

HB

174

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 5, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/28/89

The JUDICIARY Committee considered:

HB 174

HOUSE BILL NO. 174

[MUNICIPAL REFERENDUM]

"An Act relating to suspension of a municipal ordinance or resolution against which a referendum petition is filed."

RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] have attached amendment(s) [ ] a new title  
[ ] do pass  
[ ] do not pass  
[ ] no recommendation  
[X] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_  
[ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_  
[X] zero fiscal note(s) CANDRA 4/5/89  
[ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

Mike Miller  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Mike Miller</u>		✓	
<u>Mike Jones</u>		✓	
<u>Mike Jones</u>		✓	
<u>Terry Masters</u>		✓	
<u>J. G. Ellis</u>		✓	
<u>Sup. [unclear]</u>		✓	
_____			
_____			
_____			

Mike Jones  
Chairman's Signature

HOUSE COMMITTEE REPORT

4/25

(5)  
Date Referred: February 15, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/4/89

The COMMUNITY & REGIONAL AFFAIRS Committee considered:

HB 174

HOUSE BILL NO. 174 [MUNICIPAL REFERENDUM]  
"An Act relating to suspension of a municipal ordinance or resolution against which a referendum petition is filed."

RECOMMENDS:

- [ ] replacing with \_\_\_\_\_ [ ] the same title
- [ ] the attached amendment(s) [ ] a new title
- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [  ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [ ] fiscal impact
- [  ] zero fiscal note *CTRA*
- [ ] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published: \_\_\_\_\_
- [ ] zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

*Richard J. Foster* FOSTER  
*Eileen P. MacLean* MACLEAN

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

*Cheri Davis* No Rec. C. DAVIS  
*Allyson* no rec. PETTYJOH.

*Eileen P. MacLean*  
 Chairman's signature

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act, suspension of a municipal ordinance.."  
Sponsor: House C&RA Committee  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELL. NEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

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

Prepared by: Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: April 3, 1989

Approved by Commissioner: David C. Hoffman  
Agency: Community & Regional Affairs

Date: 4-3-89

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



Official Business

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

TO: ALL MEMBERS  
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE EILEEN P. MACLEAN, CHAIRMAN *Eileen P. Maclean*  
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: February 13, 1989

RE: Proposed Committee Legislation

Please review the enclosed legislation and information pertaining to it. I plan to introduce this legislation on Wednesday, February 15th as a committee bill unless there is objection from members on the committee. The legislation would clarify in statute that an ordinance or resolution is suspended if a referendum petition is filed before the operative date of the ordinance or resolution.

cc: Representative Peter Goll, Co-Chair  
Representative Max Gruenberg, Co-Chair  
House Judiciary Committee

STATE OF ALASKA  
THE LEGISLATURE

POUCH 7 STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1989

SUBJECT: Municipal Referendums  
(Work Order No. 16-0722A)

TO: Representative Eileen MacLean, Chairman  
Community and Regional Affairs Committee

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

You have asked for a draft bill that incorporates the substance of the decision, Interior Taxpayers Association, Inc. v. Fairbanks North Star Borough, 742 P.2d 781 (Alaska 1987). A copy of that case is enclosed for your reference. That case held, in essence, that even when a referendum petition is filed against an ordinance that has already gone into legal effect, that ordinance is suspended if it has not yet become operative. At issue was a sales tax which had been enacted, but collection of the tax had not yet begun at the time the referendum petition was filed.

Existing law now provides for suspension when a petition is filed before the effective date. This draft expands that section to provide for suspension of ordinances or resolutions to when a petition is filed before the operative date of the ordinance or resolution. Please contact me if you would like any changes.

TBC:gc  
W6/071

Enclosure(2)

AS 29.26.180(b)

THE EFFECTIVE DATE OF THE SUSPENSION OF AN ORDINANCE BEING REFERRED IS EXAMINED.

The Supreme Court of Alaska held that "effective date of the matter referred" refers to the date when the ordinance becomes operative rather than the date when the ordinance becomes law; the law requires that when a petition for a referendum is filed, the ordinance that is the subject of the referral is suspended pending the referendum vote if the "petition is certified before the effective date of the matter referred". The court noted that the term "effective date of the matter referred" can reasonably have at least two meanings: either when the ordinance becomes law or when the ordinance becomes operative. The ordinance in question had become law but did not yet require the collection of the new sales tax. The court noted that under the procedure of the borough, an ordinance takes effect as an ordinance on the first business day after it is adopted; the automatic suspension procedure would be completely meaningless unless the effective date is interpreted to mean when the ordinance becomes operative. The court also agreed that the term "matter referred" is vague." Interior Taxpayers Ass'n. Inc. v. Fairbanks North Star Borough, 742 P.2d 781.

While the decision of the court clarifies the vague phrase, review is recommended.

nal Rule 11(h)(2).  
 case, we hold that  
 err in finding that  
 h a fair and just  
 plea.

IRMED.

INTERIOR TAXPAYERS ASSOCIATION, INC., an Alaska non-profit corporation, Petitioner.

v.

FAIRBANKS NORTH STAR BOROUGH, Respondent.

No. S-2315.

Supreme Court of Alaska.

Sept. 15, 1987.

After borough refused to suspend collection of sales tax pending referendum on sales tax ordinance that had been scheduled, suit was brought to enjoin collection. The Superior Court denied motion for preliminary injunction and review was sought. The Supreme Court held that "effective date of the matter referred," within meaning of statute requiring suspension of ordinance against which petition for referendum is filed if such petition is certified before such date, refers to when ordinance becomes operative, rather than when ordinance becomes law.

Order reversed, case remanded with instructions.

1. Statutes §301, 341

Initiative and referendum powers set forth in Alaska Constitution, and laws implementing those powers, should be liberally construed.

2. Municipal Corporations §108.10

"Effective date of the matter referred," within meaning of statute requiring suspension of ordinance or resolution against which a petition for referendum is filed if petition is certified before such date, refers to when ordinance becomes operative such that compliance with its terms is required, rather than when ordinance becomes effective. AS 29.26.180(b).

See publication Words and Phrases for other judicial constructions and definitions.

Peter J. Aschenbrenner, Fairbanks, for petitioner.

Eugene P. Hardy, Asst. Borough Atty., Fairbanks, for respondent.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

ORDER

This petition for review involves a referendum petition on a sales tax for the Fairbanks North Star Borough. The petition for referendum was certified as meeting the requirements of law by the clerk of the borough on July 23, 1987. AS 29.26.180(b) provides:

If a petition is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote.

The referendum vote is scheduled for October 6, 1987. However, the borough refused to suspend the collection of the sales tax which was to begin on August 1, 1987. The petitioner sued to enjoin collection and moved for a preliminary injunction. The trial court denied the motion for a preliminary injunction on the grounds that the effective date of the ordinance reimposing the sales tax was June 15, 1987 even though the sales tax was not to go into effect until August 1. Thus, the court reasoned, certification of the referendum petition occurred after, rather than before, the effective date of the matter referred and suspension was not required under the statute. Petitioner seeks review of this ruling.

The court has previously stayed collection of the sales tax pending a decision on the petition for review. We now grant the petition and order entry of a preliminary injunction for the reasons that follow.

The term "effective date of the matter referred" can reasonably have at least two meanings. Under one meaning the term may refer to when the ordinance becomes law. Alternatively, the term may refer to when the ordinance becomes operative, that is, when compliance with its terms is

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STATE OF ALASKA  
THE LEGISLATURE

PRINTED AT THE  
LEGISLATIVE PRESS  
907 465 1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 26, 1989

SUBJECT: Amendment to HB 174

TO: Representative Terry Martin

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Here is the amendment that you requested providing that when a referendum petition is certified the ordinance or resolution that is the subject of the petition is suspended pending the referendum vote. A petition is certified when it is filed with the municipal clerk and is found to meet the form requirements and signature requirements of statute.

Under existing law the matter that is the subject of a referendum petition is suspended only if it has not yet taken effect at the time of certification. HB 174 in its original form clarifies the language used in accordance with the decision, Interior Taxpayers Association Inc. v. Fairbanks North Star Borough, 742 P.2d 781 (Alaska 1978).

TBC:gc  
WKG9/118

Enclosure

A M E N D M E N T

REFERRED IN THE HOUSE

BY MARTIN

TO: HB 174

lines 11 - 15:

delete all material and insert:

"(b) When [IF] a petition is certified [BEFORE THE EFFECTIVE DATE OF THE MATTER REFERRED,] the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote."

A M E N D M E N T

To: HB 174

Offered in House Judiciary

On page 1, line 11, delete subsection (b) and insert:

(b) When [IF] a petition is certified [BEFORE THE EFFECTIVE DATE OF THE MATTER REFERRED], the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the governing body may not enact an ordinance or resolution substantially similar to the suspended measure.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 ALR3d 655.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

Validity and construction of statute or ordinance prohibiting desecration of church. 90 ALR3d 1128.

Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 ALR3d 1230.

**Sec. 29.25.020. Ordinance procedure.** (a) An ordinance is introduced in writing in the form required by the governing body.

(b) The following procedure governs the enactment of all ordinances, except emergency ordinances:

(1) an ordinance may be introduced by a member or committee of the governing body, or by the mayor or manager;

(2) an ordinance shall be set by the governing body for a public hearing by the affirmative vote of a majority of the votes authorized on the question;

(3) at least five days before the public hearing a summary of the ordinance shall be published together with a notice of the time and place for the hearing;

(4) copies of the ordinance shall be available to all persons present at the hearing, or the ordinance shall be read in full;

(5) during the hearing the governing body shall hear all interested persons wishing to be heard;

(6) after the public hearing the governing body shall consider the ordinance, and may adopt it with or without amendment;

(7) the governing body shall print and make available copies of an ordinance that is adopted.

(c) An ordinance takes effect upon adoption or at a later date specified in the ordinance.

(d) This section does not apply to an ordinance proposed under AS 04.11.502(c). (§ 8 ch 74 SLA 1985; am § 15 ch 80 SLA 1986)

**Effect of amendments.** — The 1986 amendment added subsection (d).

#### NOTES TO DECISIONS

An ordinance may be amended after public hearing without the necessity of a new hearing. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978), decided under former, similar law.

Only those changes to an ordinance which are so substantial as to change its basic character require that the public hearing process be repeated. *Liberati v.*

*Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978), decided under former, similar law.

Where a public hearing on an ordinance took place, and subsequently the ordinance was amended but the amendments fell squarely within the descriptive summary published in the newspaper as notice of the previous public hearing, no additional hearing was required and failure

Bill/Resolution History

08:56 AM 02/17/89

Page 1

BILL: HB 174

NAME:

TITLE: "An Act relating to suspension of a municipal ordinance or resolution against which a referendum petition is filed."

PRIME SPONSOR: COMMUNITY & REGIONAL AFFAIRS

CURRENT STATUS: (H) CRA  
THEN JUD

STATUS DATE: 02/15/89

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU	TEXT	PRINT	BWD	FWD		FIRST	LAST	QUIT



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

TO: ALL MEMBERS  
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE EILEEN P. MACLEAN, CHAIRMAN *Eileen P. Maclean*  
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: February 13, 1989

RE: Proposed Committee Legislation

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STATE OF ALASKA  
THE LEGISLATURE

HOUSE OF REPRESENTATIVES  
LEGISLATIVE COUNCIL  
207 463 0000

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 1, 1989

SUBJECT: Municipal Referendums  
(Work Order No. 16-0722A)

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TBC:gc  
W6/071

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v.

FAIRBANKS NORTH STAR BOROUGH, Respondent.

No. S-2315.

Supreme Court of Alaska.

Sept. 15, 1987.

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See publication Words and Phrases for other judicial constructions and definitions.

Peter J. Aschenbrenner, Fairbanks, for petitioner.

Eugene P. Hardy, Asst. Borough Atty., Fairbanks, for respondent.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

ORDER

This petition for review involves a referendum petition on a sales tax for the Fairbanks North Star Borough. The petition for referendum was certified as meeting the requirements of law by the clerk of the borough on July 23, 1987. AS 29.26.180(b) provides:

If a petition is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote.

The referendum vote is scheduled for October 6, 1987. However, the borough refused to suspend the collection of the sales tax which was to begin on August 1, 1987. The petitioner sued to enjoin collection and moved for a preliminary injunction. The trial court denied the motion for a preliminary injunction on the grounds that the effective date of the ordinance reimposing the sales tax was June 15, 1987 even though the sales tax was not to go into effect until August 1. Thus, the court reasoned, certification of the referendum petition occurred after, rather than before, the effective date of the matter referred and suspension was not required under the statute. Petitioner seeks review of this ruling.

The court has previously stayed collection of the sales tax pending a decision on the petition for review. We now grant the petition and order entry of a preliminary injunction for the reasons that follow.

The term "effective date of the matter referred" can reasonably have at least two meanings. Under one meaning the term may refer to when the ordinance becomes law. Alternatively, the term may refer to when the ordinance becomes operative, that is, when compliance with its terms is

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required.<sup>1</sup> The trial court adopted the first meaning. In our view the second meaning is to be preferred for several reasons.

[1,2] First, initiative and referendum powers are set forth in our constitution and the laws implementing them should be liberally construed. *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977). "To that end 'all doubts as to technical deficiencies or failure to comply with the exact letter of procedure shall be resolved in favor of the accomplishment of that purpose.'" *Id.* (citing *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974), quoting *Cope v. Toronto*, 8 Utah 2d 255, 332 P.2d 977, 979 (1958) (footnote omitted)).

Second, the referendum process can not start without having an ordinance which has been passed by the municipality in question. Under the Fairbanks North Star Borough procedure, an ordinance takes effect on the first business day following the day it is passed. There is obviously no case where AS 29.26.180(b) could operate with respect to Fairbanks North Star Borough ordinances if "effective date" means merely when the ordinance becomes law. Thus, the automatic suspension statute could be made completely meaningless if we interpret "effective date" as did the trial judge.

Third, the purpose of the "before the effective date" limitation on suspension seems to be to avoid public confusion, as where the public first must comply with a new law, then the need for compliance is eliminated because of certification of a referendum petition, and then compliance is required because of voter approval at the referendum election. Interpreting effective date in the sense of operative date is consistent with this purpose.

Fourth, "matter referred" is a vague term. Its use suggests that the legislature did not mean that it would be necessarily synonymous with "ordinance or resolution against which the petition is filed." If so, the distinction is between the ordinance on the one hand and its subject matter on the

other. Accepting this distinction, one may readily say in the context of this case that while the effective date of the ordinance is the day after it was passed, the effective date of the subject matter, the tax, is when the tax is first levied.

The petition for review is granted, the order denying the motion for preliminary injunction is reversed, and this case is remanded to the superior court with instructions to grant the motion for preliminary injunction and for further proceedings.



Douglas A. CARSON, Petitioner,

v.

STATE of Alaska, Respondent.

No. S-2262.

Supreme Court of Alaska.

Sept. 17, 1987.

Appeal from the District Court, Third Judicial District; James C. Hornaday, Judge.

Kevin F. McCoy, Asst. Public Defender, Kenai, Dana Fabe, Public Defender, Anchorage, for petitioner.

James V. Gould, Asst. Atty. Gen., Anchorage, Grace Berg Schaible, Atty. Gen., Juneau, for respondent.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

#### ORDER

On consideration of the petition for hearing filed July 6, 1987, and response thereto,

IT IS ORDERED:

The petition for hearing is denied.

1. A case which demonstrates that "effective date" does not necessarily mean the date on which the law becomes law, but when it be-

comes operative, is *City of Plantation v. Mason*, 170 So.2d 441, 442 (Fla.1964).

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1 IN THE HOUSE

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suspension of a municipal ordi-  
7 nance or resolution against which a referendum peti-  
8 tion is filed."

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

10 \* Section 1. AS 29.26.180(b) is amended to read:

11 (b) If a petition is certified before the effective date of the  
12 ordinance or resolution against which the petition is filed or before  
13 the operative date when compliance with the ordinance or resolution is  
14 required [MATTER REFERRED], the ordinance or resolution [AGAINST WHICH  
15 THE PETITION IS FILED] shall be suspended pending the referendum vote.  
16 During the period of suspension, the governing body may not enact an  
17 ordinance or resolution substantially similar to the suspended mea-  
18 sure.

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