 24.60.010(8) provides that "the purpose of this chapter is to . . . establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter." (Emphasis added.) Further, AS 24.60.170 provides that the "committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within two years . . ." (Emphasis added.) The Committee has the jurisdiction to hear an alleged violation of any provision contained in Chapter 60, including 24.60.037, so long as it meets the time requirements of the statute.

3. The Legislature Is Under A Legal Obligation Pursuant To AS 24.60.037 To Comply With Open Meetings Principles. What Are These "Principles?"

Although this was the last question asked by the Committee, we address it here because it requires a review of the purposes of open meeting laws, which is a preliminary step towards consideration of what criteria should be used to decide the merits of any complaint alleging a violation of those laws.

It is generally accepted that the purposes of open meeting laws are to allow the general public to hear and observe the process by which government decides how to act, in order to ensure a fair and unbiased process.

Open decision-making is regarded as an essential aspect of the democratic process. It is believed that public exposure deters official misconduct, makes government more responsive to its constituency, allows for greater public provision of information to the decision-maker, creates greater public

acceptance of government action, and promotes accurate reporting of governmental processes.

Alaska Community Colleges' Federation of Teachers v. University of Alaska, 677 P.2d 886, 891 (Alaska 1984). Among other things, the open meetings laws further the policy that the government should not dictate what the people should know, and they protect the peoples' right to remain informed in order to retain control over their government. See AS 44.62.312(a)(4) and (5). The Legislature has specifically stated Alaska's policy regarding open meetings in AS 44.62.312, which provides:

- (a) it is the policy of the state that
  - (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
  - (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
  - (3) the people of this state do not yield their sovereignty to the agencies that serve them;
  - (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
  - (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
  - (6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.
  
- (b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

The Committee can be guided by the Legislature's own statement of policy contained in AS 44.62.312 in determining by analogy what the "principles of open meetings" are by which the Legislature must abide. In fact, it should be noted that subsections .312(a)(3), (4), and (5) are general statements of policy, which are not limited in their application only to the entities covered by AS 44.62.310 (which entities do not include the Legislature). Further, through its pronouncement in AS 24.60.037, the Legislature has indicated that it has a self-

Mr. Skip Cook  
February 12, 2004  
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YES

imposed duty to abide by "the principles of open meetings." which it certainly was aware are enumerated in statutes such as AS 44.62.310 and .312.

4. If The Committee Has Jurisdiction To Hear A Complaint, What Criteria Does The Committee Rely Upon To Determine The Merits Of A Complaint Alleging A Violation Of The Open Meetings Law?

It is the ultimate responsibility and duty of the Committee to interpret the provisions of the Legislative Ethics Act, and this office cannot provide a specific interpretation upon which the Committee can rely. However, there are certain matters that the Committee should consider in hearing any complaint alleging a violation of the open meetings provisions of AS 24.60.037, including the policies discussed above.

which ones?

As mentioned earlier, the Committee has already developed/certain guidelines for applying the principles of open meetings to the Legislature, which have not been approved by the Legislature. Nevertheless, those guidelines embody the Committee's interpretation of how open meetings principles should apply to the Legislature, and provide guidelines to the Committee (if not the Legislature) as to how to determine whether there has been a violation of AS 24.60.037.

If the guidelines are ever approved by the Legislature, then the statute provides that the Committee may dismiss any complaint that alleges conduct that falls within the guidelines. However, since the Legislature has not approved them, the Committee may not simply dismiss any complaint alleging conduct that falls within the guidelines, but instead must follow its normal procedure and make an initial determination as to whether the allegations, if true, constitute a violation of the ethics laws. In making this determination, the Committee may consider its own previous interpretation of the law that is embodied in the guidelines. However, the Committee may not give the guidelines the effect of law and must recognize that neither it nor the legislators are bound by the guidelines. In other words, the Committee's decision in any particular case may actually conflict with the guidelines, which is a permissible result since the guidelines do not have the effect of law. If the Committee finds that the allegations, if true, would constitute a violation, then the Committee must investigate the complaint. AS 24.60.170. If the allegations, if true, would not constitute a violation, or if there is another basis for dismissal, then the Committee may dismiss the complaint upon the appropriate findings. Id.

Verifiable  
CWSZ

UNP-5

\*

As it undoubtedly did in developing the guidelines themselves, the Committee should also consider the provisions of the open meetings statute that apply to general governmental

Mr. Skip Cook  
February 12, 2004  
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bodies. See AS 44.62.310. While that statute itself may not be constitutionally or judicially applied to the Legislature, (see Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987) and AS 44.62.310(h)(3)), the principles of that statute may be applied by the Committee if it finds that they are appropriate to a particular case. Similarly, the Committee is free to modify, change, or disregard the principles found in AS 44.62.310 if it finds that it is appropriate in determining what principles govern the Legislature's conduct with respect to open meetings. As with the Committee guidelines, the Committee's decision in any particular case may actually conflict with AS 44.62.310, which is a permissible result because the Committee may find that those provisions are not appropriately applied to the Legislature. -7

The Committee should also consider the statement of AS 24.60.010(2), that "a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process . . ." It may also consider any other law or treatise on open meetings in determining what principles and criteria to apply to Alaska legislators in order to determine whether a legislator has failed to "abide by open meetings principles."

In short, it is within the Committee's sole discretion to determine what the "open meeting principles" are that apply to the Alaska Legislature, and whether, based upon the individual facts of any particular case, alleged conduct violates those principles. Obviously, the Committee may not act arbitrarily or capriciously, or in a discriminatory manner. Barring such extreme conduct, and until the Legislature approves the guidelines proposed by the Committee, it is our opinion that the Committee may develop and rely on any criteria that it determines appropriate to decide the merits of a complaint alleging a violation of the open meetings law.

If you have any questions, please feel free to call to discuss them. I hope this answers your questions.

Very truly yours,

MARSTON & COLE, PC



Brent R. Cole

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
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Deliveries to: 129 6th St., Rm. 329

*Not recorded  
quest*

## MEMORANDUM

March 8, 2004

**SUBJECT:** Open meetings principles and political strategy discussions  
(Work Order No. 23-LS1823)

**TO:** Representative Norman Rokeberg, Chair, House Rules Committee  
Attn: Janet S. Seitz

**FROM:** Tamara Brandt Cook  
Director *TBC*

(1) For purposes of AS 24.60.037 what are "open meetings principles"?  
The term "open meetings principles" is not defined. Therefore, it is up to the Select Committee on Legislative Ethics to determine the scope of open meetings requirements that apply to the legislature, probably in the context of specific fact situations that come up in requests for advisory opinions (AS 24.60.160) or as proceedings before the Committee involving alleged violations of those principles (AS 24.60.170).

AS 24.60.037 as enacted in 1992 required legislators to "abide by AS 44.62.310 - 44.62.312 (open meetings law)." In 1994, in HB 254, which substantially revised the open meetings law (AS 44.62.310), the language in AS 24.60.037 was also amended to delete the reference to the open meetings law and substitute general language requiring legislators to "abide by open meetings principles." The versions of HB 254 that were adopted by House Committees and the version that passed the House did not include any amendment to AS 24.60.037. It was not until the Second Senate Judiciary Committee Substitute that the first two sentences of AS 24.60.037 were proposed for amendment as follows, leaving the rest of the language untouched:

Legislators shall conduct meetings that are open to the public [ABIDE BY AS 44.62.310 - 44.62.312 (OPEN MEETINGS LAW)]. The committee shall develop guidelines for the conduct of open meetings adapted to the special needs of [APPLICATION OF THIS SECTION TO] the legislature.

However, the bill was amended on the floor of the Senate to remove the change to AS 24.60.037. The existing language, with the "open meetings principles" was added as compromise language by the Conference Committee. I have checked the committee file on CCS HB 254, and it is sparse. However, the notes indicate that at least some of the conferees wanted "the legislature brought into the open meetings Act" while others were

Representative Norman Rokeberg

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apparently concerned that AS 44.62.310 might be too rigid in its details to sensibly apply to the legislature.

(2) How are legislators involved in closed caucuses and conversations involving political strategy to be protected from ethics complaints?

AS 24.60.037 already offers protection in those situations: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." Again, there is no definition of "political strategy" so it will be up to the Select Committee on Legislative Ethics to determine in any fact situation whether the matters discussed in a closed situation amount to "political strategy." Here are the four possible ways to provide for additional protection that occur to me:

(1) Simply refrain from attending any closed caucus or other meeting and, thereby, avoid even a frivolous complaint to the ethics committee;

(2) Request an Advisory Opinion as to each precise issue that is proposed to be discussed in a closed meeting before the discussion is held. Note that AS 24.60.160(b) provides: "An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion."

(3) Amend AS 24.60.037 to define "political strategy" or, better yet, to specifically list those subjects that may be discussed and actions that may be taken at a closed meeting. If the list gets too long, list the subjects that may not be discussed and actions that may not be taken.

(4) Amend AS 24.60.037 to exempt caucuses from application of that section on the ground that a caucus, like a political party, is a private rather than a public organization. This conforms to the holding of the Alaska Supreme Court decided under the open meetings law which, at that time, applied to "all meetings of a legislative body...of the state." The court took the position that caucuses are private, not public, organizations and stated that the "statute has no application to private caucuses..." (Malone v. Meekins, 650 P.2d 351 (1982))

TBC:med

04-273.med

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## MEMORANDUM

March 4, 2004

**SUBJECT:** Open meetings guidelines applicable to the legislature  
(Work Order No. 23-LS1825)

**TO:** Representative Norman Rokeberg, Chair, House Rules Committee  
Attn: Janet S. Seitz

**FROM:** Tamara Brandt Cook  
Director TBC

You have some questions regarding the open meetings guidelines required under AS 24.60.037. I think the answers to those questions will be more comprehensible if I first set out the statutory history of AS 24.60.037.

AS 24.60.037 was first enacted in 1992 as part of a bill revising laws relating to legislative ethics. It originally read:

**OPEN MEETINGS LAW.** Legislators shall abide by AS 44.62.310 - 44.62.312 (open meetings law). The committee shall develop guidelines for the application of this section to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

In 1992, when AS 24.60.037 was enacted, the open meetings law (AS 44.62.310) applied to the legislative branch. However, the Alaska Supreme Court held on separation of powers grounds that alleged violations of that statute on the part of the legislature are nonjusticiable. (Abood v. League of Women Voters of Alaska, 743 P.2d 333 (1987), copy previously provided to you) AS 24.60.037, essentially, retained application of the open meetings law to the legislature, but, since the court had refused to do so, made enforcement of that law the responsibility of a legislative entity, the Select Committee on Legislative Ethics. Note that the Select Committee was charged with developing guidelines for applying AS 44.62.310 to the legislature. These guidelines were not subject to legislative review or approval.

In chapter 69, SLA 1994 the open meetings law was substantially amended. Application of that law to the legislative branch was deleted. In the same legislation AS 24.60.037

Representative Norman Rokeberg  
Chair, House Rules Committee  
March 4, 2004  
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was amended to delete reference to AS 44.62.310 - 44.62.312 and to substitute an undefined reference to "open meetings principles." The language in AS 24.60.037 regarding guidelines was not changed, except that the second sentence was altered as follows: "The committee shall develop guidelines for the application of principles of open meetings of governmental bodies [THIS SECTION] to the legislature." In addition, a new temporary law section was included as bill sec. 10:

Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representatives, and two public members appointed from the Select Committee of Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

Proposed guidelines were duly submitted to the legislature by the Select Committee, presumably based on the advice from the legislative advisory committee. The proposed guidelines were published in Senate and House Joint Journal Supplement No. 4 on January 20, 1995. The Select Committee later submitted revised proposed guidelines which were published in Joint Journal Supplement No. 9 on February 21, 1995. Eventually the House adopted a concurrent resolution approving the initial guidelines as revised, but the Senate never did. As you know, initial guidelines have never been approved by the legislature.

Now for your questions.

(1) What are the procedures for ratifying open meetings guidelines? Under section 10, chapter 69, SLA 1994 approval of initial guidelines is accomplished by adoption of a concurrent resolution.

Representative Norman Rokeberg  
Chair, House Rules Committee  
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(2) May the legislature amend the guidelines? There is no provision for amendment of the guidelines submitted by the Select Committee, nor is there any provision for partial approval of those guidelines. Instead, section 10 requires the Select Committee to submit new guidelines "until the initial guidelines are approved." Nonetheless, on February 29, 1995, when the first (revised) guidelines were under consideration, the Senate passed a resolution that approved the revised guidelines in part, but placed specific limitations on its approval. (CSSCR 8(RLS)) That version of the resolution was not adopted by the House.

(3) After initial guidelines are approved by the legislature, are changes to those guidelines also subject to legislative approval? No. Only "initial" guidelines are subject to legislative approval and the Select Committee is only required to submit proposed guidelines "until the initial guidelines are approved." After that point, AS 24.60.037 authorizes the Select Committee to "develop guidelines" and there is no limitation under that statute to the development process, so, presumably, those guidelines may be revised by the Select Committee from time to time without legislative involvement. This is not an odd result in view of the fact that the duty of the Select Committee to develop open meetings guidelines predates the temporary law provision requiring legislative approval of initial guidelines. If the legislature had wanted to retain permanent oversight of the guidelines, AS 24.60.037 could have been amended to provide for that. Instead the legislature chose to confine its review to "initial" guidelines and used a temporary law to accomplish that.

(4) The current proposed initial open meetings guidelines prohibit closed meetings of joint House and Senate caucuses. What is the basis for this? I have no idea. AS 24.60.037 states: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." The statute does not address the question of joint meetings by two caucuses, so it cannot be said that the Select Committee is precluded from prohibiting closed joint caucus meetings in its proposed guidelines so long as the opportunity for closed meetings to discuss political strategy is otherwise provided to caucuses under the guidelines.

TBC:med  
04-264.med

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## MEMORANDUM

March 3, 2004

**SUBJECT:** Actions against legislators for violations of open meetings requirements (Work Order No. 23-LS1824)

**TO:** Representative Norman Rokeberg, Chair, House Rules Committee  
Attn: Janet S. Seitz

**FROM:** Tamara Brandt Cook  
Director *TBC*

Legislators are directed to "abide by open meetings principles" under AS 24.60.037. You ask whether failure by a legislator to do so will give rise to a private cause of action against that legislator. The Select Committee on Legislative Ethics, senate subcommittee or house subcommittee as appropriate, has jurisdiction to consider alleged violations of AS 24.60.037. (AS 24.60.140) Any person may initiate a complaint with the Select Committee alleging a violation. (AS 24.60.170) However, except for this process before the Select Committee, failure by a legislator to abide by open meetings principles does not give rise to a private cause of action that can be addressed by a court.

The Supreme Court of Alaska has considered application of the open meetings statute (AS 44.62.310) to legislators in two cases, Malone v. Meekins, 650 P.2d 351 (1982) involving the removal and replacement of the Speaker of the House, and Abood v. League of Women Voters of Alaska, 743 P.2d 333 (1987) involving closed meetings of the House and Senate Finance Committees engaged in budget deliberations. In the Malone case the court held questions relating to the internal organization of one of the houses to be nonjusticiable. Furthermore, the court noted, the open meetings statute itself had an express exemption to its applicability for organizational votes. In the Abood case the League asserted that legislators violated both the open meetings statute and the Uniform Rules in holding closed Finance Committee sessions. Again, the court held those claims to be nonjusticiable on the basis of separation of powers between the three branches of government. The court concluded that, because the state constitution grants to the legislature the power to adopt its own rules of proceedings, it is not a function of the court to interpret or enforce those rules, except to the extent that those rules violate constitutional rights. The court further held that there is no constitutional right of public access to a legislative meeting, reversing the Superior Court on that point. A copy of the Abood case is attached for your information. AS 44.62.310, the open meetings statute, has since been amended and no longer applies to the legislature.

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In conclusion, it appears highly unlikely that a court would agree to hear and decide an allegation against a legislator involving an open meetings violation. Furthermore, even if an extraordinary circumstance should arise under which the court is willing to act, the legislator would most likely incur no personal liability for the open meetings violation because of legislative immunity for official acts accorded under common law and the state constitution. (Art. II, sec. 6, Constitution of the State of Alaska)

TBC:med

04-260.med

Enclosure



## REPRESENTATIVE ERIC CROFT

November 25, 2003

Mr. Herman G. Walker  
C/O Select Committee on Legislative Ethics  
P.O. Box 101468  
Anchorage AK 99510-1468

Dr. Mr. Walker,

Belated congratulations on your appointment and particularly your confirmation to the Select Committee on Legislative Ethics.

Your Committee has a vital role. For many years, the Alaska Legislature ignored laws on governmental ethics and open meetings. Courts, asked to enforce the law against the Legislature, held that the doctrine of separation of powers made the question non-justiciable. Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987). While the legislative action in question could be held illegal, there was no effective remedy. Your Committee was created to provide a venue for holding the legislature accountable for violations of the laws on governmental ethics and open meetings. Because the Select Committee on Legislative Ethics is within the legislative branch, the separation of powers argument is not available to those that seek to avoid the law. The Committee has done an excellent job of making the legislature accountable for violations of the ethics laws. Unfortunately, due to a misconception of the Committee's jurisdiction, it has not done as well policing the violations of the open meetings laws.

For your convenience, I have attached an opinion from the Legislative Legal Department recognizing the Committee's jurisdiction over open meetings violations, copies of the relevant statutory and temporary law provisions, and a copy of the latest proposed open meetings guidelines from the Committee.

The Committee is required to consider allegations of open meetings violations. The enabling statutes provide that the Committee "shall consider a complaint alleging a violation of [Chapter 60]." AS 24.60.170(a). The open meetings requirements are clearly part of Chapter 60.



"Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." AS 24.60.037

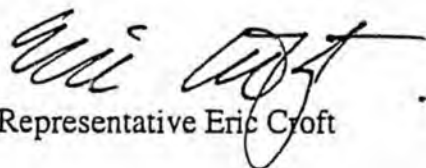
The statute makes a distinction between abiding by open meetings principles, which the Legislature is required to do without qualification, and the adoption of the guidelines, which may happen at a later date. In fact, the temporary law passed as part of the overall ethics package contemplates that the Legislature would be slow to adopt guidelines and establishes a process of repeated submittals of guidelines to keep the issue before the Legislature.

The law could have read that the Legislature would be governed by the guidelines when adopted. But it didn't. It placed the Legislature under the jurisdiction of the Committee and required that the Legislature abide by open meetings principles. The guidelines are treated in the statute as a separate issue. While it would certainly be helpful for the Legislature to adopt guidelines, and they should have done this long ago, it is not necessary for the Committee to fulfill its statutory mandate to consider open meetings violations and hold the Legislature to open meetings principles. Open meetings principles have been well-established in other jurisdictions and in scholarly publications.

In summary, the Legislature's inaction does not divest the Committee of its mandate or its jurisdiction over open meetings. I would like to know whether the Committee agrees with this position and will determine open meetings complaints on the merits.

Thank you for your time. Please feel free to contact me with any questions or for further information.

Sincerely,



Representative Eric Croft

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## MEMORANDUM

November 21, 2003

**SUBJECT:** Application of open meetings requirements to the legislature in absence of guidelines (Work Order No. 23-LS1413)

**TO:** Representative Eric Croft  
Attn: Peggy Wilcox

**FROM:** Tamara Brandt Cook  
Director TBC

You have asked for an explanation of the application of the open meetings requirement to the legislature. This is a subject with a history. The open meetings statute (AS 44.62.310) applied to the legislature as well as other governmental bodies. The court, however, held that alleged violations of the open meetings statute by the legislature were nonjusticiable. Like a Uniform Rule, the statute was deemed by the court to establish a rule of procedure concerning how the legislature conducted its business and failure to follow a rule of procedure is not a subject for judicial inquiry under the separation of powers doctrine. (Abood v. League of Women Voters, 743 P.2c 333 (Alaska 1987)) In 1994 the open meetings statute was amended so that it no longer applies to the court system or the legislative branch of government. (AS 44.62.310(i)(3)) At the same time AS 24.60.037 was amended to read:

Sec. 24.60.037. OPEN MEETINGS LAW. Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

Under AS 24.60.170(a) the Select Committee on Legislative Ethics is charged with hearing a complaint alleging a violation of AS 24.60, including, presumably, a violation of AS 24.60.037. So, a legislator could face an ethics complaint alleging failure to "abide by open meetings principles." The Select Committee is required under AS 24.60.037 to adopt guidelines regarding open meetings. If a complaint alleging an open meetings violation is filed and if the committee finds that a legislator acted within the guidelines, the complaint is to be dismissed. Note that the guidelines act as a shield to a claim of an

Representative Eric Croft  
November 21, 2003  
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open meetings violation. That is to say, if the guidelines are literally followed, the complaint is dismissed regardless of whether the facts of the case otherwise suggest that "open meetings principles" have been offended.

However, the obligation to adopt guidelines is modified under chapter 69, SLA 1994, sec. 10(a) which states in part: "Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature under this subsection." Initial guidelines have never been approved by the legislature. I am not aware that the Select Committee has taken the position that guidelines are in effect. This does not mean that a complaint may not be filed with the Select Committee alleging a violation of AS 24.60.037, but only that there are no guidelines for the committee to rely upon in deciding whether to dismiss the complaint. The committee must decide, based upon the facts of the particular case, whether "open meetings principles" have been violated, as I read the statute, even in the absence of guidelines. This is, after all, what the committee will have to do even when guidelines are in effect if those guidelines do not happen to address a particular situation that comes before the committee.

I base my conclusion upon the fact that AS 24.60.037 directs the Select Committee to prepare guidelines with no requirement for legislative approval of them. It is this aspect of the statute only that is being set aside with respect to the initial guidelines through use of the "Notwithstanding AS 24.60.037" phrase. Nothing in sec. 10(a) specifically sets aside or supercedes the command in the first sentence of AS 24.60.037: "Legislators shall abide by open meetings principles." This brings up the point that the legislature has retained for itself only a small amount of oversight in the implementation of AS 24.60.037. It is "initial guidelines" that are subject to legislative approval under chapter 69, SLA 1994, sec. 10. Subsequent amendments to those guidelines are not specifically subject to legislative approval, though use of the word "initial" strongly suggests that changes to the guidelines are contemplated. Presumably, these changes will be made by the Select Committee under its sole authority to "develop guidelines" contained in AS 24.60.037. Given the fact that the legislature plays a relatively small role in implementing AS 24.60.037, it seems to me to be a stretch to assume that the Select Committee has no jurisdiction at all over open meetings questions until after initial guidelines are adopted.

Despite the foregoing, it is ultimately up to the Select Committee to interpret the requirements of the Legislative Ethics Act and I cannot presume to know how the committee views its responsibilities under AS 24.60.037, if any, in the absence of open meeting guidelines. (See AS 24.60.158)

TBC:med  
03-733.med

# Alaska State Legislature

## Select Committee on Legislative Ethics

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99510 - 1468

August 11, 2000

Senator Drue Pearce  
Senate President  
Anch. Legislative Building  
Anchorage, AK 99501

Representative Brian Porter  
Speaker of the House  
Anch. Legislative Building  
Anchorage, AK 99501

Dear Senate President Pearce and Speaker of the House Porter;

At the June 22, 2000 meeting of the Ethics Committee, the committee adopted a motion to recommend the Legislature remove the Ethics Committee from its statutory obligation to develop and submit Open Meetings Guidelines. Further, the committee recommends the Legislature establish guidelines in statute, similar to action other states have taken.

The history of action on the Open Meetings guidelines is as follows:

Based on the requirements set out in the Open Meeting Law (AS 44.62, amended 1994) the committee adopted proposed open meetings guidelines and submitted them to the legislature on January 15, 1995. The guidelines were published in the Joint Journal January 20, 1995. After receiving legislative input, the committee later adopted and submitted Revised Proposed Guidelines, published in the Joint Journal February 21, 1995. The committee requested Senate Rules to introduce a resolution approving the revised guidelines. Senate Rules introduced SCR 8.

On February 28, 1995 the Senate passed a version of the resolution (See CSSCR 8(RLS)) that approved the revised guidelines, in part, but placed these specific limitations on its approval; the presiding officer of each body would be the final arbiter on any point of order and the terms "Go Between or Serial Meetings" must be defined before affirmation. Further, CSSCR 8(RLS) did not affirm the parts of the guidelines that address "Meetings Not Otherwise Described", political strategy sessions and non-legislative organizations.

On March 1, 1995 the House amended the resolution and approved the revised guidelines without limitation (CSSCR 8(RLS) am H). The Senate declined to concur in the House-passed version of the resolution.

A Conference Committee was established in 1996, comprised of Senators Rieger, Frank, Donley and Representatives Davis, Porter and Mackie. The Conference Committee issued a report, which passed the Senate 18 to 1 on May 4, 1996. The House read over the report and placed it under Unfinished Business. The House did not bring the report to the floor prior to the close of the regular session.

Since that time, the committee has fulfilled its obligation to resubmit guidelines to each legislature and has annually requested introduction and/or passage of a resolution to adopt the guidelines. Though resolutions have been introduced at the request of the committee, the legislature has not taken action on any resolution since May 1996.

This important issue needs to be resolved. Without resolution, members of the legislature remain under a legal obligation to comply with the general "principles of open meetings" and we, as a committee, are under the burden of interpreting what those principles may be, in the event of a complaint.

I am enclosing a copy of the Minnesota Open Meetings Law for the Legislature, as one example of a state that adopted statutory guidelines for the legislature. I found it to be a straightforward approach to setting open meetings goals.

The committee stands ready to assist the legislature, whether it is hosting a forum on the topic or enforcing laws the legislature establishes. Please do not hesitate to contact me at (907) 452-1855 or Susie Barnett at the Ethics Office, 269-0150.

Thank you for any attention you and your staff give to this issue

Sincerely,

A handwritten signature in cursive script, appearing to read "D. B. Cook".

Dennis "Skip" Cook, Chair  
Select Committee on Legislative Ethics

cc: Members of the Alaska Legislature

# Alaska State Legislature

## Select Committee on Legislative Ethics

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TO: House and Senate Legislators

FROM: Joyce Anderson  
Administrator, Ethics Committee

DATE: May 6, 2004

RE: HB 563/SB 397 - Open Meetings and Legislative Ethics

The Select Committee on Legislative Ethics has not had a chance to review this bill and formulize comments. However, I would like to comment on several sections of the bill.

First of all, I would like to give a brief overview of the open meetings process. The committee has proposed open meetings guidelines since 1993 as stipulated by state statute. The legislature has not acted on any of the proposals to date. Since March, the committee has held six subcommittee meetings on this subject. The full ethics committee is meeting on Friday, May 7 to review three proposals that have been submitted by the subcommittee and finalize a proposal. The plan was to submit the proposal to the legislature. In light of the introduction of HB 563/SB 397 on May 4, the committee was planning to consider this bill at the Friday meeting and offer recommendations to the legislature.

There are three sections in the bill that relate to the ethics complaint process. The committee has discussed these three topics at previous meetings over the last two years.

**Section 1 (d)** talks about dividing a group of open meetings complaints against one party in one body that are identical in nature into two groups and allowing the subject of one of complaints who is also on the ethics committee to evaluate a portion of the complaints. Current statute does not allow for this to happen. If the member or alternate member is the subject of a complaint they may not sit on the subcommittee hearing the complaint. The statute is very clear on this subject. It is evident a previous legislature anticipated this type of scenario.

The ethics House Subcommittee recently discussed this issue at length and determined it was not appropriate to have a legislator that was the subject of a group complaint sit on the committee that evaluates the complaints even if the complaints were divided into two separate groups. They felt it was a conflict of interest for the subject to be a part of the discussion of the merits of the complaint. The subject certainly would have a preconceived notion about the complaint. Additionally, two subcommittees of different members would be considering the same circumstances. It is possible to have two different results. This scenario poses a variety of problems and some of which can't even be thought of until the situation were to arise.

Further is it not defined in the bill that the subject is not to be a member of the subcommittee evaluating the group of complaints that the subject is grouped with. This could conceivable mean the subject could be part of the subcommittee that hears the subject's own complaint.

The subcommittee did not see a way to fix this problem. The subcommittee noted the ethics committee is comprised of five public members and no more than two public members may be members of the same political party. The subcommittee felt the ethics committee make up was well balanced. The subcommittee is also comprised of two legislators – one from the majority and one from the minority. Statute requires three public members and one legislator for a quorum of the subcommittee. The subcommittee was adamant that the subject of a complaint not be a member of the committee evaluating the complaint.

**Section 2.** Outside Counsel for the public hearing complaint process. The committee discussed this particular scenario during and after the last public hearing that was held in early 2003. The committee, after evaluating the events of the last public hearing, did not have an objection to having two different counsels in this type of situation. Therefore, I believe the committee would agree with this section.

Keep in mind there would be a minimal cost involved – getting the new counsel up to speed on committee operations and procedures.

**Section 3.** Confidentiality of the complaint process. The committee has had several meetings this last year on the subject of confidentiality of complaints. The current statute does not place any restrictions on the complainant in regard to keeping the complaint confidential. The committee strongly feels complaints should remain confidential. LAA legal researched the issue as well as myself. There are varying requirements across the United States. Some states have fines, some consider it a misdemeanor, and some dismiss complaints that have been made public.

The committee expressed reservations about a blanket dismissal for confidentiality reasons. Perhaps consideration should be given to the merits of the complaint.

I would like to point out that the bill contains only one sentence on confidentiality. This sentence does not address "what makes the complaint public". For example: the person filing the complaint talks to a neighbor in confidence who then talks to someone else and so on and one of these individuals makes the complaint public. Does this mean the complaint should be dismissed? Does this mean the complainant made the complaint public? What if the complaint is already in the investigative stage? If the complaint is dismissed for confidentiality reasons, could another person resubmit the complaint? These are only a few of the questions that come to mind in this short time.

As you can see, this is a very complicated issue and needs further thought, research and discussion. The ethics committee would need additional language in the statute in order to administer this section. I have no recommendations for additional language at this time.

I am leaving for Juneau on a 1:00 p.m. flight today and will be in Juneau on Thursday afternoon and Friday. If you have any questions, please leave a message on my office phone 269-0150 and I will return your call as soon as possible.



# Alaska State Legislature

Please enter into the record my testimony to the STUD  
committee name  
committee on SB 397 dated 5-17-04  
bill/subject

THIS IS THE COVER SHEET  
FOR THE TESTIMONY  
WRITTEN BY ROGER GAY  
FROM THE MATSU.

1 of 2

Signed: \_\_\_\_\_  
Testifier  
\_\_\_\_\_  
Representing (Optional)  
\_\_\_\_\_  
Mailing Address  
\_\_\_\_\_  
Phone Number

I don't see anything in this bill worthy of passage.

Under our system of checks and balances it is important to give the illusion of fairness and impartiality. Having the legislature in total control of its own ethics is like having the fox in charge of the hen house. We have an Ethics Committee that proposes guidelines but the legislature fails to adopt them, and now you want to remove the Committee's ability to even make proposals.

As to Section 3 dealing with confidentiality this bill states that the Proceedings of the committee are confidential and closed to the public. If the proceedings are closed how would a complainant have access to documents produced as a result of the investigation.

If the goal of this bill is to suppress the information contained in the complaint it needs to be more specific because there is a difference between ~~the~~ a copy of the actual complaint and a disclosure of the subject of the complaint.

Finally if you want to stop violations of confidentiality you need to penalize the violator not reward the unethical "subject" of the complaint.

If an actual, serious, breach of ethics has occurred you cannot force yourself to ignore it by immediately dismissing the complaint. You just don't excuse one person's behavior because of the unrelated actions of another. The exercise of one right cannot be used to deny or disparage others retained by the people. Filing a complaint cannot result in a loss of the Freedom of Speech or the Press.

Roger K. Jay

Alaska State Legislature  
House Finance Committee

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MEMORANDUM

**To:** Senator Ralph Seekins, Chairman  
Senate Judiciary Committee

**From:** Representative Bill Williams

**Date:** May 5<sup>th</sup>, 2004

**Subject:** Request for Hearing

I respectfully request that CS for House Bill 552(FIN) am, "An Act relating to the creation of the Alaska Gaming Commission; authorizing the Alaska Gaming Commission to license gambling games and gambling casino owners and suppliers and to issue occupational licenses for gambling employees; limiting casino gambling to municipalities with a population of 150,000 or more; allowing the Alaska Gaming Commission to issue only one owner's license for a gambling casino in certain municipalities with a population of 150,000 or more; creating crimes relating to gambling and setting requirements for gambling; creating the state gaming fund in the general fund; setting a gross receipts tax on gambling games; limiting the authority of a municipality to tax the adjusted gross receipts of gambling games.", be scheduled for a hearing in the House Special Committee on Fisheries.

I attach a copy of the bill and all fiscal notes.

Thank you for your attention to this matter. Feel free to contact me or my Aide, Tim Barry, if you have questions.

# FISCAL NOTE

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

Fiscal Note Number: 1  
Bill Version: CSHB 552(FIN)  
(H) Publish Date: 4/22/04

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>						
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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: 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)

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 465-3673  
Division Administrative Services Date/Time 4/19/04 4:54 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: 2  
Bill Version: CSHB 552(FIN)  
(H) Publish Date: 4/22/04

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: 0.0

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 racetrack casinos and 23 states with American Indian casinos. The number of casinos in each state varies between 3 in Michigan to 249 casinos with gross revenues (after-prize income) of at least \$1 million in Nevada. Gross revenue for commercial casinos varies between \$66 million in South Dakota (38 casinos) and \$9.4 billion in Nevada.

(continued)

Prepared by: Larry Meyers and Brett Fried  
Division: Tax Division  
Approved by: Steve Porter, Deputy Commissioner  
Agency: Department of Revenue

Phone 907-269-6620  
Date/Time 4/19/04 7:06 AM  
Date 4/19/2004

## FISCAL NOTE #2

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

### 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 \$8.6 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 tourism, (31,254) may seem low. However, it is necessary to consider that approximately 780,000 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 the inside passage and never go to Anchorage. Alaska tourism is also highly seasonal with about 84 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 other more highly developed gaming areas where the casinos include hotels and resort amenities. The tourist participation rate we used is for Washington (17 casinos) and Oregon (8 casinos). These casinos are often located on very busy highways and are not just 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.

Bear and Stearns Representative Casinos								
City	Pop. Market <sup>1</sup> 0-100 Miles	Participation Rate <sup>2</sup>	Gamer Visits	Gaming Revenue	Revenue Per Visit	Casino Sq. Ft.	Slots	Tables
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	15
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>	114,617	0.1	0.1	11,462	11,462	\$50	\$55	\$573,086	\$630,395
Total Tourists <sup>11</sup>	1,562,700	0.02	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								<u>8,615,063</u>	<u>10,423,283</u>

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 of one riverboat property, Casino Aztar. 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.

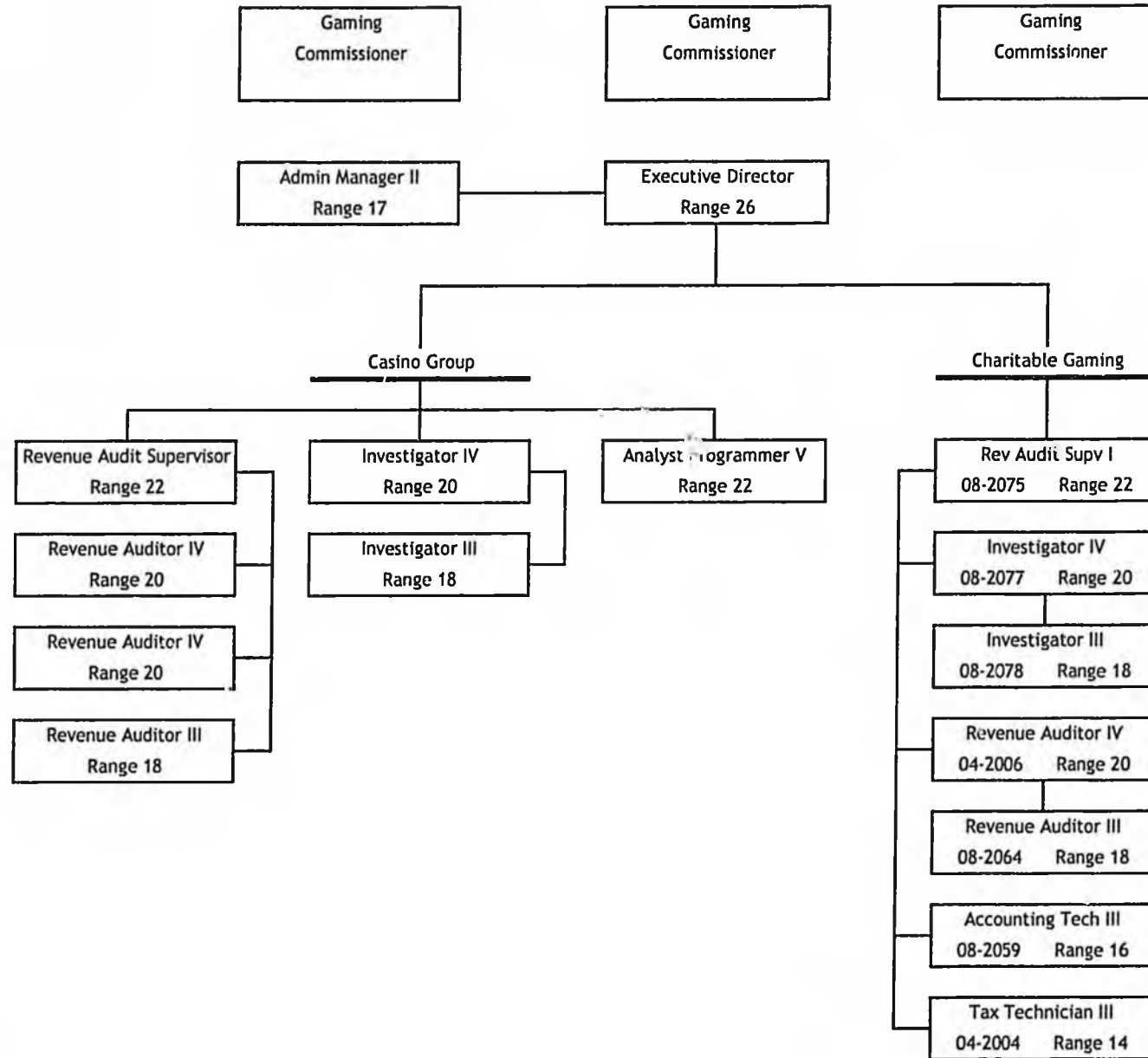
<sup>7</sup> The La Grange market has the Mark Twain Riverboat Casino. The adult population within a 100 mile radius is about 1.0 million but the market potential adult population estimate for 2006 is 151,913. The participation rate is a weighted average for each 50 mile increment.

<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.



Fiscal Note No. 2

Bill No. CSHB 552(FIN)

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	84.2	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/hrsg

<sup>(B)</sup> Base estimate @ \$8.0/Position

# FISCAL NOTE

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

Fiscal Note Number: 3  
 Bill Version: CSHB 552(FIN)  
 (H) Publish Date: 4/22/04

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>						
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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: 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: 4  
 Bill Version: CSHB 552(FIN)  
 (H) Publish Date: 4/22/04

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>						
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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: \_\_\_\_\_  
 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 #4

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

**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.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: CSHB 552(FIN)  
(H) Publish Date: 4/29/04

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 Ccmittee 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: 0.0

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 racetrack casinos and 23 states with American Indian casinos. The number of casinos in each state varies between 3 in Michigan to 249 casinos with gross revenues (after-prize income) of at least \$1 million in Nevada. Gross revenue for commercial casinos varies between \$66 million in South Dakota (38 casinos) and \$9.4 billion in Nevada.

(continued)

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Agency: Department of Revenue

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

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 \$8.6 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 tourism, (31,254) may seem low. However, it is necessary to consider that approximately 780,000 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 the inside passage and never go to Anchorage. Alaska tourism is also highly seasonal with about 84 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 other more highly developed gaming areas where the casinos include hotels and resort amenities. The tourist participation rate we used is for Washington (17 casinos) and Oregon (8 casinos). These casinos are often located on very busy highways and are not just accessible by air so tourism participation in Alaska could easily be lower.

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

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.

Bear and Stearns Representative Casinos								
City	Pop. Market <sup>1</sup> 0-100 Miles	Participation Rate <sup>2</sup>	Gamer Visits	Gaming Revenue	Revenue Per Visit	Casino Sq. Ft.	Slots	Tables
Caruthersville, Missouri <sup>3</sup>	234,197	2.8	655,752	\$26,200,000	\$47	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	15
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>	114,617	0.1	0.1	11,462	11,462	\$50	\$55	\$573,086	\$630,395
Total Tourists <sup>11</sup>	1,562,700	0.02	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 of one riverboat property, Casino Aztar. 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.

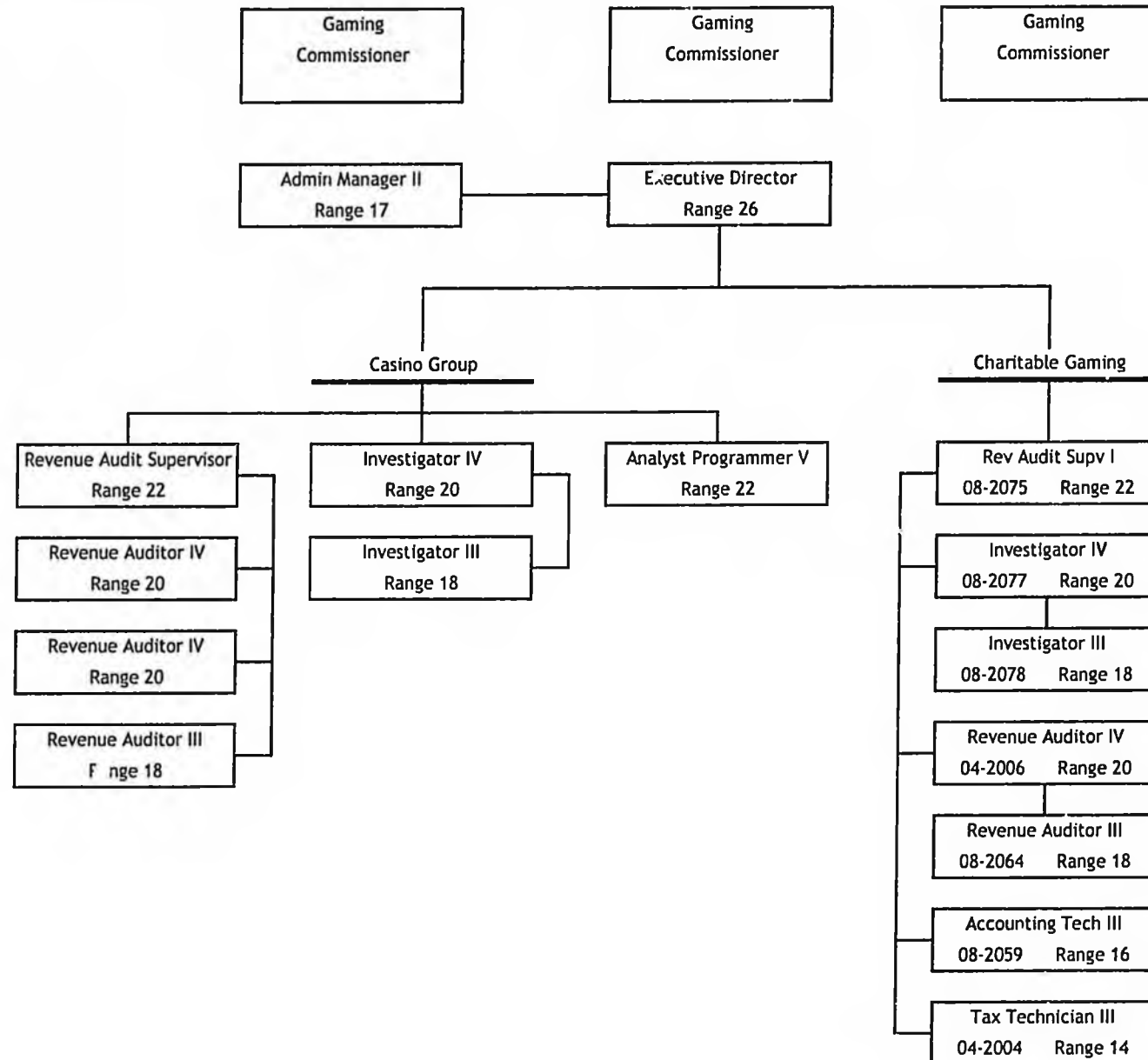
<sup>7</sup> The La Grange market has the Mark Twain Riverboat Casino. The adult population within a 100 mile radius is about 1.0 million but the market potential adult population estimate for 2006 is 151,913. The participation rate is a weighted average for each 50 mile increment.

<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	84.2	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/hrsg<sup>(B)</sup> Base estimate @ \$8.0/Position

**The Impact of Casio Gambling on  
Bankruptcy Rates: A County Level Analysis**

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Roughly 250 U.S. counties have legalized casino gambling within their borders. Sixty of these counties have established commercial casino operations, with the remainder supporting tribal casinos. Past research has provided mixed results regarding the impact of these casinos on market and non-market outcomes. The goal of this research study is to estimate the impact of casinos on two of these outcome variables -- individual and business bankruptcy rates -- over the decade of the 1990s. The study matches each casino county with a non-casino county according to U.S. Census region, household income, population and population density. Using simple descriptive statistics and regression analysis, the study estimates the impacts of casinos on bankruptcy rates. Our regression analysis on matched-pair counties indicates that those counties that legalized casino gambling during the 1990s experienced a cumulative growth rate in individual bankruptcies that was more than double the growth rate for corresponding non-casino counties. However, the cumulative rate of change in business bankruptcy rates in the casino counties was, on average, 35.4 percent lower than the applicable rate for the non-casino counties.

NOTE: ALL ESTIMATES, OPINIONS, AND VIEWS EXPRESSED IN THIS PAPER ARE THOSE OF THE AUTHORS ALONE AND NOT THOSE OF THE CONGRESSIONAL BUDGET OFFICE.

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## **The Impact of Casio Gambling on Bankruptcy Rates: A County Level Analysis**

Twenty-five years ago, legalized gambling was confined to Nevada, Atlantic City, New Jersey, a few racetracks, and two or three state lotteries. Since then, the U.S. has added almost 400 commercial casinos and 248 tribal casinos to the gambling landscape. As of January 1, 2003, only 19 states had resisted legalizing casinos. The states with no casinos include: Alabama, Alaska, Arkansas, Georgia, Hawaii, Kentucky, Maine, Maryland, Massachusetts, Nebraska, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia.

Casino revenues have grown along with the number of casinos. In recent years, commercial (non-tribal) casinos have increased adjusted gross revenues (AGR) from \$19.7 billion in 1999 to \$26.5 billion in 2002, or 10.0 percent per year.<sup>1</sup> Per thousand dollars of GDP, commercial casino AGR grew from \$2.13 in 1999 to \$2.63 in 2002. Tribal casinos have also experienced significant revenue growth. In 2001, tribal casinos in 28 states pulled in an estimated \$12.7 billion in AGR, reflecting a growth rate of approximately 14 percent per year from the \$7.5 billion in AGR reported for 1997. Figure 1 and Figure 2 profile commercial and tribal casino AGR.

This expansion has impacted the social costs of gambling, including bankruptcy. Much of the research examining the social costs has focused on the problem or pathological gambler. As noted in the report of the National Gambling Impact Study Commission,

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<sup>1</sup>Adjusted gross revenues refers to net losses of gamblers and does not include other non-gambling related revenues of the casino.

All seem to agree that pathological gamblers "engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves. With the increased availability of gambling and new gambling technologies, pathological gambling has the potential to become even more widespread."<sup>2</sup>

During the rapid expansion of casino gambling during the 1990s, personal bankruptcies expanded at comparably high rates. Between 1990 and 1999, total personal U.S. bankruptcies grew from 771,210 to 1,294,134, or 67.8 percent. On the other hand, during this same period of time, business bankruptcies declined from 63,365 in 1990 to 37,183 in 1999. Despite these seemingly contradictory relationships, many politicians, sociologists and economists fault casinos for a large share of the growth in U.S. bankruptcies. However, other economic and demographic factors were also changing during this period, making the assignment of cause for rising bankruptcies impossible to isolate without a more in-depth analysis. In the subsequent analysis, we use multivariate regression to disentangle contributors to higher bankruptcy rates, specifically focusing on the casinos.

Other researchers have also undertaken this same task. For example, Barron, Staten and Wilshusen (2000) (hereafter referred to as BSW) conclude that casinos had positive and statistically significant impacts on personal bankruptcy rates in the casino county and its geographic neighbors. However, these researchers concluded that the increase in personal bankruptcies attributable to casinos was only 8 percent, and that other demographic and economic factors were much more important in explaining the rapid growth in personal bankruptcies in the 1990s.

In the subsequent analysis, we expand on the BSW study by adding two factors not considered by them. First, we examine business bankruptcies; second, we add tribal casinos,

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<sup>2</sup> National Gambling Impact Study Commission Report, at 4-1 (1999) (quoting National Research Council, "Pathological Gambling: A Critical Review," (April 1, 1999), p. Exec-2.)

which were excluded from their analysis, to our assessment. Our data set also excludes some data that the BSW study included. The BSW study included counties adjacent to those hosting casinos -- what they term "collar counties" -- in their analysis, based on the assumption that a higher incidence of pathological gambling behavior was expected within a 50 mile radius of a casino facility. However, our study focuses only on the casino counties. Bankruptcy filings in collar counties may well include residents who live more than 50 miles from a casino, who thus are not particularly influenced by casino activity. Our more limited focus may be viewed as providing a more conservative measure of the bankruptcy impact of casinos, as it reduces the possibility that those with more attenuated geographical proximity to the casino operations may erroneously be attributed to casino-related causation.

#### GROWTH IN CASINO OPERATIONS: A PERSPECTIVE

Tribal casinos. Large-scale Indian casino gambling is barely a decade old. Its origins trace back to 1987, when the U. S. Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*.<sup>3</sup> The Court held that the state of California had no authority to apply its regulatory statutes to gambling activities conducted on Indian reservations. Tribal sovereignty was subordinate to the Federal government, and state power to regulate was thus dependent on congressional authorization. In 1988, Congress responded to this decision by enacting the Indian Gaming Regulatory Act,<sup>4</sup> which essentially recognized the right of Indian tribes to regulate gambling and gaming facilities on their reservations as long as the states in which they were located had some form of legalized gambling. The Act was intended to accomplish several policy goals, which include: 1) promoting tribal economic development and self-sufficiency, and 2) providing a regulatory base to protect Indian gaming from organized

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<sup>3</sup> 480 U.S. 202 (1987).

<sup>4</sup> 25 U.S.C. §§ 2701-2721.

crime, to ensure that the tribe is the beneficiary of the gaming operation, and to ensure the fairness and honesty of the gaming operation; and 3) establishing the National Indian Gaming Commission to assist in these purposes.<sup>5</sup> Figure 3 shows tribal casinos by state. Oklahoma had the largest number of tribal casinos at 50 followed by California at 44 and Washington at 23.

Commercial casinos.<sup>6</sup> After a brief respite, America returned to casinos in 2002. Following more than a decade of explosive growth, the tragic events of September 11<sup>th</sup> reduced air travel to spots such as Las Vegas. But casinos responded with increased marketing to locals, and the U.S. gaming industry (both casino and non-casino) posted a five percent increase in revenues to an estimated \$64 billion for 2002.

While all forms of gambling have grown, casino gambling has experienced robust growth in recent years. Since Nevada legalized casino gaming in 1931, an additional ten states have legalized commercial casinos. New Jersey legalized casino gaming in 1976, and its first casino opened in 1978. However, eight of the eleven states with commercial casinos began casino construction in the 1990s, thus introducing new features into their local economic and social structures.

According to Christiansen of Capital Advisors LLC, Americans today pay out more on gambling than they spend on movie tickets, theme parks, spectator sports, and video games combined. Moreover, Merrill Lynch estimated that Americans lose a comparable amount each year in illegal betting. Figure 4 shows the number of commercial casinos by state. As indicated, eleven states had a total of 432 commercial casinos in 2004. Nevada had the most casinos at 249, while Michigan had the fewest at 3.

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<sup>5</sup> Sec 25 U.S.C. § 2702.

<sup>6</sup>A commercial casino is a non-tribal casino owned by private investors.

Table 1 compares commercial and tribal casinos. Commercial casinos generate, on average, more revenue than tribal casinos. Furthermore, the effective tax rate is much higher for commercial casinos and the growth rate of AGR has been much lower for commercial casinos.

#### CASINOS AND FINANCIAL DISTRESS

Casino gambling is not strictly an economic issue. In addition to economic gains and losses, casinos produce impacts on the social fabric of the surrounding community. Therefore, to more accurately assess the total impact of casinos, one must distinguish between economic profitability and social viability. Bankruptcy is an issue that bridges the economic and social spheres.

A study by the National Opinion Research Center at the University of Chicago found that pathological gamblers generate 15 percent of the industry's gross revenues and that each pathological gambler costs society around \$10,550 over his/her lifetime.<sup>7</sup> In its 1999 report, The National Gambling Impact Study Commission singled out convenience gambling as providing fewer economic benefits and greater social costs than other forms of gambling. In particular, it recommended a rollback in convenience gambling operations.<sup>8</sup> It also recommended undertaking new studies on the relationship between gambling and various social problems, such as bankruptcy, divorce, domestic violence, suicide and crime.<sup>9</sup>

The National Gambling Impact Study Commission estimated that of the 125 million Americans who gamble at least once a year, approximately 7.5 million have some form of gambling problem.<sup>10</sup> Another 15 million are classified as "at risk" of developing a gambling problem.

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<sup>7</sup> National Gambling Impact Study Commission Report, p. 4-14 to -15.

<sup>8</sup> Id., Recommendation 3-6.

<sup>9</sup> Id., Recommendation 8-9.

<sup>10</sup> Id. at p. 4-1.

As a result of significant losses imposed by pathological and problem gamblers, the National Gambling Impact Study Commission recommended a pause in the expansion of gambling in order to assess the social impacts of recent rapid expansions in gambling availability.<sup>11</sup> In particular, the Commission recommended research on the "extent to which gambling-related debt is a contributing factor to personal bankruptcies", and on "gambling-related crimes perpetrated for the primary purpose of gaining funds to continue gambling or to pay gambling debts."<sup>12</sup> Many policymakers, sociologists and economists conclude that pathological gambling and even moderate gambling has an impact on sociological parameters such as bankruptcy. The analysis that follows examines the merit of this conclusion.

#### OVERVIEW OF FEDERAL BANKRUPTCY LAWS

In order to evaluate the significance of bankruptcy data considered in this study, a basic overview of federal bankruptcy laws will prove helpful. Federal bankruptcy laws serve two important purposes providing a "fresh start" for debtors by granting relief from burdensome financial obligations, and providing a means for creditors to obtain payment to the extent possible.<sup>13</sup> Debtors may choose between two primary approaches for bankruptcy relief: liquidation and reorganization/rehabilitation. Generally speaking, Chapter 7 of the Bankruptcy

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<sup>11</sup> *Id.* at p. 47.

<sup>12</sup> *Id.*, Recommendation 8-20.

<sup>13</sup> *See, e.g.*, *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 569 (1994) (referring to "core Bankruptcy Code purposes of augmenting the bankruptcy estate and improving the debtor's prospects for a "fresh start"); *Kokoszka v. Belford*, 417 U.S. 642, 645-46 (1974) ("It is the twofold purpose of the bankruptcy act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched.") (*quoting* *Burlingham v. Crouse*, 228 U.S. 459, 473 (1913)); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) ("One of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.' This purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." (citation omitted)).

Code provides for a liquidation process, while Chapters 11, 12, and 13 provide procedures for reorganization and rehabilitation of debtors.

A debtor commences bankruptcy by filing a petition that constitutes an order for relief under the applicable chapter of the Bankruptcy Code for which the debtor is eligible.<sup>14</sup> The petition creates an estate which, by operation of law, generally includes all legal and equitable interests of the debtor in property.<sup>15</sup> From this estate, an individual debtor may be permitted to treat certain property – often basic necessities -- as exempt from bankruptcy proceedings, in order to facilitate the debtor's "fresh start".<sup>16</sup> All other property is potentially available for the claims of creditors, though satisfaction of those claims ultimately depends on the priority accorded to the creditor and the amount of available assets.

Chapter 7. Chapter 7 of the Bankruptcy Code focuses primarily on liquidating the non-exempt assets of the debtor and distributing them for the benefit of creditors.<sup>17</sup> The balance of those unpaid debts may be discharged – an important feature reflecting the "fresh start" purpose.<sup>18</sup> Discharges are frequent under Chapter 7 cases, meaning that creditors are often left unpaid. Some commentators have indicated that most Chapter 7 cases leave no assets available for distribution to creditors after exemptions are taken into account.<sup>19</sup>

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<sup>14</sup> See 11 U.S.C. § 301.

<sup>15</sup> See 11 U.S.C. § 541(a).

<sup>16</sup> See 11 U.S.C. § 522(b); *In re Morehead*, 283 F.3d 199 (4<sup>th</sup> Cir. 2002) ("Federal bankruptcy law allows a debtor to exempt some of his property – mainly basic necessities – from the bankruptcy estate. The exemptions can afford the debtor some economic and social stability, which is important to the fresh start guaranteed by bankruptcy.")

<sup>17</sup> See 11 U.S.C. § 704 (defining duties of bankruptcy trustee in Chapter 7 case).

<sup>18</sup> See 11 U.S.C. § 727(a) (granting discharge provided that certain conditions are met).

<sup>19</sup> See, e.g., Arnold B. Cohen, *Chapter 20 Cases: An Appropriate Debtor Tool?*, 4 J. BANKR. L. & PRACT. 53, 53 n.4 (1994) ("Although most Chapter 7 cases are so-called "no asset" cases in which the debtor's Section 522 exemptions cover all the Section 541(a) property of the estate, there are cases in which there will be distributable property of the estate.")

As a technical matter, Chapter 7 filers may include many types of debtors, including corporations.<sup>20</sup> However, only individuals may obtain a discharge under Chapter 7, which makes this chapter particularly appealing to individual debtors.<sup>21</sup> Individuals who are employees, as well as individuals who are sole proprietors of businesses, are eligible. Thus, a portion of Chapter 7 filings may reflect adverse financial experiences with business activities, as well as financial difficulties rooted in gambling activity.

Chapter 13. Chapter 13 of the Bankruptcy Code provides individual debtors with another alternative, which focuses primarily on rehabilitation. Individuals with regular income meeting certain total debt limits for unsecured and secured debts are eligible to file under this chapter.<sup>22</sup> Self-employed individuals are potentially eligible, and thus Chapter 13 may involve business-related debt as well as personal debt.<sup>23</sup> Qualifying debtors may be attracted to Chapter 13 because it potentially allows them to keep secured property, which might otherwise be subject to loss through foreclosure.<sup>24</sup>

Chapter 13 allows a debtor to propose a plan,<sup>25</sup> in which the debtor agrees to submit future income to the trustee to satisfy all or a portion of outstanding obligations.<sup>26</sup> The plan typically involves deferred payments over a period of three to five years,<sup>27</sup> which, for example, might allow the debtor to catch up on arrearages owing on secured property.<sup>28</sup> The plan must be confirmed in order to be effective, and one of the conditions of confirmation requires that "the

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<sup>20</sup> See 11 U.S.C. § 109(b) (defining debtors eligible for Chapter 7 filing).

<sup>21</sup> See 11 U.S.C. § 727(a)(1).

<sup>22</sup> See 11 U.S.C. § 109(e). The statutory debt limits are subject to adjustment for inflation. See 11 U.S.C. § 104. For cases commenced after April 1, 2001, eligibility is limited to individuals with regular income who owe less than \$290,525 in applicable unsecured debt, and \$871,550 of applicable secured debt. See Alan N. Resnick, Bankruptcy Law Manual § 10.4, p. 1085-86 (5<sup>th</sup> Ed. 2002). The next adjustment is scheduled to occur on April 4, 2004. See *id.* at § 10.4, p. 1086.

<sup>23</sup> See 11 U.S.C. § 1304(b).

<sup>24</sup> See Cohen, *supra* note 19, at 58.

<sup>25</sup> See 11 U.S.C. § 1321.

<sup>26</sup> See 11 U.S.C. § 1322(a).

<sup>27</sup> See 11 U.S.C. § 1322(d).

<sup>28</sup> See Cohen, *supra* note 19, at 58.

value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of this title on such date."<sup>29</sup> Discharges are permitted.<sup>30</sup> Thus, unsecured creditors may experience losses in this chapter as well as in Chapter 7.

A Chapter 13 case may also be converted to a Chapter 7 case under certain conditions.<sup>31</sup> A Chapter 13 case involving a debtor who is a sole proprietor of a small business may also be converted to a Chapter 11 case.<sup>32</sup> In some cases, it may also be possible for a debtor to file a Chapter 7 case followed by a Chapter 13 case, which is referred to as a "Chapter 20".<sup>33</sup> Thus, filings in Chapters 7 and 13 may, in some cases, reflect the same debtor.

Chapter 11. Chapter 11 of the Bankruptcy Code provides another route for reorganization or rehabilitation of a debtor, which is generally somewhat more complex and costly than Chapter 13. Eligible debtors technically include any debtor that is eligible for Chapter 7.<sup>34</sup> Thus, a debtor who does not carry on an active business is technically eligible to file under Chapter 11.<sup>35</sup> However, Chapter 11 is primarily aimed at business debtors, and these are the dominant filers under this chapter.<sup>36</sup> Much like the Chapter 13 debtor, the Chapter 11

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<sup>29</sup> 11 U.S.C. § 1325(a)(4).

<sup>30</sup> See 11 U.S.C. § 1328 (describing terms of discharge).

<sup>31</sup> See 11 U.S.C. § 1307.

<sup>32</sup> See Resnick, *supra* note 22, at § 10.13.

<sup>33</sup> See generally Cohen, *supra* note 19.

<sup>34</sup> See 11 U.S.C. § 109(d) (defining debtor for purposes of Chapter 11).

<sup>35</sup> See *Toibb v. Radloff*, 501 U.S. 157, 162 (1991). See also Resnick, *supra* note 22, at § 9.5, n. 3 (noting that the bankruptcy court has refused to allow individuals to fund a chapter 11 reorganization plan with future wages).

<sup>36</sup> The legislative history supports this approach to Chapter 11. See *Toibb v. Radloff*, *supra*, 501 U.S. at 162 (quoting the legislative history as follows: "Chapter 11, Reorganization, is primarily designed for businesses, although individuals are eligible for relief under the chapter. The procedures of chapter 11, however, are sufficiently complex that they will be used only in a business case and not in the consumer context." S.Rep. No. 95-989, p. 3 (1978), U.S.Code Cong. & Admin.News 1978, p. 5789 (1978).) As the Court also noted, "the greater expense and complexity of filing under Chapter 11 likely will dissuade most consumer debtors from seeking relief under this

debtor may file a plan of reorganization with the court that provides a blueprint for repayment of creditors.<sup>37</sup> Confirmation of this plan provides relief for the debtor by changing the nature and extent of the debtor's financial obligations, which may result in some creditors not being paid, or receiving lower payments at a later time than reflected in their original bargain.<sup>38</sup>

Other Chapters. Other more detailed chapters also exist in the Bankruptcy Code to address special types of debtors. Chapter 9 provides special rules for municipalities.<sup>39</sup> Chapter 12 provides special procedures for family farmers with regular income.<sup>40</sup> Given the limited applicability of Chapter 12 and the extremely limited scope of Chapter 9, those bankruptcy filings are not considered in this study.

Venue Rules-All Chapters. Federal district courts have original and exclusive jurisdiction over bankruptcy cases.<sup>41</sup> Federal district courts are empowered to refer bankruptcy cases to bankruptcy judges,<sup>42</sup> so in this sense the bankruptcy court is a unit of the federal district court.<sup>43</sup> Bankruptcy petitions are subject to venue rules that affect the proper geographical location for filing. The following rule generally prescribes that venue is appropriate, and a petition may be filed, in the district court for the district:

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than

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Chapter." *See id.* at 165. *See also* Resnick, *supra* note 22, at § 9.6 (describing typical conditions leading to a Chapter 11 petition).

<sup>37</sup> See 11 U.S.C. § 1123. Plans may also be filed by creditors. See 11 U.S.C. § 1121.

<sup>38</sup> See 11 U.S.C. § 1129. As one commentator explains, "the essence of confirmation is that prior debts and interests are extinguished and replaced by the debts and interests provided for in the plan or confirmation order." *See* Resnick, *supra* note 22, at § 9.64, p. 1060.

<sup>39</sup> See generally 11 U.S.C. §§ 901 ff.

<sup>40</sup> See generally 11 U.S.C. §§ 1201 ff.

<sup>41</sup> See 28 U.S.C. § 1334(a).

<sup>42</sup> See 28 U.S.C. § 157 (empowering District Court to refer cases arising under Title 11 (*i.e.*, bankruptcy cases) to bankruptcy judges).

<sup>43</sup> See 28 U.S.C. §§ 151 (designating bankruptcy judges as units of Federal District Court).

the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or (2) in which there is pending a case under Title 11 [*i.e.*, the bankruptcy title] concerning such person's affiliate, general partner, or partnership." ....<sup>44</sup>

For purposes of this statute, "domicile" and "residence" may be in different venues. As the Bankruptcy Court has stated,

"Domicile" and "residence" are not used as synonyms in § 1408. The term "domicile" is defined generally as residence in fact along with the intent to remain there or to return when absent. \* \* \*

Once established, a domicile continues until a new one is acquired. Although any United States citizen residing in the United States always has a domicile in some state, a person may only have one domicile at a time. In contrast, a person may have several residences at the same time. A person can change residences at will but a domicile, once established, remains until a new domicile is established. Actual residence is not necessary to preserve a domicile once a domicile has been acquired.

\* \* \*

Residence, when used in a sense other than domicile, is one of the most nebulous terms in the legal dictionary and can have many different meanings depending on the context in which it is used. Residence is less inclusive than domicile, importing merely having an abode at a particular place which may be one of any number of such places at which one is, at least from time to time, physically present.<sup>45</sup>

The venue rules make it possible for a debtor to have a residence in one jurisdiction, but to file a bankruptcy petition in another jurisdiction that the debtor considers his domicile. Alternatively, a debtor might file in still another venue in which the debtor has a "principal place of business." Employment in a particular location is not a sufficient basis for venue under the "principal place of business" category.<sup>46</sup> However, an entrepreneur who owns a business, even

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<sup>44</sup> 28 U.S.C. § 1408(a).

<sup>45</sup> *In re Frame*, 120 B.R. 718 (S.D. N.Y. 1990) (citations omitted). This case also indicated that residence for venue purpose reflected a requirement of permanence. *See id.* While there is agreement that a temporary presence is not sufficient, courts have disagreed on whether this implies a single residence. *See In re Handel*, 242 B.R. 789, 792-93 (1999) (agreeing with *In re Frame* to extent that a "mere stopping place" would not establish residence, but refusing to read venue statute as limiting venue to area of "principal" residence to exclude possibility that debtor might have more than one residence).

<sup>46</sup> *See In re Canavos*, 108 B.R. 55, 57-58 (1989).

one that is presently inactive, may file in the location of that business, even if it differs from his residence or domicile.<sup>47</sup>

These venue rules show that filing may occur in a location that differs from one's residence. Although one might raise that fact as a basis for discounting the validity of any correlation between casinos and bankruptcy filings, the fact remains that the venue for filing will nevertheless be the same as the residence and domicile in the vast majority of cases.<sup>48</sup> Given the stringent requirements for domicile and the inability to use a place of employment to file in lieu of residence, the typical employee debtor is likely to file in the same geographical area in which he lives. Even if the debtor is an entrepreneur with a business located in a venue that might differ from his home, the business is nevertheless subject to the effects of casinos, and the individual may also be personally affected. Thus, the foundation for correlation shown in the data is substantial, though particular cases may well have exceptional facts that limit the actual scope of any effect from casinos in that jurisdiction.

## BANKRUPTCY DATA AND ANALYSIS.

### Data

The bankruptcy data used in this study was obtained from the Administrative Office of the United States Bankruptcy Courts. Report F-5A contains data by county for filings by business and non-business debtors under each bankruptcy chapter. Court administrators use data in this report to evaluate where demand is greatest for bankruptcy court services.<sup>49</sup> The county-by-county presentation of this data is also useful for the purpose of evaluating whether

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<sup>47</sup> See *id.* at 58.

<sup>48</sup> Ms. Sandra Thomas, the program manager for bankruptcy court data, has explained: "Please note that almost all consumer debtors file in the county in which they actually have their residence." E-mail from Sandra Thomas to Edward A. Morse, September 23, 2003 (on file with author).

<sup>49</sup> See *id.* Some counties appear more than once on the report. The program manager for bankruptcy court data has confirmed that the appropriate total for each county requires aggregation of each county appearance. See *id.*

any correlation exists between the availability of casino gambling in that county and the number of bankruptcy petitions filed in that county.

Table 2 compares the bankruptcy experiences of counties with commercial casinos, tribal casinos, and no casinos. When aggregate bankruptcy data are considered, the tribal casino counties experienced the highest growth rate; commercial casino counties had a lower aggregate growth rate than both non-casino and tribal casino counties. However, it should be noted that this aggregate data includes counties with preexisting casino operations. Thus, it is hazardous to generalize about the discrete effects of casino gambling on these figures alone. The rest of Table 2 focuses on median bankruptcy data over this same period. The median individual bankruptcies per thousand of population data show similar, though not identical, changes to the aggregate data over the period. However, median firm bankruptcies per thousand of population decreased over this same period for all three categories.

Table 3 also compares counties with commercial casinos, tribal casinos, and no casinos based on characteristics other than bankruptcy rates. In general, counties with commercial casinos had a larger population, higher density of population, lower poverty rates, higher bankruptcy rates, and higher family income than either counties with no casino or counties with a tribal casino. As presented, tribal casinos were located in counties that began the decade in more financial distress in terms of higher poverty rates, higher unemployment rates and slightly lower average family income.

Table 4 compares statistical results for counties with and without casinos. In this case, each casino county is matched with a non-casino county according to population, population density, census region and family income. As presented, there were no dramatic differences in these factors between casino counties and their non-casino counterparts.

## Analysis

In order to investigate differences in a multi-variate framework, we next apply regression Equations (1) and (2) to the matched data. Equations (1) and (2) estimate individual bankruptcies and business bankruptcies, respectively, against factors hypothesized to affect financial distress. The two dependent variables,  $\Delta\text{IndBnk}$  and  $\Delta\text{BusBnk}$ , represent the change from 1990 to 1999 in the individual and business bankruptcy rates. A description of each variable is contained in Table 5.

$$\Delta\text{IndBnk} = \beta_0 + \beta_1 \text{Mountain} + \beta_2 \text{Southeast} + \beta_3 \text{Southwest} + \beta_4 \text{West} + \beta_5 \text{Westnorthcentral} + \beta_6 \Delta\text{Pop} + \beta_7 \Delta\text{unemprate} + \beta_8 \Delta\text{Povrate} + \beta_9 \Delta\text{FamInc} + \beta_{10} \text{AdCasino} + \varepsilon \quad (1)$$

$$\Delta\text{BusBnk} = \beta_0 + \beta_1 \text{Mountain} + \beta_2 \text{Southeast} + \beta_3 \text{Southwest} + \beta_4 \text{West} + \beta_5 \text{Westnorthcentral} + \beta_6 \Delta\text{Pop} + \beta_7 \Delta\text{unemprate} + \beta_8 \Delta\text{Povrate} + \beta_9 \Delta\text{FamInc} + \beta_{10} \text{AdCasino} + \varepsilon \quad (2)$$

Table 6 lists results from the estimation of Equations (1) and (2). As presented, the addition of casinos in a county during the 1990s had a negative and statistically significant impact on business bankruptcy rates and a positive and statistically significant impact on individual bankruptcy rates. Using parameter estimates from Table 6 provides estimates of the impact of individual and business bankruptcy rates. Adding a casino in the 1990s increased the county personal bankruptcy rate by 100 percent, but reduced business bankruptcy rates by 35.4 percent on average.

Table 7 presents the estimated impact of factors, including the addition of a casino on three types of bankruptcy filings. As shown, the addition of a casino in the county had a positive impact on Chapter 7 and 13 bankruptcy filings. On the other hand, the addition of a casino in the county had a negative impact on Chapter 11 filings. However, there are some constraints

associated with this methodology that should be noted. First, we examined data in two discrete years: 1990 and 1999. Although this methodology may accurately measure the impact of the addition of a casino operation during the interim years, it is possible that such an introduction could have had discrete effects in a given year that were not significant in 1999.

Second, we have omitted some potential variables that could affect bankruptcy. For example, it is theoretically possible that casino counties had populations with higher debt loads than non-casino counties. Our study did not include debt load data. However, we find no evidence that such a disparity did, in fact, exist. Third, adding a casino could also be endogenous, to the extent that a county that legalized casino gambling may have already experienced increased bankruptcy rates before the casino was opened.

The differences in results between these chapters of the Bankruptcy Code may be explainable by reference to the effects of casino gambling in the particular locale. Individuals, who are the primary filers in Chapters 7 and 13, would be particularly susceptible to the impact of problem gambling on their personal financial condition. Adding casino gambling to their county of residence could be viewed as increasing the potential for this behavior to have an impact on their financial wellbeing. On the other hand, businesses in the region of the casino would not necessarily be negatively affected by these compulsive behaviors in the same manner as an individual. Though individual employees may have an impact on their operational effectiveness, the ability to diffuse that impact over a number of employees would tend to prevent the compulsive behavior of one or a few employees from impacting the financial wellbeing of the entire enterprise. Moreover, in many jurisdictions the business community surrounding a casino may well experience beneficial economic impacts from the inputs and services that casino operations require. Those jurisdictions that impose local or statewide buying

requirements may be increasing the positive effects on local businesses, even though the casino operations may have negative effects on the bankruptcy rates of local individual casino customers.

### Summary

Results from applying regression analysis to U.S. bankruptcy data for 1990 and 1999 indicate that counties that legalized casinos during the period suffered individual bankruptcy rates more than 100 percent higher than casinos that remained "casinoless." On the other hand, the casino counties experienced business bankruptcy rates that were 35.4 percent less than their matching counties without casinos. Casino counties were much more likely to experience Chapter 7 and Chapter 13 bankruptcies, but less likely to experience Chapter 11 bankruptcies.

Figure 1: Commercial casino AGR, 1990-2002

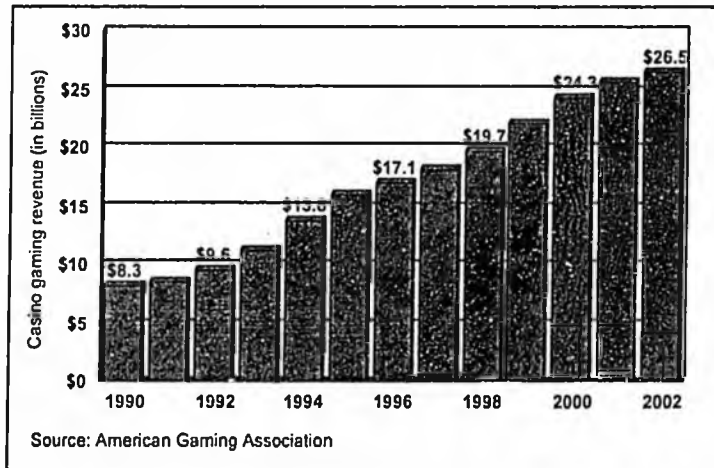
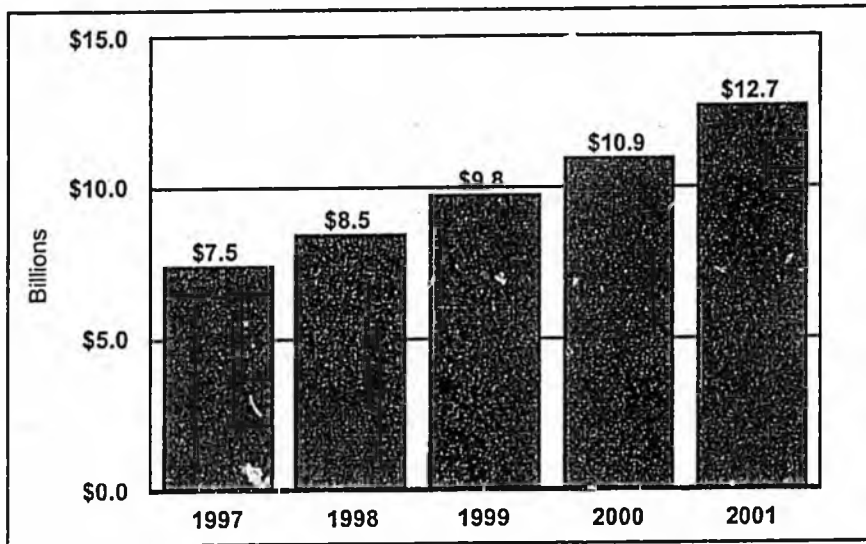


Figure 2: Tribal casino AGR, 1997-2001



Source: National Indian Gaming Commission, Tribal Gaming Revenues (7/2/2002).

Figure 3: Tribal casinos by state

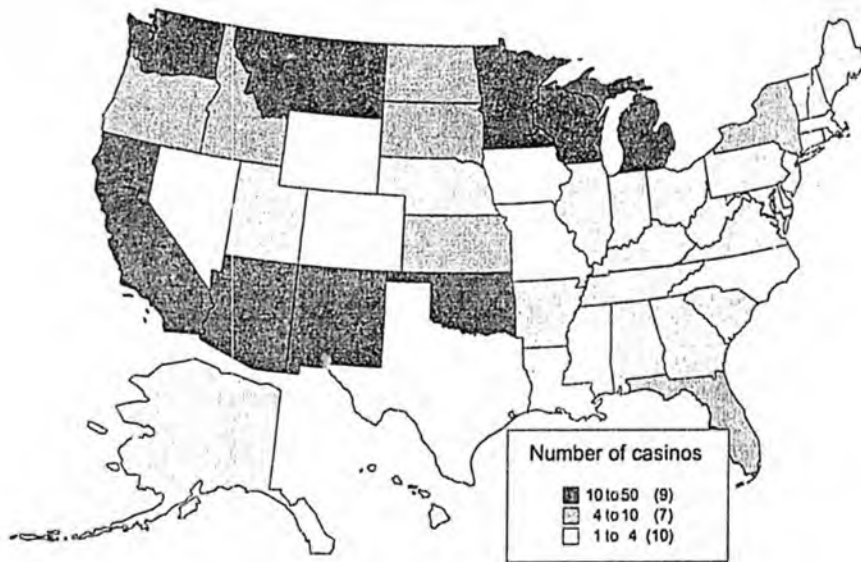


Figure 4: Commercial casinos by state



Table 1: Comparison of commercial and tribal casinos

	Commercial	Tribal
Number of casinos	432	248
Number of counties with casinos	60	192
Total AGR (in millions)	\$26,518.3	\$12,735.4
AGR per casino (in millions)	\$61.4	\$51.4
AGR yearly growth rate 1997-2001 (average)	10.3%	17.7%
Taxes or revenue sharing (in millions)	\$4,038.4	\$781.0
Effective tax or revenue sharing rate	15.2%	6.1%

Table 2: Bankruptcies by County, 1990-1999

	Commercial casinos	Counties with: Tribal casinos	No casino
Growth in individual bankruptcies 1990-99	91.8%	114.3%	100.0%
Median individual bankruptcies 1990 (per 1000 of population)	3.08	1.89	1.83
Median individual bankruptcies 1999 (per 1000 of population)	5.83	4.29	3.82
Median firm bankruptcy 1990 (per 1000 of population)	0.23	0.31	0.20
Median firm bankruptcy 1999 (per 1000 of population)	0.08	0.17	0.10

Table 3: Comparisons of U.S. counties according to casino status

	Counties with:		
	<u>Commercial Casinos</u>	<u>Tribal Casinos</u>	<u>No Casinos</u>
Median Population—1990	43,284	33,828	21,432
Median Population Growth 1990-2000	5.7%	13.9%	8.2%
Median Population per square mile 1990	73.4	27.8	38.1
Median Poverty rate 1990	11.3%	15.2%	13.7%
Median Poverty growth rate 1999	10.3%	13.4%	12.3%
Change in median poverty rate 1990-99	-1.1%	-1.7%	-1.4%
Percent of population over 65-1990	13.0%	14.9%	14.6%
Median growth 65+ population 1990-2000	7.9%	11.5%	7.6%
Median family household income-1989	\$26,721	\$22,570	\$22,637
Median family household income-1999	\$38,472	\$33,867	\$33,505
Median Growth in household income 1989-99	46.8%	48.6%	48.3%
Median unemployment rate-1990	5.7%	6.9%	5.7%
Median unemployment rate-2002	5.4%	6.1%	5.4%

Table 4: Matched counties

	Casino county	Non-casino county
Population Growth, 1990-2000	11.7%	10.6%
Median growth in family income, 1989-99	47.5%	48.2%
Poverty rate-1989	14.4%	13.8%
Poverty Rate-1999	12.8%	12.2%
Unemployment rate-1990	6.5%	5.9%
Unemployment rate-2000	6.0%	5.5%
Increase in individual bankruptcy rate, 1990-99 (median figure per thousand of population)	2.37	2.08
Decrease in firm bankruptcy rate, 1990-99 (median figure per thousand of population)		

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Table 5: Definition of variables used in Equations (1) and (2)

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Mountain	A binary variable equal to 1 if county is located in the Mountain States Region; Equal of zero otherwise.
Southeast	A binary variable equal to 1 if county is located in the Southeast region; Equal of zero otherwise.
Southwest	A binary variable equal to 1 if county is located in the Southwest region; Equal of zero otherwise.
West	A binary variable equal to 1 if county is located in the West region; Equal of zero otherwise.
West north central	A binary variable equal to 1 if county is located in the West North Central region; Equal of zero otherwise.
Change in population	Change in population between 1990 and 2000
Change in unemployment rates	Change in the county unemployment rate between 1990 and 2000
Change in poverty rates	Change in the county poverty rate between 1989 and 1999
Change in family income.	Change in county family income between 1989 and 1999
Added casino	A binary variable equal to one if the county's first casino was constructed in the county between 1990 and 2000

Table 6: Impact of factors on bankruptcy rates

	Individual bankruptcy rates		Business bankruptcy rates	
	<i>Coefficients</i>	<i>t Stat</i>	<i>Coefficient</i>	<i>t-stat</i>
Intercept	9.8850*	2.4246	-0.2574*	-2.1171
Mountain	-3.5014	-0.9699	-0.0289	-0.2685
Southeast	-1.3294	-0.3389	0.0765	0.6541
Southwest	-2.5032	-0.9949	0.0400	0.5331
West	-6.1811*	-2.2470	0.2986*	3.6401
West north central	-0.0026	-0.0010	-0.0896	-1.1639
Change in population	0.0001*	3.6729	0.0402*	-4.2218
Change in unemployment rates	-0.0345	-0.0815	0.0047	0.3754
Change in poverty rates	97.7448*	16.3521	-2.3418*	-13.1370
Change in family income.	-0.0004	-1.3794	0.0001	1.2365
Added casino	3.2506*	1.9347	-0.1266*	-2.5270
Number of observations	482		482	
Rsquared	37.5%		30.3%	

\*indicates that coefficient is statistically significant at 5% level

Table 7: Impact of factors on the change in bankruptcy rates, 1990-99

	Chapter 7		Chapter 11		Chapter 13	
Intercept	5.9036*	2.6375	-0.0968E*	-2.4877	3.8403*	2.1511
Mountain	-1.7851	-0.9007	0.0265	0.7680	-1.6954	-1.0725
Southeast	-1.4100	-0.6546	0.0011	0.0288	0.1557	0.0906
Southwest	-1.5751	-1.1403	0.0205	0.8537	-0.9079	-0.8241
West	-2.8408*	-1.8811	0.0450*	1.7149	-3.0822*	-2.5589
West north central	-0.1662	-0.1173	-0.0036	-0.1460	0.0882	0.0781
Change in population	0.0000*	3.6633	0.0000*	-4.2162	0.0000*	3.5958
Change in unemployment rates	-0.0240	-0.1034	0.0017	0.4140	-0.0084	-0.0456
Change in poverty rates	52.5214*	16.0044	-0.8215*	-14.4050	43.6680*	16.6836
Change in family income.	-0.0002	-1.3731	0.0000	1.4080	-0.0002	-1.3851
Added casino	1.7687*	1.9174	-0.0230	-1.4358	1.3732*	1.8664
Number of observations	482		482		482	
Rsqr	36.5%		32.0%		38.4%	

\*indicates that coefficient is statistically significant at 5% level (one-tail test)

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907-465-5241

**To the Alaska Senate Judiciary Committee:**

**I would like to express my support for the Single Casino Proposal, in Anchorage, which is now before the State Senate. I believe that a single casino in Anchorage will be very beneficial to the economy of Alaska and will bring much needed revenues, jobs, and tourists to our city and state which lacks the traditional resources that many other states have.**

**It is important for the future of Alaska and Anchorage to utilize every possible avenue that could make Alaska a place where people live and prosper for generations to come. The single casino concept in Anchorage has the potential to encourage second generation Alaskans to stay and establish families and homes in Alaska knowing that they have financial security and a future.**

**This idea will also alleviate the struggle we now face regarding the fiscal gap of the state budget by bringing in new sources of state and municipal tax dollars.**

**I therefore encourage the State Senate Judiciary Committee to support and approve this bill to legalize the single casino concept in Anchorage.**

*Richard F. and Victoria J. Seigel*

Signature

*Richard F. & Victoria J. Seigel*

Name

*P.O. Box 664 Seward AK 99664 and 816 OPlace Anchorage 99502*

Address

*907-224 3740 Seward 907 274 3740 Anchorage*

Phone number (optional)

*phone fax*

May 5, 2004

To: Senator Ralph Seekins, Chairman  
Senate Judiciary Committee  
Juneau, AK

Re: HB552

Dear Senator Seekins;

Please be advised that I and my whole family support HB552.

It is the leading topic of conversation at my workplace in Anchorage.

This is strong support for HB552.

Please do not deny us the opportunity to vote on this question.

Thank you,

*George Barth + Family*  
George Barth & Family

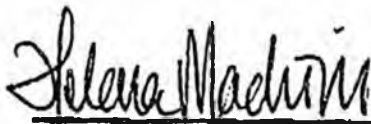
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Signature

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Helena Machini

Name

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21 Creek Street, Ketchikan, AK 99901

Address

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907-225-7698

Phone number (optional)

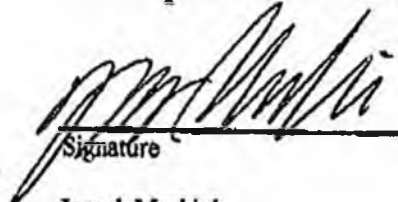
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\_\_\_\_\_  
Signature

Joseph Machini

\_\_\_\_\_  
Name

21 Creek Street, Ketchikan, AK 99901

\_\_\_\_\_  
Address

907-225-7698

\_\_\_\_\_  
Phone number (optional)

## MEMBERS OF THE SENATE JUDICIARY

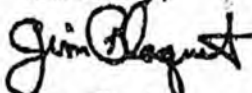
Please pass House bill 552-casino gambling. As a member of organized labor I support this bill. This bill will create high paying jobs so workers can earn and enjoy a livable wage. Paychecks from the casino will fuel the economy that sustains local businesses, schools, hospitals and other essential community services.

This economic engine idea has already been adopted by many other states in the lower 48. Take Las Vegas as an example, one of the fastest growing cities in America and at one time had over 50,000 construction workers gainfully employed.

All we hear from our legislators in Juneau is citizen taxation or using earnings of the permanent fund for State Government. It's time for Alaska to think outside the box and expand its economic base without taxing its citizens.

Please show leadership and let the people of Anchorage decide this issue.

Sincerely,



Jim Plaquet

*file***FOR IMMEDIATE RELEASE**

DATE: May 4, 2004

CONTACT: Brother Charles McBride  
907-297-7721**Alaska Catholic Bishops' Statement on Casino Gambling**

Late in Alaska's current legislative session, HB 552 was introduced to establish the Alaska Gaming Commission and allow the establishment of a casino in Anchorage. After much consideration, we speak in opposition to HB 552 and urge our fellow citizens to join us in opposing this bill.

Catholic teaching has never held that gambling is an inherently immoral activity. However, we do acknowledge that gambling is fraught with possible dangers to the social fabric of our communities and that gambling can cross the line from recreation to enslavement.

Many are familiar with our history of bingo and other games of chance in Catholic parish halls. However, it is always our desire that better stewardship will lead to a decreased dependency on games of chance.

At issue in HB 552 is the possible creation of a casino in Anchorage, Alaska's largest city. The bill was introduced with only five weeks left in the legislative session, allowing little time for public education, discernment, and testimony. The implications of casino gambling are enormous and deserve far greater study than the time remaining in the current session would allow.

The legislative intent of HB 552 is to benefit the people of Alaska by promoting tourism and economic development. We find both assertions questionable.

First, it is difficult to believe that in Alaska, where the natural beauty surpasses what can even be imagined by newly arriving tourists, we must resort to such a dangerous and potentially harmful attraction for tourists. Indeed, gambling will have little lure for tourists who dream of coming to Alaska. But we fear a casino will attract those people in our own communities who are dreaming of a lucky break or a fast buck, and it is for those people we express our concern today.

Second, the economic benefits of expanded gambling operations may well be offset by the cost of the social ills gambling will bring. We can learn from the experience

of other states. Of particular interest is South Dakota, where a 1996 study found that the "availability and accessibility of video lottery machines appears to be an important component in the onset and maintenance of many individuals' problem gambling patterns."

Further, Professor John Kindt of the University of Illinois asserts that for every one dollar in gambling revenue, a state will spend three dollars to finance the increased costs associated with crime and social problems.

Studies suggest a link between widespread gambling and addiction, domestic violence and suicide. We must ask why we would invite gambling into a state that already suffers inordinately from all three of these ills.

Alaskans' per capita consumption of alcohol and drug use is among the highest in the nation, and our dependence on drugs and alcohol is higher than that of any other state.

In 2000, Alaska suffered the highest suicide rate in the nation when 135 people took their own lives, a rate was about twice the national average. The rate among Alaska Natives was four times the national average, and for Alaska Native men it was more than six times the national average.

Domestic violence too, is rampant in Alaska. We are among the top five states for per capita rates of domestic violence. Alaskan women are killed by a partner at rate 1.5 times the national average.

Finally, the economic benefit to the State of Alaska of expanded gambling should in itself cause serious concern. Once the state becomes dependent on tax revenues from gambling, it will be difficult, if not impossible, to retreat from gambling if experience proves it to be a public nuisance.

At this time we express our urgent opposition of HB 552 and suggest questions that have been asked by our fellow bishops in other states. Before casino gambling is even considered by the state, we ask our elected officials, communities of faith, and all members of our society to consider important questions about the implications of casino gambling.

- Will the presence of a casino entice people to gamble more than they can afford to lose?
- Will the presence of a casino aggravate human weaknesses of greed and materialism?
- Will the community be able to minimize the criminal and immoral behavior that often accompanies casino activities?
- Will HB 552 ultimately open the door for electronic gaming machines throughout Alaska?
- Will the expansion of gambling create an unhealthy dependency by the State on casino gambling revenue?

---

\* Video gambling in South Dakota was legalized for several years, and then held to be unconstitutional by the South Dakota Supreme Court. Subsequently a state referendum reinstated video gambling. A study in the January 1996 *South Dakota Journal of Medicine* looked specifically at the "Video Lottery' and Treatment for Pathological Gambling." During a fourteen week period between the South Dakota Supreme Court decision and the state referendum, the video lottery machines were turned off (although other forms of gambling such as scratch tickets and regional lotteries remained available). Data from South Dakota substance abuse treatment centers indicated that when video lottery machines were turned off, inquiries and treatment for problem gambling diminished abruptly. Fourteen weeks later, when the machines were turned on again, inquiries and treatment for problem gambling immediately increased.

- Will the presence of a casino in Anchorage exacerbate Alaska's already unacceptable levels of suicide and domestic violence?

Until these questions have been thoroughly explored by all of Alaska's people, the Alaska legislature should not open the door to the expansion of gambling in Alaska. While we Catholic bishops express our firm opposition to the increased legalization of gambling in Alaska, we also ask people of faith to form their consciences on this matter through prayer, dialogue and education.

Roger L. Schwietz, OMI  
Archbishop of Anchorage  
Archdiocese of Anchorage

Michael W. Warfel  
Bishop of Juneau  
Diocese of Juneau

Donald J. Kettler  
Bishop of Fairbanks  
Diocese of Fairbanks

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 some 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 encouragements for these are needed. One example of an increased rate of suicide is seen in Nevada's Clark County, the home of Las Vegas. During the year 2002, their Coroner's office reported 295 suicides. Similar numbers were seen in previous years. Las Vegas leads the nation in this most depressing statistic.

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, several weeks ago, in our regular Spring meeting, and while no specific resolution on these matters was considered at that meeting, a discussion with a State Senator who briefly visited us, more than amply demonstrated that our opposition to increased gambling within the state remains.

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. It might be noted that the bill now before this body includes language for a local election before plans for a casino could proceed. While an appropriate addition, it is not adequate. The proposed legislation so roundly defeated in 1990 included a similar local election clause. The people still rejected the proposal. Personally, I voted against that measure because I didn't want to see one area be allowed to take actions which I strongly believe would injure all of the state.

Finally, if the committee has any question as to the possibility of the social ills our group is concerned about, I would simply ask you to consider these facts. The tax revenues that will be paid by this proposed casino, the salaries for those employed by the casino, and all of the other costs incurred by this casino, will be paid by those who visit and lose at this casino. Some of these losses will be from those simply engaged in an expensive recreational pursuit. However, I am certain, and there is no shortage of anecdotal information on this, that a significant amount of these losses will come from people who are destroying their personal finances, their families, and as seen in Las Vegas, sometimes quite literally, themselves.

Our state's situation is not nearly so desperate as to take the significant gamble this bill proposes. We have the largest state savings account in the country; we have scenic beauty that Louisiana, Mississippi and Nevada can only dream of, and we have natural resources in an abundance found nowhere else. We need to find solutions to our problems; we don't need to create new ones. Building this casino and the others that will almost certainly follow, will create problems, and not solve them.

**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.

- The bill interferes with the jurisdiction of the Department of Public Safety and Anchorage Police Department:
  - The bill should clarify that the provision for ejection in AS 05.18.100 is in addition to the power of the police to remove a trespasser
  - The provision for complaint regarding an investigation in AS 05.18.120 appears to subject the investigative power of the state and local police to the Alaska Gaming Commission
  - AS 05.18.220 appears to give the Alaska Gaming Commission the right to issue liquor licenses and security guard licenses, currently the responsibility of the Department of Public Safety.
  - The provision regarding inspection of the gambling facility, AS 05.18.450, does not provide authorization for the Anchorage police to inspect a gambling facility
- The forfeiture provision allows the forfeiture of property belonging to innocent suppliers. This probably violates substantive due process as articulated by the Alaska Supreme Court in *State v. Wilder*, 626 P.2d 104 (Alaska 1981).
- The crimes section of the bill (AS 05.18.540) reduces the level of certain crimes already set forth in the criminal code, such as bribery which is reduced from class B felony to a class C felony, and operating an illegal gambling operation which is reduced from a class C felony to a class A misdemeanor.
- The bill has drafting issues, such as the crimes identified in AS 05.18.540(a)(1) and (a)(6) are identical.

AMENDMENT NO. 1

CSHB 552(FIN) am

Page 12, immediately following line 12, insert the following:

(c) Nothing in this section affects the enforcement by appropriate law enforcement officials of state or municipal laws relating to trespass.

AMENDMENT NO. 2

CSHB 552(FIN) am

Page 13, immediately following line 3, insert the following:

(d) For purposes of this section, "investigative procedure" does not include an investigation undertaken by state or local law enforcement officials.

AMENDMENT NO. 3

CSHB 552(FIN) am

Page 18, lines 15 through 18, delete all material and insert the following:

Sec. 05.18.220. **Other licenses.** In addition to the licenses required under AS 05.18.340, before engaging in an activity in a gambling facility that requires a license under state law or municipal ordinance, a licensed owner must obtain the necessary license.

AMENDMENT NO. 4

CSHB 552(FIN) am

Page 25, line 30, after the word "Safety" insert a semi-colon and add the following:

(3) officers of the police department of the municipality in which the gambling facility is located.

AMENDMENT NO. 5

CSHB 552(FIN) am

Page 20, lines 17 through 19, delete all material and insert the following:

**Sec. 05.18.310. Forfeiture of equipment, devices, or supplies.** If a supplier knowingly supplies equipment, devices or supplies to a person in an unauthorized gambling operation, the equipment, devices or supplies shall be forfeited to the state.

AMENDMENT NO. 6  
CSHB 552(FIN) am

**1. Page 26, line 31 through page 27, line 44, delete all material and insert the following:**

**Sec. 05.18.540. Crimes.** (a) A person commits a class A misdemeanor if the person knowingly makes a false statement on an application submitted to the commission under this chapter.

(b) A person commits a class C felony if the person knowingly

(1) operates a gambling operation in which wagering is conducted or is to be conducted in a manner other than the manner required under this chapter;

(2) permits a person under 21 years of age to make a wager;

(3) aids, induces, or causes a person under 21 years of age who is not an employee of the gambling facility to enter or attempt to enter the gambling facility;

(4) wagers or accepts a wager at a location other than a gambling facility owned by a licensed owner;

(5) enters or attempts to enter a gambling facility and is not an employee of the gambling operation and is under 21 years of age.

**2. Page 27, line 15, delete all material and insert:**

(c) A person commits a class B felony if the person knowingly

**3. Page 28, line 3, delete all material and insert:**

(d) A person commits a class C felony if the person knowingly

(1) uses, or possesses with the intent to use, a device to assist in

Renumber remaining subparagraphs accordingly.

AMENDMENT TO CSHB 522(FIN) am:

Page 17, line 24:

Insert "(a)" after the section title.

Page 17, after line 26:

Insert:

"(b) If at any time during the eighth year of continuous licensed operation by the owner, the municipality in which the gambling facility is located adopts an ordinance, ratified by a majority of the municipal voters voting on the question, rescinding its previous authorization granted under AS 05.18.160(a), the owner's license expires 90 days after the certification by the municipal clerk that a majority of the voters has approved rescinding approval."