

Edwards
409

Introduced: 5/1/85
Referred: Finance

BY BINKLEY, SUND, ADAMS, ROUCHER,
CATO, CLOCKSIN, COLLINS, COTTEN,
DAVIS, DUNCAN, FRANK, FULLER,
GOLL, GRUENBERG, GRUSSENDORF,
HANLEY, HERRMANN, HURLEY, JENKINS,
KOPONEN, LARSON, M.M. MILLER,
M.W. MILLER, NAVARRE, PETTYJOHN,
PIGNALBERI, POURCHOT, RIEGER,
RINGSTAD, SZYMANSKI, TAYLOR,
THOMPSON, UEHLING, WALLIS AND MARROU

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO. 35

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Relating to a legislative committee to
6 study local option elections.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS there is an ever increasing need to find solutions to problems
9 associated with alcohol abuse in the state; and

10 WHEREAS the problems associated with alcohol abuse are particularly
11 disruptive to rural communities; and

12 WHEREAS local option elections offer a means for rural communities to
13 address local alcohol problems; and

14 WHEREAS the legislature desires to explore the advisability of local
15 option elections on the question of banning possession of alcoholic
16 beverages within a community;

17 BE IT RESOLVED by the Alaska State Legislature that under Uniform
18 Rule 21 a joint special committee on local option laws is established
19 consisting of three members of the senate appointed by the president of the
20 senate and three members of the house of representatives appointed by the
21 speaker of the house to hold public hearings in rural communities and to
22 take testimony and collect data on the subject of local option elections on
23 the question of banning possession of alcoholic beverages within a commun-
24 ity; and be it

25 FURTHER RESOLVED that before the committee dissolves on the 10th day
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27 report to the legislature that addresses the merits of and makes recommen-
28 dations concerning these local option elections.

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H

COMMITTEE COPY

ALASKA STATE LEGISLATURE

14th Legislature FIRST Session

CONCURRENT HOUSE RESOLUTION NO. 35

By BINKLEY, SUND, ADAMS, BOUCHER, CATO, CLOCKSIK, COLLINS, COTTEN, DAVIS, DUNCAN, FRANK, FULLER, GOLL, GRUENBERG, GRUSSENDORF, HANLEY, HERRMANN, HURLEY, JENKINS, KOPONEN, LARSON, M. M. MILLER, M. W. MILLER, NAVARRE, PETTYJOHN, PIGNALBERI, POURCHOT, RIEGER, RINGSTAD, SZYMANSKI, TAYLOR, THOMPSON, UEHLING, WALLIS, MARROU

Relating to a legislative committee to study local option elections.

Local Option Elections

Introduced in the House .. 5/1 .., 19.85

HISTORY IN THE HOUSE

19 85

May 1

Read first time and referred to Committee on

FINANCE

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration
PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused
Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration
PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused
Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

COMMITTEE COPY

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HCR 35
 Title: Re: Legislative committee
to study local option elections
 Sponsor: Representative Binkley
 Requestor: House Finance Committee
 Date of Request: 5/3/85

FISCAL DETAIL

Agency Affected: Legislature
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | -0- | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | | | | |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

APA

Prepared By: Representative Adams - Chairman Phone: 465-3706
 Division: House Finance Committee Date: 5/3/85

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

7/1/84

STATE OF ALASKA

MEMBER
FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES

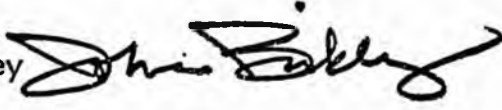


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JUNEAU ALASKA 99811
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(907) 43-2922

REPRESENTATIVE JOHNE BINKLEY

MEMORANDUM

TO: Representative Al Adams, Chairman DATE: May 3, 1985
House Finance Committee

FROM: Representative Johne Binkley 

RE: HCR 35 - Relating to a legislative committee
to study local option elections.

In 1980 the Alaska Legislature amended Title 4 of the Alaska Statutes to provide for local option elections in rural villages to control alcohol. The statute provides for four options:

- prohibition of sale of alcohol
- prohibition of sale and importation
- restriction of license by type
- restriction of sales through community stores

Since passage of the statutes a number of villages have elected to use the state law local options to prohibit sale and importation into the villages. By and large, these efforts have not been as successful as proponents of the legislation had envisioned.

Implementation of local option laws has been difficult. Under the current option prohibiting "sale and importation," a criminal prosecution must prove beyond a reasonable doubt that the accused actually imported the alcohol into the village. Such a conviction is impossible unless the accused is caught in the act of importing.

An option banning possession, however, is more readily provable. Either alcohol is present or it is not. Expanding the options available to communities under Title 4 to allow a fifth option to ban possession would more directly meet the needs and desires of many villages. It would simplify enforcement and close the loopholes in the current laws, and in some cases, encourage primary enforcement at the local level.

The attached letter from the Department of Law addresses the feasibility of revising the local option laws to include a ban on possession of alcohol. It specifically addresses concerns over the constitutionality of such an option, recommending that the legislature establish a comprehensive record of the compelling need for such an option.

Alcohol abuse continues to be the number one health and safety problem in our state. Clearly, existing laws have not provided satisfactory solutions. It is time to seek new solutions; I urge your support for HCR 35 creating a legislative committee to examine the merits and ramifications of local option and to make recommendations for the legislature's consideration early next year.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

April 16, 1985

BILL SHEFFIELD, GOVERNOR

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

Honorable John Binkley
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Binkley:

You have asked our advice regarding the feasibility of revising the local option laws to include a ban on the possession of alcohol as an option available to individual communities. Ordinarily, the best course of action would be to simply introduce a bill to fulfill this purpose and then pursue its passage in the usual manner. However, because of the various policy considerations which we previously have discussed, and particularly because of the significant potential for constitutional attack, we would recommend that a bill not be introduced until the proper groundwork has been laid by compiling a substantial factual record which will assist in both the passage and defense of the bill.

If a ban on possession of alcohol is instituted, the law will most certainly be challenged under Alaska's explicit constitutional right to privacy (Art. I, Sec. 22). It was under this constitutional provision that the Alaska Supreme Court in 1975 held that the state could not prohibit possession of marijuana by adults in their own homes for personal use. The court held that the state had not demonstrated the existence of a legitimate state interest which was strong enough to justify the regulation of this conduct. Ravin v. State, 537 P.2d 497 (Alaska 1975).

Although the Alaska Supreme Court has stated in Harrison v. State, 687 P.2d 332 (Alaska 1984) that there is no fundamental right to possess or consume alcohol, any ban on possession of alcohol would be challenged under Alaska's constitutional right to privacy. The test used by the court in Ravin read as follows:

It is appropriate in this case to resolve Ravin's privacy claims by determining whether there is a proper governmental interest in imposing restrictions on marijuana use and whether the means chosen bear

a substantial relationship to the legislative purpose. If government restrictions interfere with the individual's right to privacy, we will require that the relationship between means and ends be not merely reasonable but close and substantial.

In State v. Erickson, 574 P.2d 1 (Alaska 1978), the court applied the Ravin standard to a claim that the prohibition against cocaine possession and use in the home violated the right to privacy. The court noted, in its analysis, that a special protection is accorded to the home, stating that "where the right to privacy is manifested in terms of interests more squarely within personal autonomy, the balance [of the individual's interest in privacy and the government's interest in health and safety] requires a heavier burden on the state to sustain the legislation in light of the right involved." Erickson, 574 P.2d at 22 n. 144.

The court, in Harrison, has already recognized an unmistakable correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime. The court expressly recognized the deleterious effects of consuming alcoholic beverages. The court also recognized that marijuana, and even cocaine (State v. Erickson, 574 P.2d 22 (Alaska 1978)), are less dangerous.

But it must be noted that the court in the Harrison case did not rule on the constitutionality of a complete ban on the possession of alcohol. They ruled that a ban on importation and distribution of alcohol did not violate Alaska's constitutional right to privacy. The court saw a definite relationship between a ban on importation and its ultimate effect on possession, but they also made it perfectly clear that the right to consume alcohol in the home was not directly at issue in this case. Harrison 687 P.2d at 338.

One way to enact a defensible law would be to establish a comprehensive legislative record of the compelling need for expanding the options available to include a complete ban on possession. That is, the legislature's consideration of the bill should include extensive public hearings, debate on the social policy merits of the proposal, and the collection of the most recent scientific, medical, and pharmacological studies regarding the physical, emotional, and social effects of alcohol consumption. If, after reviewing the data, the legislature concludes that the danger inherent in the consumption of alcohol, especially in the home, is significant enough to justify a complete ban on possession of alcohol, it makes it much easier for the court to uphold the constitutionality of the measure. In making its decision, the court can rely, to a great extent,

on the data collected, the findings made, and the strong legislative intent expressed.

If you desire to pursue this process, the following steps are recommended:

(1) A legislative resolution should be drafted which would (a) establish the desire of the legislature to seek new solutions to the alcohol abuse problem, especially in rural areas; (b) establish the desire of the legislature to explore the possibility of offering a local option to individual communities of a complete ban on possession of alcohol; (c) establish a select committee consisting of representatives from rural communities, the medical profession, social services agencies, law enforcement agencies, prosecution agencies, and the legislature; and (d) establish the mandate of this committee as examining the merits and ramifications of such a local option--with duties including the holding of public hearings, the collection of data, and the preparation of written recommendations for the legislature's consideration by the beginning of next session.

As we discussed at our lunch meeting with Mike Wallery, the appropriate places for these public meetings would be in areas such as the NANA region, the Bethel and St. Mary's region, the Tanana Chiefs Conference (TCC) region, the Southeast region and the Anchorage area. Also, as we discussed, sufficient publicity should be provided ahead of time which encourages community members to attend and testify--especially family members who have experienced the effects of alcohol abuse in their home and those persons who have had problems with alcohol themselves. Special effort should be made to notify representatives from the fields of law enforcement, prosecution, social work, alcohol counselling, and medicine.

Once the committee's written recommendations are submitted, they should be put in the form of legislative proposals. The legislative committee hearings on these legislative proposals should establish a good factual record--leading to the preparation and adoption of specific legislative findings. The legislative hearings will not be able to be as extensive as the public hearings held by the select committee, but the same type of testimony should be gathered, in summary form, which was used to substantiate the select committee's findings.

Once this process is completed, and all hearings and findings clearly establish that the danger of alcohol consumption in the home is significant, it will be much more difficult for the court to find that a ban on possession in the home does not bear a close and substantial relationship to the legislative purpose of protecting the public health and welfare. It will be difficult for the court to say that under Alaska's

constitution, the privacy interest in being able to have a glass of wine in one's own home outweighs the need to protect the public from harm to themselves and others.

For your information, a subcommission and public hearing process was also used to develop the revised criminal code in 1978. And furthermore, since the recriminalization of possession of small amounts of marijuana suffers the same potential of constitutional challenge, we have recommended a similar approach for that legislative proposal, as well. Another approach would entail the use of a legislative interim committee, instead of a select committee made up of community members with special expertise.

The Department of Law will be happy to review the resolution drafted by your Division of Legal Affairs and provide any other assistance needed.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 

Lisa B. Nelson

Assistant Attorney General

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Referred: Finance

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