

**HOUSE  
COMMITTEE REPORT**

(11)  
Date referred: 4/17/86  
(Judiciary waived 4/17)

FURTHER REFERRALS:

DATE: 4-23-86

The FINANCE Committee has considered HB 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSSSH B 700 (FIN)  same title  
 new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - ~~new~~ fiscal note 4/11/86 19.9
  - zero fiscal note

SIGNING, DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Albert P. Gada  
Jim ...  
Mike ...  
Jim ...  
Ronald ...  
Kat ...  
Jack ...  
Steve ...  
Dolne ...  
Ken ...

\_\_\_\_\_  
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Albert P. Gada  
Chairman

## STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

**REQUEST** Page 1 of 3 (1)

Revision Date: \_\_\_\_\_

Bill/Resolution No.: CSSSHB 700 (CASA) FIN  
 Title: An Act Relating to Possession  
 of Alcohol  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**  
 Agency Affected: Alaska Court System  
 BRU: Trial Courts  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		19.9				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		19.9				
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		19.9				
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		19.9				

**POSITIONS :**

FULL TIME						
PART-TIME						
TEMPORARY						

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

See Attachments

Prepared by: Robert G. Fisher  
 Division: Alaska Court System  
 Approved by Commissioner: Arthur H. Snowden, II *AHS II*  
 Agency: Alaska Court System

Phone: 264-8215  
 Date: 4/11/86  
 Date: 4/11/86

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

ALASKA COURT SYSTEM  
 SCHEDULE OF MAGISTRATE TRAINING CONFERENCE COSTS  
~~CSSHB 700~~ - ALCOHOL POSSESSION  
 FY 87

CSSSHB 700 (FIN)

ESTIMATED  
AIR FARE  
COST

Page 2 of 3

--- PER DIEM ---  
#/DAYS RATEESTIMATED  
TOTAL COST

## First District Magistrates:

FROM	TO	ESTIMATED AIR FARE COST	#/DAYS	PER DIEM RATE	ESTIMATED TOTAL COST
Angoon	Anchorage	\$366	3	\$80	\$606
Craig	Anchorage	366	3	80	606
Haines	Anchorage	366	3	80	606
Hoonah	Anchorage	366	3	80	606
Kake	Anchorage	452	3	80	692
Pelican	Anchorage	366	3	80	606
Skagway	Anchorage	366	3	80	606
Yakutat	Anchorage	268	3	80	508

## Bethel Area Magistrates:

FROM	TO	ESTIMATED AIR FARE COST	#/DAYS	PER DIEM RATE	ESTIMATED TOTAL COST
Aniak	Anchorage	328	3	80	568
Emmonak	Anchorage	328	3	80	568
Hooper Bay	Anchorage	328	3	80	568
Mekoryuk	Anchorage	428	3	80	668
Quinhagak	Anchorage	328	3	80	568
St. Marys	Anchorage	328	3	80	568

## Second District Magistrates:

FROM	TO	ESTIMATED AIR FARE COST	#/DAYS	PER DIEM RATE	ESTIMATED TOTAL COST
Gambell	Anchorage	428	3	80	668
Kiana	Anchorage	428	3	80	668
Noorvik	Anchorage	428	3	80	668
Point Hope	Anchorage	428	3	80	668
Savoonga	Anchorage	428	3	80	668
Selawik	Anchorage	428	3	80	668
Shungnak	Anchorage	428	3	80	668
Unalakleet	Anchorage	428	3	80	668

## Third District Magistrates:

FROM	TO	ESTIMATED AIR FARE COST	#/DAYS	PER DIEM RATE	ESTIMATED TOTAL COST
Cordova	Anchorage	130	3	80	370
Dillingham	Anchorage	320	3	80	560
Glennallen	Anchorage	94	3	80	334
Naknek	Anchorage	292	3	80	572
Seward	Anchorage	63	3	80	303
Unalaska	Anchorage	594	3	80	834
Whittier	Anchorage	37	3	80	277

## Fourth District Magistrates:

FROM	TO	ESTIMATED AIR FARE COST	#/DAYS	PER DIEM RATE	ESTIMATED TOTAL COST
Delta Junction	Anchorage	272	3	80	512
Ft. Yukon	Anchorage	322	3	80	562
Galena	Anchorage	358	3	80	598
Healy	Anchorage	130	3	80	370
Tanana	Anchorage	272	3	80	512
Tok	Anchorage	165	3	80	405

Total Cost

\$19,857

This bill establishes a mail-in bail forfeiture procedure as the means of enforcing local ordinances which may be adopted to ban the possession of alcohol. The bill impacts the court system by requiring courts to accept and process citations and bail payments for these new offenses.

Accurate processing and accounting procedures will be critical to successful implementation of this bill. For example, if the court issues a bench warrant because its records erroneously indicate a defendant has failed to pay the bail amount or to perform community work, the defendant is likely to sue the state for false arrest.

Although courts in urban areas are familiar with mail-in bail for traffic offenses, outlying magistrate courts have far less experience with these procedures. This fiscal note sets out the costs of a one-time meeting for magistrates to explain the law and the details of the processing and accounting procedures which each affected court will be required to establish.

Original sponsor: Rules Committee by request

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages  
7 and enactment of municipal ordinances."

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

9 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) abuse of alcohol seriously interferes with the rights and  
11 privileges of the people of the state;

12 (2) the public health, safety, and welfare does in fact suffer  
13 when alcohol abuse is not controlled;

14 (3) prohibition of alcohol in rural areas of the state is an  
15 effective tool for controlling the abuse of alcohol;

16 (4) serious crimes and a wide variety of other social problems  
17 could be prevented if the possession of alcohol were prohibited;

18 (5) there is a strong and unmistakable correlation between  
19 alcohol consumption and poor health, fetal damage, suicide, domestic vio-  
20 lence, and crime;

21 (6) the dangers resulting from alcohol abuse are particularly  
22 acute in rural areas of the state because the communities are small, iso-  
23 lated, without adequate law enforcement, without adequate health care  
24 facilities, and populated by people who are closely related and interdepen-  
25 dent;

26 (7) in communities that have chosen to ban the sale and importa-  
27 tion of alcohol, most drinking takes place in private homes;

28 (8) the economic cost of alcohol abuse is high, and cannot be  
29 afforded by the state or small rural communities; and

1 (9) a fine in the amount of \$1,000 or 200 hours of community  
2 work, is not so severe a penalty as to indicate criminality in either rural  
3 or urban Alaska communities.

4 \* Sec. 2. AS 04.11 is amended by adding a new section to read:

5 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-  
6 AGES. (a) The following question, appearing alone, may be placed  
7 before the voters of a municipality or an established village in  
8 accordance with AS 04.11.502: "Shall the possession of alcoholic  
9 beverages be prohibited in . . . . (name of municipality or vil-  
10 lage)? (yes or no)."

11 (b) If a majority of the voters of an established village vote  
12 "yes" on the question set out in (a) of this section, and the sale of  
13 alcoholic beverages, or the sale and importation of alcoholic bever-  
14 ages, has been previously prohibited in the established village in  
15 accordance with AS 04.11.490 or 04.11.494, a person, beginning on the  
16 first day of the month following certification of the results of the  
17 election, may not knowingly possess an alcoholic beverage in the  
18 established village, unless the alcoholic beverage is wine to be used  
19 for bona fide religious purposes based on tenets or teachings of a  
20 church or religious body, is limited in quantity to the amount neces-  
21 sary for religious purposes, and is dispensed only for religious  
22 purposes, by a person recognized by the church or religious body as  
23 authorized to dispense the wine. The board shall be notified immedi-  
24 ately after certification of the results of the election and there-  
25 after may not issue, renew, or transfer between holders or locations a  
26 license for licensed premises located within the perimeter of the  
27 established village as defined in AS 04.21.080(b)(8).

28 (c) If a majority of the voters of an established village vote  
29 "yes" on the question set out in (a) of this section and the sale of

1 alcoholic beverages, or the sale and importation of alcoholic bever-  
2 ages, has not been previously prohibited in the established village in  
3 accordance with AS 04.11.490 or 04.11.494, and a person, beginning 90  
4 days after certification of the results of the election, may not  
5 knowingly possess an alcoholic beverage in the established village,  
6 unless the person is licensed by the board or the alcoholic beverage  
7 is wine to be used for bona fide religious purposes based on tenets or  
8 teachings of a church or religious body, is limited in quantity to the  
9 amount necessary for religious purposes, and is dispensed only for  
10 religious purposes by a person by the church or religious body as  
11 authorized to dispense the wine. The board shall be notified immedi-  
12 ately after certification of the results of the election and there-  
13 after may not issue, renew, or transfer between holders or locations a  
14 license for licensed premises located within the perimeter of the  
15 established village as defined in AS 04.21.080(b)(8). Licenses that  
16 may not be renewed because of a local option election held under this  
17 section are void 90 days after the results of the election are cer-  
18 tified. A license that will expire during the 90 days after the  
19 results of a local option election under this section are certified  
20 may be extended until it is void under this section, by payment of a  
21 prorated portion of the annual license fee.

22 (d) If a majority of the voters of a municipality vote "yes" on  
23 the question set out in (a) of this section, and the sale of alcoholic  
24 beverages, or the sale and importation of alcoholic beverages, has  
25 been previously prohibited in the municipality in accordance with  
26 AS 04.11.490 or 04.11.494, an ordinance is adopted that becomes effec-  
27 tive beginning on the first day of the month following certification  
28 of the results of the election, and a person may not knowingly possess  
29 an alcoholic beverage in the municipality, unless the alcoholic

1 beverage is wine to be used for bona fide religious purposes based on  
2 tenets or teachings of a church or religious body, is limited in  
3 quantity to the amount necessary for religious purposes, and is dis-  
4 pensed only for religious purposes, by a person recognized by the  
5 church or religious body as authorized to dispense the wine. The  
6 board shall be notified immediately after certification of the results  
7 of the election and thereafter may not issue, renew, or transfer  
8 between holders or locations a license for licensed premises located  
9 within the boundaries of the municipality and within unincorporated  
10 areas within five miles of the boundaries of the municipality.

11 (e) If the majority of the voters of a municipality vote "yes"  
12 on the question set out in (a) of this section and the sale of alco-  
13 holic beverages, or the sale and importation of alcoholic beverages,  
14 has not been previously prohibited in the municipality in accordance  
15 with AS 04.11.490 or 04.11.494, and an ordinance is adopted that  
16 becomes effective beginning 90 days after certification of the results  
17 of the election, and a person may not knowingly possess an alcoholic  
18 beverage in the municipality, unless the alcoholic beverage is wine to  
19 be used for bona fide religious purposes based on tenets or teachings  
20 of a church or religious body, is limited in quantity to the amount  
21 necessary for religious purposes, and is dispensed only for religious  
22 purposes by a person recognized by the church or religious body as  
23 authorized to dispense the wine. The board shall be notified immedi-  
24 ately after the adoption of the ordinance and thereafter may not  
25 issue, renew, or transfer between holders or locations a license for  
26 licensed premises located within the boundaries of the municipality  
27 and within unincorporated areas within five miles of the boundaries of  
28 the municipality. Licenses that may not be renewed because of a local  
29 option election held under this section are void 90 days after the

1 results of the election are certified. A license that will expire  
2 during the 90 days after the results of a local option election under  
3 this section are certified may be extended, until it is void under  
4 this section, by payment of a prorated portion of the annual fee.

5 (f) If a majority of the voters vote "no" on the question set  
6 out in (a) of this section or vote "yes" on the questions set out in  
7 AS 04.11.492 or 04.11.500 in an election conducted in accordance with  
8 AS 04.11.502 after an election in which the voters voted "yes" on the  
9 question set out in (a) of this section, the prohibition on the pos-  
10 session of alcoholic beverages is removed effective 90 days after the  
11 results of the election are certified except as those prohibitions  
12 continue to be imposed in accordance with the results of the subse-  
13 quent election.

14 (g) For the purposes of this section, "possession" means having  
15 physical possession of or exercising dominion or control over alco-  
16 holic beverages, but does not include having alcoholic beverages  
17 within the digestive system of a person.

18 \* Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

19 (c) A petition filed with the local governing body of a munic-  
20 ipality in accordance with (a) of this section, which places on the  
21 ballot the question set out in AS 04.11.498, shall constitute a pro-  
22 posed ordinance of the municipality.

23 \* Sec. 4. AS 04.16 is amended by adding a new section to read:

24 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF  
25 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages  
26 in a municipality or established village in violation of AS 04.11.498  
27 or an ordinance adopted under AS 04.11.498 may, upon conviction, be  
28 punished by a fine not to exceed \$1,000. When a peace officer stops  
29 or contacts a person concerning a violation of AS 04.11.498 or an

1 ordinance enacted under AS 04.11.498, the peace officer may, in the  
2 officer's discretion, issue a citation to the person as provided in  
3 AS 12.25.180.

4 (b) A person cited for a violation of AS 04.11.498 or an ordi-  
5 nance adopted under AS 04.11.498 for which a bail amount has been  
6 established under (c) of this section may, within 30 days after the  
7 date the citation is issued

8 (1) mail or personally deliver to the clerk of the court in  
9 which the citation is filed by the peace officer the amount of bail  
10 indicated on the citation and a copy of the citation indicating that  
11 the right to an appearance is waived, a plea of no contest is entered  
12 and the bail and all alcoholic beverages seized are forfeited; or

13 (2) perform community work in lieu of payment of the fine  
14 or a portion of the fine as provided in (d) of this section.

15 (c) The supreme court shall establish by rule or order a sched-  
16 ule of bail amounts that may be forfeited without a court appearance  
17 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
18 11.498. In establishing the bail schedule the supreme court may  
19 consider the quantity of alcoholic beverages possessed and the number  
20 of prior violations of the person cited. Before establishing or  
21 amending the schedule of bail amounts required by this subsection, the  
22 supreme court shall appoint and consult with an advisory committee  
23 consisting of the following seven persons: one superior court judge,  
24 one magistrate from each judicial district in the state, a representa-  
25 tive of the Department of Law, and a representative of the Public  
26 Defender Agency. The maximum bail amount may not exceed \$1,000, and  
27 the issuing officer shall write on the citation the amount of bail  
28 applicable to the violation.

29 (d) Community work shall be performed at the direction of the

1 governing body of the municipality or the governing body of the estab-  
2 lished village. The value of community work in lieu of a fine is  
3 \$5.00 per hour. When the community work is completed, the person  
4 cited for the violation shall mail or personally deliver to the clerk  
5 of the court in which the citation is filed by the peace officer

6 (1) a form, prescribed by the administrative director of  
7 the Alaska Court System, indicating completion of the community work;  
8 and

9 (2) a copy of the citation, indicating that the right to an  
10 appearance is waived, a plea of no contest is entered, and that the  
11 bail is forfeited or community work has been performed and that all  
12 alcoholic beverages seized are forfeited.

13 (e) When bail has been forfeited or proof of performance of  
14 community work under this section has been filed with the court, a  
15 judgment shall be entered. Forfeiture of bail or filing proof of  
16 performance of community work and forfeiture of all seized items is a  
17 complete satisfaction for the violation. The clerk of court accepting  
18 the bail or the form indicating performance of community work shall  
19 provide the offender with a receipt stating that fact, if requested.

20 (f) If the person fails to pay the bail amount established under  
21 (c) of this section, or fails to provide proof of performance as spec-  
22 ified in (d)(1) of this section to the court, the citation is con-  
23 sidered a summons.

24 (g) Notwithstanding other provisions of law, if a person cited  
25 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
26 11.498 for which a bail amount has been established under (c) of this  
27 section appears in court and is found guilty, the penalty that is  
28 imposed for the offense may not exceed the bail amount for that of-  
29 fense established under (c) of this section.

1 (h) A violation of AS 04.11.498 or an ordinance adopted under  
2 AS 04.11.498 may not be considered a criminal offense and may not  
3 result in imprisonment, nor is a fine imposed for a violation con-  
4 sidered criminal punishment. A person cited for a violation does not  
5 have a right to a jury trial or court appointed counsel.

6 (i) The commissioner of public safety shall prescribe and pro-  
7 vide a suitable standard citation form that is in a form necessary to  
8 identify the offender, to identify the offense, and to meet the needs  
9 of public safety and administration of justice.

10 (j) A municipality shall adopt a citation form that is equiva-  
11 lent to that prescribed by the commissioner under (i) of this section.

12 \* Sec. 5. AS 04.16.220(a) is amended to read:

13 (a) The following are subject to forfeiture:

14 (1) alcoholic beverages manufactured, sold, offered for  
15 sale or possessed for sale, bartered or exchanged for goods and ser-  
16 vices in this state in violation of AS 04.11.010; alcoholic beverages  
17 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;  
18 alcoholic beverages possessed, sold or offered for sale in an area  
19 where the results of a local option election have, under AS 04.11.-  
20 490 - 04.11.500, prohibited the possession of alcoholic beverages or  
21 prohibited the board from issuing, renewing, or transferring one or  
22 more licenses or permits under this title in the area; alcoholic  
23 beverages transported into the state and sold to persons not licensed  
24 under this chapter in violation of AS 04.16.170(b);

25 (2) materials and equipment used in the manufacture, sale,  
26 offering for sale, possession for sale, barter or exchange of alco-  
27 holic beverages for goods and services in this state in violation of  
28 AS 04.11.010; materials and equipment used in the stocking, warehous-  
29 ing, or storage of alcoholic beverages in violation of AS 04.21.060;

1 materials and equipment used in the sale or offering for sale of an  
2 alcoholic beverage in an area where the results of a local option  
3 election have, under AS 04.11.490 - 04.11.500, prohibited the board  
4 from issuing, renewing, or transferring one or more licenses or per-  
5 mits under this title in the area;

6 (3) aircraft, vehicles, or vessels used to transport, or  
7 facilitate the transportation of

8 (A) alcoholic beverages manufactured, sold, offered  
9 for sale or possessed for sale, bartered or exchanged for goods  
10 and services in this state in violation of AS 04.11.010;

11 (B) property stocked, warehoused, or otherwise stored  
12 in violation of AS 04.21.060;

13 (C) alcoholic beverages imported into a municipality  
14 or established village in violation of AS 04.11.496;

15 (4) alcoholic beverages found on licensed premises that  
16 [WHICH] do not bear federal excise stamps if excise stamps are re-  
17 quired under federal law;

18 (5) alcoholic beverages, materials, or equipment used in  
19 violation of AS 04.16.175.

20 \* Sec. 6. AS 04.16.220(b) is amended to read:

21 (b) Property subject to forfeiture under this section may be  
22 actually or constructively seized under an order issued by the su-  
23 perior court upon a showing of probable cause that the property is  
24 subject to forfeiture under this section. Constructive seizure is  
25 effected upon posting a signed notice of seizure on the item to be  
26 forfeited, stating the violation and the date and place of seizure.  
27 Seizure without a court order may be made if

28 (1) the seizure is incident to a valid arrest or search;

29 (2) the property subject to seizure is the subject of a

1 prior judgment in favor of the state; or

2 (3) there is probable cause to believe that the property is  
3 subject to forfeiture under (a) of this section; except for alcoholic  
4 beverages possessed in violation of AS 04.11.498 or an ordinance  
5 adopted under AS 04.11.498, property seized under this paragraph may  
6 not be held over 48 hours or until an order of forfeiture is issued by  
7 the court, whichever is earlier.

8 \* Sec. 7. AS 04.16.220(d) is amended to read:

9 (d) Property subject to forfeiture under (a) of this section may  
10 be forfeited

11 (1) upon conviction of a person under AS 04.11.010, 04.11.-  
12 496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498  
13 or an ordinance adopted under AS 04.11.498;

14 (2) upon judgment by the superior court in a proceeding in  
15 rem that the property was used in a manner subjecting it to forfeiture  
16 under (a) of this section.

17 \* Sec. 8. AS 04.16.220(h) is amended to read:

18 (h) Alcoholic beverages forfeited under (d) of this section  
19 shall be placed in the custody of a peace officer of the state and  
20 destroyed no earlier than 30 days after forfeiture. All other prop-  
21 erty [PROPERTY] forfeited under this section shall be placed in the  
22 custody of the commissioner of public safety for disposition according  
23 to an order entered by the court. The court shall order destroyed any  
24 property forfeited under this section that [WHICH] is harmful to the  
25 public. Other property shall be ordered sold and the proceeds used  
26 for payment of expenses of the proceedings for forfeiture and sale,  
27 including expenses of seizure, custody and court costs. The remainder  
28 of the proceeds shall be deposited in the general fund.

29 \* Sec. 9. AS 04.21.010(a) is amended to read:

1 (a) A municipality may adopt ordinances governing the barter,  
2 sale, and consumption of alcoholic beverages within the municipality  
3 as necessary for the orderly conduct of the business of selling alco-  
4 holic beverages within the municipality and may ban possession of  
5 alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopt-  
6 ed under this section may not be inconsistent with this title or  
7 regulations adopted under this title.

8 \* Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:

9 (1) "alcoholic beverage" means spirituous, vinous, malt or  
10 other fermented or distilled liquids, whatever the origin, that are  
11 intended for human consumption as a beverage and that contain alcohol,  
12 whether produced commercially or privately;

13 \* Sec. 11. AS 04.21.080(b) is amended by adding a new paragraph to  
14 read:

15 (12) "community work" means and is limited to work on  
16 projects designed to reduce or eliminate environmental damage, protect  
17 the public health, or improve public land, forests, parks, roads,  
18 highways, facilities, or education; community work may not confer a  
19 private benefit on a person except as may be incidental to the public  
20 benefit.

21 \* Sec. 12. AS 29.10.200 is amended by adding a new paragraph to read:

22 (47) AS 29.20.270(e) (ordinance veto by mayor).

23 \* Sec. 13. AS 29.20.270(a) is amended to read:

24 (a) Except as provided in (c), [AND] (d) and (e) of this sec-  
25 tion, the mayor may veto an ordinance, resolution, motion, or other  
26 action of the governing body and may strike or reduce appropriation  
27 items.

28 \* Sec. 14. AS 29.20.270 is amended by adding a new subsection to read:

29 (e) The veto does not extend to an ordinance adopted under

1 AS 04.11.498. This subsection applies to home rule and general law  
2 municipalities.

3 \* Sec. 15. AS 29.25.020 is amended by adding a new subsection to read:  
4

5 (d) This section does not apply to an ordinance proposed under  
6 AS 04.11.502(c).

7 \* Sec. 16. AS 29.25.070 is amended by adding a new subsection to read:

8 (d) This section does not apply to an ordinance adopted under  
9 AS 04.11.498(d) or (e).

10 \* Sec. 17. AS 29.35.080(a) is amended to read:

11 (a) A municipality may regulate the possession, barter, sale,  
12 importation, and consumption of alcoholic beverages in accordance with  
13 AS 04.11.480 - 04.11.506 and AS 04.21.010.  
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**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSSSHB 700 (Fin) am  
 Title : "An Act relating to regulation  
 of alcoholic beverages and enactment  
 of municipal ordinances."  
 Sponsor : Rules Committee  
 Requestor : Senate Finance  
 Date of Request : 4/25/86

**FISCAL DETAIL**

Agency Affected Public Safety  
 BRU : DPS Administration  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Kathy Niles, Admin Assistant  
 Division : Commissioner's Office

Phone : 465-4336  
 Date : 4/25/86

Approved by Commissioner: [Signature]  
 Agency : Public Safety

Date : 4/25/86

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A SEARCH FOR CONTROL:  
THE EFFECT OF ALCOHOL ON  
PUBLIC RIGHTS AND PRIVATE WRONGS



REPORT TO THE LEGISLATURE  
JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS

Representative John Binkley, Chairman  
Senator John Sackett  
Senator Vic Fischer  
Senator Edna DeVries  
Representative Katie Hurley  
Representative John Sund

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EXECUTIVE SUMMARY

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March 1986

Prepared by  
Laurie H. Otto  
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Bethel, Alaska 99559

A SEARCH FOR CONTROL:  
THE EFFECT OF ALCOHOL ON  
PUBLIC RIGHTS AND PRIVATE WRONGS

EXECUTIVE SUMMARY

Introduction

The numbers of social problems stemming from alcohol abuse in Alaska are staggering. The ravaging effects of alcohol are particularly acute in the isolated native communities of rural Alaska.

As a result of the enactment of the present local option law, villagers are precluded from banning alcohol. Many villagers want the power to ban alcohol in their communities because they believe that alcohol prohibition is a way to prevent serious social problems from occurring. Moreover, many villagers and expert analysts believe that existing bans on importing alcohol cannot be enforced unless possession of alcohol is also banned.

In response to requests made by the city councils of several communities in the Yukon-Kuskokwim Delta, the Fourteenth Legislature created the Joint Special Committee on Local Option Laws. The mandate of the Committee was to take testimony and collect data on the question of banning possession of alcoholic beverages within a community.

Eighteen hearings were held by the Committee during the months of November and December 1985. Hearing locations were limited by financial and time constraints to communities located in the western and northern areas of Alaska. These two areas were chosen because most of the communities which have taken advantage of the existing local option law are in western and northern Alaska.

Two significant facts were made clear to the Committee as a result of the hearing testimony. First, villagers want to have strong and healthy communities. However, their ability to turn this desire into reality is limited because they do not have meaningful input into, and thus control over, most of the governmental decisions that directly affect their lives. Second, the problems related to alcohol abuse in the villages cut across every aspect of community and family life.

After considering a vast body of evidence, the Committee found that the harm caused by alcohol abuse is so pervasive, serious and overwhelming that villages should have the authority to ban possession of alcohol. The Committee, therefore, proposed legislation that would add a new alternative to the present local option law and that would allow communities to implement a ban on alcohol. Violation of a ban on possession of alcohol would be punishable by a fine and violators would not receive a criminal record.

The proposed legislation authorizes the Alaska Supreme Court to set a bail forfeiture schedule for violations of the law. Because the statute allows for bail forfeiture, persons not contesting a citation for possessing alcohol could simply mail the appropriate amount of bail to the nearest court in lieu of a fine. Because many villagers have limited access to cash, community services performed under the direction of the city or village council could be substituted for cash bail. One hour of community service would be equal to \$5.00 in cash. Confiscation and forfeiture of liquor possessed in violation of the ban would be permitted.

#### History of Alcohol Regulation in Alaska

From the time of initial Russian contacts with native Alaskans, through the present-day local option legislation, alcohol regulation has been a consistent theme of law enforcement in rural Alaska. Until the last ten to twenty years, federal statutes, state statutes, village ordinances, and community sanctions have all been used as control mechanisms to prohibit rural Alaskans from using alcohol.

Most recently, the legislature adopted the existing local option law in 1980. Under the local option statute, communities that want to limit the importation or distribution of alcoholic beverages can hold elections and choose one of several options for regulating alcohol. The available options are:

1. Prohibition of the sale of alcohol;
2. Prohibition of the sale and importation of alcohol;
3. Restriction of the types of license available for selling alcohol (i.e., beer and wine only);
4. Restriction of alcohol sales to community-owned liquor stores.

#### Studies of Alaska's Local Option Law

In-depth studies have shown that communities are adopting a wide variety of control measures, including the local option law, in an attempt to prevent residents from abusing alcohol. The local option law is an indirect method of controlling alcohol-related behavior and is used because villages do not have direct control over either the use of alcohol by community

members or the resulting alcohol-related deviant behavior. Local option is considered to be a significant and indispensable tool because it helps prevent problems from occurring.

The most frequently used option allows for banning the sale and importation of alcohol. The use of the most restrictive option reflects the desire of many villages to severely limit access to alcohol. If villages could totally prohibit both the manufacture and possession of alcohol, many communities would opt for complete prohibition.

In the communities that have implemented the local option law, there has been a significant reduction in alcohol-related dangerous behavior. After adoption of the local option law, communities have less public drinking and public drunkenness, declines in the amount of alcohol-related interpersonal violence and accidents, and marked improvements in the physical appearance and scholastic performance of the children of drinking parents.

In addition to the direct benefits, other positive side effects of the local option law have been identified. These benefits resulted from the process used in making the decision to regulate alcohol. By implementing the law through an election, the burden of responsibility for the law shifted from the council and village leaders to the entire voting population. As a result, both lawmaking and enforcement have been made easier.

Villagers' concerns about alcohol are not based on moral judgments about drinking, or a desire to intrude on the power of individuals to make decisions about their personal health. The primary reason people want to ban alcohol is because it is intimately related to the deaths of village members. The deaths of young people are of particular concern because many villagers believe that the survival of their culture is completely dependent on the caliber of future community leaders, many of whom are dying in alcohol-related incidents.

#### The 1985 Local Option Hearings

Alcohol is involved in a wide range of social problems occurring in Alaska communities. Some of the problems described during the testimony are:

- \* Virtually all of the violent crime is alcohol related, as is a majority of all types of criminal activity in Alaska.
- \* A large number of deaths, including suicides, are alcohol related.
- \* Children of alcohol abusers suffer problems with their schooling. They do not get enough sleep at night and do not get their homework done because of parents drinking and partying in the home.

- \* Most cases of child abuse and neglect involve alcohol abuse. Many children of drinkers suffer from malnourishment, and some have health problems caused by mothers drinking during pregnancy.
- \* Children of drinkers follow in their parents' footsteps by using and abusing alcohol.
- \* Elders become uneasy and fearful, and cannot eat or sleep, as a result of concern about the behavior of alcohol abusers. This fear and unease causes problems which require medical intervention.
- \* The use and abuse of alcohol is threatening the structure of the extended family. Children and grandchildren in some families are either excluded, or exclude themselves, from extended family activities in an effort to be protected from alcohol abusers.
- \* Alcohol abusers can interrupt critically important subsistence activities.
- \* Essential and irreplaceable family tools, such as snowmachines and boat engines, are broken or destroyed by persons under the influence of alcohol.

#### The Social Costs of Alcohol Abuse

The overall level of alcohol consumption, regardless of beverage source, determines the prevalence of dangerous drinkers and alcohol-related problems, both nationally and within Alaska. Alaska has a high rate of annual consumption in comparison to both the rest of the world and the rest of the United States. Moreover, Alaska has historically shown a dramatic increase over the years in the average annual alcohol consumption rate.

In analyzing which factors most affect per capita consumption rates, a recent study pointed to three variables: the cost of alcohol, the hours in which alcohol is available for sale, and the number of outlets in which alcohol may be purchased. Thus, states with "strict, tight or conservative" liquor laws were found to have low per capita consumption rates, and states with "permissive, loose, or liberal" liquor laws had high per capita consumption.

Chronic alcohol consumption has toxic effects on every part of the body, with medical consequences ranging from slight impairments of physical condition to life-threatening diseases. The most common location of the disease is the liver; however, alcohol may also directly injure the gastro-intestinal tract, muscles, and the pancreas. The cardiovascular system, the nervous system, and the endocrine system may be damaged by alcohol. Finally, there is evidence of a strong association between chronic alcohol use and cancer of the stomach, large intestine, pancreas, and liver.

Studies have consistently shown that alcoholics and heavy drinkers have significantly higher death rates than the rest of

the population. The numbers of homicides, suicides, and accidental deaths are increased as a result of alcohol. Native Alaskans have a particularly high alcohol-related suicide rate. The leading cause of death in Alaska is "accidents" and the rate of accidental death is over twice the national average. A majority of Alaska's accidental deaths are alcohol-related.

Alcohol and violent crime are inseparable in Alaska. Many different studies have shown the close link between criminal activity and the abusive use of alcohol. The highest correlation between alcohol and crime is with violent acts committed in rural Alaska.

Studies have shown that a strong relationship exists between problem drinking and spouse abuse. The domestic violence problems linked to alcohol were not limited to incidents of spouse abuse; child abuse and parent abuse have also been found to be common. In comparing men who abuse their spouses with those who do not, researchers have found that the abusers had a history of exposure to spouse abuse in their childhood home. These findings suggest that spouse abuse may become more widespread as children from violent homes make families of their own.

Heavy drinking during pregnancy increases the risk of miscarriage and can result in alcohol-related birth defects. When consumed in large amounts, alcohol can cause fetal alcohol syndrome.

There is a substantial relationship between having an alcoholic parent and development of alcoholism. Children of alcoholics are frequent victims of incest, child neglect, and other forms of violence and exploitation. In 90% of child abuse cases, alcohol is a significant factor. Children of alcoholics are prone to experience a range of psychological difficulties, including learning disabilities, anxiety, attempted and completed suicide, eating disorders, and compulsive achieving.

The economic cost to society from alcohol abuse is high. Various methodologies have been used for measuring the cost of alcohol abuse to the State of Alaska in dollars. One study concluded that the total cost for fiscal year 1984, including direct and indirect costs, was \$195,500,000. Another analysis of the economic cost of alcohol abuse during the same period found the cost to be \$185,294,061.

#### Legal Issues Presented by Proposal to Ban Alcohol

Under federal law, states are given the power to absolutely prohibit, or to limit and regulate, traffic in intoxicating liquors within their borders. The Alaska Supreme Court has recognized that the legislature has the power to impose either complete prohibition or any other conditions deemed necessary to protect the people of the state.

A ban on the possession of alcohol would not violate the protection given to individual privacy rights in the Alaska Constitution. The courts have repeatedly held that the right to privacy must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely," according to the Alaska Supreme Court.

The Court has found that there is an unmistakable correlation between alcohol consumptions and poor health, death, family violence, child abuse, and crime. Based on this correlation, the court has upheld the portion of the current local option law which allows communities to ban the specific reference to previous rulings of the Alaska Supreme Court that had expressly recognized "the deleterious effects of consuming alcoholic beverages" and that had expressly found alcohol to be more dangerous than either marijuana or cocaine.

#### Committee Findings

Finding Number One: The abusive use of alcohol interferes in a serious manner with the health, safety, rights, and privileges of Alaskans, and with the public welfare.

Finding Number Two: The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

Finding Number Three: The prohibition of alcohol in rural Alaska villages is an effective tool for controlling the abusive use of alcohol.

Finding Number Four: Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

Finding Number Five: There is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family stability, and child abuse.

Finding Number Six: The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of alcohol, and would increase the cost of illicitly-available liquor.

Finding Number Seven: The dangers resulting from alcohol abuse are particularly acute in rural Alaska because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.

Finding Number Eight: The most damaging type of abusive alcohol-related behavior is that which affects innocent victims, such as children and elders. Children are particularly vulnerable, and as a result of parental alcohol abuse, suffer from a broad range of serious problems.

Finding Number Nine: The abusive use of alcohol perpetuates an escalating pattern of crime and violence from generation to generation.

Finding Number Ten: The most serious harm to the innocent victims of alcohol abuse takes place in private homes and behind closed doors. In communities that have chosen to ban the sale and importation of alcohol, and that have significant alcohol-related social problems, most drinking takes place in private homes.

Finding Number Eleven: The economic cost of alcohol abuse is high and cannot be afforded by either the state or rural communities.

Finding Number Twelve: A significant number of rural Alaska communities want, and would use, the authority to ban possession of alcohol. These communities have had a long-standing belief that alcohol should be completely banned, and this belief is based on a lengthy history of alcohol prohibition in rural villages.

Finding Number Thirteen: The policy decision to ban possession of alcohol is one that must be made by local governments. If local authorities are precluded from making such a decision, self-government efforts are undermined, respect for the state legal system is lost, and the public welfare is damaged.

Finding Number Fourteen: Although Alaska law permits communities to ban the sale and importation of alcoholic beverages, the present law is unenforceable because the possession of alcoholic beverages, including homebrew, is permitted.

#### Committee Conclusions

The severity of Alaska's problems with alcohol cannot be overemphasized, or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state. Every possible tool must be available for use in combatting the threat posed by alcohol.

Since Alaska communities are extremely diverse, the tools available to fight alcohol abuse must be equally varied. Approaches to controlling alcohol that are effective in urban areas are unlikely to work in the rural villages of the state. Similarly, alcohol control mechanisms that help stop the disintegration of homogenous and isolated villages, would be completely out of place in a complex urban community. Laws must be flexible enough to provide solutions to the problems faced in all communities.

Villagers repeatedly told the Committee that they want the power to completely prohibit alcohol. The broad range of problems that are associated with alcohol abuse, and which are set forth in the Committee Findings of Fact, legally and morally justify legislative action that grants villages that power. Therefore, the recommendation of the Committee is that the local option law be amended and that communities be granted the power to ban possession of alcohol

Ford.

A M E N D M E N T

Offered in the HOUSE FINANCE COMMITTEE

By Binkley

TO: CSSSHB 700(C&RA)

Page 1, line 27, delete "and"

Page 1, line 29, following "communities", delete "." and insert "; and"

Page 1, after line 29, insert a new paragraph to read:

"(9) a fine in the amount of \$1,000 or 200 hours of community work, is not so severe a penalty as to indicate criminality in either rural or urban Alaska communities."

## Sectional Analysis

### Committee Substitute for Sponsor Substitute Bill for House Bill 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

SECTION 1: Sets forth in Legislative Findings the specific reasons for amending the existing local option law.

SECTION 2: Provides established villages and municipalities the authority to hold elections to ban possession of alcohol, as an addition to the options for regulating alcohol allowed under current law. Following an election, alcoholic beverages would be banned by city ordinance in municipalities and by state statute in established villages. Excludes from the definition of possession "alcoholic beverages within the digestive system of a person."

SECTION 3: Specifies that a petition for local option election constitutes a proposed ordinance of a municipality.

SECTION 4: Sets penalty for possession of alcohol in violation of law as a maximum \$1,000 fine, for which community work, supervised by the governing body of the community, may be substituted at the option of the offender. Authorizes the Supreme Court to set a bail forfeiture schedule after consultation with an advisory committee. Mandates that the Commissioner of the Department of Public Safety develop a uniform citation form, which must be adopted by municipalities. Allows appearance on a citation to be waived, a plea of no contest to be entered, and bail and all alcoholic beverages seized to be forfeited. Specifies that possession of alcohol in violation of the law is not a criminal offense, and does not give rise to the right to jury trial or to court-appointed counsel.

SECTION 5: Provides that alcoholic beverages possessed in violation of a ban is subject to forfeiture.

SECTION 6: Provides an exception to the requirement that a court hearing be held within 48 hours of seizure of property subject to forfeiture for alcoholic beverages possessed in violation of a community ban on alcohol. This section does not change Alaska law

relating to search and seizure, rather it recognizes that alcohol possessed in violation of a ban is contraband and that a court hearing to consider the propriety of its seizure would have no purpose.

SECTION 7: Specifies that forfeiture may occur at the point when judgment has been entered on a citation.

SECTION 8: Requires that alcoholic beverages forfeited under the law be destroyed no earlier than 30 days after forfeiture.

SECTION 9: Authorizes municipalities to adopt ordinances banning possession of alcohol as set forth in Section 2 of CSSSHB700.

SECTION 10: Clarifies that the definition of alcoholic beverage includes privately produced beverages containing alcohol.

SECTION 11: Conforms Title 29 with Sections 2 and 9.

SECTION 12: Conforms Title 29 with Sections 2 and 9.

SECTION 13: Conforms Title 29 with Sections 2 and 9.

SECTION 14: Conforms Title 29 with Sections 2 and 9.

SECTION 15: Conforms Title 29 with Sections 2 and 9.

SECTION 16: Conforms Title 29 with Sections 2 and 9.



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE  
STAFF COUNSEL

303 K Street  
Anchorage, Alaska 99501

(907) 284-8228

April 9, 1986

Rep. Peter Goll, Chair  
House Community and  
Regional Affairs Committee  
P. O. Box V  
Juneau AK 99811

Dear Rep. Goll:

I am writing on behalf of the Alaska Court System to bring to your attention some minor questions with HB 700, relating to the regulation of alcoholic beverages and enactment of municipal ordinances. The court system shares the legislature's concern about the consequences of alcohol abuse. As you know, this bill would permit localities to determine whether an ordinance should be adopted prohibiting the possession of alcoholic beverages within the municipality or village. Because possession of alcohol is not an offense under current law, issuance of citations to enforce these ordinances will increase the court's workload. However, because enforcement is tied to a mail-in bail forfeiture system rather than to a mandatory court appearance, most of the impact will be at the clerical level.

Adoption of such ordinances will impact the court system in two ways. First, although the bail mail-in forfeiture mechanism eliminates the need for mandatory court appearances (which are time-consuming for enforcement officials and judicial officers), new work is created for court clerks who are required to accept bail forfeiture payments. Work is also created for judicial officers when an individual fails to pay the bail forfeiture amount or fails to perform community work, in which case a bench warrant must be issued. Additionally, some new trials will occur for those defendants who decide to plead not guilty and who request a court appearance. The workload impact on the courts as a result of these new violations will depend on the number of citations which are filed.

I have discussed the potential workload impact with Laurie Otto. Although precise information is unavailable, it is assumed that about half of the villages which now ban importation of alcohol would adopt restrictive ordinances. Population in these villages ranges from 150 to 600, with an

Peter Goll  
April 9, 1986  
Page 2

estimated 15-30 problem drinkers. Some of these persons will be cited repeatedly. Magistrate locations can therefore anticipate increased filing of citations. Ms. Otto indicates that citations for other alcohol offenses should decrease (since it is hoped that the seizure provisions of this bill will have a major impact on problem drinking). However, implementation of bail forfeiture procedures will require magistrate training. Training is especially critical in the area of bench warrant procedures, since improper issuance of warrants leads to litigation against the state for false arrest.

The court system will review the anticipated workload increase as well as magistrate training needs (for which funding is severely limited under current budget projections), and will determine the extent of any fiscal impact.

Another area of impact involves the supreme court, which will be required to adopt a bail forfeiture schedule for violations of these ordinances. The supreme court has adopted similar schedules for traffic infractions and misdemeanors, for misdemeanors committed in state parks, and for fish and game offenses. The court endeavors to establish an amount which will penalize the defendant for the conduct while at the same time giving a violator an incentive to plead not guilty rather than to appear in court and contest the citation.

One area of concern with this bill relates to the manner in which the supreme court will adopt the bail forfeiture schedule. This legislation anticipates that the supreme court will set varying levels of bail forfeitures depending on a number of prior violations and the quantity of alcoholic beverages possessed. There is no simple way for the supreme court to arrive at appropriate figures. In fish and game and park offenses, the legislature has recognized this concern by creating committees consisting of appropriate enforcement officials and legislators to make recommendations to the supreme court in an advisory capacity about the proposed bail schedule. Establishment of such a committee could prove helpful to the supreme court in setting a bail schedule for these ordinances.

Another problem for courts stems from the difficulty in knowing whether a defendant has complied. Under the bill a citation is considered a summons if a defendant fails to pay the bail forfeiture amount or fails to perform community work. Courts will know whether a bail forfeiture amount has been paid because these payments are received directly by the court. However, it is possible that a defendant could perform community work yet fail to submit the necessary paperwork to the court system. In this case, the court might issue a bench warrant based on the summons for a defendant who had already performed community work but had failed to submit the necessary paperwork to the court. An alternative approach would be for local officials rather than defendants to inform courts when community work has been completed and for a bench warrant to issue within a specified number of days after the court receives notice from the locality.

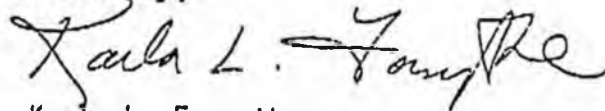
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Peter Goll  
April 9, 1986  
Page 3

Successful implementation of this legislation will require close coordination between courts and enforcement officials. If possible, a uniform citation should be drafted and should be reviewed by the court prior to adoption, to ensure it comports with court processing procedures. Second, courts and localities need to determine how courts will be informed that a person has completed community work.

I hope these comments are helpful. The court system will be glad to provide any additional information which the committee or the bill sponsors require to address these and any other court-related concerns.

Sincerely,



Karla L. Forsythe  
Staff Counsel

KF/k1

cc: Arthur H. Snowden, II  
Rep. Binkley

POSITION PAPER  
ON  
SPONSOR SUBSTITUTE FOR HOUSE BILL 700

"An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

Discussion

From a public health and public safety perspective the Department of Health and Social Services is entirely supportive of SSHB 700. Consistent with previous Alaska Judiciary findings in *Boehl vs. Saber Jet* and *Harrison vs. State of Alaska*, SSHB 700 makes note, under Legislative Findings, of the deleterious relationship between alcohol abuse and a variety of health and social ills. This Department, which too often provides services for the casualties of alcohol abuse, applauds the Joint Special Committee on Local Alcohol Options for the inclusion of this section in the bill.

This bill implements a process to ban possession of alcohol. To the maximum extent possible, SSHB 700 attempts to place the decision for adoption, responsibility, enforcement, and adjudication upon the local government unit. The Department is supportive of this approach because of the unique nature of individual communities in rural Alaska that are likely to be impacted by the passage of this bill. Even though past local option initiatives have generally produced healthier villages, a problem of enforcement does exist. The transfer of this responsibility from the State to local "community governing body", as outlined in section 4, will be most helpful in strengthening the process of local option. An argument may be advanced regarding an individual resident's right to possess alcohol in a dry area. With regard to alcohol in rural Alaska, it is the Department's position that the right of health and well-being of the community exceeds those rights of the individual. This right of the rural community to take an action to ensure its well-being and safety is clearly outlined by the Supreme Court in the *Harrison* case. The State was upheld, in part, because inadequate health and public safety responses are prevalent in rural Alaska to assist with the injuries that occur as a result of alcohol abuse. Furthermore, the problem of alcohol abuse in rural Alaska is of catastrophic proportions and requires a major community response.

The Department did commission a study recently by the Justice Center, University of Alaska/Anchorage, entitled *Feasibility Study on the Effects of Local Option Law on Local Communities*. A principle finding of this study is that the negative consequences of drinking have greatly decreased in villages that have banned importation. The study also indicated, however, that considerable frustration exists in villages if alcohol is imported undetected, since there presently is no legal remedy for this situation. SSHB 700 attempts to go one step further in the array of options available to a community by allowing ordinances to ban possession. A Village Public Safety Officer (VPSO) estimated a 25% decrease in the availability of alcohol in a village that banned importation. It is expected that if a village exercises its option to ban possession the availability of alcohol could be further decreased.

The Department recognizes passage of SSHB 700 will not be a panacea for all of the alcohol problems in rural Alaska but does view it as a vehicle or tool for further improvement of the present condition.

Position

The Department of Health and Social Services strongly supports SSHB 700. This legislation continues the Office of Alcoholism and Drug Abuse's past efforts in the prevention of alcohol abuse in rural Alaska by limiting availability. SSHB 700 gives rural Alaskans a method of fulfilling their apparently strong desire to improve the health and welfare of their communities.

Recommended by:

*Matthew C. Felix*  
.....  
Matthew C. Felix  
Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

*4/4/86*  
.....

Approved by:

*John R. Pugh*  
.....  
John R. Pugh  
Commissioner  
Department of Health  
and Social Services

Date:

*4/4/86*  
.....

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SSHB 700

Support

April 11, 1986

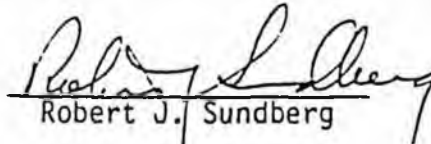
SSHB 700 - "An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

The Department of Public Safety supports SSHB 700.

The impetus of this bill is to restrict alcohol, as much as possible, from any village or municipality, that votes to outlaw the possession of such.

The bill addresses the problem currently faced by many of the villages after they voted in favor of restricting the importation and sale of alcohol where in possession is still a constant unenforceable problem.

The bill further addresses the punitive aspects in a manner that does not materially impact law enforcement, the courts or Corrections.

  
Robert J. Sundberg

Introduced: 4/4/86  
Referred: Community & Regional  
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to regulation of alcoholic beverages

7

and enactment of municipal ordinances."

8

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

9

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10

(1) abuse of alcohol seriously interferes with the rights and

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privileges of the people of the state;

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(2) the public health, safety, and welfare does in fact suffer

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when alcohol abuse is not controlled;

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(3) prohibition of alcohol in rural areas of the state is an

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effective tool for controlling the abuse of alcohol;

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(4) serious crimes and a wide variety of other social problems

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could be prevented if the possession of alcohol were prohibited;

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(5) there is a strong and unmistakable correlation between

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alcohol consumption and poor health, fetal damage, suicide, domestic vio-

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lence, and crime;

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(6) the dangers resulting from alcohol abuse are particularly

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acute in rural areas of the state because the communities are small,

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isolated, without adequate law enforcement, without adequate health care

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facilities, and populated by people who are closely related and interdepen-

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dent;

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(7) in communities that have chosen to ban the sale and importa-

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tion of alcohol, most drinking takes place in private homes; and

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(8) the economic cost of alcohol abuse is high, and cannot be

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afforded by the state or small rural communities.

1 \* Sec. 2. AS 04.11 is amended by adding a new section to read:

2           Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVER-  
3 AGES. (a) The following question, appearing alone, may be placed  
4 before the voters of a municipality or an established village in  
5 accordance with AS 04.11.502: "Shall the possession of alcoholic  
6 beverages be prohibited in . . . . (name of municipality or vil-  
7 lage)? (yes or no)."

8           (b) If a majority of the voters of an established village vote  
9 "yes" on the question set out in (a) of this section, a person, begin-  
10 ning on the first day of the month following certification of the  
11 results of the election, may not knowingly possess an alcoholic  
12 beverage in the established village, unless the alcoholic beverage is  
13 sacramental wine to be used for bona fide religious purposes based on  
14 tenets or teachings of a church or religious body, is limited in  
15 quantity to the amount necessary for religious purposes, and is dis-  
16 pensed only for religious purposes by a person authorized by the  
17 church or religious body to dispense the sacramental wine. The board  
18 shall be notified immediately after certification of the results of  
19 the election and thereafter may not issue, renew, or transfer between  
20 holders or locations a license for licensed premises located within  
21 the perimeter of the established village. Licenses that may not be  
22 renewed because of a local option election held under this section are  
23 void on the first day of the month following certification of the  
24 election.

25           (c) If a majority of the voters of a municipality vote "yes" on  
26 the question set out in (a) of this section, an ordinance is adopted  
27 that becomes effective beginning on the first day of the month follow-  
28 ing certification of the results of the election, and a person may not  
29 knowingly possess an alcoholic beverage in the municipality, unless

1 the alcoholic beverage is sacramental wine to be used for bona fide  
2 religious purposes based on tenets or teachings of a church or reli-  
3 gious body, is limited in quantity to the amount necessary for reli-  
4 gious purposes, and is dispensed only for religious purposes by a  
5 person authorized by the church or religious body to dispense the  
6 sacramental wine. The board shall be notified immediately after the  
7 adoption of the ordinance and thereafter may not issue, renew, or  
8 transfer between holders or locations a license for licensed premises  
9 located within the boundaries of the municipality and within unincor-  
10 porated areas within five miles of the boundaries of the municipality.  
11 Licenses that may not be renewed because of a local option election  
12 held under this section are void on the first day of the month follow-  
13 ing certification of the election.

14 (d) If a majority of the voters vote "no" on the question set  
15 out in (a) of this section or vote "yes" on the questions set out in  
16 AS 04.11.492 or 04.11.500 in an election conducted in accordance with  
17 AS 04.11.502 after an election in which the voters voted "yes" on the  
18 question set out in (a) of this section, the prohibition on the pos-  
19 session of alcoholic beverages is removed effective 90 days after the  
20 results of the election are certified except as those prohibitions  
21 continue to be imposed in accordance with the results of the subse-  
22 quent election.

23 (e) For the purposes of this section, "possession" means having  
24 physical possession of or exercising dominion or control over alco-  
25 holic beverages, but does not include having alcoholic beverages  
26 within the digestive system of a person.

27 \* Sec. 3. AS 04.11.502 is amended by adding a new subsection to read:

28 (c) A petition filed with the local governing body of a munic-  
29 ipality in accordance with (a) of this section, which places on the

1 ballot the question set out in AS 04.11.498, shall constitute a pro-  
2 posed ordinance of the municipality.

3 \* Sec. 4. AS 04.16 is amended by adding a new section to read:

4 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF  
5 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages  
6 in a municipality or established village in violation of AS 04.11.498  
7 or an ordinance adopted under AS 04.11.498 may, upon conviction, be  
8 punished by a fine not to exceed \$1,000. When a peace officer stops  
9 or contacts a person concerning a violation of AS 04.11.498 or an  
10 ordinance enacted under AS 04.11.498, the peace officer may, in the  
11 officer's discretion, issue a citation to the person as provided in  
12 AS 12.25.180.

13 (b) A person cited for a violation of AS 04.11.498 or an ordi-  
14 nance adopted under AS 04.11.498 for which a bail amount has been  
15 established under (c) of this section may, within 30 days after the  
16 date of the citation

17 (1) mail or personally deliver to the clerk of the court in  
18 which the citation is filed by the peace officer the amount of bail  
19 indicated on the citation and a copy of the citation indicating that  
20 the right to an appearance is waived, a plea of no contest is entered  
21 and the bail and all alcoholic beverages seized are forfeited; or

22 (2) perform community work in lieu of payment of the fine  
23 or a portion of the fine as provided in (d) of this section.

24 (c) The supreme court shall establish by rule or order a sched-  
25 ule of bail amounts that may be forfeited without a court appearance  
26 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
27 11.498. In establishing the bail schedule the supreme court may  
28 consider the quantity of alcoholic beverages possessed and the number  
29 of prior violations of the person cited. The maximum bail amount may

1 not exceed \$1,000, and if a citation is issued that may be disposed of  
2 without court appearance, the issuing officer shall write on the  
3 citation the amount of bail applicable to the violation.

4 (d) Community work shall be performed at the direction of the  
5 governing body of the municipality or the village council of the  
6 established village. The value of community work in lieu of a fine is  
7 \$5.00 per hour. When the community work is completed, the person  
8 cited for the violation shall mail or personally deliver to the clerk  
9 of the court in which the citation is filed by the peace officer

10 (1) a form, prescribed by the board, indicating completion  
11 of the community work; and

12 (2) a copy of the citation, indicating that the right to an  
13 appearance is waived, a plea of no contest is entered, and that the  
14 bail is forfeited or community work has been performed and that all  
15 alcoholic beverages seized are forfeited.

16 (e) When bail has been forfeited or community work performed  
17 under this section, a judgment of conviction shall be entered. For-  
18 feiture of bail or performance of community work and forfeiture of all  
19 seized items is a complete satisfaction for the violation. The clerk  
20 of court accepting the bail or the form indicating performance of  
21 community work shall provide the offender with a receipt stating that  
22 fact.

23 (f) If the person fails to pay the bail amount established under  
24 (c) of this section or to perform community work as provided in (d) of  
25 this section, the citation is considered a summons.

26 (g) Notwithstanding other provisions of law, if a person cited  
27 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
28 11.498 for which a bail amount has been established under (c) of this  
29 section appears in court and is found guilty, the penalty that is

1 imposed for the offense may not exceed the bail amount for that  
2 offense established under (c) of this section.

3 (h) A violation of AS 04.11.498 or an ordinance adopted under  
4 AS 04.11.498 may not be considered a criminal offense and may not  
5 result in imprisonment, nor is a fine imposed for a violation con-  
6 sidered criminal punishment. A person cited for a violation does not  
7 have a right to a jury trial or court appointed counsel.

8 \* Sec. 5. AS 04.16.220(a) is amended to read:

9 (a) The following are subject to forfeiture:

10 (1) alcoholic beverages manufactured, sold, offered for  
11 sale or possessed for sale, bartered or exchanged for goods and ser-  
12 vices in this state in violation of AS 04.11.010; alcoholic beverages  
13 stocked, warehoused, or otherwise stored in violation of AS 04.21.060;  
14 alcoholic beverages possessed, sold or offered for sale in an area  
15 where the results of a local option election have, under AS 04.11.-  
16 490 - 04.11.500, prohibited the possession of alcoholic beverages or  
17 prohibited the board from issuing, renewing, or transferring one or  
18 more licenses or permits under this title in the area; alcoholic  
19 beverages transported into the state and sold to persons not licensed  
20 under this chapter in violation of AS 04.16.170(b);

21 (2) materials and equipment used in the manufacture, sale,  
22 offering for sale, possession for sale, barter or exchange of alco-  
23 holic beverages for goods and services in this state in violation of  
24 AS 04.11.010; materials and equipment used in the stocking, warehous-  
25 ing, or storage of alcoholic beverages in violation of AS 04.21.060;  
26 materials and equipment used in the sale or offering for sale of an  
27 alcoholic beverage in an area where the results of a local option  
28 election have, under AS 04.11.490 - 04.11.500, prohibited the board  
29 from issuing, renewing, or transferring one or more licenses or

1 permits under this title in the area;

2 (3) aircraft, vehicles, or vessels used to transport, or  
3 facilitate the transportation of

4 (A) alcoholic beverages manufactured, sold, offered  
5 for sale or possessed for sale, bartered or exchanged for goods  
6 and services in this state in violation of AS 04.11.010;

7 (B) property stocked, warehoused, or otherwise stored  
8 in violation of AS 04.21.060;

9 (C) alcoholic beverages imported into a municipality  
10 or established village in violation of AS 04.11.496;

11 (D) alcoholic beverages possessed in violation of  
12 AS 04.11.498 or an ordinance adopted under AS 04.11.498;

13 (4) alcoholic beverages found on licensed premises that  
14 [WHICH] do not bear federal excise stamps if excise stamps are re-  
15 quired under federal law;

16 (5) alcoholic beverages, materials, or equipment used in  
17 violation of AS 04.16.175.

18 \* Sec. 6. AS 04.16.220(b) is amended to read:

19 (b) Property subject to forfeiture under this section may be  
20 actually or constructively seized under an order issued by the  
21 superior court upon a showing of probable cause that the property is  
22 subject to forfeiture under this section. Constructive seizure is  
23 effected upon posting a signed notice of seizure on the item to be  
24 forfeited, stating the violation and the date and place of seizure.  
25 Seizure without a court order may be made if

26 (1) the seizure is incident to a valid arrest, [OR] search,  
27 or a citation issued under AS 04.11.498 or an ordinance adopted under  
28 AS 04.11.498;

29 (2) the property subject to seizure is the subject of a

1 prior judgment in favor of the state; or

2 (3) there is probable cause to believe that the property is  
3 subject to forfeiture under (a) of this section; property seized under  
4 this paragraph may not be held over 48 hours or until an order of  
5 forfeiture is issued by the court, whichever is earlier.

6 \* Sec. 7. AS 04.16.220(d) is amended to read:

7 (d) Property subject to forfeiture under (a) of this section may  
8 be forfeited

9 (1) upon conviction of a person under AS 04.11.010, 04.11.-  
10 496(b), 04.11.498, or AS 04.21.060;

11 (2) upon judgment by the superior court in a proceeding in  
12 rem that the property was used in a manner subjecting it to forfeiture  
13 under (a) of this section.

14 \* Sec. 8. AS 04.16.220(h) is amended to read:

15 (h) Alcoholic beverages forfeited under (d) of this section  
16 shall be placed in the custody of a peace officer of the state and  
17 destroyed not later than 30 days after forfeiture. All other property  
18 [PROPERTY] forfeited under this section shall be placed in the custody  
19 of the commissioner of public safety for disposition according to an  
20 order entered by the court. The court shall order destroyed any  
21 property forfeited under this section that [WHICH] is harmful to the  
22 public. Other property shall be ordered sold and the proceeds used  
23 for payment of expenses of the proceedings for forfeiture and sale,  
24 including expenses of seizure, custody and court costs. The remainder  
25 of the proceeds shall be deposited in the general fund.

26 \* Sec. 9. AS 04.21.010(a) is amended to read:

27 (a) A municipality may adopt ordinances governing the barter,  
28 sale, and consumption of alcoholic beverages within the municipality  
29 as necessary for the orderly conduct of the business of selling

1       alcoholic beverages within the municipality and may ban possession of  
2       alcoholic beverages under AS 04.11.498(c). An ordinance adopted under  
3       this section may not be inconsistent with this title or regulations  
4       adopted under this title.

5       \* Sec. 10. AS 04.21.080(b)(1) is repealed and reenacted to read:  
6               (1) "alcoholic beverage" means spirituous, vinous, malt or  
7       other fermented or distilled liquids, whatever the origin, that are  
8       intended for human consumption and that contain alcohol, whether  
9       produced commercially or privately;

10       \* Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:  
11               (47) AS 29.20.270(e) (ordinance veto by mayor).

12       \* Sec. 12. AS 29.20.270(a) is amended to read:  
13               (a) Except as provided in (c), [AND] (d) and (e) of this sec-  
14       tion, the mayor may veto an ordinance, resolution, motion, or other  
15       action of the governing body and may strike or reduce appropriation  
16       items.

17       \* Sec. 13. AS 29.20.270 is amended by adding a new subsection to read:  
18               (e) The veto does not extend to an ordinance adopted under  
19       AS 04.11.498. This subsection applies to home rule and general law  
20       municipalities.

21       \* Sec. 14. AS 29.25.020 is amended by adding a new subsection to read:  
22               (d) This section does not apply to an ordinance proposed under  
23       AS 04.11.502(c).

24       \* Sec. 15. AS 29.25.070 is amended by adding a new subsection to read:  
25               (d) This section does not apply to an ordinance adopted under  
26       AS 04.11.498(c).

27       \* Sec. 16. AS 29.35.080(a) is amended to read:  
28               (a) A municipality may regulate the possession, barter, sale,  
29       importation, and consumption of alcoholic beverages in accordance with

1 AS 04.11.480 - 04.11.506 and AS 04.21.010.