

ALASKA LEGISLATURE

2604

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

WHAT HAPPENS IF THE AMENDMENT IS CHALLENGED AS UNCONSTITUTIONAL?

There is no significant risk of the proposed amendment being held unconstitutional. The Model Escrow Statute, or versions identical to it in other states, has been challenged and consistently been upheld as a valid enactment. For example, in Star Scientific Inc. v. Beales, 278 F.3d 339 (4th Cir.), cert. denied, 123 S.Ct. 93 (2002), the Fourth Circuit Court of Appeals held that Virginia's statute was constitutional under the Equal Protection, Due Process, and Commerce Clauses. In none of the lawsuits has a court suggested that the aspect of the statute that the proposed legislation would amend is necessary to its constitutionality.

Moreover, in the unlikely event the amendment were challenged and struck down as unconstitutional, there exists a "back-up provision" which eliminates the paragraph dealing with the allocable share release in its entirety. Should the Model Escrow Statute thereafter be held unconstitutional due to the ABSENCE of the allocable share release paragraph, then the original Model Escrow Statute language would be restored. As a result, in the extremely unlikely event that BOTH alternative changes (i.e., eliminating the loophole, and eliminating the release paragraph altogether) are held unconstitutional, the Statute would be restored to its original constitutionally upheld position. This "revival" provision is a general rule that exists in every state – namely if an unconstitutional amendment is passed, the law is restored to its prior condition. (Think of it this way: If you amend your assault statute, and the amendment is held to be unconstitutional, assault doesn't suddenly become legal. Rather, the law is restored to its original position, because the unconstitutional change is deemed to be a nullity.)

WILL PASSAGE OF THE AMENDMENT PUT AT RISK MY STATE'S MSA PAYMENTS?

NO. Passing the amendment will NOT jeopardize a State's MSA payments. The only parties that could make such a challenge are parties to the MSA. The parties that make the preponderance of the payments have signed letters of assurance that the amendment will not affect the salutary effect of the Model Escrow Statutes. Companies that want to maintain an unfair competitive advantage may try to scare States with misinformation so that they can continue to profit by exploiting the loophole in the current statute. States that enact the amendment will ensure that NPMs who sell in their States make escrow deposits as originally intended.

HOW WILL THIS AMENDMENT PROTECT PUBLIC HEALTH?

Studies have repeatedly demonstrated that cheap cigarettes are favored by kids, who tend to be more price-sensitive than adults. By ensuring that NPM cigarette prices include some of the cost burden imposed on the State, this amendment will maintain the price of NPM cigarettes at a higher level and help discourage another generation of minors from becoming addicted to cigarettes.

WILL THE PROPOSAL HAVE A FISCAL IMPACT?

The proposed amendment would likely be "revenue neutral." Escrow deposits do not constitute state revenues; they remain the property of the NPM. However, the legislation would likely result in a reduction in the administrative costs of enforcing the Model Escrow Statute because there would be fewer requests for releases from escrow for the State to process. Moreover, should the State obtain a judgment against an NPM to recover the health care costs imposed on the State by the NPM's products, the proposed legislation would enhance the State's ability to recover that judgment.

Chapter 45.53. CIGARETTE SALES

Sec. 45.53.010. Tobacco product Master Settlement Agreement recognized.

The Master Settlement Agreement entered into by certain United States tobacco product manufacturers and the state, and related documents, for settlement of claims raised in State of Alaska v. Philip Morris, Incorporated, and approved by the Alaska Superior Court on February 9, 1999, are recognized.

Sec. 45.53.020. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 4, 1999, shall do one of the following:

(1) become a participating manufacturer, as that term is defined in sec. II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2) place into a qualified escrow fund on or before April 15 of the year following each listed calendar year the following amounts, as such amounts are adjusted for inflation:

(A) for 1999, \$.0094241 per unit sold on or after June 4, 1999, but before January 1, 2000;

(B) for 2000, \$.0104712 per unit sold during that year;

(C) for each of 2001 and 2002, \$.0136125 per unit sold during the year in question;

(D) for each of 2003 through 2006, \$.0167539 per unit sold during the year in question;

(E) for each of 2007 and each year thereafter, \$.0188482 per unit sold during the year in question.

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and

only to the extent and at the time necessary to make payments required under the judgment or settlement;

(2) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer, as such payments are determined under sec. IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in sec. IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) to the extent not released from escrow under (1) or (2) of this subsection, funds placed into escrow shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) To be a qualified escrow fund under this section, the

(1) fund must be an escrow fund governed by an escrow arrangement with a federally or state chartered financial institution having no affiliation with a tobacco product manufacturer and having assets of at least \$1,000,000,000; and

(2) escrow arrangements described in (1) of this subsection must

(A) require that the financial institution hold the principal of the escrow fund for the benefit of releasing parties; and

(B) prohibit the tobacco product manufacturer that places money into the escrow fund from using, accessing, or directing the use of the principal of the fund except as consistent with this section.

Sec. 45.53.030. Regulations.

The commissioner of revenue shall adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to ascertain the amount of excise tax paid on the cigarettes of a tobacco product manufacturer for each year for which the manufacturer is required to place money into a qualified escrow fund under AS 45.53.020 .

Sec. 45.53.040. Certification of compliance; civil actions.

(a) A tobacco product manufacturer that elects to comply with AS 45.53.020 by placing money into escrow under that section shall annually, at

the time of compliance, certify to the commissioner of revenue that it is in compliance with AS 45.53.020 .

(b) If the commissioner of revenue does not timely receive a certification of compliance from a tobacco product manufacturer as required by (a) of this section, the commissioner shall notify the attorney general. The attorney general shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 . The attorney general may bring a civil action on behalf of the state against a tobacco product manufacturer that fails to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 . The court, upon a finding of a tobacco product manufacturer's

(1) violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in an amount not to exceed five percent of the amount improperly withheld from escrow, for each day of the violation; the total amount of the penalty under this paragraph may not exceed 100 percent of the original amount improperly withheld from escrow;

(2) knowing violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in an amount not to exceed 15 percent of the amount improperly withheld from escrow, for each day of the violation; the total amount of the penalty under this paragraph may not exceed 300 percent of the original amount improperly withheld from escrow; and

(3) second knowing violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020, and may impose a monetary penalty as described in (2) of this subsection, and shall prohibit the manufacturer from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(c) In addition to the civil penalties described in (b) of this section, the court may award the state full reasonable attorney fees and costs if the state prevails in a civil action brought under (b) of this section.

(d) Each failure to make an annual placement of money into a qualified escrow fund as required by AS 45.53.020 is a separate violation for the purposes of this section.

Sec. 45.53.100. Definitions.

In this chapter,

(1) "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set out in Exhibit C to the Master Settlement Agreement;

(2) "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person; in this paragraph,

(A) "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more;

(B) "person" means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

(3) "allocable share" means allocable share as that term is defined in the Master Settlement Agreement;

(4) "cigarette"

(A) means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by, consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (i) of this subparagraph;

(B) includes "roll-your-own"; for purposes of this subparagraph,

(i) 0.09 ounces of "roll-your-own" tobacco constitutes one individual "cigarette;"

(ii) "roll-your-own" includes any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes;

(5) "Master Settlement Agreement" means the settlement agreement and related documents described in AS 45.53.010 ;

(6) "original participating manufacturer" means "original participating manufacturer" as that term is defined in the Master Settlement Agreement;

(7) "qualified escrow fund" means a fund described in AS 45.53.020(c);

(8) "released claims" means "released claims" as that term is defined in the Master Settlement Agreement;

(9) "releasing parties" means "releasing parties" as that term is defined in the Master Settlement Agreement;

(10) "tobacco product manufacturer"

(A) means an entity that, on or after June 4, 1999, directly, and not exclusively through an affiliate,

(i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered to be a tobacco product manufacturer under this clause (i) if, first, such cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of sec. II(11m) of the Master Settlement Agreement and that pays the taxes specified in sec. II(z) of the Master Settlement Agreement, and, second, the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(ii) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) becomes a successor of an entity described in (i) or (ii) of this subparagraph;

(B) does not include an affiliate of an entity described in (A) of this paragraph unless the affiliate itself meets the standards set out in any of (A)(i) - (iii) of this paragraph;

(11) "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or

through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers.

THE ALLOCABLE SHARE AMENDMENT GETTING THE FACTS

- Myth:* The proposed legislation is a violation of the deal the States made with the tobacco manufacturers when the MSA was negotiated. The deal then was that a manufacturer could come into the agreement or else abide by the Model Statute. We chose to abide by the model statute and we have done so. Now the rules are changing.
- Fact:** The only agreement the States entered into was the Tobacco Master Settlement Agreement (MSA). The States entered into no agreement with companies that refused to join the MSA. While the Settling States have passed statutes that apply to companies that refused to join the MSA, States were not required to do so nor did this constitute any agreement with NPMs. Moreover, it is within the province of the State legislatures to amend a State statute if it believes it is warranted.
- Myth:* If this legislation is passed, an NPM would have to escrow more per cigarette than Philip Morris or RJ Reynolds has to pay.
- Fact:** The proposed legislation *limits* the escrow contributions an NPM makes. An NPM will never be required to deposit into the escrow account any more on a per-cigarette basis than Participating Manufacturers pay to the States under the MSA.
- Myth:* In the absence of the current release provision, an NPM would have to escrow more than Philip Morris actually paid per-stick.
- Fact:** Even without a release, NPMs contribute much less in escrow than Philip Morris pays. By way of example, in the absence of any release, for sales in 2002 an NPM would have had to contribute 1.53 cents per stick to escrow. For cigarettes sold in 2002 Philip Morris actually paid 2.0 cents per stick. (\$3.8 billion paid on 189 billion sticks). Philip Morris also made substantial payments to the American Legacy Foundation and the four Previously Settling States.
- Myth:* Participating Manufacturers who sell a disproportionate percentage of their cigarettes in a few states may pay less per cigarette than an NPM escrows.
- Fact:** MSA payments by Participating Manufacturers are calculated on a national basis. A Participating Manufacturer makes the same payment no matter what State or States the cigarettes are sold in. The number of cigarettes sold in an individual State is irrelevant to the calculation of its payment. Under the MSA a State receives its allocable share of the total payments no matter how many or how few cigarettes a Participating Manufacturer happens to sell in that State.
- Myth:* This legislation is unfair to small companies.

Fact: Many small companies are either Participating Manufacturers (there are over 40 Participating Manufacturers and some of them are small family-owned businesses) or NPMs with widely dispersed sales. The current statute allows some companies—those with sales concentrated in a few states — to avoid making the necessary deposits into escrow so that a fund would be available to satisfy State claims in the event the State obtains a judgment against an NPM. Additionally, the current statute allows only certain NPMs to compete unfairly with NPMs that have widely dispersed sales.

Myth: *The legislation tries to punish small companies for competing effectively with Philip Morris and the other OPMs.*

Fact: The legislation merely imposes requirements that are evenhanded. Under existing law, some NPMs escrow 30 cents per pack. Others escrow 3 cents per pack. That distinction gives some NPMs an advantage that is unfair. A lot of their sales growth came because they have had that unfair advantage, not because they make a superior product.

Myth: *"I have a client who made an escrow deposit of \$10.6 million in a state but was entitled under the existing statute to get \$10.1 million back. If my client had to pay \$10.6 million rather than \$500,000 in escrow payments, they would be out of business."*

Fact: In order to sell enough cigarettes to have an obligation of \$10.6 million, an NPM had to sell 700 million cigarettes. Those 700 million cigarettes will eventually impose a large cost on the State and its taxpayers in health care costs. The tiny amount per stick that was left in escrow does not come close to the cost those cigarettes will impose. The refund left the State and its taxpayers unable to recover their costs. Moreover, the only reason this company could sell 700 million cigarettes was that it had an unfair price advantage over companies who were either making MSA payments or were paying the full amount of escrow deposits. The loophole in the escrow statute operates to give only certain NPMs a windfall. This unfair result was not intended by the Escrow Statutes and those NPMs don't have the right to enjoy that windfall indefinitely.

Myth: *Companies that take advantage of this legislation are not hurting the States.*

Fact: NPMs were not released from claims by the States and are not required to abide by the public health provisions of the MSA. Additionally, NPMs do **NOT** pay anything to the States. However, the States lose potential MSA revenue every time a smoker chooses to buy a pack of NPM cigarettes. In 2002, the States lost \$450 million in revenue because of NPM sales.¹ That amounts to a significant

¹ Payments to the Settling States from the four largest companies alone for sales were reduced by \$2.3 billion in 2002 because of the reduction in volume sold by those companies. Shipments by those companies fell by 111 billion cigarettes from the base year of 1997. Reductions in cigarettes consumed nationally since the base year accounted for about 75 billion cigarettes, but sales by NPMs increased by at least 22 billion cigarettes. Thus, a

loss in every Settling State. (See Table 1). States have no obligation to continue conferring unfair advantages on companies whose sales cost them revenues. States that fail to enact this legislation are sacrificing state revenue.

Myth: The legislation will cost States money.

Fact: The legislation will save the States money. The legislation costs nothing to implement and will lessen the administrative burden on State Attorneys General and Revenue offices. In addition, once a critical mass of states enact the legislation, the decline in MSA revenue due to the loophole in the Escrow Statutes will stop, and states should recapture some of the MSA revenue that has been lost. To the extent that a state loses any tax revenue on reduced cigarette sales – and this is not likely to happen in any but a handful of states – the small loss in tax revenue would be overwhelmed by the gains in MSA revenue.

Myth: NPMs have a right to compete. The States are just trying to protect the major tobacco companies.

Fact: Companies that joined the MSA not only make payments to the states, but they also have to observe restrictions on advertising, marketing and promotion of their cigarettes.

Companies that chose not to join the MSA were not released from claims by the States. NPMs do NOT make MSA payments, are NOT required to abide by the public health provisions of the MSA and DO use marketing and advertising channels forbidden to Participating Manufacturers.

There is a real difference between the marketing policies of NPMs and those permitted by the MSA. One NPM recently distributed free packs of cigarettes at a convenience store directly across the street from an elementary school and advertised free samples on a van. NPMs engage in outdoor advertising and some host on-line catalogs of brand-name merchandise. Advertising and distributing cigarettes in all these fashions are not permitted by MSA companies and such activities violate the intent of the MSA concerning youth targeting.

In addition, NPMs have to make escrow contributions but the states do NOT get those revenues. NPMs retain ownership of their escrow funds and NPMs collect the interest. In contrast, payments by the Participating Manufacturers under the MSA are paid directly to the States. Under current law, some NPMs' escrow contributions are both far less than the payments the Participating Manufacturers make to the states and also far less than the escrow contributions of other NPMs. It's time to put a stop to this discrimination.

minimum of 20 percent of the payment lost to the Volume Adjustment is the result of increased NPM sales. The States are at further risk if, in addition to the Volume Adjustment, a Non-Participating Manufacturer Adjustment is imposed.

Myth: The MSA was a scheme hatched by OPMs to protect them from competition. Companies that joined the MSA as SPMs had to agree to restrict their output. Now they are trying to eliminate competition from NPMs.

Fact: The year before the MSA was signed companies that became SPMs sold 12 billion cigarettes. In 2002 SPMs sold 30 billion cigarettes. They did not restrict their output. They have greatly expanded it. Participating Manufacturers also face competition from NPMs. NPMs have a right to sell their cigarettes but they don't have a right to do so on terms that unfairly discriminate against other companies and fail to provide security to the states for the costs their cigarettes impose on the states.

Myth: The legislation would put NPMs out of business.

Fact: Many NPMs do not take advantage of the loophole and are not at risk by this legislation. The legislation would help ensure that NPMs price their products to reflect their escrow payments as participating manufacturers must price their products to reflect their MSA payments.

Myth: The legislation would retroactively require NPMs to make up for refunds received in earlier years.

Fact: The legislation would apply *only* to requests for release of escrow made after the effective date of the legislation.

Myth: The Allocable Share Amendment is not supported by NAAG.

Fact: The proposed Allocable Share Amendment is supported by the members of NAAG. It was developed by the members of NAAG in consultation with the NAAG Tobacco Project as is the normal process for developing model state legislation affecting the MSA. The NAAG Tobacco Committee has considered and approved the model Allocable Share Amendment.

Myth: NPMs don't market to kids.

Fact: Cheap cigarettes appeal to kids. Studies show there is a greater elasticity of demand for kids than for adult smokers.² This makes sense because kids have less disposable income. The states should not be encouraging the sale of cheap cigarettes. Moreover, NPMs continue to use marketing and advertising channels directed at youth that are forbidden to Participating Manufacturers. The state's desire to curb youth smoking is an important objective.

² See, e.g., Chaloupka, Frank. Macro-Social Influences: The Effects of Prices and Tobacco-Control Policies on the Demand for Tobacco Products, *Nicotine & Tobacco Research*, vol. 1, Supplement 1, September 1, 1999 and sources cited therein.

Participating Manufacturers to the MSA that have executed assurances and support the Allocable Share legislation:

Brown & Williamson
Caribbean-American Tobacco
Chancellor Tobacco Company
Commonwealth Brands, Inc.
Monte Paz
Daughters & Ryan, Inc.
Dhanraj Imports, Inc.
Eastern Company S.A.E.
Imperial Tobacco Limited/ITL
King Maker Marketing
Konci G&D Management Group

Kretek International
Lane Limited
Ligget Group, Inc.
Lignum-2, Inc.
Lorillard Tobacco Company
Mac Baren Tobacco Company
Peter Stokkebye International
Philip Morris Incorporated
Planta Tabak-manufaktur GmbH.
Premier Manufacturing Inc
P.T. Djarum

R.J. Reynolds Tobacco
Santa Fe Natural Tobacco
Sherman 1400 Broadway
Top Tobacco, LP
Vector Tobacco, Inc.
Virginia Carolina Corporation,
Von Eicken Group
Wind River Tobacco Company,
Winner Sales Company

**Estimated Reduction in State MSA Payments
Caused by Increased NPM Sales – 2002 Sales**

Table 1

STATE	\$450 Million	State's Allocable Share (Exhibit A - MSA)
Alabama	\$7,272,588.60	1.62%
Alaska	\$1,536,384.15	0.34%
Arizona	\$6,632,480.25	1.47%
Arkansas	\$3,726,297.45	0.83%
California	\$57,437,799.30	12.76%
Colorado	\$6,168,876.30	1.37%
Connecticut	\$8,354,417.85	1.86%
Delaware	\$1,779,612.75	0.40%
D.C.	\$2,732,032.35	0.61%
Georgia	\$11,045,058.75	2.45%
Hawaii	\$2,708,392.50	0.60%
Idaho	\$1,634,684.40	0.36%
Illinois	\$20,944,112.40	4.65%
Indiana	\$9,179,114.85	2.04%
Iowa	\$3,913,501.50	0.87%
Kansas	\$3,751,520.40	0.83%
Kentucky	\$7,925,213.70	1.76%
Louisiana	\$10,149,088.95	2.26%
Maine	\$3,462,077.25	0.77%
Maryland	\$10,172,056.50	2.26%
Massachusetts	\$18,175,405.50	4.04%
Michigan	\$19,583,764.20	4.35%
Missouri	\$10,235,704.95	2.27%
Montana	\$1,911,415.95	0.42%
Nebraska	\$2,677,424.85	0.59%
Nevada	\$2,744,707.95	0.61%
New Hampshire	\$2,996,703.00	0.67%
New Jersey	\$17,401,483.35	3.87%
New Mexico	\$2,683,753.65	0.60%
New York	\$57,429,139.50	12.76%
North Carolina	\$10,495,282.50	2.33%
North Dakota	\$1,647,062.10	0.37%
Ohio	\$22,668,794.10	5.04%
Oklahoma	\$4,662,616.50	1.04%
Oregon	\$5,164,461.90	1.15%
Pennsylvania	\$25,860,864.60	5.75%
Rhode Island	\$3,235,074.30	0.72%
South Carolina	\$5,293,583.55	1.18%
South Dakota	\$1,570,256.10	0.35%
Tennessee	\$10,984,025.25	2.44%
Utah	\$2,001,991.05	0.44%
Vermont	\$1,850,332.95	0.41%
Virginia	\$9,201,352.95	2.04%
Washington	\$9,239,661.90	2.05%
West Virginia	\$3,989,071.80	0.89%
Wisconsin	\$9,314,175.50	2.07%
Wyoming	\$1,117,552.05	0.25%
American Samoa	\$68,476.50	0.02%
N. Mariana Island	\$37,969.20	0.01%
Guam	\$98,716.95	0.02%
U.S. Virgin Island	\$78,116.85	0.02%
Puerto Rico	\$5,045,748.30	1.12%

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 503
 () Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Tobacco Master Settlement Agreement RDU Revenue Programs & Services
 Component Tax Division
 Sponsor House Finance
 Requester House Finance Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Tobacco Master Settlement Agreement - Bill Analysis

This bill, based on a model developed by the National Association of Attorneys General in cooperation with a working group of participating states, is designed to preserve, to the fullest extent possible, the revenue stream under the tobacco product Master Settlement Agreement (MSA) and AS 45.53. One of the provisions of the MSA required states to enact legislation that would "level the playing field" for non-participating tobacco manufacturers by requiring them to deposit money into escrow for every cigarette they sell in the state. Nonparticipating manufacturers have discovered a "loophole" that allows them to remove escrow payments from individual state escrow accounts which has given them a competitive advantage over those manufacturers that signed the MSA. This bill is intended to close the "loophole" and ensure a "level playing field" as originally intended by AS 45.53

Prepared by: Johanna Bales Phone 269-6628
 Division: Tax Division Date/Time 2/24/04 4:39 PM
 Approved by: Steve Porter, Deputy Commissioner Date 2/24/2004
 Agency: Department of Revenue

Alaska State Legislature

House Finance Committee



REPRESENTATIVE
BILL WILLIAMS

Co-Chair

(907) 465-3424

Fax: (907) 465-3793

INTERIM ADDRESS

50 Front Street, Suite 203

Ketchikan, Alaska 99901

(907) 247-4627

Fax: (907) 225-7157

REPRESENTATIVE
JOHN HARRIS

Co-Chair

(907) 465-4859

Fax: (907) 465-3799

INTERIM ADDRESS

State Capitol, Room 507

Juneau, AK 99801-1182

State Capitol, Juneau, Alaska 99801-1182

SECTIONAL ANALYSIS

HOUSE BILL 503: *An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.*

Section 1: Amends AS 45.53.020(b)(2), Requirements. Language clarifies that a non-participating tobacco manufacturer in the Master Settlement Agreement must deposit money into escrow for every cigarette they sell in the state. Removes a loophole that allowed NPMs to remove escrow payments from individual state accounts. Currently, an NPM is supposed to deposit only a percentage of its cigarette sales into escrow.

Section 2: Repeals and reenacts AS 45.53.020(b), Requirements. Provisional language if a court finds section 1 of this legislation unconstitutional. States that funds placed into escrow may only be released to pay a judgment or settlement on a released claim or after 25 years after the date on which funds were placed into escrow.

Section 3: Repeals and reenacts AS 45.53.020(b), Requirements. Provisional language if a court finds section 1 and/or section 2 of this legislation unconstitutional. Reverts to original language found in current statute, AS 45.53.020(b).

Section 4: Conditional effective date. Section 2 takes effect only if section 1 of this bill is found to be unconstitutional. If section 2 is found to be unconstitutional, then section 3 takes effect.

Section 5: Section 1 effective date of July 1, 2004

Section 6: Section 2 takes effect on the day after the date of a final order or decision by a court if section 1 is found to be unconstitutional.

Section 7: Section 3 takes effect on the day after the date of a final order or decision by a court if section 2 is found to be unconstitutional.

2-25-04
law

**NPM Escrow Release Calculations
for hypothetical non participating manufacturer
Cheap Smokes, Inc.**

Cheap Smokes' national cigarette sales	100,000,000
Approx. MSA Contr./cigarette	\$0.02
"As if" MSA Contribution	\$2,000,000
Alaska MSA Allocable Share Percentage	0.003414187
AK allocable share of Cheap Smokes' "as if" MSA payment	\$6,828.37
Cheap Smokes' sales in AK	1,000,000
Approx. Escrow Deposit/cigarette	\$0.02
Escrow Deposit Requirement	\$20,000
Current Law:	
Escrow Release Threshold	\$6,828.37
Escrow Release Amount	\$13,171.63
Amount Left in Escrow	\$6,828.37
Effective Amount Deposited/Cigarette	\$0.0068
HB 503 Proposal, Section 1:	
Escrow Release Threshold	\$20,000
Escrow Release Amount	\$0.00
Amount Left in Escrow	\$20,000
Effective Amount Deposited/Cigarette	\$0.02
HB 503 Proposal, Section 2:	
Escrow Release Threshold	none
HB 503 Proposal, Section 3:	same as current law

prepared by AAG Mike Barnhill, Alaska Department of Law, 2/25/04
HB 503

HB

503

SFIN

FILE



Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 213
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: May 8, 2004
TO: Finance Committee
(Mindy, Room 520)
FROM: Office of the Senate Secretary
SUBJ: Referral Change

The Co-Chair of the Committee noted above has waived the referral(s) on the following bills(s):

RETRIEVE

HOUSE BILL NO. 503

"An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date."

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you.

Alaska State Legislature
House Finance Committee

REPRESENTATIVE
BILL WILLIAMS

Co-Chair

(907) 465-3424

Fax: (907) 465-3793

INTERIM ADDRESS

50 Front Street, Suite 203

Kotchikan, Alaska 99901

(907) 247-4627

Fax: (907) 225-7157



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
JOHN HARRIS

Co-Chair

(907) 465-4859

Fax: (907) 465-3799

INTERIM ADDRESS

State Capitol, Room 507

Juneau, AK 99801-1182

MEMORANDUM

TO: Senator Gary Wilken, Co-Chair
Senator Lyda Green, Co-Chair
Senate Finance Committee

FROM: Representative John Harris, Co-Chair
House Finance Committee

DATE: April 20, 2004

RE: Request for Scheduling

Please consider this request to schedule House Bill 503: An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date, at your earliest possible convenience.

The bill requires non-participating manufacturers to make a deposit into escrow that is roughly the same as what they would pay under the Master Settlement Agreement. So if the MSA would require tobacco manufacturers to pay 2 cents per cigarette, under this statute they have to deposit into escrow 2 cents per cigarette—and leave it there. In sum, it ensures that all tobacco manufacturers selling cigarettes in Alaska will pay approximately 2 cents per cigarette, either into an escrow account or into the MSA revenue fund.

I appreciate your consideration of my request. Please do not hesitate to contact either Tom Wright of my staff or me if we can provide further information or answer any questions you may have in regards to this legislation.

Alaska State Legislature

House Finance Committee



REPRESENTATIVE
BILL WILLIAMS

Co-Chair

(907) 465-3424

Fax: (907) 465-3793

INTERIM ADDRESS

50 Front Street, Suite 203

Ketchikan, Alaska 99901

(907) 247-4627

Fax: (907) 225-7157

REPRESENTATIVE
JOHN HARRIS

Co-Chair

(907) 465-4859

Fax: (907) 465-3799

INTERIM ADDRESS

State Capitol, Room 507

Juneau, AK 99801-1182

State Capitol, Juneau, Alaska 99801-1182

SPONSOR STATEMENT

HOUSE BILL 503: *An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.*

HB 503 is a bill related to the tobacco Master Settlement Agreement. Under the Master Settlement Agreement, we enacted AS 45.53 in 1999 so as to level the economic playing field between those tobacco manufacturers that participated in the MSA and those that didn't. AS 45.53 requires all non-participating manufacturers to deposit a certain amount of money into an escrow account—this year about two cents per cigarette—in order to level the playing field.

AS 45.53 lets non-participating manufacturers withdraw money from the escrow account if the amount they put in is more than what the state would have received had the non-participating manufacturer ("NPM") been a participant in the MSA. While this sounds fair, in actual practice it is not. It allows NPMs to concentrate their markets in certain states and receive a substantial windfall by withdrawing from the escrow account far more than was originally intended.

This bill was drafted by the National Association of Attorneys General and was unanimously supported by its membership. Simply put, it requires NPMs to make a deposit into escrow that is roughly the same as what they would pay under the MSA. So if the MSA would require tobacco manufacturers to pay 2 cents per cigarette, under this statute they have to deposit into escrow 2 cents per cigarette—and leave it there. In sum, it ensures that all tobacco manufacturers selling cigarettes in Alaska will pay approximately 2 cents per cigarette, either into an escrow account or into the MSA revenue fund.

This bill has two contingent sections, if for some reason a court objects to this provision. If section 1 is found unconstitutional, then section 2 comes into effect which would prohibit any withdrawal by an NPM from an escrow account until the money has been in escrow for 25 years. If section 2 is found unconstitutional, then the current language now in effect is revived in section 3.

Alaska State Legislature
House Finance Committee

REPRESENTATIVE
BILL WILLIAMS

Co-Chair
(907) 465-3424
Fax: (907) 465-3793

INTERIM ADDRESS
50 Front Street, Suite 203
Ketchikan, Alaska 99901
(907) 247-4627
Fax: (907) 225-7157



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
JOHN HARRIS

Co-Chair
(907) 465-4859
Fax: (907) 465-3799

INTERIM ADDRESS
State Capitol, Room 507
Juneau, AK 99801-1182

SECTIONAL ANALYSIS

HOUSE BILL 503: *An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date.*

Section 1: Amends AS 45.53.020(b)(2), Requirements. Language clarifies that a non-participating tobacco manufacturer in the Master Settlement Agreement must deposit money into escrow for every cigarette they sell in the state. Removes a loophole that allowed NPMs to remove escrow payments from individual state accounts. Currently, an NPM is supposed to deposit only a percentage of its cigarette sales into escrow.

Section 2: Repeals and reenacts AS 45.53.020(b), Requirements. Provisional language if a court finds section 1 of this legislation unconstitutional. States that funds placed into escrow may only be released to pay a judgment or settlement on a released claim or after 25 years after the date on which funds were placed into escrow.

Section 3: Repeals and reenacts AS 45.53.020(b), Requirements. Provisional language if a court finds section 1 and/or section 2 of this legislation unconstitutional. Reverts to original language found in current statute, AS 45.53.020(b).

Section 4: Conditional effective date. Section 2 takes effect only if section 1 of this bill is found to be unconstitutional. If section 2 is found to be unconstitutional, then section 3 takes effect.

Section 5: Section 1 effective date of July 1, 2004.

Section 6: Section 2 takes effect on the day after the date of a final order or decision by a court if section 1 is found to be unconstitutional.

Section 7: Section 3 takes effect on the day after the date of a final order or decision by a court if section 2 is found to be unconstitutional.

**NPM Escrow Release Calculations
for hypothetical non participating manufacturer
Cheap Smokes, Inc.**

Cheap Smokes' national cigarette sales	100,000,000				
Approx. MSA Contr./cigarette	\$0.02				
"As if" MSA Contribution	\$2,000,000				
	Alaska	Washington	California	Oregon	Total
MSA Allocable Share Percentage	0.003414187	0.020532582	0.127639554	0.0114766	
Allocable share of Cheap Smokes' "as if" MSA payment	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,125.81
Cheap Smokes' sales	1,000,000	20,000,000	75,000,000	4,000,000	100,000,000
Approx. Escrow Deposit/cigarette	\$0.02	\$0.02	\$0.02	\$0.02	
Escrow Deposit Requirement	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000
Current Law:					
Escrow Release Threshold	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,126
Escrow Release Amount	\$13,171.63	\$358,934.84	\$1,244,720.89	\$57,046.84	\$1,673,874
Amount Left in Escrow	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,126
Effective Amount Deposited/Cigarette	\$0.0068	\$0.0021	\$0.0034	\$0.0057	\$0.0033
HB 503 Proposal, Section 1:					
Escrow Release Threshold	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000
Escrow Release Amount	\$0.00	\$0.00	\$0.00	\$0.00	\$0
Amount Left in Escrow	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000
Effective Amount Deposited/Cigarette	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02
HB 503 Proposal, Section 2:					
Escrow Release Threshold	none				
HB 503 Proposal, Section 3:					
	same as current law				

prepared by AAG Mike Barnhill, Alaska Department of Law, 2/26/04
HB 503

Chapter 45.53. CIGARETTE SALES

Sec. 45.53.010. Tobacco product Master Settlement Agreement recognized.

The Master Settlement Agreement entered into by certain United States tobacco product manufacturers and the state, and related documents, for settlement of claims raised in *State of Alaska v. Philip Morris, Incorporated*, and approved by the Alaska Superior Court on February 9, 1999, are recognized.

Sec. 45.53.020. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after June 4, 1999, shall do one of the following:

(1) become a participating manufacturer, as that term is defined in sec. II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2) place into a qualified escrow fund by April 15 of the year following each listed calendar year the following amounts, as such amounts are adjusted for inflation:

(A) for 1999, \$.0094241 per unit sold on or after June 4, 1999, but before January 1, 2000;

(B) for 2000, \$.0104712 per unit sold during that year;

(C) for each of 2001 and 2002, \$.0136125 per unit sold during the year in question;

(D) for each of 2003 through 2006, \$.0167539 per unit sold during the year in question;

(E) for each of 2007 and each year thereafter, \$.0188482 per unit sold during the year in question.

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and

only to the extent and at the time necessary to make payments required under the judgment or settlement;

(2) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer, as such payments are determined under sec. IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in sec. IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) to the extent not released from escrow under (1) or (2) of this subsections, funds placed into escrow shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) To be a qualified escrow fund under this section, the

(1) fund must be an escrow fund governed by an escrow arrangement with a federally or state chartered financial institution having no affiliation with a tobacco product manufacturer and having assets of at least \$1,000,000,000; and

(2) escrow arrangements described in (1) of this subsection must

(A) require that the financial institution hold the principal of the escrow fund for the benefit of releasing parties; and

(B) prohibit the tobacco product manufacturer that places money into the escrow fund from using, accessing, or directing the use of the principal of the fund except as consistent with this section.

Sec. 45.53.030. Regulations.

The commissioner of revenue shall adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to ascertain the amount of excise tax paid on the cigarettes of a tobacco product manufacturer for each year for which the manufacturer is required to place money into a qualified escrow fund under AS 45.53.020 .

Sec. 45.53.040. Certification of compliance; civil actions.

(a) A tobacco product manufacturer that elects to comply with AS 45.53.020 by placing money into escrow under that section shall annually, at

the time of compliance, certify to the commissioner of revenue that it is in compliance with AS 45.53.020 .

(b) If the commissioner of revenue does not timely receive a certification of compliance from a tobacco product manufacturer as required by (a) of this section, the commissioner shall notify the attorney general. The attorney general shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 . The attorney general may bring a civil action on behalf of the state against a tobacco product manufacturer that fails to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 . The court, upon a finding of a tobacco product manufacturer's

(1) violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in an amount not to exceed five percent of the amount improperly withheld from escrow, for each day of the violation; the total amount of the penalty under this paragraph may not exceed 100 percent of the original amount improperly withheld from escrow;

(2) knowing violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020 and may impose a civil penalty, in an amount not to exceed 15 percent of the amount improperly withheld from escrow, for each day of the violation; the total amount of the penalty under this paragraph may not exceed 300 percent of the original amount improperly withheld from escrow; and

(3) second knowing violation of AS 45.53.020 , shall require the manufacturer, within 15 days, to place into a qualified escrow fund the money necessary to bring the manufacturer into compliance with AS 45.53.020, and may impose a monetary penalty as described in (2) of this subsection, and shall prohibit the manufacturer from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(c) In addition to the civil penalties described in (b) of this section, the court may award the state full reasonable attorney fees and costs if the state prevails in a civil action brought under (b) of this section.

(d) Each failure to make an annual placement of money into a qualified escrow fund as required by AS 45.53.020 is a separate violation for the purposes of this section.

Sec. 45.53.100. Definitions.

In this chapter,

(1) "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set out in Exhibit C to the Master Settlement Agreement;

(2) "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person; in this paragraph,

(A) "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more;

(B) "person" means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

(3) "allocable share" means allocable share as that term is defined in the Master Settlement Agreement;

(4) "cigarette"

(A) means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by, consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in (i) of this subparagraph;

(B) includes "roll-your-own"; for purposes of this subparagraph,

(i) 0.09 ounces of "roll-your-own" tobacco constitutes one individual "cigarette;"

(ii) "roll-your-own" includes any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes;

(5) "Master Settlement Agreement" means the settlement agreement and related documents described in AS 45.53.010 ;

(6) "original participating manufacturer" means "original participating manufacturer" as that term is defined in the Master Settlement Agreement;

(7) "qualified escrow fund" means a fund described in AS 45.53.020(c);

(8) "released claims" means "released claims" as that term is defined in the Master Settlement Agreement;

(9) "releasing parties" means "releasing parties" as that term is defined in the Master Settlement Agreement;

(10) "tobacco product manufacturer"

(A) means an entity that, on or after June 4, 1999, directly, and not exclusively through an affiliate,

(i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered to be a tobacco product manufacturer under this clause (i) if, first, such cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of sec. II(mm) of the Master Settlement Agreement and that pays the taxes specified in sec. II(z) of the Master Settlement Agreement, and, second, the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(ii) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) becomes a successor of an entity described in (i) or (ii) of this subparagraph;

(B) does not include an affiliate of an entity described in (A) of this paragraph unless the affiliate itself meets the standards set out in any of (A)(i) - (iii) of this paragraph;

(11) "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or

through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers.

RESOLUTION SUPPORTING ALLOCABLE SHARE LEGISLATION

WHEREAS, Cigarette smoking presents serious public health concerns to the States, requires the States to spend billions of dollars for the treatment of health conditions resulting from Cigarette smoking, and imposes substantial additional costs on the States, many of which costs occur years after the Cigarettes are sold; and

WHEREAS, 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four United States territories ("the Settling States") and more than 40 Cigarette manufacturers are parties to the tobacco Master Settlement Agreement of 1998 ("the MSA") under which Cigarette manufacturers who are parties to the MSA have agreed to significant limitations on the advertising, promotion, and marketing of Cigarettes and agreed to make substantial payments to the States in exchange for a release from liability for certain claims of the States related to Cigarette smoking; and

WHEREAS, in connection with the MSA the Settling States have enacted statutes that require Cigarette manufacturers who do not become parties to the MSA ("Non-Participating Manufacturers" or "NPMs") to make payments into an escrow fund of a specified amount for each of its Cigarettes sold in the State; and

WHEREAS, the Escrow Statute is designed to ensure that a Settling State that obtains a judgment against an NPM for the costs imposed by sales of the NPM's Cigarettes will have an Escrow Fund available against which to satisfy a judgment; and

WHEREAS, in the absence of a significant escrow fund, companies that choose not to enter into the MSA and are not subject to its restrictions on advertising and promotion would be able to sell cigarettes without making any provision for the costs imposed on the State by the sales of their cigarettes; and

WHEREAS, the existing escrow statutes as originally enacted by the Settling States contain language that inadvertently permits NPMs that concentrate their sales in only a few states to avoid the large majority of their obligation to keep funds in escrow and thereby confers on those companies an unfair competitive advantage over both Participating Manufacturers and over other NPMs; and

WHEREAS, as a result of this language several NPMs have enjoyed an unintended competitive advantage over the more than 40 companies that have chosen to join the Master Settlement Agreement and have thereby expanded their sales at the expense of those companies; and

WHEREAS, permitting NPMs to make sales in any State without requiring them to keep significant escrow funds on deposit jeopardizes the health care objectives and MSA payments of all States; and

WHEREAS, the availability of low-priced cigarettes made possible by the

deficiencies in the existing escrow statutes has reduced the effectiveness of State programs to discourage youth smoking; and

WHEREAS, a large number of States, recognizing the deficiency in the existing escrow statutes, jointly developed proposed legislation (the "Allocable Share legislation," attached as Tab A hereto) designed to eliminate this inadvertent deficiency and to serve the purposes for which the escrow statute was originally designed; and

WHEREAS, the Tobacco Committee of the National Association of Attorneys General considered and endorsed enactment of the Allocable Share legislation; and

WHEREAS, seventeen States have already enacted the Allocable Share legislation and the legislation is under consideration in other jurisdictions;

NOW, THEREFORE, be it resolved that the National Association of Attorneys General:

1. Reaffirms the principle that the purpose of the escrow statute is to preserve the public health gains of the MSA by ensuring that all Cigarette manufacturers selling Cigarettes in a State must either join the MSA, restrict their advertising and promotion, and make MSA payments to compensate the State for the costs imposed on the State by cigarette smoking or establish and maintain an escrow fund sufficient to ensure that significant funds will be available in the event that the State obtains a judgment for such costs; and
2. Recognizes that the existing escrow statutes as originally drafted and enacted do not always accomplish this objective; and
3. Endorses the enactment of the Allocable Share Amendment in each Settling State in order that this objective be accomplished; and
4. Directs the Executive Director to communicate this resolution to interested parties; and
5. Directs the Tobacco Project to provide support to attorneys general for the enactment of the legislation.

THE
FOLLOWING
DOCUMENT(S)
ARE
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ORIGINAL
COPIES

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

750 FIRST STREET NE · SUITE 1100
WASHINGTON, DC 20002
(202) 326-6057 (Tobacco Project) · (202) 498-8064 (Facsimile)
<http://www.naag.org>

**IN SUPPORT OF
THE ALLOCABLE SHARE AMENDMENT -- [BILL #]*****PURPOSE OF THE LEGISLATION***

[Bill #] would close a loophole in the Model Escrow Statute that costs the States many millions of dollars in MSA payments every year. This loophole has enabled some Non-Participating Manufacturers ("NPMs") to avoid making significant escrow payments under the States' Model Escrow statutes. By avoiding such costs, NPMs are able to under-price Participating Manufacturers who are making MSA payments. These NPMs thereby take sales away from Participating Manufacturers and thus reduce the payments Participating Manufacturers make to the States. In 2003, sales by NPMs reduced MSA payments by \$450 million. This legislation would significantly reduce that loss.

WHY IS THIS LEGISLATION IMPORTANT?

The Model Escrow Statute was enacted to ensure that Settling States would receive the benefits of the MSA and to prevent companies that refused to enter into the MSA from profiting unfairly as a result. A loophole in the current law has permitted some companies that refused to join the MSA to avoid any significant responsibility under the State's Escrow Statute. This amendment is designed to ensure that the Model Escrow Statutes operate evenhandedly as intended, thereby advancing the legitimate health and safety goals contemplated by the MSA.

WHAT ARE THE PURPOSES OF THE MODEL ESCROW STATUTE?

Companies that chose not to join the MSA were not released from claims by the States -- they do not make MSA payments and are not required to abide by the public health provisions of the MSA. States were concerned that NPMs could take advantage of the fact that they did not have to bear the cost of making MSA payments or abide by the public health provisions of the MSA. To deal with this concern, all Settling States enacted the Model Escrow Statute, which is designed to ensure that there will be a fund available to satisfy State claims in the event the State obtains a judgment against an NPM.

HOW HAVE THE PURPOSES OF THE MODEL ESCROW STATUTE BEEN SUBVERTED?

A provision of the Model Escrow Statute permits an NPM to obtain a release of funds from escrow "to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement ... had it been a Participating Manufacturer under the MSA...." Experience in several states has shown that this provision enables NPMs that concentrate their sales in a single state or a few states to obtain early releases of the great majority of their escrow deposits. This outcome was never contemplated and threatens to undermine the effectiveness of the Model Escrow Statutes. Escrow funds so minimized are not adequate to provide security to the States nor do they prevent unfair profit taking.

HOW DOES THE CURRENT ALLOCABLE SHARE RELEASE PROVISION SUBVERT THE MODEL STATUTE?

By way of example, consider an NPM that makes all its sales -- 100 million cigarettes -- in a state whose allocable share of MSA payments is two percent. Under the current statute, although the NPM sold 100 million cigarettes in the State, the amount it would have to leave in escrow would be based on only 2 million cigarettes. This permits an NPM that has geographically concentrated sales to obtain a refund of the vast majority of its

escrow deposits. This allows the NPM to significantly lower the cost of its cigarettes, because the NPM is not escrowing its full share of the future healthcare burden that its product imposes on the State. In lowering the cost, the NPM presents a product that is very attractive to youth, who tend to be more price-sensitive than adults. People that start smoking as minors are much more likely to become daily smokers, and eventually become a healthcare burden on the State.

HOW DOES THE PROPOSED AMENDMENT REMEDY THE PROBLEM?

[BILL #] eliminates the unintended consequence of the original language that has compromised the law's effectiveness. [BILL #] provides that the MSA payments relevant to release would not be limited to a State's allocable share of the NPM's (hypothetical) total MSA payments. In other words, where the NPM sells 100 million cigarettes in a State, the NPM would be entitled to a release only to the extent that its escrow payment exceeded what would have been its MSA payment on these 100 million cigarettes.

WERE N'T STATES TOLD THEY WERE NOT SUPPOSED TO AMEND THE MODEL STATUTE?

NO. The amendment is consistent with the purposes of the Model Escrow Statute: it sharply reduces the ability of an NPM to minimize its payments by concentrating its sales in one or two states and it sharply reduces the unintended disparity created by the current Model Escrow Statute. Moreover, the Original Participating Manufacturers ("OPMs") and the largest Subsequent Participating Manufacturers ("SPMs") have signed letters of assurance that the amendment will not affect the ability of the Model Escrow Statutes to protect the States from any potential downward adjustments in MSA payments.

IS THE AMENDMENT CONSTITUTIONAL?

There is no significant risk that the proposed amendment is unconstitutional. The Model Escrow Statute, has been challenged in several lawsuits, and has consistently been upheld as a valid enactment. For example, in Star Scientific Inc. v. Beales, 278 F.3d 339 (4th Cir.), cert. denied, 123 S.Ct. 93 (2002), the Fourth Circuit Court of Appeals held that Virginia's statute was constitutional under the Equal Protection, Due Process, and Commerce Clauses. Moreover, in the unlikely event the amendment was struck down, a "back-up provision" eliminates the allocable share release paragraph. Should the Model Escrow Statute thereafter be held unconstitutional due to the ABSENCE of the allocable share release paragraph, then the original Model Escrow Statute allocable share release language would be restored. As a result, in the remote event that BOTH alternative changes (i.e., eliminating the loophole, and eliminating the release paragraph altogether) are held unconstitutional, the Statute would be restored to its original position. (I.e.: If you amend your assault statute, and the amendment is held unconstitutional, assault doesn't become legal. Rather the law is restored to its original position.)

WILL PASSAGE OF THE AMENDMENT PUT AT RISK MY STATE'S MSA PAYMENTS?

NO. Passing the amendment will NOT jeopardize a State's MSA payments. The only parties that could make such a challenge are parties to the MSA. As noted, the parties that make more than 99 percent of the payments have signed letters of assurance that the amendment will not affect the validity of the Model Escrow Statutes. Companies that want to maintain an unfair competitive advantage may try to scare States with misinformation so that they can continue to profit by exploiting the loophole in the current statute. States that enact the amendment will ensure that NPMs who sell in their States make escrow deposits as originally intended.

WILL THE PROPOSAL HAVE A FISCAL IMPACT?

The proposed amendment would likely be "revenue neutral." Escrow deposits do not constitute state revenues; they remain the property of the NPM. However, the legislation would likely result in a reduction in the administrative costs of enforcing the Model Escrow Statute because there would be fewer requests for releases from escrow for the State to process. Moreover, should the State obtain a judgment against an NPM to recover the health care costs imposed on the State by the NPM's products, the proposed legislation would enhance the State's ability to recover that judgment.

**NPM Escrow Release Calculations
for hypothetical non participating manufacturer
Cheap Smokes, Inc.**

Cheap Smokes' national cigarette sales	100,000,000					
Approx. MSA Contr./cigarette	\$0.02					
"As if" MSA Contribution	\$2,000,000					
		Alaska	Washington	California	Oregon	Total
MSA Allocable Share Percentage	0.003414187	0.020532582	0.127639554	0.0114766		
Allocable share of Cheap Smokes' "as if" MSA payment	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,125.81	
Cheap Smokes' sales	1,000,000	20,000,000	75,000,000	4,000,000	100,000,000	
Approx. Escrow Deposit/cigarette	\$0.02	\$0.02	\$0.02	\$0.02		
Escrow Deposit Requirement	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000	
Current Law:						
Escrow Release Threshold	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,126	
Escrow Release Amount	\$13,171.63	\$358,934.84	\$1,244,720.89	\$57,046.84	\$1,673,874	
Amount Left in Escrow	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,126	
Effective Amount Deposited/Cigarette	\$0.0068	\$0.0021	\$0.0034	\$0.0057	\$0.0033	
HB 503 Proposal, Section 1:						
Escrow Release Threshold	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000	
Escrow Release Amount	\$0.00	\$0.00	\$0.00	\$0.00	\$0	
Amount Left in Escrow	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000	
Effective Amount Deposited/Cigarette	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02	
HB 503 Proposal, Section 2:						
Escrow Release Threshold	none					
HB 503 Proposal, Section 3:	same as current law					

prepared by AAG Mike Barnhill, Alaska Department of Law, 2/26/04
HB 503

SENATE COMMITTEE REPORT

DATE: 04/02/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/19/04

Judiciary Committee considered HOUSE BILL NO. 503

HB 503 TOBACCO MASTER SETTLEMENT AGREEMENT

"An Act relating to the tobacco product Master Settlement Agreement; and providing for an effective date."

and recommends:

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

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
REV	2/24			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
French <i>[Signature]</i>	X			
Ellis <i>[Signature]</i>	X			
Therrien <i>[Signature]</i>	✓			
Orr <i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

SENATE FINANCE COMMITTEE

SIGN - IN

HB 503-TOBACCO MASTER SETTLEMENT AGREEMENT

NAME: Mike Barbell Barushil Subject/Bill No: _____
Co./Dept./Title: Law Phone: 418
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

HB

507

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 507
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title G.O. Bonds for Edu Facilities RDU Revenue Programs and Services
 Component Treasury Management
 Sponsor Representative Hawker
 Requester House Finance Component No. 121

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	265.2	7.5	7.5	7.5	7.5	7.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		5,111.8	5,108.8	5,109.8	5,109.2	5,112.0
TOTAL OPERATING	265.2	5,119.3	5,116.3	5,117.3	5,116.7	5,119.5

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	265.2	5,119.3	5,116.3	5,117.3	5,116.7	5,119.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	265.2	5,119.3	5,116.3	5,117.3	5,116.7	5,119.5

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Authorizes the issuance of \$53 million in general obligation bonds to pay for educational facilities.

If the bill is passed by the legislature the proposal would be included on the ballot for voter authorization in the fall of 2004. Assuming voter approval the entire authorization of bonds would be issued in the spring of 2005. However, the State Bond Committee would determine the actual timing, amount, and term of the bond sales based on project demand and market conditions. \$265,184 will be appropriated from the general fund of the state to pay the costs of issuing the bonds including rating agency, printing, public notice, travel, financial advisor, and bond counsel fees.

Prepared by: Dever Mitchell, State Debt Manager Phone 465-3750
 Division Treasury Division Date/Time 2/18/04, 1 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 2/18/2004
 Agency Department of Revenue

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB 507

ANALYSIS CONTINUATION

These bonds would be sold on a competitive basis with the bonds being awarded to the bidder offering the lowest true interest cost. The bidder would be given the option of purchasing bond insurance. This structure almost always results in a net bond premium. The bonds would be remarketed, with the premium used to pay the underwriter's sales force and expenses.

Assuming an interest rate of 5.00% (approximately 90 basis points higher than current rates) and a 15 year term, level annual debt service would be approximately \$5.1 million per year beginning in FY 2006. With current interest rates, annual debt service would be reduced to \$4.8 million.

The interest rates in this fiscal note require the maintenance of the State's credit ratings through this additional bonds issuance, a possible but perhaps unlikely scenario. The State is currently on negative outlook from Moody's Investors Service. Standard and Poor's and Fitch Services have indicated mid-term concern related to the disparity between ongoing recurring revenues and expenditures, and the continuing and projected depletion of the State's short term reserves. If no steps had been taken to balance recurring revenues with expenditures by the time these bonds were issued, it is likely that the cost of capital would increase for all issuers of Alaska public debt when the state credit ratings were downgraded by at least one of the agencies.

HB507
University of Alaska
Remaining Project Descriptions

(7) Paul/Ziegler classroom renovation: Using initial project estimates, an additional \$500,000 is necessary to complete the current renovation project planned for Paul/Ziegler buildings. The due to the raising cost of construction and the extensive nature of the necessary renovations this \$500,000 coupled with the \$3.9M of funding received via 2002 General Obligation Bond package is necessary for completion of the renovation project. The renovation includes general building system upgrades, renovating and adding classrooms for the dynamic and expanding curriculum offerings, faculty offices, and common study space for students.

(11) Homer campus new facility classroom construction: Due to raising cost of construction and the necessary land purchase, this request is of \$500,000 coupled with the \$3M of funding received via 2002 General Obligation Bond package is necessary for completion of the Kachemak bay campus classroom facility construction. This \$500,000 was part of UA's 2004 capital budget request for land acquisition. The Kachemak Bay Branch of UAA's Kenai Campus has a steady student population with substantial campus activity that warrants a classroom building. This building is being built adjacent to the existing Kachemak Bay campus building that offers only limited classroom space. Note, that in project (4) Safety code and ADA improvements is an addition \$150,000 for essential Homer campus electrical improvements.

(12) Prince William Sound facilities classroom construction: This funding request completes the funding necessary to build a classroom and theater/museum addition to an existing PWSCC facility. This funding of \$1M coupled with funding from the 2002 General Obligation Bond package totaling \$2.3M will be used to renovate the existing facility as well as add classrooms, a theater and house a significant collection of Alaska historical artifacts donated to UA.

**THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES**

11/15/04

State of Alaska
 Department of Education and Early Development
 Capital Improvement Projects (FY2005)
 Major Maintenance Grant Fund

Final Agency Decision

Mar 16	Dec 15	Nov 5	School District	Project Name	Amount Requested	Eligible Amount	EED Recommended Amount	Participating Share	State Share	Aggregate Amount
1	1	1	Iditarod Area	Blackwell School New Well, Anvik	\$92,019	\$92,019	\$92,019	\$1,840	\$90,179	\$90,179
2	2	2	Copper River	Glennallen Elementary School Exterior Upgrade	\$3,067,627	\$2,214,501	\$2,095,501	\$41,910	\$2,053,591	\$2,143,770
3	3	3	Yukon-Koyukuk	Nulato Structural Roof Repair	\$829,439	\$829,439	\$829,439	\$16,589	\$812,850	\$2,856,620
4	4	4	Nenana City	Nenana Boiler Replacement/Heating System Upgrade	\$393,407	\$393,407	\$393,407	\$19,670	\$373,737	\$3,330,357
5	5	5	Alaska Gateway	Tatlin School Site Civil Improvements	\$254,465	\$222,239	\$222,239	\$4,445	\$217,794	\$3,548,151
6	6	6	Yukon-Koyukuk	Allakaket Renovate Water/Sewer Facility	\$322,252	\$303,924	\$303,924	\$6,078	\$297,846	\$3,845,997
7	7	7	Saint Marys	Elcavicuar Elementary Exterior Upgrades	\$459,757	\$459,757	\$459,757	\$22,988	\$436,769	\$4,282,766
8	8	8	Kake City	Kake Elementary Ventilation System Upgrade	\$394,029	\$394,029	\$394,029	\$39,403	\$354,626	\$4,637,392
9	9	9	Alaska Gateway	Tatlin School Building Improvements	\$903,137	\$873,306	\$873,306	\$17,466	\$855,840	\$5,493,232
10	10	10	Iditarod Area	David Louis Memorial School Emergency Repairs & Boiler Relocation, Grayling	\$180,128	\$180,128	\$180,128	\$3,603	\$176,525	\$5,669,757
11	11	11	Iditarod Area	Top Of The Kuskokwim School Boiler Replacement, Nikolai	\$173,500	\$173,500	\$173,500	\$3,470	\$170,030	\$5,839,787
12	12	12	Iditarod Area	Innoko River School Tank Farm Pipeline & Remediation, Shageluk	\$247,032	\$247,032	\$247,032	\$4,941	\$242,091	\$6,081,878
13	13	13	Iditarod Area	Holy Cross School Vocational Education Shop Upgrade	\$177,760	\$177,760	\$177,760	\$3,555	\$174,205	\$6,256,083
14	14	14	Yukon-Koyukuk	Allakaket Restroom Renovation	\$352,932	\$311,862	\$311,862	\$6,237	\$305,625	\$6,581,708
15	15	15	Saint Marys	Andreafski High School Code Upgrades	\$179,906	\$179,906	\$179,906	\$8,995	\$170,911	\$6,732,619
16	16	16	Annette Island	Annette Island Schools Security/Safety and Major Maintenance Upgrades	\$1,667,840	\$1,090,863	\$1,090,863	\$21,817	\$1,069,046	\$7,801,665
17	17	17	Alaska Gateway	Dot Lake School Mechanical Upgrade	\$782,034	\$782,034	\$782,034	\$15,641	\$766,393	\$8,568,058
18	18	18	Yukon-Koyukuk	Minto Restroom Renovation	\$179,150	\$179,150	\$179,150	\$3,583	\$175,567	\$8,743,625
19	19	19	Southeast Island	Thome Bay House Access Ramp	\$139,045	\$139,045	\$139,045	\$2,781	\$136,264	\$8,879,889
20	20	20	Yukon-Koyukuk	Kaltag Exterior Sliding Replacement	\$625,381	\$351,245	\$351,245	\$7,025	\$344,220	\$9,224,109
21	21	21	Iditarod Area	Iditarod Fire Alarm Upgrades	\$192,994	\$192,994	\$192,994	\$3,860	\$189,134	\$9,413,243
22	22	22	Lower Kuskokwim	Kilbuck Elementary Deferred Maintenance, Bethel	\$6,331,162	\$5,401,968	\$5,401,968	\$108,039	\$5,293,929	\$14,707,172
23	23	23	Lower Kuskokwim	Mikeinguat Ellitnaurval Elementary Deferred Maintenance, Bethel	\$4,232,798	\$2,331,937	\$2,331,937	\$46,639	\$2,285,298	\$16,992,470

4-26-04

State of Alaska
 Department of Education and Early Development
 Capital Improvement Projects (FY2005)
 Major Maintenance Grant Fund

Final Agency Decision

Mar 16	Dec 15	Nov 5	School District	Project Name	Amount Requested	Eligible Amount	EED Recommended Amount	Participating Share	State Share	Aggregate Amount
24	24	24	Lower Kuskokwim	W. Miller Memorial K-12 Deferred Maintenance, Napakiak	\$4,421,919	\$2,598,517	\$2,598,517	\$51,970	\$2,546,547	\$19,539,017
25	25	25	Lower Kuskokwim	Eok K-12 Deferred Maintenance	\$1,435,657	\$1,094,677	\$1,094,677	\$21,894	\$1,072,783	\$20,611,800
26	26	26	Lower Kuskokwim	Nuniwaarmut K-12 Deferred Maintenance, Mekoryuk	\$1,399,533	\$1,110,915	\$1,110,915	\$22,218	\$1,088,697	\$21,700,497
27	27	27	Lower Kuskokwim	Rocky Mountain K-12 Deferred Maintenance, Goodnews Bay	\$2,033,859	\$1,376,941	\$1,376,841	\$27,537	\$1,349,304	\$23,049,801
28	28	28	Lower Kuskokwim	Akula Ellinaurvit K-12 Deferred Maintenance, Kasgluk	\$1,816,408	\$1,353,216	\$1,353,216	\$27,064	\$1,326,152	\$24,375,953
29	29	29	Lower Kuskokwim	P.T. Albert Memorial K-12 Deferred Maintenance, Tununak	\$1,499,034	\$946,180	\$946,180	\$18,924	\$927,256	\$25,303,209
30	30	30	Lower Kuskokwim	L. Angapak Memorial K-12 Deferred Maintenance, Tuntutullak	\$1,395,036	\$892,668	\$892,668	\$17,853	\$874,815	\$26,178,024
31	31	31	Lower Kuskokwim	Qugcuun Memorial K-12 Deferred Maintenance, Oscarville	\$122,009	\$88,157	\$88,157	\$1,763	\$86,394	\$26,264,418
TOTALS:					\$36,301,249	\$26,983,216	\$26,864,216	\$599,798	\$26,264,418	

(07/1/04)

State of Alaska
 Department of Education and Early Development
 Capital Improvement Projects (FY2005)
 School Construction Grant Fund
 Final Agency Decision

Mar 16	Dec 15	Nov 5	School District	Project Name	Amount Requested	Eligible Amount	EED Recommended Amount	Participating Share	State Share	Aggregate Amount
1	1	1	Lower Yukon	Sheldon Point (Nunam Iqua) K-12 School Improvement	\$14,505,233	\$11,410,991	\$10,667,574	\$213,351	\$10,454,223	\$10,454,223
2	2	2	Southeast Island	Howard Valentine K-12 School Improvement, Coffman Cove	\$4,508,018	\$4,095,255	\$3,748,143	\$74,963	\$3,673,180	\$14,127,403
3	3	3	Lower Kuskokwim	D.R. Klunya Memorial K-12 Improvement, Kongiganak	\$20,140,023	\$13,594,689	\$13,594,689	\$271,894	\$13,322,795	\$27,450,198
4	4	4	Iditarod Area	Lime Village School Addition & New Well	\$593,136	\$593,136	\$593,136	\$11,863	\$581,273	\$28,031,471
5	5	5	Yukon Flats	Arctic Village K-12 School Improvement	\$9,219,644	\$9,767,573	\$9,074,551	\$181,491	\$8,893,060	\$36,924,531
6	6	8	Bering Strait	White Mountain K-12 School Replacement	\$11,138,540	\$9,290,051	\$8,332,126	\$166,643	\$8,165,483	\$45,090,014
7	7	6	Southwest Region	New Stuyahok K-12 School Improvement	\$23,543,626	\$21,970,104	\$19,919,922	\$398,398	\$19,521,524	\$64,611,538
8	8	7	Lower Kuskokwim	Kwiglingok K-12 Improvement	\$20,870,676	\$12,028,142	\$12,028,142	\$240,563	\$11,787,579	\$76,399,117
9	9	13	Lower Yukon	Russian Mission K-12 School Improvement	\$16,303,126	\$14,739,003	\$14,739,003	\$294,780	\$14,444,223	\$90,843,340
10	10	9	Lower Kuskokwim	Chapnguak K-12 Improvement, Chefonak	\$21,478,025	\$12,184,182	\$12,184,182	\$243,684	\$11,940,498	\$102,783,838
11	11	10	Lower Kuskokwim	Chief Paul K-12 Improvement, Kipnuk	\$24,326,142	\$15,917,815	\$15,917,815	\$318,356	\$15,599,459	\$118,383,297
12	12	11	Bering Strait	St. Michael K-12 School Improvement	\$20,955,250	\$15,687,764	\$15,687,764	\$313,755	\$15,374,009	\$133,757,306
13	13	12	Southeast Island	Hyder New K-12 School Construction	\$522,921	\$726,588	\$726,588	\$14,532	\$712,056	\$134,469,362
14	14	14	Bering Strait	Savoonga K-12 School Improvement	\$31,928,968	\$20,939,063	\$20,939,063	\$418,781	\$20,520,282	\$154,989,644
15	15	15	Lower Yukon	Marshall K-12 School Improvement	\$21,535,279	\$18,533,191	\$18,533,191	\$370,664	\$18,162,527	\$173,152,171
16	16	16	Lower Kuskokwim	Nelson Island Schools Improvement, Toksook Bay	\$22,957,615	\$17,712,486	\$17,712,486	\$354,250	\$17,358,236	\$190,510,407
17	17	17	Lower Yukon	Emmonak K-12 Renovation/Addition	\$20,623,256	\$14,692,093	\$14,692,093	\$293,842	\$14,398,251	\$204,908,658
18	18	18	Lower Kuskokwim	Nightmute K-12 Renovation/Addition	\$10,919,356	\$9,089,925	\$9,089,925	\$181,798	\$8,908,127	\$213,816,785
19	19	19	Lower Kuskokwim	Joann A. Alexie K-12 Improvement, Atmaulluk	\$17,655,727	\$9,476,388	\$9,476,388	\$189,528	\$9,286,860	\$223,103,645
20	20	20	Lower Kuskokwim	Kwethluk K-12 Renovation/Addition	\$18,106,150	\$16,212,704	\$16,212,704	\$324,254	\$15,888,450	\$238,992,095
21	21	21	Delta/Greely	Delta Junction K-12 School Improvement	\$40,146,298	\$35,998,281	\$35,998,281	\$719,966	\$35,278,315	\$274,270,410
22	22	22	Lower Kuskokwim	Kulnerramult Eiltnaurvalt K-12 Renovation/Addition, Qulnhagak	\$14,462,185	\$13,181,681	\$13,181,681	\$263,634	\$12,918,047	\$287,188,457
23	23	23	Lower Kuskokwim	Z.J. Williams Memorial K-12 Renovation/Addition, Napasklak	\$13,687,807	\$11,131,647	\$11,131,647	\$222,633	\$10,909,014	\$288,097,471

State of Alaska
 Department of Education and Early Development
 Capital Improvement Projects (FY2005)
 School Construction Grant Fund

Final Agency Decision

Mar 16	Dec 15	Nov 5	School District	Project Name	Amount Requested	Eligible Amount	EED Recommended Amount	Participating Share	State Share	Aggregate Amount
24	24	24	Southeast Island	Outdoor Covered Physical Education Area, 3 Schools	\$1,436,646	\$873,196	\$873,196	\$17,464	\$855,732	\$298,953,203
25	25	25	Yukon-Koyukuk	Minto Renovation/Addition	\$5,221,538	\$3,857,610	\$3,857,610	\$77,152	\$3,780,458	\$302,733,661
26	26	26	Lower Yukon	Plika's Point K-12 School Improvement	\$9,435,394	\$7,526,267	\$7,526,267	\$150,525	\$7,375,742	\$310,109,403
27	27	27	Lower Kuskokwim	New Bethel Elementary School	\$16,708,431	\$15,828,616	\$15,828,616	\$316,572	\$15,512,044	\$325,621,447
TOTALS:					\$432,929,008	\$337,058,441	\$332,266,783	\$6,645,336	\$325,621,447	

Capital Budget Request Introduction

The University of Alaska Board of Regents' FY05 capital budget request addresses critical infrastructure needs across the system to allow for the continued success over the last several years in academic and research programs. The total request is \$175.1 million, with \$40.3 million being sought in state funding.

The Board of Regents' *Highest Priority Projects* (\$ 28.5 million state funding) include essential life safety, renovation and equipment priorities. These include priority code, ADA and life safety issues as well as crucial equipment and space renovation needs. In addition to these essential needs, the regents' highest priority projects include the integrated science facility at UAA, which will provide crucial science classroom and instructional labs, and the School of Fisheries and Ocean Sciences facility at Lena Point in Juneau.

Administrative and Academic Equipment and Programming Needs (\$2.4 million state funding) includes necessary information technology infrastructure upgrades and replacement of academic and instructional equipment.

Existing Campus Facility and Infrastructure Renovation (\$5.3 million state funding) provides crucial support for renovation of classroom facilities in Anchorage, Juneau, Fairbanks, and Bethel. These projects will provide for more effective space use and alleviate space capacity issues associated with the tremendous growth in student population UA has experienced over the last several years.

New Construction, Property and Facility Acquisition (\$3.9 million state funding) in state funding provides key planning funding for necessary new facilities across the UA system. Of highest priority is the planning funding for the Biological and Computational Facility on the Fairbanks campus. This facility will support the continued successful expansion of the state and university's research and development agenda. Additionally this category includes the replacement for the Alpha Helix research vessel, a recognized federal priority by the National Science Board and at \$80 million would be fully funded through federal appropriations.

FY05 Capital Budget Request Project Abstracts

Board of Regents Highest Priority Projects

Essential Life, Safety, Renovation and Equipment Priorities UA, Systemwide

FY05	
State Approp.	\$5,973.8
Receipt Auth.	\$4,359.8
TPC (FY05-10)	\$19,275.3

This request is for the crucial projects aligned with maintaining current operating effectiveness at the University of Alaska system. With respect to critical life safety issues, this project addresses concerns at UAF with respect to elevator safety and necessary power plant electrical distribution upgrades. At UAA, Anchorage, this project addresses safety concern with the windows at the MAC housing complex and continual removal of asbestos related to plumbing fixtures at seven facilities. Elsewhere in UAA this project addresses accessibility issues at the Kenai campus and exterior lighting concerns at Mat-Su. At UAS, this request takes care of code compliance and functional separation at the Sitka campus.

In terms of space, the university is exceeding capacity at certain sites due to successful enrollment gains over the last several years. At UAA, the largest college is the college of arts and sciences. With increased enrollments, it is necessary to renovate the CAS building. For UAS, this project provides a small amount of general fund and the necessary receipt authority to purchase the DEC facility in Juneau which provides a cost-effective way to deal with critical research space shortages.

Finally, this request includes those absolutely critical equipment needs across the system including replacement of instructional science equipment at UAA, video and telecommunications distribution at UAS, and increased security measures for the UA network.

Integrated Science Facility UAA, Anchorage

FY05	
State Approp	\$13,600.0
TPC (FY05-10)	\$46,400.0

This project will design and construct a new Integrated Science Facility and incorporate the existing science facility into expanded instructional, student and administrative space. The proposed project is in response to a critical shortage of fundamental core science, instructional, and laboratory space. Current facilities are insufficient and inadequate to meet the current demand of 450 science majors and 4,000 non-majors each semester. The new facility will feature state of the art science academic labs, and technology associated with distance delivery. The facility will be designed to incorporate program growth in integrated sciences, including integrated science instruction for majors and non-majors, environmental studies and systems research, biomedical research, and complex system studies to prepare students to meet the employment needs of the State of Alaska.

Small Business Development
 UAA, Anchorage

FY05	
State Approp.	\$550.0
TPC (FY05-10)	\$3,650.0

The Alaska Small Business Development Center (ASBDC) is a statewide business assistance program. The services it offers to small businesses are not duplicated or provided by any other agency or organization. The primary emphasis of the program is in-depth, quality business counseling. Through professional counseling, small businesses are assisted in solving problems concerning operations, manufacturing, engineering technology exchange, accounting, business strategy development and other productivity and management improvement. The individual business counseling is supplemented with quality business training designed to improve the skills and knowledge of existing and prospective small business owners/managers.

Project and Planning Receipt Authority
 Statewide, Systemwide

FY05	
Receipt Auth.	\$25,000.0
TPC (FY05-10)	\$75,000.0

The value of this request is an estimation of potential receipt authority needed for FY06-FY10 at main and community campuses for planning and small projects associated with federal grants and other restricted revenues the university has potential of receiving throughout the fiscal year.

Administrative and Academic Equipment Needs

Network Infrastructure Equipment Replacement and Upgrades
 UA, Systemwide

FY05	
State Approp.	\$744.8
TPC (FY05-10)	\$1,555.0

This request allows for upgrades to the basic network infrastructure across the system including necessary equipment replacement. Additionally, this will allow deployment of wireless technology at UAA and renewal of the UAF network, including the student data network.

Digital Document Infrastructure

Statewide, Systemwide

FY05	
State Approp.	\$450.0
TPC (FY05-10)	\$450.0

This initiative will provide the necessary capacity and infrastructure for migrating UA business documents and forms to electronic (or digital) documents. Electronic documents reduce storage and maintenance costs; increase availability of records and archives; expedite processes such as review and approval (since documents may be sent nearly instantaneously); provide opportunities for enhanced automated services to students and others. Benefits of electronic document storage, retrieval and processing depend critically on integration into and enhancement of business practices and workflow. Integration in turn requires common systems and standards in the many business areas of UA in each of its MAUs (e.g., recruiting, admissions, financial aid, advising, student records, budget, accounts payable, audit, human resources, benefits, and individual department administration). This initiative seeks to insure that UA reap the benefits by establishing a common set of standards and tools for creating, storing, and retrieving university documents. It will not encompass all the specific electronic document needs of the university but rather assures that as units begin to utilize electronic documents they will be able quickly to integrate their documents with other processes through common technologies supported throughout the university.

Administrative and Instructional Equipment Upgrades

UA, Systemwide

FY05	
State Approp.	\$684.7
TPC (FY05-10)	\$3,429.7

Crucial to the mission of the University of Alaska are the tools and equipment used by faculty, staff and students. This project addresses needed replacement of administrative equipment across the system including enterprise system upgrades at UAA. Needed instructional equipment includes replacement of obsolete AV equipment at UAA, archive and video broadcast equipment as well as necessary replacement of the KUAC video server at UAF. Additional items include aviation training equipment, and construction lab equipment at UAA and UAS respectively.

Existing Campus Facility and Infrastructure

Lucy Cuddy Center Renewal

UAA, Anchorage

FY05	
State Approp.	\$1,100.0
TPC (FY05-10)	\$1,100.0

This project focuses on renewing building infrastructure in a 30-year-old facility. The building houses the Culinary Arts and Hospitality academic programs and is the dining venue for students, faculty and staff on the west campus. Recent increases in student enrollment and changes in student dining plans have shifted dining patterns and increased utilization of the Cuddy facility dramatically. Upgrading the building to contemporary use will improve space efficiency, responding to growing student enrollment, and assist faculty in delivering cutting edge instruction. The Culinary Arts and Hospitality programs supports major economic engines in the State of Alaska - hospitality and tourism.

Bristol Bay Classroom Expansion

UAF, Bristol Bay

FY05	
State Approp.	\$1,000.0
TPC (FY05-10)	\$1,000.0

The scope of this project is to construct an addition to the existing facility, which will include new vocational instructional areas, administrative offices, registration and student support services and an independent learning area.

TVC Improvements - 604 Barnette

UAF, Tanana Valley Campus

FY05	
State Approp.	\$2,000.0
TPC (FY05-10)	\$8,000.0

This project replaces the aged mechanical and electrical systems within the old Fairbanks Court-house, upgrades the exterior envelope, and completes seismic corrections, as well as revitalizing the interior spaces to meet TVC's rapidly expanding program needs.

Hendrickson Remodel and Renovation

UAS, Juneau

FY05	
State Approp.	\$1,213.0
TPC (FY05-10)	\$1,213.0

The project will renew and remodel the Hendrickson Building and the Hendrickson Annex to provide more effective use of the space, provide building code mandated toilet rooms and fire sprinklers, and to replace or renew building systems and finishes.

Seward Marine Center Renovation

UAF, Fairbanks

FY05	
Receipt Auth.	\$26,000.0
TPC (FY05-10)	\$26,000.0

This project is in anticipation of federal initiatives to support critical renewal of the facility and permit significant expansions of the facility and its role in providing critical research in fisheries and ocean sciences.

New Construction, Property and Facility Acquisition**SFOS Facility, Juneau
UAF, Fairbanks**

FY05	
State Approp.	\$9,000.0
TPC (FY05-10)	\$9,000.0

The facility at Lena Point will provide long-term support for the School of Fisheries and Ocean Sciences and its academic and research mission. The facility is a three-story building consisting of approximately 41,500 square feet and programmed to provide space for 14 faculty members and their associated research assistants and graduate students. The academic space consists of two classrooms, one teaching lab, and a seminar room with a capacity of 120 people. The research space consists of 19 laboratories for a multitude of scientific disciplines ranging from computer labs for statistical analysis, to wet labs with large salt-water tanks.

**Center for Innovative Learning - ANSEP Program
UAA, Anchorage**

FY05	
State Approp.	\$500.0
Receipt Auth.	\$4,155.0
TPC (FY05-10)	\$4,655.0

The Center for Innovative Learning is a new campus facility being planned to house learning programs that directly impact student retention and academic success. The Center will house academic communities composed of groups of students, faculty, staff and external partners who are focused on academic success, as well as the personal and professional development of the students. Successful UAA programs like the Alaska Native Science and Engineering Program, which are national models for student recruitment and retention, will be housed in the facility. The facility focuses on academic communities in the fields of engineering, biology, and computer sciences and honors the Alaska Native tradition of community gathering places in design and function.

**School of Nursing Facility - Partnership with ANTHC
UAA, Anchorage**

FY05	
State Approp.	\$720.0
TPC (FY05-10)	\$6,000.0

UAA is uniquely situated, surrounded by two of the largest hospital complexes in Alaska. As the U-Med District concept grows, partnerships with neighboring institutions continue to emerge. For the past year, the university has been in discussion with neighboring institutions about partnership for joint-use healthcare training facilities. Recently the Alaska Native Tribal Health Consortium and the university formed a workgroup to examine the possibilities for constructing a joint use health education facility on land owned by ANTHC north of Ambassador Drive along Bragaw Street. This project would fund planning efforts for the future facility.

Mat-Su Expansion Planning

UAA, Mat-Su

FY05	
State Approp.	\$100.0
TPC (FY05-10)	\$100.0

This planning project is to assess the needs of the community based on current and future demographic trends. The goal of the campus is to increase the accessibility of the college to the community at large, to enhance the opportunities for student learning and accommodate new academic programs.

Strategic Property and Facility Acquisition

UA, Systemwide

FY05	
State Approp.	\$1,630.0
Receipt Auth.	\$943.0
TPC (FY05-10)	\$10,634.6

This project would allow for the purchase of critical properties necessary for strategic expansion of campuses. In FY05 this project addresses immediate concerns at UAS with respect to the Gitkov property under an existing purchase option agreement. In out years, this request addresses shortages at the Anchorage campus and additional opportunities in Auke Bay.

AARV Research Vessel

UAF, Fairbanks

FY05	
Receipt Auth.	\$80,000.0
TPC (FY05-10)	\$80,000.0

This project is a top federal priority. The request is for federal receipt authority in anticipation of a federal appropriation to replace the Alpha Helix Research Vessel. Recently the National Science Board passed a resolution stating that the National Science Board concurs that planning for the Alaska Region Research Vessel is sufficiently advanced, and the intellectual value of the project sufficiently well demonstrated, to justify consideration for funding in the FY05 or a future NSF budget request.

Alaska Congressional Public Center

UAF, Fairbanks

FY05	
Receipt Auth.	\$5,000.0
TPC (FY05-10)	\$5,000.0

This is a facility still being considered to house the libraries and related memorabilia from Senator F. Murkowski and Rep. Young's tenure serving Alaska in the US Senate and House of Representatives.

Biological and Computational Sciences Facility
UAF, Fairbanks

FY05

State Approp. \$1,000.0

TPC (FY05-10) \$82,500.0

The newly constructed Biological and Computational Sciences Facility will provide instructional and research lab space for Biology and Computational Science programs, the State of Alaska Virology labs, and affiliated classrooms and offices. The Arctic Region Super Computer staff will also reside in this new facility. Phase I of the project, funded by the passage of the 2002 GO Bond, includes the construction of the utilidor, a new Central Animal Facility (CAF) with provisions for an incinerator and necropsy lab, relocation of three existing structures on the proposed CAF site, and revised BICS programming/concept design. Phases II through IV in this request will complete the design, contract documents, construction and build-out of the facility.

GO Bonds:

A comprehensive approach – p.1

Election 2002

Ballot Props:

Bonds build Alaska infrastructure – p.2

How Alaska Builds Schools

History of school construction in Alaska, including EED's CIP list and Judge Reese's opinion – p.3

Looking at Costs

Prevention vs. replacement, impact on PFD – p.4

Projects List

K-12 schools, University of Alaska, Museum – p.5

Why Bond?

What's driving Proposition C; Organizations line up to support schools – p.6

Tuluksak

Elementary School Replacement, Yuplit School District – The #1 ranked project on the EED CIP list is the Tuluksak School Replacement. In 2000 the district requested \$10 million for major renovations and additions. Today, it has been determined that the prudent approach is replacement at a cost of \$18 million. The school is currently operating at 255 percent capacity. Note: Bathroom access requires children to leave the main building.



Given the uniqueness of

Alaska is a vast and unique state. As a relatively young state, development of our infrastructure is a top priority. Transportation, and even basic necessities like running water and sanitation, remain elusive for many communities. To build and grow the economy, Alaska needs a strong transportation system for commerce, a strong university to retain and grow our future leaders, and a K-12 school system that creates the foundation from which prosperous futures are launched.

Alaska, K-12 school construction and repair necessitate creative solutions. The 22nd Legislature created an opportunity for Alaskans to address essential school construction using a two-pronged approach...

- general obligation bonds for those communities without taxing authority; and
- assistance with school debt for those communities with taxing authority.

On Nov. 5, 2002, Alaskans will vote on three bond propositions to offer

veteran home loans, build roads, and repair/replace schools at both the K-12 and university levels. It will be the first time in 20 years that the public has the opportunity to approve capital projects in Alaska.

Proposition C is of special interest to each of our communities. If passed, it allows the state to sell \$236.8 million in general obligation bonds to address a growing backlog of rural school construction and repairs. Just as critical, passage of Proposition C initiates a debt reimbursement plan that allows urban areas to build and repair schools. As voters study the issues contained within Proposition C, the win-win proposition envisioned by our legislature will emerge.

"This is about more than school facilities," says Carl Rose, Executive Director for the Association of Alaska School Boards, a member organization of

the Education Coalition. "It is about the value we place on education and the future of our youth."

Proposition C is also about the life cycle of schools in Alaska. Many of these schools are reaching the

For the first time in 20 years Alaskans will vote on building and repairing schools throughout the state.

end of their life expectancy and replacement is the only option. For others, repairs and renovations now could save massive replacement costs down the road.

This informational publication outlines the impact of Proposition C on your community and how it will impact Alaska's youth.

School Life Cycle: Repair, Renovate, Replace

In 1976 the Molly Hootch decision resulted in a proliferation of high schools. Today those schools are 25 years old with major maintenance needs. Some have reached the end of their useful life cycle. Typically, a school will be built, go through a number of major renovations, much like your average home, then it is time to look at replacement costs. We call it the 3 R's of school construction – Repair, Renovate,

Replace. Unlike your average home, however, the wear and tear on schools is tremendous. The mechanics of maintaining a 20-year old building require that renovation and replacement are a regular part of the plan. Addressing the cycle of improvement is an important policy question. To ignore it continues to build the backlog of major maintenance needs.

Critical Issues

A Comprehensive Approach to Build Schools

November Ballot 3 Bond Propositions

Bonding in Election 2002 is about capacity. It's about building the roads that connect communities that help commerce flourish. It's about making it affordable for veterans to remain in Alaska. It's about Alaskans helping those who lack the population base and economic wealth to meet essential educational infrastructure needs. It's about assuring a strong university and expanding the vision of the Anchorage Museum of History and Art. It's about a strong, vibrant Alaska.



Schools In Peril
Hooper Bay High School, Lower Yukon, shows rotted structural members. Extensive deterioration was discovered in the area of the bathrooms and showers during an appraisal in February 2001 by SERRC, Inc.

Mortgages for Veterans Proposition A

State Guaranteed Veterans Residential Mortgage Bonds
\$500,000,000

Shall the State of Alaska unconditionally guarantee as a general obligation of the state the payment of principal and interest on revenue bonds of the Alaska Housing Finance Corporation issued in the principal amount of not more than \$500,000,000 for the purpose of purchasing mortgages made for residences for qualifying veterans, as defined by law?

Bonds Yes []
Bonds No []

Facts

- Provides up to \$500,000,000 in low interest home loans for qualified veterans consistent with federal law enacted in the 1980s.
- 430 Vietnam era veterans projected to utilize the loans in initial year.
- Borrowers would retire the debt.

Benefits

- Takes advantage of a federal program designed to assist veterans.
- Assists qualified veterans in buying a home.
- Boosts Alaska's housing market.

Transportation Proposition B

State Guaranteed Transportation Revenue Anticipation Bonds \$102,805,000; State General Obligation State Transportation Project Bonds \$123,914,500; Total Bond Authorization \$226,719,500

Shall the State of Alaska issue state guaranteed transportation revenue anticipation bonds in the principal amount of not more than \$102,805,000 for the purpose of paying the cost of accelerated Alaska transportation projects qualifying for federal highway aid, and shall the State of Alaska issue general obligation bonds in the principal amount of not more than \$123,914,500 for the purpose of paying the cost of state transportation projects?

Bonds Yes []
Bonds No []

Facts

- Provides bonds for \$226.7 million to build and repair roads.
- Revenue bonds, paid for by federal highway aid, will repay \$102.8 million of the bonds; \$123.9 million from GO bonds.

Benefits

- Ties Alaskans together to promote commerce.
- Repairs and enhances Alaska's transportation infrastructure.

FACTS

- Provides \$236,805,441 to:
 - \$170 M: Repair and build schools primarily in rural Alaska.
 - \$61.7 M: Maintain, build and acquire University of Alaska facilities statewide.
 - \$5 M: Contribute to an addition/Anchorage Museum of History and Art.
- If passed, implements companion legislation passed in Spring 2002 that provides a new debt reimbursement program for larger school districts within a July 1, 1999 - January 1, 2005 window. Local facility projects, determined on an individual basis by voters, will be reimbursed at 70% if state approved and 60% if outside state eligibility criteria.
- General Obligation bonds paid for by the State of Alaska over a 20-year period.

BENEFITS

- Address critical facility needs in small communities where there is no tax base to support local bonding.
- Companion legislation gives larger school districts that have bonding authority with either 70% or 60% debt reimbursement from the state.
- Expands the university's capacity to attract students and help grow our economy.
- Supports an addition to the Anchorage Museum of History and Art to house science exhibits and activities, and the Arctic Studies Center (a division of the Smithsonian Institution's National Museum of Natural History).
- \$236 million in maintenance and construction work will create jobs for Alaskans.

Education Proposition C

State General Obligation Education and Museum Facilities Design, Construction, and Major Maintenance Bond
\$236,805,441

Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than \$236,805,441 for the purpose of paying for the cost of design, construction, and major maintenance of educational and museum facilities?

Bonds Yes []
Bonds No []

How Alaska Builds Schools

A short history lesson

During more affluent economic times, Alaska utilized a debt reimbursement program and direct appropriations to build and renovate schools.

With the advent of North Slope crude and the Molly Hootch decree to place high schools in most Alaskan communities, untold millions were placed into the development of village high schools. This vast expansion of school facilities is now susceptible to the cycle of capital improvement funding.

In the mid-1980s the legislature realized it was accumulating a serious debt retirement problem. Former Rep. Swackhammer (Kenai) sought to bring order to the process of building and repairing schools by developing the Capital Improvement Program (CIP), managed by the Department of Education and Early Development.

The idea was to prioritize projects so that state policymakers could address them systematically. Over the years as the legislature limited funds for the CIP, communities with taxing authority continued to build through bonding. This rural district inequity was challenged by a consortium of school districts organized as Citizens for the Educational Advancement of Alaska's Children (CEAAC). A lawsuit was filed and on Sept. 1, 1999, Superior Court Judge John Reese ruled Alaska's method of funding school facilities was unconstitutional and violated federal civil rights laws.

In making his decision, Reese said: "Rural areas do not have substantially equal access to facilities funding. As a result, many rural schools are continuously denied facility funding. Failing to provide adequate funding for facilities in rural areas

violates the Education Clause [of the Alaska State Constitution]."

"The state system for facilities funding provides adequate opportunities for urban school districts, but not for rural schools. Because of the funding system, rural schools are not getting the money they need to maintain their schools."

- Judge John Reese

The state challenged that the court was only looking at a snapshot of 10 years, arguing that if you take into consideration what the state has done to build rural schools since the Molly Hootch decision 25 years ago, the picture is very different.

Judge Reese was unimpressed. He restated his position in 2000 on the inequity of rural school funding, giving state policymakers a clear indication that he was willing to remedy the situation if they were unable to make significant headway.

Spring 2002 found the 22nd Legislature taking decisive action to address the backlog in construction and maintenance of school, university, and museum facilities. A GO Bond package with an accompanying debt reimbursement program was to be placed before the voters.

Alaska Department of Education & Early Development

Capital Improvement Program

Criteria

The Department of Education & Early Development is charged with the task of compiling a prioritized list of projects to be used in preparing a six-year capital plan for submittal to the governor and the legislature. The criteria for accomplishing the priorities are established in statute and are awarded points based on a scoring system developed by the Bond Reimbursement and Grant Review Committee.

Projects are prioritized into two lists: the School Construction List and the Major Maintenance List and reflect the two statutory funds established for education capital projects.

AS 14.11.013 CRITERIA

In recommending projects for this schedule, the department shall verify that each proposed project meets the criteria established under AS 14.11.014 (b) and qualifies as a project required to:

- Life safety.** (A) avert imminent danger or correct life-threatening situations;
- Unhoused students.** (B) house students who

would otherwise be unhoused; for purposes of this subparagraph, students are considered unhoused if the students attend school in temporary facilities;

Preventive maintenance. (C) protect the structure of existing school facilities;

Code upgrades. (D) correct building code deficiencies that require major repair or rehabilitation in order for the facility to continue to be used for the educational program;

Efficiencies. (E) achieve an operating cost savings;

Renovation. (F) modify or rehabilitate facilities for the purpose of improving the instructional program;

Other. (G) meet an educational need not specified in (A) - (F) identified by the department;

The department may modify a project request when necessary to achieve cost-effective school construction or require that a school construction project be phased for purposes of planning, design, and construction.



Naukati School Replacement, Southeast Island School District - Currently ranked #8 on the EED CIP list to replace the existing amalgamation of classroom and other buildings, estimated at \$4 million.

Looking at Costs

Lack of preventive maintenance funds

Preventive maintenance has long been an issue with schools. It's not that school managers didn't recognize the value in it. They did, and consistently requested funds through the Capital Improvement

Program (CIP) to address major maintenance. However, legislators frequently found difficulty in identifying funds on an annual basis to ensure preventive maintenance. Today, it is more cost effective in the long-term

for some districts to build a new school than to repair the patchwork of 50 year old buildings built back when the federal Bureau of Indian Affairs (BIA) ran rural schools.

Replacement costs

When replacing schools, the general rule of thumb is this, says Eddy Jeans, School Finance Manager for the Department of Education & Early Development. If a repair project gets to be 75% of the replacement cost, it may be more reasonable to replace the school.

Managing the decay of buildings has long been the status quo in Alaska,

and takes away from the educational experience. The goal is to maximize dollars into the instructional program. Neglect leads to higher

costs through premature replacement costs.

Other cost inflators: increasing enrollment that requires additional classroom space, inflation, new building codes, and the impact of additional regulatory requirements.



GO Bonds: A long term solution

After considering all the available options, our elected state officials have determined the best and perhaps only solution to address the tremendous backlog of statewide school projects is GO Bonds. The state is considering paying for the school package with a 20-year bond. Bonds allow timely improvements and spread the cost of infrastructure needs over a period of time.

Circle's K-12 School, Yukon Flats School District -

"All existing structures have exceeded their life expectancies and are spatially and technologically obsolete," states an independent audit by Bezek Durst Seiser, Architects and Planners. The original one-classroom building was built in 1962; two additional classrooms were added in 1982. The school also utilizes a trailer as a classroom. As is typical of lagoons, especially in the Spring, one may detect the odor of the school's wastewater facility. ■ Currently ranked #7 on the EED CIP list to replace the existing amalgamation of classroom and other buildings, estimated at \$4 million.

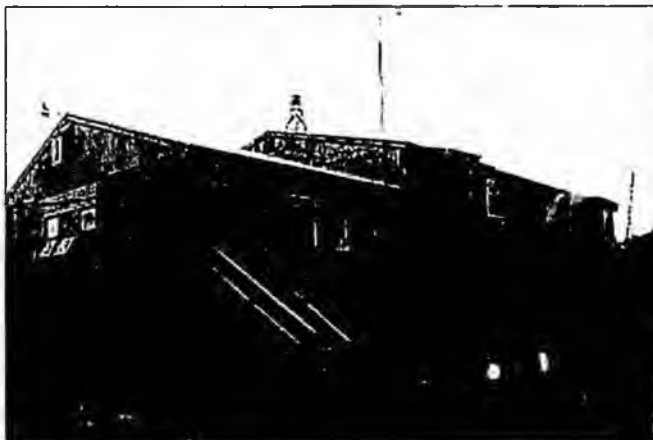
Bonds Already Passed Communities take advantage

In Juneau, taxpayers have already agreed to pay for a new high school through increased property taxes, if and when a state debt reimbursement plan is initiated. Should Prop. C pass Juneau will be underway with their valley high school.

In April 2002 Anchorage voters passed two school bonds totaling \$98.6 million for specific school additions and renovations, and for districtwide major maintenance upgrades. Sixty to 70 percent of the

bonds will be reimbursed if voters pass Prop. C.

If municipalities want to take advantage of the companion debt reimbursement plan that would be implemented by passage of Proposition C, residents will have to vote to do so.



Aklachak's School Improvement Project

Yupik School District

(Photo of Kindergarten exit and gym.) The school renovation project is #3 on the EED CIP list. This project involves the design, construction and equipping of a 42,903 sq.ft. replacement K-12 school on a new site. The 35-year-old elementary school will be demolished, and the high school, power plant and generator sets will be surplus. The school is currently operating at 206 percent capacity. Proposed cost: \$19.5 million.

Will GO bonds impact my PFD?

There will be no direct impact on the Permanent Fund dividends, says Larry Persch, Deputy Commissioner, Department of Revenue. GO bonds are paid by oil, tobacco, alcohol and other taxes. Dividends are paid for by Permanent Fund earnings. ■ GO bonds impact the state's fiscal gap only in the sense that they would put additional pressure on future state revenues.

Prop. C-Projects List**School Construction & Repairs**

HB 2002: DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT. The amount of \$170,101,411 is appropriated from the educational and museum facility design, construction, and major maintenance for the following projects and estimates:

A Companion Plan**Debt Reimbursement**

Under the companion plan to Proposition C, the state will offer debt reimbursement for school districts for bonds approved by local voters from 1999 to 2005. Under this program, school projects would be reimbursed at either 70% or 60% depending on whether the projects meet certain criteria.

Prop. C Not All Rural

While Prop. C benefits mostly rural communities, many municipal projects are included, like the Wendler Middle School renovation in Anchorage for \$12.8 million.

HB 2002: UNIVERSITY OF ALASKA. The amount of \$61,704,000 is appropriated to the University of Alaska for the following design, construction, and major maintenance projects, subject to reallocation between projects:

"The engine that's going to change the economy and the success of the economy is the University. It's how it has happened in every other state. It's how it will happen here in Alaska."

- Mike Burns, Regent, University of Alaska

HB 2002: DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT.

Project Location	Amount	Project Location	Amount
(1) Tuluskak School improvement <i>Yupit</i>	\$17,703,793	(28) Tanana major maintenance <i>Tanana City</i>	\$ 2,606,707
(2) Akiak School improvement <i>Yupit</i>	13,228,730	(29) Yakutat High School gymnasium <i>Yakutat Borough</i>	125,801
(3) Akiachak School improvement <i>Yupit</i>	19,099,094	structural repair 28	
(4) Scammon Bay replacement school <i>Lower Yukon</i>	17,029,762	(30) Klukwan mechanical system <i>Cbatkam</i>	138,137
(5) Teller K-12 remodel/addition <i>Bering Strait</i>	9,426,570	renovation	
(6) Hooper Bay addition/renovation <i>Lower Yukon</i> ..	24,423,467	(31) Chenega Bay major maintenance <i>Chugach</i>	10,520
(7) Circle School replacement <i>Yukon Flats</i>	4,068,521	(32) Chalkyitsik sewage lagoon and <i>Yukon Flats</i>	156,249
(8) Naukati School replacement <i>Southeast Island</i> ...	4,018,031	water tank project	
(9) Sheldon Point (Nunam Iqua) <i>Lower Yukon</i>	728,549	(33) Kake Middle School renovation <i>Kake City</i>	470,415
school improvement		(34) Elicavicular Elementary tank farm <i>St. Mary's</i>	218,035
(10) White Mountain K-12 remodel/ <i>Bering Strait</i>	1,138,767	upgrades	
addition		(35) George Morgan Sr. High School <i>Kuspuk</i>	452,647
(11) Arctic Village addition/renovation <i>Yukon Flats</i>	679,162	sewage system replacement	
(12) Howard Valentine School <i>Southeast Island</i>	340,170	(36) Akiak High School access ramp <i>Yupit</i>	29,821
(13) New Stuyahok School <i>Southwest Region</i>	2,009,178	(37) Nenana vocational education <i>Nenana City</i>	494,205
improvement		building renovation	
(14) Wendler Middle School building <i>Anchorage</i>	12,821,521	(38) Northway School structural <i>Alaska Gateway</i>	956,636
renovation, phase 2		upgrade	
(15) Hooper Bay structural repairs <i>Lower Yukon</i>	258,901	(39) Tetlin sewer line project <i>Alaska Gateway</i>	77,081
(16) Gustavus gymnasium renovation <i>Chalbam</i>	394,065	(40) Nenana ADA access <i>Nenana City</i>	173,195
(17) Glennallen Elementary School <i>Copper River</i>	927,069	(41) District-wide structural repairs <i>Yukon-Koyukuk</i>	474,162
upgrade		(42) District-wide fuel tank upgrades <i>Yukon-Koyukuk</i> ..	5,066,932
(18) Hoonah Elementary major <i>Hoonah City</i>	1,805,501	(43) Yakutat High School interior <i>Yakutat Borough</i>	72,258
maintenance		renovation	
(19) Akiak Elementary School <i>Yupit</i>	3,234	(44) District-wide fuel tank upgrade <i>Chugach</i>	133,428
(20) Angoon ADA access renovation <i>Chalbam</i>	134,806	(45) Tatitlek generator replacement <i>Chugach</i>	154,312
(21) Glennallen High School gym <i>Copper River</i>	152,709	(46) District-wide ADA code upgrades <i>Yukon-Koyukuk</i> ...	981,036
renovation		(47) Elicavicular Elementary <i>St. Mary's</i>	339,567
(22) Hydaburg School renovation <i>Hydaburg City</i>	5,822,106	gymnasium/cafeteria upgrade	
(23) Galena High School floor <i>Galena</i>	154,841	(48) Hoonah pool upgrades <i>Hoonah City</i>	171,092
renovation		(49) Bethel Regional High <i>Lower Kuskokwim</i>	10,505,286
(24) Skagway roof replacement <i>Skagway City</i>	177,756	School deferred maintenance	
(25) Nenana kitchen/cafeteria <i>Nenana City</i>	324,287	(50) Fort Yukon High School <i>Yukon Flats</i>	109,406
renovation		gym sprinklers	
(26) Elicavicular Elementary boiler <i>St. Mary's</i>	161,346	(51) Nome-Beliz High School <i>Nome</i>	2,691,000
replacement		renovation	
(27) Kaltag School renovation <i>Yukon-Koyukuk</i>	2,461,577	(52) Lower Kuskokwim School District-wide	4,000,000
		classroom building renovation	
		(12) Matanuska-Susitna classroom <i>Palmer</i>	\$ 650,000
		building renovation	
		(13) Robertson classroom/parking <i>Ketchikan</i>	385,000
		lot renovations	
		(14) Classroom building renovations <i>Kodiak</i>	500,000
		(15) Tanana Valley space renovation <i>Fairbanks</i>	2,000,000
		(16) Chukchi classroom building <i>Kotzebue</i>	580,000
		renovation	
		(17) Interior/Aleutians classroom <i>Interior/Aleutians</i> ..	240,000
		building renovation	
		(18) Northwest College classroom <i>Nome</i>	190,000
		building renovation	
		(19) Kuskokwim College classroom <i>Betbel</i>	180,000
		building renovation	
		(20) Bristol Bay Campus addition <i>Dillingham</i>	704,000

The amount of \$5,000,000 is appropriated from the educational and museum facility design, construction, and major maintenance fund to the Department of Community and Economic Development to be awarded as a grant to the Municipality of Anchorage for renovation of the Anchorage Museum of History and Art.

Why Bond?

- **Meet constitutional obligation.** Judge Reese's ruling—that Alaska's method of funding rural school construction is discriminatory—requires a remedy by the state. The GO Bond package is a statewide solution to the Reese decision, and meets the constitutional obligation.
- **Overcrowded and unsafe schools.** A priority list of projects is maintained by the

state, which has characterized numerous schools as overcrowded and unsafe (below minimum standards for health and safety of children). The GO Bond package addresses a large portion of the current backlog.

- **Manageability.** Bonding is a widely used process for financing public works projects and spreading the cost over time. Citizens of Alaska can pool their resources

and pay for needed projects over a 20 year period making the state's budget more predictable and manageable.

- **Favorable rates.** Bonding rates are favorable today. The actual cost of construction/repair/renovation will increase over time.
- **Attract students.** Improved facilities at the University of Alaska are expected to attract students and help Alaska meet its growing infrastructure needs.

- **Ensure needs are met now.** With or without bonding, Alaska will be forced to address new revenue needs when the reserves run out. GO Bonds allow legitimate needs to be met now, without furthering the backlog of critical infrastructure needs.
- **Create jobs.** \$236 million of maintenance and construction work will create jobs for Alaskans and income for families all over the state.

In review...

Alaska has the constitutional responsibility to educate students in a safe, conducive learning environment.

By pooling our resources through the use of GO bonds Alaska can address both the backlog and future school construction needs.

Bonding is a tool available to Alaskans to meet its obligation to provide an educational environment that helps all Alaska's youth realize their full potential.

Gubernatorial Candidates Speak Out

Ulmer (D):
Does Ulmer support GO Bonds?
YES ✓

Does Ulmer support the accompanying debt reimbursement plan?
YES ✓

"Alaska must address its backlog of school repair and construction projects. The state must systematically tackle this backlog over the next five years to ensure that no child is left in an unsafe, unfit school."

Murkowski (R):
Does Murkowski support GO Bonds?
YES ✓

Does Murkowski support the accompanying debt reimbursement plan?
YES ✓

"I see education as an investment in Alaska's future, and the school bond proposal is a vital part of that investment. I hope Alaskans will join me in supporting Proposition C on November 5th."

Proposition C: GO Bonds for Education, A Comprehensive Approach to Build Schools (September 2002) provides you with a broader understanding of how your schools will be impacted by the GO Bond package on school facilities. Produced and paid for by the Association of Alaska School Boards.

Organizations Back School Bonds

- ✓ Alaska State Board of Education
- ✓ Citizens for the Educational Advancement of Alaska's Children
- ✓ Education First - A group of education advocates organized to support education bonds.
- ✓ Alaska Municipal League and the Conference of Mayors.
- ✓ Alaska Federation of Natives - Board-authorized resolution supporting Prop. C.
- ✓ University of Alaska, Board of Regents - The Board that oversees Alaska's state university system.
- ✓ NEA - Alaska
- ✓ Association of Alaska School Boards
- ✓ Alaska Association of School Administrators
- ✓ Alaska Association of Elementary School Principals
- ✓ Alaska Association of Secondary School Principals
- ✓ South East Regional Resource Center

What people are saying...

"It's a win-win situation. It also represents a commitment to rural Alaska in areas that have a great deal of need for some schools to be built."
- Senate President Rick Halford

"We believe the opportunity is here for the people of Alaska to support the central theme that all Alaska's children deserve adequate school facilities conducive to learning and that are safe to occupy."
- John Davis, Citizens for the Educational Advancement of Alaska's Children (CEAAC)

"K-12 public schools are the seed corn for the University of Alaska. Safe and adequate facilities don't guarantee a decent education, but overcrowding and poor conditions are significant handicaps to learning."
- Mark Hamilton, President, University of Alaska



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HB

509

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FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 509(L&C)
 (H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Alaska Gaming Commission RDU Revenue Programs & Services
 Component Tax Division
 Sponsor Representative Kott
 Requester: House Labor & Commerce Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	616.0	616.0	616.0	616.0	616.0	616.0
Travel	39.0	39.0	39.0	39.0	39.0	39.0
Contractual	35.8	35.8	35.8	35.8	35.8	35.8
Supplies	8.0	8.0	8.0	8.0	8.0	8.0
Equipment	8.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	707.3	698.8	698.8	698.8	698.8	698.8

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	159.0	150.5	150.5	150.5	150.5	150.5
1005 GF/Program Receipts	548.3	548.3	548.3	548.3	548.3	548.3
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	707.3	698.8	698.8	698.8	698.8	698.8

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time	8	8	8	8	8	8
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Meyers Phone 269-6620
 Division Tax Division Date/Time 2/23/04 2:03 PM
 Approved by: _____ Date 2/23/2004
 Agency Department of Revenue

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 509(L&C)

ANALYSIS CONTINUATION

The proposed legislation provides for the transfer of the current charitable gaming program to a newly formed Alaska Gaming Commission in the Department of Revenue. The Gaming Commission consists of seven members appointed by the governor. The commissioners do not receive a salary but they are required to meet quarterly and receive per diem and travel expenses. The Commission is required to hire an executive director to oversee the program.

The fiscal note identifies the costs associated with administering the current charitable gaming unit, plus the costs associated with the Commission and the hiring of an executive director. Funding for the current charitable gaming unit falls within the Tax Division and consists of \$548.3 of General Fund Program Receipts reflected in this note and is contained in the Governor's FY 2005 Budget. It is anticipated that these funds will be made available to the Alaska Gaming Commission to administer the program.

The legislation creates a state gaming fund in the general fund. It also requires that the commission shall have an audit of the books and accounts of the commission performed at least once a year by certified public accountants. The charitable gaming unit has not had this audit requirement in the past and it is estimated that the cost will be \$25,000 and are reflected in contractual.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 509(L&C)
(H) Publish Date: 2/24/04

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Supplies	8.0	8.0	8.0	8.0	8.0	8.0
Equipment	8.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	707.3	698.8	698.8	698.8	698.8	698.8

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
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1004 GF	159.0	150.5	150.5	150.5	150.5	150.5
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Other (Specify Type--Do not abbreviate)						
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Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time	8	8	8	8	8	8
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Meyers Phone 269-6620
Division: Tax Division Date/Time 2/23/04 2:03 PM
Approved by: _____ Date 2/23/2004
Agency: Department of Revenue

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 509(L&C)

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The proposed legislation provides for the transfer of the current charitable gaming program to a newly formed Alaska Gaming Commission in the Department of Revenue. The Gaming Commission consists of seven members appointed by the governor. The commissioners do not receive a salary but they are required to meet quarterly and receive per diem and travel expenses. The Commission is required to hire an executive director to oversee the program.

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2004 HOUSE FINANCE COMMITTEE VOTE SHEET

CS HB 509
Version U

DATE: 3.4.04

Amendment: _____

MEMBER	Favor	Oppose
MEYER		
MOSES	X	
STOLTZE		X
CHENAULT	X	
CROFT	X	
FATE	X	
FOSTER	X	
HAWKER	X	
JOULE	X	
HARRIS	X	
WILLIAMS	X	

Yea 9

Nay 1

Adopted
2.25.04

23-LS1768\S.1
Luckhaupt
2/25/04

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 509(), Draft Version "S"

1 Page 4, line 31:

2 Delete "and other employees of the commission are"

3 Insert "is"

4

5 Page 8, line 25, through page 9, line 4:

6 Delete all material and insert:

7 "* Sec. 7. AS 39.25.110 is amended by adding a new paragraph to read:

8 (40) the executive director of the Alaska Gaming Commission."

23-LS1768\S
Luckhaupt
2/25/04

2.25.04

CS FOR HOUSE BILL NO. 509()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to establishing the Alaska Gaming Commission."**

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

3 *** Section 1. AS 04.11.370(c) is amended to read:**

4 (c) If the board receives notice from the Alaska Gaming Commission
5 [DEPARTMENT OF REVENUE] that a licensee or permittee has violated a provision
6 of AS 05.15 related to gambling, the board

7 (1) may suspend the license or permit; and

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

11 *** Sec. 2. AS 05.15.010 is amended to read:**

12 **Sec. 05.15.010. Alaska Gaming Commission [DEPARTMENT OF**
13 **REVENUE] to administer chapter. The Alaska Gaming Commission in the**
14 **Department of Revenue shall administer this chapter.**

15 *** Sec. 3. AS 05.15.690 is amended by adding a new paragraph to read:**

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(46) "commissioner" means the Alaska Gaming Commission.

* Sec. 4. AS 05 is amended by adding a new chapter to read:

Chapter 18. Alaska Gaming Commission.

Article 1. Administration.

Sec. 05.18.010. Creation of commission. (a) The Alaska Gaming

Commission is established for the purpose of generating revenue for the state and regulating gaming activities in the state. The commission is established in the Department of Revenue. The commission consists of seven members appointed by the governor, subject to confirmation by the legislature. One member shall be appointed from each of the four judicial districts of the state. Three members shall be at-large members. Not more than three of the seven members may be members of the same political affiliation or party. One member of the commission must have at least five years' experience in law enforcement, and one member must be a certified public accountant. The members of the commission shall elect one member to serve as chair of the commission.

(b) Members serve staggered terms of three years. A member may be reappointed but may not serve for more than six years.

(c) A member of the commission does not receive a salary for service on the commission but is entitled to per diem and travel expenses authorized for members of boards and commissions under AS 39.20.180.

(d) A member of the commission may not have a pecuniary interest in a contract or agreement entered into by the commission.

(e) A person may not serve as a member of the commission if that person

(1) has been convicted of

(A) a felony; or

(B) an offense under this chapter, AS 11.66.200 - 11.66.280, or a comparable provision of municipal, state, or federal law;

(2) is an elected official of the state or of a political subdivision of the state;

new : (3) holds a license, permit, or registration under AS 05.15; or

new : (4) holds a license or permit under AS 04.11.

L

1 (f) A person may not serve as a member of the commission until the
2 investigation required under AS 18.65.080(b) is completed.

3 (g) Four members of the commission constitute a quorum for the transaction of
4 business.

5 (h) The governor may remove a member for cause, including incompetence,
6 neglect of duty, or misconduct in office. A member being removed for cause shall be
7 given a copy of the charges and afforded an opportunity to publicly present a defense in
8 person or by counsel upon not less than 10 days' notice. If a member is removed for
9 cause, the governor shall file with the lieutenant governor a complete statement of all
10 charges made against the member and the governor's findings based on the charges,
11 together with a complete record of the proceedings.

12 (i) The governor may immediately suspend a member for a violation of law or
13 for misconduct in office pending removal from office under (a) of this section.

14 **Sec. 05.18.020. Meetings.** (a) The commission shall meet at least quarterly at
15 the call of the chair, at the request of a majority of the members, or at a regularly
16 scheduled time set by the commission.

17 (b) An action of the commission is not binding unless taken at a meeting
18 where four or more of the members are present and vote in favor of the action.

19 **Sec. 05.18.030. Duties and powers of commission** (a) The commission
20 shall

21 (1) enter into contracts and agreements necessary to carry out the
22 provisions of this chapter;

23 (2) adopt regulations necessary to carry out the provisions of this
24 chapter;

25 (3) administer, regulate, and enforce the charitable gaming laws under
26 AS 05.15;

27 (4) recommend policy direction for the operation and administration of
28 gaming activities in Alaska;

29 (5) report to the governor and the legislature each quarter on the
30 gaming activities authorized and on the total revenue, prize disbursement, and other
31 expenses for the preceding quarter;

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(6) report to the governor and the legislature each year on authorized gaming activities, including a full and complete statement of revenue, prize disbursement, and other expenses, and recommendations for changes in this chapter;

(7) report to the governor and the legislature as frequently as the commission determines necessary on conclusions from the analysis of the reaction of state residents to gaming activities, and on matters that require changes in the law to prevent violations or evasions of this chapter or to correct undesirable conditions in connection with the operation or administration of gaming activities;

(8) monitor the operation of gaming throughout the state; and

(9) study and investigate the operation and administration of gaming laws of other states and of federal laws that affect gaming activities.

(b) The commission may participate with other states in multi-state gaming activities if permitted by the legislature.

Sec. 05.18.040. Regulations. The commission shall adopt regulations under AS 44.62 (Administrative Procedure Act) to establish

(1) the types of gaming activities to be conducted if those activities are permitted under AS 05.18.100;

(2) the places and locations where gaming activities may be conducted; and

(3) all matters necessary or desirable to carry out this chapter and AS 05.15, to operate gaming activities efficiently and economically, and to make the participation in gaming activities and the distribution of prizes convenient.

Sec. 05.18.050. Executive director and employees. (a) The commission shall employ an executive director who is qualified by training and experience to conduct the day-to-day work of the commission. The director may not engage in another profession or occupation.

(b) Subject to the approval of the commission, the director may appoint deputies required to carry out the functions and duties of the commission. The director may appoint professional, technical, and clerical employees necessary to perform the duties of the commission.

Amendment #1 (c) The director ^{is} ~~and other employees of the commission are~~ in the exempt

1 service under AS 39.25.110.

2 (d) The commission may not employ a person who has been convicted,
3 including conviction based on a guilty plea or plea of nolo contendere, of an offense
4 that disqualifies a person from being a member of the commission.

5 **Sec. 05.18.060. Duties of director.** The director shall

- 6 (1) supervise the operation and administration of gaming activities;
7 (2) act as secretary to the commission;
8 (3) contract with agents and contractors to engage in or conduct or
9 operate gaming activities;
10 (4) meet at least quarterly with the commission on the operation and
11 administration of gaming activities;
12 (5) make available for inspection by the commission, upon request, all
13 books, records, files, and other information and documents of the commission;
14 (6) advise the commission and make recommendations to improve the
15 operation and administration of gaming in the state;
16 (7) suspend or revoke a contract issued under this chapter for a
17 violation of this chapter or the regulations adopted under this chapter;
18 (8) subject to the approval of the commission, enter into contracts for
19 the operation and administration of gaming activities, except that agent contracts are
20 not subject to the approval of the commission;
21 (9) provide each month to the commission a full and complete
22 statement of the revenue, prize disbursements, and other expenses for the preceding
23 month; and
24 (10) administer and enforce the charitable gaming laws in AS 05.15.

25 **Sec. 05.18.070. Subpoenas.** (a) The director or the commission may
26 subpoena witnesses and documents in a matter over which the commission has
27 jurisdiction, control, or supervision. The director or the commission may administer
28 oaths and affirmations to persons whose testimony is required.

29 (b) If a person fails to obey a subpoena, or if a person refuses to answer a
30 relevant question or to exhibit a document when ordered to do so by the director or the
31 commission, the director or the commission may apply to the superior court for an

1 order directing the person to comply with the subpoena or the order. The court may
2 order the person to comply.

3 **Article 2. Gaming Activities.**

4 **Sec. 05.18.100. Gaming activities.** The commission may not authorize a
5 gaming activity unless that activity is authorized by the legislature in this section. The
6 commission may not authorize a charitable gaming activity unless that activity is
7 authorized under AS 05.15.

8 **Article 3. Miscellaneous Provisions.**

9 **Sec. 05.18.300. State gaming fund and appropriations.** There is created in
10 the general fund the state gaming fund. The state gaming fund consists of all revenue
11 received from gaming activities and all other money credited or transferred to the fund
12 from another fund or source.

13 **Sec. 05.18.310. Audit.** The commission shall have an audit of the books and
14 accounts of the commission performed at least once in each year by certified public
15 accountants. The Legislative Budget and Audit Committee shall annually perform
16 post-audits of the commission and report to the legislature. The commission may have
17 special audits performed at any time on its own motion or at the request of the
18 director. The commission shall file a copy of each audit with the commissioner of
19 revenue and the legislature.

20 **Sec. 05.18.320. Prohibited acts.** (a) A person may not

21 (1) knowingly act as an agent or sell a gaming product unless the
22 person has a contract with the commission to be an agent, or is an employee of an
23 agent and sells gaming products or awards gaming prizes under the supervision of the
24 agent;

25 (2) knowingly sell a gaming product at a price greater than that fixed
26 by the commission;

27 (3) knowingly sell or offer to sell a gaming product to a person under
28 21 years of age;

29 (4) knowingly present a counterfeit or altered gaming product for
30 payment or transfer a counterfeit or altered gaming product to another person to
31 present for payment;

1 (5) with intent to defraud, falsely make, alter, forge, utter, pass or
2 counterfeit a gaming product; or

3 (6) impersonate a representative of the commission.

4 (b) A contractor, an agent, the governor, or an officer or employee of the
5 commission may not purchase a gaming product, receive a gaming prize, or participate
6 in a gaming activity.

7 (c) An agent or contractor may not knowingly withhold funds owed to the
8 commission.

9 (d) This section does not prohibit a person from giving a gaming product to
10 another person of any age.

11 (e) In this section, "knowingly" has the meaning given in AS 11.81.900.

12 **Sec. 05.18.330. Assignment of contracts.** A person that enters into a contract
13 under this chapter may not assign the contract without the approval of the commission.

14 **Sec. 05.18.340. Penalty.** A person that violates AS 05.18.320 or 05.18.330 is
15 guilty of a class C felony.

16 **Sec. 05.18.350. Statement of odds.** Each gaming product must indicate the
17 odds of winning a prize in the particular gaming activity represented by the product.

18 **Article 4. General Provisions.**

19 **Sec. 05.18.900. Definitions.** In this chapter, unless the context requires
20 otherwise,

21 (1) "commission" means the Alaska Gaming Commission;

22 (2) "director" means the executive director of the commission;

23 (3) "gaming product" means a ticket, receipt, card, or other item,
24 except a prize, received by a person from an agent or an employee of an agent as
25 evidence of participation in a gaming activity under this chapter;

26 (4) "operation and administration" includes accounting, sales,
27 promotion, and security;

28 (5) "person" has the meaning given in AS 01.10.060 and also includes
29 an estate, receiver, trustee, assignee, referee, or other person acting in a fiduciary or
30 representative capacity, whether appointed by a court or otherwise, and a department,
31 commission, agency, or instrumentality of the state, including a municipality and an

1 agency or instrumentality of a municipality.

2 * Sec. 5. AS 11.66.280(2) is amended to read:

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

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

13 (B) playing an amusement device that
14 (i) confers only an immediate right of replay not
15 exchangeable for something of value other than the privilege of
16 immediate replay; and

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

19 (C) an activity authorized by the Alaska Gaming Commission
20 [DEPARTMENT OF REVENUE] under AS 05.15 or AS 05.18;

21 * Sec. 6. AS 18.65.080 is amended by adding a new subsection to read:

22 (b) The Department of Public Safety shall investigate and ascertain whether a
23 person appointed by the governor to serve as a member of the Alaska Gaming
24 Commission has been convicted of a crime set out in AS 05.18.010(e).

25 * Sec. 7. AS 39.25.110(11) is amended to read: *Amendment # 1*

26 (11) the officers and employees of the following boards, commissions,
27 and authorities:

- 28 (A) [REPEALED
- 29 (B)] Alaska Permanent Fund Corporation;
- 30 (B) [(C)] Alaska Industrial Development and Export Authority;
- 31 (C) [(D)] Alaska Commercial Fisheries Entry Commission;

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- ~~(D) [(E)] Alaska Commission on Postsecondary Education;~~
- ~~(E) [(F)] Alaska Aerospace Development Corporation;~~
- ~~(F) [(G)] Alaska Natural Gas Development Authority;~~
- (G) Alaska Gaming Commission;

* Sec. 8. AS 39.50.200(b) is amended by adding a new paragraph to read:

(58) Alaska Gaming Commission (AS 05.18).

* Sec. 9. AS 05.15.690(9) is repealed.

* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR INSTRUCTION. The revisor of statutes is instructed to change references to the "commissioner" and "department" in AS 05.15 to "commission" unless it is clear from the context that "commissioner" refers to a commissioner other than the commissioner of revenue and "department" refers to a department other than the Department of Revenue.

L

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-3777
Fax (907) 465-2819



Interim: (June-Dec)
716 West 4th Avenue, Suite 600
Anchorage, AK 99501-2133
(907) 269-0155
(907) 269-0154 Fax

Pete Kott
Speaker of the House

Sponsor Statement

HB 509

"An Act relating to establishing the Alaska Gaming Commission."

House Bill 509 establishes the Alaska Gaming Commission in statute. The Alaska Gaming Commission will regulate all forms of gaming activity in Alaska. This includes current forms, and additional forms that may be authorized by the legislature under AS 15.15.100.

Gaming activity currently allowed in AS 05.15.100 includes bingo, raffles, lotteries, pull-tab games, "classic" fish derbies and contests of skill. If, sometime in the future, additional forms of gaming become legal in Alaska, it will be critical that appropriate regulatory oversight be in place.

The goal of HB 509 is to put the regulatory framework in place by establishing the Alaska Gaming Commission within the Department of Revenue. This bill establishes parameters for a seven-member commission appointed by the governor and confirmed by the legislature. The bill clearly specifies commission make-up, qualifications for commissioners, meeting times, and powers and duties.

HB 509 makes it clear that the commission may not authorize a charitable gaming activity unless that activity is authorized under AS 05.15. This bill only gives the commission tools necessary to administer gaming once the legislature and governor adopt activity into law.

We respectfully request the committee consider to HB 509 and passes it from committee.

Adopted
3.4.04

23-LS1768\U.1
Luckhaupt
3/4/04

AMENDMENT |

OFFERED IN THE HOUSE

TO: CSHB 509(), Draft Version "U"

Adopted FIN
CS
Work Draft U

and
Am 1
Am 2

- 1 Page 3, following line 25:
- 2 Insert a new subsection to read:
- 3 "(c) The voting members of the commission may exclude the ex officio members
- 4 from executive sessions otherwise permitted by law."