

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6639 SENATE STATE AFFAIRS

1093

38

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: Transfer of Charitable
Gaming Program
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income and Excise Audit Division
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See Attached.

Prepared By: Steven E. Kettel, Director *St. E. Kettel* Phone: (907) 465-2320
 Division: Income and Excise Audit Division Date: December 22, 1988
 Approved by Commissioner: Hugh Malone *H. Malone* Date: 12/22/88
 Agency: Department of Revenue

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
December 22, 1988

FISCAL NOTE ANALYSIS
TRANSFER OF CHARITABLE GAMING PROGRAM

The Charitable Gaming Program will transfer from the Department of Revenue to the Department of Commerce and Economic Development on July 1, 1989. The Gaming Program operates more as a regulatory section than a revenue agency. This transfer will enhance the efficiency of state government through consolidation in a department that already performs other similar regulatory functions. This transfer will allow the Department of Revenue to focus attention and resources on its primary responsibility of collection revenue due to state government.

This bill is necessary to amend the statutes which specify the department responsible for implementing AS 04.15.

The Department of Revenue will transfer the necessary resources; including seven positions, associated travel, contractual, and supply monies to enable the Department of Commerce and Economic Development to carry out the responsibilities of the program. Refer to Income and Excise Audit Division's FY 90 Budget Amendment for details.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: Trans. of games of chance and contests BRU: Occupational Licensing
of skill from Revenue to DCEU
 Sponsor: Rules Committee Components: Administration
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING						
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funding for the transfer of this function will be submitted through the budget amendment process.

Prepared by: Jennifer Strickler, Admin. Officer
 Division: Occupational Licensing

465-2144
 Phone: _____
 Date: December 22, 1988

Approved by Commissioner: Larry Merculieff, Commissioner
 Agency: Dept. of Commerce & Economic Development

Date: 12/22/88

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST: _____

Revision Date: _____
 Title: Transfer of Charitable
Gaming Program
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Revenue
 BRU: Income and Excise Audit Division
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See Attached.

Prepared By: Steven E. Kettel, Director *Stev E. Kettel* Phone: (907) 465-2320
 Division: Income and Excise Audit Division Date: December 22, 1988

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: 12/22/88
 Agency: Department of Revenue

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
December 22, 1988

FISCAL NOTE ANALYSIS
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This bill is necessary to amend the statutes which specify the department responsible for implementing AS 04.15.

The Department of Revenue will transfer the necessary resources; including seven positions, associated travel, contractual, and supply monies to enable the Department of Commerce and Economic Development to carry out the responsibilities of the program. Refer to Income and Excise Audit Division's FY 90 Budget Amendment for details.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "...gambling enterprise in
 municipalities & on state ferries..."
 Sponsor: Fahrenkamp
 Requestor: _____

Agency Affected: DOT&PF - AMHS
 BRU: _____
 Components: Southeast Vessels

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		1,500.0	1,500.0	1,500.0	1,530.0	1,560.0
TRAVEL		30.0	30.0	30.0	31.0	32.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1,530.0	1,530.0	1,530.0	1,561.0	1,592.0
CAPITAL		270.0				
REVENUE		*	*	*	*	*

FUNDING: (Thousands of Dollars)

GENERAL FUND		1,800.0	1,530.0	1,530.0	1,561.0	1,592.0
FEDERAL FUNDS						
OTHER						
TOTAL		1,800.0	1,530.0	1,530.0	1,561.0	1,592.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Not determined at this time.

FY 93 and FY 94 each increased by approximately 2% over previous year to allow for inflation.

See attached comments.

Prepared by: John Halterman, Assistant Director Phone: 465-3950
 Division: Alaska Marine Highway System Date: _____

Approved by Commissioner: Mark S. Hickey Date: 3/2/89
 Agency: Department of Transportation and Public Facilities

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An act authorizing gambling in municipalities and on state ferries
Sponsor: Fahrenkamp
Requestor: Community & Regional Affairs

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: February 17, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: February 17, 1989
Agency: Department of Revenue

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis

This legislation would impact the Department of Revenue by:

1. Section 2

A) which requires the Department to issue a license to and regulate gambling on vessels on the Alaska Marine Highway System, upon application by the Commissioner of DOTPF.

B) which provides the Department will regulate legalized gambling activities in communities which have allowed, by ordinance, for those activities to be conducted and who have established a commission responsible for licensing and regulating gambling in the community.

2. Section 6

A) which requires the Department to collect a 3 1/2% fee applied against gambling gross proceeds. The fee is collected from the municipality and deposited in the general fund.

Fiscal Impact

The Department has no basis on which to estimate revenues or expenses for this legislation. Legalized gambling of the type allowed in this bill is not permitted by present law. It cannot be assumed that any community will pass an ordinance to allow gambling.

Recommendation

1) The regulation of legalized gambling should not be placed within the Department of Revenue. It would detract management attention away from its highest priority - the administration of tax enforcement and investment programs.

2) There would be unnecessary duplication of effort and expense in having DOR license and regulate DOTPF ferries conducting gambling activities. Perhaps DOTPF could better carry out this function.

3) The Department of Revenue has no agency position on the merits of this proposal itself.



FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act authorizing gambling ...
 in municipalities and on state ferries.."
 Sponsor: Senator Bettve Fahrenkamp
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Carol Carroll
 Prepared by: Carol Carroll, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/2/89

[Signature]
 Approved by Commissioner: _____ Date: 3/2/89
 Agency: Community & Regional Affairs

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 168 (SA)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Authorizing Gambling Enterprises
in Municipalities
Sponsor: Fahrenkamp
Requester: Senate State Affairs

Agency Affected: Commerce & Econ. Dev.
BRU: _____
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		89.2	89.2	89.2	89.2	89.2
TRAVEL		7.5	7.5	7.5	7.5	7.5
CONTRACTUAL		25.4	25.4	25.4	25.4	25.4
SUPPLIES		3.0	3.0	3.0	3.0	3.0
EQUIPMENT		10.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	135.1	125.1	125.1	125.1	125.1

CAPITAL						
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REVENUE	0	*	*	*	*	*
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FUNDING: (Thousands of dollars)

GENERAL FUND		135.1**				
FEDERAL FUNDS						
OTHER			125.1	125.1	125.1	125.1
TOTAL	0					

POSITIONS:

FULL-TIME	0	2	2	2	2	2
PART-TIME		0	0	0	0	0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

*See Revenue Analysis attached.

**Funding is to come from program receipts; however, the department cannot estimate what the amount might be. Therefore, for the first year, general funds are used.

Prepared by: Linda Wild, Special Assistant
Division: Commissioner's Office

Phone: 465-2500
Date: 5-1-89

Approved by Commissioner: Larry Merculieff
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: 5-1-89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note Analysis: CSSB 168 (SA)

CSSB 168 (SA) authorizes historical gambling within municipalities, subject to local approval through adoption of an ordinance. The department is to "cooperate" with municipalities in the administration and regulation of gambling within municipalities authorized to license or operate historical gambling activities. The department is uncertain as to what might be involved in "cooperation," but this fiscal note assumes that the department would be responsible for adopting regulations regarding gambling activities, the auditing of municipal records, and reporting requirements. Municipalities are to establish local commissions responsible for licensing, regulation, and administration of authorized gambling activities. It is unclear to what extent the department would be involved in this effort.

The bill further provides that the department submit an annual report to the Governor and Legislature on its administration of historical gambling, the regulation of gambling by municipalities, and its recommendations for legislation.

The department believes that, if the Legislature chooses to authorize historical gambling or any other type of gambling activity, the administration and regulation of the activity would best be handled through a state gambling commission.

FY 90 EXPENDITURE DETAIL

PERSONAL SERVICES

Administrative Officer III, Range 21	\$61,500
Clerk Typist III, Range 8	<u>27,736</u>
Subtotal	\$89,236

TRAVEL

Staff travel to meet with municipal gambling commissions	\$ 7,500
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CONTRACTUAL

Audits	\$15,000
Postage, communications, printing, etc.	5,000
Office space	<u>5,400</u>
Subtotal	\$25,400

SUPPLIES	\$ 3,000
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EQUIPMENT (one time costs)	\$10,000
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FY 90 EXPENDITURES

FY 90 REVENUE DETAIL

CSSB 168 (SA) provides that the state receive 3-1/2% of gross proceeds, and that 1/2% of that amount may be appropriated for the treatment and counseling of persons identified as compulsive gamblers and for programs designed to prevent persons from becoming compulsive gamblers. The department is unable to estimate, at this time, the amount of revenue that may be generated by historical gambling activities. The bill does provide that program receipts may be used to fund administrative costs of the department under this chapter.

Funding for future years depends upon how many municipalities would choose to authorize gambling enterprises. Not knowing how extensive participation might be, this fiscal note carries the FY 90 numbers on into future years.

1 IN THE SENATE

BY POURCHOT BY REQUEST

2

SENATE BILL NO. 263

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to video gaming devices and their
7 distributors, classifying video gaming devices as
8 coin-operated devices for purposes of regulation and
9 taxation, and exempting them from the definition of
10 gambling devices; to taxes imposed on and regulation
11 of coin-operated devices; and providing for an effec-
12 tive date."

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

14 * Section 1. AS 11.66.280(2) is amended to read:

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

21 (A) bona fide business transactions valid under the
22 law of contracts for the purchase or sale at a future date of
23 securities or commodities and agreements to compensate for loss
24 caused by the happening of chance, including contracts of indem-
25 nity or guaranty and life, health, or accident insurance; [OR]

26 (B) playing an amusement device that

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

1 (ii) does not contain a method or device by which
2 the privilege of immediate replay may be cancelled or re-
3 voked;

4 (C) an activity authorized by the commissioner of
5 revenue under AS 05.15; or

6 (D) a video gaming device authorized under AS 43.35;

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

8 (3) "gambling device" means any device, machine, parapher-
9 nalia, or equipment that is used or usable in the playing phases of
10 unlawful gambling, whether it consists of gambling between persons or
11 gambling by a person involving the playing of a machine; "gambling
12 device" does not include

13 (A) lottery tickets, policy slips, or other items used
14 in the playing phases of lottery or policy schemes; [OR]

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

17 (C) a video gaming device authorized under AS 43.35;

18 * Sec. 3. AS 43.35 is amended by adding a new section to read:

19 Sec. 43.35.015. TAX ON VIDEO GAMING DEVICE. (a) In addition to
20 the tax payable under AS 43.35.010, the holder of a video gaming
21 device license shall, not later than 15 days after the end of the
22 calendar quarter,

23 (1) pay to the department 25 percent of the net machine
24 income earned in the previous calendar quarter from a video gaming
25 device; and

26 (2) file a statement with the department showing the total
27 net income earned in the previous calendar quarter from video gaming
28 devices authorized under this section, and the amount due the depart-
29 ment based on net income.

1 (b) A person who fails to pay fees or file a statement as re-
2 quired under (a) of this section is subject to a civil penalty of not
3 more than \$1,000 for each violation. Each day a person fails to
4 comply constitutes a separate violation. The civil penalty may be
5 imposed by the department in an administrative proceeding or by a
6 court.

7 (c) In this section "net machine income" means money received
8 from a video gaming device less money paid out in cash for credits
9 earned from the video gaming device.

10 * Sec. 4. AS 43.35.030 is amended by adding a new subsection to read:

11 (b) The provisions of (a) of this section do not apply to a
12 person who is licensed as a distributor of video games under AS 43.-
13 35.200.

14 * Sec. 5. AS 43.35.050 is repealed and reenacted to read:

15 Sec. 43.35.050. DISTRIBUTION OF TAX. (a) Except as provided in
16 (b) of this section, subject to an appropriation made for the purpose,
17 the department shall pay one-half of the proceeds of the gross reve-
18 nues from the tax provided by this chapter to municipalities in the
19 proportion that the revenue was earned within them. The balance shall
20 be retained by the state and deposited in the general fund.

21 (b) The amount of gross revenue shared with municipalities under
22 (a) of this section does not include

23 (1) revenue from fees paid for distributor's licenses and
24 permits; *under 43.35.030 + 43,35,200*

25 (2) revenue from penalties;

26 (3) revenue attributable by the department to expenses
27 incurred in the collection of the tax; and

28 (4) revenue from the tax on video gaming devices under
29 AS 43.35.015(a). *+ 43,35,010(a)*

1 * Sec. 6. AS 43.35.090(3) is amended to read:

2 (3) "coin-operated device class 3" means

3 (A) a slot machine or other apparatus or device that
4 [WHICH] operates by means of insertion of a coin, token, or
5 similar object and that [WHICH], by strict dependence upon the
6 element of chance, may deliver or may entitle the person playing
7 or operating the machine to receive cash, premiums, merchandise,
8 or tokens; the term includes a device or apparatus that is other-
9 wise a coin-operated device class 2 [A DEVICE OR APPARATUS OTHER-
10 WISE FALLING WITHIN THE CLASSIFICATION OF (2) OF THIS SECTION,
11 THOUGH NOT STRICTLY DEPENDENT UPON THE ELEMENT OF CHANCE, IS
12 TAXED ACCORDING TO THE RATE APPLICABLE TO SLOT MACHINES] if the
13 device or apparatus itself delivers cash directly to the person
14 playing or operating it; and

15 (B) a video gaming device;

16 * Sec. 7. AS 43.35.090 is amended by adding a new paragraph to read:

17 (5) "video gaming device" means an electronic machine that
18 uses a video screen or display and microprocessors to play or simulate
19 the play of the game of draw poker or of the game of keno, and that
20 upon insertion of money allows a user by skill or chance to receive
21 free games or credits that may be redeemed for cash, but does not
22 include a machine that directly deposits money to the user.

23 * Sec. 8. AS 43.35 is amended by adding new sections to read:

24 ARTICLE 3. VIDEO GAMING DEVICES.

25 Sec. 43.35.200. DISTRIBUTOR OF VIDEO GAMING DEVICES TO BE LI-
26 CENSED. (a) A person who distributes video gaming devices may not
27 distribute a video gaming device in this state without a valid video
28 gaming distributor's license issued by the department. To remain
29 valid, a license must be renewed annually on or before a date set by

1 the department.

2 (b) An applicant for a license or renewal of a license shall pay
3 an annual fee of \$500.

4 (c) The department shall refuse to issue a license to a person
5 who distributes video gaming devices if the person has not been a
6 resident of the state for one year immediately preceding the person's
7 application or reapplication for a license.

8 (d) The department

9 (1) shall refuse to issue a license to a person who dis-
10 tributes video gaming devices, or shall suspend or revoke a license,
11 if the person

12 (A) has been convicted of a felony;

13 (B) has been convicted of a violation of AS 11.66.-
14 200 - 11.66.280 or another law or ordinance with substantially
15 similar elements;

16 (2) may refuse to issue a license to a person who distrib-
17 utes video gaming devices, or may suspend or revoke a license if the
18 person fails to comply with a provision of this chapter or of a regu-
19 lation adopted under it;

20 (3) may require an applicant for a license or renewal of a
21 license and, if the applicant is a corporation, each shareholder and
22 employee of the corporation, to file an affidavit that the distributor

23 (A) is a citizen of the United States;

24 (B) has been a bona fide resident of the state for at
25 least one year; and

26 (C) has never been convicted of a crime identified in
27 (1) of this subsection.

28 (e) A person who is denied a license under (d) of this section,
29 or whose license is suspended or revoked under (d) of this section,

1 has the right to a hearing on the department's decision and may appeal
2 the denial, suspension, or revocation to the superior court.

3 (f) In this section "license" means a video gaming distributor's
4 license.

5 Sec. 43.35.210. INSTALLATION OF VIDEO GAMING DEVICES. A person
6 licensed under AS 43.35.200 may install video gaming devices only in
7 premises that sell alcoholic beverages and that hold under AS 04.11:

8 (1) a beverage dispensary license under AS 04.11.090;

9 (2) a duplicate beverage dispensary license for additional
10 rooms under AS 04.11.090(e);

11 (3) a club license under AS 04.11.110;

12 (4) a common carrier dispensary license under AS 04.11.180;

13 or

14 (5) a pub license under AS 04.11.220.

15 * Sec. 9. This Act takes effect July 1, 1989.

Sen. Pourchot
April 13, 1989

SECTIONAL ANALYSIS
SB 263, RELATING TO VIDEO GAMING DEVICES

Sec 1-2 Exempt video gaming, as authorized in SB 263, from criminal code

THE FOLLOWING PROVISIONS ARE AMENDMENTS TO AS 43.35, "COIN OPERATED DEVICES", IN THE DEPARTMENT OF REVENUE. THEY WOULD APPLY ONLY TO VIDEO GAMING DEVICES:

- Sec 3 Tax is 25% of net income, paid quarterly to Dept. Revenue
Civil penalty of \$1000/day for failure to pay
Define "net income" as money paid into device less money paid out in cash for credits
- Sec 4 Current coin-operated device license doesn't apply
- Sec 5 Requirement that revenues from coin-operated devices be shared with municipalities doesn't apply
- Sec 6 Amends definition of "coin-operated device class 3" to include video gaming devices
- Sec 7 Defines "video gaming device" as draw poker or keno
Devices can't pay money directly to the winner
- Sec 8 Distributor of video device must be licensed:
Annual fee \$500, 1-year resident, no felony or gambling convictions, U.S citizen (all of these requirements except the fee apply currently to distributors of coin-operated devices)

Distributor can install machines only on certain premises licensed by the ABC Board -- bar, club, pub, common carrier

THE FOLLOWING PROVISIONS OF THE EXISTING COIN-OPERATED DEVICE LAW WOULD APPLY TO VIDEO DEVICES ALSO:

Annual fee per device \$240, to be paid by distributor
Must be age 18 to play
Department may adopt regulations

THE FOLLOWING PROVISIONS OF THE EXISTING CRIMINAL CODE WOULD APPLY TO UNLAWFUL USES OF VIDEO DEVICES:

Class C felony (maximum \$50,000 fine, 5-year sentence) for promoting gambling in the first degree or possession of gambling records in the first degree; Class A misdemeanor (maximum \$5,000 fine, 1-year sentence) for promoting in second degree, possessing records in second degree, or possessing a gambling device; Class B misdemeanor (maximum \$1,000 fine, 90-day sentence) for engaging in unlawful gambling

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An act relating to video gaming devices
Sponsor: By Pourchot by request
Requestor: _____

Agency Affected: Revenue
BRU: Income & Excise Audit Division
Components: Operating and Revenue

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	310.4	310.4	310.4	310.4	310.4	310.4
TRAVEL	9.0	9.0	9.0	9.0	9.0	9.0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	56.0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	8.0	0	0	0	0	0
TOTAL OPERATING	388.4	324.4	324.4	324.4	324.4	324.4
CAPITAL	0	0	0	0	0	0
REVENUE	12000.	15000.	15000.	15000.	15000.	15000.

FUNDING: (Thousands of Dollars)

GENERAL FUND	388.4	324.4	324.4	324.4	324.4	324.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	388.4	324.4	324.4	324.4	324.4	324.4

POSITIONS:

FULL-TIME	7	7	7	7	7	7
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel
Division: Income and Excise Audit
Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Phone: (907) 465-2320
Date: April 13, 1989
Date: 4/14/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

OPERATING

Personal Service Costs

<u>Location</u>	<u>Position</u>	<u>Range/Step</u>	<u>Annual Salary and Benefits</u>
Juneau	Revenue Audit Supvr I	22A	\$65.3
Juneau	Revenue Auditor II	14A	\$39.8
Juneau	Tax Examiner II	12A	\$35.7
Juneau	Investigator I	14A	\$39.8
Juneau	Clerk Typist II	7A	\$28.0
Anchorage	Revenue Auditor III	18A	\$50.9
Anchorage	Investigator III	18A	<u>\$50.9</u>
TOTAL PERSONAL SERVICE			\$310.4

Travel Costs

Perform inspections, audits, investigations, regulation hearings \$9.0

Supplies

Miscellaneous office supplies-forms, returns, applications and information packets \$1.0
 +\$4.0

TOTAL SUPPLIES \$5.0

FY '90*

Equipment

7 each Office furnishings and files (chair, module, S drawer file) \$3.5 X 7 \$24.5

7 each Wang P/C system \$3.5 X 7 \$24.5

1 each Wang printer \$7.0 X 1 +\$7.0

TOTAL EQUIPMENT \$56.0

Training

Audit Supervisor, Investigator III, Auditor III travel and training +\$8.0

TOTAL OPERATING \$388.4

*This represents a one-time expenditure

REVENUE PROJECTION

This projection is based on the assumption that only 5 video gaming devices would be licensed in each premise. Under AS 43.35.210, 935 premises could be licensed. The State of Montana implemented "Video Draw Police Machine Law of 1985", "23-5-601", which was enacted in 1987. This revenue projection is based on an assumed annual gross profit per device of \$9300, which is Montana's gross profit per device. Montana currently has 7500 devices licensed and collected tax of \$10,500,000 in their first year of the law's enactment. Montana's tax rate is 15%; this bill provides for a tax rate of 25%.

Tax Revenue

Licensed premises (each)	935		
Total devices per premise	<u>x5</u>		
Total gaming devices (each)	4,675		
Projected gross profits per machine	<u>x\$9,300</u>		
Total gross profits (tax base)		\$43,477,500	
Tax rate		<u>x25%</u>	
TAX REVENUE			\$10,869,375

Licensing Revenue

12 month premises (each)	847		
Devices per premise	<u>x5</u>		
Full year devices	4,235		
License rate	<u>x\$240</u>		
12 MONTH LICENSING REVENUE		\$ 1,016,400	
6 month premise (each)	88		
Device per premise	<u>x5</u>		
1/2 year devices	440		
License rate	<u>x\$120</u>		
6 MONTH LICENSING REVENUE		\$ 52,800	

Distributor Licenses

Projected distributors (each)	15		
License fee	<u>x500</u>		
Distributor license revenue		+ \$7,500	
TOTAL LICENSING REVENUE			+\$1,076,700

TOTAL REVENUE			<u>\$12,000,000</u>
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SECTIONAL ANALYSIS

This bill would classify video gaming devices as coin-operated devices and exempt them from being considered gambling devices. It provides for regulation and taxation of these devices, as well as licensing of the devices and distributors. Administration would be under the Income and Excise Audit Division of the Department of Revenue.

Section #1

Amends AS 11.66.280(2) to exempt gambling authorized under this bill (AS 43.35).

Section #3

Provides for a tax of 25% of the "net machine income" to be paid on a quarterly basis to the state.

This section also defines "net machine income" as money received by the devices less money paid out, and provides for a \$1,000.00 a day penalty for a person who fails to pay fees or file a quarterly return.

Section #4

Amends AS 43.35.030 by adding a section to license a distributor of video games.

Section #5

Repeals AS 43.35.050 and reenacts the distribution of the taxes collected. One-half of the proceeds of the licensing fees shall be paid (by an appropriation) to the municipalities that the fees were earned within. The balance of fees and all taxes shall be retained by the state and deposited into the general fund.

Section #6

Amends AS 43.35.090(3) to provide for video gaming devires. to be licensed as a class 3 coin operated device.

Section #7

Amends AS 43.35.090 to define a "video-gaming device".

Section #8

Amends by adding a new section to AS 43.35 to provide for the annual licensing for a video gaming distributor. The annual fee will be \$500.00. This section also provides language for issuance and denials of video gaming license based on specific qualifications of the applicant.

This section also provides for the installation of video gaming devices under AS 43.35.200 only in premises licensed under AS 04.11:

1. a beverage dispensary license under AS 04.11.090;
2. a duplicate beverage dispensary license for additional rooms under AS 04.11.090(e);
3. a club license under AS 04.11.110;
4. a common carrier dispensary license under AS 04.11.180; or
5. a pub license under AS 04.11.220.

Section #9

Provides for the bill to be effective July 1, 1989.

DEPARTMENT'S POSITION

The department has no position regarding the issue of allowing video gaming devices to be legalized in the state, however, the department would have several recommendations regarding administration language that could be added to the bill.

Sen. Pourchot
April 13, 1989

COMPARISON OF VARIOUS GAMING LAWS

	<u>FEEES</u>	<u>TAX</u>	<u>USE OF FUNDS</u>
<u>SB 263</u>	\$240/device \$500/distributor	25% net income	state GF
<u>MONTANA VIDEO</u>	\$100/device/state \$100/device/local \$1000/distributor \$1000/manufacturer	15% net income	1/3 to state GF 2/3 to local govt
<u>NEVADA VIDEO</u>	\$250/device	If fewer than 15 machines: \$180 each for first 5, \$360 each additional If more than 15 machines: \$80 each plus 3% first \$50,000 gross revenues, 4% next \$85,000, 6% any additional	state GF
<u>ALASKA PULLTABS</u>	\$1000/distributor \$500/manufacturer	3% gross receipts less prizes	state GF
<u>ALASKA COIN-OP DEVICES</u>	\$240/device \$50/distributor	none	device fee 50% state GF, 50% local; distrib- utor fee state GF

Sen. Pourchot
April 12, 1989

VIDEO GAMING IN MONTANA

THE LAW

Authorizes persons licensed to sell alcoholic beverages for consumption on the premises to install video draw poker machines. Maximum 5 machines per establishment.

Authorizes any establishment that sells food to install video keno/bingo machines. Maximum 15 machines per establishment.

Establishes annual license fee of \$100 for each video machine, payable by the holder of the liquor license. License fees are maintained by the department to pay operational costs.

Authorizes local governments to also license each machine. Maximum license fee \$100/machine.

Requires that 15% of net machine income be paid to the state quarterly; one-third of this is deposited in the general fund and two-thirds is paid to the city or county in which the machine is located. Defines net machine income as money put into a video machine minus credits paid out in cash. (Per regulation, penalty for late payment is 10-100% of the tax due depending on how overdue it is.)

Requires manufacturers and distributors to obtain a license; annual fee \$1,000 plus processing costs. License fees are maintained by the department to pay operational costs.

Provides for the department to examine and approve new types of machines before they can be used in the state. The manufacturer/distributor pays for the exam. (Per regulation, distributor is charged \$25/hour for the exam.)

Contains extensive machine specifications, including:

Cannot actually pay out coins, cash, or tokens.

No switches, posts, or other means of manipulation that could affect the outcome of a game.

Accept quarters only.

Maximum \$2 bid on any game.

Maximum \$100 win per game.

Print a ticket voucher for the player at the completion of each game and retain within the machine a printed copy of each ticket voucher.

Print weekly audit ticket. (Per regulation, licensee must keep these records for 3 years.)

Have nonresettable mechanical meters that keep a permanent record of all coins played and credits paid.

Payback of at least 80%, monitored electronically.

(Regulations contain additional, more detailed specifications.)

Authorizes the department to make investigations, suspend and revoke licenses, seize machines, and conduct background checks of license applicants. Declares a violation of the law a criminal offense with a maximum fine of \$10,000 for the first violation and \$15,000 for subsequent violations.

BRIEF HISTORY

Video poker was authorized in 1985. The annual license fee per machine was \$1,500; there was no net income tax. In 1987 video keno and bingo were authorized. The annual license fee was reduced to \$100 and the 15% net income tax was established.

The law is administered by the Video Gaming Control Bureau. They began with a staff of 2 in 1985, and currently have a staff of 10. Two of these staff conduct the exams of the new machines. In addition, the Bureau receives enforcement assistance from 6 persons in the Department of Revenue. The Bureau was established in the Department of Revenue, but has since been transferred to the Department of Commerce.

Montana also has a state lottery (regulated by a special commission), pari-mutual betting (regulated by the Board of Horse Racing), and raffles, sports pools, and live poker, keno, and bingo (regulated by local governments).

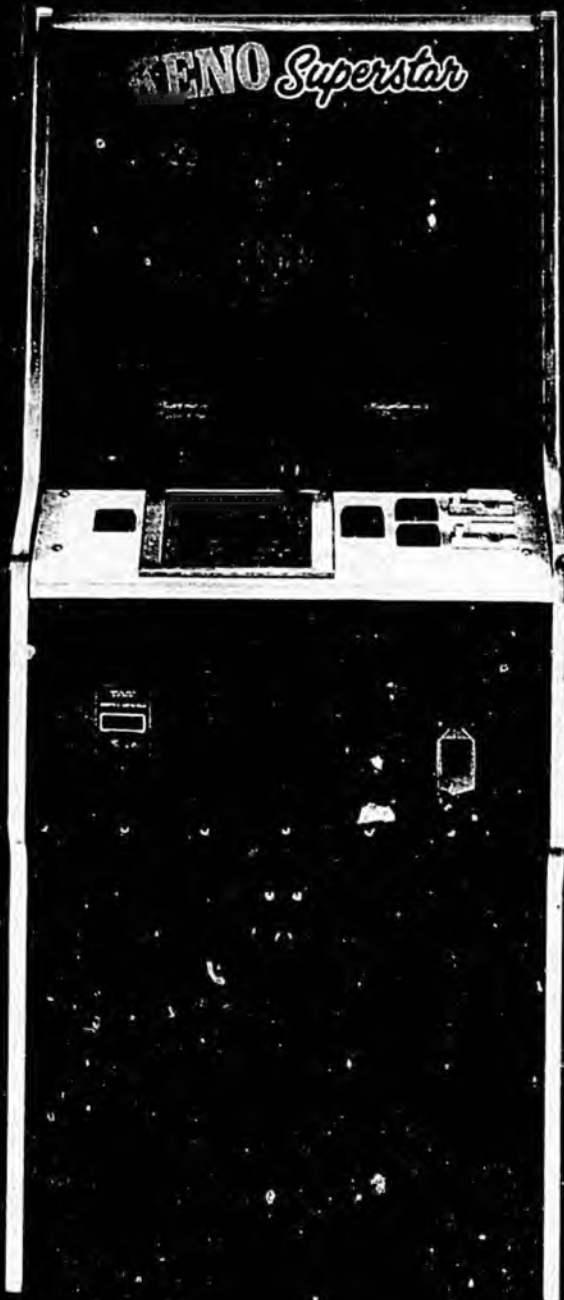
Recommendations of a 1988 Task Force that are being pursued by the Montana legislature include creation of a state gaming commission to regulate all gambling activity in the state, replacement of the current restrictions on number of video machines per establishment with a blanket 20 machine limitation, increase of the maximum payout from \$100 to \$800, authorization of nickle and dime machines, and earmarking of some fees for therapy for habitual gamblers.

LICENSE STATISTICS -- FY 88

Licensed machines:	Poker	4,564	
	Keno	3,786	
	<u>Bingo</u>	<u>112</u>	
	Total	8,462	(9437 so far '89)
Net income:	Poker	49,996,245	
(Average \$8,315 per	Keno	20,186,441	
machine)	<u>Bingo</u>	<u>181,011</u>	
	Total	\$70,363,697	
	STATE SHARE (15%)	\$10,554,555	
	(IF 25%	17,590,924)	

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- (2) "department" means the Department of Revenue;
- (3) "executor" means the executor, administrator or curator of the decedent, or if there is no executor, administrator or curator appointed qualified and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent;
- (4) "gross estate" means the gross estate as determined under the provisions of the applicable federal revenue Act;
- (5) "net estate" means the net estate as determined under the provisions of the applicable federal revenue Act;
- (6) "nonresident" means a natural person domiciled outside the state;
- (7) "person" means persons, corporations, associations, joint stock companies and business trusts;
- (8) "real property" means real property as it is commonly understood and includes real property whose legal title is in the decedent but which is subject to a contract of sale to a third party;
- (9) "resident" means a natural person domiciled in the state;
- (10) "tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally;
- (11) "transfer" includes the passing of property or any interest in property, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner described in this chapter;
- (12) "United States" used in a geographical sense includes only the 50 states and the District of Columbia. (§ 2 ch 24 SLA 1970)

Sec. 43.31.430. Short title. This chapter may be cited as the Estate Tax Law of Alaska. (§ 2 ch 24 SLA 1970)

Chapter 35. Coin-Operated Devices and Punchboards.

Article

- 1. Coin-Operated Amusement and Gaming Devices (§§ 43.35.010 — 43.35.090)
- 2. Punchboards (§§ 43.35.100 — 43.35.150)

Article 1. Coin-Operated Amusement and Gaming Devices.

Section

- 10. Amount of tax
- 20. Administration
- 30. Distributor fees
- 40. Operation by a minor

Section

- 50. Distribution of tax
- 60. Orders and regulations
- 70. Gambling not legalized
- 90. Definitions

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§ 43.35.010

REVENUE AND TAXATION

Collateral references. — 38 Am. Jur. 2d, Gambling, §§ 10-25; 71 Am. Jur. 2d, State and Local Taxation, §§ 180 — 182. 84 C.J.S., Taxation, §§ 121-124.

Devices within contemplation of statutes regulating coin-operated vending or amusement machines, 151 ALR 1213.

Sec. 43.35.010. Amount of tax. (a) A person who maintains for use or permits the use on premises under the person's control of a coin-operated device class 1, class 2, or class 3 shall first pay a tax as follows:

- (1) \$48 a year for each coin-operated device class 1;
- (2) \$120 a year for each coin-operated device class 2;
- (3) \$240 a year for each coin-operated device class 3;

(b) No additional tax is levied where a device within a given classification is replaced by another of the same classification.

(c) The tax imposed by this section is reduced by one-twelfth for the entirety of each month which elapses from the first day of the year to the date upon which the device is placed in operation. In this chapter a remaining portion of a month is considered as one full month. (§ 48-3-1 ACLA 1949; am ch 31 SLA 1949; am § 1 ch 142 SLA 1960)

NOTES TO DECISIONS

The tax imposed by this section is not a license of the business of operating pinball machines in the sense that it confers a right which would not exist in the absence of the imposition of the tax. State v. Pinball Machs., Sup. Ct. Op. No. 298 (File No. 529), 404 P.2d 923 (1965).

This section says nothing about a license. State v. Pinball Machs., Sup. Ct.

Op. No. 298 (File No. 529), 404 P.2d 923 (1965).

Business not made lawful by imposition of tax. — A business expressly condemned and made unlawful by statute is not made lawful by the fact that a tax is imposed with respect to its operation. State v. Pinball Machs., Sup. Ct. Op. No. 298 (File No. 529), 404 P.2d 923 (1965).

Sec. 43.35.020. Administration. (a) Tax payments specified in AS 43.35.010 shall be made to the commissioner of revenue before the installation for operation of a device taxable under AS 43.35.010, except that the tax shall be prorated for a taxable device installed after January 31 in a given year from the beginning of the month within which the device is installed through the remainder of the calendar year. The receipt of the commissioner of revenue for payment shall be kept for inspection in the manner required under regulations prescribed by the commissioner of revenue.

(b) If the ownership of the taxable device changes, the receipt shall be transferred by the commissioner of revenue to the new owner or operator upon payment of a transfer fee of \$5. The fee shall be deposited in the general fund. Application for the transfer of the receipt shall be made within 30 days after the change of ownership. Tax on a device on which earlier taxes have been paid and which is in operation at the

close of the preceding calendar year shall be paid before February 1 of the year in which the tax is due. (§ 48-3-3 ACLA 1949; am § 3 ch 142 SLA 1960)

~~Sec. 43.35.030. Distributor fees. A distributor of coin-operated equipment shall~~

~~(1) pay an annual permit fee of \$50 to the Department of Revenue, to be deposited by it in the general fund; and~~

~~(2) file an affidavit that the distributor is a citizen of the United States and a bona fide resident of the state for more than three years, and has never been convicted of a felony; in the case of a corporation an affidavit is required from each stockholder and employee of the corporation. (§ 48-3-4 ACLA 1949; am § 4 ch 142 SLA 1960)~~

Sec. 43.35.040. Operation by a minor. (a) An operator or other person who has charge of a device covered by this chapter, except a music machine or a coin-operated device class 1,

(1) shall not permit a person under 18 years of age to operate the device; and

(2) shall place a conspicuous notice of this prohibition on each device, in accordance with standards fixed by the commissioner of revenue.

(b) No machine, except a music machine, may be placed, used, located, or operated within a radius of 100 yards of a school building. (§ 48-3-5 ACLA 1949; am § 5 ch 142 SLA 1960; am § 1 ch 164 SLA 1970)

Sec. 43.35.050. Distribution of tax. One-half of the proceeds of the gross revenue from the tax provided by this chapter, excluding distributors' fees, penalties, and the amount determined to have been spent by the state in its collection, shall be refunded to organized boroughs and cities of the first, second, and third classes by action of the legislature in the proportion that the revenue was earned within them, and the balance shall be retained by the state and deposited in the general fund. (§ 48-3-6 ACLA 1949; am ch 31 SLA 1949; am § 6 ch 142 SLA 1960; am § 2 ch 155 SLA 1962)

Sec. 43.35.060. Orders and regulations. The commissioner of revenue may issue orders and adopt regulations necessary to carry out this chapter. (§ 48-3-7 ACLA 1949; am § 7 ch 142 SLA 1960)

Sec. 43.35.070. Gambling not legalized. This chapter does not legalize gambling or the possession of a gambling device. (§ 48-3-8 ACLA 1949; am § 8 ch 142 SLA 1960)

Cross references. — For limitations on authorized gaming activities, see AS 05.15.180.

see supplement (attached)

Legisl 1960 am no intent permit g No. 2334 No. 162)

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NOTES TO DECISIONS

Legislative intent. — In enacting the 1960 amendment to this section there was no intent on the part of the legislature to permit gambling. *Pin-Ball Mach.*, Serial No. 2334 v. State, Sup. Ct. Op. No. 86 (File No. 162), 371 P.2d 805 (1962).

The use or possession of a pinball machine is not made lawful by the mere fact that such machine is defined by law for tax purposes. *State v. Pinball Machs.*, Sup. Ct. Op. No. 298 (File No. 529), 404 P.2d 923 (1965).

Sec. 43.35.080. Penalties. [Repealed, § 46 ch 113 SLA 1980. For current law, see AS 43.05.220 and 43.05.290.]

Sec. 43.35.090. Definitions. In this chapter

(1) "coin-operated device class 1" means an entertainment or amusement device or amusement apparatus which operates by means of insertion of a coin, token, or other similar object, except a coin-operated radio, which does not involve an element of chance;

(2) "coin-operated device class 2" means a pinball machine, including a bingo type coin-operated device, horse race machine or other apparatus or device which operates by means of insertion of a coin, token, or similar object and which, by embodying the elements of chance or skill, awards free plays and which contains a device for releasing free plays and a meter for registering or recording the plays so released, or with a provision for multiple coin insertion for increasing the odds; class 2 does not include bona fide vending machines in which gaming or amusement features are not incorporated;

(3) "coin-operated device class 3" means a slot machine or other apparatus or device which operates by means of insertion of a coin, token, or similar object and which, by strict dependence upon the element of chance, may deliver or may entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; a device or apparatus otherwise falling within the classification of (2) of this section, though not strictly dependent upon the element of chance, is taxed according to the rate applicable to slot machines if the device or apparatus itself delivers cash directly to the person playing or operating it;

(4) "distributor" means a person who directly provides or furnishes a coin-operated device for operation on premises not owned by the person and not under the jurisdiction or control of the person. (§ 48-3-2 ACLA 1949; am § 2 ch 142 SLA 1960; am § 1 ch 135 SLA 1966)

Legislative history reports. — For report on ch. 135, SLA 1966, see 1966 House Journal, p. 870.

Effect of amendments. — The 1984 amendment changed the internal reference in the last sentence.

Chapter 35. Coin-Operated Devices and Punchboards.

Article

1. Coin-Operated Amusement and Gaming Devices (§ 43.35.030)

Article 1. Coin-Operated Amusement and Gaming Devices.

Section

30. Distributor fees

Sec. 43.35.030. Distributor fees. A distributor of coin-operated equipment shall

(1) pay an annual permit fee of \$50 to the department, to be deposited by it in the general fund; and

(2) file an affidavit that the distributor is a citizen of the United States, a bona fide resident of the state for at least one year, and has never been convicted of a felony; in the case of a corporation an affidavit is required from each stockholder and employee of the corporation. (§ 48-3-4 ACLA 1949; am § 4 ch 142 SLA 1960; am § 118 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "department" for "Department of Revenue" in paragraph (1) and "a bona fide resident of the state for at least one year" for "and a bona fide resident of the state for more than three years" in paragraph (2).

*Sec 4
distributor*

Chapter 40. Motor Fuel Tax.

Section

35. Other refunds and credits

Sec. 43.40.035. Other refunds and credits. (a) A person who resells fuel on which the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or refund of the tax if (1) the resold fuel is not motor fuel and the requirements of AS 43.40.010(1) have been fulfilled; or (2) the amount of tax previously paid exceeds the tax due on the resale. The amount of the credit or refund under this section is equal to the amount of tax previously paid on the resold fuel less the amount of tax prescribed by AS 43.40.010(a) or (b).

(b) A reseller may elect, with the express written consent of the supplier of the reseller, to receive the credit or refund under this section directly from the supplier rather than by filing a claim for the credit or refund with the department. When an election is properly made under this subsection, the supplier may claim the credit or re-

fund from section supplier election, and signature under the ten cons 1983)

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Article 1. Cigare 2. Additi 3. Excise

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§ 11.66.200

CRIMINAL LAW

§ 11.66.210

Collateral references. — 38 Am. Jur. 2d, Gambling, § 1 et seq.

27 C.J.S., Disorderly Houses, § 1 et seq.; 38 C.J.S., Gaming, § 1 et seq.

Racing as a game within statute, 45 ALR 998.

Constitutionality of statutes forbidding or regulating dissemination of betting odds or other gambling information, 47 ALR 1135.

Pari-mutuel and similar betting methods on race as game of chance or gambling, 52 ALR 74.

What are games of chance, games of skill, and mixed games of chance and skill, 135 ALR 104.

Entrapment to commit offense with respect to gambling or lotteries, 31 ALR2d 1212.

Criminal conspiracies as to gambling, 91 ALR2d 1148.

Bridge as within gambling laws, 97 ALR2d 1420.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling informa-

tion as gaming "devices" within criminal statute or ordinance, 1 ALR3d 726.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts, 17 ALR3d 491.

Gambling in private residence as prohibited or permitted by antigambling laws, 27 ALR3d 1074.

Promotion schemes of retail stores as criminal offense under antigambling laws, 29 ALR3d 888.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling, 42 ALR3d 663.

Construction and application of state or municipal enactments relating to policy or numbers games, 70 ALR3d 897.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 ALR3d 694.

Sec. 11.66.200. Gambling. (a) A person commits the offense of gambling if the person engages in unlawful gambling.

(b) It is an affirmative defense to a prosecution under this section that the defendant was a player in a social game.

(c) Gambling is a violation for the first offense. Gambling is a class B misdemeanor for the second and each subsequent offense. (§ 8 ch 166 SLA 1978)

max. fine \$1000
max. term 90 days

Cross references. — For law on bingo, raffles and ice pools, see AS 05.15.

NOTES TO DECISIONS

For case construing former statute prohibiting dealing or conducting gambling game, see United States v. Frodenberg, 8 Alaska 251 (1930).

Quoted in Gilman v. Martin. Sup. Ct. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983).

Sec. 11.66.210. Promoting gambling in the first degree. (a) A person commits the crime of promoting gambling in the first degree if the person promotes or profits from an unlawful gambling enterprise.

(b) Promoting gambling in the first degree is a class C felony. (§ 8 ch 166 SLA 1978)

max. fine \$50,000
max. term 5 yrs.

NOTES TO DECISIONS

For case construing former statute prohibiting dealing or conducting gambling game, see United States v. Frodenberg, 8 Alaska 251 (1930).

Sec. 11.66.220. Promoting gambling in the second degree. (a) A person commits the crime of promoting gambling in the second degree if the person promotes or profits from unlawful gambling.

(b) Promoting gambling in the second degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978) max. fine \$5000 max. term 1 yr.

NOTES TO DECISIONS

For case construing former statute prohibiting dealing or conducting gambling game, see United States v. Frodenberg, 8 Alaska 251 (1930).

Sec. 11.66.230. Possession of gambling records in the first degree. (a) A person commits the crime of possession of gambling records in the first degree if, with knowledge of its contents or character, the person possesses a gambling record used or intended to be used in the operation or promotion of an unlawful gambling enterprise.

(b) Possession of gambling records in the first degree is a class C felony. (§ 8 ch 166 SLA 1978; am § 24 ch 102 SLA 1980) max. fine \$50,000 max term 5 yrs.

Effect of amendments. — The 1980 amendment substituted "used or intended to be" for "of a kind commonly" preceding "used in the" near the middle of subsection (a). report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

Legislative history reports. — For a

Sec. 11.66.240. Possession of gambling records in the second degree. (a) A person commits the crime of possession of gambling records in the second degree if, with knowledge of its contents or character, the person possesses a gambling record.

(b) Possession of gambling records in the second degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978) max. fine \$5000 max term 1 yr.

Sec. 11.66.250. Affirmative defenses. (a) It is an affirmative defense in a prosecution under AS 11.66.230 that the gambling record was possessed by the defendant solely as a player.

(b) It is an affirmative defense in a prosecution under AS 11.66.230 or 11.66.240 that the gambling record

(1) was not used or intended to be used by the defendant in the operation or promotion of unlawful gambling;

(2) was used or intended to be used by the defendant in a social game. (§ 8 ch 166 SLA 1978)

Sec. 11.66.260. Possession of a gambling device. (a) A person commits the offense of possession of a gambling device if, with knowledge of the character of the device, the person manufactures, sells, transports, places, or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a gambling device knowing that the device is used or is to be used in unlawful gambling.

(b) It is an affirmative defense in a prosecution under this section that the gambling device possessed by the defendant was used or intended to be used only in a social game.

(c) Possession of a gambling device is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

*max. fine \$5000
max. term 1 yr.*

NOTES TO DECISIONS

What constitutes a gambling device. —
See note to AS 11.66.280.

Collateral references. — Slot vending machine as gambling device, 38 ALR 73; 81 ALR 177.

Destruction of gambling devices, constitutionality of statutes providing for, 81 ALR 730.

Coin-operated or slot machine other than slot vending machine which may be played for amusement only or which confines winner's reward to privilege of additional play or other form of amusement, as within antigambling provisions, 148 ALR 879; 89 ALR2d 815.

Possession of gambling device as offense, 162 ALR 1188.

Coin-operated pinball machine or similar device, played for amusement only or confining reward to privilege of free replays, as prohibited or permitted by antigambling laws, 89 ALR2d 815.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 ALR3d 726.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts, 17 ALR3d 491.

Sec. 11.66.270. Forfeiture. If used in violation of AS 11.66.200 — 11.66.280, the following property shall be forfeited:

- (1) a gambling device or gambling record;
- (2) money, not found on the person, used as a bet or stake;
- (3) money used as a bet or stake which is found on the person of one who conducts, finances, manages, supervises, directs, or owns all or part of an unlawful gambling enterprise. (§ 8 ch 166 SLA 1978)

Opinions of attorney general. — Wager slips or pool tickets used in carrying on a scheme involving wagering bookmaking or pool selling could be seized and forfeited as gambling implements under former AS 11.45.040, 1962 Op. Att'y Gen., No. 22.

6-0672J✓
Lauterbach
4/20/89

Changes in CS:

Original sponsor: Fahrenkamp

p. 1, l. 7

p. 2, l. 18 and l. 26-27

p. 3, l. 8-10 & l. 19-20

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 168 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing gambling enterprises in munic-
cipalities ^[and on state ferries] and providing for an effective date."

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

9 * Section 1. POLICY. Gambling enterprises operated or licensed by
10 municipalities offer a substantial contribution to the welfare and pros-
11 perity of the municipalities and an opportunity to offset declining munici-
12 pal revenue. The success of the limited gambling operations authorized by
13 this Act is dependent upon strict regulation and control of all persons,
14 locations, practices, and activities related to operation of gambling
15 enterprises. Strict regulation and control will ensure that gambling is
16 conducted honestly and free from criminal and corrupt persons, practices,
17 and influences. All premises where gambling is conducted under this Act
18 must be operated or licensed by a municipality. To further local control
19 over the conduct of gambling, residents of each municipality authorized to
20 operate or license gambling operations under this Act must vote to approve
21 gambling before it can occur in the municipality.

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

23 CHAPTER 16. LEGALIZED GAMBLING.

24 Sec. 05.16.010. GAMBLING PERMITTED. (a) Gambling is permitted
25 within the limitations of this section.

26 (b) A person under 21 years of age may not gamble.

27 (c) Only numbers wheels and card and dice games may be operated
28 for the purposes of gambling.

29 (d) A person licensed to operate a gambling enterprise or an

1 employee of a gambling enterprise may not extend credit to a patron of
2 a gambling enterprise.

3 (e) A person may not receive a license to operate a gambling
4 enterprise or be employed by a gambling enterprise if that person has
5 been convicted of a felony or an offense defined in AS 11.66.200 -
6 11.66.280 or a comparable provision of a municipal ordinance or state
7 or federal law.

8 (f) Only a person who has successfully completed a course of
9 study in a curriculum for employees of a gambling enterprise at a
10 school licensed by a state where gambling is legal may be employed by
11 a gambling enterprise.

12 (g) An employee of a gambling enterprise may not gamble while on
13 duty for the gambling enterprise.

14 (h) Within the boundaries of a municipality, gambling may be
15 conducted under AS 29.35.600 - 29.35.690.

16 (i) Gambling is not authorized under this section in areas
17 outside the boundaries of a municipality.

18 [GAMBLING ON STATE FERRIES]
19 Sec. 05.16.020. PROCEEDS FROM MUNICIPALITIES. The commissioner
20 of administration shall separately account for money received under
21 AS 29.35.620(a) that the department deposits in the general fund. The
22 annual estimated balance in the account may be used by the legislature
23 to make appropriations to the department to administer this chapter
24 except that one-half percent of the annual estimated balance in the
25 account may be used by the legislature to make appropriations for the
26 treatment and counseling of persons identified as compulsive gamblers
27 and for programs designed to prevent persons from becoming compulsive
28 gamblers.

29 Sec. 05.16.030. COOPERATION WITH MUNICIPALITIES. The department
shall cooperate with municipalities in the administration and

1 regulation of gambling within municipalities authorized to license or
2 operate gambling enterprises under AS 29.35.600 - 29.35.690.

3 Sec. 05.16.040. REGULATIONS. The department shall adopt regu-
4 lations under the Administrative Procedure Act (AS 44.62) that are
5 necessary to carry out this chapter, including regulations governing

6 (1) procedures for resolution of disputes between patrons
7 of gambling enterprises and licensees;

8 (2) procedures under which the department may audit munici-
9 pal records for gambling enterprises authorized under AS 29.35.600 -
10 29.35.690;

11 (3) the form and content of reports by municipalities on
12 their administration and regulation of gambling.

13 Sec. 05.16.050. ANNUAL REPORT. The department shall make a
14 report to the governor and the legislature by March 1 of each year on
15 its administration of this chapter, the regulation of gambling by
16 municipalities, and its recommendations for legislation necessary for
17 the regulation of gambling in this state.

18 Sec. 05.16.900. DEFINITIONS. In this chapter

19 (1) "department" means the Department of Commerce and
20 Economic Development; [Revenue]

21 (2) "gambling" means that a person stakes or risks some-
22 thing of value upon the outcome of a game or a future contingent event
23 not under the person's control or influence, upon the agreement or
24 understanding that the person or someone else will receive something
25 of value in the event of a certain outcome; "gambling" does not in-
26 clude activities authorized under AS 05.15;

27 (3) "gambling enterprise" means a business licensed to
28 conduct gambling.

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

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

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

12 (B) playing an amusement device that

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

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

19 (C) an activity authorized by the commissioner of
20 revenue under AS 05.15; or

21 (D) an activity authorized under AS 29.35.600 -
22 29.35.690;

23 * Sec. 4. AS 11.66.280(4) is amended to read:

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

25 (A) includes five or more persons who conduct, fi-
26 nance, manage, supervise, direct, or own all or part of the
27 business;

28 (B) has been or remains in substantially continuous
29 operation for a period in excess of 30 days or has a gross income

1 of \$2,000 or more in any single day; [AND]

2 (C) is not a municipality or a qualified organization
3 under AS 05.15.210 except that, for purposes of this paragraph,
4 no application for a license under AS 05.15 is required to be
5 considered a qualified organization; and

6 (D) is not authorized under AS 29.35.600 - 29.35.690;

7 * Sec. 5. AS 29.10.200 is amended by adding a new paragraph to read:

8 (51) AS 29.35.600 - 29.35.690 (gambling).

9 * Sec. 6. AS 29.35 is amended by adding new sections to read:

10 ARTICLE 9. GAMBLING WITHIN MUNICIPALITIES.

11 Sec. 29.35.600. AUTHORIZATION. Subject to AS 05.16.010, a
12 municipality may operate or license a person in the municipality to
13 operate a gambling enterprise if

14 (1) the municipality adopts an ordinance permitting gam-
15 bling enterprises in the municipality and the ordinance is ratified by
16 a majority of the voters of the municipality; the governing body of
17 the municipality may require that voter approval of an ordinance
18 proposed under this paragraph be by more than a majority of the voters
19 of the municipality;

20 (2) the economy of the municipality depends substantially
21 on tourism;

22 (3) the municipality has a substantial history of gambling
23 during the gold rush era of 1890 to 1910; and

24 (4) the gambling enterprise enhances the historic character
25 of the municipality.

26 Sec. 29.35.610. REGULATION OF GAMBLING. (a) The municipal
27 ordinance providing for licensing and regulation of gambling enter-
28 prises within a municipality authorized to license or operate gambling
29 enterprises under AS 29.35.600 must

1 (1) establish a commission responsible for municipal li-
2 censing and regulation of gambling enterprises consisting of at least
3 seven members including

4 (A) a member of the governing body;

5 (B) a person experienced in law enforcement;

6 (C) a person trained in accounting or bookkeeping;

7 (D) a person active in the tourism industry;

8 (E) a historian or other person familiar with the
9 history of the municipality; and

10 (F) two public members;

11 (2) establish qualifications for persons employed by the
12 commission;

13 (3) provide for issuance, renewal, suspension, and revoca-
14 tion of licenses for gambling enterprises and for the immediate sus-
15 pension or revocation of a license for a violation of AS 05.16.010,
16 AS 29.35.600 - 29.35.690, or a municipal gambling ordinance;

17 (4) establish

18 (A) dates and hours of operation for gambling enter-
19 prises;

20 (B) locations in the municipality where gambling
21 enterprises may be located;

22 (C) the games permitted;

23 (D) the number of gaming tables permitted on the
24 premises of a gambling enterprise;

25 (E) the maximum amount of wagers permitted in games;

26 (F) a schedule of fees for licenses;

27 (G) allowable rates of return on investment for gam-
28 bling enterprises;

29 (H) auditing procedures for gambling enterprises;

1 (5) provide for the distribution of gambling proceeds
2 including the amounts or proportions allocated to the gambling enter-
3 prise and to winners;

4 (6) require disclosure of the identity of persons having a
5 financial interest in a gambling enterprise and the nature of the
6 interest;

7 (7) require detailed financial records of gambling enter-
8 prises.

9 (b) The municipality may operate or license a person in the
10 municipality to operate only numbers wheels and card and dice games
11 for the purposes of gambling.

12 (c) The municipality may establish by ordinance whether alco-
13 holic beverages may be sold on the premises of a gambling enterprise.

14 (d) A member of a commission responsible for municipal licensing
15 and regulation of gambling enterprises and employees of the commission
16 may not participate in or have a financial interest in a gambling
17 enterprise.

18 (e) The municipality shall make a report to the Department of
19 Commerce and Economic Development by February 1 of each year on its
20 administration and regulation of gambling during the preceding year in
21 the form prescribed by the department.

22 Sec. 29.35.620. PROCEEDS. (a) A municipality that operates or
23 licenses a person to operate a gambling enterprise under AS 29.35.600
24 shall collect three and one-half percent of the gross proceeds from
25 the gambling enterprise and pay that amount to the Department of
26 Commerce and Economic Development for deposit in the general fund.

27 (b) If the municipality operates a gambling enterprise, the
28 municipality shall receive all of the proceeds from the gambling
29 enterprise, except the amount paid to the Department of Commerce and

1 Economic Development under (a) of this section.

2 (c) If the municipality licenses a person in the municipality to
3 operate a gambling enterprise, the municipality and the licensee may
4 divide the proceeds from the gambling enterprise under the terms of
5 the license after subtracting the amount paid to the Department of
6 Commerce and Economic Development under (a) of this section.

7 Sec. 29.35.630. REVENUE DERIVED FROM GAMBLING ENTERPRISES. The
8 fees, proceeds, and other revenue that a municipality receives from
9 gambling enterprises may be used for public purposes as the munic-
10 ipality may determine by ordinance.

11 Sec. 29.35.640. APPLICATION. AS 29.35.600 - 29.35.690 apply to
12 home rule and general law municipalities.

13 Sec. 29.35.690. DEFINITION. In AS 29.35.600 - 29.35.690 "gam-
14 bling" and "gambling enterprise" have the meanings given in AS 05.16.-
15 900.

16 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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1989 LEGISLATIVE SURVEY

Representative
Jim Zawacki

• Bear Valley • Rabbit Creek • Oceanview

• Girdwood • Bird • Indian • Nikiski

The 1989 legislative session begins on January 9th. Legislators may be faced with shortfalls in state revenues and additional needs to reduce state spending.

State spending can no longer exceed anticipated revenues. It is imperative that you and I identify and retain those services provided by the state that are essential and recognize other programs that may have to be reduced or phased out.

Your opinions are important. Please answer the following questions and feel free to include any comments about additional concerns.

1) Reducing State Spending. Do you support phasing down the state's spending over 2 - 4 years, or would you prefer a more immediate cut?

39% Phase down over 2 - 4 years

49% More immediate cut

12% Other (Please explain) _____

2). Taxes: Should the following taxes be increased or decreased or, in case of taxes not now in existence, instituted? (Please check only *one* in each category)

i. General Business Tax

11% Increase 13% Decrease 76% Remain Same

ii. Oil Taxes

16% Increase 9% Decrease 75% Remain Same

iii. School Tax: Should such a tax be reinstated?

37% Yes 63% No

iv. Income Tax: Should a personal income tax be reestablished?

16% Yes 84% No

v. State Sales Tax: Should the state institute a statewide sales tax?

31% Yes 69% No

vi. State Property Tax: Should the state institute a statewide property tax?

6% Yes 94% No

3). Alaska is considering legislation to impose new safety regulations on fishing vessels. Please circle the item(s) you think should be mandatory:

80% Survival suits

77% Emergency Position Indication Radio Beacons (EPIRBs)

67% Life rafts

58% Licensing of captains

43% Crew training programs

44% Vessel construction/stability requirements

20% None of the above. Alaska should not impose new safety regulations on fishing vessels.

(4) Leave Corpus of Permanent Fund Intact

(5) Tougher Alaskan Hiring Practices

(6) Promote Pacific Rim Trade

(7) Strengthen the Fisheries

4). Alaska is considering a number of options to address the problem of drug abuse. Please rank the following options from 1 to 5, with 1 being the action you feel is most important.

2_ Increased education about the dangers of drug abuse.

5_ Increased federal funding for treatment facilities.

1_ More severe penalties for drug dealers.

4_ Re-criminalization of marijuana.

3_ Authorizing juries to impose the death penalty on persons convicted of drug-related murder.

5). Alaska has 65 percent of the nation's wilderness, 70 percent of all National Park lands and 85 percent of all wildlife refuge lands. The National and Alaska Fish and Wildlife Services are recommending additional wilderness designations within existing refuges and parks.

The amount of wilderness in Alaska *at this time* is:

39% About right.

45% Too much.

16% Not enough.

6). Should individuals registering motor vehicles be required to present proof of insurance before that vehicle can be registered in Alaska?

80% Yes

17% No

3% I'm currently undecided

7). Do you think Alaskan local governments should have the option of deciding whether gambling should be legalized within their boundaries?

51% Yes

42% No

7% I'm currently undecided

8). What do you think is the biggest issue facing Alaska during the next few years, and what would you like the legislature to do about it?

(1) Cut State Spending - Reduce Budget

(2) Bring in New Business - Diversify

(3) Open ANWR - Explore for Oil

Kert English

*K. R. English and Associates, Inc.*1800 W. BRNSON BLVD.
SUITE 202
ANCHORAGE, ALASKA 99517
(907) 258-6246

The Pacific air carriers are announcing their intentions to bypass Anchorage and use Russia as the re-fueling route for Europe. The Alaska Railroad has produced only a minimal effort for transportation to the ski area at Alyeska. The Eagle River Ski development appears in serious trouble partially due to lack of local (city and state) support. The city public transportation system is cutting back due to lack of ridership revenues (we are still operating a 1930's design type system). Anchorage cannot book a medium size convention (1500 - 2000 attendance) in the summer months due to the lack of bookable convention/hotel facilities (I have tried!). The medium-low end housing market in Anchorage is in a shambles due to the lack of people with jobs in this sector. This last factor is also having a dramatic effect on our local economy as a whole with a decided negative effect on our tax base that in turn supports our ability to provide the public services we have come to expect.

A PROPOSAL

Major point of destination activity facility directed toward International tourists,

- Must be:
- proven low in crime promulgation
 - not dependent on local revenue sources
 - non polluting
 - labor intensive
 - non seasonable
 - conducive to promotion of Alaska Arts & Heritage
 - of a significance so as to serve as feeder attraction for other tourist adventures
 - non oil dependent

Where: Point Woronzof (behind Airport)

- Why?
- containable and isolated
 - scenic vistas (mountains & inlets)
 - close to major foreign transportation
 - terrain and vegetation conducive to Alaskan motif

OR

Where: Port area (Vacated Railroad areas)

- Why?
- adjacent to Visitor/Hotel facilities
 - central to developing downtown attractions and convention facilities
 - business district participation
 - conducive to rapid transit facilities and would serve as core facilities for further peripheral transit system via railroad routes with participation by Alaska Railroad
 - traversed by Ship Creek for tourist facilities emphasizing fish and Alaskan
 - geographically contained

Employment Enhanced Sectors:

- tours and agencies
- local merchants and businesses
- labor and construction
- all services sectors
- recreational fishing
- crafts products
- arts
- Hotels and Restaurants

- Ski Resorts
- rapid or mass transit via Railroad routes
- conventions related
- transportation - air and land and water
- banking, domestic and international

How:

A special purpose Casino Gambling zone is to be created limited to a specified 500-2000 acre sector, to house three major casino facilities. The three casinos will be constructed one at a time at five year intervals by Alaska State funds and leased to private operators for 10 year periods. At the end of each lease the facilities would be open for bid for the following ten year period. Each lease would be based on a flat fee plus a percentage revenue share, the revenue share being split between the State of Alaska and the Municipality of Anchorage.

Transit Support Base:

This attraction will create an enhanced volume through Anchorage International Airport, requiring transportation from the airport to hotels and downtown Anchorage as well as to other tourist oriented attractions such as salmon viewing areas, ski developments, boat/sailing areas, nature/wilderness viewing, convention areas, civic performing arts and sports centers, etc. The Alaska Railroad rights of way are typically 200' wide and would provide space as well as participation for development of monorail or similar type tourist-local resident use facilities, running from Anchorage International Airport to Eagle River-Palmer-Wasilla-Alyeska (Girdwood)-Seward. Commuter runs on a time coordinated basis are to be encouraged for South Anchorage, East Anchorage and Eagle River to/from Anchorage Central Business areas. Small private commuter shuttles will be encouraged to serve the neighborhood-transit stations. Thus, air quality and traffic congestion solutions will be enhanced.

Anchorage International Airport will be bolstered as an Intercontinental refueling stop. International travelers will have an incentive to choose a flight with a 3-4 hour layover if they have something "exciting" to do other than sit in an airport lounge. The once initiated traveler will be encouraged to return.

Anchorage as a tour ship destination will be promotable for a longer season and with a glamour image to boot. It will no longer be a city of museums, hotels and trinket shops accessible only by common taxi or school bus type transportation. There will be "things to do and see" in Anchorage known from Osaka and Moscow to Dubai.

This proposal is based on sound economics. It is not environmentally harmful or socially degrading. It is not based on a finite resource extraction. By rigid geographic containment it is manageable. It is also an overall plan highly labor intensive and conducive to a promotion of Alaska, with Anchorage as the center target, without destroying those things that brought us here.

It is also a plan looking for a champion of unimpeachable character. That person must be strong enough to not yield to temptation and recognize that the keys making this plan workable are:

- containment of facilities
- management and vigilant monitoring provisions
- world class transportation for ease of access.

If done right, the Alaskan Mystique will be carried home to all corners of the world.

Thank you


INSIDE ONE

Voters bet on gambling to help gold-rush town

Wild Bill Hickok was shot in the head during a poker game in Deadwood, S.D., more than a century ago, but the city's voters have bet that restoring gambling will give a shot in the arm to the gold-rush town's economy.

Residents voted 690-230 Tuesday to allow poker, blackjack and slot machines, with the city's cut of the proceeds to be used to restore and preserve buildings in the historic Black Hills community of 2,000.

An amendment to the South Dakota Constitution last year provided that gambling limited to \$5 bets would be permitted in Deadwood if 60 percent of the city's voters approved it.

South Dakota is the third state to allow casino gambling, joining New Jersey and Nevada.

Melodee Nelson, head of the Deadwood You Bet Committee, said legalized gambling should boost the economy, increase tourism, create jobs and help hold

down property taxes.

"But let's all remember it's first and foremost a funding mechanism for historic preservation," she said. "That's what it started out as. That's what it's always been."

Supporters hope the games can begin this summer, said Bill Walsh, owner of the 85-year-old Franklin Hotel. He said the restoration of gambling is about as important as the arrival of the first train in 1890.

"It's here, and we want to all jump on the train and ride this thing for the betterment of the city of Deadwood and the state of South Dakota," he said.

About 50 supporters of the measure gathered Tuesday night in the hotel lobby, which is guarded by a bust of Hickok.

But their celebration was subdued by the outcome of the mayoral election. Mayor Tom Blair, a gambling supporter, ran into trouble in his re-election bid.

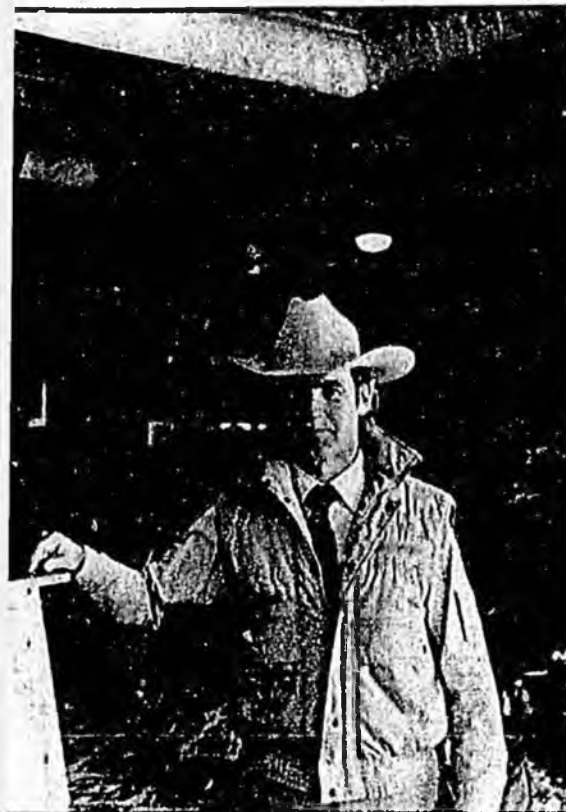
Blair finished second in a three-way race, and now will face first-place finisher Bruce Oberlander in a runoff in two weeks.

Some residents quietly opposed a return to gambling on moral grounds, and argued that the games wouldn't provide that much of an economic boost.

Supporters think gambling will help make the area a final destination for tourists, instead of just a stop on the way to Yellowstone National Park, the Rocky Mountains or Mount Rushmore National Monument, which is about 50 miles away.

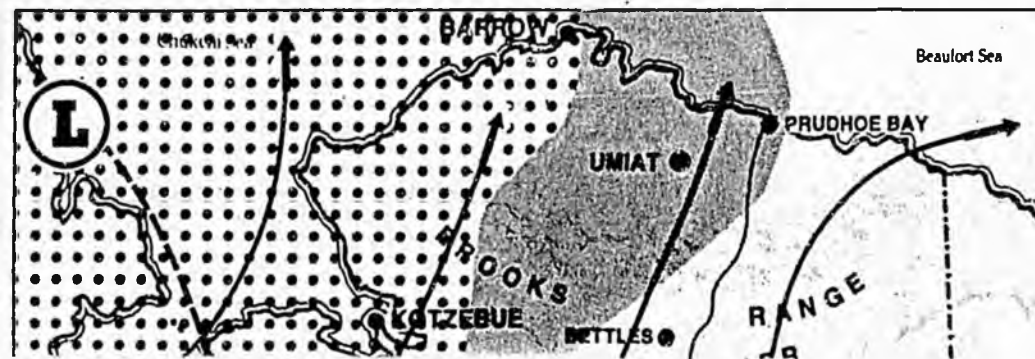
Deadwood owes much of its tourism reputation to Hickok, the U.S. marshal and frontiersman who was shot in the back of the head in 1876 during a poker game in a saloon called No. 10. Legend has it he was holding a pair each of aces and eights, known since as the "dead man's hand."

Daily News wire services



The Associated Press

by a bust of Wild Bill Hickok.



Anchorage Daily News

Forecast key

- ☐ Rain
- ☐ Showers
- ☐ Snow
- ☐ Flurries
- ☐ Fog

40s. Tonight, cloudy with a chance of rain toward morning. Low in the mid 30s. Friday, rain likely. High in the mid 40s.

SITKA — Today, increasing cloudiness with a chance of rain late in the day. East wind increasing to 20 mph. High near 50. Tonight and Friday, occasional rain. Low in the low 40s. High Friday in the upper 40s.

TALKEETNA — Today, sunny. Southwest wind to 10 mph during the afternoon. High near 50. Tonight, fair. Low in the mid 20s. Friday, increasing clouds. High in the upper 40s.

VALDEZ — Today, sunny. High in the upper 40s. Southwest wind to 10 mph in the afternoon and early evening. Tonight,

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2.26.89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

SA - TRSP
FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 3.2.89

2/8/89

Mr. President:

C&RA

SB 168

Committee considered

authorizing gambling enterprises in municipalities and on state ferries; efd

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero ^{REVENUE} C&RA fiscal impact ^{REVENUE} DOT
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Revenue - no rec

Don't know - no rec

Pat Louchard no REC

Al Adams - No Rec

Chairman signature and recommendation

Committee backup attached

§ 11.66.150

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§ 11.66.280

CRIMINAL LAW

§ 11.66.280

Article 2. Gambling Offenses.

Section 280. Definitions

Sec. 11.66.280. Definitions. In AS 11.66.200 — 11.66.280, unless the context requires otherwise,

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

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

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

(B) playing an amusement device that

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

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

(C) an activity authorized by the commissioner of revenue under AS 05.15;

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

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

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

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

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

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

(C) is not a municipality or a qualified organization under AS 05.15.210, except that, for purposes of this paragraph, no application

for a license under AS 05.15 is required to be considered a qualified organization;

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

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

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

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

(A) conduct directed toward the

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

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

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

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

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

(10) "something of value" means any money or property; any token, object, or article exchangeable for money or property; and any form of credit or promise directly or indirectly contemplating transfer of money or property or of an interest in money or property or involving

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extension of a service, entertainment, or privilege of playing at a game or scheme without charge;

(11) "unlawful" means not specifically authorized by law. (§ 8 ch 166 SLA 1978; am § 9 ch 59 SLA 1983; am § 20 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment, in paragraph (4) substituted "that" for "which" in the introductory language and in subparagraph (C) inserted "municipality or a" and substituted "AS 05.15.210" for "AS 05.15.210(15)" and "AS 05.15" for "AS 05.15.210(15)."

Chapter 70. Miscellaneous Provisions.

Secs. 11.70.010— 11.70.030. Intent to defraud; use of evidence by person on charge of perjury; intoxication as defense. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.990(10), AS 11.81.630.]

Editor's notes. — The repeal line above is set out to correct an error in the main pamphlet.

Chapter 71. Controlled Substances.

Article

- 1. Offenses Relating to Controlled Substances (§§ 11.71.030 — 11.71.070)
- 2. Standards and Schedules (§§ 11.71.120, 11.71.160, 11.71.180)
- 3. Miscellaneous Provisions (§ 11.71.305)
- 4. Definitions (§ 11.71.900)

Article 1. Offenses Relating to Controlled Substances.

Section

- 30. Misconduct involving a controlled substance in the third degree
- 40. Misconduct involving a controlled substance in the fourth degree
- 50. Misconduct involving a controlled substance in the fifth degree

Section

- 60. Misconduct involving a controlled substance in the sixth degree
- 70. Misconduct involving a controlled substance in the seventh degree

NOTES TO DECISIONS

Conviction reversed where search warrant improperly issued. — See State v. Jones, Sup. Ct. Op. No. 2983 (File

No. S-486), 706 P.2d 317 (1985) (conviction under former AS 17.10.101).

Sec. 05.15.100. Issuance of permits and licenses. (a) The commissioner may issue a permit to a municipality or qualified organization. The permit gives the municipality or qualified organization the privilege of conducting bingo, raffles and lotteries, pull-tab games, ice classics, rain classics, goose classics, mercury classics, salmon classics, dog mushers' contests, fish derbies, and contests of skill.

(b) The commissioner also may issue a permit giving a municipality or qualified organization the privilege of conducting an activity involving the use of playing cards, dice, and numbers wheels. Each year, a municipality or qualified organization may apply for a permit under this subsection for either a single event lasting no more than three consecutive days, or for no more than three events lasting no more than one day each.

(c) The commissioner may issue an operator's license to a natural person to conduct an activity permitted under this chapter on behalf of a municipality or a qualified organization. The commissioner may also issue an operator's license to a municipality or a qualified organization to conduct an activity on behalf of another municipality or qualified organization. (§ 1 a ch 27 SLA 1960; am § 1 ch 66 SLA 1976; am § 2 ch 27 SLA 1982; am § 2 ch 59 SLA 1983; am § 1 ch 93 SLA 1986; am § 2 ch 94 SLA 1986; am §§ 11, 12 ch 99 SLA 1988)

Effect of amendments. — The first 1986 amendment inserted "goose classics, mercury classics," in subsection (a) and inserted a comma following "derbies."

The second 1986 amendment in subsection (a) inserted "salmon classics," in the second sentence.

The 1988 amendment, in subsection (a), deleted "of revenue" following "commissioner" in the first sentence and, in the second sentence, inserted "qualified" and "pull-tab games," and made a minor punctuation change; and added subsection (c).

Sec. 05.15.112. Member in charge. (a) Each municipality or qualified organization that receives a permit under this chapter shall designate a member in charge.

(b) The member in charge is responsible for preparation, maintenance, and transmittal of all records and reports required of the permittee. The member in charge shall be a member of the qualified organization or the board of directors of the qualified organization or an employee of the municipality.

(c) The member in charge shall monitor the operator's performance under and compliance with contracts for the conduct of activities on behalf of the authorizing permittee.

(d) The municipality or qualified organization shall designate alternate members in charge who are responsible for the duties of the member in charge in the absence of the member in charge. (§ 13 ch 99 SLA 1988)

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or until the end of a hearing or other proceeding begun during suspension. The authority of the commissioner to suspend a permit is not subject to the Administrative Procedure Act (AS 44.62). (§ 5 ch 27 SLA 1960)

Editor's notes. — This section is set out to incorporate editorial changes made by the Revisor of Statutes.

Sec. 05.15.180. Limitations on authorized activity. (a) Except as provided in AS 05.15.100(b), this chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement not expressly authorized by the commissioner.

(b) With the exception of raffles, lotteries, bingo games, pull-tab games, rain classics, goose classics, mercury classics, salmon classics, and other activities authorized under AS 05.15.100(b), an activity may not be licensed under this chapter unless it existed in the state in substantially the same form and was conducted in substantially the same manner before January 1, 1959.

(c) The operation of activities licensed under AS 05.15.100(b) is limited as follows:

- (1) cash prizes may not be awarded;
- (2) only money substitutes such as chips or scrip may be used by a player in the activity;
- (3) the money substitutes may be exchanged only for prizes other than money and may not be otherwise exchanged or sold; and
- (4) additional limitations may be established by the commissioner under adopted regulations.

(d) The total value of door prizes offered or awarded under authority of a permit issued to a municipality or qualified organization under this chapter may not exceed \$20,000 a month or \$240,000 a year.

(e) The total value of all door prizes offered or awarded at a single facility or bingo hall or parlor by an operator on behalf of authorizing permittees or by a permittee in conjunction with other permittees may not exceed \$20,000 a month or \$240,000 a year.

(f) A person under the age of 19 years may not play a bingo game.

(g) A municipality or a qualified organization may award a maximum of \$1,000,000 in prizes each year in activities authorized under this chapter; however, if a municipality or a qualified organization contracts with an operator to conduct on its behalf activities authorized under this chapter, the municipality or qualified organization may award a maximum of \$500,000 in prizes each year. In this subsection "activities authorized under this chapter" means all activities subject to this chapter other than bingo. (§ 2 ch 27 SLA 1960; am § 3

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ch 66 SLA 1976; am §§ 5, 6 ch 59 SLA 1983; am § 2 ch 93 SLA 1986;
am § 3 ch 94 SLA 1986; am §§ 20, 21 ch 99 SLA 1988)

Effect of amendments. — The first 1986 amendment inserted "goose classics, mercury classics," in subsection (b).

The second 1986 amendment in subsection (b) inserted "salmon classics," and

"not" preceding "be licensed" and substituted "an" for "no."

The 1988 amendment inserted "bingo games, pull-tab games" in subsection (b) and added subsections (d)-(g).

Sec. 05.15.181. Pull-tab manufacturer's license. (a) A person may not manufacture pull-tabs in the state unless the person has received a pull-tab manufacturer's license issued by the department.

(b) The department may issue a pull-tab manufacturer's license to a person who pays an annual fee of \$500.

(c) Each series of pull-tabs manufactured in the state shall be sealed and have a serial number label issued by the National Association of Fundraising Ticket Manufacturers or other serial number label approved by the department.

(d) A pull-tab manufacturer may distribute pull-tabs only to a licensed pull-tab distributor unless the pull-tab manufacturer is also a licensed pull-tab distributor.

(e) Each pull-tab manufacturer shall report to the department by the last business day of the month on each series of pull-tabs distributed during the preceding month, including the serial number of each series distributed and the name of the distributor to whom the series was distributed. (§ 22 ch 99 SLA 1988)

Sec. 05.15.183. Pull-tab distributor's license. (a) A person may not distribute pull-tab games unless the person has received a pull-tab distributor's license issued by the department.

(b) The department may issue a pull-tab distributor's license to a person who pays an annual fee of \$1,000.

(c) Pull-tabs may be distributed only from a location in the state. A person may not distribute pull-tabs directly to another person in the state from a location outside of this state.

(d) A pull-tab distributor shall report to the department by the last business day of each month on each pull-tab series distributed in the preceding month. The report must include the name of the permittee to whom each series of pull-tabs is distributed and the serial number of each series. (§ 22 ch 99 SLA 1988)

Sec. 05.15.184. Pull-tab tax. A pull-tab distributor shall collect a tax of three percent of an amount equal to the gross receipts less prizes awarded on each series of pull-tabs distributed. The pull-tab distributor shall pay to the department the tax collected in the preceding month at the time that the report under AS 05.15.183(d) is filed with the department. (§ 22 ch 99 SLA 1988)

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170

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 170

SPONSOR Governor

BILL TITLE State procurement

DATE REFERRED 2-13-89

HEARING SCHEDULED 3-13-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED

INTERESTED PARTIES CONTACTED

7th Fl
508

✓ Bob Link, DOA 2250

✓ Brian Rogers, Univ 474-7448 in Jnu 3/11

Wendy Frank Turpin, AK Railroad 265-2403

✓ Loren Rasmussen, DOT 2960

Jim Baldwin, AG 3600 Virginia Page ✓

✓ Sen Faiks 4523 (Cheryl)

Resa Jernel 586-1740

OTHER Faiks AK bidder bill

170A.M.TXT - amendments 3/17/89

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time for appeals

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ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

February 24, 1989

The Honorable Pat Pourchot, Chairman
Senate State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Alaska Railroad Corporation Procurement Procedures

Dear Pat,

Thank you again for making time available to meet with Marv Yetter and me recently. We had a productive trip to Juneau and a highlight was visiting with you and sharing our plans to improve the appearance of the Alaska Railroad's Anchorage facility.

We also expressed our concerns with the state's procurement procedures.

As we discussed, we've prepared two proposed amendments to existing Senate bills, Nos. 170 and 58. The first proposes to exempt the Alaska Railroad Corporation ("ARRC") from a State Procurement Code requirement that it maintain procurement procedures which are "substantially equivalent" to the state's own procedures. The second relates to the Alaska bidder's preference.

The Alaska Railroad Corporation Act ("ARCA") requires that railroad procurement procedures meet accepted industry standards. This direction was in keeping with a legislative purpose that ARRC operate as a viable, self-sufficient entity subject to the same rules, regulations, and practices applicable to other railroads. It was established as a public corporation independent of and separate from the state to help insure that sound business management practices, not government regulations, would guide its operations in an extremely competitive private market. Wise procurement practices tailored to railroad needs were intended to responsibly reduce costs and thereby help insure economic viability. With this goal and public accountability in mind, ARRC's board of directors adopted procurement rules in 1985 which best served the special mission charted for the railroad.

Unfortunately and despite ARCA's earlier directions, the 1986 State Procurement Code ordered ARRC to adopt procurement

The Honorable Pat Pourchot
February 24, 1989
Page 2

procedures which mirrored those required for state agencies. Saddled by the additional costs and delays inherent in this new system, we come to you with a request that ARCA's vision and philosophy be restored. Without the flexibility enjoyed by our sister railroads and our competitors, ARRC's responsiveness in the marketplace has been crippled and its continued vitality has been threatened.

As you know, SB No. 170 contains many technical amendments to the State Procurement Code. We respectfully request that you submit our proposed amendment to this bill. The amendment will release ARRC from the "substantial equivalent" limitation, but will also require ARRC's board to insure that procurement procedures meet industry standards and adapt them to the railroad's special needs.

During our visit, we also explained our view that certain individuals are abusing the Code's Alaska bidder preference. Our second proposal suggests language to amend SB No. 58, legislation which already recommends several other modifications to this provision.

Most railroad goods (especially locomotive and railcar parts) are available only from Outside manufacturers. In the past, ARRC has received bids directly from such manufacturers when our inventory becomes depleted. Since it was not cost effective for them to do so, these manufacturers have never established dealerships in our state. Nonetheless, the broad language of the Alaska bidder's preference now permits a single Alaskan to negotiate an exclusive representation arrangement with these railroad parts manufacturers, submit a bid claiming a five percent preference, and obtain a contract on their behalf for the price of the preference or some portion of it. Not a dollar of the bidder's money need be spent on local labor, advertising, inventory, facilities, or real estate! ARRC's costs increase, but there is no return to Alaska except that portion of the bidder's fee which he may spend or save here.

The Alaska bidder's preference was instituted to promote local businesses, not to invite speculation. Accordingly, we propose that bidders promoting Outside goods be required to demonstrate their commitment to Alaska before qualifying for a preference. Our suggested amendment requires that this commitment be demonstrated by a bidder's existing inventory of Outside goods or his ongoing repair or warranty services for them.

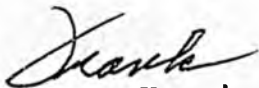
We firmly believe that these changes can meaningfully contribute to a much healthier operating environment for the state's railroad without jeopardizing those important public accountability requirements found in its enabling legislation.

The Honorable Pat Pourchot
February 24, 1989
Page 3

Your support and sponsorship of these amendments will be greatly appreciated.

Larry Wood, our General Counsel, and I plan to be in Juneau March 13 and 14 and we would like to visit with you in regard to these amendments. I will be contacting your office next week to see if this time is appropriate.

Sincerely,



F.G. Turpin
President & CEO

cc: ARRC Board of Directors

7914L

PROPOSED AMENDMENT TO SB NO. 170

A Bill for "An Act relating to state procurement."

Sec. 21. AS 36.30 is amended by adding a new section to read:

Sec. 36.30.035. ALASKA RAILROAD CORPORATION. The board of directors of the Alaska Railroad Corporation shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must meet accepted railroad industry standards and must be adapted to the special needs of the Alaska Railroad Corporation as determined by its board of directors.

Sec. 22. AS 36.30.015(e) is amended to read:

(e) The board[S] of directors of the [ALASKA RAILROAD CORPORATION AND THE] Alaska State Building Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

7909L

PROPOSED AMENDMENT TO SB NO. 58

A Bill for "An Act relating to the definition of 'Alaska bidder' for purposes of the Alaska bidder preference in the awarding of state contracts."

Sec. 2. AS 36.30.170 is amended by adding a new section to read:

(e) Notwithstanding the provisions of paragraph (b) above, a bidder shall not be entitled to receive the Alaska bidder preference if such bidder submits a bid which offers goods substantially manufactured, assembled, or provided by another party located outside the state, unless the bidder:

(1) has maintained an inventory of at least \$50,000 in such goods at a place of business within the state for six months immediately preceding the date of the bid; or

(2) has provided repair or warranty services for such goods at a place of business within the state for six months immediately preceding the date of the bid.

7912L



Brian Rogers
Vice President for Finance
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5260

March 6, 1989

The Honorable Pat Pourchot
Chair, Senate State Affairs Committee
P. O. Box V
Juneau, AK 99811

SUBJECT: Senate Bill #170 - An Act relating to state
procurement

Dear Senator Pourchot:

The University of Alaska has a keen interest in the passage of Senate Bill #170, An Act relating to state procurement, which is currently in your committee. The university participated in discussions with the state Department of Administration during the drafting of this legislation, and strongly endorses action this legislative session to improve the procurement code.

In this letter, I will discuss the university's position on the amendments made by the Governor's bill and will suggest additional areas for committee consideration to improve the procurement process for the University of Alaska.

The University of Alaska's concerns with the current law fall generally under five categories:

1. Alaska business license requirements;
2. Exemptions from the code;
3. Bid limits;
4. Protest procedures; and
5. Penalties.

I. Alaska Business License:

Section 1 of Senate Bill #170, AS 36.30.110(b), requires bidders to have a valid Alaska business license at the time designated in the invitation to bid for bid opening. This creates two problems. First, the process for obtaining an Alaska business license often takes up to six weeks, while bids are advertised for only three weeks. Vendors who may wish to bid, but have not conducted business in Alaska, are precluded from competing due to these time deadlines. This is a particular prob-

University of Alaska

The Honorable Pat Pourchot

Page 2

March 6, 1989

lem for the university when no in-state bidders are available for specialized scientific products. We believe an amendment as follows would alleviate the situation: Page 2, line 9, after "license," insert "or have made application for an Alaska business license"; and line 12, after "license," insert "or of the bidder's application for an Alaska business license."

The Alaska Business License Act defines those businesses which are required to obtain an Alaska business license in AS 43.70.110(1). Some businesses are not required to have an Alaska business license, including "fisheries businesses, fishermen, liquor licenses, insurance businesses, mining and coin-operated amusement and gaming machines, calling or vocation." Furthermore, "business" is defined as those activities or acts "with the object of financial or pecuniary gain, profit or benefit, either direct or indirect."

In AS 36.30.110(b), however, all bidders must have a valid Alaska business license at the time of bid opening. Thus, if the University of Alaska goes to bid for a service which can be provided by another college or university, for example, under AS 36.30 they must have a valid Alaska business license; but under AS 43.70, they are not required to have an Alaska business license. The university believes that AS 36.30.110(b) should be amended to only require the Alaska business license of bidders who are required under the Alaska Business License Act to have one. We believe the section should be amended as follows: Page 1, line 9, after "(b)", insert "If the bidder is required to have an Alaska business license under AS 43.70."

In context, the two amendments would thus read:

"Section 1. AS 36.30.110(b) is amended to read: (b) If the bidder is required to have an Alaska business license under AS 43.70, the bidder must have a valid Alaska business license, or have made application for an Alaska business license, at the time designated, in the invitation to bid, for bid opening. The [WHEN RESPONDING TO THE INVITATION TO BID, THE] bidder shall supply evidence of the bidder's valid Alaska business license, or of the bidder's application for an Alaska business license in accordance with regulations adopted by the commissioner. A bidder for a construction contract

The Honorable Pat Pourchot
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March 6, 1989

shall also submit evidence of the bidder's registration under AS 08.18."

A similar amendment needs to be added to the new subsection 36.30.210(e), beginning on page 3, line 29, of the bill.

II. Exemptions

The university strongly supports two exemptions contained in Senate Bill #170. These are on page 10 beginning at line 2, subsection 20, exempting "purchases of curatorial and conservation services to maintain, preserve, and interpret objects of art and items having cultural, historical, or archaeological significance to the state"; and on page 10, line 16, subsection 25, "contracts for supplies or services for research projects funded by money received from the federal government or private grants."

We believe use of standard bidding procedures is not proper for the University of Alaska Museum to obtain the curatorial services under subsection 20, and thus believe this amendment is needed.

Subsection 25 is even more important to the university, as some provisions of AS 36.30 are inconsistent with procurement procedures required by federal agencies. The university is concerned that application of all AS 36.30 procedures to our research procurements may make the University of Alaska uncompetitive with other public and private universities in obtaining federal grants or contracts.

The university would ask the committee to consider two additional exemptions from the provisions of AS 36.30 as follows:

1. Registration fees for conferences and workshops.

When a university faculty member or administrator attends a national or state conference, the payment of registration fees for the conference or workshop is a sole source purchase. The university believes that it is extremely cumbersome to require a sole source determination on each conference or workshop registration and that the registration at such a conference or workshop by definition is not a competitive procurement. A blanket exemption for these registrations would reduce

The Honorable Pat Pourchot

Page 4

March 6, 1989

paperwork without materially affecting the purpose of the act.

2. Guest speakers and entertainment. When the University of Alaska seeks a guest speaker, this professional service is currently subject to the provisions of AS 36.30 requiring, for example, three quotes for speakers between \$10,000 and \$25,000 and open competitive process over \$25,000. In most circumstances, guest speakers and entertainment are sole source purchases. If, for example, the University of Alaska wanted to bring former President Ronald Reagan to speak, we believe we should not be required to seek quotes from former Presidents Carter and Ford. Under existing law, sole source determination would be required to go directly to former President Reagan. As is the case for the preceding exemption, the university believes the requirement for a separate written determination on guest speakers and entertainers is cumbersome and does not achieve the purposes of AS 36.30.

III. Bid Limit.

AS 36.30 currently requires open competitive bidding for purchases in excess of \$5,000. Procurements under \$5,000 are subject to separate regulations for "small procurements." The university believes this \$5,000 limit is unreasonably low. The federal government, for example, uses a \$25,000 limit in similar circumstances while the state of Oregon uses a \$15,000 limit. The university believes that a \$10,000 limit for small procurements would be more appropriate for Alaska. This change would mean that for purchases under \$10,000, the university would be able to obtain informal quotes rather than going through the full advertising and competitive bid procedure. We believe that such a change would have the likely effect of increasing the amount of business done with local vendors since we would not be required to notify all out-of-state vendors who are on the bidders' list of each of these small procurements. We believe this change would simplify the procurement procedure without violating the intent of the procurement code.

IV. Protests.

On page 7 of the bill beginning on line 6, AS 36.30.575 would be reenacted to prohibit making award of a con-

University of Alaska

The Honorable Pat Pourchot

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March 6, 1989

tract if a protest is filed within the time set out in the law unless there is a written determination that "(1) if a reasonable probability exists the protest will be denied, or (2) a delay of award of the contract is contrary to the state's best interests."

The university is concerned that the proposed protest procedures make it too easy for a losing bidder to hold up the procurement process. We believe this injures the successful bidders. The university believes that the successful bidder should be able to seek damages against a protesting bidder when claims made are frivolous and damage the winning vendor. Furthermore, the university believes that the procurement officer should be able to reject those protests which fail to contain the requirement under AS 36.30.560(4) of "a detailed statement of the legal and factual grounds of the protest including copies of relevant documents." (Emphasis added) The university has received protests which do not contain details of the grounds of the protest, which has required the university to hold up the award while trying to seek the details of the grounds for protest.

V. Penalties.

The civil and criminal penalties of AS 36.30 have caused significant discomfort for university employees, who are afraid that unintentional errors and omissions might lead to liability for costs and damages or to criminal penalties. The university believes that AS 36.30.930(1) should be amended as follows:

"Section 36.30.930. Civil and criminal penalties. The following penalties apply to violations of this chapter: (1) a person who intentionally contracts for or purchases supplies, equipment for the state fleet professional services or construction in a manner the person knows to be contrary to the requirements of this chapter or the regulations adopted under the chapter is liable to all costs and damages to the state arising out of the violation;"

The university is concerned that our ability to attract high-quality professionals in the procurement field is compromised when the situation could exist that the procurement official knows the requirements of the chapter but unintentionally approves a procurement contrary to that knowledge.

University of Alaska

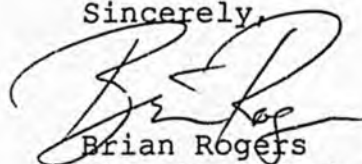
The Honorable Pat Pourchot

Page 6

March 6, 1989

The university appreciates the committee's willingness to consider this important legislation during the current legislative session. We look forward to the opportunity to testify before the committee on hearings and to answer any questions you may have on the university's position on these or any other issues related to the current or proposed procurement law.

Sincerely,



Brian Rogers
Vice President for Finance

BDR/pe

cc: Senator Jan Faiks
Don O'Dowd, President
Alice Peterson, Acting Chief Procurement Officer
Wendy Redman, Vice President University Relations
Bob Link, Director, General Services and Supply

Alaska State Legislature

170FAIKS.TXT

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senator Jan Faiks

FROM: Senator Pat Pourchot, Chairman
Senate State Affairs Committee *Pat*

RE: SB 170, Relating to state procurement

DATE: February 27, 1989

As you know, SB 170, which proposes several changes and clarifications to the state procurement code, has been referred to the State Affairs Committee.

According to the Department of Administration, the lead agency on SB 170, there was an attempt in drafting the bill to limit it to noncontroversial issues. However, I have already been approached by the Alaska Railroad Corporation and other agencies who have additional concerns with the code.

I intend to schedule the bill for a hearing, and am anticipating significant discussion on it. Because of your extensive background on the procurement code, I would greatly appreciate your taking a look at SB 170 and providing the committee with any comments or suggestions you might have.

I have attached for your convenience a copy of the bill, the Governor's transmittal letter, and the fiscal notes.

ALASKA STATE LEGISLATURE

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling



P.O. Box V
Juneau, AK 99811

907-465-3712

Senate State Affairs Committee

February 27, 1989

Frank G. Turpin, President
P.O. Box 107500
Anchorage, Alaska 99510-7500

Dear Frank:

Thank you for coming by my office when you were in town. I appreciated your briefing on the Ship Creek redevelopment area and your comments on procurement.

Senate Bill 170, which proposes a number of changes and clarifications to the state procurement code, has been referred to the Senate State Affairs Committee, which I chair. I intend to schedule a hearing on the bill sometime within the next several weeks, and would appreciate receiving your thoughts and comments on it in advance of the hearing.

I have enclosed a copy of SB 170 for your convenience. Please drop me a line or give my office a call with your comments. I will notify you of the hearing date once it has been set.

Thanks for you help, Frank.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pat", written over a large, stylized circular flourish.

Senator Pat Pourchot
Chairman

PP/ss

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 16, 1989

SUBJECT: Constitutionality of offeror preference
 (draft CSSB 170(SA))

TO: Senator Pat Pourchot, Chair
 State Affairs Committee

FROM: Theresa L. Bannister *TLB*
 Legislative Counsel

This memo accompanies the committee substitute that you requested for SB 170. Although the primary purpose for your request was to address the procurement procedures of the Alaska Railroad Corporation, please be aware that SB 170 contains new bidder preference provisions that could be challenged under the commerce clause and the privileges and immunities clause of the federal constitution. Section 13 gives offerors who are Alaska bidders two preferences in the evaluation of offers. I have not examined the issues sufficiently yet to express an opinion on whether the challenge would be successful. If you wish a fuller examination of this issue, please advise.

TLB:gc
WKG8/025

Enclosure



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to state procurement.

After working with the new state procurement code for the past year, state agencies have identified a number of provisions that need clarification or change to address the practical realities of administering the code.

Sections 1, 6, and 7 of the bill clarify and make consistent the requirements that a bidder or proposer have, and provide evidence of having, a valid Alaska business license. Under these sections, bidders and proposers must possess the license at the time of bid or proposal opening, and must provide proof of the license in accordance with regulations adopted by the commissioner of administration.

Section 2 of the bill permits the commissioner of transportation and public facilities to make the state's estimate of the costs of construction confidential until after bid opening, upon a written finding that confidentiality is in the state's best interest.

Section 3 of the bill clarifies that a listed subcontractor may be replaced if the subcontractor, rather than the bidder, is determined by the procurement officer not to be responsible.

Section 4 of the bill establishes a uniform requirement that the bid security that is required for competitive sealed bids for certain construction contracts and that may be required for competitive sealed bids for other construction contracts and for contracts for supplies, services, or professional services, must be equal to at least five percent of the amount of the bid. This replaces more complicated security requirements, which the

Department of Transportation and Public Facilities found resulted in rejection of several major bids.

Section 5, besides making some technical corrections in AS 36.30.170(b)(4), recognizes the need in some situations to provide the Alaska bidder preference to partnerships in which not all partners are Alaska residents.

Section 6 of the bill also requires the list of subcontractors provided by the offeror of the proposal determined to be most advantageous to the state to include a list of the work to be performed by each subcontractor.

Sections 8 and 9 of the bill provide more specific requirements for consideration of proposers' Alaska bidder status in evaluating competitive sealed proposals. In evaluating the cost factors of a proposal, an agency must consider the proposed costs of an offeror who qualifies as an Alaska bidder to be reduced by five percent. In establishing evaluation factors, an agency must allocate at least 10 percent of the value of the rating system to the proposers' Alaska bidder status. These provisions place in statute the requirements of interpretive regulations adopted by the commissioner of administration.

Section 10 of the bill adds a new provision that permits multi-step sealed proposals, similar to AS 36.30.190 which provides for multi-step competitive sealed bidding.

Sections 11 and 12 of the bill permit delegation of the authority to make written determinations necessary for a sole source or limited competition procurement of supplies, services, or construction if the amount of the procurement does not exceed the amount for small procurements under AS 36.30.320(a). That amount is currently \$5,000.

Section 13 of the bill amends the provisions for determination of responsibility of a bidder or offeror, to require the procurement officer to make a written determination only if the bidder or offeror is found to be not responsible, rather than if he or she is found to be responsible.

Section 14 of the bill amends the requirement that the procurement officer issue a written explanation of award of a contract to an out-of-state bidder, to provide that such an explanation is not required if the award is made under competitive sealed bidding. The reason for this change is that awards under competitive sealed bidding involve no exercise of discretion.

Section 15 of the bill removes the prohibition against use of cost-plus-a-percentage-of-cost contracts, and allows use of that type of contract under regulations to be adopted by

the commissioner of administration and commissioner of transportation and public facilities in their respective areas of responsibility.

Section 16 of the bill repeals and reenacts the provision for stay of award of a contract when an appeal is filed. Currently, even if an appeal is filed, the contracting agency may proceed with the award unless the agency determines that the protest will probably be sustained or that a stay of the award is not contrary to the best interests of the state. As reenacted, AS 36.30.575 requires a stay of the award unless there is a written finding that there is a reasonable probability that the protest will be denied or that the delay is found to be contrary to the state's best interests. In other words, essentially, the provision is reversed.

Section 17 of the bill amends AS 36.30.850(b) to provide for additional exemptions from the procurement code, including exemptions of

- contracts for day care assistance (AS 44.47.250);
- contracts for purchase of standardized licensure examinations;
- disposals of supplies acquired in agricultural loan foreclosures;
- purchases of certain services connected to art and historical objects;
- acquisition of confidential seismic information for pre-sale oil and gas lease analyses;
- contracts for village public safety officers;
- expenditures for expenses for travel to meetings by persons who provide personal care and sign language interpretation for members of the Governor's Council for the Handicapped and Gifted;
- contracts for home health care services and adult residential and foster care services; and
- contracts for services and supplies for research projects that are funded with federal or private grant money.

Language is also deleted from AS 36.30.850(b)'s lead-in, and the same language is instead included in a new definition of "state money" (sec. 19 of the bill).

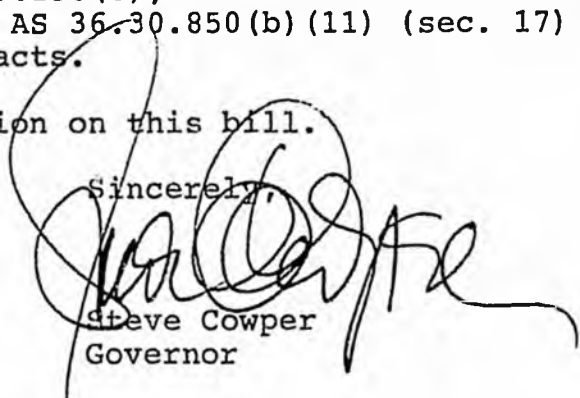
Section 18 adds a new section that allows for use of alternate procurement methods, rather than those provided in the procurement code, in specified situations in which agencies have found application of the procurement code to be impractical or disadvantageous to the state.

Section 19 adds a new definition of "state money," to clarify that only expenditure of money appropriated to an agency or spent under an appropriation (including money spent under AS 37.07.080(h)) is subject to the procurement code. Not subject to the procurement code under this definition is expenditure of money such as that of companies for which, or of individuals for whom, the state acts as the trustee, receiver, or conservator (for example, money of a bank that the state has taken possession of under AS 06.05.470, or a client's money held in trust by the Office of Public Advocacy).

Section 20 repeals AS 36.30.100(b)(1) -- (4), which are currently exemptions from competitive bidding requirements and which are relocated by the bill to proposed AS 36.30.855 (sec. 18); AS 36.30.540(4) -- (5), to delete the reporting requirements for out-of-state and state source procurements; AS 36.30.605, to delete the protest report requirement; and AS 44.47.250(c), to conform AS 44.47.250 to the exemption added to AS 36.30.850(b)(11) (sec. 17) for day care assistance contracts.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper
Governor

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: March 13 Committee Meeting

DATE: March 10, 1989

On Monday, March 13 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 145, An Act making a special appropriation to the Department of Administration for payment as a grant to the Alaska Native Cultural Center Corporation

SB 145 would appropriate \$500,000 to the Alaska Native Cultural Center Corporation for Phase I of the Alaska Native Cultural Center in Anchorage. The bill was heard by the State Affairs Committee meeting jointly with the Special Committee on International Trade and Tourism on February 27.

A draft committee substitute has been prepared. It would require that state funds be matched by funds from non-state sources and that the state funds be spent on planning, design, engineering, and site preparation.

SB 170, An Act relating to state procurement

SB 170 makes a series of amendments to the state procurement code. The code has been in effect since January 1, 1988. During the past year state agencies have identified a number of provisions that they feel need clarification or change to address the practical realities of administering the code. Additional changes recommended by the Alaska Railroad Corporation and the University are attached.

The bill has a zero fiscal note. Any cost savings will be reflected as increased efficiencies in the procurement process.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiko, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: March 17 Committee Meeting
DATE: March 17, 1989

Today at 1:30 p.m. in the Beltz Room the following bills will be back before the State Affairs Committee:

SJR 3, Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature

A draft committee substitute providing for repeal of regulations by joint resolution rather than concurrent resolution is attached. Because Uniform Rule 49 requires that a joint resolution receive three readings and that its vote be recorded in the journal, these requirements have been deleted from SJR 3.

SJR 5, Proposing amendments to the Constitution of the State of Alaska amending provisions relating to the Alaska permanent fund; establishing temporary provisions relating to dedicated funds, the Alaska permanent fund, the expenditure limit, and the budget stabilization fund

SJR 5 would constitutionally dedicate permanent fund earnings (50% dividends, 30% inflation proofing, 20% budget stabilization fund), establish an appropriation limit, provide for deposit of revenues in excess of the appropriation limit (50% permanent fund, 50% budget stabilization fund), and allow for expenditure of up to 25% of the budget stabilization fund in years in which revenues are less than the appropriation limit.

A draft committee substitute which deletes the \$1.4 billion appropriation limit specified in the original bill is attached. Instead, annual appropriations would be limited to the level of appropriations made in the preceding year with an adjustment for inflation. Revenues within the spending limit that were not appropriated would be deposited in the Permanent Fund.

Committee Memo
March 17, 1989

SJR 30, Relating to location of a job corps center within the
Matanuska-Susitna Borough

When SJR 30 was before the committee, questions arose regarding the state's financial obligation if Alaska should be chosen as the site for a job corps center. The state's application to the federal government indicated that we would contribute \$1 million to capital costs of the center. The funding question will be addressed by the bill sponsor at today's meeting.

SB 170, An Act relating to state procurement

A draft committee substitute, which incorporates the following two provisions discussed by the committee, is attached:

1 Authorization of the Alaska Railroad Corporation to adopt procurement procedures based on the competitive principles of the state procurement code but adapted to the special needs of the corporation

2 Exemption from the procurement code for guest speakers or performers for an educational or cultural activity

Six additional amendments are also attached:

NO 1 Application of the Alaska business license

NO 2 Abuse of the Alaska bidders' preference by firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the preference

yes 3 Increase of the dollar threshold for open competitive bidding

NO 4 Exemption for purchases made outside the U.S. for use outside the U.S., and for contracts for hearing officers

NO 5 Penalty for frivolous protest of a contract award

yes 6 Definition of "state money"

It is my hope that we could move all of these bills out of committee today.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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ANCHORAGE, ALASKA 99501-1994
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JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 16, 1989

The Honorable Pat Pourchot
Chair, Senate State Affairs
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 170, procurement code

Dear Senator Pourchot:

At your request, I have reviewed amendments presented to the Senate State Affairs Committee for inclusion in SB 170, relating to state procurement.

The most difficult issue for consideration of the committee is a proposal by the Alaska Railroad Corporation that is intended to prevent abuse of the Alaska bidder's preference. During the hearing on March 13, I expressed some reservations about the railroad's suggestion that an inventory requirement be added to the elements of the definition of "Alaska bidder" set out in AS 36.30.170. The railroad suggested that to qualify, a bidder must have an inventory valued at \$50,000 or more. It would be difficult to predict the effect of this amendment on the array of bidders currently enjoying the benefits of the preference. It would also be difficult to determine the value of inventory at any given time during the bidding process.

I have reviewed the statutes of other states to determine how they have dealt with this problem. New Mexico offers a good example for the committee to consider. A "resident business" is granted a preference for state contracts. To qualify, a resident business must have its principal place of business in the state or have five or more employees who are residents of the state. NMSA 13-1-21. Additionally, each resident business must apply to the chief procurement officer for a certificate evidencing resident status. A bidder is not entitled to the preference unless a copy of the certificate is presented with the bid. The procurement officer is empowered to create an application form and require sufficient proof to qualify for the preference.

Arkansas requires a "bona fide place of business and a representative inventory of the commodities on which the bid is

The Honorable Pat Pourchot
Alaska State Senate
Re: SB 170, procurement code

March 16, 1989
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submitted." ACA 19-11-259(a)(3). Apparently this requirement was successfully challenged as being vague and overbroad. Pacificorp v. Exerleben, ___ F. Supp. ___ (E.D. Ark., Sept. 30, 1988). It has been reported that Arkansas will attempt to resurrect the preference with valid, enforceable standards.

Illinois requires a "resident bidder" to have a "bona fide establishment for transacting business on the date when any bid for a public contract is first advertised or announced." IL St. ch. 127, p. 132.6. The Minnesota statute is identical. MN ST 16B.102. South Dakota allows resident bidders to qualify for a preference if they "have maintained a substantial and bona fide place of business and have conducted business therefrom within this state for at least one year prior to the date on which a contract was awarded." SDCL 5-19-4.

Based on the foregoing research, if the committee desires to pursue this matter, we recommend that you consider amending AS 36.30.170 in the following manner:

* Sec. __. AS 36.30.170(b)(3) is amended to read:

(3) has maintained a substantial bona fide place of business within the state [STAFFED BY THE BIDDER OR AN EMPLOYEE OF THE BIDDER FOR A PERIOD OF SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THE BID];

* Sec. __. AS 36.30.170 is amended by adding a new subsection to read:

(e) In this section "substantial bona fide place of business" means a place that is

(1) regularly used for the sale of the supplies or services called for in the invitation to bid;

(2) staffed by the bidder or at least one employee of the bidder who is a resident of the state;

(3) equipped and staffed to offer any maintenance, warranty, or repair services called for in the invitation to bid; and

(4) continuously used in the state at a single location for a period of six months immediately preceding the date of the invitation to bid.

The Honorable Pat Pourchot
Alaska State Senate
Re: SB 170, procurement code

March 16, 1989
Page #3

The amendments set out above are designed to eliminate firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the Alaska bidder's preference. The requirement to provide in-state warranty and repair services will effectively eliminate agents or jobbers who desire to broker sales of supplies to the state. We cannot guarantee that this amendment preserves the preference of all bona fide vendors. The enforcement of Alaska bidder status would be complete if the chief procurement officer were tasked with the responsibility of granting a preference certificate similar to the procedure used in New Mexico. Under those circumstances, a case-by-case determination could be made before bids are solicited. However, we recognize that the assumption of this function will require increased appropriations to the Department of Administration and for that reason do not recommend the adoption of such a provision in the state procurement code.

We would also like to comment on the amendment proposed by Senator Faiks regarding the status of the Alaska Railroad Corporation under the procurement code. The amendment would give the state-owned railroad the same status enjoyed by the legislature. For a separate branch of government created in the state constitution, the procurement code recognizes that the separation of powers doctrine implied in the constitution requires a certain amount of freedom to tailor procurement procedures to the mission of each branch of government. However, the railroad is a creature of statute.

The Model Procurement Code proposed by the American Bar Association urges the ideal of all state agencies following uniform procedures under a single procurement code. However, the state procurement code originally enacted deviated from the ideal in an effort to accommodate various interests both inside and outside state government. Under existing law, the railroad is allowed to independently adopt procurement regulations; but those regulations must be "substantially similar" to the state procurement code. AS 36.30.015(e). If the railroad is allowed to attain a new status, we can guarantee that other public corporations will want to follow suit. It is fervently hoped that the goal of uniformity can someday be achieved. If we had our way, the Alaska Railroad Corporation and the Alaska State Building Authority would be treated as any other executive branch agency under the code.

There are two additional amendments to SB 170 that the administration favors.

The first amendment involves adding an exemption from competition for contracts for hearing officers. We are learning

The Honorable Pat Pourchot
Alaska State Senate
Re: SB 170, procurement code

March 16, 1989
Page #4

that the procurement process tends to slow down the administration of justice through administrative agencies. Often, it is desirable to obtain the services of a particular hearing officer who is experienced in resolving specialized disputes, such as environmental law or labor disputes. If an exemption is enacted, we intend to solicit qualified persons to express an interest in serving as hearing officers. After a list of interested persons is developed, appointments will be made from the list on a rotating basis. Set out below is a suggested amendment to provide the exemption we propose:

Page 10, line 15:

Delete the word "or"

Page 10, line 18:

After "grants" insert

"; or

(26) contracts for hearing officers"

The second amendment is intended to correct a drafting error currently present in the bill. Section 19 adds a definition of "state money." However, the definition, if enacted in its current form, will exclude contracts of an agency from coverage under the procurement code if the agency operates exclusively with nonappropriated money. For example, the Alaska State Building Authority is covered by the code but does not receive state general fund appropriations, nor are federal funds appropriated for its use. We recommend the committee delete the material set out between lines 15 and 19 of page 11 and adopt the amendments set out below. So that you will understand the effect of the changes we propose, we have set out the amendments here showing the insertions and deletions to the original text necessary to correct our oversight:

(17) "state money" means any money appropriated to an agency or spent by an agency [UNDER AN APPROPRIATION], irrespective of its sources, including federal assistance except as otherwise specified in AS 36.30.890 but does not include money held in trust by an agency for a person.

Thank you for the opportunity to comment on the amendments proposed by other agencies and to propose additional amendments. If you have further questions, Assistant Attorney General

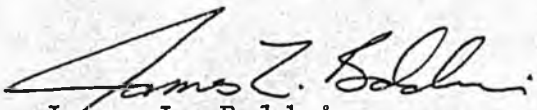
The Honorable Pat Pourchot
Alaska State Senate
Re: SB 170, procurement code

March 16, 1989
Page #5

Virginia B. Ragle will be present at the hearing scheduled for this bill on March 17.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Bob Link, Director
Div. of General Services & Supply
Dept. of Administration

Arthur H. Peterson
Assistant Attorney General
Dept. of Law - Juneau