HB

549

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg

State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

MEMORANDUM

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Representative Lesil McGuire, Chair
House Judiciary Committee

Date: April 27, 2004

Re: Request for Hearing

I respectfully request that SCS CSHB 549(L&C), "An Act relating to unsolicited communications following an aircraft accident" be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. I have included the following in the bill packet for your information:

1. Sponsor Statement
2. SCS CSHB 549(L&C)
3. CSHB 549(JUD) am
4. CSHB 549(JUD)
5. Zero Fiscal Notes
6. Letter of Support
7. Applicable Alaska Rules of Professional Conduct
8. Federal Statutory Counterpart
9. Applicable Sections of Alaska Statutes

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990. Thank you for your time and consideration.

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Sponsor Statement
SCS CSHB 549(L&C)

"An Act relating to unsolicited communications following an aircraft accident."

Across the nation, there are rules of professional conduct that all attorneys are bound to abide by to keep their license to practice law. Alaska is no exception and its rules are similar to those found across the nation. Alaska's Rules of Professional Conduct state that an attorney "shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." Rule 7.3(a). The lawyer cannot solicit professional employment by written or recorded means, even if allowed under 7.3(a), where the client has made known that they do not desire to be solicited by the lawyer, or the solicitation involves coercion, duress, or harassment. Rule 7.3(b). The reason for this rule is that the "prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation and over-reaching." Comment to Rule 7.3. Even though this rule and rules like it have been in place across the nation for some time, they have not controlled the legal feeding frenzy that takes place in the aftermath of aviation accidents.

The federal government tried to correct this problem when it recognized the vulnerability of aviation accident victims and their families in 1996 and passed the Aviation Disaster Family Assistance Act. This federal law mandated that air carriers provide specific support to the families of those injured or killed and prohibited unsolicited contact by attorneys with these individuals for 30 days. In 2000, this law was amended to expand the scope of unsolicited contact to include "any associated, agent, employee or other representative of an attorney" and expanded the time period from 30 to 45 days. Unfortunately, the enforcement of this law requires action by the Civil Aeronautics Board or the U.S. Attorney General, and the penalty for its violation is a mere $1,000 fine. There is currently very little enforcement of this law. There is also some legal debate as to whether or not the federal law is enforceable against attorneys who violate it in the context of aviation accidents involving flights entirely within Alaska.

In the aftermath of an aviation accident in Alaska, the injured and the families of the deceased or injured are vulnerable to the external pressures of others. This is particularly true

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when the accident happens in rural Alaska due to their initial isolation from all of the necessary support services immediately after the accident. These individuals should not be preyed upon by anyone who is pressing them to decide matters relating to future legal actions until they themselves decide that the time is appropriate to initiate that process.

This bill is based on the federal law, and applies only to flights that take place entirely within Alaska (intrastate transportation). Like the federal law, this bill does not interfere with the performance of the family support functions provided for in the Family Assistance Act by the air carrier and its insurer. This bill is different from the federal counterpart in that a reference to "the air carrier's attorney" has been added to make it clear that all attorneys are to refrain from having contact with the injured passengers or their families.

Regarding sanctions against attorneys who violate this statute, the Sponsor believes that a civil financial penalty only would be inadequate because the financial incentive of representing aircraft accident victims on contingency fee arrangements is so great. A criminal sanction would serve as the greatest deterrent to this type of predatory conduct, since the Alaska Bar Association will take notice of an attorney's criminal conviction and be in a position to take licensing actions that will more directly impact the attorney's future earning capacity. Under the most current version of the bill, an offense is a Class A misdemeanor with a fine equal to the greater of $100,000 or the amount of the legal fee that attorney receives for representing a party whose representation was acquired through a contact in violation of this bill.

Under this bill, an Alaskan affected by an aviation accident may initiate contact with an attorney immediately, without any restrictions. This bill only prevents lawyers and their agents from initiating the contact. This will allow Alaskans to take time to reflect on their potential claims, and research their options for the best legal representation to meet their needs. This may or may not be the attorney who was well positioned to rush to the hospital and drive them home.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 549(JUD)
(H) Publish Date: 4/7/04

Revision Date/Time (Note if correction):
Dept. Affected:

Title: Unsolicited Communication: Aircraft Crash
BRU: Alaska Court System
Component: Trial Courts

Sponsor: House Judiciary Committee
Requester:
Component No.:

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
The court system does not anticipate any fiscal impact from the passage of HB 549.

Prepared by: Doug Wooliver Administrative Attorney
Phone 463-4750
Division: Alaska Court System
Date/Time 4/2/04 11:52 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver
Date 4/2/2004
Agency: Alaska Court System

(Revised 9/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 549(JUD)
(H) Publish Date: 4/7/04

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to unsolicited communications following an aircraft accident..."
RDU CIVIL
Component Various
Sponsor House Judiciary Committee
Requester House Judiciary Committee
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill adds a new section to AS 02-40 prohibiting an attorney or potential party from initiating contact with an individual injured in an accident involving an air carrier within 45 days following the accident.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 4/4/04 1:10 PM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 4/4/2004
Agency Department of Law

(Revised 12/2003 OMB)

Subject: Support for HB 549
Date: Tue, 06 Apr 2004 14:35:08 -0800
From: Tom Nicolos <tom.nicolos@capesmythe.com>
To: Representative_Lesil_McGuire@legis.state.ak.us

Good afternoon and thank you for the opportunity to testify in support of HB 549. I recognize you have been busy so I will try to be brief. My name is Tom Nicolos, I live in Barrow and I am the General Manager for Cape Smythe Air Service. Additionally, I currently serve on the Board of Directors as Vice-President of the Alaska Air Carriers Association.

As I hope you are aware the Federal government recognized that a problem existed and had attempted to address this issue in the Aviation Disaster Family Assistance Act of 1996. They failed however to put into effect any substantial deterrent to prevent the continual occurrences of abuse of the Act.

Cape Smythe Air Service and the Alaska Air Carriers Association strongly support HB 549 and encourage the Alaska Legislature to act to correct oversights in the Federal legislation. Cape Smythe Air Service has seen first hand, attorneys who operate with disregard to the Federal Act. When inquires are made as to why this is allowed to happen, we are informed it is because there are no teeth in the Federal Statue.

Recently, Cape Smythe had an aircraft involved in an incident where an aircraft ran off the end of the runway barely the full aircraft length. Because of past issues it has become our policy to request everyone be checked at the local hospital. Almost before we could have the passengers checked, several passengers were on there way to the local snow machine dealer to pick out the what they expected to get from having the fortune to have been involved in an aircraft mishap.

While it is important that individuals injured any accident or occurrence be properly provided for, we must stop this expectation of entitlement that has been fostered by attorneys who know the system and know they can muscle settlements out of air carrier insurers. We are not trying to impact the freedoms and choices of the citizens. But we are trying to correct the problem by keeping lawyers from starting the cycle by taking advantage of passengers and their families when they are most vulnerable and creating inappropriate expectations immediately after an accident.

I strongly urge you to correct this oversight and put HB 549 forward to the Alaskan Legislature for adoption.

Thank you for your time.

Tom D. Nicolos
Cape Smythe Air Service

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need not identify the client. (SCO 1123 effective July 15, 1993)

ALASKA COMMENT

The Committee amended the last sentence in order to state more clearly the nature of the disclosure which must be made by the lawyer.

COMMENT

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services or any prospective client's need for legal services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated. (SCO 1123 effective July 15, 1993)

ALASKA COMMENT

The Committee revised Model Rule 7.1 to address the situation in which a lawyer might provide misleading information with regard to a potential client's needs for legal services from a particular lawyer.

COMMENT

This rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television or through written or recorded communication.

(b) A copy or recording of each advertisement or communication shall be retained by the lawyer for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertising or written communication permitted by this rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or other legal service organization; and

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content. (SCO 1123 effective July 15, 1993)

COMMENT

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in

the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this rule.

Rule 7.3. Direct Contact with Prospective Clients.

(a) A lawyer shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words "Advertising Material" on the front of the outside envelope and at the beginning and ending of any recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate in a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. (SCO 1123 effective July 15, 1993; amended by SCO 1426 effective April 15, 2001)

COMMENT

There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giv-

ing rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the fact of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

The use of general advertising and written and recorded communications to transmit information from lawyer to prospective client, rather than direct in-person or live telephone contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 are permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person or live telephone conversations between a lawyer to a prospective client can be disputed and are not subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a lawyer would engage in abusive practices against an individual with whom the lawyer has a prior personal or professional relationship or where the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or the lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

Paragraph (c) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred in paragraph (d) must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but it is to be designed to inform potential plan members generally of another

means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a)

Rule 7.4. Communication of Fields of Practice and Certification.

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a "specialist," "certified," or words of similar import except as follows:

(a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation; and

(b) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority, but only if that certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.

(SCO 1123 effective July 15, 1993; amended by SCO 1370 effective April 15, 2000)

ALASKA COMMENT

Paragraph (b) was deleted from ABA Model Rule 7.4 because the Committee concluded that under modern practice the field of admiralty is no longer a unique specialization.

COMMENT

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office.

This rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate. All communications are, however, subject to the "false and misleading" standard of Rule 7.1 in respect to communications concerning a lawyer's services.

A lawyer may not communicate that the lawyer is a specialist or has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. Recognition of specialization in patent matters is a matter of long established policy of the Patent and Trademark Office, as reflected in paragraph (a). The American Bar Association's Model Rule 7.4 also permits attorneys who specialize in admiralty law to use the designation "proctor in admiralty" or otherwise hold themselves out as specialists in admiralty. This exception was not included in Alaska's Professional Conduct Rule 7.4 because the Alaska Bar Association's Committee on the Rules of Professional Conduct concluded that under modern practice the field of admiralty is no longer a unique specialization.

Paragraph (b) permits a lawyer to communicate that the lawyer has been certified as specialist in a field of law when the American Bar Association has accredited the organization's specialty program to grant such certification. Certification procedures imply that an objective entity has recognized a lawyer's higher degree of specialized ability than is suggested by general licensure to practice law. Those objective entities may be expected to apply standards of competence, experience, and knowledge to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful certification information, the name of the certifying organization or agency must be included in any communication regarding the certification.

See **Peel v. Attorney Registration & Disciplinary Comm'n,** 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990).

Rule 7.5. Firm Names and Letterheads.

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers shall not state or imply that they practice in a partnership or other organization unless the relationship stated or implied in fact exists.

(e) The term "of counsel" shall be used only to refer to a lawyer who has a close continuing rela-

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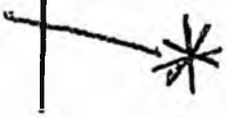
TITLE 49 > SUBTITLE II > CHAPTER 11 > SUBCHAPTER III

SUBCHAPTER III - AUTHORITY



Sec. 1136. - Assistance to families of passengers involved in aircraft accidents

(a) In General. -

As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall -

(1)

designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2)

designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board. -

The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(c) Responsibilities of Designated Organization. -

The organization designated for an accident under

subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1)

To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2)

To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3)

To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4)

To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5)

To arrange a suitable memorial service, in consultation with the families.

(d) Passenger Lists. -

(1) Requests for passenger lists. -

(A) Requests by director of family support services. -

It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by designated organization. -

The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of information. -

The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) Continuing Responsibilities of the Board. -

In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident -

(1)

are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2)

are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) Use of Air Carrier Resources. -

To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) Prohibited Actions. -

(1) Actions to impede the board. -

No person (including a State or political subdivision) may impede the ability of the Board (including the

director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) Unsolicited communications. -

In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

Amended 2000 P.L. 106-181 -30→45 -expanded "attorney" -added foreign air carrier

(3) Prohibition on actions to prevent mental health and counseling services. -

No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) Definitions. -

In this section, the following definitions apply:

(1) Aircraft accident. -

The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) Passenger. -

The term "passenger" includes -

(A)

an employee of an air carrier or foreign air carrier aboard an aircraft; and

(B)

any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.

(l) Statutory Construction. -

Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.

* Added 2000 also to protect air carrier performing "CARE" duties.

Prev | Next

MEANS TO ENFORCE FEDERAL LAW

Sec. 1151. - Aviation enforcement

(a) Civil Actions by Board. -

The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) Civil Actions by Attorney General. -

On request of the Board, the Attorney General may bring a civil action in an appropriate court -

(1)

to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

(2)

to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) Participation of Board. -

On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title.

Sec. 1155. - Aviation penalties

(a) Civil Penalty. -

(1)

A person violating section 1132, section 1134(b), section 1134(f)(1), or section 1136(g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under any of those sections is liable to the United States Government for a civil penalty of not more than $1,000. A separate violation occurs for each day a violation continues.

(2)

This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3)

The Board may compromise the amount of a civil penalty imposed under this subsection.

(4)

The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5)

A civil penalty under this subsection may be collected

"No Teeth"

by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) Criminal Penalty. -

A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

Prev

HB

552

Alaska State Legislature

House of Representatives

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

MEMORANDUM

TO: Senator Ralph Seekins, Chairman
Senate Judiciary Committee

FROM: Representative Norman Rokeberg, Chairman
House Rules Committee

DATE: May 5, 2004

RE: SB 397/HB 563 - LEGISLATIVE PROCEDURE & ETHICS GUIDELINES

Thank you for scheduling Senate Bill 397 to be heard before your committee on Thursday, May 6, 2004, a companion measure to House Bill 563. Attached are the following:

1. SB 397
2. Sponsor Statement to HB 563
3. Sectional Analysis to HB 563
4. Copy of AS 24.60.037
5. January 13, 2004 – History of Open Meetings Guidelines for the legislature: since 1994. Prepared by Joyce Anderson, Staff, Select Committee on Legislative Ethics.
6. August 28, 2003 proposed Open Meetings Guidelines (from Select Committee on Legislative Ethics)
7. February 12, 2004 letter from Marston & Cole, P.C., to Skip Cook, Chair, Select Committee on Legislative Ethics
8. March 8, 2004, "Open meetings principles and political strategy discussions" opinion from Tamara Cook to Rep. Rokeberg.
9. March 4, 2004, "Open meetings guidelines applicable to the legislature" opinion from Tamara Cook to Rep. Rokeberg.
10. March 3, 2004 "Actions against legislators for violations of open meetings requires" opinion from Tamara Cook to Rep. Rokeberg.
11. November 25, 2003 letter from Rep. Croft to Herman G. Walker
12. November 21, 2003 Legal Opinion from Tamara Cook to Rep. Croft
13. August 11, 2000 letter to Senator President and Speaker of the House from Select Committee on Ethics (recommendations in first paragraph).

Alaska State Legislature

House of Representatives

State Capitol, Rm. 214
Juneau, Ak 99801-1182
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Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

SPONSOR STATEMENT
HOUSE BILL HB 563
Open Meetings Guidelines

Current state law requires the Select Committee on Legislative Ethics to prepare Open Meetings Guidelines for submission and approval by the legislature. The Select Committee has been attempting, since 1994, to develop the guidelines for approval by the Legislature. This year, a subcommittee has again been convened to propose guidelines. But that subcommittee, despite months of meetings and debate, has been unable to reach agreement on the definition of the most basic terms relating to open meetings, including the terms "meetings" and "political strategy."

Despite the absence of any guidelines, the Select Committee has awkwardly asserted jurisdiction over Open Meetings complaints. Without applicable guidelines, Legislators and legislative staff who remain subject to the Legislative Standards of Conduct are left with nothing upon which to rely when deciding whether a meeting or caucus adheres to the "open meetings principles".

It is unreasonable to subject legislators and staff to rules of conduct that have never been established. HB 563 defines and sets out the Open Meetings Guidelines in statute. Additionally, the legislation defines terms such as "legislative body," "meeting," and describes what is included in "political strategy."

The bill also addresses some concerns about the Ethics Committee process:

1. In a public hearing, the Ethics Committee retains counsel to provide legal advice to the Committee, and then utilizes that same attorney as the "prosecutor" in the full Ethics hearing. The untenable situation presents a clear conflict of interest, which is awkward and unfair to the subject of the complaint.
2. Unless a subject of the complaint wants to waive confidentiality, the subject of the complaint is bound to keep quiet. The person filing the complaint is not. HB 563 addresses this situation by stating that if confidentiality provisions are not waived by the subject of the complaint and the person filing the complaint reveals information about the complaint, the complaint is to be dismissed. This is intended to avoid use of a complaint as a political attack.
3. Each body has two members and two alternates assigned to serve on the Ethics Committee. If a group complaint is filed against a number of legislators, HB 563 requires that both Majority and Minority have representation on any subcommittee considering a complaint.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 397
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Legislature
Title "An Act relating to open meeting guidelines applicable to legislators, to the confidentiality of..."
BRU Component: Legislative Council / Select Committee on Legislative Ethics
Sponsor Senate Rules Committee by Request
Requestor Senate Judiciary
Component No. 2321

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director — Phone 465-6626
Division Administrative Services — Date/Time 5/6/04 7:18 AM
Approved by: Pamela Varni, Executive Director — Date 5/6/2004
Agency Legislative Affairs Agency

(Revised 9/2001 OMB)

Alaska State Legislature

House of Representatives

State Capitol, Rm. 214
Juneau, Ak 99801-1182
(907) 465-3764

Official Business

COMMITTEE ON RULES
Representative Norman Rokeberg, Chairman

SECTIONAL ANALYSIS
HOUSE BILL 563

Section 1: Repeals the current statutory language indicating that the Select Committee on Legislative Ethics will propose Open Meetings Guidelines and send the Legislature the initial Guidelines for approval.

Places in statute Open Meetings Guidelines that describe when a meeting takes place (p. 1, lines 11-14) and what is not a "meeting" (p. 3, lines 15-19).

Places in statute that legislators may meet in a closed caucus or in private informal meetings to discuss and deliberate on political strategy. Describes what "political strategy" includes. States that these meetings are exempt from the Open Meetings Guidelines. (p. 2, line 1-9).

Places in statute that each subcommittee considering a case must have a Majority and Minority member permitted to attend the subcommittee hearings. Currently, each body has a Majority and Minority member and alternate. If a group complaint were filed, it is felt that the complaints should be divided so that the subcommittee considering that group would consist of the Majority or Minority member or alternate and that this representation would continue to be available at all times. (Page 2, lines 10-16).

Places in statute the fact that the Open Meetings Guidelines, which could be changed by a majority vote, are subservient to the Uniform Rules adopted by the Alaska State Legislature. Uniform Rules may be changed only upon the approval of 2/3 membership of each body – a much higher standard. The Uniform Rules covers items such as meeting notices, committee meetings, and executive sessions. (p. 2, lines 17-19).

Places in statute that the Open Meetings Guidelines set forth in statute are the ones to be used by the Committee when considering complaints filed regarding open meetings (page 2, lines 20-21).

Defines: "legislative body" (p. 2, line 22, page 3, line 14). Establishes that certain committees or groups are not a "legislative body" and thus not subject to the Open Meetings Guidelines.

Section 2: Amends current statutes to provide that a person hired by the Committee to provide legal advice about a case may not be the same person who prosecutes the case on behalf of the committee.

Section 3: Amends current law to require immediate dismissal of any case where the subject of the complaint has not waived confidentiality and the filer of the complaint makes the complaint and its contents public.

Section 4: Repeals the Guidelines section of the law adopted in 1994 (see attached).

Section 10, Chapter 69, SLA 1994

* **Sec. 10.** OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037 , adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.

(b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representatives, and two public members appointed from the Select Committee on Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

Sec. 24.60.037. Open meetings principles and guidelines.

Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

(§ 4 ch 127 SLA 1992; am § 1 ch 69 SLA 1994)

Cross references. For provisions related to initial guidelines and legislative approval, see § 10, ch. 69, SLA 1994 in the Temporary and Special Acts.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

January 13, 2004

History of Open Meetings Guidelines for the legislature: Since 1994

The history of action on the guidelines during the 19th Legislature is as follows:

Based on the requirements set out in the Open Meeting Law (AS 44.62, amended 1994) the committee adopted proposed open meetings guidelines and submitted them to the legislature on January 15, 1995. The guidelines were published in the Joint Journal January 20, 1995. The committee later adopted and submitted Revised Proposed Guidelines, published in the Joint Journal February 21, 1995. The committee requested Senate Rules to introduce a resolution approving the revised guidelines. Senate Rules introduced SCR 8.

On February 28, 1995 the Senate passed a version of the resolution (See CSSCR 8(RLS)) that approved the revised guidelines, in part, but placed these specific limitations on its approval; the presiding officer of each body would be the final arbiter on any point of order and the terms "Go Between or Serial Meetings" must be defined before affirmation. Further, CSSCR 8(RLS) did not affirm the parts of the guidelines that address "Meetings Not Otherwise Described", political strategy sessions and non-legislative organizations.

On March 1, 1995 the House amended the resolution and approved the revised guidelines without limitation (CSSCR 8(RLS) am H). The Senate declined to concur in the House-passed version of the resolution.

A Conference Committee was established in 1996, comprised of Senators Rieger, Frank, Donley and Representatives Davis, Porter and Mackie. The Conference Committee issued a report, which passed the Senate 18 to 1 on May 4, 1996. The House read over the report and placed it under Unfinished Business. The House did not bring the report to the floor prior to the close of the regular session.

The Ethics Committee has proposed substantially the same guidelines to each legislature from 1995 through 2000. The committee then met several times in 2000 and 2001 to draft new proposed Open Meetings guidelines. The Ethics Committee adopted the guidelines, by a 6-3 vote on March 12, 2001. The committee then forwarded a request to the Senate and House Rules committees to introduce a concurrent resolution and to spread the Proposed Open Meetings Guidelines in the legislative journal. SCR 9 was introduced on April 11, 2001 and HCR 16 was introduced on April 6, 2001. SCR 9 was referred to the State Affairs and Judiciary committees but never heard. HCR 16 was referred to State Affairs, Judiciary and Finance committees. HCR 9 was heard in State Affairs on April 16, 2002. Ethics Committee Member Shirley McCoy gave testimony. No action was taken.

The Ethics Committee adopted the same guidelines on August 28, 2003 and forwarded a request to the Senate President and Speaker of the House in January 2004 to refer the guidelines to the appropriate committee for introduction.

OPEN MEETINGS LAW

AS 24.60.037

In 1993, the legislature enacted AS 24.60.037, requiring legislators to abide by Open Meeting Principles. It reads:

> Sec. 1. AS 24.60.037 OPEN MEETINGS LAW. Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

In the same Act, the legislature gave additional directions as to the adoption of the initial Open Meetings Guidelines. Section 10, chapter 679, SLA 1994 reads as follows:

> Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The Legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.
>
> (b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representative, and two public members appointed from the Select Committee on Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

The statue requires legislators to abide by Open Meeting Principles, whether or not guidelines have been approved under sec. 10. The committee submitted proposed guidelines to the 19th, 20th, 21st and 22nd legislatures for review but thus far, the guidelines have not received legislative approval. The law appears to require the committee to continue to submit proposed guidelines until guidelines are approved.

Open Meetings Guidelines for the Alaska State Legislature

as proposed by the
Select Committee on Legislative Ethics

August 28, 2003

Sec. 1. General Rule. Meetings of a legislative body shall be open to the public.

Sec. 2. Meetings. (a) For purposes of this guideline, a meeting occurs when a majority of the members of the legislative body is present and action is taken. A legislative body takes action when members of the body vote on or agree upon a course of action on a motion, bill, resolution, rule, or regulation.

(b) In this guideline, a legislative body

(1) includes

(A) the Senate;

(B) the House of Representatives;

(C) the Senate and the House of Representatives meeting in joint session;

(D) a committee of the legislature other than the Committee on Committees, including a standing committee, special committee, joint committee, conference or free conference committee, committee of the whole, or permanent interim committee;

(E) a delegation or caucus of legislators representing a geographic area or political subdivision;

(F) a legislative commission, task force, or other group; or

(G) a caucus of members of one or more of the bodies set out in (A) - (F) of this paragraph; but

(2) does not include a Committee on Committees.

Sec. 3. Executive sessions. (a) A legislative body may call an executive session at which members of the public may be excluded.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the legislative body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Except as otherwise provided in this section, a legislative body may not make a decision in executive session.

(c) An executive session may be held for discussion of a matter

(1) the immediate knowledge of which would adversely affect the finances of a government unit;

(2) that tends to prejudice the reputation and character of a person;

(3) that is, by law, required to be confidential;

(4) involving consideration of government records that by law are not subject to public disclosure;

(5) that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court; a legislative body may, in executive session, decide on and give instructions to an attorney representing the legislative body or the state on issues arising out of or related to the representation.

Sec. 4. Closed meetings for political strategy. Legislators may meet in closed caucus or in a private, informal meeting to discuss political strategy but those meetings are exempt from the requirements adopted under sec. 5(b) of these Guidelines. This section does not permit a joint meeting of the House and Senate majority caucuses or of the House and Senate minority caucuses to be conducted in a closed session.

Sec. 5. Uniform Rules. (a) The legislature shall adopt Uniform Rules to implement this guideline.

(b) The Uniform Rules of the Legislature shall provide for posting notices of meetings, recording proceedings, and making the recordings and votes available to the public. The Uniform Rules may set different notice requirements for meetings of

(1) permanent interim committees of the legislature;

(2) standing, special, or joint committees held during

(A) a regular legislative session, including different notice requirements for meetings held in the first week of the session or after the date a conference committee has been chosen to consider the operating budget;

(B) a special legislative session; and

(C) the interim between legislative sessions.

Note: These are the same guidelines as proposed by the Committee on March 12, 2001.

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE
COLLEEN J. MOORE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

February 12, 2004

Skip Cook, Chair
Select Committee on Legislative Ethics
P.O. Box 101468
Anchorage, Alaska 99510-1468

Re: AS 24.60.037 Open Meetings Law
Our File No. 656.005

Dear Mr. Cook:

The Select Committee on Legislative Ethics ("Committee") has asked for a legal opinion concerning how to proceed if and when it receives a complaint based on an alleged violation of open meetings principles and guidelines as set forth in AS 24.60.037. In your memo dated January 13, 2004, you asked four specific questions, each of which will be addressed in detail below.

In summary, however, it is our opinion that the Committee certainly has jurisdiction to hear any complaint alleging a violation of AS 24.60.037. In the absence of legislative approval of the Committee's proposed guidelines for compliance with open meetings principles, the Committee has the responsibility to determine what criteria to apply in order to determine whether there has been a violation, including consideration of the proposed guidelines, open meetings statutes that apply to other governmental entities, and any other treatises or materials that help the Committee define appropriate legislative conduct regarding open meetings. In other words, there are no definitive rules or statutes that guide the Committee in this area, and the Committee must determine the scope of the open meetings principles that apply to the Legislature and whether any specific conduct violates those principles.

1. **What Is The Legal Status Of The Guidelines That The Committee Has Developed Pursuant To AS 24.60.037 If They Have Not Been Adopted By The Legislature?**

The short answer to this question is that the guidelines that have been developed and submitted to the Legislature for approval have **no** legal status. As you know, AS 24.60.037 provides that "[t]he committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature." This statute goes on to require that "[i]n a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the **adopted** guidelines, the committee shall dismiss the complaint as to that violation." (Emphasis added.) However, there is also a provision of law that states, in pertinent part:

> Notwithstanding AS 24.60.037, **adoption** of initial guidelines applying the open meetings principles to the legislature **are [sic] subject to approval by the legislature** as provided under this subsection.

1994 Temporary and Special Acts, Ch. 69, Sec. 10 (herein referred to as "Section 10") (emphasis added). Although this provision is found in the Temporary and Special Acts, it is nevertheless a recognized statute that has the authority of law and must be followed like any other statute. See AS 01.05.026 and .031.[1]

Section 10 is generally clear in its scope. It requires that the Legislature approve the guidelines proposed by the Committee before they are officially adopted (become effective). It also sets forth the general procedure for such approval. Although there has been some question in the past about how to proceed when the Legislature failed to vote on a concurrent resolution concerning proposed guidelines (see Memorandum from Teresa B. Cramer to Joe Donahue, Chair, dated 8.23.95), it appears that the Committee has taken the position that anything short of a concurrently passed resolution is a "failure to approve" the guidelines, requiring continued submission of proposed guidelines for approval. Accordingly, the Committee submitted proposed guidelines to the 19th, 20th, 21st, and 22nd Legislatures for approval, each without success.

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[1] It is simply a matter of procedure that any section of the session laws that is temporary in nature is not included in the general statutory compilation and is placed, instead, into the Temporary and Special Acts. Because Section 10 applies only until the guidelines developed by the Committee are approved by the Legislature, it was not given a statutory number, but simply included in the Temporary and Special Acts section of the law.

Given that the Legislature has failed to approve the guidelines proposed by the Committee, the guidelines have no legal effect. However, that does not mean that the guidelines are useless. As will be discussed more fully in response to Questions 3 and 4, below, they may be used by the committee in its determination of any complaint that may be brought alleging a violation of AS 24.60.037, but they cannot be used as a basis to dismiss a complaint as contemplated in AS 24.60.037.

2. **What Is The Committee's Jurisdiction, If Any, Over A Complaint Filed Under AS 24.60.037?**

The Committee clearly has statutory jurisdiction to hear and decide a complaint alleging a violation of AS 24.60.037. Alaska Statute 24.60.010(8) provides that "the purpose of this chapter is to . . . establish the Select Committee on Legislative Ethics **to consider alleged violations of this chapter** and to render advisory opinions to persons affected by this chapter." (Emphasis added.) Further, AS 24.60.170 provides that the "committee **shall consider a complaint alleging a violation of this chapter** if the alleged violation occurred within two years . . .." (Emphasis added.) The Committee has the jurisdiction to hear an alleged violation of any provision contained in Chapter 60, including 24.60.037, so long as it meets the time requirements of the statute.

3. **The Legislature Is Under A Legal Obligation Pursuant To AS 24.60.037 To Comply With Open Meetings Principles. What Are These "Principles?"**

Although this was the last question asked by the Committee, we address it here because it requires a review of the purposes of open meeting laws, which is a preliminary step towards consideration of what criteria should be used to decide the merits of any complaint alleging a violation of those laws.

It is generally accepted that the purposes of open meeting laws are to allow the general public to hear and observe the process by which government decides how to act, in order to ensure a fair and unbiased process.

> Open decision-making is regarded as an essential aspect of the democratic process. It is believed that public exposure deters official misconduct, makes government more responsive to its constituency, allows for greater public provision of information to the decision-maker, creates greater public

acceptance of government action, and promotes accurate reporting of governmental processes.

Alaska Community Colleges' Federation of Teachers v. University of Alaska, 677 P.2d 886, 891 (Alaska 1984). Among other things, the open meetings laws further the policy that the government should not dictate what the people should know, and they protect the peoples' right to remain informed in order to retain control over their government. See AS 44.62.312(a)(4) and (5). The Legislature has specifically stated Alaska's policy regarding open meetings in AS 44.62.312, which provides:

> (a) it is the policy of the state that
>
> (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
> (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
> (3) the people of this state do not yield their sovereignty to the agencies that serve them;
> (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
> (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
> (6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.
>
> (b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

The Committee can be guided by the Legislature's own statement of policy contained in AS 44.62.312 in determining by analogy what the "principles of open meetings" are by which the Legislature must abide. In fact, it should be noted that subsections .312(a)(3), (4), and (5) are general statements of policy, which are not limited in their application only to the entities covered by AS 44.62.310 (which entities do not include the Legislature). Further, through its pronouncement in AS 24.60.037, the Legislature has indicated that it has a self-

imposed duty to abide by "the principles of open meetings," which it certainly was aware are enumerated in statutes such as AS 44.62.310 and .312.

4. **If The Committee Has Jurisdiction To Hear A Complaint, What Criteria Does The Committee Rely Upon To Determine The Merits Of A Complaint Alleging A Violation Of The Open Meetings Law?**

It is the ultimate responsibility and duty of the Committee to interpret the provisions of the Legislative Ethics Act, and this office cannot provide a specific interpretation upon which the Committee can rely. However, there are certain matters that the Committee should consider in hearing any complaint alleging a violation of the open meetings provisions of AS 24.60.037, including the policies discussed above.

As mentioned earlier, the Committee has already developed certain guidelines for applying the principles of open meetings to the Legislature, which have not been approved by the Legislature. Nevertheless, those guidelines embody the Committee's interpretation of how open meetings principles should apply to the Legislature, and provide guidelines to the Committee (if not the Legislature) as to how to determine whether there has been a violation of AS 24.60.037.

If the guidelines are ever approved by the Legislature, then the statute provides that the Committee may dismiss any complaint that alleges conduct that falls within the guidelines. However, since the Legislature has **not** approved them, the Committee may not simply dismiss any complaint alleging conduct that falls within the guidelines, but instead must follow its normal procedure and make an initial determination as to whether the allegations, if true, constitute a violation of the ethics laws. In making this determination, the Committee may consider its own previous interpretation of the law that is embodied in the guidelines. However, the Committee may not give the guidelines the effect of law and must recognize that neither it nor the legislators are bound by the guidelines. In other words, the Committee's decision in any particular case may actually conflict with the guidelines, which is a permissible result since the guidelines do not have the effect of law. If the Committee finds that the allegations, if true, would constitute a violation, then the Committee must investigate the complaint. AS 24.60.170. If the allegations, if true, would not constitute a violation, or if there is another basis for dismissal, then the Committee may dismiss the complaint upon the appropriate findings. Id.

As it undoubtedly did in developing the guidelines themselves, the Committee should also consider the provisions of the open meetings statute that apply to general governmental

bodies. See AS 44.62.310. While that statute itself may not be constitutionally or judicially applied to the Legislature, (see Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987) and AS 44.62.310(h)(3)), the **principles** of that statute may be applied by the Committee if it finds that they are appropriate to a particular case. Similarly, the Committee is free to modify, change, or disregard the principles found in AS 44.62.310 if it finds that it is appropriate in determining what principles govern the Legislature's conduct with respect to open meetings. As with the Committee guidelines, the Committee's decision in any particular case may actually conflict with AS 44.62.310, which is a permissible result because the Committee may find that those provisions are not appropriately applied to the Legislature.

The Committee should also consider the statement of AS 24.60.010(2), that "a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process . . .." It may also consider any other law or treatise on open meetings in determining what principles and criteria to apply to Alaska legislators in order to determine whether a legislator has failed to "abide by open meetings principles."

In short, it is within the Committee's sole discretion to determine what the "open meeting principles" are that apply to the Alaska Legislature, and whether, based upon the individual facts of any particular case, alleged conduct violates those principles. Obviously, the Committee may not act arbitrarily or capriciously, or in a discriminatory manner. Barring such extreme conduct, and until the Legislature approves the guidelines proposed by the Committee, it is our opinion that the Committee may develop and rely on any criteria that it determines appropriate to decide the merits of a complaint alleging a violation of the open meetings law.

If you have any questions, please feel free to call to discuss them. I hope this answers your questions.

Very truly yours,

MARSTON & COLE, PC

Brent R. Cole

Not handled over

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 8, 2004

SUBJECT: Open meetings principles and political strategy discussions (Work Order No. 23-LS1823)

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet S. Seitz

FROM: Tamara Brandt Cook
Director TBC

(1) For purposes of AS 24.60.037 what are "open meetings principles"?
The term "open meetings principles" is not defined. Therefore, it is up to the Select Committee on Legislative Ethics to determine the scope of open meetings requirements that apply to the legislature, probably in the context of specific fact situations that come up in requests for advisory opinions (AS 24.60.160) or as proceedings before the Committee involving alleged violations of those principles (AS 24.60.170).

AS 24.60.037 as enacted in 1992 required legislators to "abide by AS 44.62.310 - 44.62.312 (open meetings law)." In 1994, in HB 254, which substantially revised the open meetings law (AS 44.62.310), the language in AS 24.60.037 was also amended to delete the reference to the open meetings law and substitute general language requiring legislators to "abide by open meetings principles." The versions of HB 254 that were adopted by House Committees and the version that passed the House did not include any amendment to AS 24.60.037. It was not until the Second Senate Judiciary Committee Substitute that the first two sentences of AS 24.60.037 were proposed for amendment as follows, leaving the rest of the language untouched:

> Legislators shall **conduct meetings that are open to the public** [ABIDE BY AS 44.62.310 - 44.62.312 (OPEN MEETINGS LAW)]. The committee shall develop guidelines for the **conduct of open meetings adapted to the special needs of** [APPLICATION OF THIS SECTION TO] the legislature.

However, the bill was amended on the floor of the Senate to remove the change to AS 24.60.037. The existing language, with the "open meetings principles" was added as compromise language by the Conference Committee. I have checked the committee file on CCS HB 254, and it is sparse. However, the notes indicate that at least some of the conferees wanted "the legislature brought into the open meetings Act" while others were

apparently concerned that AS 44.62.310 might be too rigid in its details to sensibly apply to the legislature.

(2) How are legislators involved in closed caucuses and conversations involving political strategy to be protected from ethics complaints?
AS 24.60.037 already offers protection in those situations: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." Again, there is no definition of "political strategy" so it will be up to the Select Committee on Legislative Ethics to determine in any fact situation whether the matters discussed in a closed situation amount to "political strategy." Here are the four possible ways to provide for additional protection that occur to me:

(1) Simply refrain from attending any closed caucus or other meeting and, thereby, avoid even a frivolous complaint to the ethics committee;

(2) Request an Advisory Opinion as to each precise issue that is proposed to be discussed in a closed meeting before the discussion is held. Note that AS 24.60.160(b) provides: "An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion."

(3) Amend AS 24.60.037 to define "political strategy" or, better yet, to specifically list those subjects that may be discussed and actions that may be taken at a closed meeting. If the list gets too long, list the subjects that may not be discussed and actions that may not be taken.

(4) Amend AS 24.60.037 to exempt caucuses from application of that section on the ground that a caucus, like a political party, is a private rather than a public organization. This conforms to the holding of the Alaska Supreme Court decided under the open meetings law which, at that time, applied to "all meetings of a legislative body...of the state." The court took the position that caucuses are private, not public, organizations and stated that the "statute has no application to private caucuses..." (Malone v. Meekins, 650 P.2d 351 (1982))

TBC:med
04-273.med

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FAX (907) 465-2029
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 4, 2004

SUBJECT: Open meetings guidelines applicable to the legislature (Work Order No. 23-LS1825)

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet S. Seitz

FROM: Tamara Brandt Cook
Director TBC

You have some questions regarding the open meetings guidelines required under AS 24.60.037. I think the answers to those questions will be more comprehensible if I first set out the statutory history of AS 24.60.037.

AS 24.60.037 was first enacted in 1992 as part of a bill revising laws relating to legislative ethics. It originally read:

> OPEN MEETINGS LAW. Legislators shall abide by AS 44.62.310 - 44.62.312 (open meetings law). The committee shall develop guidelines for the application of this section to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

In 1992, when AS 24.60.037 was enacted, the open meetings law (AS 44.62.310) applied to the legislative branch. However, the Alaska Supreme Court held on separation of powers grounds that alleged violations of that statute on the part of the legislature are nonjusticiable. (Abood v. League of Women Voters of Alaska, 743 P.2d 333 (1987), copy previously provided to you) AS 24.60.037, essentially, retained application of the open meetings law to the legislature, but, since the court had refused to do so, made enforcement of that law the responsibility of a legislative entity, the Select Committee on Legislative Ethics. Note that the Select Committee was charged with developing guidelines for applying AS 44.62.310 to the legislature. These guidelines were not subject to legislative review or approval.

In chapter 69, SLA 1994 the open meetings law was substantially amended. Application of that law to the legislative branch was deleted. In the same legislation AS 24.60.037

was amended to delete reference to AS 44.62.310 - 44.62.312 and to substitute an undefined reference to "open meetings principles." The language in AS 24.60.037 regarding guidelines was not changed, except that the second sentence was altered as follows: "The committee shall develop guidelines for the application of **principles of open meetings of governmental bodies** [THIS SECTION] to the legislature." In addition, a new temporary law section was included as bill sec. 10:

> Sec. 10. OPEN MEETINGS GUIDELINES. (a) Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature as provided under this subsection. By January 16, 1995, the Select Committee on Legislative Ethics shall submit proposed initial guidelines to the legislature. The legislature shall vote on a concurrent resolution approving the guidelines by the 45th day of the legislative session. If the guidelines are voted on but not approved, the committee shall submit new proposed guidelines within 60 days after the resolution was voted on by the legislature. If the new guidelines are voted on but not approved, the Select Committee on Legislative Ethics shall continue to submit proposed guidelines in accordance with the procedure set out in this subsection until the initial guidelines are approved.
>
> (b) There is established an Open Meetings Advisory Committee consisting of two senators appointed by the president of the senate, two representatives appointed by the speaker of the house of representatives, and two public members appointed from the Select Committee of Legislative Ethics by its chair. The advisory committee shall consider application of open meetings principles to the legislature and submit a report of its recommended guidelines to the Select Committee on Legislative Ethics by December 1, 1994. The advisory committee is terminated upon adoption of the guidelines by the legislature.

Proposed guidelines were duly submitted to the legislature by the Select Committee, presumably based on the advice from the legislative advisory committee. The proposed guidelines were published in Senate and House Joint Journal Supplement No. 4 on January 20, 1995. The Select Committee later submitted revised proposed guidelines which were published in Joint Journal Supplement No. 9 on February 21, 1995. Eventually the House adopted a concurrent resolution approving the initial guidelines as revised, but the Senate never did. As you know, initial guidelines have never been approved by the legislature.

Now for your questions.

(1) What are the procedures for ratifying open meetings guidelines? Under section 10, chapter 69, SLA 1994 approval of initial guidelines is accomplished by adoption of a concurrent resolution.

(2) May the legislature amend the guidelines? There is no provision for amendment of the guidelines submitted by the Select Committee, nor is there any provision for partial approval of those guidelines. Instead, section 10 requires the Select Committee to submit new guidelines "until the initial guidelines are approved." Nonetheless, on February 29, 1995, when the first (revised) guidelines were under consideration, the Senate passed a resolution that approved the revised guidelines in part, but placed specific limitations on its approval. (CSSCR 8(RLS)) That version of the resolution was not adopted by the House.

(3) After initial guidelines are approved by the legislature, are changes to those guidelines also subject to legislative approval? No. Only "initial" guidelines are subject to legislative approval and the Select Committee is only required to submit proposed guidelines "until the initial guidelines are approved." After that point, AS 24.60.037 authorizes the Select Committee to "develop guidelines" and there is no limitation under that statute to the development process, so, presumably, those guidelines may be revised by the Select Committee from time to time without legislative involvement. This is not an odd result in view of the fact that the duty of the Select Committee to develop open meetings guidelines predates the temporary law provision requiring legislative approval of initial guidelines. If the legislature had wanted to retain permanent oversight of the guidelines, AS 24.60.037 could have been amended to provide for that. Instead the legislature chose to confine its review to "initial" guidelines and used a temporary law to accomplish that.

(4) The current proposed initial open meetings guidelines prohibit closed meetings of joint House and Senate caucuses. What is the basis for this? I have no idea. AS 24.60.037 states: "The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." The statute does not address the question of joint meetings by two caucuses, so it cannot be said that the Select Committee is precluded from prohibiting closed joint caucus meetings in its proposed guidelines so long as the opportunity for closed meetings to discuss political strategy is otherwise provided to caucuses under the guidelines.

TBC:med
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STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 3, 2004

SUBJECT: Actions against legislators for violations of open meetings requirements (Work Order No. 23-LS1824)

TO: Representative Norman Rokeberg, Chair, House Rules Committee
Attn: Janet S. Seitz

FROM: Tamara Brandt Cook
Director TBC

Legislators are directed to "abide by open meetings principles" under AS 24.60.037. You ask whether failure by a legislator to do so will give rise to a private cause of action against that legislator. The Select Committee on Legislative Ethics, senate subcommittee or house subcommittee as appropriate, has jurisdiction to consider alleged violations of AS 24.60.037. (AS 24.60.140) Any person may initiate a complaint with the Select Committee alleging a violation. (AS 24.60.170) However, except for this process before the Select Committee, failure by a legislator to abide by open meetings principles does not give rise to a private cause of action that can be addressed by a court.

The Supreme Court of Alaska has considered application of the open meetings statute (AS 44.62.310) to legislators in two cases, Malone v. Meekins, 650 P.2d 351 (1982) involving the removal and replacement of the Speaker of the House, and Abood v. League of Women Voters of Alaska, 743 P.2d 333 (1987) involving closed meetings of the House and Senate Finance Committees engaged in budget deliberations. In the Malone case the court held questions relating to the internal organization of one of the houses to be nonjusticiable. Furthermore, the court noted, the open meetings statute itself had an express exemption to its applicability for organizational votes. In the Abood case the League asserted that legislators violated both the open meetings statute and the Uniform Rules in holding closed Finance Committee sessions. Again, the court held those claims to be nonjusticiable on the basis of separation of powers between the three branches of government. The court concluded that, because the state constitution grants to the legislature the power to adopt its own rules of proceedings, it is not a function of the court to interpret or enforce those rules, except to the extent that those rules violate constitutional rights. The court further held that there is no constitutional right of public access to a legislative meeting, reversing the Superior Court on that point. A copy of the Abood case is attached for your information. AS 44.62.310, the open meetings statute, has since been amended and no longer applies to the legislature.

In conclusion, it appears highly unlikely that a court would agree to hear and decide an allegation against a legislator involving an open meetings violation. Furthermore, even if an extraordinary circumstance should arise under which the court is willing to act, the legislator would most likely incur no personal liability for the open meetings violation because of legislative immunity for official acts accorded under common law and the state constitution. (Art. II, sec. 6, Constitution of the State of Alaska)

TBC:med
04-260.med

Enclosure

REPRESENTATIVE ERIC CROFT

November 25, 2003

Mr. Herman G. Walker
C/O Select Committee on Legislative Ethics
P.O. Box 101468
Anchorage AK 99510-1468

Dr. Mr. Walker,

Belated congratulations on your appointment and particularly your confirmation to the Select Committee on Legislative Ethics.

Your Committee has a vital role. For many years, the Alaska Legislature ignored laws on governmental ethics and open meetings. Courts, asked to enforce the law against the Legislature, held that the doctrine of separation of powers made the question non-justiciable. Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987). While the legislative action in question could be held illegal, there was no effective remedy. Your Committee was created to provide a venue for holding the legislature accountable for violations of the laws on governmental ethics and open meetings. Because the Select Committee on Legislative Ethics is within the legislative branch, the separation of powers argument is not available to those that seek to avoid the law. The Committee has done an excellent job of making the legislature accountable for violations of the ethics laws. Unfortunately, due to a misconception of the Committee's jurisdiction, it has not done as well policing the violations of the open meetings laws.

For your convenience, I have attached an opinion from the Legislative Legal Department recognizing the Committee's jurisdiction over open meetings violations, copies of the relevant statutory and temporary law provisions, and a copy of the latest proposed open meetings guidelines from the Committee.

The Committee is required to consider allegations of open meetings violations. The enabling statutes provide that the Committee "shall consider a complaint alleging a violation of [Chapter 60]." AS 24.60.170(a). The open meetings requirements are clearly part of Chapter 60.

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June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162
Representative_Eric_Croft@legis.state.ak.us

"Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed." AS 24.60.037

The statute makes a distinction between abiding by open meetings principles, which the Legislature is required to do without qualification, and the adoption of the guidelines, which may happen at a later date. In fact, the temporary law passed as part of the overall ethics package contemplates that the Legislature would be slow to adopt guidelines and establishes a process of repeated submittals of guidelines to keep the issue before the Legislature.

The law could have read that the Legislature would be governed by the guidelines when adopted. But it didn't. It placed the Legislature under the jurisdiction of the Committee and required that the Legislature abide by open meetings principles. The guidelines are treated in the statute as a separate issue. While it would certainly be helpful for the Legislature to adopt guidelines, and they should have done this long ago, it is not necessary for the Committee to fulfill its statutory mandate to consider open meetings violations and hold the Legislature to open meetings principles. Open meetings principles have been well-established in other jurisdictions and in scholarly publications.

In summary, the Legislature's inaction does not divest the Committee of its mandate or its jurisdiction over open meetings. I would like to know whether the Committee agrees with this position and will determine open meetings complaints on the merits.

Thank you for your time. Please feel free to contact me with any questions or for further information.

Sincerely,

Representative Eric Croft

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MEMORANDUM November 21, 2003

SUBJECT: Application of open meetings requirements to the legislature in absence of guidelines (Work Order No. 23-LS1413)

TO: Representative Eric Croft
Attn: Peggy Wilcox

FROM: Tamara Brandt Cook
Director TBC

You have asked for an explanation of the application of the open meetings requirement to the legislature. This is a subject with a history. The open meetings statute (AS 44.62.310) applied to the legislature as well as other governmental bodies. The court, however, held that alleged violations of the open meetings statute by the legislature were nonjusticiable. Like a Uniform Rule, the statute was deemed by the court to establish a rule of procedure concerning how the legislature conducted its business and failure to follow a rule of procedure is not a subject for judicial inquiry under the separation of powers doctrine. (Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987)) In 1994 the open meetings statute was amended so that it no longer applies to the court system or the legislative branch of government. (AS 44.62.310(h)(3)) At the same time AS 24.60.037 was amended to read:

> Sec. 24.60.037. OPEN MEETINGS LAW. Legislators shall abide by open meetings principles. The committee shall develop guidelines for the application of principles of open meetings of governmental bodies to the legislature. The guidelines must permit closed caucuses and private, informal meetings or conversations between legislators in which political strategy is discussed. In a proceeding under AS 24.60.170 in which a violation of this section is alleged, if the committee finds that a person acted within the adopted guidelines, the committee shall dismiss the complaint as to that violation.

Under AS 24.60.170(a) the Select Committee on Legislative Ethics is charged with hearing a complaint alleging a violation of AS 24.60, including, presumably, a violation of AS 24.60.037. So, a legislator could face an ethics complaint alleging failure to "abide by open meetings principles." The Select Committee is required under AS 24.60.037 to adopt guidelines regarding open meetings. If a complaint alleging an open meetings violation is filed and if the committee finds that a legislator acted within the guidelines, the complaint is to be dismissed. Note that the guidelines act as a shield to a claim of an

open meetings violation. That is to say, if the guidelines are literally followed, the complaint is dismissed regardless of whether the facts of the case otherwise sugges that "open meetings principles" have been offended.

However, the obligation to adopt guidelines is modified under chapter 69, SLA 1994 sec. 10(a) which states in part: "Notwithstanding AS 24.60.037, adoption of initial guidelines applying the open meetings principles to the legislature are subject to approval by the legislature under this subsection." Initial guidelines have never been approved by the legislature. I am not aware that the Select Committee has taken the position that guidelines are in effect. This does not mean that a complaint may not be filed with the Select Committee alleging a violation of AS 24.60.037, but only that there are no guidelines for the committee to rely upon in deciding whether to dismiss the complaint. The committee must decide, based upon the facts of the particular case, whether "open meetings principles" have been violated, as I read the statute, even in the absence of guidelines. This is, after all, what the committee will have to do even when guidelines are in effect if those guidelines do not happen to address a particular situation that comes before the committee.

I base my conclusion upon the fact that AS 24.60.037 directs the Select Committee to prepare guidelines with no requirement for legislative approval of them. It is this aspect of the statute only that is being set aside with respect to the initial guidelines through use of the "Notwithstanding AS 24.60.037" phrase. Nothing in sec. 10(a) specifically sets aside or supercedes the command in the first sentence of AS 24.60.037: "Legislators shall abide by open meetings principles." This brings up the point that the legislature has retained for itself only a small amount of oversight in the implementation of AS 24.60.037. It is "initial guidelines" that are subject to legislative approval under chapter 69, SLA 1994, sec. 10. Subsequent amendments to those guidelines are not specifically subject to legislative approval, though use of the word "initial" strongly suggests that changes to the guidelines are contemplated. Presumably, these changes will be made by the Select Committee under its sole authority to "develop guidelines" contained in AS 24.60.037. Given the fact that the legislature plays a relatively small role in implementing AS 24.60.037, it seems to me to be a stretch to assume that the Select Committee has no jurisdiction at all over open meetings questions until after initial guidelines are adopted.

Despite the foregoing, it is ultimately up to the Select Committee to interpret the requirements of the Legislative Ethics Act and I cannot presume to know how the committee views its responsibilities under AS 24.06.037, if any, in the absence of open meeting guidelines. (See AS 24.60.158)

TBC:med
03-733.med

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O.Box 101468
Anchorage, AK
99510 - 1468

August 11, 2000

Senator Drue Pearce
Senate President
Anch. Legislative Building
Anchorage, AK 99501

Representative Brian Porter
Speaker of the House
Anch. Legislative Building
Anchorage, AK 99501

Dear Senate President Pearce and Speaker of the House Porter;

At the June 22, 2000 meeting of the Ethics Committee, the committee adopted a motion to recommend the Legislature remove the Ethics Committee from its statutory obligation to develop and submit Open Meetings Guidelines. Further, the committee recommends the Legislature establish guidelines in statute, similar to action other states have taken.

The history of action on the Open Meetings guidelines is as follows:

Based on the requirements set out in the Open Meeting Law (AS 44.62, amended 1994) the committee adopted proposed open meetings guidelines and submitted them to the legislature on January 15, 1995. The guidelines were published in the Joint Journal January 20, 1995. After receiving legislative input, the committee later adopted and submitted Revised Proposed Guidelines, published in the Joint Journal February 21, 1995. The committee requested Senate Rules to introduce a resolution approving the revised guidelines. Senate Rules introduced SCR 8.

On February 28, 1995 the Senate passed a version of the resolution (See CSSCR 8(RLS)) that approved the revised guidelines, in part, but placed these specific limitations on its approval; the presiding officer of each body would be the final arbiter on any point of order and the terms "Go Between or Serial Meetings" must be defined before affirmation. Further, CSSCR 8(RLS) did not affirm the parts of the guidelines that address "Meetings Not Otherwise Described", political strategy sessions and non-legislative organizations.

On March 1, 1995 the House amended the resolution and approved the revised guidelines without limitation (CSSCR 8(RLS) am H). The Senate declined to concur in the House-passed version of the resolution.

A Conference Committee was established in 1996, comprised of Senators Rieger, Frank, Donley and Representatives Davis, Porter and Mackie. The Conference Committee issued a report, which passed the Senate 18 to 1 on May 4, 1996. The House read over the report and placed it under Unfinished Business. The House did not bring the report to the floor prior to the close of the regular session.

Since that time, the committee has fulfilled its obligation to resubmit guidelines to each legislature and has annually requested introduction and/or passage of a resolution to adopt the guidelines. Though resolutions have been introduced at the request of the committee, the legislature has not taken action on any resolution since May 1996.

This important issue needs to be resolved. Without resolution, members of the legislature remain under a legal obligation to comply with the general "principles of open meetings" and we, as a committee, are under the burden of interpreting what those principles may be, in the event of a complaint.

I am enclosing a copy of the Minnesota Open Meetings Law for the Legislature, as one example of a state that adopted statutory guidelines for the legislature. I found it to be a straightforward approach to setting open meetings goals.

The committee stands ready to assist the legislature, whether it is hosting a forum on the topic or enforcing laws the legislature establishes. Please do not hesitate to contact me at (907) 452-1855 or Susie Barnett at the Ethics Office, 269-0150.

Thank you for any attention you and your staff give to this issue

Sincerely,

Dennis "Skip" Cook, Chair
Select Committee on Legislative Ethics

cc: Members of the Alaska Legislature

Alaska State Legislature

Select Committee on
Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK 99501-2133
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 – 1468

TO: House and Senate Legislators

FROM: Joyce Anderson
Administrator, Ethics Committee

DATE: May 6, 2004

RE: HB 563/SB 397 – Open Meetings and Legislative Ethics

The Select Committee on Legislative Ethics has not had a chance to review this bill and formulize comments. However, I would like to comment on several sections of the bill.

First of all, I would like to give a brief overview of the open meetings process. The committee has proposed open meetings guidelines since 1993 as stipulated by state statute. The legislature has not acted on any of the proposals to date. Since March, the committee has held six subcommittee meetings on this subject. The full ethics committee is meeting on Friday, May 7 to review three proposals that have been submitted by the subcommittee and finalize a proposal. The plan was to submit the proposal to the legislature. In light of the introduction of HB 563/SB 397 on May 4, the committee was planning to consider this bill at the Friday meeting and offer recommendations to the legislature.

There are three sections in the bill that relate to the ethics complaint process. The committee has discussed these three topics at previous meetings over the last two years.

Section 1 (d) talks about dividing a group of open meetings complaints against one party in one body that are identical in nature into two groups and allowing the subject of one of complaints who is also on the ethics committee to evaluate a portion of the complaints. Current statute does not allow for this to happen. If the member or alternate member is the subject of a complaint they may not sit on the subcommittee hearing the complaint. The statute is very clear on this subject. It is evident a previous legislature anticipated this type of scenario.

The ethics House Subcommittee recently discussed this issue at length and determined it was not appropriate to have a legislator that was the subject of a group complaint sit on the committee that evaluates the complaints even if the complaints were divided into two separate groups. They felt it was a conflict of interest for the subject to be a part of the discussion of the merits of the complaint. The subject certainly would have a preconceived notion about the complaint. Additionally, two subcommittees of different members would be considering the same circumstances. It is possible to have two different results. This scenario posses a variety of problems and some of which can't even be thought of until the situation were to arise.

Further is it not defined in the bill that the subject is not to be a member of the subcommittee evaluating the group of complaints that the subject is grouped with. This could conceivable mean the subject could be part of the subcommittee that hears the subject's own complaint.

The subcommittee did not see a way to fix this problem. The subcommittee noted the ethics committee is comprised of five public members and no more than two public members may be members of the same political party. The subcommittee felt the ethics committee make up was well balanced. The subcommittee is also comprised of two legislators – one from the majority and one from the minority. Statute requires three public members and one legislator for a quorum of the subcommittee. The subcommittee was adamant that the subject of a complaint not be a member of the committee evaluating the compliant.

Section 2. Outside Counsel for the public hearing complaint process. The committee discussed this particular scenario during and after the last public hearing that was held in early 2003. The committee, after evaluating the events of the last public hearing, did not have an objection to having two different counsels in this type of situation. Therefore, I believe the committee would agree with this section.

Keep in mind there would be a minimal cost involved – getting the new counsel up to speed on committee operations and procedures.

Section 3. Confidentiality of the complaint process. The committee has had several meetings this last year on the subject of confidentiality of complaints. The current statute does not place any restrictions on the complainant in regard to keeping the compliant confidential. The committee strongly feels complaints should remain confidential. LAA legal researched the issue as well as myself. There are varying requirements across the United States. Some states have fines, some consider it a misdemeanor, and some dismiss complaints that have been made public.

The committee expressed reservations about a blanket dismissal for confidentiality reasons. Perhaps consideration should be given to the merits of the complaint.

I would like to point out that the bill contains only one sentence on confidentiality. This sentence does not address "what makes the complaint public". For example: the person filing the complaint talks to a neighbor in confidence who then talks to someone else and so on and one of these individuals makes the complaint public. Does this mean the complaint should be dismissed? Does this mean the complainant made the complaint public? What if the complaint is already in the investigative stage? If the complaint is dismissed for confidentiality reasons, could another person resubmit the complaint? These are only a few of the questions that come to mind in this short time.

As you can see, this is a very complicated issue and needs further thought, research and discussion. The ethics committee would need additional language in the statute in order to administer this section. I have no recommendations for additional language at this time.

I am leaving for Juneau on a 1:00 p.m. flight today and will be in Juneau on Thursday afternoon and Friday. If you have any questions, please leave a message on my office phone 269-0150 and I will return your call at soon as possible.

Alaska State Legislature

Please enter into the record my testimony to the SJUD
committee name

committee on SB 397 bill/subject, dated 5-7-04.

THIS IS THE COVER SHEET
FOR THE TESTIMONY
WRITTEN BY ROGER GAY
FROM THE MATSU.

1 of 2

Signed: _____
Testifier

_____
Representing (Optional)

_____
Mailing Address

_____
Phone Number

I don't see anything in this bill worthy of passage.

Under our system of checks and balances it is important to give the illusion of fairness and impartiality. Having the legislature in total control of it's own ethics is like haveing the fox in charge of the hen house. We have an Ethics Committee that proposes guidelines but the legislature fails to adopt them. and now you want to remove the Commitees ability to even make proposals.

As to Section 3 dealing with confidentiality this bill states that the Proceedings of the committee are confidential and closed to the public. If the proceedings are closed how would complaintant have access to documents produced as a result of the investagation.

If the goal of this bill is to supress the information contained in the complaint it needs to be more specific because there is a difference between ~~the~~ a copy of the actual complaint and a disclosure of the subject of the complaint.

Finally if you want to stop violations of confidentiality you need to penalize the violater not reward the unethical subject of the complaint.

If an actual, serious, breach of ethics has occured you cannot force yourself to ignore it by immediately dismissing the complaint. just don't excuse one persons behavior because of the unrelated actions of another. The exercise of one right cannot be used to deny or disparaged others retained by the people. Filing a complaint cannot result in a loss of the Freedom of Speech or the Press.

Roger K Gay

REPRESENTATIVE
BILL WILLIAMS
Co-Chair
(907) 465-3424
Fax: (907) 465-3793

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

Alaska State Legislature

House Finance Committee

State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
JOHN HARRIS
Co-Chair
(907) 465-4859
Fax: (907) 465-3799

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

MEMORANDUM

To: Senator Ralph Seekins, Chairman
Senate Judiciary Committee

From: Representative Bill Williams

Date: May 5th, 2004

Subject: Request for Hearing

I respectfully request that CS for House Bill 552(FIN) am, "An Act relating to the creation of the Alaska Gaming Commission; authorizing the Alaska Gaming Commission to license gambling games and gambling casino owners and suppliers and to issue occupational licenses for gambling employees; limiting casino gambling to municipalities with a population of 150,000 or more; allowing the Alaska Gaming Commission to issue only one owner's license for a gambling casino in certain municipalities with a population of 150,000 or more; creating crimes relating to gambling and setting requirements for gambling; creating the state gaming fund in the general fund; setting a gross receipts tax on gambling games; limiting the authority of a municipality to tax the adjusted gross receipts of gambling games.", be scheduled for a hearing in the House Special Committee on Fisheries.

I attach a copy of the bill and all fiscal notes.

Thank you for your attention to this matter. Feel free to contact me or my Aide, Tim Barry, if you have questions.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 552(FIN)
(H) Publish Date: 4/22/04

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act related to gambling and gaming."
RDU CRIMINAL & CIVIL
Component Criminal Justice Litigation
Commercial and Fair Business
Sponsor House Finance Committee
Requester House Finance Committee
Component No. 2202

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	********	********	********	********	********	********
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	********	********	********	********	********	********
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	********	********	********	********	********	********

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill creates the Alaska Gaming Commission to oversee and license legal gambling in Alaska. The bill creates several new crimes involving participants in the gambling operation and the players themselves. The number and type of these crimes may depend on how well-run and how well-regulated the casino turns out to be in actual operation. However, the lure of easy money and new forms of gambling technology make it difficult to predict the effect of such cases on the Criminal Division of the Department of Law until more experience is gained.

There is evidence that casinos may increase the level of crime in the surrounding area, the extent of the increase cannot be known at the present time. Additionally, some level of indeterminate additional legal services will be needed to assist the Commission in its function.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 4/19/04 4:54 PM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 4/19/2004
Agency Department of Law

(Revised 12/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 552(FIN)
(H) Publish Date: 4/22/04

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES	*	*	*	*	*	*
CHANGE IN REVENUES ( )	*	*	*	*	*	*

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: *(please see attached for more analysis)*

* We have not included projections because of the lack of information on the size of the casino, choice of the mix of games and location for the proposed Casino. Although the city location is known because the only city in the state "with at least 150,000 in population" is Anchorage, the exact location of the facility is unknown. There has been some speculation about the former Alaska Seafood International plant (Juneau Empire - April 7, 2004), but the bill does not include any specific reference to a particular site.

The American Gaming Association lists eleven states with commercial casinos, six states with racetrack casinos and 23 states with American Indian casinos. The number of casinos in each state varies between 3 in Michigan to 249 casinos with gross revenues (after-prize income) of at least $1 million in Nevada. Gross revenue for commercial casinos varies between $66 million in South Dakota (38 casinos) and $9.4 billion in Nevada.

(continued)

Prepared by: Larry Meyers and Brett Fried
Phone 907-269-6620
Division: Tax Division
Date/Time 4/19/04 7:06 AM
Approved by: Steve Porter, Deputy Commissioner
Date 4/19/2004
Agency: Department of Revenue

ANALYSIS CONTINUATION

Finding a state or casino that is a proxy for Alaska is complicated by differences in state and local statutes and regulations, choice of gaming mix, population densities, availability of substitutes, income levels and many other factors. However, below we provide some very rough estimates of expenditures and revenues.

Expenditures

We based our operating costs on a similar organization of auditor and investigator staff as found in South Dakota. South Dakota casino revenue closely approximates what we are estimating for Alaska. Most other states have much higher casino related expenses and would not be appropriate as a model for Alaska. It is expected that the Alaska Gaming Commission would consist of three (3) gaming commissioners, nine (9) new positions and seven (7) charitable gaming positions transferred from the Department of Revenue. It is difficult to project the operating costs under this legislation as some costs will be funded or reimbursed by fees set by the Commission.

Overall funding request of $1.7 million in FY 05 and $1.5 million in the following fiscal year includes $548,000 General Fund Program Receipts currently in the Governor's FY05 budget request for charitable gaming. Because the Commission has the power to set fees and investigations are reimbursed , it is possible that most of the costs would be paid by the Casino.

Personal service costs include the Executive Director, seven audit staff, four investigators, an analyst programmer and three technical and administrative staff. Travel costs include travel to hearings, Commissioner per diem, and audit and investigator staff travel. Contractual costs include professional services for background investigations, and associated staff costs for communications, leased vehicle, advertising, printing, training and professional memberships. Supply costs include office, data needs and desk peripherals for each year. Equipment costs are a one-time projection for FY05 or first year of operation for necessary office setup and equipment.

Revenues

There are two variables that normally enter into the estimation of potential revenues from casinos. The first is the size of the facility or the number of gaming devices and tables and the second is the distance from potential gamers. Cummings Associates (2004) found that these are the two most important determinants in predicting gaming facility revenues. The Bear Stearns 2002 North American Gaming Almanac includes participation rates (number of visits per adult population) for ten states and 34 communities. Statewide rates vary from 3.2 in Oregon to 6.2 in New Mexico. The problem with statewide participation rates is that they reference multiple casinos. Bear Stearns shows 8 tribal casinos in Oregon and 12 tribal casinos and 4 racinos in New Mexico. Clearly, multiple casinos will have an effect on the participation rate in a State. Consequently, we used the following two criteria in our choice of communities: (1) the market potential adult population within 100 miles (as determined by Bear and Stearns) had to be less than 500,000 and (2) the market had to be served by only one casino.

Bear and Stearns

We used the "2002-2003" North American Gaming Almanac produced by Bear and Stearns to find casinos that met the criteria discussed above. We found five casinos that fit the criteria and then we used the median and high participation rate and median and high revenue per visit to estimate potential revenues from a casino in Anchorage. After including tourists and Alaskans on and off the road system we developed a range from $8.6 to $10.4 million a year after the casino is fully operational.

Substitution

The after-prize income from Anchorage pull-tabs is approximately $13 million with $5.6 million going to charities. We do not know how much charitable gaming revenues will decline as a result of a casino in Anchorage.

Visitors

Given that we have over 1.5 million visitors to our state annually, the number of casino visits from tourism, (31,254) may seem low. However, it is necessary to consider that approximately 780,000 of these visitors arrive or depart by cruise ship and already have full casino facilties available on board. In addition, approximatly 60 percent of cruise ship passengers just cruise the inside passage and never go to Anchorage. Alaska tourism is also highly seasonal with about 84 percent of the visitors arriving in the Summer months. It seems unlikely that tourists whose primary purpose of traveling is to game would not choose other more highly developed gaming areas where the casinos include hotels and resort amenities. The tourist participation rate we used is for Washington (17 casinos) and Oregon (8 casinos). These casinos are often located on very busy highways and are not just accessible by air so tourism participation in Alaska could easily be lower.

ANALYSIS CONTINUATION

Income
One of the shortcomings of the above analysis is that all of the small casinos used as proxies for the Anchorage casino are in areas where incomes are relatively low. Per-capita income in Alaska is approximately 44 percent higher than in Mississippi, 14 percent higher than in Iowa and 11 percent higher than in Missouri. In a 2004 report by Cummings Associates, Cummings refines his model by using "less critical" parameters such as per capita income, urban/rural mix and relative reach of other casinos. On per capita income he argues that "higher is not necessarily better, but lower-income areas appear to spend less." All of these "less critical parameters" would argue for a revenue estimate at the higher end of the suggested range.

Bear and Stearns Representative Casinos								
City	Pop. Market[1] 0-100 Miles	Participation Rate[2]	Gamer Visits	Gaming Revenue	Revenue Per Visit	Casino Sq. Ft.	Slots	Tables
Caruthersville, Missouri[3]	234,197	2.8	655,752	$26,200,000	$40	20,000	753	15
Fort Madison, Iowa[4]	191,526	3.6	679,967	$33,300,000	$49	14,021	532	26
Natchez, Mississippi[5]	217,712	3.7	804,231	$41,600,000	$52	15,783	702	15
Boonville, Missouri[6]	458,692	3.9	1,780,592	$89,000,000	$50	28,000	900	27
La Grange, Missouri[7]	151,913	4.1	622,843	$34,000,000	$55	10,000	450	15

*** Note - Communities with only one casino and a market population area less than 500,000**

Anchorage Estimates using High and Median Revenue per Visit and Participation Rate									
	Population (21+ Alaska)	Participation Rate Median	High	Visits Median	High	Rev. Per Visit Median	High	Revenue Median	High
Anchorage[8]	253,132	3.7	4.1	936,588	1,037,841	$50	$55	$46,829,420	$57,081,266
Out of Market Fairbanks[9]	57,055	0.6	0.6	34,233	34,233	$50	$55	$1,711,637	$1,882,801
Out of Market Alaska[10]	114,617	0.1	0.1	11,462	11,462	$50	$55	$573,086	$630,395
Total Tourists[11]	1,562,700	0.02	0.02	31,254	31,254	$50	$55	$1,562,700	$1,718,970
Totals				1,013,537	1,114,790			50,676,844	$61,313,432
State Tax @ 17 percent								**8,615,063**	**10,423,283**

Source: Ader, N Jason. Bear Stearns 2002-2003 North American Gaming Almanac. Huntington Press - Las Vegas, Nevada.

[1] The population is an estimate by Bear and Stearns for 2006 of the market for a particular casino within a 100 mile radius. Casinos were only chosen if there was only one casino in the market area and the market potential within 100 miles was less than 500,000 adults.

[2] Participation rate is the estimate of the number of visits per person.

[3] The Caruthersville market has of one riverboat property, Casino Aztar. The adult population within 100 miles is almost 1.8 million but the market potential adult population estimate for 2006 is 234,197.

[4] The Fort Madison market has a single casino called Catfish Bend. Although the adult population within a 100 mile radius is over a million, the market potential adult population estimate for 2006 is 191,526.

[5] The Natchez market has a single Isle of Capri casino . The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 217,712. The participation rate is a weighted average for each 50 mile increment.

[6] The Boonville market has one Isle of Capri riverboat property. The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 458,692. The participation rate is a weighted average for each 50 mile increment.

[7] The La Grange market has the Mark Twain Riverboat Casino. The adult population within a 100 mile radius is about 1.0 million but the market potential adult population estimate for 2006 is 151,913. The participation rate is a weighted average for each 50 mile increment.

[8] Because the only legal competition for the casinos with a 100 mile radius of Anchorage are Bingo halls and pull-tabs, it is assumed that the market population is equivalent to the adult population of Anchorage, Mat-Su and the Kenai Peninsula Borough.

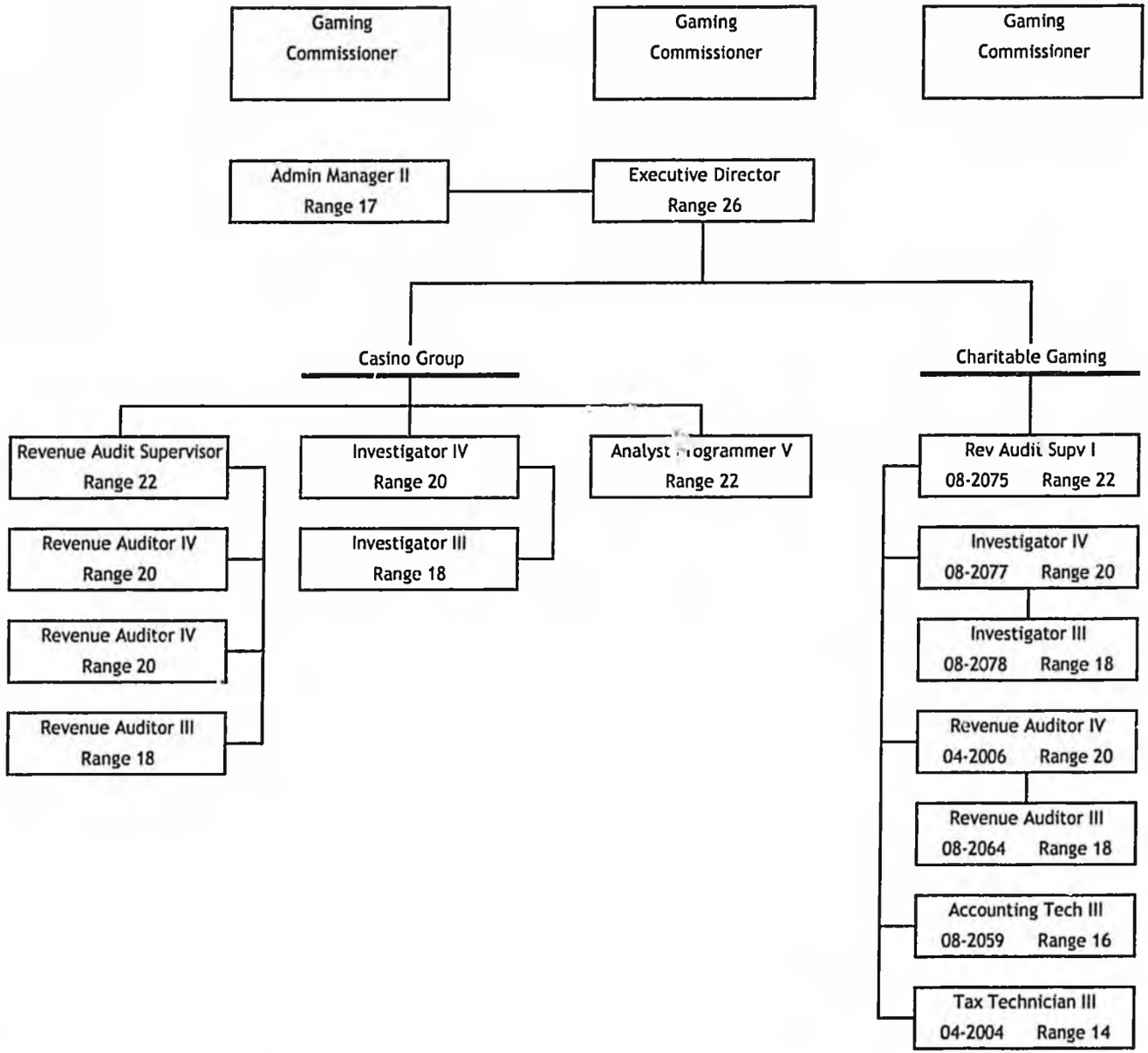
[9] The adult population of Fairbanks and Denali are included at a higher participation level than others outside of the 100 mile radius because of road access.

[10] The remaining adult Alaska population is shown at the level of access in Detroit outside of the 100 mile but within 150 miles. This is probably generous given the lack of road access and only one not three large casinos.

[11] Total visitors to Alaska is from Northern Economics visitor statistics for Summer 2003 and Fall/Winter 2002-2003 statistics. Participation rate is for Washington and Oregon tourist participation where there are eight and seventeen casinos, respectively.

ALASKA GAMING COMMISSION

Bill No. HB 552



Fiscal Note No. 2

Bill No. CSHB 552(FIN)

HB 552 Expenditures	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
PERSONAL SERVICES						
Executive Director	106.0	106.0	106.0	106.0	106.0	106.0
Administrative Manager II	65.7	65.7	65.7	65.7	65.7	65.7
Casino Group						
Revenue Audit Supervisor I	92.0	92.0	92.0	92.0	92.0	92.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor III	70.1	70.1	70.1	70.1	70.1	70.1
Investigator IV	81.0	81.0	81.0	81.0	81.0	81.0
Investigator III	70.1	70.1	70.1	70.1	70.1	70.1
Analyst Programmer V	92.0	92.0	92.0	92.0	92.0	92.0
Charitable Gaming						
Revenue Audit Supervisor I	99.9	99.9	99.9	99.9	99.9	99.9
Investigator IV	92.2	92.2	92.2	92.2	92.2	92.2
Investigator III	72.9	72.9	72.9	72.9	72.9	72.9
Revenue Auditor IV	84.2	84.2	84.2	84.2	84.2	84.2
Revenue Auditor III	84.8	84.8	84.8	84.8	84.8	84.8
Accounting Technician III	59.3	59.3	59.3	59.3	59.3	59.3
Tax Technician III	52.6	52.6	52.6	52.6	52.6	52.6
	1,284.8	1,284.8	1,284.8	1,284.8	1,284.8	1,284.8
TRAVEL						
Staff Travel	41.4	41.4	41.4	41.4	41.4	41.4
Commissioner Meetings/Hearings [A]	31.2	31.2	31.2	31.2	31.2	31.2
	72.6	72.6	72.6	72.6	72.6	72.6
CONTRACTUAL						
Professional Services	184.0	92.0	92.0	92.0	92.0	92.0
Communications (Phones, Postage, Data)	5.4	5.4	5.4	5.4	5.4	5.4
Leased Vehicle Costs	5.8	5.8	5.8	5.8	5.8	5.8
Advertising, Printing	3.0	3.0	3.0	3.0	3.0	3.0
Equipment Maintenance	3.0	3.0	3.0	3.0	3.0	3.0
Training Costs	5.0	3.0	3.0	3.0	3.0	3.0
Memberships, Conference Costs	2.0	2.0	2.0	2.0	2.0	2.0
	208.2	114.2	114.2	114.2	114.2	114.2
SUPPLIES						
Office and Data Supplies	40.0	40.0	40.0	40.0	40.0	40.0
	40.0	40.0	40.0	40.0	40.0	40.0
EQUIPMENT						
9 Positions - Offices, Equipment [B]	72.0	0.0	0.0	0.0	0.0	0.0
	72.0	0.0	0.0	0.0	0.0	0.0
FY TOTALS	1,677.6	1,511.6	1,511.6	1,511.6	1,511.6	1,511.6

[A] 31.2 = 3 Commish * $200 @ 52 mtgs/hrgs

[B] Base estimate @ $8.0/Position

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 552(FIN)
(H) Publish Date: 4/22/04

Revision Date/Time (Note if correction):
Dept. Affected: DPS
Title: Gambling & Gaming
RDU: Statewide Support
Component: Criminal Records & ID
Sponsor: H. Finance
Requester: H. Finance
Component No. 1190

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	*	*	*	*	*	*

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

ANALYSIS: *(Attach a separate page if necessary)*

The bill requires criminal record checks for gambling licensure. The gambling commission within the Department of Revenue will collect fees from license applicants to pay DPS for the record checks.

The department charges $59 for each fingerprint-based check of state and national criminal records. The fee includes $35 for a check of state criminal records plus $24 (set by the FBI) to check national criminal records. The department retains $2 of the FBI's fee for handling. The department will seek an increase in authority to receive funds from the gambling commission to accommodate the increase in workload when the volume of criminal record checks can be determined.

Prepared by: Diane Schenker, Criminal Justice Planner
Phone 907-269-5092
Division: Statewide Services
Date/Time 4/22/04 9:23 AM
Approved by: Commissioner William Tandeske
Date 4/22/2004
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 552(FIN)
(H) Publish Date: 4/22/04

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: Act related to gambling and gaming
RDU: Alaska State Troopers
Component: Alaska Bureau of Investigation
Sponsor: (H) Finance
Requester: (H) Finance
Component No.: 2744

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

At this point in time, in order to determine the fiscal impact to the Department of Public Safety (DPS) if HB 552 were to become law, consideration is only being given to the tasks of criminal history checks and background investigations. Because there are different levels or types of background investigations and criminal history checks that can be conducted, consideration must be given to the type and to what degree each applicant, owner, employee, and Alaska Gaming Commission member and staff member will be investigated.

Alaska Gaming Commission:

As the Alaska Gaming Commission members are selected by the Governor, each member will undergo a background investigation to include a fingerprint based criminal history check, a credit check, and other actions as deemed appropriate.

Prepared by: Lt. Al Storey
Phone: 269-4532
Division: Alaska State Troopers
Date/Time: 4/22/04 9:00 AM
Approved by: Commissioner William Tandeske
Date: 4/22/2004
Agency: Department of Public Safety

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

ANALYSIS CONTINUATION

At a minimum, this will take an estimated 8 to 12 staff-hours each to accomplish assuming that no issues are discovered that need additional investigation.

As the Alaska Gaming Commission comes into being, it will need an executive director, auditors, investigators, and administrative support. Those state employees will also require a fingerprint based criminal history check, a credit check, and other investigative efforts to insure that no issues are left unanswered as to the credibility of the employees. It is estimated that such investigations will take 6 to 8 staff-hours each to accomplish.

Also, based on the organizational chart proposed by the Department of Revenue in their fiscal analysis, seven state employees that will be assigned within the casino group, which is in turn subordinate to the executive director of the commission. All totaled, not counting the three gaming commissioners themselves, 9 state employees will need background investigations due to their employment with the Alaska Gaming Commission.

Owners, Managers, and Key Employees:

Based on input from other states, it is believed that at a minimum, all owners or partners of a gambling facility, all managers, and select key employees should have an expanded background investigation to include a fingerprint based criminal history check, a credit check, interaction with other state and local law enforcement agencies, and other appropriate investigative efforts as necessary to insure that the individuals are legitimate members of the business community.

Background checks will take a minimum of 8 to 12 staff-hours to accomplish. If information of a negative nature is discovered, additional investigative effort will be needed to insure that all concerns are properly addressed. It is not clear at this point how many of these types of background checks will be required. The number of these types of inquiries can also vary depending on the regulations that will be promulgated if this bill becomes law.

Occupational Licensing and Other Employees:

As provided for in the proposed legislation, others associated with the operation of the gambling facility will require occupational licensing. Based on the regulations that will be promulgated as a result of this legislation, it is believed that as part of the occupational licensing process, fingerprint based criminal history checks will be required in order to obtain an occupational license. The majority of these types of employees will be able to have their fingerprint based criminal history checks accomplished through a process that already exists as described in the fiscal analysis preparedby the Statewide Services Division of the Department of Public Safety. There are other considerations that must be looked at when making a finding of suitability as it relates to those involved in the sale, transfer, or offering for use or play of gambling associated equipment. Those considerations include, but certainly are not limited to, a credit check of individuals involved in the enterprise as well as past business practices.

Summary:

While HB 552 provides for the commission to reimburse the DPS for costs incurred in conducting background investigations from fees collected from applicants for licenses, the total number of people that will be required to obtain a complete background investigation and the amount of time and effort needed to complete each investigation are not immediately known. Therefore, the fiscal impact to the DPS cannot be determined at this time.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 552(FIN)
(H) Publish Date: 4/29/04

Revision Date/Time (Note if correction):
Title: Gambling
Sponsor: House Finance Committee
Requester: House Finance Committee

Dept. Affected: Revenue
RDU: Revenue Programs & Services
Component: Tax Division
Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES	*	*	*	*	*	*
CHANGE IN REVENUES ( )	*	*	*	*	*	*

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: *(please see attached for more analysis)*

* We have not included projections because of the lack of information on the size of the casino, choice of the mix of games and location for the proposed Casino. Although the city location is known because the only city in the state "with at least 150,000 in population" is Anchorage, the exact location of the facility is unknown. There has been some speculation about the former Alaska Seafood International plant (Juneau Empire - April 7, 2004), but the bill does not include any specific reference to a particular site.

The American Gaming Association lists eleven states with commercial casinos, six states with racetrack casinos and 23 states with American Indian casinos. The number of casinos in each state varies between 3 in Michigan to 249 casinos with gross revenues (after-prize income) of at least $1 million in Nevada. Gross revenue for commercial casinos varies between $66 million in South Dakota (38 casinos) and $9.4 billion in Nevada.

(continued)

Prepared by: Larry Meyers and Brett Fried
Phone 907-269-6620
Division: Tax Division
Date/Time 4/19/04 7:06 AM
Approved by: Steve Porter, Deputy Commissioner
Date 4/19/2004
Agency: Department of Revenue

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

ANALYSIS CONTINUATION

Finding a state or casino that is a proxy for Alaska is complicated by differences in state and local statutes and regulations, choice of gaming mix, population densities, availability of substitutes, income levels and many other factors. However, below we provide some very rough estimates of expenditures and revenues.

Expenditures
We based our operating costs on a similar organization of auditor and investigator staff as found in South Dakota. South Dakota casino revenue closely approximates what we are estimating for Alaska. Most other states have much higher casino related expenses and would not be appropriate as a model for Alaska. It is expected that the Alaska Gaming Commission would consist of three (3) gaming commissioners, nine (9) new positions and seven (7) charitable gaming positions transferred from the Department of Revenue. It is difficult to project the operating costs under this legislation as some costs will be funded or reimbursed by fees set by the Commission.

Overall funding request of $1.7 million in FY 05 and $1.5 million in the following fiscal year includes $548,000 General Fund Program Receipts currently in the Governor's FY05 budget request for charitable gaming. Because the Commission has the power to set fees and investigations are reimbursed , it is possible that most of the costs would be paid by the Casino.

Personal service costs include the Executive Director, seven audit staff, four investigators, an analyst programmer and three technical and administrative staff. Travel costs include travel to hearings, Commissioner per diem, and audit and investigator staff travel. Contractual costs include professional services for background investigations, and associated staff costs for communications, leased vehicle, advertising, printing, training and professional memberships. Supply costs include office, data needs and desk peripherals for each year. Equipment costs are a one-time projection for FY05 or first year of operation for necessary office setup and equipment.

Revenues
There are two variables that normally enter into the estimation of potential revenues from casinos. The first is the size of the facility or the number of gaming devices and tables and the second is the distance from potential gamers. Cummings Associates (2004) found that these are the two most important determinants in predicting gaming facility revenues. The Bear Stearns 2002 North American Gaming Almanac includes participation rates (number of visits per adult population) for ten states and 34 communities. Statewide rates vary from 3.2 in Oregon to 6.2 in New Mexico. The problem with statewide participation rates is that they reference multiple casinos. Bear Stearns shows 8 tribal casinos in Oregon and 12 tribal casinos and 4 racinos in New Mexico. Clearly, multiple casinos will have an effect on the participation rate in a State. Consequently, we used the following two criteria in our choice of communities: (1) the market potential adult population within 100 miles (as determined by Bear and Stearns) had to be less than 500,000 and (2) the market had to be served by only one casino.

Bear and Stearns
We used the "2002-2003" North American Gaming Almanac produced by Bear and Stearns to find casinos that met the criteria discussed above. We found five casinos that fit the criteria and then we used the median and high participation rate and median and high revenue per visit to estimate potential revenues from a casino in Anchorage. After including tourists and Alaskans on and off the road system we developed a range from $8.6 to $10.4 million a year after the casino is fully operational.

Substitution
The after-prize income from Anchorage pull-tabs is approximately $13 million with $5.6 million going to charities. We do not know how much charitable gaming revenues will decline as a result of a casino in Anchorage.

Visitors
Given that we have over 1.5 million visitors to our state annually, the number of casino visits from tourism, (31,254) may seem low. However, it is necessary to consider that approximately 780,000 of these visitors arrive or depart by cruise ship and already have full casino facilties available on board. In addition, approximatly 60 percent of cruise ship passengers just cruise the inside passage and never go to Anchorage. Alaska tourism is also highly seasonal with about 84 percent of the visitors arriving in the Summer months. It seems unlikely that tourists whose primary purpose of traveling is to game would not choose other more highly developed gaming areas where the casinos include hotels and resort amenities. The tourist participation rate we used is for Washington (17 casinos) and Oregon (8 casinos). These casinos are often located on very busy highways and are not just accessible by air so tourism participation in Alaska could easily be lower.

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 552(FIN)

ANALYSIS CONTINUATION

Income
One of the shortcomings of the above analysis is that all of the small casinos used as proxies for the Anchorage casino are in areas where incomes are relatively low. Per-capita income in Alaska is approximately 44 percent higher than in Mississippi, 14 percent higher than in Iowa and 11 percent higher than in Missouri. In a 2004 report by Cummings Associates, Cummings refines his model by using "less critical" parameters such as per capita income, urban/rural mix and relative reach of other casinos. On per capita income he argues that "higher is not necessarily better, but lower-income areas appear to spend less." All of these "less critical parameters" would argue for a revenue estimate at the higher end of the suggested range.

Bear and Stearns Representative Casinos								
City	Pop. Market[1] 0-100 Miles	Participation Rate[2]	Gamer Visits	Gaming Revenue	Revenue Per Visit	Casino Sq. Ft.	Slots	Tables
Caruthersville, Missouri[3]	234,197	2.8	655,752	$26,200,000	$40	20,000	753	15
Fort Madison, Iowa[4]	191,526	3.6	679,967	$33,300,000	$49	14,021	532	26
Natchez, Mississippi[5]	217,712	3.7	804,231	$41,600,000	$52	15,783	702	15
Boonville, Missouri[6]	458,692	3.9	1,780,592	$89,000,000	$50	28,000	900	27
La Grange, Missouri[7]	151,913	4.1	622,843	$34,000,000	$55	10,000	450	15

*** Note - Communities with only one casino and a market population area less than 500,000**

Anchorage Estimates using High and Median Revenue per Visit and Participation Rate									
	Population (21+ Alaska)	Participation Rate		Visits		Rev. Per Visit		Revenue	
		Median	High	Median	High	Median	High	Median	High
Anchorage[8]	253,132	3.7	4.1	936,588	1,037,841	$50	$55	$46,829,420	$57,081,266
Out of Market Fairbanks[9]	57,055	0.6	0.6	34,233	34,233	$50	$55	$1,711,637	$1,882,801
Out of Market Alaska[10]	114,617	0.1	0.1	11,462	11,462	$50	$55	$573,086	$630,395
Total Tourists[11]	1,562,700	0.02	0.02	31,254	31,254	$50	$55	$1,562,700	$1,718,970
Totals				1,013,537	1,114,790			50,676,844	$61,313,432
State Tax @ 17 percent								**8,615,063**	**10,423,283**

Source: Ader, N Jason. Bear Stearns 2002-2003 North American Gaming Almanac. Huntington Press - Las Vegas, Nevada.

[1] The population is an estimate by Bear and Stearns for 2006 of the market for a particular casino within a 100 mile radius. Casinos were only chosen if there was only one casino in the market area and the market potential within 100 miles was less than 500,000 adults.

[2] Participation rate is the estimate of the number of visits per person.

[3] The Caruthersville market has of one riverboat property, Casino Aztar. The adult population within 100 miles is almost 1.8 million but the market potential adult population estimate for 2006 is 234,197.

[4] The Fort Madison market has a single casino called Catfish Bend. Although the adult population within a 100 mile radius is over a million, the market potential adult population estimate for 2006 is 191,526.

[5] The Natchez market has a single Isle of Capri casino . The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 217,712. The participation rate is a weighted average for each 50 mile increment.

[6] The Boonville market has one Isle of Capri riverboat property. The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 458,692. The participation rate is a weighted average for each 50 mile increment.

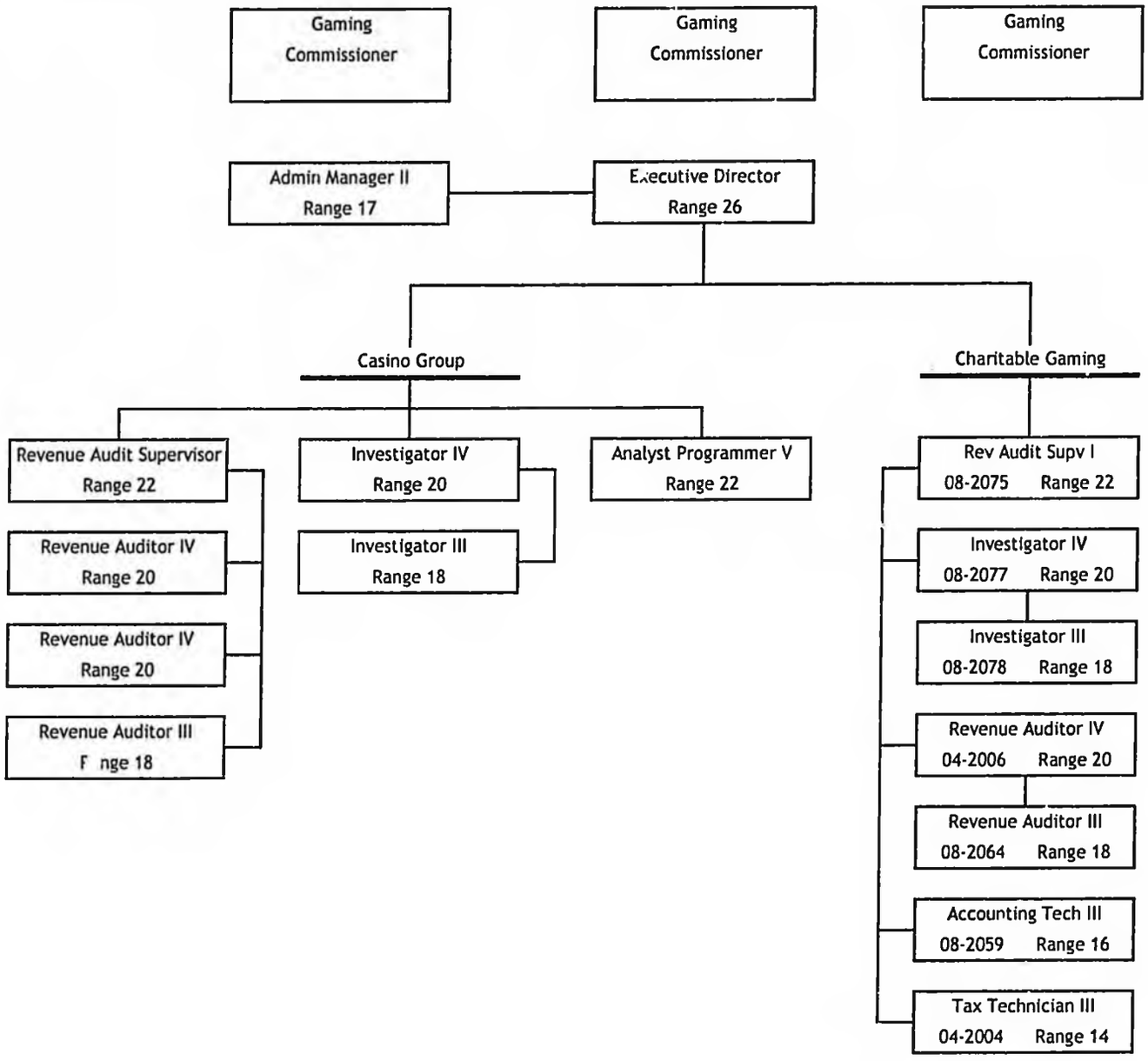
[7] The La Grange market has the Mark Twain Riverboat Casino. The adult population within a 100 mile radius is about 1.0 million but the market potential adult population estimate for 2006 is 151,913. The participation rate is a weighted average for each 50 mile increment.

[8] Because the only legal competition for the casinos with a 100 mile radius of Anchorage are Bingo halls and pull-tabs, it is assumed that the market population is equivalent to the adult population of Anchorage, Mat-Su and the Kenai Peninsula Borough.

[9] The adult population of Fairbanks and Denali are included at a higher participation level than others outside of the 100 mile radius because of road access.

[10] The remaining adult Alaska population is shown at the level of access in Detroit outside of the 100 mile but within 150 miles. This is probably generous given the lack of road access and only one not three large casinos.

[11] Total visitors to Alaska is from Northern Economics visitor statistics for Summer 2003 and Fall/Winter 2002-2003 statistics. Participation rate is for Washington and Oregon tourist participation where there are eight and seventeen casinos, respectively.


Gaming Commissioner
Gaming Commissioner
Gaming Commissioner
Admin Manager II Range 17
Executive Director Range 26
Casino Group
Charitable Gaming
Revenue Audit Supervisor Range 22
Revenue Auditor IV Range 20
Revenue Auditor IV Range 20
Revenue Auditor III F nge 18
Investigator IV Range 20
Investigator III Range 18
Analyst Programmer V Range 22
Rev Audit Supv I 08-2075 Range 22
Investigator IV 08-2077 Range 20
Investigator III 08-2078 Range 18
Revenue Auditor IV 04-2006 Range 20
Revenue Auditor III 08-2064 Range 18
Accounting Tech III 08-2059 Range 16
Tax Technician III 04-2004 Range 14

HB 552 Expenditures	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
PERSONAL SERVICES						
Executive Director	106.0	106.0	106.0	106.0	106.0	106.0
Administrative Manager II	65.7	65.7	65.7	65.7	65.7	65.7
Casino Group						
Revenue Audit Supervisor I	92.0	92.0	92.0	92.0	92.0	92.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor III	70.1	70.1	70.1	70.1	70.1	70.1
Investigator IV	81.0	81.0	81.0	81.0	81.0	81.0
Investigator III	70.1	70.1	70.1	70.1	70.1	70.1
Analyst Programmer V	92.0	92.0	92.0	92.0	92.0	92.0
Charitable Gaming						
Revenue Audit Supervisor I	99.9	99.9	99.9	99.9	99.9	99.9
Investigator IV	92.2	92.2	92.2	92.2	92.2	92.2
Investigator III	72.9	72.9	72.9	72.9	72.9	72.9
Revenue Auditor IV	84.2	84.2	84.2	84.2	84.2	84.2
Revenue Auditor III	84.8	84.8	84.8	84.8	84.8	84.8
Accounting Technician III	59.3	59.3	59.3	59.3	59.3	59.3
Tax Technician III	52.6	52.6	52.6	52.6	52.6	52.6
	1,284.8	**1,284.8**	**1,284.8**	**1,284.8**	**1,284.8**	**1,284.8**
TRAVEL						
Staff Travel	41.4	41.4	41.4	41.4	41.4	41.4
Commissioner Meetings/Hearings [A]	31.2	31.2	31.2	31.2	31.2	31.2
	72.6	**72.6**	**72.6**	**72.6**	**72.6**	**72.6**
CONTRACTUAL						
Professional Services	184.0	92.0	92.0	92.0	92.0	92.0
Communications (Phones, Postage, Data)	5.4	5.4	5.4	5.4	5.4	5.4
Leased Vehicle Costs	5.8	5.8	5.8	5.8	5.8	5.8
Advertising, Printing	3.0	3.0	3.0	3.0	3.0	3.0
Equipment Maintenance	3.0	3.0	3.0	3.0	3.0	3.0
Training Costs	5.0	3.0	3.0	3.0	3.0	3.0
Memberships, Conference Costs	2.0	2.0	2.0	2.0	2.0	2.0
	208.2	**114.2**	**114.2**	**114.2**	**114.2**	**114.2**
SUPPLIES						
Office and Data Supplies	40.0	40.0	40.0	40.0	40.0	40.0
	40.0	**40.0**	**40.0**	**40.0**	**40.0**	**40.0**
EQUIPMENT						
9 Positions - Offices, Equipment [B]	72.0	0.0	0.0	0.0	0.0	0.0
	72.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
FY TOTALS	**1,677.6**	**1,511.6**	**1,511.6**	**1,511.6**	**1,511.6**	**1,511.6**

[A] 31.2 = 3 Commish * $200 @ 52 mtgs/hrgs

[B] Base estimate @ $8.0/Position

The Impact of Casio Gambling on Bankruptcy Rates: A County Level Analysis

Ernie Goss, Professor of Economics, Visiting Scholar, CBO
(402) 598-3198 mobile phone (402) 280-4757 voicemail
e-mail ernieg@creighton.edu

Edward Morse, Professor of Law, Creighton University
e-mail morse@creighton.edu

Roughly 250 U.S. counties have legalized casino gambling within their borders. Sixty of these counties have established commercial casino operations, with the remainder supporting tribal casinos. Past research has provided mixed results regarding the impact of these casinos on market and non-market outcomes. The goal of this research study is to estimate the impact of casinos on two of these outcome variables -- individual and business bankruptcy rates -- over the decade of the 1990s. The study matches each casino county with a non-casino county according to U.S. Census region, household income, population and population density. Using simple descriptive statistics and regression analysis, the study estimates the impacts of casinos on bankruptcy rates. Our regression analysis on matched-pair counties indicates that those counties that legalized casino gambling during the 1990s experienced a cumulative growth rate in individual bankruptcies that was more than double the growth rate for corresponding non-casino counties. However, the cumulative rate of change in business bankruptcy rates in the casino counties was, on average, 35.4 percent lower than the applicable rate for the non-casino counties.

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The Impact of Casio Gambling on Bankruptcy Rates: A County Level Analysis

Twenty-five years ago, legalized gambling was confined to Nevada, Atlantic City, New Jersey, a few racetracks, and two or three state lotteries. Since then, the U.S. has added almost 400 commercial casinos and 248 tribal casinos to the gambling landscape. As of January 1, 2003, only 19 states had resisted legalizing casinos. The states with no casinos include: Alabama, Alaska, Arkansas, Georgia, Hawaii, Kentucky, Maine, Maryland, Massachusetts, Nebraska, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia.

Casino revenues have grown along with the number of casinos. In recent years, commercial (non-tribal) casinos have increased adjusted gross revenues (AGR) from $19.7 billion in 1999 to $26.5 billion in 2002, or 10.0 percent per year.[1] Per thousand dollars of GDP, commercial casino AGR grew from $2.13 in 1999 to $2.63 in 2002. Tribal casinos have also experienced significant revenue growth. In 2001, tribal casinos in 28 states pulled in an estimated $12.7 billion in AGR, reflecting a growth rate of approximately 14 percent per year from the $7.5 billion in AGR reported for 1997. Figure 1 and Figure 2 profile commercial and tribal casino AGR.

This expansion has impacted the social costs of gambling, including bankruptcy. Much of the research examining the social costs has focused on the problem or pathological gambler. As noted in the report of the National Gambling Impact Study Commission,

[1]Adjusted gross revenues refers to net losses of gamblers and does not include other non-gambling related revenues of the casino.

> All seem to agree that pathological gamblers "engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves. With the increased availability of gambling and new gambling technologies, pathological gambling has the potential to become even more widespread."[2]

During the rapid expansion of casino gambling during the 1990s, personal bankruptcies expanded at comparably high rates. Between 1990 and 1999, total personal U.S. bankruptcies grew from 771,210 to 1,294,134, or 67.8 percent. On the other hand, during this same period of time, business bankruptcies declined from 63,365 in 1990 to 37,183 in 1999. Despite these seemingly contradictory relationships, many politicians, sociologists and economists fault casinos for a large share of the growth in U.S. bankruptcies. However, other economic and demographic factors were also changing during this period, making the assignment of cause for rising bankruptcies impossible to isolate without a more in-depth analysis. In the subsequent analysis, we use multivariate regression to disentangle contributors to higher bankruptcy rates, specifically focusing on the casinos.

Other researchers have also undertaken this same task. For example, Barron, Staten and Wilshusen (2000) (hereafter referred to as BSW) conclude that casinos had positive and statistically significant impacts on personal bankruptcy rates in the casino county and its geographic neighbors. However, these researchers concluded that the increase in personal bankruptcies attributable to casinos was only 8 percent, and that other demographic and economic factors were much more important in explaining the rapid growth in personal bankruptcies in the 1990s.

In the subsequent analysis, we expand on the BSW study by adding two factors not considered by them. First, we examine business bankruptcies; second, we add tribal casinos,

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[2] National Gambling Impact Study Commission Report, at 4-1 (1999) (*quoting* National Research Council, "Pathological Gambling: A Critical Review," (April 1, 1999), p. Exec-2.)

which were excluded from their analysis, to our assessment. Our data set also excludes some data that the BSW study included. The BSW study included counties adjacent to those hosting casinos -- what they term "collar counties" – in their analysis, based on the assumption that a higher incidence of pathological gambling behavior was expected within a 50 mile radius of a casino facility. However, our study focuses only on the casino counties. Bankruptcy filings in collar counties may well include residents who live more than 50 miles from a casino, who thus are not particularly influenced by casino activity. Our more limited focus may be viewed as providing a more conservative measure of the bankruptcy impact of casinos, as it reduces the possibility that those with more attenuated geographical proximity to the casino operations may erroneously be attributed to casino-related causation.

GROWTH IN CASINO OPERATIONS: A PERSPECTIVE

Tribal casinos. Large-scale Indian casino gambling is barely a decade old. Its origins trace back to 1987, when the U. S. Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*.[3] The Court held that the state of California had no authority to apply its regulatory statutes to gambling activities conducted on Indian reservations. Tribal sovereignty was subordinate to the Federal government, and state power to regulate was thus dependent on congressional authorization. In 1988, Congress responded to this decision by enacting the Indian Gaming Regulatory Act,[4] which essentially recognized the right of Indian tribes to regulate gambling and gaming facilities on their reservations as long as the states in which they were located had some form of legalized gambling. The Act was intended to accomplish several policy goals, which include: 1) promoting tribal economic development and self-sufficiency, and 2) providing a regulatory base to protect Indian gaming from organized

[3] 480 U.S. 202 (1987).
[4] 25 U.S.C. §§ 2701-2721.

crime, to ensure that the tribe is the beneficiary of the gaming operation, and to ensure the fairness and honesty of the gaming operation; and 3) establishing the National Indian Gaming Commission to assist in these purposes.[5] Figure 3 shows tribal casinos by state. Oklahoma had the largest number of tribal casinos at 50 followed by California at 44 and Washington at 23.

Commercial casinos.[6] After a brief respite, America returned to casinos in 2002. Following more than a decade of explosive growth, the tragic events of September 11th reduced air travel to spots such as Las Vegas. But casinos responded with increased marketing to locals, and the U.S. gaming industry (both casino and non-casino) posted a five percent increase in revenues to an estimated $64 billion for 2002.

While all forms of gambling have grown, casino gambling has experienced robust growth in recent years. Since Nevada legalized casino gaming in 1931, an additional ten states have legalized commercial casinos. New Jersey legalized casino gaming in 1976, and its first casino opened in 1978. However, eight of the eleven states with commercial casinos began casino construction in the 1990s, thus introducing new features into their local economic and social structures.

According to Christiansen of Capital Advisors LLC, Americans today pay out more on gambling than they spend on movie tickets, theme parks, spectator sports, and video games combined. Moreover, Merrill Lynch estimated that Americans lose a comparable amount each year in illegal betting. Figure 4 shows the number of commercial casinos by state. As indicated, eleven states had a total of 432 commercial casinos in 2004. Nevada had the most casinos at 249, while Michigan had the fewest at 3.

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[5] See 25 U.S.C. § 2702.

[6] A commercial casino is a non-tribal casino owned by private investors.

Table 1 compares commercial and tribal casinos. Commercial casinos generate, on average, more revenue than tribal casinos. Furthermore, the effective tax rate is much higher for commercial casinos and the growth rate of AGR has been much lower for commercial casinos.

CASINOS AND FINANCIAL DISTRESS

Casino gambling is not strictly an economic issue. In addition to economic gains and losses, casinos produce impacts on the social fabric of the surrounding community. Therefore, to more accurately assess the total impact of casinos, one must distinguish between economic profitability and social viability. Bankruptcy is an issue that bridges the economic and social spheres.

A study by the National Opinion Research Center at the University of Chicago found that pathological gamblers generate 15 percent of the industry's gross revenues and that each pathological gambler costs society around $10,550 over his/her lifetime.[7] In its 1999 report, The National Gambling Impact Study Commission singled out convenience gambling as providing fewer economic benefits and greater social costs than other forms of gambling. In particular, it recommended a rollback in convenience gambling operations.[8] It also recommended undertaking new studies on the relationship between gambling and various social problems, such as bankruptcy, divorce, domestic violence, suicide and crime.[9]

The National Gambling Impact Study Commission estimated that of the 125 million Americans who gamble at least once a year, approximately 7.5 million have some form of gambling problem.[10] Another 15 million are classified as "at risk" of developing a gambling problem.

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[7] National Gambling Impact Study Commission Report, p. 4-14 to -15.
[8] Id., Recommendation 3-6.
[9] Id., Recommendation 8-9.
[10] Id. at p. 4-1.

As a result of significant losses imposed by pathological and problem gamblers, the National Gambling Impact Study Commission recommended a pause in the expansion of gambling in order to assess the social impacts of recent rapid expansions in gambling availability.[11] In particular, the Commission recommended research on the "extent to which gambling-related debt is a contributing factor to personal bankruptcies", and on "gambling-related crimes perpetrated for the primary purpose of gaining funds to continue gambling or to pay gambling debts."[12] Many policymakers, sociologists and economists conclude that pathological gambling and even moderate gambling has an impact on sociological parameters such as bankruptcy. The analysis that follows examines the merit of this conclusion.

OVERVIEW OF FEDERAL BANKRUPTCY LAWS

In order to evaluate the significance of bankruptcy data considered in this study, a basic overview of federal bankruptcy laws will prove helpful. Federal bankruptcy laws serve two important purposes providing a "fresh start" for debtors by granting relief from burdensome financial obligations, and providing a means for creditors to obtain payment to the extent possible.[13] Debtors may choose between two primary approaches for bankruptcy relief: liquidation and reorganization/rehabilitation. Generally speaking, Chapter 7 of the Bankruptcy

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[11] Id. at p. 47.

[12] Id., Recommendation 8-20.

[13] *See, e.g.*, BFP v. Resolution Trust Corp., 511 U.S. 531, 569 (1994) (referring to "core Bankruptcy Code purposes of augmenting the bankruptcy estate and improving the debtor's prospects for a "fresh start"); Kokoszka v. Belford, 417 U.S. 642, 645-46 (1974) ("'It is the twofold purpose of the bankruptcy act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched.'") (*quoting* Burlingham v. Crouse, 228 U.S. 459, 473 (1913)); Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) ("One of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.' This purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." (citation omitted)).

Code provides for a liquidation process, while Chapters 11, 12, and 13 provide procedures for reorganization and rehabilitation of debtors.

A debtor commences bankruptcy by filing a petition that constitutes an order for relief under the applicable chapter of the Bankruptcy Code for which the debtor is eligible.[14] The petition creates an estate which, by operation of law, generally includes all legal and equitable interests of the debtor in property.[15] From this estate, an individual debtor may be permitted to treat certain property – often basic necessities -- as exempt from bankruptcy proceedings, in order to facilitate the debtor's "fresh start".[16] All other property is potentially available for the claims of creditors, though satisfaction of those claims ultimately depends on the priority accorded to the creditor and the amount of available assets.

Chapter 7. Chapter 7 of the Bankruptcy Code focuses primarily on liquidating the non-exempt assets of the debtor and distributing them for the benefit of creditors.[17] The balance of those unpaid debts may be discharged – an important feature reflecting the "fresh start" purpose.[18] Discharges are frequent under Chapter 7 cases, meaning that creditors are often left unpaid. Some commentators have indicated that most Chapter 7 cases leave no assets available for distribution to creditors after exemptions are taken into account.[19]

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[14] *See* 11 U.S.C. § 301.

[15] See 11 U.S.C. § 541(a).

[16] See 11 U.S.C. § 522(b); In re Morehead, 283 F3d 199 (4th Cir. 2002) ("Federal bankruptcy law allows a debtor to exempt some of his property – mainly basic necessities – from the bankruptcy estate. The exemptions can afford the debtor some economic and social stability, which is important to the fresh start guaranteed by bankruptcy.")

[17] See 11 U.S.C. § 704 (defining duties of bankruptcy trustee in Chapter 7 case).

[18] See 11 U.S.C. § 727(a) (granting discharge provided that certain conditions are met).

[19] *See, e.g.*, Arnold B. Cohen, *Chapter 20 Cases: An Appropriate Debtor Tool?*, 4 J. BANKR. L. & PRACT. 53, 53 n.4 (1994) ("Although most Chapter 7 cases are so-called "no asset" cases in which the debtor's Section 522 exemptions cover all the Section 541(a) property of the estate, there are cases in which there will be distributable property of the estate.")

As a technical matter, Chapter 7 filers may include many types of debtors, including corporations.[20] However, only individuals may obtain a discharge under Chapter 7, which makes this chapter particularly appealing to individual debtors.[21] Individuals who are employees, as well as individuals who are sole proprietors of businesses, are eligible. Thus, a portion of Chapter 7 filings may reflect adverse financial experiences with business activities, as well as financial difficulties rooted in gambling activity.

Chapter 13. Chapter 13 of the Bankruptcy Code provides individual debtors with another alternative, which focuses primarily on rehabilitation. Individuals with regular income meeting certain total debt limits for unsecured and secured debts are eligible to file under this chapter.[22] Self-employed individuals are potentially eligible, and thus Chapter 13 may involve business-related debt as well as personal debt.[23] Qualifying debtors may be attracted to Chapter 13 because it potentially allows them to keep secured property, which might otherwise be subject to loss through foreclosure.[24]

Chapter 13 allows a debtor to propose a plan,[25] in which the debtor agrees to submit future income to the trustee to satisfy all or a portion of outstanding obligations.[26] The plan typically involves deferred payments over a period of three to five years,[27] which, for example, might allow the debtor to catch up on arrearages owing on secured property.[28] The plan must be confirmed in order to be effective, and one of the conditions of confirmation requires that "the

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[20] *See* 11 U.S.C. § 109(b) (defining debtors eligible for Chapter 7 filing).

[21] *See* 11 U.S.C. § 727(a)(1).

[22] See 11 U.S.C. § 109(e). The statutory debt limits are subject to adjustment for inflation. See 11 U.S.C. § 104. For cases commenced after April 1, 2001, eligibility is limited to individuals with regular income who owe less than $290,525 in applicable unsecured debt, and $871,550 of applicable secured debt. See Alan N. Resnick, Bankruptcy Law Manual § 10.4, p. 1085-86 (5th Ed. 2002). The next adjustment is scheduled to occur on April 4, 2004. See id. at § 10.4, p. 1086.

[23] See 11 U.S.C. § 1304(b).

[24] See Cohen, *supra* note 19, at 58.

[25] See 11 U.S.C. § 1321.

[26] See 11 U.S.C. § 1322(a).

[27] See 11. U.S.C. § 1322(d).

[28] See Cohen, *supra* note 19, at 58.