

HB

272

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 27, 2005

FURTHER REFERRALS:

Date of Committee Action: 4/29/05

The FINANCE Committee considered:

HB 272

HOUSE BILL NO. 272

CARD ROOMS & OPERATIONS

"An Act relating to card rooms and card operations."

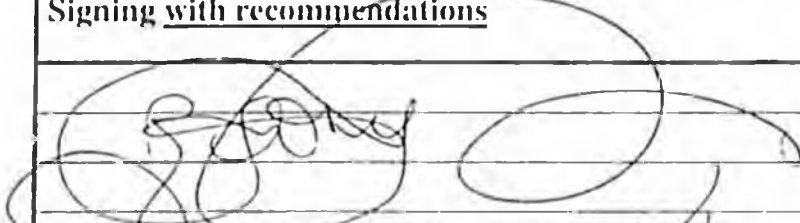
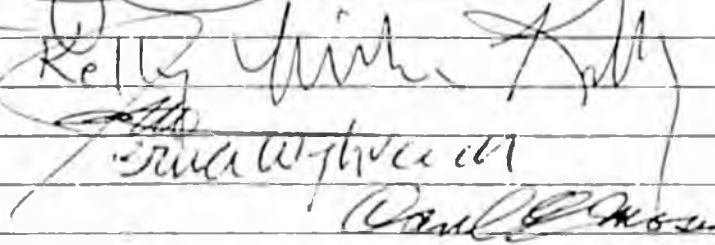
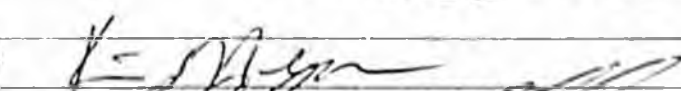
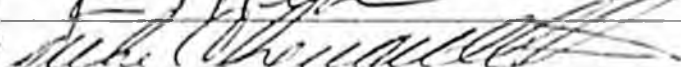
Recommends it be replaced with HCS or ACS for HB 272 (FIN)
 For Senate Bills with new title: Technical Title New Title: HCR Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
REV			✓	

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	FOSTER	X			
Kelly	Kelly		X		
	MOSES	X			
Chair: 	Meyer			X	
Chair: 	Chestnut			X	

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 272 (JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title Card Rooms & Operations RDU Treasury and Tax
Component Tax Division
Sponsor Representative Kott
Requester (H) FIN Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

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

1002 Federal Receipts						
1003 GF Match						
10.
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type -Do not abbreviate)						
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY2005) cost: 00

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	.	.	.	.	.	.
Part-time	.	.	.	.	.	.
Temporary	.	.	.	.	.	.

ANALYSIS: (Attach a separate page if necessary)

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, subject to voter ratification of local ordinances authorizing card rooms and with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000." A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game; Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. There are two issues associated with estimating the maximum number of card rooms that would be allowed under this bill. First, it is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Census Bureau for purposes of estimating the number of card rooms allowed. Second, the term "municipality" is not defined in the bill.

(continued on next page)

Prepared by: Larry Meyers & Brett Fried
Division: Tax Division
Approved by: Dan Dickinson, Director of Tax
Agency: Revenue

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Date: 4/29/2005

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FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSHB 272 (JUD)

ANALYSIS CONTINUATION

Revenue Discussion, Continued

For our reference case, we used the definition of "municipality" in AS 29.71.800 (cities and boroughs) and the April 1, 2000 U.S. Census to estimate that a maximum of 13 card rooms would be possible under this bill: 8 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. The most restrictive interpretation would be if "municipality" referred only to cities. Using this definition and the April 1, 2000 U.S. Census, a maximum of 10 card rooms would be possible: 8 in Anchorage, 1 in Fairbanks and 1 in Juneau. It is important to note that these estimates, including our reference case, assume all eligible municipalities will quickly ratify ordinances authorizing card rooms. Clearly, if a municipality such as Anchorage were not to authorize card rooms this would dramatically reduce card room operations in the state.

In addition to the voter ratification and population rules, there are three other reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. These rules and regulations will be formulated after receiving recommendations from the five member governor-appointed advisory board created under this bill. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,060 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. CSHB 272 imposes an owner's license fee of \$25,000 to apply for a five-year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, posting of a \$500,000 cash bond and biannual occupational licensing fees to be set by the department.

Based on several assumptions, we estimate that one card room in Alaska could generate about \$201,000 in fees for the state in the first year. During years 2 through 5, we estimate a card room in Alaska could generate between \$150,000 and \$167,000 in annual fees for the state. These estimates assume that the average card room will have 15 tables (15 is the maximum allowed in Washington and in California the average is 14.3). The card room is assumed to pay its owner's license fee in the first year with no transfer of ownership over the 5 year license period. This estimate also assumes an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals (for Alaska's biannual licenses this would translate into \$175 + \$84 = \$259 initially and \$84 + \$84 = \$168 for renewals). We assume that Washington's average of 6.7 card room occupational licenses per table will hold in Alaska and that after the first year, all of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. A significant variable affecting revenues would be the actual number of tables card rooms would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues.

One provision of this bill instructs the department to set maximum wagers for card rooms; this restriction along with any maximum rake could have an effect on the revenue generated by potential card rooms. In Washington, non-banked card room wagers are capped at \$25 per player per round, and rakes are capped at \$10 per player per hour or \$1 per player per hand or 10% of the pot up to \$5. Annual gross revenue to card rooms per non-banked table in Washington is \$162,000. In California, there are no maximums placed on rakes or wagers, and the annual gross revenue per non-banked table is about \$409,000.

This bill stipulates that card rooms must hold at least one card tournament per quarter with gross proceeds donated to a nonprofit group. There are many variables that would help determine the total amount generated for charities, including the number of card rooms, the number of tables and rules and regulations adopted by the department. Also, "gross proceeds" is not defined in the bill so it is unclear if prizes or any expenses would be included in this calculation. In Michigan the average Texas Hold Em tournament generates \$2,020 in revenue and \$1,059 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In a 2005 article in the Boston Globe, card tournament supplier Mike Shoehy estimated that "A well run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we anticipate \$512,000 in personnel costs and related expenditures would be necessary to investigate, license and regulate up to 15 card rooms. Also about \$5,930 in RSA's to Public Safety for fingerprint background checks would be required for each card room (assuming 15 tables times 6.7 employees per table times \$59 per employee). The personnel costs are for an Investigator IV, four Investigator I's and an Admin Clerk I's. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 15 card rooms with an average of 15 tables each. Also having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables, we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this bill.

Sources: California Division of Gambling Control; Michigan State Charitable Gaming Division; Montana Gambling Control Division; Washington State Gambling Commission; American Gaming Association "2004 State of the States"

adopted 4/29/05
N/D

24-LS0916F
Kurtz
4/28/05

CS FOR HOUSE BILL NO. 272()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to card rooms and card operations."

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

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

5 LEGISLATIVE INTENT. This chapter is intended to benefit the people of Alaska by
6 promoting tourism and assisting economic development. The public's confidence and trust
7 will be maintained only through the comprehensive law enforcement supervision and strict
8 regulation of card rooms and card operations under AS 05.18.

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

10 Chapter 18. Card Rooms.

11 Article 1. Card Games and Card Rooms.

12 Sec. 05.18.010. Card rooms. (a) Notwithstanding AS 11.66, a person may
13 establish and operate a card room in the state if the person complies with the licensing
14 and other requirements of this chapter, as well as the statutory requirements applying
15 to businesses generally.

1 (b) The following non-banking card games may be played in a card room,
2 according to rules prescribed in regulation by the department:

- 3 (1) poker;
4 (2) pan;
5 (3) rummy;
6 (4) bridge; and
7 (5) cribbage.

8 **Sec. 05.18.020. Presence of department employees in card rooms.**
9 Employees of the department have the right to be present in a card room or any
10 adjacent facilities under the control of a licensed owner.

11 **Sec. 05.18.030. Wagers.** (a) The department shall determine minimum and
12 maximum wagers on card games.

13 (b) A licensed owner may not permit any form of wagering on card games
14 except as permitted under this chapter.

15 (c) Wagers may be received only from a person present in a licensed card
16 room. A person present in a card room may not place or attempt to place a wager on
17 behalf of another person who is not present in the card room.

18 (d) Wagering may not be conducted with money or other negotiable currency.

19 (e) All tokens or chips that are used to make wagers must be purchased from
20 the owner of the card room while the purchaser is in the card room or at a facility that
21 is adjacent to the card room and has been approved by the department. The tokens or
22 chips may be purchased by means of an agreement under which the licensed owner
23 extends credit to the patron.

24 **Sec. 05.18.040. Persons under 21 years of age.** (a) A person who is under
25 21 years of age may not be present in a card room.

26 (b) A person who is under 21 years of age may not make a wager under this
27 chapter.

28 **Article 2. Administration.**

29 **Sec. 05.18.110. Administration, regulation, and enforcement.** (a) The
30 department shall administer, regulate, and enforce the provisions of this chapter. The
31 department:

- 1 (1) shall have all powers and duties specified in this chapter;
- 2 (2) shall have all powers necessary to execute this chapter;
- 3 (3) shall exercise jurisdiction and supervision over the following:
 - 4 (A) all authorized card operations in the state;
 - 5 (B) all persons in card rooms where card operations are
 - 6 conducted;
- 7 (4) shall investigate and reinvestigate applicants and license holders
- 8 and determine the eligibility of applicants for licenses and to require applicants and
- 9 license holders to reimburse the department for the costs of the investigation and
- 10 reinvestigation;
- 11 (5) shall select from among competing applicants the applicants that
- 12 promote the most economic development and that best serve the interests of the
- 13 citizens of the state;
- 14 (6) shall take appropriate administrative enforcement or disciplinary
- 15 action against a licensee under this chapter that violates the provisions of this chapter;
- 16 (7) shall investigate alleged violations of this chapter;
- 17 (8) shall establish fees for the review and investigation of applications
- 18 for the licenses that are authorized under this chapter;
- 19 (9) may conduct hearings;
- 20 (10) may issue subpoenas to compel the attendance of witnesses and
- 21 subpoenas duces tecum for the production of books, records, and other relevant
- 22 documents;
- 23 (11) may administer oaths and affirmations to witnesses;
- 24 (12) shall prescribe a form to be used by a licensed owner as an
- 25 application for employment by potential employees of the card room and licensees of
- 26 the department;
- 27 (13) may revoke, suspend, or renew licenses issued under this chapter;
- 28 (14) may hire employees to gather information, conduct investigations,
- 29 and carry out other tasks under this chapter;
- 30 (15) may take any appropriate action to enforce this chapter, including
- 31 the issuance of notices of violations of this chapter or regulations of the department.

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orders to cease and desist, and closure orders:

(16) may adopt regulations for the implementation and enforcement of this chapter;

(17) shall adopt regulations governing the conduct of card games that may be played in card rooms;

(18) shall adopt regulations specifying the form and amount of charges a card room may impose on players for playing card games in the card room;

(19) may, through the office of the attorney general, apply to the courts for injunctive and declaratory relief in aid of any action or decision of the department on any matter within the jurisdiction of the department.

(b) The Department of Public Safety and the attorney general may assist the department in conducting background investigations of applicants. The department shall reimburse the Department of Public Safety for the costs incurred by the department as a result of assistance provided to the department under this section. The department shall make the payment from fees collected from applicants for licenses.

Sec. 05.18.120. Violations; fees; inspections. (a) The department shall

(1) provide for the establishment and collection of license fees imposed under this chapter and deposit the license fees in the state gaming fund;

(2) levy and collect penalties for noncriminal violations of this chapter and deposit the penalties in the state gaming fund.

(b) The department may enter an office, a card room, or other premises of a person holding an owner's license where evidence of compliance or noncompliance with this chapter is likely to be found.

Sec. 05.18.130. Licensing. (a) The department shall adopt standards for the licensing of persons regulated under this chapter.

(b) The department shall require that the records, including financial statements, of a person holding an owner's license must be maintained in the manner prescribed by the department.

(c) The department may not issue a license to a person who has been convicted of a felony in this or another jurisdiction.

(d) An applicant for a license under this chapter shall provide the following

1 information to the department:

2 (1) the name, business address, and business telephone number of the
3 applicant;

4 (2) an identification of the applicant;

5 (3) the following information for an applicant that is not an individual:

6 (A) the state of incorporation and any states where the
7 corporation is registered to do business;

8 (B) the names and addresses of all corporate officers;

9 (C) the identity of

10 (i) any entity in which the applicant has an equity
11 interest of at least 20 percent; the identification must include the state
12 of incorporation or registration, if applicable; however, an applicant
13 that has a pending registration statement filed with the United States
14 Securities and Exchange Commission is not required to provide
15 information under this item;

16 (ii) the shareholders or participants of the applicant; an
17 applicant that has a pending registration statement filed with the United
18 States Securities and Exchange Commission is required to provide only
19 the names of persons holding an interest of more than 20 percent of all
20 shares;

21 (4) an identification of any business, including the state of
22 incorporation and all states where the business is registered to do business, if
23 applicable, in which an applicant or the spouse or children of an applicant has an
24 equity interest of more than 20 percent of all shares;

25 (5) if the applicant has been indicted, ~~has~~ convicted, pled guilty or
26 nolo contendere, or forfeited bail concerning a criminal offense other than a traffic
27 violation under the laws of any jurisdiction, the applicant must include the following
28 information under this paragraph:

29 (A) the name and location of the court, the arresting agency,
30 and the prosecuting agency;

31 (B) the case number;

- 1 (C) the date and type of offense;
2 (D) the disposition of the charge;
3 (E) the location and length of incarceration, if any;

4 (6) a statement of whether the applicant has filed or had filed against
5 the applicant a proceeding in bankruptcy or been involved in a formal process to
6 adjust, defer, suspend, or work out the payment of a debt, including the date of filing,
7 the name and location of the court, and the case and number of the disposition;

8 (7) a statement of whether the applicant has filed or been served with a
9 complaint or notice filed with a public body concerning a delinquency in the payment
10 of or a dispute over a filing concerning the payment of a tax required under federal,
11 state, or local law, including the amount, type of tax, taxing agency, and times
12 involved;

13 (8) the name and business telephone number of the attorney who will
14 represent the applicant in matters before the department;

15 (9) a description of a proposed or an approved card room, including
16 the expected economic benefit to local communities;

17 (10) the following information from each licensee involved in the
18 ownership or management of card operations:

19 (A) an annual balance sheet;

20 (B) an annual income statement;

21 (C) a list of the stockholders or other persons having at least 20
22 percent beneficial interest in the card room activities of the person who has
23 been issued the owner's license;

24 (D) any other information the department considers necessary
25 for the effective administration of this chapter.

26 (e) The department shall review and approve or disapprove promptly and in
27 reasonable order all license applications.

28 (f) A party aggrieved by an action of the department denying, suspending,
29 revoking, restricting, or refusing the renewal of a license may request a hearing before
30 the department. A request for a hearing must be made to the department in writing not
31 more than 10 days after service of notice of the action of the department.

1 (g) Except as provided in AS 05.18.180, the department shall serve notice of
2 the department's actions under this section on a party by personal delivery or by
3 certified mail. Notice served by certified mail is considered complete on the business
4 day following the date of the mailing.

5 (h) The department shall conduct all requested hearings under this section
6 promptly and in reasonable order.

7 **Sec. 05.18.140. Card room advisory board.** (a) The governor shall appoint
8 five individuals to serve on a card room advisory board. Appointments to the board
9 shall be for a period of five years.

10 (b) The card room advisory board shall make recommendations to the
11 department relating to license applications and policy issues relating to card rooms.

12 (c) Members of the card room advisory board serve without compensation and
13 are not entitled to per diem and travel expenses authorized by law for boards and
14 commissions under AS 39.20.180.

15 **Sec. 05.18.150. Violations of chapter; fraudulent acts.** If a licensee or an
16 employee of a licensee violates this chapter or engages in a fraudulent act, the
17 department may

18 (1) suspend, revoke, or restrict the license of a licensee;

19 (2) require the removal of a licensee or an employee of a licensee from
20 the card room;

21 (3) impose a civil penalty of not more than \$5,000 against an
22 individual who has been issued an occupational license for each violation of this
23 chapter;

24 (4) impose for each violation of this chapter by a licensed owner a
25 penalty of not more than the greater of \$10,000 or an amount equal to the licensee's
26 daily gross receipts for each day of the violation.

27 **Sec. 05.18.160. Investigative procedure; complaints.** (a) The department
28 shall review and make a determination on a complaint by a person who has been
29 issued an owner's license concerning an investigative procedure that the licensee
30 alleges is unnecessarily disruptive of card operations.

31 (b) A licensee filing a complaint under this section must prove by clear and

1 convincing evidence that the investigative procedure

2 (1) does not have a reasonable law enforcement purpose; and

3 (2) is so disruptive as to unreasonably inhibit card operations.

4 (c) For purposes of this section, the need to inspect and investigate a licensee
5 shall be presumed at all times.

6 **Sec. 05.18.170. Transfer of licenses; rules of procedure; prohibitions.** (a)

7 A licensed owner or another person shall apply for and must receive the department's
8 approval before an owner's license is transferred, sold, or purchased or a voting trust
9 agreement or other similar agreement is established with respect to the owner's
10 license. A licensed owner or another person may not lease, hypothecate, or borrow or
11 loan money against an owner's license.

12 (b) The department shall adopt regulations governing the procedure a licensed
13 owner or another person shall follow to take an action under (a) of this section. The
14 regulations must specify that a person who obtains an ownership interest in a license
15 shall meet the criteria of this chapter and regulations adopted by the department. A
16 licensed owner may transfer an owner's license only in accordance with this chapter
17 and regulations adopted by the department.

18 **Sec. 05.18.180. Suspension of license without notice or hearing; revocation**
19 **of license.** (a) The department may suspend a license issued to the owner of a card
20 room without notice or hearing if the department determines that the safety or health
21 of patrons or employees would be threatened by the continued operation of the card
22 room. The opportunity for a hearing shall be provided within a reasonable time
23 following a suspension.

24 (b) The suspension of a license under this section may remain in effect until
25 the department determines that the cause for suspension has been abated. The
26 department may revoke the license if the department determines that the owner has not
27 made satisfactory progress toward abating the hazard.

28 **Sec. 05.18.190. Department records.** (a) Notwithstanding any other law,
29 upon written request from a person, the department shall provide the following
30 information to the person:

31 (1) the information provided under this chapter concerning a licensee

1 or an applicant;

2 (2) a copy of a letter providing the reasons for the denial of an owner's
3 license;

4 (3) a copy of a letter providing the reasons for the department's refusal
5 to allow an applicant to withdraw the applicant's application.

6 (b) The department may assess fees for the copying of information provided
7 by the department to a person requesting information under (a) of this section.

8 Article 3. Licenses.

9 Sec. 05.18.200. Owner's licenses. (a) The department may issue to a person
10 a license to own a card room and conduct card games in any municipality of the state
11 with a population of at least 30,000 according to the most recent federal census
12 information. The total number of owner's licenses issued in a municipality may not
13 exceed the total population of the municipality divided by 30,000.

14 (b) A person applying for an owner's license under this chapter shall pay a
15 nonrefundable \$25,000 application fee to the department.

16 (c) An applicant shall submit the following on forms provided by the
17 department:

18 (1) the information required under AS 05.18.130;

19 (2) if the applicant is an individual, two sets of the individual's
20 fingerprints;

21 (3) if the applicant is not an individual, two sets of fingerprints for
22 each officer and director of the applicant.

23 (d) The department shall review an application for an owner's license under
24 this chapter and inform each applicant of the department's decision concerning the
25 issuance of an owner's license.

26 (e) The costs of investigation of an applicant for an owner's license under this
27 chapter shall be included in the application fee paid by the applicant.

28 (f) An applicant for an owner's license under this chapter shall pay all
29 additional costs that are associated with the investigation of the applicant that exceed
30 the portion of the application fee paid by the applicant that is assessed for the
31 investigation.

1 (g) The department may not issue an owner's license under this chapter to a
2 person if the person

3 (1) has been convicted of a felony under the laws of the state, the laws
4 of another state, or laws of the United States;

5 (2) has knowingly or intentionally submitted an application for a
6 license under this chapter that contains false information;

7 (3) is an officer, a director, or a managerial employee of a person
8 described in (1) or (2) of this subsection; or

9 (4) employs an individual described in (1), (2), or (3) of this subsection
10 and that individual participates in the management or operation of card operations
11 authorized under this chapter.

12 **Sec. 05.18.210. Factors considered in granting owner's licenses;**
13 **submission of design.** In determining whether to grant an owner's license to an
14 applicant, the department shall consider

15 (1) the character, reputation, experience, and financial integrity of

16 (A) the applicant;

17 (B) a person that

18 (i) directly or indirectly controls the applicant; or

19 (ii) is directly or indirectly controlled by the applicant

20 or by a person that directly or indirectly controls the applicant;

21 (2) the card room or proposed card room;

22 (3) the good faith affirmative action plan of each applicant to recruit,
23 train, and upgrade minorities in all employment classifications;

24 (4) the financial ability of the applicant to purchase and maintain
25 adequate liability and casualty insurance;

26 (5) whether the applicant has adequate capitalization to provide and
27 maintain the card room for the duration of the license;

28 (6) the extent to which the applicant exceeds or meets other standards
29 adopted by the department by regulation.

30 **Sec. 05.18.220. Issuance of license; fee; bond.** (a) The department may
31 issue an owner's license to an eligible person if the person pays an initial license fee

1 and posts a bond as required in this section. The annual license fee is \$10,000 for each
2 card table. After a license has been issued, additional tables may be added for an
3 initial license fee of \$10,000 each; however, the full annual renewal fee for each table
4 must be paid on or before the anniversary of issuance of the owner's license,
5 regardless of when the table was added. The department may suspend or revoke a
6 license if the annual license fee is not paid in a timely fashion.

7 (b) A licensed owner must post a \$500,000 cash bond with the department at
8 least 60 days before the commencement of the construction of a card room or the
9 commencement of a card operation under the license, whichever is earlier.

10 (c) The principal of the bond shall be placed without restriction at the disposal
11 of the department, but interest earned on the principal shall inure to the benefit of the
12 licensee.

13 (d) The bond is subject to the approval of the department and must be payable
14 to the department for use by the department in satisfaction of the licensed owner's
15 financial obligations to the local community, the state, and other parties, as determined
16 by regulations of the department.

17 (e) If, following a hearing held after at least five days written notice, the
18 department determines that the amount of a licensed owner's bond is insufficient, the
19 licensed owner shall, upon written demand of the department, file a new bond.

20 (f) The department may require a licensed owner to file a new bond with a
21 satisfactory surety in the same form and amount if

22 (1) liability on the old bond is discharged or reduced by judgment
23 rendered, payment made, or otherwise; or

24 (2) in the opinion of the department, a surety on the old bond becomes
25 unsatisfactory.

26 (g) If a new bond obtained under (e) or (f) of this section is unsatisfactory, the
27 department shall cancel the owner's license. If the new bond is satisfactorily
28 furnished, the department shall release, in writing, the surety on the old bond from any
29 liability accruing after the effective date of the new bond.

30 (h) The total and aggregate liability of the surety on a bond is limited to the
31 amount specified in the bond, and the continuous nature of the bond may not be

1 construed as allowing the liability of the surety under a bond to accumulate for each
2 successive approval period during which the bond is in force.

3 (i) A bond filed under this section is released 60 days after the owner's license
4 expires and a written request for release is submitted by the licensed owner.

5 **Sec. 05.18.230. Tournaments.** The holder of an owner's license for a card
6 room shall host a card tournament at least once each calendar quarter, with the gross
7 proceeds of the tournament to be distributed to a nonprofit educational institution or
8 group designated by the owner. An application for issuance or renewal of an owner's
9 license must include proposed dates for the tournaments, and specify the nonprofit
10 educational institution or group designated to benefit from each tournament. The
11 licensed owner shall notify the department of any change in the date or beneficiary of
12 a tournament. A nonprofit educational institution or group may be the designated
13 beneficiary of only one tournament each year under this section.

14 **Sec. 05.18.240. Term of a license.** An owner's initial license expires five
15 years after the effective date of the license.

16 **Sec. 05.18.250. Revocation of owner's license for delay.** The department
17 may revoke an owner's license if

18 (1) the licensee begins regular operations more than 12 months after
19 receiving the department's approval of the application for the license; and

20 (2) the department determines that the revocation of the license is in
21 the best interests of the state.

22 **Sec. 05.18.260. Renewal of owner's license; compliance investigations.** (a)
23 The owner's license may be renewed for an additional five-year period, provided that
24 the bond required under AS 05.18.220 remains in force, the annual license fees have
25 been paid in a timely fashion, and the requirements of this section are met.

26 (b) A licensed owner shall undergo a complete investigation by the
27 department every five years to determine whether the licensed owner remains in
28 compliance with this chapter.

29 (c) Notwithstanding (b) of this section, the department may investigate a
30 licensed owner at any time the department determines necessary to ensure that the
31 licensee remains in compliance with this chapter.

1 (d) The licensed owner shall bear the cost of an investigation or
2 reinvestigation of the licensed owner and an investigation resulting from a potential
3 transfer of ownership.

4 (e) An owner's license may be renewed only if, during the initial license
5 period, the voters of the municipality in which the card room is located vote in favor
6 of renewal of the license. A municipality in which a card room is located shall place
7 the question on a general or special election ballot before the expiration of the initial
8 license period asking the voters whether they favor or disfavor renewal of the license.

9 **Sec. 05.18.270. Schools for training occupational licensees.** This chapter
10 does not prohibit a licensed owner from operating a school for the training of
11 occupational licensees.

12 **Sec. 05.18.280. Nature of license.** An owner's license is a revocable privilege
13 granted by the state and is not a property right.

14 **Sec. 05.18.290. Occupations requiring license.** The department shall
15 determine the occupations related to card games and card rooms that require a license
16 under this chapter. The department shall require that an individual applying for an
17 occupational license may manage card operations for only one licensed owner.

18 **Sec. 05.18.300. Occupational license; requirements; fees; duration;
19 renewal; compliance investigations.** (a) The department may issue an occupational
20 license to an individual if

21 (1) the individual has applied for the occupational license and provided
22 the information required under AS 05.18.130;

23 (2) a nonrefundable application fee set by the department has been
24 paid on behalf of the applicant in accordance with (b) of this section;

25 (3) the department has determined that the applicant is eligible for an
26 occupational license; and

27 (4) an annual license fee set by the department has been paid on behalf
28 of the applicant in accordance with (b) of this section.

29 (b) A licensed owner or an applicant for an owner's license shall pay the
30 application fee of an individual applying for an occupational license to work at the
31 licensed owner's card operation and any renewal fees on behalf of an employee or

1 potential employee. The licensed owner or applicant for an owner's license may seek
2 reimbursement of the application fee or annual license fee from an employee who is
3 issued an occupational license by the department.

4 (c) A license issued under this section is valid for two years after the date of
5 issuance.

6 (d) Unless an occupational license is suspended, expires, or is revoked by the
7 department, the occupational license may be renewed biennially upon the payment of
8 a license renewal fee by the licensed owner on behalf of the licensee, or by the
9 licensee in an amount established by the department and a determination by the
10 department that the licensee is in compliance with this chapter.

11 (e) The department may investigate the holder of an occupational license at
12 any time the department determines necessary to ensure that the licensee is in
13 compliance with this chapter.

14 (f) A licensed owner or an applicant for an owner's license shall pay the cost
15 of an investigation or reinvestigation by the department of a holder of an occupational
16 license who is employed by the licensed owner. The licensed owner or applicant for
17 an owner's license may seek reimbursement of the cost of an investigation or
18 reinvestigation from an employee who holds an occupational license.

19 **Sec. 05.18.310. Qualifications for occupational license.** The department
20 may not issue an occupational license to an individual unless the individual

21 (1) is at least 21 years of age;

22 (2) has not been convicted of a felony under the laws of this state, the
23 laws of another state, or the laws of the United States;

24 (3) has demonstrated a level of skill or knowledge that the department
25 determines is necessary to operate card games; and

26 (4) has met standards of character and fitness adopted by the
27 department for the holding of an occupational license.

28 **Sec. 05.18.320. Application for occupational license.** (a) An application for
29 an occupational license shall be made on forms prescribed by the department and
30 contain all information required by the department.

31 (b) An applicant for an occupational license shall provide the following

1 information in the application:

2 (1) a statement of whether the applicant has held any other licenses
3 related to card rooms;

4 (2) if the applicant has been licensed in another state under any other
5 name, the name under which the applicant was licensed in the other state;

6 (3) the applicant's age.

7 (c) An applicant for an occupational license shall submit with the application
8 two sets of the applicant's fingerprints. The applicant must submit the fingerprints on
9 forms provided by the department. The department shall charge each applicant the fee
10 set by the Department of Public Safety for state and national fingerprint record
11 searches.

12 **Sec. 05.18.330. Restrictions on issuance of occupational license.** The
13 department may refuse to issue an occupational license to an individual who

14 (1) is unqualified to perform the duties required of the applicant;

15 (2) does not disclose or states falsely any information required by the
16 application;

17 (3) has been found guilty of a violation of this chapter; or

18 (4) has not met standards of character and fitness adopted by the
19 department for the holding of an occupational license.

20 **Sec. 05.18.340. Suspension, revocation, or restriction of licenses.** The
21 department may suspend, revoke, or restrict an occupational licensee for

22 (1) a violation of this chapter;

23 (2) a cause that, if known to the department, would have disqualified
24 the applicant from receiving the occupational license;

25 (3) a default in the payment of an obligation or a debt due to the state;

26 or

27 (4) any other just cause.

28 **Sec. 05.18.350. Schools for training occupational licensees.** (a) This
29 chapter does not prohibit a licensed owner from entering into an agreement with a
30 school approved by the department for the training of an occupational licensee.

31 (b) Training offered by a school described in (a) of this section must be in

1 accordance with a written agreement between the licensed owner and the school and
2 approved by the department.

3 **Sec. 05.18.360. Training locations.** Training provided for occupational
4 licensees may be conducted in a card room or at a school with which a licensed owner
5 has entered into an agreement under this chapter.

6 **Sec. 05.18.370. Convicted felons; rehabilitation; waiver.** (a) An individual
7 applying for an occupational license who is disqualified under AS 05.18.310 due to a
8 conviction for a felony may apply to the department for a waiver of that
9 disqualification, and the department may issue a license to the person if the
10 department determines that the individual has demonstrated by clear and convincing
11 evidence the individual's rehabilitation.

12 (b) In determining whether the individual applying for the occupational
13 license has demonstrated rehabilitation under (a) of this section, the department shall
14 consider

15 (1) the nature and duties of the position for which the individual has
16 applied;

17 (2) the nature and seriousness of the offense or conduct;

18 (3) the circumstances under which the offense or conduct occurred;

19 (4) the date of the offense or conduct;

20 (5) the age of the individual when the offense or conduct was
21 committed;

22 (6) whether the offense or conduct was an isolated or a repeated
23 incident;

24 (7) a social condition that may have contributed to the offense or
25 conduct;

26 (8) evidence of rehabilitation, including good conduct in prison or in
27 the community, counseling or psychiatric treatment received, acquisition of additional
28 academic or vocational education, successful participation in a correctional work
29 release program, or the recommendation of a person who supervises or has supervised
30 the individual;

31 (9) the complete criminal record of the individual;

1 (10) the prospective employer's written statement that

2 (A) the employer has been advised of all of the facts and
3 circumstances of the individual's criminal record; and

4 (B) after having considered the facts and circumstances, the
5 prospective employer will hire the individual if the department grants a waiver
6 of the requirements of this chapter.

7 (c) The department may not waive the requirements of this chapter for an
8 individual who has been convicted of committing any of the following:

9 (1) a felony in violation of federal law, as classified in 18 U.S.C. 3559;

10 (2) a felony of fraud, deceit, or misrepresentation under the laws of this
11 state or another jurisdiction; or

12 (3) a felony of conspiracy to commit a felony of fraud, deceit, or
13 misrepresentation under the laws of this state or another jurisdiction.

14 **Article 4. Crimes.**

15 **Sec. 05.18.400. Crimes.** (a) A person commits a class A misdemeanor if the
16 person knowingly

17 (1) makes a false statement on an application submitted under this
18 chapter;

19 (2) operates a card operation in which wagering is conducted or is to
20 be conducted in a manner other than the manner required under this chapter;

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

22 (4) aids, induces, or causes a person under 21 years of age who is not
23 an employee of the card room to enter or attempt to enter the card room;

24 (5) makes a false statement on an application submitted to the
25 department under this chapter; or

26 (6) enters or attempts to enter a card room and is not an employee of
27 the card room and is under 21 years of age.

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

29 (1) offers, promises, or gives anything of value or benefit

30 (A) to a person who is connected with the owner of a card
31 room, including an officer or an employee of a licensed owner or holder of an

1 occupational license; and

2 (B) under an agreement to influence or with the intent to
3 influence

4 (i) the actions of the person to whom the offer, promise,
5 or gift was made in order to affect or attempt to affect the outcome of a
6 card game; or

7 (ii) an official action of the department;

8 (2) solicits, accepts, or receives a promise of anything of value or
9 benefit

10 (A) while the person is connected with a card room, including
11 an officer or employee of a licensed owner or a holder of an occupational
12 license; and

13 (B) under an agreement to influence or with the intent to
14 influence the actions of the person to affect or attempt to affect the outcome of
15 a card game or an official action of the department;

16 (3) uses, or possesses with the intent to use, a device to assist in
17 projecting the outcome of a card game;

18 (4) cheats at a card game;

19 (5) manufactures, sells, or distributes any cards, chips, or device that is
20 intended to be used to violate this chapter;

21 (6) alters or misrepresents the outcome of a card game on which
22 wagers have been made after the outcome is made sure but before the outcome is
23 revealed to the players;

24 (7) places a bet on the outcome of a card game after acquiring
25 knowledge that is not available to all players and that concerns the outcome of the card
26 game that is the subject of the bet;

27 (8) aids a person in acquiring the knowledge described in (7) of this
28 subsection for the purpose of placing a bet contingent on the outcome of a card game;

29 (9) claims, collects, takes, or attempts to claim, collect, or take money
30 or anything of value in or from a card game with the intent to defraud or without
31 having made a wager contingent on winning a card game;

1 (10) claims, collects, or takes an amount of money or thing of value of
2 greater value than the amount won in a card game;

3 (11) uses or possesses counterfeit chips or tokens in or for use in a card
4 game;

5 (12) possesses a key or device designed for opening, entering, or
6 affecting the operation of a card game, a drop box, or an electronic or mechanical
7 device connected with the card game or removing coins, tokens, chips, or other
8 contents of a card game; this paragraph does not apply to a licensee or an employee of
9 a licensee acting in the course of the employee's employment;

10 (13) possesses materials intended to be used in a manner that violates
11 this chapter.

12 **Sec. 05.18.410. Possession of cheating devices; presumption.** The
13 possession of more than one of the devices described in AS 05.18.400(b) as cheating
14 devices creates a rebuttable presumption that the possessor intended to use the devices
15 for cheating.

16 **Article 5. General Provisions.**

17 **Sec. 05.18.500. State gaming fund.** There is created in the general fund the
18 state gaming fund. The state gaming fund consists of all revenue received from card
19 room activities under this chapter and all other money credited or transferred to the
20 fund from another fund or source.

21 **Sec. 05.18.900. Definitions.** In this chapter,

22 (1) "card game" means a non-banking card game listed in
23 AS 05.18.010(b);

24 (2) "card operation" means the conduct of card games in a licensed
25 card room;

26 (3) "card room" means a structure in which card games authorized
27 under this chapter are conducted by an owner licensed under this chapter;

28 (4) "cheat" means to alter the selection of criteria that determine the
29 result of a card game or the amount or frequency of payment in a card game;

30 (5) "department" means the Department of Revenue;

31 (6) "gross receipts" means the total amount of money exchanged for

1 the purchase of chips or tokens by card room patrons:

2 (7) "intentionally" has the meaning given in AS 11.81.900;

3 (8) "knowingly" has the meaning given in AS 11.81.900;

4 (9) "license" means a license issued by the department under this
5 chapter;

6 (10) "licensed owner" means a person that owns a card room who is
7 licensed under this chapter;

8 (11) "licensee" means a person holding a license issued under this
9 chapter;

10 (12) "owner's license" means a license issued under this chapter that
11 allows a person to own and operate a card room.

12 * Sec. 3. AS 11.66.280(2) is amended to read:

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

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

23 (B) playing an amusement device that

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

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

29 (C) an activity authorized by the Department of Revenue under
30 AS 05.15 or AS 05.18;

31 * Sec. 4. AS 44.64.030(a)(2) is amended to read:

1

(2) AS 05.15 and AS 05.18 (charitable gaming; card rooms):

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 272 (JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title Card Rooms & Operations RDU Treasury and Tax
Component Tax Division
Sponsor Representative Kott
Requester (H) FIN Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

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

1002 Federal Receipts						
1003 GF Match						
1005 GF/Program Receipts
1037 GF/Mental Health						
Other (Specify Type - Do not abbreviate)						
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY2005) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	.	.	.	.	.	.
Part-time	.	.	.	.	.	.
Temporary	.	.	.	.	.	.

ANALYSIS: (Attach a separate page if necessary)

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, subject to voter ratification of local ordinances authorizing card rooms and with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000." A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game; Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. There are two issues associated with estimating the maximum number of card rooms that would be allowed under this bill. First, it is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Census Bureau for purposes of estimating the number of card rooms allowed. Second, the term "municipality" is not defined in the bill.

(continued on next page)

Prepared by: Larry Meyers & Brett Fried Phone 465-2320
Division: Tax Division Date/Time 4/29/05 8:10 AM
Approved by: Dan Dickinson, Director of Tax Date 4/29/2005
Agency: Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSHB 272 (JUD)

ANALYSIS CONTINUATION

Revenue Discussion, Continued

For our reference case, we used the definition of "municipality" in AS 29.71.800 (cities and boroughs) and the April 1, 2000 U.S. Census to estimate that a maximum of 13 card rooms would be possible under this bill: 0 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. The most restrictive interpretation would be if "municipality" referred only to cities. Using this definition and the April 1, 2000 U.S. Census, a maximum of 10 card rooms would be possible: 0 in Anchorage, 1 in Fairbanks and 1 in Juneau. It is important to note that these estimates, including our reference case, assume all eligible municipalities will quickly ratify ordinances authorizing card rooms. Clearly, if a municipality such as Anchorage were not to authorize card rooms this would dramatically reduce card room operations in the state.

In addition to the voter ratification and population rules, there are three other reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. These rules and regulations will be formulated after receiving recommendations from the five member governor-appointed advisory board created under this bill. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,000 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. CSHB 272 imposes an owner's license fee of \$25,000 to apply for a five year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, posting of a \$500,000 cash bond and biannual occupational licensing fees to be set by the department.

Based on several assumptions, we estimate that one card room in Alaska could generate about \$201,000 in fees for the state in the first year. During years 2 through 5, we estimate a card room in Alaska could generate between \$150,000 and \$167,000 in annual fees for the state. These estimates assume that the average card room will have 15 tables (15 is the maximum allowed in Washington and in California the average is 14.3). The card room is assumed to pay its owner's license fee in the first year with no transfer of ownership over the 5 year license period. This estimate also assumes an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals for Alaska's biannual licenses this would translate into \$175+\$84=\$259 initially and \$84+\$84=\$168 for renewals. We assume that Washington's average of 6.7 card room occupational licenses per table will hold in Alaska and that after the first year, all of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. A significant variable affecting revenues would be the actual number of tables card rooms would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues.

One provision of this bill instructs the department to set maximum wagers for card rooms, this restriction along with any maximum rake could have an effect on the revenue generated by potential card rooms. In Washington, non-banked card room wagers are capped at \$25 per player per round, and rakes are capped at \$10 per player per hour or \$1 per player per hand or 10% of the pot up to \$5. Annual gross revenue to card rooms per non-banked table in Washington is \$162,000. In California, there are no maximums placed on rakes or wagers, and the annual gross revenue per non-banked table is about \$409,000.

This bill stipulates that card rooms must hold at least one card tournament per quarter with gross proceeds donated to a nonprofit group. There are many variables that would help determine the total amount generated for charities, including the number of card rooms, the number of tables and rules and regulations adopted by the department. Also, "gross proceeds" is not defined in the bill so it is unclear if prizes or any expenses would be included in this calculation. In Michigan the average Texas Hold Em tournament generates \$2,920 in revenue and \$1,029 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In a 2005 article in the Boston Globe, card tournament supplier Mike Shohy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we anticipate \$512,000 in personnel costs and related expenditures would be necessary to investigate, license and regulate up to 15 card rooms. Also about \$5,930 in RSA's to Public Safety for fingerprint background checks would be required for each card room (assuming 15 tables times 6.7 employees per table times \$59 per employee). The personnel costs are for an Investigator IV, four Investigator I's and an Admin Clerk III. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 15 card rooms with an average of 15 tables each. And having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables, we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this bill.

Sources: California Division of Gambling Control, Michigan State Charitable Gaming Division, Montana Gambling Control Division, Washington State Gambling Commission, American Gaming Association "2004 State of the States"

adopted

4/29/65

AMENDMENT

OFFERED IN THE FINANCE COMMITTEE

BY: Rep. Weyhrauch

TO: CS HB 272

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Page 6, Line 13

after attorney, insert

" , if any, "

adopted 4/29/05

AMENDMENT 2

OFFERED IN THE FINANCE COMMITTEE

BY: Rep. Weyhrauch

TO:

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Page 7, Line 3-4

delete "on the business day"
replace with
"three business days"

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AVRUM M. GROSS (RETIRED)

TELEPHONE: (907) 686-2777
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April 25, 2005

Perry Green
130 W. 4th Avenue
Anchorage, Alaska 99501

Re: Effect of HB 272/SB 165 (Card Rooms) on Indian Gaming in Alaska

Dear Mr. Green:

You have asked what effect, if any, the enactment of HB 272 or SB 165 would have on Indian gaming in Alaska. More specifically, you have asked me to address two questions:

(1) Would the enactment of HB 272 or SB 165 "open the door" to allow Indian tribes in Alaska to operate casino type gaming operations – referred to in the federal Indian Gaming Regulatory Act ("IGRA") as "Class III" games?

The answer is no. As discussed below, all of the card games authorized in HB 272 and SB 165 are Class II games for purposes of IGRA. IGRA authorizes Indian tribes to operate Class III games only if state law does not prohibit them. Alaska law currently prohibits all forms of Class III gaming, and nothing in either bill would authorize Class III games. So long as Alaska law continues to prohibit Class III games, IGRA would not authorize Indian tribes to operate them within Alaska.

(2) Would the enactment of HB 272 or SB 165 "open the door" to additional Class II Indian gaming in Alaska, beyond what is already authorized under existing law?

The answer is no. As discussed below, Alaska currently allows certain organizations and entities to conduct various types of Class II gaming under AS 05.15, including bingo, pull tabs, raffles, lotteries and various lottery type "classics," such as ice classics, rain classics, and salmon classics, among others. In addition, Alaska's criminal code exempts players engaged in social gambling, including players in social card games, from the criminal prohibitions against gambling in the state. Because Alaska currently allows Class II gaming, including card games, IGRA would allow Indian tribes to operate the types of

Class II card games allowed in HB 272 and SB 165 on Indian lands in Alaska – even if neither of those bills were enacted.

I. Brief overview of the Indian Gaming Regulatory Act.

The federal Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq., provides authority for Indian tribes to conduct certain gaming operations on Indian lands.¹ There are three classes of games under the Act.

Class I games include social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations. Tribes may conduct Class I games on Indian lands without oversight by the Indian Gaming.

Class II games include bingo, lotto, pull-tabs, punch boards, tip jars and non-banking card games. Non-banking card games are games in which only the players may make wagers on the outcome, in contrast to "banked" card games such as blackjack, baccarat and chemin de fer, where the player effectively plays against the house or another banker and the house or banker collects money from losers and pays winners. Indian tribes may conduct Class II games on Indian lands if the tribe adopts an ordinance authorizing the activity and receives a permit from the Indian Gaming Commission. IGRA imposes various regulatory requirements on Class II gaming and restricts the uses of revenues from Class II gaming operations.

Class III games include casino type gambling, electronic or electromechanical facsimiles of any games of chance, slot machines, pari-mutuel horse and dog racing, and all other forms of gaming that are not Class I or Class II. For states located within the federal Ninth Circuit (including Alaska), Indian tribes may conduct a Class III game only if the state permits the particular type of game that the tribe seeks to operate. *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 (9th Cir. 1995). Class III games, if they are allowed by the state, may be conducted only in conformity with a negotiated tribal-state compact entered into by the tribe and the state.

II. Enactment of HB 272 or SB 165 would not "open the door" to Class III Indian Gaming in Alaska.

HB 272 and SB 165 are identical bills that would authorize, under various limitations, the operation of card rooms in Alaska for the purpose of playing one or more

¹ IGRA restricts Indian gaming to activities conducted on "Indian lands." This is a significant restriction, and is discussed briefly in Part IV of this opinion, beginning on page 4.

specified "non-banking" card games². The specified games are poker, pan, rummy, bridge and cribbage. Since the only games allowed under the bills are non-banking games, they would be considered as Class II games and not Class III games.

IGRA allows Class III Indian gaming activity only if the activity is "located in a State that permits such gaming for any purpose by any person, organization, or entity." Alaska currently does not permit any type of Class III gaming activity, and nothing in either HB 272 or SB 165 would constitute such permission. Kathryn L. Kurtz, Legislative Counsel, recently provided an opinion to Representative Pete Kott in which she concluded that HB 272 would authorize only Class II games and would therefore not provide a basis for any Class III Indian gaming in Alaska. (Memorandum from Kathryn L. Kurtz to Representative Pete Kott, April 21, 2005.) I agree with her analysis, and rather than repeat it here, I have attached a copy of her opinion to this letter.

III. Authority of Indian Tribes to Conduct Class II Card Games under Existing Alaska Law.

IGRA, in 25 U.S.C. 2710(b)(A), allows an Indian tribe to engage in Class II gaming on Indian lands within the tribe's jurisdiction if

such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law).

AS 05.15 currently allows charitable organizations and municipalities to conduct certain games that would be included within IGRA's definition of Class II games – specifically, bingo, pull tabs, raffles, lotteries and various lottery type "classics" such as the Nenana Ice Classic. Additionally, Alaska's criminal code exempts from prosecution for gambling offenses "a player in a social game." AS 11.66.200. "Social game" is defined in AS 11.66.280(9) as "gambling in a home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game."

There are two alternative bases for concluding that IGRA would permit Indian tribes to operate the types of card games authorized under HB 272 and SB 165, even if neither bill were enacted. The first is that under the authorizing language quoted above, Alaska allows "such gaming" – that is, Class II gaming – of several types. It does not matter that Class II gaming activity is limited to charitable organizations and municipalities. Alaska need only authorize these games for "any purpose by any person,

² Both bills, at page 2, line 1, make it clear that the specified card games are "non-banking." The Senate Labor & Commerce Committee Substitute for SB 165 contains additional language to further emphasize that only "non-banking" games are allowed. The committee substitute, at page 2, lines 18 and 19, provides that wagers may be made only by a player with respect to his or her own game and that players may not make a wager on behalf of another individual.

organization or entity." As noted above, the Ninth Circuit Court of Appeals has ruled that for a Class III game, IGRA authorizes it only if state law permits the same type of game that the tribe seeks to operate. The Court has indicated however, that for Class II games, a less stringent standard will be applied, and a tribe may operate a Class II game if the state permits any person, organization, or entity to operate any Class II game. *See, Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d at 1258 n. 4. Under this analysis, IGRA would authorize Indian tribes to operate Class II card games solely by virtue of current law authorizing charitable organizations and municipalities to operate certain Class II games.

Alternatively, it may be argued that the *Rumsey* analysis should not be applied so broadly where Class II card games are at issue. That is because IGRA makes a distinction in its definition of Class II games between bingo, pull tabs and other bingo-like games on the one hand, and card games on the other. Specifically, IGRA defines Class II card games as games that "are explicitly authorized by the laws of the State" OR that "are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." 25 U.S.C. 2703(7)(A)(ii)(I) and (II). Current Alaska law meets that definition.

While current Alaska law does not "explicitly" authorize non-banking card games, it clearly does not "explicitly" prohibit them, because of the exemption in AS 11.66.200(b) from prosecution for players in social games. Moreover, since non-banking gambling is allowed in Alaska by players in homes, existing law allows for gambling on card games "at any location in the State."

Thus, Indian tribes are authorized under IGRA to operate non-banking card games under Alaska law as it exists today. Enactment of either HB 272 or SB 165 would not be required as a prerequisite to that authorization.

IV. Territorial Restrictions on Indian Gaming in Alaska.

Even though IGRA would authorize Indian tribes to conduct Class II card games in Alaska under existing state laws, there are additional restrictions in IGRA that may serve to minimize the proliferation of such gaming in Alaska. Indian tribes may conduct Class II and Class III gaming operations only on "Indian lands." Indian lands are defined in IGRA, 25 U.S.C. 2703(4), as:

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the

United States against alienation and over which an Indian tribe
exercises governmental power.

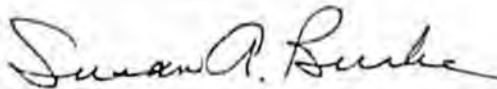
In Alaska, the only lands within an Indian reservation are those within the Metiakatla reservation. The Alaska Native Claims Settlement Act revoked all other reserves set aside for Native use and lands conveyed to regional and village Native corporations are held in fee simple by each corporation. Native corporation lands, then, do not fall within the definition of "Indian lands" because they are not within an Indian reservation, they are not held in trust by the United States, and they are not subject to any restrictions on alienation or sale.

Another category of lands that arguably might constitute "Indian lands" are various Alaska village town sites. While these lands were at one time held in trust, they have since been re-conveyed to the villages in fee simple and are now free of any prior restrictions on the sale of these lands. As a result, village town sites would not qualify as "Indian lands" for purposes of IGRA.

The last category of lands that may constitute "Indian lands" under IGRA are individual Native allotments. There are a number of parcels of land in this category scattered all over the state, and most, if not all, are held by individual Natives and are subject to federal restrictions against alienation. Thus, Native allotments would likely meet two of the three requirements needed to qualify as "Indian lands." What is less clear is whether Native allotments would meet the third requirement that the Tribe must "exercise governmental power" over the lands. This is a complex issue, however, and the result would depend on the facts surrounding the particular parcel in question and the extent to which a recognized tribe actually exercises any governmental powers within the boundaries of that particular parcel.

Please let me know if you have additional questions.

Very truly yours,



Susan A. Burke

SAB:ps

Enclosure

LEGAL SERVICES

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

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Juneau, Alaska 99801-1182
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MEMORANDUM

April 21, 2005

SUBJECT: Card Rooms and Indian Gaming (HB 272)
TO: Representative Pete Kott
FROM: Kathryn L. Kurtz *KLK*
Legislative Counsel

You asked whether this bill would affect Indian gaming in Alaska. I do not think this bill will open the door to class three gaming.

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

- (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
- (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non banking card games, as well as banking card games operated on or before May 1, 1988;¹ and
- (3) Class III gaming includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do

¹ Class II gaming does not include:

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

25 U.S.C. § 2703(b).

Representative Pete Kott
April 21, 2005
Page 2

so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact.

There has been a good deal of litigation involving the various provisions of the IGRA since its passage. Some of that has involved the definition of "Indian lands." Although Alaska has only one remaining reservation, it is not safe to assume that there are no other "Indian lands" in Alaska. There certainly are parcels that are held in trust by the United States that might qualify for purposes of IGRA.

This underscores the significance of the difference between class II and class III gaming. If the legislature permitted class III gaming in state law, it would pave the way for tribes to conduct class III gaming on Indian lands under federal law. However, HB 272 permits only non-banking card games, specifically poker, pan, rummy, bridge, and cribbage games. Poker falls under IGRA's definition of class II games. 25 C.F.R. 502.3; National Indian Gaming Commission Opinion dated June 17, 1999, Re: Game Classification Opinion - "Poker Club."² House banked card games, such as blackjack and baccarat, as well as player banked games, such as chemin de fer, are class III games, 25 C.F.R. 502.4; National Indian Gaming Commission Bulletin No. 95-1, April 10, 1995, but those types of games are not permitted in card rooms under HB 272.

KLK:med
05-284.med

² According to this National Indian Gaming Commission opinion, "Banking games, as commonly understood and defined in the NIGC regulations, are games in which the banker (usually the house) takes on, that is, competes against, all players, collecting from losers and paying winners. See 25 C.F.R. 502.11(c). Conversely, non-banking card games are games where players play against each other. Poker is the typical example of a non-banking card game." The opinion went on to conclude that the proposed poker club would constitute class II, rather than class III gaming: "[A]s proposed, the players in the Nation's Club would play against each other in a non-banking format, not against the house or other banker. Turning Stone and its dealers would not have an interest, financial or otherwise, in the outcome of any poker game. Thus, the poker games to be played at the Club qualify as non-banking card games."

ALASKA STATE LEGISLATURE

Chair:
Legislative Council

Member:
Community and Regional Affairs
Judiciary
Labor and Commerce - Vice Chair



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REPRESENTATIVE PETE KOTT DISTRICT 17 - EAGLE RIVER

Sponsor Statement for

House Bill 272

An Act relating to card rooms and card room operations

The growing popularity of poker is obvious to who have recently surf TV channels. Many networks, from ESPN to the Travel Channel, are regularly televising Texas Hold 'em tournaments and enjoying sky rocketing ratings and subsequent advertising revenues. Men and woman, old and young are joining the poker trend, which shows no signs of slowing. Due to this growth in interest, the intent of HB 272 is to allow social card games to be played in a tightly controlled public environment. Alaska can address the trend and bring this popular pastime into compliance with the safety and revenue laws of the state.

Under HB 272 card rooms would be limited to boroughs with a population of 30,000 or more and only one card room establishment per 30,000 people. These card rooms would be limited to players 21 years of age or older, and they would only offer non-banked card games such as poker, cribbage, rummy, etc.

In addition to the taxable revenue generated by the card rooms, food and drink purchases, and table charges, the establishments would also pay \$10,000 per table annually to the state and would be required to hold quarterly tournaments to benefit a non-profit educational institution or group. As part of the licensing procedure, the card room operators would also be responsible for covering the administrative cost of licensing and subsequent enforcement through a \$25,000 application fee.

In addition to the revenue and job creation, regulated card rooms would allow for players to enjoy their hobby in a safe regulated environment rather than playing in an unsavory, and often unsafe "back room." Currently many players, in addition to their friendly home game, play in underground games where the "house" takes in large profits with little assurance of "fair" play. Although not an everyday occurrence, players at these games have in the past been held up at gunpoint with little recourse because of the shady and illegal nature of the game.

By recognizing this trend and the fact that we already allow this type gaming in our homes, Alaska can address the issue head on and make card games a legitimate, safe, social activity that will increase revenue and job opportunities while minimizing the negative effects of underground gambling.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 272
(H) Publish Date: 4/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title Card Rooms & Operations RDU Treasury and Tax
Component Tax Division
Sponsor Representative Kott
Requester (H) L&C Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

CAPITAL EXPENDITURES
-----------------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()
-------------------------------	---	---	---	---	---	---

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Larry Meyers & Brett Fried Phone 465-2320
Division: Tax Division Date/Time 4/1/2005
Approved by: Jerry Burnett, Special Assistant to the Commissioner Date _____
Agency: Department of Revenue

FISCAL NOTE #3

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB 272

ANALYSIS CONTINUATION

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000". A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game. Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. It is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Bureau of Census for purposes of determining the number of card rooms allowed. We used the April 1, 2000 U.S. Census to determine that a maximum of 13 card rooms would be possible under this bill: 8 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. We assume the definition of "municipality" in AS 29.71.800, which includes first-class and home-rule cities and boroughs.

There are three reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision that will be made by potential licensees. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,060 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. SB 165 imposes an owner's license fee of \$25,000 to apply for a five-year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, and the department is authorized to set occupational licensing fees.

Based on several assumptions, we estimate that the maximum of 13 card rooms in Alaska would generate about \$2.5 million in fees for the state in the first year. During years 2-5, we estimate the maximum of 13 card rooms in Alaska would generate \$2.1 million in annual fees for the state. These estimates assume that there will be the maximum of 13 card rooms with an average of 15 tables each (15 is the maximum allowed in Washington and in California the average is 14.3). All card rooms are assumed to pay their owner's license fees in the first year and would not transfer ownership over the 5-year license period. These estimates also assume an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals. We assume that Washington's average of 6.7 gaming employees per table will hold in Alaska and that after the first year, two-thirds of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. Of course, a significant variable affecting revenues is the actual number of tables any individual card room would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues. California and Washington are useful comparisons because both states have data available specifically for non-banked card rooms.

This bill stipulates that card rooms must hold at least one card tournament per quarter with proceeds donated to a nonprofit group. There are many variables that would help determine tournament proceeds, including the number of card rooms, the number of tables, rules and regulations adopted by the department, and other factors. In Michigan the average Texas Hold-Em tournament generates \$1,099 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In an article in the Boston Globe, card tournament supplier Mike Sheehy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first-place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we would anticipate \$448,600 in total costs with \$371,600 in personnel costs and related expenditures and \$77,000 in RSAs to Public Safety for fingerprint background checks. The personnel costs are for an Investigator IV, four Investigator III's and an Admin Clerk III. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 13 card rooms with an average of 15 tables each. Also having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this Bill.

HB 272 - "An Act relating to card rooms and card operations."

Possible gross sales & employee information for card room operations

\$4 Rake	5	10	15	25	50	100	150
Tables	5	10	15	25	50	100	150
\$90/hr avg	\$450.00	\$900.00	\$1,350.00	\$2,250.00	\$4,500.00	\$9,000.00	\$13,500.00
9hrs/day avg table use	\$4,050.00	\$8,100.00	\$12,150.00	\$20,250.00	\$40,500.00	\$81,000.00	\$121,500.00
Yearly Sales*	\$1,478,250.00	\$2,956,500.00	\$4,434,750.00	\$7,391,250.00	\$14,782,500.00	\$29,565,000.00	\$44,347,500.00

*exclusive of non-card game operations

Avg # Employees Per Table	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Total Number of Employees	22.5	45	67.5	112.5	225	450	675

Types of Employees

Dealer (Mimum Wage +Tips)	\$250-300/day *
Cashiers (part-time)	\$10/hr *
Janitorial/Maintenance	\$8/hr *
Security	\$10/hr *
Brushperson	\$10/hr *
Shift Manager	\$45,000/yr *
Card Room Manager	\$65,000/yr *
	*Plus Benefits