

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 27, 2007

3:46 p.m.

MEMBERS PRESENT

Senator Donny Olson, Chair
Senator Albert Kookesh, Vice Chair
Senator Joe Thomas

MEMBERS ABSENT

Senator Gary Stevens
Senator Thomas Wagoner

COMMITTEE CALENDAR

SENATE BILL NO. 128

"An Act relating to the sale, distribution, and purchase of alcoholic beverages; relating to a state database for records of certain alcoholic purchases of alcoholic beverages; relating to procedures for local option elections for control of alcoholic beverages; and providing for an effective date."

MOVED CSSB 128(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 128

SHORT TITLE: ALCOHOL LOCAL OPTION PROVISIONS

SPONSOR(S): SENATOR(S) OLSON

03/19/07	(S)	READ THE FIRST TIME - REFERRALS
03/19/07	(S)	CRA, JUD, FIN
03/27/07	(S)	CRA AT 3:30 PM BELTZ 211

WITNESS REGISTER

TALIS COLBERG, Attorney General
Co-Chair, Alaska Rural Justice and Law Enforcement Commission
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

ANNE CARPENETI, Attorney
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of SB 128.

DARWIN PETERSON, Staff
to Senator Lyda Green
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

KEITH MALLARD, Commander
Alaska Bureau of Alcohol and Drug Enforcement
Alaska State Troopers
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding SB 128.

BILL ROCHE, Chief Enforcement Officer
Alcohol Beverage Control Board
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding SB 128.

KAREN BITZER, Executive Director
Alaska Rural Justice and Law Enforcement Commission
Anchorage, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

LORETTA BULLARD, President
Kawerak, Inc.
Nome, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

DIANE KELLER, Mayor
Wasilla, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

JIM WOOD, Senior Vice President
Meritage Development Group
Wasilla, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

JIM STEVENS, Leasing Manager
Browman Development
Wasilla, Alaska

POSITION STATEMENT: Spoke in favor of SB 128.

ACTION NARRATIVE

CHAIR DONNY OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at [3:46:40 PM](#).

Senators Kookesh and Olson were present at the call to order. Senator Thomas arrived shortly thereafter.

SB 128-ALCOHOL LOCAL OPTION PROVISIONS

SENATOR KOOKESH moved to adopt the committee substitute (CS) for SB 128, labeled 25-LS0742\C, Bullard. Hearing no objections, Version C was before the committee.

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GINNY AUSTERMAN, Staff to Senator Olson, presented SB 128 on behalf of Senator Olson:

Alaska, along with many other states, finds itself in the position of needing to protect residents of rural communities from bootleggers of alcohol. Various alcohol abuse educational programs have been in place in rural Alaska for a number of years, but they have not served to halt the illegal importation and sale of alcohol to Alaska's rural communities. SB 128 curbs bootlegging by allowing the Alcoholic Beverage Control (ABC) Board, at the request of the communities of Bethel and Kotzebue, to establish pilot alcohol delivery sites. If opened, these sites would operate for a period of three years.

Senate Bill 128 is aimed at preventing bootleggers from ordering alcohol from numerous package stores in violation of the local option. Alcohol Local Option Provisions require that the ABC Board, in conjunction with package store licensees, create and maintain a database documenting the sale, distribution, and purchase of alcoholic beverages, ordered in writing, from persons residing in damp local option communities. The bill requires that a package store consult the database before filling a written order from a person residing in the local option area. The database will be available to package store licensees and their agents and employees, law enforcement officers, probation and parole officers, and the ABC Board. Information in the database will not be available to the public.

The bill also corrects an inadequacy in state liquor law that hampers the ability of large hub communities to attract investment in family-oriented restaurants. There are [no] allowances for the transfer of a borough license to a city within the borough's borders in order to meet public demand and promote economic development.

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CHAIR OLSON noted a letter from the Tanana Chiefs Conference in support of SB 128.

TALIS COLBERG, Attorney General Designee and Co-Chair of the Alaska Rural Justice Commission, said the commission has focused on four areas of concern in the past two years, with alcohol interdiction as one. It formed working groups across the state and came up with about 100 action options including the provisions in SB 128. The bill seeks to interdict alcohol in rural Alaska with: a statewide database for tracking alcohol shipments; modifications to forfeiture; and restricted shipments to damp communities. He added that the bill prohibits package stores from shipping alcohol in response to written orders from a person residing in a local option area. It allows the transfer of liquor licenses in large hub communities. SB 128 also prohibits persons from purchasing alcoholic beverages from a person who is selling alcohol in violation of the local option, and it addresses "other provisions in the law to try to enhance the ability of local communities to better serve the local population." The bill is a final work product from the commission, he said. The commission is out of money and the executive director, Ms. Bitzer, has been working without compensation for two months. She has offered to see this work through. He expressed the need for supplemental funding.

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ANNE CARPENETI, Attorney, Criminal Division, Department of Law, said Sections 1 and 2 of SB 128 require the ABC board to establish a database to record written orders from damp communities. Licensees would be required to check the database prior to filling orders for alcohol shipments "to ensure that a person has not made several orders from several different licensees in excess of the amount that is the presumption for possession with intent to sell." Section 3 prohibits shipping alcohol to any address other than the address of the person ordering the alcohol, unless there is a community delivery site, "in which case, under current law, they would be required to send the alcohol to the community delivery site." Sections 4 and 5 were added by request of Senator Green. Places with a city government within a borough will be able to transfer a liquor license from the surrounding borough to the city if approved by the local governing bodies. This language is to encourage economic development and vibrant downtown areas, she stated.

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SENATOR THOMAS said the bill restricts the sale of alcohol but Sections 4 and 5 expand it. He surmised it loosened the

transferability of liquor licenses between a borough and a city inside the borough and did not expand the number of licenses.

MS. CARPENETI agreed. The city and borough government must both approve the transfer. She said there were family-type restaurants in downtown Wasilla that would like to add alcohol to their menus. There are licenses available in the surrounding borough but none for downtown, she explained.

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MS. CARPENETI said Sections 6, 7, 11, and 12 prohibit a person from purchasing alcohol from a bootlegger in violation of a local option. It is now illegal to sell alcohol but not illegal to purchase alcohol from a bootlegger. It would become a Class A misdemeanor for the buyer, and the bootlegger would be subject to a Class C felony. Section 8 extends the time after a local option election before another one could be held to remove or reduce the level of the local option. It also provides that an election removing or reducing a local option may be held only once in every 36-month period. Section 9 prohibits a person from buying alcohol on behalf of a person who lives in a dry community. Section 10 prohibits a person living in a dry community from possessing ingredients or equipment with the intent to create homebrew. Sections 13 and 14 amend the forfeiture provisions to allow forfeiture of the alcohol that was purchased in violation. Section 15 allows the ABC board to establish pilot delivery sites in Kotzebue and Bethel if requested by the local government.

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SENATOR KOOKESH asked for the definition of an established village.

MS. CARPENETI said it is a term used in the local option law, which is found in AS04.11.491. It has been used by courts and law enforcement.

DARWIN PETERSON, Staff to Senator Lyda Green, said Sections 4 and 5 were added to accommodate Fairbanks and the Mat-Su, which have the need to transfer existing licenses from the borough to within the city. There is no expansion, just more flexibility to manage liquor licenses, he stated.

CHAIR OLSON asked if there has been any opposition.

MR. PETERSON said he has not heard from anyone.

CHAIR OLSON asked if the sections have any broader effects.

MR. PETERSON said it just affects organized boroughs, and both governing bodies and the ABC would have to approve the transfer.

CHAIR OLSON asked the reason for the initial prohibition.

MR. PETERSON said the City of Wasilla brought the limitation to the attention of Senator Green when it was trying to expand development. Chili's and Applebee's weren't able to set up shop, he said. He didn't know the history of the original law.

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SENATOR THOMAS asked if the licenses could be transferred the other direction—from the city to the borough.

MR. PETERSON said yes, as long as both bodies approve it.

CHAIR OLSON asked how individual civil rights are protected.

MS. CARPENETI said that issue has been litigated and the local options laws have been upheld by the courts.

CHAIR OLSON asked if she expects any litigation on constitutional grounds for SB 128.

MS. CARPENETI said anybody can file a lawsuit, "but I believe that since we have prevailed in other areas of local option litigation, I believe we would also prevail here."

SENATOR THOMAS asked about the limits of no more than 10.5 liters of distilled spirits, 24 liters of wine and 12 gallons of malt beverages, and he surmised it is based on alcohol content.

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MS. CARPENETI said that is existing law, and she believes the senator is correct.

KEITH MALLARD, Captain, Alaska State Troopers, said he has been with the troopers for 11 years and he has worked in Aniak. He currently supervises the Western Alcohol Enforcement and Narcotics team.

CHAIR OLSON asked why he would think the distribution center would work in Bethel and Kotzebue, "especially since you've been up in Aniak."

CAPTAIN MALLARD said it provides a place where there will be local knowledge of who actually lives in those communities versus in the outlying or local option communities.

CHAIR OLSON said there have been attempts to break into the distribution center in Barrow. They are so visible, he said, and he asked how those problems can be worked out.

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CAPTAIN MALLARD said he would handle it like any other burglary.

CHAIR OLSON asked if he anticipated the same success rate as Barrow.

CAPTAIN MALLARD said he can't speak to the success rates in the North Slope Borough.

WILLIAM ROCHE, Chief Enforcement Officer, Alcohol Beverage Control (ABC) Board, said moving licenses between cities and boroughs was supported by the ABC board in February.

SENATOR THOMAS asked about any comments from "the cabaret, hotel, restaurant folks."

MR. ROCHE said he believes they were informed and haven't given any comments.

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CHAIR OLSON asked about alcoholic beverages on a ship in port.

MR. ROCHE said cruise ships have Alaska liquor licenses, and they obtain the beverages from Alaska licensed wholesalers. It is a very sophisticated business, he stated.

CHAIR OLSON asked about an icebreaker heading out for the Northwest Passage but gets stuck between Kotzebue and Barrow and needs to purchase more alcohol for the trip.

MR. ROCHE said he has been with the ABC board since 1979, and such a situation has never occurred.

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LORETTA BULLARD, President, Kawerak, a regional services consortium for the Bering Straits, said she serves on the Alaska Rural Justice and Law Enforcement Commission. Alcohol and substance abuse is the nucleus of suicides, homicides, neglect, domestic violence, accidental deaths and injuries, and child

sexual abuse in rural Alaska. It is the sole cause of fetal alcohol syndrome. She estimates that 90 percent of the inmates in the Anvil Mountain Correctional Center are serving time for offenses conducted under the influence of alcohol, for consuming alcohol while on probation, or for importing or brewing alcohol in violation of local option laws. The increase in correctional expenditures is huge, she said. She supports SB 128, which includes practical solutions developed as part of the Rural Justice and Law Enforcement work group process.

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MS. BULLARD described the provisions in SB 128. In the Bering Straits region alcohol is shipped into wet communities and individuals from dry communities come by boat or snow machine to get it. She noted that Barrow set up an alcohol delivery site, which has been a huge success in controlling the delivery of alcohol. She said the bill focuses on the supply issue, and she encouraged the legislature to make funds available to address the demand for and treatment for alcohol and substance abuse. She sent in a list of other options developed by the work group, and she wants the committee to know there are many more ideas, including early intervention.

MS. BULLARD noted that the commission is out of money because of the federal "no earmarks" policy. She asked for stop-gap funding to allow the commission to do their work.

CHAIR OLSON said bootlegging has been around since before statehood, and he asked what makes her think this legislation will help "with some of the problems that are out there."

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MS. BULLARD said there is currently no control in the amounts of liquor that people can import into damp communities. There are plane loads, she stated, and there are alcohol runs between communities. The bill is a step in the right direction.

DIANE KELLER, Mayor, City of Wasilla, said Wasilla is growing rapidly and expecting 1.2 million square feet of new retail development by 2009. The city has been approached by chain and local restaurants for help in getting liquor licenses. Wasilla has only three beverage dispensary licenses for purchase. The city would have to grow to 24,000 people before getting another one. The value of the licenses are in the mid-six figures and too costly for restaurants. She said the transferred licenses wouldn't be used for bars but to "make for a pleasant environment for a family to have dinner."

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CHAIR OLSON asked if more licenses could be issued.

MAYOR KELLER said Wasilla doesn't need more licenses; it just needs to use the ones that are out there.

CHAIR OLSON said the market is driving the licenses up.

MAYOR KELLER said there are licenses, but they can't come into the city because it is a population-based program.

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MAYOR KELLER said she knows two business owners who now hold licenses are not opposed to the language. The other hasn't decided, but there is no active opposition that she is aware of.

JIM WOOD, Senior Vice President, Meritage Development Group, said he is putting in two developments in Wasilla worth \$160 million. He is working with Applebee's restaurant contingent upon getting a liquor license. His type of development hasn't been done in Alaska; it is more of a lifestyle center, he said. He can't get the restaurant without the liquor license.

JIM STEVENS, Leasing Manager, Browman Development, said he is working on a shopping mall and would like to have a sit-down restaurant there, but he can't attract them until this is resolved. Restaurants have tremendous costs and to add an exorbitant cost of a liquor license is prohibitive. The trade area of Wasilla is 80,000 people, but liquor licenses are based on the population of 8,000 people, he explained.

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SENATOR KOOKESH moved CSSB 128(CRA), labeled 25-LS0742\C, from committee with individual recommendations and attached the fiscal note(s). There were no objections and it was so ordered.

The meeting was adjourned at [4:27:47 PM](#).