

HB

61

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 5 2005

SENATE FINANCE
COMMITTEE

DATE: 4/29/05

FURTHER:

DATE TURNED
IN TO OFFICE:

5 May 2005

Finance Committee considered CS FOR HOUSE BILL NO. 61(FIN)

HB 61 GAMING: CALCUTTA POOLS & CRANE CLASSICS

"An Act relating to Calcutta pools and crane classics as authorized forms of charitable gaming."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous S CS CS HB 61 (L&C)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
Rev.	4/14/05		+		#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>		✓	✓	
<i>[Signature]</i>		✓		
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SCS CSHB 61(L&C)
(S) Publish Date: 4/29/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Charitable Gaming; Calcutta Pools RDU Taxation and Treasury
Component Tax
Sponsor Representatives McGuire, Ramras, F. Foster
Requester (S) 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 ()						
	3.0	3.0	3.0	3.0	3.0	3.0

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						

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, Deputy Director Phone 907-269-6620
Division: Tax Division Date/Time 4/14/05 12:47 PM
Approved by: Jerry Burnett Date 4/14/2005
Agency: Department of Revenue

FISCAL NOTE # 2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SCS CSHB 61(L&C)

ANALYSIS CONTINUATION

Please see below for a discussion of revenue and costs.

REVENUE

There are three U.S. states which expressly allow calcutta pools: Montana, Wyoming, and North Dakota. Of these, the only state that maintains statistics on its calcutta pools is North Dakota. North Dakota's statutes regarding calcutta pools are very similar to CSHB 61. For instance, both North Dakota and CSHB 61 regulate calcutta pools as games of chance; both stipulate an age requirement of 18 or over; both limit calcutta pools to amateur and professional sporting events held in the state; and both disallow calcuttas for youth events or academic sporting events. Calcuttas also compete with bingo and pull tabs in both states. In addition, Alaska's adult population (18+) of 467,206 is very close to North Dakota's 495,411 adults.

Although there are many similarities between the structure of the calcutta games and the potential gaming population in both states, there is one significant difference. North Dakota has at least five Indian casinos in addition to bingo, pull-tabs and calcuttas, and is bordered by three states (Minnesota, South Dakota and Montana) with casino gambling or video lottery terminals; Alaska has none. For this reason, we believe the introduction of calcutta gambling has the potential to have the biggest impact on charitable gaming since the legalization of pull-tabs in 1988. For instance, it is theoretically possible to have as many calcuttas on a single major Alaskan sporting event such as the Iditarod, as there are organizations holding gaming permits (approximately 1,250).

In FY 2004, gross proceeds from North Dakota's calcuttas were \$204,679. If we assume the same level of calcutta pools in Alaska, calcutta net proceeds going to qualified organizations would be (\$204,679 x 30%) \$61,404. New revenue to Alaska would be \$614 (the 1% of net proceeds fee). Clearly, even if calcutta pools were significantly more popular in Alaska than in North Dakota, revenue to the state would still be very small. For every million dollars wagered on a calcutta, Alaska's revenue would increase by \$3,000. However, the same amount of wagers would increase the net proceeds of qualified organizations by \$300,000.

EXPENSES

Initially, we expect that the passage of this legislation will generate great interest in its fundraising potential and result in the issuance of approximately 700 additional permits, considerable staff time dealing with numerous inquiries regarding licensing, accounting issues, and game rules, as well as, audits, complaints, and on site inspections.

If Calcuttas are as popular as projected, we will need to add an Administrative Clerk III, at an annual cost of \$48,900 for personal services, \$1,000 for supplies, and \$3,567 for contractual services.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE LESLIE MCGUIRE
HOUSE DISTRICT 28

Chair
Judiciary Committee

Member
House Leadership
Rules Committee
Health, Education
& Social Services
Committee
Oil & Gas Committee
Military & Veterans'
Affairs Committee

SECTIONAL ANALYSIS HB 61

"An Act relating to Calcutta pools and crane classics as a form of charitable gaming"

Section 1 – Amends AS 05.15.080(a) by adding a Calcutta pool as an exception for *not* submitting a report to the department if a Calcutta pool is, in fact, the only activity conducted by the qualified organization. (Or a Calcutta pool added to page 1, line 13 and page 2)

Section 2 – Amends AS 05.15.080 by adding a new subsection. The purpose of this subsection is to require those holding Calcutta pools to file a report for each pool conducted on a form prescribed by the Department of Revenue.

Section 3 – Amends AS 05.15.100(a) by adding crane classics, Calcutta pools (added to page 2, line 17) to the list of activities that are permitted by the Department of Revenue if the municipality or organization qualifies to hold such an activity.

Section 4 – Amends AS 05.15.100(c) by clarifying that an operator's license may not be issued to any person to conduct a Calcutta pool. The Calcutta pool must be overseen by an individual who is directly involved with the organization holding the permit. (Other than a Calcutta pool, was added to page 2, line 21 and page 2, line 24)

Section 5 – Amends AS 05.15.115(e) by adding crane classics (added to page 3, line 1) to distinguish the difference between these particular activities among others listed in this section.

Section 6 – Amends AS 05.15.160(d) by adding or Calcutta pools (page 3, lines 4 & 5) to the types of activities that are not under a category a gaming activity that may not exceed 90 percent of the adjusted gross income from that activity. (this is further clarified in the next section)

Section 7 – Amends AS 05.15.160 by adding a new subsection (e) that clarifies that the total amount of expenses that may be incurred and prizes that may be awarded in connection with a Calcutta pool may not exceed 50 percent of the pool of wagers.

Therefore, guaranteeing the permittee/charity receive no less than 30 percent of the pool of wagers/money raised.

Section 8 – Amends AS 05.15.180(b) by adding crane classics, Calcutta pools (page 3, line 16) to the list of activities that can be licensed by the department if they were not in existence before January 1, 1959.

Section 9 – Amends AS 05.15.180 by adding a new subsection (h). This subsection clarifies that Calcutta pools may not be conducted for elementary, secondary, postsecondary, or youth organization sporting events. The organization holding the Calcutta pool may not accept a wager on a competitor unless the competitor is at least 18 years of age. And a person may not place wager on a competitor unless the competitor is 18 years of age or older. This subsection also clarifies that a Calcutta pool may not be conducted unless the rules for a Calcutta pool are publicly posted and available to all participants in the pool. And only one Calcutta pool can be conducted per event and the Calcutta pool permits are limited to the organization conducting the event. *For example, the only Iditarod Committee can hold a Calcutta for the Iditarod.*

Section 10 – Amends 05.15.690 by adding new paragraphs that clearly define a Calcutta pool and crane classic.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

*Calcutta's
(for future
legislative change)*

State of Alaska
Department of Revenue
Tax-Division-Gaming Group
State Office Building
PO Box 110420
Juneau, Alaska 99811-0420

July 15, 2004

To: Vicki Otto
ANCSA Regional CLOs
Fax: 907-265-4528

From: Jeff Prather
Fax: 907-465-3098

I am writing in response to your fax of this morning.

A Calcutta is not an authorized gaming activity under AS 05.15.

It is my understanding that a Calcutta is an illegal gambling activity in Alaska (unless the Calcutta can be structured to meet certain criteria - see the attached copy of an Attorney General Memorandum regarding the fundamental characteristics of gambling dated April 2, 2004).

Please be advised that it is a violation of AS 05.15 for a permitted organization to conduct an unauthorized gaming activity.

cc: Gary Dodson, Chief of Investigations

MEMORANDUM

State of Alaska
Department of Law

To: Scott Nordstrand
Deputy Attorney General
Department of Law
Office of the Attorney General

Date: April 2, 2004

File No:

Tel. No.: (907) 465-3600

Fax: (907) 465-2539

From: Michael A. Barnhill MB
Assistant Attorney General
Commercial and Fair Business Section

Subject: Fundamental characteristics
of gambling

The purpose of this memo is to identify the fundamental characteristics of gambling. The definition of gambling in Alaska is found in the criminal code, but this statutory definition both relies upon and is informed by the common law of gambling. Thus, this memo will discuss both the statutory and common law definitions of gambling.

Gambling has long been held to exist at common law when one "pays for a chance to obtain a prize." *State v. Pinball Machines*, 404 P.2d 923, 925 (Alaska 1965). In 1978, the legislature relied upon this common law definition of gambling to craft a new definition of gambling for purposes of the criminal code. See Commentary on the Alaska Revised Criminal Code, SCS HB 661 at 112 (June 12, 1978). Gambling is currently defined in statute to mean:

that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that that person or someone else will receive something of value in the event of a certain outcome. . . .

AS 11.06.280(2). According to the Commentary, "the definition includes any activity that brings a profit based on chance and includes ordinary lotteries." Commentary on the Alaska Revised Criminal Code, SCS HB 661 at 113 (June 12, 1978). The statutory elements of gaming are therefore as follows:

1. the staking or risking of something of value
2. upon a contest of chance

Scott Nordstrand
Re: Fundamental characteristics of gambling

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3. with the agreement or understanding
4. that someone will get something of value as profit

Where the Alaska definition requires an "agreement or understanding," the cases at common law often require similar concepts of a *purpose*, reason or inducement. In other words, the purpose, reason or inducement for payment must be to obtain a prize. If the reason for paying is something other than getting a prize, then the activity is not gambling.¹

An appellate court in Illinois discussed this purpose element in a case from 1939:

The controlling fact in the determination of whether a given scheme or business is a lottery is determined by the nature of the appeal which the business makes to secure the patronage of its customers. If the controlling inducement is the lure of an uncertain prize, then the business is a lottery.

Kent v. City of Chicago, 22 N.E.2d 799 (Ill. App. 1939) (emphasis added), quoted by, *G.A. Carney, Ltd. v. Brzeczek*, 453 N.E.2d 756, 760 (Ill. App. 1983). This opinion has been cited with approval in past opinions of this office. See Inf. Op. Att'y Gen. at 4 (663-00-0212, Oct. 17, 2000); Inf. Op. Att'y Gen. at 11 (663-93-0004, Sept. 2, 1992).

Moreover, the cases suggest that the purpose must be to win something more than what is placed at risk: "It may be true that the player receives the value of the money he deposits in the slot, but he stands a chance to get twenty times its value, and it is the pressure of this chance that continues the progress of the game and makes it a game of chance." *Alexander v. City of Atlanta*, 179 S.E.177, 178 (Ga. 1905), quoted by Inf. Op. Att'y Gen. at 9 (663-93-0004, Sept. 2, 1992). According to Am. Jur. 2d, "The vice of various gambling games or projects lies in the payment of money for the opportunity to win more money by a scheme of chance." 38 Am. Jur. 2d *Gambling* § 245 (1959) (emphasis added). In other words, it is not gaming unless the participant "has a chance of gain and takes a risk of loss." *Id.* This concept is echoed in the legislative history to the current definition of gambling: "the definition includes any activity that brings a profit based on chance and includes ordinary lotteries." Commentary on the Alaska Revised Criminal Code, SCS HB 661 at 113 (June 12, 1978) (emphasis added).

¹ Although this memorandum discusses the concept of "purpose," it is not intended to express an opinion on the specific culpable mental state required for any criminal offense—a topic governed by statute and Alaska case law. Later in this memorandum is a discussion of the concept of inducement in terms of what can be subjectively or objectively determined. This, too, it is not intended to express an opinion on whether a subjective or objective standard is required for any criminal offense.

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In summary, if the purpose, understanding or agreement with respect to an activity is to pay for the chance to make a profit, then the activity is gambling under Alaska law. If any of the required elements is lacking, the activity is not gambling.

Accordingly, we can conceive of a variety of activities that do not constitute gambling under Alaska law. For instance, many charitable organizations host fundraising dinners at which door prizes are given away. For most participants, the purpose or controlling inducement for attendance at such a function is to contribute to a worthy cause—not to win a door prize. But the concept of controlling inducement or purpose is often subjective, and may depend on the varying motivations of individual participants. However, from an objective standpoint, if the ticket to get into the dinner costs \$20, the fair market value of the dinner is \$10 and the maximum value of any door prize is \$10, there is no possibility of profit to the participant in this scenario—regardless of the motivation or expectation of the participants that they may win a door prize. In such a case, we do not think the activity meets the definition of gambling under Alaska law.

Other kinds of fundraising events in Alaska have other inducements in addition to contributing to a worthy cause. For example, there may be entertainment and refreshments, or the participants may have the opportunity to meet a person of some prominence. It is difficult or impossible to place a value on these types of inducements. If, in addition, the fundraising event also awards door prizes equal to or less than the price of admission, we do not think such events fall into the category of gambling.

We note the possibility, however, that there may be events (either fundraising events or commercial operations) in which contests of chance are bundled with lodging, hunting, fishing or other activities that ordinarily come at some cost and the value of the possible prize is quite high. Thus, the purpose of the participants may not be able to be objectively determined, and the contests of chance could constitute gambling. But if the maximum value derived by the participants is necessarily less than the fee to participate, the definition of gambling has not been met. For example, if a participant pays \$2000 to attend a fundraising event at a ski resort, the actual value of the food, lodging and entertainment of the event is \$1500 and the maximum amount of prizes that can be awarded to the participant is \$400, then the event is probably not gambling. The operators of such games of chance would be well-advised to maintain careful records, and to be prepared to demonstrate to state or municipal officials that the value of the inducements provided does not exceed the cost of participating.

We recognize that the variation in fact patterns are infinite. Thus, this memorandum should be treated as a general enforcement guideline only. Where the inducements to participating in an event are substantial, and thus the purpose in participating may be unclear, the facts should be reviewed on a case-by-case basis before enforcement action is begun. However, as was noted in a previous opinion, it has been

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the longstanding policy of the Department of Law not to provide legal advice to private persons or businesses, and this is especially important in areas that may implicate criminal laws such as gambling. See Inf. Op. Att'y Gen. at 1 (063-01-0183, May 22, 2001). When existing contests of chance are changed or new contests developed, the operators frequently contact government officials seeking legal opinions as to whether the contests are illegal gambling. Despite the best efforts of investigators and government attorneys, the advice provided in these situations often leaves a question unanswered and is sometimes imprecise. We do not wish to become so involved with structuring contests of chance that we become, in essence, legal advisors to the gaming industry.

MAB:mi

SENATE COMMITTEE REPORT

DATE: 3/29/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/29/05

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 61(FIN)

HB 61 GAMING: CALCUTTA POOLS & CRANE CLASSICS

"An Act relating to Calcutta pools and crane classics as authorized forms of charitable gaming."

and recommends:

- be replaced with S CS CSHB 61 (LEC)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
REV	4/19/05	✓	1		2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

	DO PASS	DO NOT PASS	NO REC	AMEND
Ellis <i>[Signature]</i>			X	
Davis <i>[Signature]</i>			↑ X	
B. Stevens <i>[Signature]</i>	✓			
CHAIR: Seekins <i>[Signature]</i>	✓			