

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7534 SENATE LABOR & COMMERCE

II. Contests

Licensee Responsibility

Defining a Contest

A contest is a plan in which a prize is offered or awarded to the public based upon chance, diligence, knowledge or skill. A lottery must contain prize, chance and consideration, but a contest may contain only one or two of these elements. Although there are still instances where certain lotteries may not be broadcast, contests generally may always be broadcast, so long as they are not deceptive. Once a broadcaster determines that airing a promotional plan or act is not a prohibited (not complying with state and/or federal law) lottery, the following guidelines on the broadcast of contests should be followed.

Licensee Liability

The broadcast of contest information, although not illegal, can subject the licensee to stiff penalties if such a contest is deceptively conducted. During the past several years, the FCC has repeatedly shown a strong interest in the manner in which contests and promotions are conducted by broadcast stations. On October 26, 1976, the following rule went into effect, 47 C.F.R. §73.1216 (1988):

"A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term."

Material Terms Of A Contest

Material terms are those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending upon the exact nature of the contest, they generally will include:

- how to enter or participate; eligibility restrictions; entry deadline dates;
- whether prizes can be won; when prizes can be won; the extent, nature and value of prizes;
- time and means of selecting winners; and
- tie-breaking procedures.

47 C.F.R. §73.1216 (b) (1988)

Thus, it is the obligation of the licensee to make certain, right from the beginning, that a contest does not mislead the audience. The Commission has consistently imposed heavy fines, issued short-term renewals, and even revoked station licenses where it found that rigged, deceptive or misleading contests were conducted. In connection with such contests,

The Commission has pointed out that a licensee's lack of knowledge of an improperly run contest is no excuse, because a licensee is responsible for the acts of its employees and for all material broadcast over the station. Prearranging or predetermining the outcome of a supposedly fair contest with the intent to deceive the public is subject to criminal penalty under Section 508 of the Communications Act and, under Sections 312 and 503, is grounds for a fine and/or revocation of license.

Failure To Disclose The Nature Of The Prize: Black Book Case

Failure to state the nature of the prizes to be awarded is a failure to disclose a material term of a contest, as required under FCC rules. A Washington, D.C. station received a Notice of Apparent Liability for a forfeiture of \$6,000. The station broadcast announcements inviting listeners to call in and give their names and the names of three close friends for recording in a "Black Book." The announcements stated that the station would call friends listed in the Black Book. If the friend who was called happened to be listening to the station, both the friend and the person who submitted the friend's name would win a prize. No specifics about the prize were given.

The Commission found that this contest violated Section 73.1216 of the rules, which requires that a station "fully and accurately disclose the material terms of the contest." In its announcements, the station failed to indicate the exact nature of the prizes. The prizes were quite legitimate—record albums and pairs of tickets to sporting and musical events. The winners were informed of these prizes when they were called. Nonetheless, the Commission found that the material terms of the contest were not fully disclosed.

Danger Zones

Problem contests fall into three main categories: misleading contests; contests adversely affecting the public interest; and, rigged contests.

Misleading Contests. A misleading contest is one in which the station misrepresents the terms of the contest or overstates the amount that can be won. The FCC's main concern is that the licensee fully and accurately disclose the material terms of the contest and that the licensee conduct the contest substantially as announced. In January 1977, the FCC admonished a West Virginia station for failing to state that prizes in its contest, four-day "vacations" in resorts such as Las Vegas, San Juan and Acapulco, did not include transportation to the selected destination. It



appeared from the text of contest announcements that the prize reasonably could be construed to include transportation, since the prize was described as a vacation and the transportation costs were substantial. The Commission stated that it did not appear that the full and accurate details of the prizes were furnished to the listeners until after the winners were announced. Such conduct fell short of the degree of responsibility expected from licensees.



The Commission has listed a number of misleading practices relating to licensee-conducted contests that would raise serious questions concerning licensee responsibility. Such practices include:

- disseminating false or misleading information regarding the amount or nature of prizes; failing to control the contest to assure a fair opportunity for contestants to win the announced prize;
- urging participation in a contest, or urging persons to stay tuned to the station in order to win, at times when it is not possible to win prizes; failing to award prizes, or failing to award them within a reasonable time; failing to set forth fully and accurately the rules and conditions for contests on a continuing basis;
- changing the rules or conditions of a contest without advising the public or without doing so promptly; using arbitrary or inconsistently applied standards in judging entries; providing secret assistance to contestants or predetermination of winners;
- stating that winners are chosen solely by chance, when in fact chance played little or no part; broadcasting false clues in connection with a contest; and conducting contests without adequate supervision.

Contests Adversely Affecting the Public Interest. The Commission has, in the past, looked with disfavor upon contests or promotions of the "treasure hunt" variety which constitute a public hazard and might cause interference with or destruction of property. Examples of contest ventures that have infringed upon the rights of property or privacy include: a contest that required participants to travel to a specified place in a very short time, causing traffic violations and endangering lives; a contest that led listeners to choose names at random from the telephone directory and to call the persons listed at all hours of the day and night, causing great annoyance and effectively blocking the use of their telephones for normal purposes; the broadcast of "scare announcements" or headlines that either were untrue or were worded in such a way as to mislead or frighten the public; and, contests that caused the accumulation of hazardous material in locations, so as to block the access to nearby commercial establishments. Although the FCC no longer has a specific policy against these particular types of promotions, licensees should be aware that such

promotions might be viewed by the FCC as violating the Commission's general policy of requiring licensees to program their stations in the public interest. These contests may expose the licensee to tort liability as well.

Rigged Contests. It is unlawful for a station to broadcast contest information where the outcome of the contest has been predetermined. The broadcast of rigged contests is a violation of Section 508 of the Communications Act, which makes it unlawful for any person, with the intent to deceive the listening public, to: supply to any contestant in a purportedly bona fide contest of intellectual skill any special or secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined; induce or cause by means of persuasion, bribery, intimidation or otherwise any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using such knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined; engage in any artifice or scheme if the purpose of the scheme is to predetermine or prearrange in whole or part the outcome of a purportedly bona fide contest of intellectual knowledge, skill or chance.

An FCC-conducted field investigation of the operations of a Connecticut radio station revealed the following facts pertaining to an Ali-Norton "knockout" contest. Listeners were instructed to enter the contest by telephoning the radio station at certain times, as announced by a disc jockey. The disc jockey asked the listeners to guess whether the listener could knock out Ali in a make believe fight. After the caller made a guess, the disc jockey played a prerecorded tape cartridge which simulated a one-minute bout with Ali and announced whether the listener had won or not. However, prior to playing the cartridge the disc jockey first would consult a timetable and instructions which indicated whether a given contestant at a particular timeslot was "scheduled" to win or lose. The station maintained separate "winner" and "loser" cartridge tapes. The disc jockey would wait for the contestant to make a selection, but then consult the schedule in order to select the cartridge that would yield the prearranged result. Thus, the station controlled the outcome of the contest, regardless of the choice made by the contestant.¹³

The Commission determined that the contest was improperly conducted, because the contestant was misled into believing that he or she might make a correct guess, when, in fact, the station had predetermined the outcome of the contest.¹⁴

The Commission determined that there was another faulty aspect to the contest. Listeners were told that the prize for a correct guess would be tickets to see the Ali-Norton fight. The Commission stated that these announcements misled the audience into believing that the prize consisted

of tickets to see the Ali-Norton fight live in New York at Madison Square Garden. In fact, the tickets were for a closed-circuit broadcast of the fight at a local Connecticut theatre.

Suggested Safeguards

Content of Broadcast Copy. The FCC has made a number of suggestions pertaining to the proper content of broadcast copy dealing with contests. Such copy should include:

- Complete information on how the public may obtain the rules.¹⁵
- The beginning and termination dates of the contest.
- How to enter.
- The amount or nature of the prize. If the original prize becomes unavailable, the licensee should try to secure an equivalent prize, and if an equivalent prize cannot be secured, substitute a prize of comparable value. Also, be precise in describing what is included in the prize. For example, a prize described as a "vacation in France" that does not include everything normally included in vacations, such as air fare and lodging, would be misleading.
- If a contest involves the elements of prize and chance, there should be a statement that no purchase is necessary. Care should be taken to avoid overstating a participant's chance of winning.

Try not to make any changes in the rules or operation of the contest after the contest is underway. If a change of rules is necessary due to circumstances beyond the station's control, the change should be announced at the earliest possible opportunity and the impact of the change minimized in order to reduce the possibility of unfairly disadvantaging some contestants. As a further safeguard, the station may incorporate in its original rules that prizes may be substituted should they be unavailable due to circumstances beyond the station's control.

Contest Files

Because the FCC regularly receives complaints from disgruntled contestants concerning the manner in which contests are conducted, stations may wish to maintain appropriate written records. An efficient security procedure to be followed would consist of the following steps:

- Each contest or promotion broadcast by the station should have its own file.
- The rules and eligibility requirements should be attached to one side of the folder.
- Each prize awarded should be recorded in the file. A "receipt-release" form should be signed by the winner at the time the prize is awarded and the release placed in the folder. When awarding prizes worth \$600 or more in a station-sponsored contest, be sure to obtain the winner's

social security number in order to comply with Internal Revenue Service regulations.

- File any letters of complaint.
- The file should contain copies of all broadcast material pertaining to the promotion.
- Place in the file copies of any layouts, ads, billboards or other media advertising used to promote the contest.
- The file should contain a notation verifying the dates and times on which the rules and regulations were broadcast. A safe rule of thumb is to broadcast a rules announcement at different times during each day of the contest.
- If the station so desires and the winner is amenable, place in the file an agreement signed by the winner which would permit the station to use the winner's name in connection with the contest or publicizing the contest.

Tax Consequences Of Broadcasting Contests

Whenever a licensee broadcasts a station-run contest in which a prize worth \$600 or more is awarded, it must file a 1099 MISC federal tax form. In addition, whenever a party wins an aggregate of \$600 or more in prizes from the station during a calendar year, the station must file a 1099 MISC for that person. *See I.R.C. §6041; Treas. Reg. §1.6041-a(d)(3)*. The broadcaster who files a 1099 MISC tax form incurs no tax liability, and is simply complying with a law which requires the licensee who conducts a station-run promotion to inform the IRS as to the identity of a contestant who has won a taxable prize. It is important to stress that the broadcaster's duty to file a 1099 MISC form attaches only to station-sponsored contests, and not to promotions in which the licensee airs a paid advertisement for a non-station affiliated contest promoter. If the broadcaster is required to file a 1099 MISC form, it should be certain to acquire the contestant's social security number prior to awarding the prize, because it is necessary to report the winner's social security number on the tax form.

Form 1099 MISC must be submitted along with Form 1096, which is a form itemizing all of the 1099s submitted by each licensee to the IRS. Both forms must be submitted within a certain period each tax year. Contact the local IRS office listed in your area to order forms and to get the filing dates.

A broadcaster is entitled to deduct from its taxable income the amount of money spent in conducting a station-sponsored contest, such as the money spent to purchase prizes. I.R.C. §162. So long as such expenses are "ordinary" and "necessary" costs incurred in the course of business, the IRS fixes no dollar limit on deductibility.

Broadcasting The Contestant's Voice

Before beginning to record a telephone conversation for future broadcast, or prior to broadcasting such a conversation live, the licensee must inform any party to the conversation of the intention to broadcast the call. 47 C.F.R., §73.1206 (1988). The FCC allows an exception where such a party is aware or may be presumed to be aware, from the circumstances of the conversation, that it is likely to be broadcast.

Awareness is presumed only when the other party originates the call and it is obvious that the call is in response to a program which customarily broadcasts the telephone conversations. *Broadcast of Telephone Conversations*, 23 F.C.C. 2d 1, 19 R.R. 2d 1504 (1970). The purpose of the rule is to give the answering party an opportunity, while not on the air, to refuse permission to have the conversation broadcast by simply not participating in the conversation. Initiating a live broadcast with the intention of seeking the other party's "permission" for the broadcast once the person answers the phone or at some point during the conversation violates 47 C.F.R. §73.1206 (1988).

It is important to remember the requirements of 47 C.F.R. §73.1206 (1988) when planning a promotion in which contestants are selected at random from the telephone directory and called at home as part of the contest. The contestant must be informed of the station's intention to air the conversation "live" or record the conversation for future broadcasting, before the live broadcast or tape recording is initiated. If the licensee broadcasts the contestant answering the phone with a "hello" he or she has failed to comply with the rule. Even if a contestant voluntarily submits a postcard with his or her phone number on it in order to participate in a "Calling for Cash" contest, the broadcaster still must "inform" the contestant before recording the conversation.

If, for future promotions, the broadcaster wishes to use a taperecording of the winner accepting the prize as part of a station promotion, he or she should obtain a release. The release will serve as written permission to use the tape for commercial purposes and protect the station from future claims related to the use of the tape. (Sample releases may be found in the NAB publication "Getting What You Bargained For," available through NAB Services.)

Logging Requirements

As part of the FCC's radio and television deregulation decisions, broadcast stations are no longer required to maintain program logs, which formerly had contained entries for contest promotional announcements for both licensee-conducted contests and the contests of advertisers. However, the elimination of these logging requirements should not preclude the prudent broadcaster from maintaining appropriate records of station contests and

promotions. If questions arise as to whether the promotion constituted prohibited lottery information, or if a contest is characterized as fraudulent or misleading or otherwise adverse to the public interest, the record can document the licensee's actions. (See the discussion of contest files above.)

NAB recommends that a broadcaster maintain a commercial record which notes the date, time, duration and sponsor of commercial announcements, including those which promote contests.

The elimination of the program logging requirements has no effect upon the sponsorship identification rules. 47 C.F.R. §1212 (1988). This rule provides that whenever a station broadcasts any material for which it has received or will receive any money, service or other valuable consideration, it must fully and fairly identify the person or group sponsoring the broadcast.

Compliance With FCC Contest Guidelines

Please note: The following guidelines are provided only to help the licensee interpret 47 C.F.R. §73.1216 (1988). The standards suggested below are not required by the Commission because they were never officially adopted.¹⁶ These examples should be viewed as merely illustrative of the everyday situations facing licensees.

Scope Of Rule

For the purpose of 47 C.F.R. §73.1216 (1988), a contest includes any arrangement in which a prize is offered to the public. A prize can be anything of value: cash, refunds, negotiable instruments, securities, merchandise, services, tickets, trips, recording contracts, personal appearances and so on. The means of selecting a winner are not significant for the purpose of defining a contest, but typically involve ability, skill, knowledge, chance or similar factors or combination of factors.

The rule applies to all contests conducted by the licensee and broadcast to the public. The rule does not apply to licensee-conducted contests not advertised to the public. For example, sales contests among station employees are a private matter between the licensee and its employees, and such contests are excluded from the scope of this rule. Broadcast stations often advertise contests for businesses, non-profit groups or others, with no licensee involvement in the actual conduct of the contests. Even where a licensee's only connection with a contest is to advertise it for another, its responsibility is the same as for commercial announcements in general. The licensee should "take all reasonable measures to eliminate any false, misleading or deceptive matter."

Material Contest Terms

The material terms of a contest are those factors that are significant in defining the operation of the contest. From the potential contestant's viewpoint, they are factors that affect his or her decision whether or not to participate in the contest and how to participate and win.

While the material terms of a contest will of course depend on the nature of the contest, in general they will include information about prizes, eligibility restrictions, how to enter or participate, how winners are selected, entry deadline dates, whether prizes can be won, when prizes can be won, the extent, nature and value of prizes, time and means of selecting winners, and tie-breaking procedures. For example, Station XXXX conducts a contest in which a \$100 cash prize is to be awarded. Anyone is eligible to enter as often as one wishes and may do so by mailing a postcard to the station. The winner will be selected by random drawing of the cards received. In this simple contest, the material terms are the prize, method of entering the contest, eligibility restrictions and the method of selecting the winner. The licensee should specify that the prize is \$100 cash, that the contest is entered by mailing postcards to the station, and that the winner will be selected by a drawing of the cards. The cut-off date for accepting entries (the only eligibility restriction in this contest) should be announced well before the deadline date. In more complex contests, special or unusual rules applying to the contest should be made clear. 47 C.F.R. §73.1216(b) (1989).

Disclosure Of Material Contest Terms

Method of Disclosing Material Contest Terms. The material terms should be disclosed by announcements broadcast on the station conducting the contest. They should be stated whenever the station purports to set out the conditions or terms of the contest (whether on the air or in other media), but need not be given in full with brief promotional announcements that do not purport to set out the conditions or terms of the contest.¹⁷ However, no contest description should be false, misleading, or deceptive with respect to any material term. The information given should be in letters of sufficient size to be readily legible to an average viewer, should be shown against a background that does not reduce their legibility, and should remain on the screen long enough to be read in full by the average viewer. Similarly, audio announcements should be understandable to the average listener. The nature of the station's audience should be taken into account. Licensees should, therefore, carefully review promotional material before its use to assure themselves that the material will be understood by the station's audience.

Sample Contests

Disclosure Of Material Terms

Example #1: Teaser announcements.

On May 15 Station XXXX begins promoting an upcoming contest with announcements such as, "The Spring Sweepstakes Contest is coming soon to XXXX!" On May 20 it adds announcements such as, "Enter the XXXX Spring Sweepstakes!" On May 25 announcements such as, "Win \$500 in the XXXX Spring Sweepstakes Contest!" are broadcast. On May 30 the audience is told how to enter the contest. When does the obligation arise to disclose the material terms of the Spring Sweepstakes Contest?

The obligation to disclose the material terms of the contest arises when potential contestants (a) are asked to participate in the contest and (b) have enough information about the contest to reasonably believe that participation is possible. The May 15 announcements neither invite participation nor tell how to participate, so disclosure is not required on May 15. The May 20 announcements invite participation, but do not tell how to participate; if information about how to participate has not been disseminated, disclosure is not required. Similarly, the May 25 announcements do not tell how to participate, so disclosure is not required. Disclosure is finally required on May 30, for then the audience has both been asked to participate and been told how to participate.

Eligibility Requirements

Example #2: Permissible eligibility requirements.

Station ZZZZ is promoting a contest in which only children attending religious schools can participate.

The rule does not prohibit the use of any eligibility restriction reasonably disclosed. However, some requirements (for example, race, gender, or religion) might be contrary to the public interest if the licensee were to air predominantly restricted contests. Permissible eligibility restrictions include residence, number of entries per person and time deadlines.

Example #3: Contestant calling from a particular exchange.

Station XXXX conducts a call-in contest, each time asking for a contestant from a specified telephone exchange. Once the announcer intends to ask for a caller from the 632 exchange, but forgets to name the exchange. The first caller is from the 456 exchange. Should the caller be permitted to participate in the contest?

Yes. Any eligibility restriction is a material contest term and should be disclosed fully



and accurately. If a restriction is not reasonably disclosed, that restriction must be presumed by the audience not to apply, and a licensee that applies a restriction not reasonably disclosed will not have conducted the contest substantially as announced.



Contest Prizes

Example #4: Prize packages.

Station XXXX conducts a contest offering dozens of prize packages collectively worth thousands of dollars, but each package is worth about \$5,000. The contest will have two winners, each of whom may choose one of the prize packages. How should the prizes be advertised?

Since only about \$10,000 in prizes will be awarded, the licensee should avoid giving the misleading impression that it may award hundreds of thousands of dollars worth of prizes. The truth is, the contest offers only two winners a single prize package each. Announcements indicating that a total of \$10,000 in prizes will be offered or given away would be acceptable, as would announcements that each winner will receive \$5,000 in prizes. Announcements indicating that, "You can win \$10,000 in prizes," would be unacceptable, since there is little chance that a single person would win both prizes.

Example #5: Match the number and win.

Station XXXX conducts a contest offering \$1,000 to any listener who can present a dollar bill matching a serial number read over the air. During the course of the contest, 1,000 serial numbers are to be broadcast. Would it be acceptable to advertise the contest as offering \$1,000,000 in prize money?

No. The licensee should not "offer" more in prizes than it can reasonably expect to award. Because the odds that a listener might have the dollar bill whose serial number is announced are so small, it is likely there will be but a few winners. The odds that there will be 1,000 winners (or any number even approaching that many) are extremely low.

Example #6: Treasure chests.

Station XXXX conducts a "Treasure Chest" contest, offering 25 different prizes each worth about \$40. There will be a single winner, who may win 1, 5, 10, or all 25 of the prizes. Would it be acceptable to advertise the contest as a \$1,000 Treasure Chest?

Yes. This differs from the contest in the previous example in that all \$1,000 in prizes can be won. As long as all the prizes in the chest can be won (in other words, as long as they are all offered), the sum of their individual values can be publicized without deceptively overstating the prize values.

Example #7: Prizes acquired in exchange for advertising time—fair market value.

Station XXXX conducts a contest offering an item of merchandise as grand prize. The item regularly sells for \$250 in the station's area, but was bought for \$300 worth of advertising time. As consolation prizes, the station made a wholesale purchase of 1,000 T-shirts for \$1.25 each, though the equivalent T-shirt sells for \$2.00 retail. For advertising purposes, how should XXXX value the prizes?

Prizes should be promoted at their normal retail value, the retail price a member of the station's audience could expect to pay for the identical prize or its equivalent. In the example given, XXXX should advertise the grand prize as worth \$250, and the consolation prizes as worth \$2.

Misleading The Contestant About Prizes Offered

Example #8: Vacation prizes.

Station XXXX promotes a contest as offering "vacations" at a distant resort. In fact the prizes consist of only hotel accommodations; winners must provide their own transportation, meals, and expense money. Are the announcements misleading?

Yes. Since the term "vacation" popularly connotes more than just lodging, it should not be used where the prize is so limited. Prize descriptions should clearly indicate the nature and value of prizes offered, and should not mislead, whether by misstatement, exaggeration, implication, or omission of material facts. The ultimate test of descriptions of material terms—including prize descriptions—is how they are likely to be perceived by the station's audience.

Example #9: Guessing the prize.

Station XXXX conducts a contest in which an entrant wins by correctly guessing the prize offered. What information should be disclosed about the prize?

In such a contest, a licensee may disclose as much or as little information about the prize as it chooses. Disclosure of the prize is not required in contests where non-disclosure is an essential element in the operation of the contest. However, any information broadcast must be accurate and not misleading. Thus, it would not be an accurate description for a station to advertise a secret-prize contest with cash prizes between \$1 and \$10,000 if the maximum prize to be offered is only \$2,000, even though \$2,000 does lie between \$1 and \$10,000.¹⁴ Reasonable rounding-off is of course not misleading.

Example #10: Joke prizes.

Station XXXX promotes a contest by saying the winner will receive the keys

to an automobile. In fact the winner receives just that, the keys, but no car. Is such advertising misleading?

Yes. The advertising implies that not only will the keys be awarded, but that an automobile will be part of the prize. If an automobile is not part of the prize, the station has not fully disclosed a material term of the contest, and its failure to award the car would constitute a failure to conduct the contest substantially as announced.

Example #11: Delay in awarding a prize.

Station XXXX conducts a contest offering an automobile and announces a winner. However, the winner does not receive the prize until more than a year after the contest ends. Is the delayed award of the prize improper?

Yes. The prompt award of prizes at the conclusion of a contest is an implied material term of every contest unless there is an announcement to the contrary. Unreasonable delay in awarding prizes, therefore, is a failure to conduct the contest substantially as announced.

Determining Winners

Example #12: Sham winners.

Station XXXX conducts a contest in which the winner is to be selected by a random drawing of entries. Before the drawing, though, a winner is selected by some other means, and the drawing is a sham. Has the contest been conducted substantially as announced?

No. A contest is not conducted substantially as announced if the means of determining the winner is not the same as announced to the public.¹⁵ It also is a serious deception when legitimate entrants have no chance to win, as when a non-existent winner is announced to avoid awarding the prize, or the prizes are awarded to predetermined winners.

Example #13: Controlling the number of winners.

Station XXXX conducts a "Turkey Shoot" contest. Once an hour a contestant who calls the station is permitted to guess how many "shots" will be required to hit the turkey target: one, two, three, or four. Following the guess, a tape recording of shots is played. If the number of shots matches the contestant's guess, the contestant wins a lovely ceramic turkey vase. If not, no prize or a small consolation prize is won. What problems can contests of this type present?

The most common problem is that the winner-determining process may not operate as implied. In the example given, contest procedures imply that whether a particular contestant wins depends entirely on the chance coincidence of his or her guess and the number of shots on the tape. If for any reason chance is not the sole factor in determining winners in such a

contest, the contest will not have been conducted substantially as announced. Thus, a contest would be conducted improperly if a station employee selects a tape that is known to match or not match the contestant's guess, or if the number of winners is controlled by some means other than chance.

Example #14: Special assistance to an entrant.

Station XXXX conducts a contest in which the winner will be the first entrant to identify a secret celebrity. XXXX broadcasts daily clues as to the identity of the celebrity. A listener, confused by a clue, calls the station requesting a clarification. What should XXXX do?

Fair conduct of a contest requires that each entrant have a fair opportunity to win. If special information or assistance that could affect the outcome of a contest is given to some entrants without being made available to all, the contest will not have been conducted substantially as announced. Thus, no contestant or group of contestants should be given special information or assistance that is not available to the station's entire audience.

Example #15: Thwarting a potential winner.

Station XXXX conducts a contest in which a person must listen for his or her name to be announced on the air, then call a special telephone number within five minutes in order to win. The telephone line is used for other station business, though, and is sometimes busy when contestants call the station. What should the station do?

The station should take special care to see that the telephone line is free when names are broadcast. If attempts to keep the line open do not succeed, the station should change the operation of the contest to assure that contestants have a reasonable chance to win. Failure to take such action may constitute failure to conduct the contest substantially as announced.

Example #16: Tie breakers.

Station ZZZZ announces that the child with the "goufiest Halloween costume" will win a \$100 gift certificate. This contest has been held for many years and ties frequently occur. The judges announce a tie between Patricia, dressed as a bag of french fries, and Marty, dressed as a washing machine. How should tie breaking procedures be disclosed?

Where it could reasonably be anticipated that there might be more than one winner for a



particular prize, the means of breaking the tie is a material contest term which should be disclosed in advance. For example, a contest with a \$10,000 cash prize ends with 100 eligible "winners." Will the station award each of the hundred \$10,000? Will it divide the \$10,000 equally among the 100? Will it conduct a random drawing to select a single winner? If the tie could reasonably have been anticipated, a tie-breaking procedure should have been adopted and disclosed.



Changes In Material Contest Terms

Example #17: Change made after contest has begun.

Station ZYZY announces that 10 "Zebra" cars will be awarded in a contest. The station is later informed by the Exotic Car Company that it is discontinuing its line of "Zebra" cars and that only two will be available as prizes. What should the broadcaster do?

The broadcaster should announce the substitution of prizes of equal value as soon as possible. Changes in material contest terms may constitute failure to conduct the contest substantially as announced. For the Commission's purposes, a licensee's liability under the rule will be determined by the circumstances of the change, and if the licensee's actions are reasonable, no sanction will be imposed. Factors considered include:

- the extent and significance of the change;
- whether the change unfairly disadvantages some contestants;
- if the change is necessitated by circumstances beyond the licensee's control; and,
- whether the circumstances requiring the change could have been anticipated.

When it is determined that a material contest term must or should be changed, the impact of the change should be minimized to reduce the possibility of disadvantaging some contestants, and the change should be announced promptly and conspicuously.

Example #18: Changes in eligibility requirements.

Station XXXX begins an hourly call-in contest without mentioning any eligibility restrictions, but decides to limit each contestant to a single call after noticing that a small group of entrants is making most of the calls. Is this proper?

Yes. Like all other changes in material contest terms, changes in eligibility restrictions will be considered in light of such factors as those mentioned in Contest Example #17. Since this change is made to make the contest more fair to a greater number of potential contestants, and does not unfairly disadvantage any, it is a proper change. However, adequate notice of the change should be given, and it should not be applied retroactively.

Example #19: Disclosing contest deadlines.

Station XXXX begins a contest in which the winner will be selected by drawing a postcard entry, but does not state a deadline date for accepting entries. Has it failed to disclose a material contest term properly?

Yes. The deadline date should be announced at the outset so that any person who wishes to enter the contest may do so. In the case of mail entries, it should be specified whether the deadline date is the date of postmark or the date of receipt. A licensee may prefer to use the date of receipt as the deadline, since properly postmarked entries may be delayed in the mail.

Example #20: Substituting prizes.

Station XXXX conducts a contest with an announced prize of a vacation trip to Buenos Aires. After the contest begins, though, arrangements for the trip fall through, and XXXX substitutes a different prize. Has the licensee failed to properly conduct the contest substantially as announced?

The answer depends on the circumstances of the change, as mentioned in Contest Example #17. In this case the licensee should:

- take reasonable steps from the beginning to assure itself that the prizes offered will be available when the contest is concluded;
- attempt to secure an equivalent prize if the original becomes unavailable;
- substitute a prize of comparable value if an equivalent prize cannot be secured; and,
- announce the change to its audience as soon as possible.

The Commission may find the change improper if the licensee fails to take these reasonable steps.

Ambiguous Rules

Example #21: Scavenger hunts.

Station XXXX conducted a Scavenger Hunt contest, publishing a list of items to be collected. As the contest progressed, it became apparent that the list was ambiguous, and XXXX modified the requirements slightly.

At the end of the contest there was not a clear winner, though two contestants claimed to have met all the requirements.

How should the station have avoided these problems?

Contest rules and procedures should have been carefully reviewed in advance to assure that all likely problems had been anticipated and avoided. In this case, scavenger list



descriptions should have been thoroughly analyzed to eliminate the ambiguities, and special attention should have been given to the procedure for determining the winner. Any clarifications required during the course of the contest should have been announced to the station's audience so no contestant would have an unfair advantage. Where such precautions are not taken, the contest may not be conducted substantially as announced.

Example #22: Increasing the value of prizes.

Station XXXX conducts a contest offering a year's car washes as the prize. Two weeks after the contest begins, a set of tires is added to the prize. Two weeks later, a car is added. Is there anything improper about these prize changes?

No. Since no contestant is unfairly disadvantaged by the increases in prize value, these changes are not improper. However, reductions in prize value are suspect, raising the question whether there ever was a reasonable chance that the larger prizes could have been won.

Misrepresentations

Example #23: Evaporating prizes.

Station XXXX conducts an hourly \$25 "guess the singer" contest, but once a day adds a bonus of \$100 if the contestant makes a correct guess during a particular hour. On a particular day, the bonus prize hour occurs in the early morning. However, the station's announcers continue to tell contestants later in the day that they may win an extra \$100. Has the contest been conducted improperly?

Yes. When a station states or implies that a prize can be won when in fact it cannot, a material contest term (whether the prize can be won) has not been fully and accurately disclosed, and the contest has not been conducted substantially as announced. Similar misrepresentations occur when: a station urges its audience to look for a hidden prize before it is hidden; a station urges submission of entries that it knows no longer have any chance of winning (for example, after receipt of a correct entry in a contest where the earliest correct entry is the winner); and, a station announces a \$1,000 Treasure Chest contest (see Contest Example #10), but there is no way all \$1,000 can be won.

Example #24: Stay tuned and stay tuned, etc.

Station XXXX conducts a contest offering \$5,000 in merchandise to a single winner. The winner will be the first person to call a designated telephone number once the station announces that calls will be accepted. The station urges its audience to stay tuned for an imminent

announcement that calls will be accepted ("maybe in five minutes, maybe in five hours, maybe in five days") though the announcement will not be made for two weeks. Are the promotional announcements improper?

Yes. Representations that it is possible to win the contest in the immediate future are false if it will not be possible to win until much later. Such announcements do not accurately disclose a material contest term (when the prize can be won), and, therefore, are improper.

Conclusion

The purpose of this handbook has been to clarify the revised federal lottery laws and to guide broadcasters who are considering promotions that may still be subject to federal and/or state restrictions. NAB hopes that this booklet, and the examples contained within, has been a useful tool for broadcasters confronted with questions about federal and/or state lottery laws. We must stress, however, that there is no substitute for the advice of counsel when particular situations arise. Moreover, because most state lottery laws are subject to constant change, NAB urges broadcasters to consult their state broadcaster associations or state governments for information concerning the current status of individual state lottery laws.

As an indication of the varying nature of state lottery laws and restrictions, Appendix A contains a state-by-state rundown of the lottery law provisions that were in effect on the date of this publication. Because these state laws change over time—and are expected to undergo special scrutiny by state legislatures as a result of the recent federal law change—it is important that broadcasters carefully check these state laws periodically. The NAB Legal Department plans to update its own lists of state laws and may be contacted by individual member stations when state law questions arise. Broadcasters are also advised to contact their state broadcaster associations or state attorneys general offices. (See list of contacts in Appendix B.)

Lotteries conducted by commercial organizations must be promotional activities which are clearly occasional and ancillary to the primary business of that organization.

By using the words "occasional" and "ancillary," Congress originally intended to distinguish casino gambling from events sponsored time to time by commercial organizations whose primary business is not gambling. In an informal opinion, however, the FCC has indicated that it *does not* consider an event "occasional" if it is held on a daily basis, or if it is held at regular intervals so close together (i.e., weekly, monthly) that the event appears to be part of one ongoing promotion or a series of promotions.

Notwithstanding the FCC's informal opinion, as this book was going to press, neither the FCC, nor any other government body, had developed a firm set of policies as to how the language of the revised federal law would be interpreted in factual situations. As such, NAB urges special caution in broadcasters' implementation of contests under the revised statute.

The FCC pointed out that it is the licensed location (city of license) of a station, rather than the actual location of a transmitter or studio, to which the statute refers in providing a limited exemption from the prohibitions of Section 1304.

47 C.F.R. §73.1211(c)(2).

47 C.F.R. §§73.4125, 73.4126, 73.4130.

Report and Order in MM Docket 83-842, *In the Matter of Elimination of Unnecessary Broadcast Regulation*, 56 R.R. 2d (P&F) 976 (1984).

18 U.S.C. §§1084, 1952, 1955, 1962.

For greater detail on the topic, see page 8.

State Law Summary—March 1990

This state law summary which follows is the result of research conducted by NAB's Legal Department and in conjunction with state broadcaster associations. It is based on information available at the date of publication.

Because state lottery laws are subject to constant change, broadcasters are urged to consult with the appropriate state authorities and/or state broadcaster association (see Appendix B) or their local attorney for the current status of individual state laws.

See page 4 for more information on skill versus chance. For information on horse racing and jai alai, see page 17.

It is important to inform the contestant that he or she will be on the air before you broadcast his or her voice, unless such a broadcast of the contestant's voice would be presumed from the nature of the program (e.g., a "call-in" show). For guidelines, see page 51.

United Broadcasting Co. (WOOK-FM), FCC 78-819, November 27, 1978.

A licensee who airs a contest which threatens lives or property may face a lawsuit for deaths, injuries and/or damage that result from such a broadcast.

For more information, see Contest Example #12, page 57.

Letter to Colonial Broadcasting Co., (WFIF), 44 RR 2d 1191 (1978).

The rules of the contest should include: (a) eligibility requirements; (b) the prize structure (i.e., the nature and value of prizes offered); (c) the number of entries permitted; (d) the type of submission required; (e) where, when and how entries are to be submitted; (f) the basis on which "prizes" will be awarded (including, where applicable, tie-breaking procedures); (g) the termination date of the contest; and (h) any conditions or limitations.

Report and Statement of Policy re: Commission En Banc Programming Inquiry, FCC 60-970, 25 Fed. Reg. 7291, 20 R.R. 1901 (1960). See also Public notice re: Applicability of Lottery Statute to Certain Contests and Merchandise Sales Promotion, 18 F.C.C. 2d 52, 16 R.R. 2d 1559 (1969)

Examples of such promotional announcements are: "Win up to \$1,000 on XXXX!" "Play Easy Bucks with XXXX! You may win!" "XXXX, your Cash Words station!"

High-Low contests present a unique problem, and somewhat greater flexibility in announcing the prize range would be reasonable. An example of High-Low is a contest in which a contestant is asked to guess the amount of money in a barrel. If the guess is incorrect, the announcer informs the audience that the guess was too high or too low. The next caller has the benefit of the clue. A serious question of prize overstatement would be raised if several successive "jackpots" were offered, all worth substantially less than the maximum announced.

This and some of the following examples may also involve violations of Section 509 of the Communications Act of 1934, as amended. 47 U.S.C. §509 (1976).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
ALABAMA			
None as of date of publication.	Only Bingo conducted by licensed entities in certain counties (state constitution).	Not legal (state constitution).	Yes, advertising of all lotteries, even those of other states is illegal. No restrictions on bingo advertising by stations licensed in counties with bingo.
ALASKA			
None as of date of publication.	Only certain groups as identified by Alaska law can apply for permit. Limit on proceeds.	Not legal (statutory law).	Yes, can only advertise lawful non-profit lotteries.
ARIZONA			
Yes	Allowed if certain conditions are met (Opinion of Attorney General).	Not legal.	Yes, can only advertise lawful non-profit lotteries. No advertising restrictions for state operated lotteries (statutory law).
ARKANSAS			
None as of date of publication.	Not legal (case law).	Not legal (state constitution).	Yes, cannot even advertise out of state lotteries (statutory law).
CALIFORNIA			
Yes	Bingo allowed if proceeds go to charity and there is a local government ordinance allowing bingo (statutory law).	Not legal (opinion of Attorney General).	Yes, can only advertise lawful non-profit lotteries (statutory law). No advertising restrictions for state operated lotteries.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
COLORADO			
Yes	Allowed for certain organizations. Bingo allowed for certain organizations licensed by the secretary of state (state constitution).	Not legal (state constitution).	Yes, can only advertise state operated lotteries. However, certain restrictions apply (statutory law).
CONNECTICUT			
Yes	Traditional lotteries not allowed. Bazaars, bingo, Las Vegas Nights and raffles, allowed under certain conditions by certain organizations (statutory law).	Not legal (statutory law).	Yes, ads 30 seconds or longer for state operated lottery tickets require a statement of the chance of winning per ticket. Cannot advertise time, prize, or location of bazaar, raffle, or games of chance (statutory law).
DELAWARE			
Yes	Allowed for specific organizations. Restrictions apply (state constitution).	Not legal (state constitution).	Yes, can only advertise state operated and lawful non-profit lotteries.
DISTRICT OF COLUMBIA			
Yes	Only bingo if for charitable or educational purposes and regulated by lottery and charitable games control board (statutory law).	Not legal (statutory law).	Yes, can only advertise lawful non-profit bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
FLORIDA			
Yes	Only eligible organizations that have been in existence for three years may conduct bingo or guest games. Proceeds must be donated to non-profit organizations (statutory law).	Not legal (state constitution).	Yes, can advertise state operated bingo. Cannot advertise non-profit bingo (statutory law).
GEORGIA			
None as of date of publication.	Bingo allowed (statutory law).	Not legal (state constitution).	Yes, can only advertise lawful non-profit bingo.
HAWAII			
None as of date of publication.	Not legal (statutory law).	Not legal (state law).	Yes, cannot even advertise other state lotteries.
IDAHO			
Yes	Not legal (statutory law).	Not legal (statutory law).	Yes, can only advertise state operated lotteries. Subject to regulation by lottery commission.
ILLINOIS			
Yes	Lotteries allowed. Bingo allowed. License required.	Not legal (statutory law).	Yes, can advertise state operated lotteries but specific groups or economic classes cannot be targeted. Lawful non-profit lotteries and bingo can also be advertised (statutory law).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
INDIANA			
Yes	Not legal.	Not legal.	No restrictions apply to state operated lotteries.
IOWA			
Yes	Lotteries allowed. Bingo allowed but license required (statutory law).	Allowed if commercial organization's activity is occasional and ancillary to the primary business or activity of the organization.	No additional restrictions. Amended state statute to conform with federal law.
KANSAS			
Yes	Bingo allowed. License required. Restrictions apply (statutory law).	Not legal (state constitution).	Yes, can only advertise state operated lotteries. Cannot advertise bingo (state law). Legislation to allow bingo advertising was pending as of date of publication.
KENTUCKY			
Yes	Bingo allowed (statutory law).	Not legal.	Yes, can only advertise state operated lottery and non-profit lawful bingo.
LOUISIANA			
None as of date of publication.	Charitable raffle, bingo and keno allowed. License required (statutory law).	Not legal (state constitution).	Yes, can only advertise lawful non-profit bingo, raffle and keno (statutory law).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
MAINE			
Yes	Bingo and games of chance allowed for some organizations. License required (statutory law).	Not legal (statutory law).	Yes, the lottery director may pick a person or firm to advertise state operated lotteries. State advertising guidelines apply to bingo and games of chance.
MARYLAND			
Yes	Bingo and raffles are legal in certain counties (statutory law).	Not legal (statutory law).	Yes, can only advertise state operated lottery and lawful bingo and raffle games.
MASSACHUSETTS			
Yes	Bingo allowed if licensed by State Lottery Commission and approved by city council and mayor. Other restrictions apply. Raffles and bazaars are legal with a permit and if net proceeds go to non-profit organizations. Other restrictions apply (statutory law).	Not legal (statutory law).	Yes, cannot advertise bingo. No advertising restrictions for state operated lotteries. No advertising restrictions for lawful raffles and bazaars (statutory law).

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
MICHIGAN			
Yes	Bingo, Millionaire Parties and raffles allowed. License required. Restrictions apply (statutory law).	Not legal (statutory law).	Yes, can only advertise non-profit bingo if Commissioner permits. Restrictions apply. No advertising restrictions for state operated lotteries. Can advertise lawful lotteries of other jurisdictions.
MINNESOTA			
Yes	Raffles, paddlewheels, tip-boards and pull tabs allowed by certain organizations. License required in certain cases.	Not legal as of date of publication. According to Minnesota Broadcasters Association, as of May 7, 1990, Minnesota law will change to conform to revised federal lottery laws.	Yes, restrictions apply to the content of state operated lottery advertisements. Cannot advertise non-profit lotteries. According to MN Broadcasters Assn., as of 5/7/90, Minnesota law will change to conform to revised federal lottery laws.
MISSISSIPPI			
None as of date of publication.	Certain organizations under certain conditions can hold bingo and raffles (statutory law).	Not legal (statutory law).	Yes, can only advertise lawful bingo (statutory law).
MISSOURI			
Yes	Bingo allowed. State license required (statutory law and state constitution).	Not legal (state constitution).	Yes, several restrictions on state operated lotteries. Cannot advertise bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
MONTANA			
Yes	Bingo and raffles allowed. License required.	Bingo and raffles allowed. License required. Prize limit and other restrictions apply. Rodeo and agricultural lotteries allowed (statutory law).	Yes, must state odds in state operated lottery advertisements. Can advertise lawful bingo and raffles.
NEBRASKA			
None as of date of publication.	License required for lottery only where gross proceeds are more than \$1,000. Each organization may conduct one small lottery per calendar month. License required for raffle only where gross proceeds are more than \$5,000. Bingo allowed if conducted by licensed charitable organization and municipality (statutory law).	Legislature can authorize lotteries that are business promotions (state constitution).	Yes, advertising restrictions apply for bingo.
NEVADA			
None as of date of publication.	Lotteries are not allowed (Attorney General's opinion) Bingo allowed. License required (statutory law).	Lotteries are not allowed (state constitution). Bingo allowed. License required (statutory law).	Yes, can only advertise bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
NEW HAMPSHIRE			
Yes	Bingo allowed, raffles allowed. Permit from city council required. Lotteries and gambling allowed (statutory law).	Special bingo licenses issued to certain groups. In very limited situations, gas stations can promote games of chance (statutory law).	No advertising restrictions for state operated lotteries, lawful bingo, and non-profit raffles and lotteries (statutory law).
NEW JERSEY			
Yes	Not legal (statutory law).	Only state regulated casino gambling is allowed (statutory law).	Yes. Federal prohibition preempts state advertising law allowing casino advertising.
NEW MEXICO			
None as of date of publication.	Two lotteries per year per organization allowed if all proceeds are expended in state for public purposes. No part of proceed can go to any individual or employee of organization. Bingo and raffles allowed.	Drawings at fairs are allowed if proceeds benefit certain organizations. Movie theaters can offer prizes (cash and merchandise for advertising purposes) (statutory law).	Yes, only lawful non-profit lotteries may be advertised. However, lawful non-profit bingo or raffles may not be advertised (statutory law).
NEW YORK			
Yes	Subject to state and municipal control. Proceeds must be for charitable purposes. Bingo is allowed, license required (statutory law).	Not legal (state constitution).	Yes, cannot advertise non-profit lotteries. Can advertise bingo on the radio, certain restrictions. No advertising restrictions for state operated lotteries.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
NORTH CAROLINA			
None as of date of publication.	Bingo and raffles allowed, license required (statutory law).	Not legal (state law).	Yes, can only advertise bingo or raffles. Cannot advertise lawful out-of-state lotteries.
NORTH DAKOTA			
None as of date of publication.	Lotteries allowed. All net proceeds must be used for non-profit uses. License required if more than \$2,000 is raised. If less, organization needs city approval in city where event is held (state constitution and statutory law).	Not legal.	No restrictions on how lawful lotteries can be advertised.
OHIO			
Yes	Allowed if conducted for charitable purposes by licensed charitable organization.	Not legal (statutory law and state constitution).	Yes, can only advertise state operated lotteries and charitable bingo. Cannot advertise charitable lotteries (state constitution).
OKLAHOMA			
None as of date of publication.	Bingo and games of chance allowed. License required (statutory law).	Not legal (statutory law).	Yes, can only advertise lawful bingo.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
OREGON			
Yes	Bingo, raffles and other games of chance allowed. License from State Department of Justice required (statutory law).	Not legal (statutory law).	Yes, for TV advertisements, certain restrictions apply. No restrictions for radio. No advertising restrictions for bingo, raffles, etc.
PENNSYLVANIA			
Yes	Bingo allowed if conducted for a charitable or civic purpose (statutory law).	Not legal.	No advertising restrictions apply for state operated lotteries and lawful bingo.
PUERTO RICO			
Yes	Charitable lotteries are allowed for certain organizations if: 1) proceeds are used for non-profit purposes; 2) organization files a report with the Department of Treasury (Puerto Rico statutory law).	Not legal.	No advertising restrictions apply for state operated lotteries or charitable lotteries.
RHODE ISLAND			
Yes	Annual or semi-annual commercial lotteries by clubs or societies permitted as long as all proceeds are donated to charity (statutory law).	Commercial events to promote retail businesses permitted. Promoter must file with Secretary of State where total of prizes is more than \$500 (statutory law).	No advertising restrictions apply for state operated lotteries or state authorized lotteries.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
SOUTH CAROLINA			
None as of date of publication.	Bingo allowed (statutory law and state constitution).	Bingo allowed if conducted at state and county fairs (statutory law and state constitution).	Yes, cannot advertise lotteries (state constitution).
SOUTH DAKOTA			
Yes	Bingo and other games of chance allowed if conducted by certain organizations and all net proceeds go to charitable purposes (statutory law).	Not legal (state constitution).	No advertising restrictions for state operated lotteries and other lawful non-profit lotteries.
TENNESSEE			
None as of date of publication.	Not legal (state constitution and statutory law).	Not legal (state and statutory law).	Not applicable.
TEXAS			
None as of date of publication.	Bingo allowed, license required. Restrictions apply (state constitution).	Not legal (state constitution).	Yes, the amount of a prize or series of prizes offered at a lawful bingo occasion cannot be included in the advertisement.
UTAH			
None as of date of publication.	Not legal (state constitution and statutory law).	Not legal (state constitution and statutory law).	Not applicable.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
VERMONT			
Yes	Bingo, raffles and games of chance allowed. Political parties are included in this category (statutory law).	Not legal (statutory law).	Yes, ads for state operated lotteries must state odds of winning. No restrictions for lawful non-profit bingo, raffles or games of chance.
VIRGINIA			
Yes	Bingo and raffles allowed if conducted by certain organizations, annual local permit required. Subject to other restrictions (statutory law).	Not legal (statutory law).	Yes, several restrictions apply to advertising state operated lotteries. No restrictions on non-profit bingo and raffles (statutory law).
WASHINGTON			
Yes	Raffles, social card games and fundraising events allowed. Restrictions apply (statutory law).	Agricultural fair can conduct bingo. Not more than 12 consecutive days in a calendar year (statutory law).	Yes, ads for state operated lotteries must include odds. No restrictions on agricultural fairs, non-profit raffles, bingo, etc. (statutory law).
WEST VIRGINIA			
Yes	Bingo allowed if conducted by charitable or public service organizations. License required. Prize limits. Raffles allowed by charitable or public service organizations. License not required.	Not legal (statutory law and state constitution).	No advertising restrictions for state operated lotteries and lawful bingo and raffles.

State Operated Lottery?	Non-Profit Lotteries (e.g., Church Bingo)?	Commercial Enterprise Lotteries (e.g., Retailer Raffles)?	Any Restrictions on Advertising Legal Lotteries?
WISCONSIN Yes	Bingo and raffles allowed. Prize limits, license required.	Not legal (statutory law).	Yes, advertising for state operated lotteries is limited to "informational advertising." Several restrictions apply for lawful non-profit lotteries.
WYOMING None as of date of publication.	Lotteries, bingo raffles, pull tabs, calcutta wagering allowed by charitable organizations. Several restrictions apply (statutory law).	Not legal (statutory law and state constitution).	No advertising restrictions on lawful bingo or raffles.

Appendix B

Sources of Information Concerning State Lottery Laws

To help broadcasters obtain information about their individual state lottery laws, we have included the following list of state government addresses and phone numbers, and appropriate state broadcaster association phone numbers. Because state lottery laws are subject to change, it is important for broadcasters to contact the numbers listed to find out about the current status of their state's lottery laws.

- Alabama**
 Public Information Dept.
 Attorney General's Office
 South House, 11 So. Union St.
 Montgomery, AL 36130
 (205) 242-7440
 Alabama Broadcasters Association
 205-942-4571
- Alaska**
 Gaming Supervisor
 Division of Occupational Licensing
 Department of Commerce and Economic Development
 (907) 465-2534
 Attorney General's Office
 P.O. Box K, State Capitol
 Juneau, AK 99811-0300
 (907) 465-3600
 Alaska Broadcasters Association
 907-258-2424
- American Samoa**
 Attorney General's Office
 P.O. Box 7
 Pago Pago, American Samoa
 96799
 (684) 633-4163
- Arizona**
 Civil Division
 Attorney General's Office
 1275 West Washington
 Phoenix, AZ 85007
 (602) 542-1610
 Arizona Broadcasters Association
 602-991-1700
- Arkansas**
 Consumer Division Lottery
 (501) 682-2341
 Attorney General's Office
 Press Secretary-Gambling
 200 Tower Building
 4th and Center Sts.
 Little Rock, AK 72201
 (501) 682-2007
 Arkansas Broadcasters Association
 501-227-7564
- California**
 Deputy Attorney General
 1515 K Street, Suite 638
 Sacramento, CA 95814
 (916) 324-5465
 California Broadcasters Association
 916-444-2237

7. **Colorado**
Marketing Director
Colorado Lottery
(303) 837-3411
Colorado Broadcasters
Association
303-894-0911
8. **Connecticut**
Executive Assistant
Division of Special Revenue
(203) 566-1807
Connecticut Broadcasters
Association
203-633-5031
9. **Delaware**
Deputy Attorney General in
Charge of Lotteries and
Sweepstakes
820 French Street
Wilmington, DE 19801
(302) 571-2500
10. **Washington, D.C.**
Attorney General
of the United States
Department of Justice
Room 5111
10th and Constitution, N.W.
Washington, DC 20530
(202) 633-2001
11. **Florida**
General Counsel
State Department of the Lottery
(904) 487-7724
Florida Association of
Broadcasters
904-681-6444
12. **Georgia**
Office of Legislative Counsel
General Assembly
(404) 656-5000
Georgia Association of
Broadcasters
404-993-2200
13. **Guam**
Attorney General of Guam
Department of Law
238 F.C. Flores Street, #701
Agana, Guam 96910
(671) 472-6841
14. **Hawaii**
Supervising Attorney for the
Criminal Justice Division
Department of the Attorney
General
State Capitol, Room 405
Honolulu, HI 96813
(808) 548-5336
Hawaii Association of
Broadcasters
808-531-4511
15. **Idaho**
Department of the Attorney
General
State House
Boise, ID 83720
(208) 334-2424
Idaho State Broadcasters
Association
208-345-3072
16. **Illinois**
Public Information Officer
State Attorney General's Office
500 S. Second Street
Springfield, IL 62706
(217) 524-4173
Illinois Broadcasters
Association
217-753-2636
17. **Indiana**
Attorney General of Indiana
219 State House
Indianapolis, Indiana 46204
(317) 232-6201
Hoosier Lottery Department
(317) 264-4990
Caller will probably be referred
to local county prosecutor's
office
Indiana Broadcasters
Association
317-638-1332
18. **Iowa**
Department of Inspections and
Appeals
Racing and Gaming Division
(515) 281-7357
Lottery
(515) 281-7900
Iowa Broadcasters Association
319-366-8016
19. **Kansas**
Public Information Officer
of the Kansas Lottery
(913) 296-5708
Kansas Association of
Broadcasters
913-235-1307
20. **Kentucky**
Director, Civil and
Environmental Law Division
Attorney General's Office
State Capitol, Room 116
Frankfort, KY 40601
(502) 564-4010
Kentucky Broadcasters
Association
502-692-6888
21. **Louisiana**
Public Relations Dept.
Attorney General's Office
P.O. Box 94005
Baton Rouge, LA 70804-9005
(504) 342-7013
State Police—Charitable
Gaming Division
P.O. Box 66614
Baton Rouge, LA 70896
(504) 925-1835
Louisiana Association of
Broadcasters
504-383-7486
22. **Maine**
Maine State Police, Licensing
Division
(207) 582-8765
Maine Association of
Broadcasters
207-623-3870
23. **Maryland**
Assistant Attorney General
200 Saint Paul Place
Baltimore, MD 21202
(301) 576-6300
Maryland/DC/Delaware
Broadcasters Association
(301) 385-0224

24. **Massachusetts**
General Counsel's Office
Massachusetts State Lottery
Commission
(617) 849-5555
Massachusetts Broadcasters
Association
508-921-6400

25. **Michigan**
Assistant Attorney General in
charge of Lotteries & Racing
(517) 373-3517
Michigan Association of
Broadcasters
517-484-7444

26. **Minnesota**
Assistant Attorney General
Gaming & Regulation Division
(612) 296-7862
Minnesota Broadcasters
Association
612-926-8123

27. **Mississippi**
White Collar Crime Division
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Federal Statutes Concerning Lotteries and Indian Bingo

The following appendix contains selected sections of the federal "Lotteries" statute and the "Indian Gaming Regulation Act." NAB feels that these particular sections will be an important reference for broadcasters when they encounter problems or questions pertaining to federal lottery laws.

Lotteries

(As amended, effective May 7, 1990)

§1304. Broadcasting lottery information

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning, any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Each day's broadcasting shall constitute a separate offense.

§1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries.

- (a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—
 - (1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—
 - (A) contained in a publication published in that State or in a State which conducts such a lottery; or
 - (B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or
 - (2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—
 - (A) conducted by a not-for-profit organization or a governmental organization; or
 - (B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing—

(1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law; or

(2) to an addressee within a foreign country of equipment, tickets or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.

(c) For purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(d) For the purposes of subsection (b) "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests. For purposes of this section, the term a "not-for-profit organization" means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.

Indian Gaming Regulatory Act—Pub.L. No. 100-497, 102 Stat 2467

DECLARATION OF POLICY

Sec. 3 The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

DEFINITIONS

Sec. 4. For purposes of this Act—

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this Act, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after the date of enactment of this Act, to negotiate a Tribal-State compact under section 11(d)(3).

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

TRIBAL GAMING ORDINANCES

Sec. 11. (b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

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

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(d)(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

DISSEMINATION OF INFORMATION

Sec. 21. Consistent with the requirements of this Act, sections 1301, 1302, 1303, and 1304 of title 18, United States Code, shall not apply to any gaming conducted by an Indian tribe pursuant to this Act.

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* DELIVER TO: LIOCROG
*
* ORIGINAL
* SENT: 02/11/91 TIME: 16:02
* FROM: LIOCMIL
* SUBJECT: 91-02-034; PL2; SB82; 2/11
* PRINT DATE: 02/11/91 TIME: 16:02
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SUBJECT LINE TO READ: TC NO.; PL FS; SHORT SUBJECT; DATE

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T/C NO: 91-02-034
DATE: 2/11
SPONSOR: S LABOR AND COMMERCE
SUBJECT: SB 82 BROADCASTING OF CHARITABLE GAMING
MODERATOR: JUDY
SITE: ANCHORAGE

```

PARTICIPANT LIST

TO TESTIFY

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. TOM TIERNEY/KENI	1777 FOREST PARK DR.	272-7461	SB 82
2. DENNIS BOOKEY/KFQD/KWHL	9200 LAKE OTIS PKWY.	344-9622	SB 82
3.			

- 4.
- 5.
- 6.

TO OBSERVE:

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1. AL BRAMSTADT JR./KTUU-TV	POB 102880	257-0202	SB 82
2. THEDA COMSTOCK/AK BRDCST ASSN			SB 82
3. DIANE KAPLAN/APRN		563-7733	SB 82
4. MIKE SZYMANSKI	POB 210587	563-1018	SB 82
5.			

BACK UP NUMBER: 561-1199
EMAIL ADDRESS: LIOCMIL

S B

8 3

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 1/23/91

HESS
FURTHER: Finance

Date of 5-Day Notice: 2/7/91
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

L&C Committee considered SB 83

Alaska State Health Resources Authority; relating to the delivery, quality, and financing of health care for residents of the state, and to the issuance of certificates of need; efd.

and recommended:

- replace with _____ CS SB 83 (L&C) same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) ADMIN / 4-3-91

zero fiscal note(s) ADMIN / 2-13-91
14+55 / 2-13-91

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

John G. ... 40 Rec
Mike Halford NO REC

True Keane - no rec
Chair: Signature and Recommendation

FISCAL NOTE

BILL NO. CSSB 83

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: April 3, 1990
Title: An Act relating to the Alaska State Health Resources Authority

Department Affected: Administration
BRU: Health Resources Authority

Sponsor: Duncan
Requestor: _____

Component: Health Resources Authority

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	155.5	163.3	171.4	180.0	189.0	198.5
TRAVEL	62.5	49.7	49.7	49.7	49.7	49.7
CONTRACTUAL	319.0	239.0	239.0	239.0	239.0	239.0
SUPPLIES	33	33	33	33	33	33
EQUIPMENT	33.3	1.0	1.0	1.0	1.0	1.0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	573.6	456.3	464.4	473.0	482.0	491.5

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	547.6	557.3	567.7	578.4	589.8
---------	---	-------	-------	-------	-------	-------

FUNDING: (Thousands of dollars)

GENERAL FUND	573.6	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	456.3	464.4	473.0	482.0	491.5
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME:	3	3	3	3	3	3
PART-TIME:	0	0	0	0	0	0
TEMPORARY:	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (attach a separate page if necessary.)

See attached analysis

Prepared By: Garv Bader *Garv Bader*
Division: Retirement and Benefits
Approved by Commissioner: Millett Keller *Millett Keller*
Agency: Department of Administration

Phone: 465-4460
Date: 4/2/91
Date: 4/2/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).

CSSB 83
Analysis of Financial Impact
Prepared by the Division of Retirement and Benefits
Department of Administration
April 2, 1991
Page 2 of 4

Analysis: This bill creates the Alaska Health Resources Authority in the Department of Administration. This independent agency would have specific duties and powers as outlined including regulatory powers and authority to charge fees and establish reserves to cover the expenses of the Authority. The Authority shall be managed by a nine member board of directors appointed by the Governor.

Employing an Executive Director and additional staff as necessary, the Authority shall:

** issue recommendations on the effect of certificates of need under AS 18.07.071 effective immediately;

** by July 1, 1992, create provider reimbursement systems and utilization standards mandatory within the boundaries of municipalities with a population of 20,000 or more. Implementation must be complete by 12/31/93;

** after July 1, 1992, procure or provide through self insurance group health insurance pool for certain individuals, groups or employers; and

**after February 15, 1993, procure or provide through self insurance group health insurance for employers with 50 or fewer employees and who have been refused coverage by two carriers and have not provided insurance to its employees for a year.

The bill allows voluntary participation in the Authority's group plan that would be available after 7/1/92. It is assumed that the State would participate in this plan if the coverage could be provided less expensively than through the normal marketplace. It is expected that this bill will decrease the cost of health insurance since that is the charge to the Authority. Upon participation, a public entity or other employer would be required to continue participation unless granted a waiver by the Authority.

For purposes of this fiscal analysis, we have assumed that participation in the plan will be adequate to allow the Authority to charge sufficient administrative fees to support the entire operating costs of the Authority beginning in FY 93. These fees are shown as revenue on the fiscal note form and it is assumed that the amount collected will be 20% higher than the operating costs for the first five years in order to establish a reserve to cover continuing expenses. It is also assumed that staff salaries will increase 5% annually.

At the same time the fees are taken from insurance premiums paid by participating employers, it is assumed for purposes of this analysis, that there is a decrease in the overall health care expenditure in the state due to the cost containing influences of the Health Resource Authority. This decrease in expenditures resulting in annual savings has been estimated by other sources to be \$132,723 in FY 93 and increasing to \$1,066,318 by FY 96.

Personal Services

Executive Director (Range 26A, 12 mos.)	87.1
Administrative Assistant II (14A, 12 mos.)	39.9
Clerk Typist III (8B, 12 mos.)	28.5
Total Personal Services	155.5

Travel

Assume 12 Board Meetings for FY 92
and 9 each year thereafter at an average
cost of \$400 per member per trip:

\$475 X 9 members X 12 trips =	51.3
--------------------------------	------

Administrative travel for Director:

Board Meetings	\$400 X 12 =	4.8
Organizational Meetings	\$600 X 12 =	7.2

Total Travel	63.3
---------------------	-------------

Contractual

Office space--500 sq. ft. @ \$2.00 X 12 mos.=	12.0
Telephone--\$300 X 12 mos.=	3.6
Courier Services--\$220 X 12 mos.=	2.4
Postage--\$500 X 12 mos.=	6.0
Printing, binding, transcription services=	15.0
Professional Services Contract (s) which could include services such as: carrier surveys and analysis; provider data collection; provider meetings; financial and investment consulting; self vs fully insured analyses; and/or plan design and development=	280.0
Total Contractual	319.0

Supplies

\$500 per employee	1.5
Software	1.8
Total Supplies	3.3

Equipment

3 PCs and printer	15.0
Phone system	2.6
Photocopier	1.3
Fax machine	1.8
Office furniture:	
1 management unit	4.0
2 support workstations	5.0
3 chairs	1.2
3 side chairs	.8
2 file cabinets	.9
bookcase	.1
storage cabinet	.6
Total Equipment	33.3

FISCAL NOTE

BILL NO. SB 83

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to the Alaska State Health Resources Authority

Department Affected: Administration
BRJ: Retirement and Benefits

Sponsor: Duncan
Requestor: _____

Component: Retirement and Benefits

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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
LAND & 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

Estimate of current year impact: _____

ANALYSIS: (attach a separate page if necessary.)

See Attached

Prepared By: Garv Bader *Garv Bader*

Phone: 465-4460

Division: Retirement and Benefits

Date: _____

Approved by Commissioner: Millett Keller *Millett Keller*
Agency: Department of Administration *1/12*

Date: 2/13/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).

REQUEST: FISCAL NOTE

Revision Date: _____ Agency Affects: Health & Social Services
 Title: Relating to the delivery, quality, and financing of health care BRU: State Health Services
 Sponsor: Duncan, Zharoff Components: none
 Requester: Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-Time		0				
Part-Time		0				
Temporary		0				

ANALYSIS: (attach a separate page if necessary)

No fiscal impact will occur in the immediate future. At the time that the Authority requires services from Division of Public Health, the Division will assess the Authority for those services

Prepared By: Alfred G. Zangri Phone: 465-3090
 Division: PUBLIC HEALTH Date: 02/13/91
 Approved By Commissioner: Theodore Mala, M.D., MPH Date: 2/13/91
 Agency: HEALTH & SOCIAL SERVICES

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

FISCAL NOTE

REQUEST:

Revision Date: 3-18-91
Title: Alaska State Health Resources Authority
Sponsor: Senator Duncan

Affected Agency: _____
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 91	FY 92	FY93	FY 94	FY 95	FY 96
Personal Services		112.7	112.7			
Travel		40.4	40.4			
Contractual		145.3	145.3			
Supplies		3.5	3.5			
Equipment		21.0	1.0			
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING		322.9	302.9	*	*	*

CAPITAL						
---------	--	--	--	--	--	--

REVENUE			122,723.318,573.	642,677.1,614,954.0
---------	--	--	------------------	---------------------

FUNDING: (THOUSANDS OF DOLLARS)

General Fund		322.9	302.9	*	*	*
Federal Fund						
Other						
TOTAL		322.9	302.9	*	*	*

POSITIONS:

Full-Time		2	2			
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY) See pages 2 and 3 for budget detail

*After July 1, 1992, the Authority shall provide that sufficient premiums are collected to provide the required insurance coverage and to pay the expenses of the Authority.

Prepared By: Dale Staley for Senator Jim Duncan Phone: 465-4766
Division: _____ Date: 3-1-91

Approved By: _____ Date: _____
Agency: _____

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY(IES)

CONTINUATION OF FISCAL NOTE:

Senate Bill 83 "An Act relating to the Alaska State Health Resources Authority; relating to the delivery, quality, and financing of health care for residents of the state, and to the issuance of certificates of need; and providing for an effective date."

Personal Services:

Executive Director Range 24A
\$5084 x 12 months = \$60,008
\$60,008 x 37% benefits = \$22,573
Subtotal \$82,581

Clerk Typist III Range 8B \$1830
\$1830 x 12 months = \$21,960
\$21,960 x 37% benefits = \$8,125
Subtotal \$30,085

Total Personal Services \$112,666

Travel:

It is anticipated there will be 6 meetings of the Health Care Resources Authority.

6 meetings x 9 members = 54 airfares
54 airfares x \$436 = \$23,544
2 days per diem x 54 = 108
108 days x \$95 = \$10,260
Subtotal \$30,804

Travel for Executive Director
10 board meetings x \$436 = \$4,360
2 meetings x 12 months x \$436 = \$5,232
Subtotal \$ 9,592

Total Travel \$ 40,396

CONTINUATION OF FISCAL NOTE:

SB 83

Contractual:

Office Space 500 sq. ft. x \$1.75 = \$875	
\$875 x 12 months	\$ 10,500
Telephone \$200 x 12 months	\$ 2,400
Postage \$200 x 12 months	\$ 2,400
Advertising and printing	\$ 5,000
Professional Services Contract(s)	\$125,000
which may include:	
Rate Studies	
Utilization Research	
Financial Systems Analysis	

Total Contractual	\$145,300
-------------------	-----------

Supplies:

\$1,000 per employee	\$ 2,000
Software	\$ 1,500

Total Supplies	\$ 3,500
----------------	----------

Equipment:

2 Desk top computers and a printer	\$ 11,000
Bookcases and file cabinets	\$ 1,200
Desk and chairs	\$ 4,000
Photocopier	\$ 2,000
Phone system	\$ 800
Miscellaneous	\$ 2,000

Total Equipment	\$ 21,000
-----------------	-----------

<u>TOTAL OPERATING</u>	\$322,862
------------------------	-----------

REVENUE ASSUMPTIONS FOR SB 83

The revenue assumptions are based on the estimated 20% per year increase in the costs of medical care.

Understanding that this 20% per year figure may not be constant over a long period of time it is the target that SB 83 is aiming to reduce. This figure has been used in the following table to demonstrate the costs savings in Alaska resulting from the phased implementation of SB 83. Savings achieved by this phased implementation are calculated by the application of the formula in column B.

	A Health Care Expenditure w/o ASHRA	B FORMULA	C Health Care Expenditure With ASHRA	ANNUAL SAVINGS
FY 91	\$1,929,000.0		NO ASHRA	00.0
FY 92	\$2,315,520.0		NO ASHRA	00.0
FY 93	\$2,778,624.0	20%@CPI, 80%@17%	\$2,655,901.0	\$ 122,723.0
FY 94	\$3,334,348.0	30%@CPI, 70%@15%	\$3,015,775.0	\$ 318,573.0
FY 95	\$4,001,218.0	40%@CPI, 60%@15%	\$3,358,541.0	\$ 642,677.0
FY 96	\$4,801,462.0	40%@CPI, 60%@15%	\$3,729,137.0	\$ 1,072,325.0
FY 97	\$5,761,754.0	40%@CPI, 60%@15%	\$4,146,800.0	\$ 1,614,954.0
FY 98	\$6,914,105.0	50%@CPI, 50%@15%	\$4,571,847.0	\$ 2,342,258.0
FY 99	\$8,296,926.0	50%@CPI, 50%@15%	\$5,040,461.0	\$ 3,256,465.0
FY 2000	\$9,955,312.0	50%@CPI, 50%@15%	\$5,557,108.0	\$ 4,398,204.0

NOTES:

A = FULL 20% ANNUAL MEDICAL INFLATION

B = EFFECTS OF ASHRA, CPI ESTIMATED AT 5% PER YEAR, REDUCED INFLATION AT 17% PER YEAR UNTIL 1994, 15% THEREAFTER.

C = TOTAL HEALTH CARE EXPENDITURE IN ALASKA AFTER ASHRA.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Alaska State Health
Resources Authority
Sponsor: Senator Duncan

Affected Agency: _____
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 91	FY 92	FY93	FY 94	FY 95	FY 96
Personal Services		112.7	112.7			
Travel		40.4	40.4			
Contractual		145.3	145.3			
Supplies		3.5	3.5			
Equipment		21.0	1.0			
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING		322.9	302.9	*	*	*

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

General Fund		322.9	302.9	*	*	*
Federal Fund						
Other						
TOTAL		322.9	302.9	*	*	*

POSITIONS:

Full-Time		2	2			
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY) See pages 2 and 3 for budget detail

*After July 1, 1992, the Authority shall provide that sufficient premiums are collected to provide the required insurance coverage and to pay the expenses of the Authority.

Prepared By: Dale Staley for Senator Jim Duncan Phone: 465-4766
Division: _____ Date: 3-1-91
Approved By: _____
Agency: _____ Date: _____

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY(IES)

CONTINUATION OF FISCAL NOTE:

Senate Bill 83 "An Act relating to the Alaska State Health Resources Authority; relating to the delivery, quality, and financing of health care for residents of the state, and to the issuance of certificates of need; and providing for an effective date."

Personal Services:

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Subtotal \$82,581

Clerk Typist III Range 8B \$1830
\$1830 x 12 months = \$21,960
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Subtotal \$30,085

Total Personal Services \$112,666

Travel:

It is anticipated there will be 6 meetings of the Health Care Resources Authority.

6 meetings x 9 members = 54 airfares
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Subtotal \$30,804

Travel for Executive Director
10 board meetings x \$436 = \$4,360
2 meetings x 12 months x \$436 = \$5,232
Subtotal \$ 9,592

Total Travel \$ 40,396

CONTINUATION OF FISCAL NOTE:

SB 83

Contractual:

Office Space 500 sq. ft. x \$1.75 = \$875	
\$875 x 12 months	\$ 10,500
Telephone \$200 x 12 months	\$ 2,400
Postage \$200 x 12 months	\$ 2,400
Advertising and printing	\$ 5,000
Professional Services Contract(s)	\$125,000
which may include:	
Rate Studies	
Utilization Research	
Financial Systems Analysis	

Total Contractual	\$145,300
-------------------	-----------

Supplies:

\$1,000 per employee	\$ 2,000
Software	\$ 1,500

Total Supplies	\$ 3,500
----------------	----------

Equipment:

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Bookcases and file cabinets	\$ 1,200
Desk and chairs	\$ 4,000
Photocopier	\$ 2,000
Phone system	\$ 800
Miscellaneous	\$ 2,000

Total Equipment	\$ 21,000
-----------------	-----------

<u>TOTAL OPERATING</u>	\$322,862
------------------------	-----------

Alaska State Legislature

JAN 25 1991



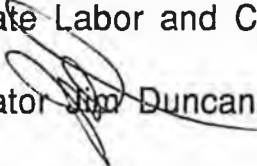
SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR —
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce Committee

FROM: Senator  Duncan

DATE: January 25, 1991

SUBJECT: Senate Bill 83, The Alaska State Health Resources Authority

I would like to request a few minutes of your time on January 30, 31 or February 1. Jeffrey Malek, Consultant to the Alaska State Health Care Cost Containment Task Force will be in Juneau those three days and I would like you to have an opportunity to talk to him about SB 83.

The Health Resources Authority created in SB 83 will help control the rate of increase in the cost of health care in Alaska. Mr. Malek has been working with the Task Force for the last 22 months. He is an expert in the health care field and has helped the Task Force make recommendations saving the State of Alaska more than \$22 million in one year.

DAVE
SCHARD

I would also appreciate it if you would consider having Mr. Malek make a presentation to the Senate Labor and Commerce Committee concerning the health care cost containment measures contained in SB 83. This will give you and your Committee the opportunity to ask question about the concepts proposed in SB 83 before it is comes up for a regular hearing.

Finally, I would like to request an early date for a formal hearing of SB 83 before the Senate Labor and Commerce Committee.

Thank you for your consideration and I look forward to your favorable response.

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR -
HEALTH, EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

SECTIONAL ANALYSIS

SENATE BILL NO. 83

"An Act creating the Alaska State Health Resources Authority; relating to the delivery, quality, and financing of health care for the residents of the state, and to the issuance of certificates of need; and providing for an effective date." By Senator Duncan.

SECTION
PRIVATE
OPTIONAL
Section 1. This section outlines the goals and objectives of the Alaska State Health Resources Authority in providing cost effective health insurance coverage for an expanded pool of employees.

"SHOULD REDUCE COST"
PUBLIC + PRIVATE
PARTICIPATE
Section 2 and 3. The authority has advisory responsibilities to the Department of Health and Social Services' certificate of need process. The responsibility is determination of group health insurance cost effects resulting from proposed new or expanded health facilities.

Section 4. is a new chapter establishing the Alaska State Health Resources Authority (ASHRA hereafter) and its powers, duties and requirements:

Sec. 4. Section 21.77.010. Requires ASHRA to establish a health care provider reimbursement system and utilization standards for eligible employees of the state, a municipality, or a school district, and other employers that apply to the authority. ASHRA must provide a group health insurance pool or pools for eligible state and local government employees as well as other employees that elect to participate.

Sec. 4. Section 21.77.015. It is provided that state agencies cooperate in the development of the health care provider reimbursement system and utilization standards and share relevant information.

Sec 4. Section 21.77.020. ASHRA has a nine member board of directors from various occupations serving staggered four year terms. Members are entitled to per diem and travel expenses and are subject to conflict of interest requirements in AS 39.50.

Sec 4. Section 21.77.030. ASHRA may exercise the powers granted to insurers as well as other general powers.

Sec. 4. Section 21.77.040. Duties of the ASHRA board include providing lowest cost comprehensive health insurance, annual reports to the governor and legislature on fiscal activities, and review of certificate of need applications under AS 18.07.041. Every third year a cost and benefit analysis of its insurance pool or pools is required.

Sec. 4. Section 21.77.050. ASHRA may employ an executive director and other staff it requires. It may contract for professional services. Employees of ASHRA are in the exempt service under AS 39.25.110.

Sec. 4. Section 21.77.060. ASHRA shall purchase group health insurance for eligible employees after July 1, 1992 or act as a self insurer. When purchasing group health insurance, ASHRA must comply with the State Procurement Code and re-bid at least once every five years.

Sec.4. Section 21.77.070. The Alaska State Health Resources Fund is created of funds appropriated by the legislature and collected premiums. The fund is managed and invested by the board.

Sec.4. Section 21.77.080. ASHRA shall provide that sufficient funds are available for the purposes of employee group health insurance.

Sec. 4. Section 21.77.090. A participant in group health insurance offered by ASHRA may obtain a waiver to opt out under certain conditions.

Sec. 4. Section 21.77.100. Definition section.

Section 5 and 6. Technical amendments.

Section 7. A special, March 1, 1992 report to the legislature is required of ASHRA describing the progress in establishing the health care provider reimbursement system and utilization standards.

Section 8. Effective date clause.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 21, 1991

SUBJECT: Sectional analysis - CSSB 83(L&C) and
CSSB 83()

TO: Senator Drue Pearce

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of CSSB 83(L&C), with a comparison to CSSB 83() that reflects the changes made in the blank substitute:

Section 1 - Purpose.

The blank CS contains minor changes in paragraphs (1), (2) and (9), adds new paragraph (3), and deletes paragraph (8).

Section 2 - Requires certain certificate of need applications to be provided to the authority.

No change.

Section 3 - Provides that certain certificates of need may not be issued until the authority makes a determination regarding the effect of the certificate on group health insurance.

No change.

Section 4 - Requires the legislature to appropriate funds for the authority.

This section is now section 5 in the blank CS. Section 4 is a provision requiring an annual audit by the Legislative Budget and Audit Committee.

Section 5 - This provision places employees of the authority in the exempt service.

No change.

Section 6 - This provision subject the employees of the authority to the conflict of interest chapter AS 39.30.

No change.

Section 7 -

Sec. 44.87.010 - Creates the authority and requires establishment of a reimbursement system and utilization standards. Requires the state, a municipality, or a school district to use the reimbursement system and utilization standards. Allows other employers to participate with approval of the authority. Limits the authority's ability to establish group health insurance pools, to not earlier than July 1, 1992. Allows participation by an eligible state program.

The blank CS requires, by July 1, 1992, the creation and phased implementation of reimbursement systems and utilization standards established by the authority, within municipalities that have a population of 20,000 or more. Also, all reimbursement systems and utilization standards created within a municipality that has a population of 20,000 or more must be operational by December 31, 1993. Also, a requirement is imposed under subsection (c), that all health care providers or persons submitting a claim for services provided to a public employer or public employee, must use the reimbursement systems or utilization standards if established by the authority. Other employers may elect to use the reimbursement systems and utilization standards, if the use is approved by the authority. The blank CS also imposes new deadlines on the authority in (a)(1), requires new reimbursement components under (a)(2) and (3), and inserted paragraphs (a)(4) and (5). The blank CS also requires the authority to design a new health insurance program for certain employers who elect to participate, in subsections (e), (f) and (g). The authority is required to provide public notice and accept public comments under subsection (h).

Sec. 44.87.015 - Requires cooperation by state agencies.

No change.

Sec. 44.87.020 - Establishes the board and its organization.

No change.

Sec. 44.87.030 - Establishes the general powers of the authority.

No change.

Sec. 44.87.040 - Establishes the duties of the board, including requiring an annual report.

The blank CS adds paragraphs (5) - (9), that impose new duties on the board.

Sec. 44.87.050 - Provides for certain staff of the authority and for service contracts.

No change.

Sec. 44.87.060 - Gives the authority the power to procure insurance or to act as a self-insurer. Imposes certain requirements on the insurance obtained by the authority.

The blank CS rewrites subsection (a) to limit the authority to providing insurance for an individual or employer without insurance or with insurance that is more costly than could be provided by the authority. This section also adds a new subsection (b) that allows the authority to establish group insurance pools for employees who elect to participate, requires coverage for eligible employees and dependents, and requires employees who elect to participate to use the reimbursement systems and utilization standards established by the authority. This section also imposes new restrictions on when the authority can act as a self-insurer, in subsection (c) and (d), and allows creation of pools or subpools to track insurance costs, in subsection (e).

Sec. 44.87.070 - Creates a fund for the authority to expend to carry out duties imposed by this chapter.

No change.

Sec. 44.87.080 - Provides for the collection and investment of insurance premiums.

No change.

Sec. 44.87.090 - Allows participation by the state, a municipality or a school district in the group insurance provided by the authority. Requires participation after initial entry into the system, unless a waiver is granted. Sets out criteria for granting a waiver.

No change.

Sec. 44.87.100 - Definitions.

The blank CS contains two new definitions, of "full-time employee" and "public employer" and made minor changes in the definition of "reimbursement system".

Senator Drue Pearce
March 21, 1991
Page 4

Section 8 - Report.

No change.

Section 9 - Effective date.

No change.

MFF:pl
91-198.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 20, 1991

SUBJECT: Sectional analysis - CSSB ⁸³305(L&C) and
CSSB-~~305~~()
⁸³

TO: Senator Drue Pearce

FROM: Michael F. Ford *M. F.*
Legislative Counsel

The following is a section by section analysis of CSSB 305(L&C), with a comparison to CSSB 305() that reflects the changes made in the blank substitute:

Section 1 - Purpose.

The blank CS contains minor changes in paragraphs (1), (2) and (9), adds new paragraph (3), and deletes paragraph (8).

Section 2 - Requires certain certificate of need applications to be provided to the authority.

No change.

Section 3 - Provides that certain certificates of need may not be issued until the authority makes a determination regarding the effect of the certificate on group health insurance.

No change.

Section 4 - Requires the legislature to appropriate funds for the authority.

This section is now section 5 in the blank CS. Section 4 is a provision requiring an annual audit by the Legislative Budget and Audit Committee.

Section 5 - This provision places employees of the authority in the exempt service.

No change.

Section 6 - This provision subject the employees of the authority to the conflict of interest chapter AS 39.30.

No change.

Section 7 -

Sec. 44.87.010 - Creates the authority and requires establishment of a reimbursement system and utilization standards. Requires the state, a municipality, or a school district to use the reimbursement system and utilization standards. Allows other employers to participate with approval of the authority. Limits the authority's ability to establish group health insurance pools, to not earlier than July 1, 1992. Allows participation by an eligible state program.

The blank CS requires, by July 1, 1992, the creation and phased implementation of reimbursement systems and utilization standards established by the authority, within certain municipalities. Also, all reimbursement systems and utilization standards must be operational by December 31, 1993. Also, a new requirement is imposed under subsection (c), that all health care providers or persons submitting a claim must use the reimbursement systems or utilization standards if established by the authority. The blank CS also imposes new deadlines on the authority in (a)(1), requires new reimbursement components under (a)(2) and (3), and inserted paragraphs (a)(4) and (5). The blank CS also requires the authority to design a new health insurance program for certain employers, in subsections (e), (f) and (g). The authority is required to provide public notice and accept public comments under subsection (h).

Sec. 44.87.015 - Requires cooperation by state agencies.

No change.

Sec. 44.87.020 - Establishes the board and its organization.

No change.

Sec. 44.87.030 - Establishes the general powers of the authority.

No change.

Sec. 44.87.040 - Establishes the duties of the board, including requiring an annual report.

The blank CS adds paragraphs (5) - (9), that impose new duties on the board.

Sec. 44.87.050 - Provides for certain staff of the authority and for service contracts.

No change.

Handwritten notes:
6.87.010
The RT-2MS
POOL

Handwritten notes:
The board admin. is
I hope you go with
it is another...
D

Senator Drue Pearce
March 20, 1991
Page 3

Sec. 44.87.060 - Gives the authority the power to procure insurance or to act as a self-insurer. Imposes certain requirements on the insurance obtained by the authority.

The blank CS rewrites subsection (a) to limit the authority to providing insurance for an individual or employer without insurance or with insurance that is more costly than could be provided by the authority. This section also adds a new subsection (b) that allows the authority to establish group insurance pools for employees who elect to participate, imposes new restrictions on when the authority can act as a self-insurer, in subsection (c) and (d), and allows creation of pools or subpools to track insurance costs, in subsection (e).

Sec. 44.87.070 - Creates a fund for the authority to expend to carry out duties imposed by this chapter.

No change.

Sec. 44.87.080 - Provides for the collection and investment of insurance premiums.

No change.

Sec. 44.87.090 - Allows participation by the state, a municipality or a school district in the group insurance provided by the authority. Requires participation after initial entry into the system, unless a waiver is granted. Sets out criteria for granting a waiver.

No change.

Sec. 44.87.100 - Definitions.

The blank CS contains two new definitions, of "full-time employee" and "public employer" and made minor changes in the definition of "reimbursement system".

Section 8 - Report.

No change.

Section 9 - Effective date.

No change.

MFF:pl
91-181.plm

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Hallford
Senator Jay Kerttula



WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Mike Ford, Legal Counsel
Legal Services Division

FROM: Rod Mourant, Legislative Aide
Senate Labor & Commerce Committee

DATE: April 16, 1991

RE: SB 83

Mike, please draft a new committee substitute for the subject working from CSSB 83() dated 3/19/91, work draft 7-LS0305\D with the following changes:

Pg. 4, ln 31, insert after "United States census (;) as well as phased implementation of interested and eligible businesses of twenty five or fewer employees:"

⁵⁰
Pg. 5, ln 2, insert a new section as follows:
"(2) the health care provider reimbursement systems and utilization standards required in 1 of this section are also required for communities with populations of less than 20,000, as reflected by the 1990 United States census, and shall be operational by July 1, 1995." Renumber accordingly.

Amend Pg. 5, ln 31 as follows:
"months; (and) or"

Amend Pg. 9, ln 19 as follows:
"The authority may not begin acting as a self-insurer under the plan until the legislature (has been in regular session for sixty calendar days) has voted to approve the self-insurance plan after the plan (was) has been submitted for approval by the Authority.

Amend Pg. 5, ln 12 as follows:
"(G) actual provider (cost) charges as of January 1, 1991;"

Amend Pg. 5 ln 13 as follows:

Insert additional components for the reimbursement systems as necessary to assure that the following concepts are addressed:

Advanced technology resulting in new equipment, staff & training.

Specialty training to expand or improve service.

Rate dispute resolution process & expense associated.

Uncollectible service expense.

Charity caseload modifier.

Long term elder care expense.

Employee expense because of competition with state employee compensation levels.

Specialist recruitment.

Capital costs.

Medicaid rates.

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

TO: Members
Senate Labor & Commerce Committee

FROM: Senator Drue Pearce, Chair *Drue Pearce*
Senate Labor & Commerce Committee

DATE: February 8, 1991

RE: Health Insurance Legislation

Gordon E. Evans, representative for the Health Insurance Association of America, asked that the enclosed material be distributed to committee members in preparation for hearings that the committee will be holding dealing with health insurance.

DP:rrm

Enclosure

Alaska State Legislature

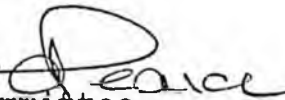
3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

TO: Bruce Kendall, Legislative Liaison
Office Of the Governor

FROM: Senator Drue Pearce, Chair 
Senate Labor & Commerce Committee

DATE: February 8, 1991

RE: Senate Bill 83

The Senate Labor & Commerce Committee has scheduled Senate Bill 83, "Relating to the Alaska State Health Resources Authority; Relating to the Delivery, Quality and Financing of Health Care...", for a public hearing at 3:30 P.M. on Wednesday, February 13th, in the Beltz Room. Please forward a position paper and appropriate agency fiscal notes on this legislation.

Thank you for your cooperation.

DP:rrm

DUNCAN -

PROSPECTIVELY -

EFFORT + TIME

LIBEL

LISTED IN BILL

* "ACTUAL PROVIDER CHARGES" "

~~REASONABLE~~

COLLID'S - MODIFIERS PL 5

A.

TECHNOLOGY

SPECIALTY TRAINING (EXPERIENCE)

NEW EQUIPMENT

NEW EQUIPMENT TRAINING

* PROVISION TO REQUEST FEE/RATE
REVIEW

LIABILITY INSURANCE

SUPPLY COSTS (TRANSPORTATION)

UNCOLLECTIBLES MODIFIERS

CLARITY CASES

LONG TERM ELDER CARE

RATE DISPUTES

EMPLOYEE SALARIES

SPECIALIST RECRUITMENT

CAPITAL COSTS

MEDICAID RATES

BASE YEAR SHOULD NOT BE 1989.



From the desk of: ^{3/ra}

Rod Mourant

Senator Drue Pearce's Office

P.O. Box V

Juneau, AK 99811

Capitol, Room 101

(907) 465-4993

8-10 BUDNO

HI CARL TAX CONF
SCHRAMM

PARS HIAA

1025 CONNECTICUT AVE NW

DC 20036

202-723-7800

** the report recommends fixing fees for all providers-- This assumes there is excess profit and revenue in the health care system. How much? In what areas? By imposing a fee schedule how much would the one expect by way of immediate savings and total cost reductions? Would such a pricing scheme effect the viability of facilities and providers; could it result in the closure of facilities?

** If the purpose of the reimbursement system is to nullify cost shifting, then all this does is shift costs from employers to the providers themselves, or to those remaining employers who do not opt into the system; this offers no real solution, but rather a routine passing of the buck.

** the report identifies inefficient delivery systems, overbuilt facilities, and system waste as primary culprits in rising health care costs--What specifically are the inefficiencies, Which particular facilities are overbuilt? What is the exact nature of the waste?

** The report also speaks of establishing utilization monitoring. Most public and private employer groups have instituted utilization management in the form of precertification requirements for inpatient care and, less frequently for outpatient care. Are these programs considered substandard? too lenient? Years of effort by insurers and third party payors have gone into testing and developing these programs--does the authority expect to be able to significantly improve upon these results? Also, "appropriate" utilization must be determined to some degree on a case by case basis, taking into account the patients specific medical circumstances. How would the authority administer such a program, or would it rather just adopt a cookie-cutter approach?

** Also to the extent insurers and other payors were required to adopt such standards, there would be significant cost, particularly, for smaller insurers.

** My understanding is that the Authority would likely adopt the Medicare RBRVS as its physician payment system. Can in fact the Medicare system be bought and utilized by others, is it a turnkey system available to other entities? If not, they it would seem that the cost to develop such a payment system from the ground up would be prohibitive.

•• How would phase two result in savings? Given that it would need to accommodate any number of plan arrangements due to collective bargaining, etc. The 1-31-90 Task force report indicates that State of Alaska plan expenses (p.20) were under 7% not including interest offsets. Assuming that plan expenses for other employer plans are similar, how much savings in terms of economy of scale is anticipated?

•• the Bill indicates that pooling will be voluntary, why then does the Bill indicate that that the Authority will evaluate the need for mandatory participation in the group health insurance offered by the authority?

Jan Meisels
HIAA

(818) 991-6817

How does she
call in to just
listen?
(MON. MEETING)

Dr. Robert Crittenden
Office of the Governor
State of Washington
Df. office 202-624-2449

John M. Colmans
Health Services Cost Review
Commission
Baltimore, Maryland
301-764-2605

John
Colmans

DIN Health Services Cost
Review Commission
Baltimore, Maryland

303-764-2605

Dir Robert
CRITTENDEN

State Asst to Gov.

WASH ST.

206-586-4048

WORKS W/

G. ADAM

Phone addresses DU (MSUARD)

SB 83 WORKSESSION TELECONFERENCE

ON LINE:

JAN MEISELS OF HIAA - LISTEN ONLY

DR. ROBERT CRITTEDEN, SPEC ASST TO GOVERNOR GARDNER OF WASH.

JOHN COLMERS, DIR HLTH SVC COST REVIEW COMMISSION OF MARYLAND

DR. JACK METER OF HIAA

SB 83
MODIFIERS FOR RATE & UTILIZATION SYSTEMS

FROM TESTIMONY AT MARCH 22 HEARING:

ADVANCED TECHNOLOGY:

NEW EQUIPMENT

NEW STAFF

STAFF TRAINING

SPECIALTY TRAINING TO IMPROVE OR EXPAND SERVICE

RATE DISPUTE RESOLUTION PROCEDURE EXPENSE

UNCOLLECTIBLE SERVICES

CHARITY CASELOAD

LONG TERM ELDER CARE

COMPETITIVE IN-STATE SALARY LEVEL

SPECIALIST RECRUITMENT

EXCESSIVE IN-STATE CAPITAL IMPROVEMENT COST

MEDICAID RATE CHANGES

BASE YEAR IS TOO LONG AGO

SB 83 AMENDMENTS

- 1) HAVE SMALL BUSINESSES COME ONLINE AT SAME TIME AS STATE & 3 MUNIS.
- 2) REQUIRE OUTLYING AREAS TO BE BROUGHT ONLINE AT A DATE CERTAIN IN THE FUTURE.
- 3) PG 5 LN 31 CHANGE [AND] TO OR .
- 4) PG 9 LN 19 - 21 CHANGE TO REQUIRE APPROVAL.
- 5) PG 5 SEC (B) (2) ADD ADDITIONAL CRITERIA TO RATE AND UTILIZATION STANDARDS.
- 6) PG 5 LN 12 DELETE [COST] INSERT CHARGES.

SB 83 MODIFIERS

Pg. 5 Sec 8 (b) (2)

Modifiers mentioned in 3/22 testimony

Advanced technology resulting in new equipment, staff & training

Speciality training to expand or improve service

Rate dispute resolution process & expense associated

Uncollectible service expenses

Charity caseload modifier

Long term elder care expense

Employee salary because of state

Specialist recruitment

Capital costs

Medicaide rate

Base year change

1. Concern about whether the Authority belongs in Title 21, the insurance statutes, or Title 44, where most other authorities are established, has been expressed by Bergstrom at H&SS and, off-the-record, Reed Stoops for Aetna and, off-the-record, Dave Walsh, Div of Insurance.
2. Concern about the authority setting rates that would force membership growth has been expressed by Reed Stoops, off-the-record again, for Aetna; Gordon Evans for Health Insurance Association of America.
3. HIAA also expresses concern over definition of employer, which somehow is divided down to the level of bargaining unit.
4. HIAA also has concern about ability to get out of pool.
5. Walsh, still off-the-record, suggests that if the authority chooses to self-insure, it should be exempt from state regulatory authority to avoid conflict between agencies.

requires certificate of need evaluation

establishes an authority

gives authority access to state info

Board of directors is 1 or 2 of the following:

exec branch

labor organizations

school districts

municipalities

private sector employer

health care provider

exempt service or contracts

bid purchase or self insurance

establishes State Health Resources Fund with approps & premiums

once enrolled an entity can only withdraw with board approval

SB 83 Railroad Questions - MARK HICKEY

What rates apply to employees stationed out side of the country, out side of the state?

What is the relationship between this plan and SBS?

What is the relationship of this plan to the long term supplemental coverage system the railroad enjoys?

Philosophically, they railroad believes this to be bad public policy.

Oppose rate setting and utilization standards.

Believe the formation of reduced payments for medical services will result in cost transfer by providers and the spiral will continue until all belong.

Rod,

Dr. Tuckerman

Strongly opposes SB83!!

Do we need to take addresses of these people? Send them the form letter thanking them for calling in and expressing their opinion?

(907) 276-2811
2841 Debarr Rd.
Anchorage, AK 99508

Introduction of SB 83

"An act creating the Alaska State Health Resources Authority; relating to the delivery, quality, and financing of health care for the residents of the state, and to the issuance of certificates of need; and providing for an effective date."

This legislation has received referrals to the Senate Labor & Commerce; Health, Education & Social Services and Finance Committees.

Similar legislation, SB 254, "An act relating to group health insurance and to health care provided by the state, and providing for an effective date", was sponsored by Senators Duncan and Kerttula last session. That legislation restricted participation to employees of the public sector only. It passed the Senate 18 to 1 and stalled in the House Finance Committee last year.

SB 83 allows public sector, as well as private sector, employers to participate. And, like SB 254, it allows the State Health Resources Authority to purchase coverage plans for participating employers or self-insure.

SB 83
MODIFIERS FOR RATE & UTILIZATION SYSTEMS

FROM TESTIMONY AT MARCH 22 HEARING:

ADVANCED TECHNOLOGY: *needed*

NEW EQUIPMENT

NEW STAFF

STAFF TRAINING

SPECIALTY TRAINING TO IMPROVE OR EXPAND SERVICE

RATE DISPUTE RESOLUTION PROCEDURE EXPENSE

UNCOLLECTIBLE SERVICES

CHARITY CASELOAD

LONG TERM ELDER CARE

COMPETITIVE IN-STATE SALARY LEVEL

SPECIALIST RECRUITMENT

EXCESSIVE IN-STATE CAPITAL IMPROVEMENT COST

MEDICAID RATE CHANGES

(BASE YEAR IS TOO LONG AGO?)

March 18, 1991

Drue -

Re: SB83 Continuing Saga

I had asked Dale Staley of Duncan's office for a list of the amendments that you and he had agreed to. I never got them.

The next time I asked, Dale said the list included the amendments you had agreed to as well as some others that Duncan felt should be included. I never got the list.

Sunday, 3/17, Staley gave me the attached amendment draft and said that it replaced "some" of Duncan's original amendment number 3. (The committee had a package of four amendments from Duncan that were never acted on.)

This morning I asked for the "draft amendments" again and was told by Staley that what the committee would be receiving is a draft blank CS not individual amendments.

I have requested from Staley a side-by-side sectional comparing the draft blank CS with the original legislation. He indicated that "might take time and when did we need it?" I reminded him that the bill is scheduled to be heard on Friday and that it would be nice to be able to understand the changes prior to that hearing.

Let's talk about
Friday hearing.

Rod

March 7, 1991

Ruth Lurie
Law Department
Great West Life
8515 E. Orchard Road
Anglewood, CO 80111

Dear Ms. Lurie:

As I mentioned to you in our telephone conversation today, the Senate Labor & Commerce Committee has heard Senate Bill 83, An act relating to the Alaska State Health Authority, on three occasions.

I have enclosed the minutes, which are paraphrased not verbatim, of those three meetings.

If I can be of further assistance, let me know.

Sincerely,

Rod R. Mourant
Legislative Aide

February 28, 1991

Brenda -

Enclosed is a copy of Senate Bill 83.

On friday, the meeting starts at 3:30 P.M. You should call collect 562-2882 and ask for the "Bridge Operator" and identify yourself.

On monday, the meeting is scheduled for the same time. Call collect 562-2867.

If you wish to testify just let the moderator know.

Thanks for your interest and I wish you well.

Rod

F A X T R A N S M I T T A L M E M O

TO:	<u>BRENDA TRUMBUE</u>	
DEPT:		FAX #: <u>755-2511</u>
FROM:	<u>ROD MOURANT</u>	PHONE: <u>465-3844</u>
CO:	<u>SEN PEARL</u>	FAX #: <u>463-5352</u>

Post-It brand fax transmittal memo 7671

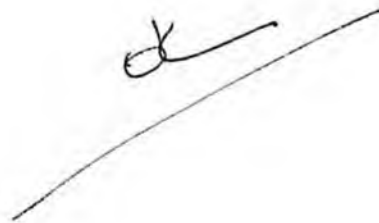
NO. OF PAGES
9

February 7, 1991

Drue -

Harlan Knudson, lobbyist for AK State Hospital & Nursing Home Assoc, would like Sen L&C to consider holding a teleconference on SB 83 at a future hearing. He believes Humana, Providence and Fairbanks would be interested in participating.

Reed

A handwritten mark consisting of a small, stylized character above a long, slightly curved horizontal line.

8

February 7, 1991

Drue -

SB 83 -

Met with Reed Stoops today. Off the record, because they, Aetna, are the current state contract holder and don't want to lose it, they oppose the legislation. Their concerns center on rate setting. He claimed that the rates set by the authority apply to all public employees whether they're in the system or not. They also had a concern with the same authority that's setting the rates being the same authority that either purchases the coverage or self insures being the same authority that processes all claims. They also worry that the authority will set rates so low that providers will charge non-participants higher rates that will force more employers to join which will drive rates up for non-participants until everyone joins. The ultimate in socialized medicine will result.

Also spoke with Dave Walsh. Again, it was off the record because the administration has not taken a position as yet but Millet Keller seems to be supportive of the legislation. Dave does have two technical concerns with the legislation. The first is that the statutory language is being placed in Title 21, the Insurance section, rather than in Title 44, the State Government section. (AIDEA, Muni Bond Bank, AEA, CFAB were all Title 44.) He has no real problem with a health resources authority whose role is to reduce health insurance costs. The second concern is that if the authority chooses to self insure, it should be exempt from state regulation rather than regulated as the bill now provides. This would prevent disagreements between the authority and the regulating agency resulting in administrative resolution of disagreements. If they were exempted from state regulation, the regulatory role would be filled by the legislature and the public. If the authority did not self insure, there would be no problem.

T. Walsh

1/16/91

Health Care Cost Containment Task Force Report February, 1991

- Problems ① The list of factors responsible for the high cost of Health Care ~~was~~ (page 5) ¹⁵ ~~is~~ simply a laundry list, which ^{is} ~~is~~ frequently mentioned in reports and news articles around the country. The report should have investigated each of them as they pertain to Alaska and to determine which are major causes ~~and~~ as opposed to incidental. The only information in the report which sheds any light on this is the survey response. A copy of the survey is enclosed. The survey is poorly written, and the return rate was very low. To my knowledge, it was not sent to individual doctors. I have no doubt that the survey information has no statistical significance due to these problems. (Ask Mark for a list of everyone who was sent a survey, and a list of who returned the survey.)
- ② Without assessing or ranking the cause of high health care costs, it is difficult to recommend or justify a solution or solutions. The report should have ~~presented~~ prioritized the causes from greatest to smallest, ^{alternatively} ~~with~~ discussed ways to address the greatest problems, and recommended the best solution, giving reasons why it was selected over other possible solutions. You will find none of this analysis in ~~the~~ the report.

- ③ One would assume that the cost of health care in Alaska would be compared to the cost in other States ~~the~~ to give a relative idea of the problem here. You will find little, if any, ~~data~~ comparative cost or expenditure data in the report.
- ④ There is no discussion about solutions proposed and tried in other States to evaluate the success and failures of various approaches. (with the exception of an attached article). This is another obvious deficiency in the report.
- ⑤ Given the endorsement of a ^{mandated} provider rate schedule and utilization standards, one would expect some discussion of the way this as worked in other States which have tried it (i.e. CT, MA, NY, N.J., MD, WA.). Again, nothing.
- ⑥ I don't believe that the number of uninsured in Alaska (99,000) or the cost of projected increase in health care costs found in the executive summary are credible. Last year, the estimate of insured was (45,000). You should ask Orlean for the back up for both claims.
- ⑦ If Moore says that the scope of the study was too limited to get 1-6, ask how much he received for the last two years of his contract. (I believe it was $\$100,000/yr$).