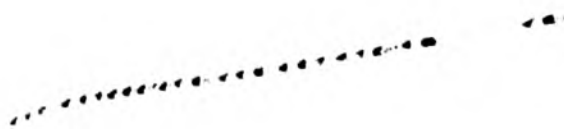


**SB**

**128**



**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 3/19/07

FURTHER: Judiciary  
Finance

Date of 5-Day Notice: March 22, 2007  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: March 28, 2007

Community and Regional Affairs Committee considered SENATE BILL NO. 128

**SB 128 ALCOHOL LOCAL OPTION PROVISIONS**

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

and recommends:

- be replaced with  SCS or  CS 128 (CRA)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>
<input type="checkbox"/> Same Title
<input checked="" type="checkbox"/> New Title
<hr/>
<b>HOUSE BILL:</b>
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____


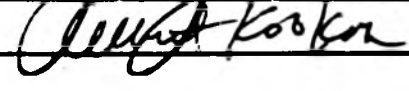
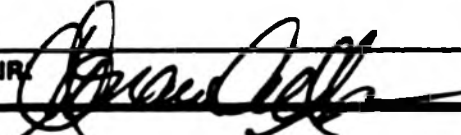
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FNE
DPS	3/27/07		✓		

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	No REC	AMEND
	Thomas	✓			
	KOOKER	✓			
CHAIR 	Olson	✓			

# ALASKA STATE LEGISLATURE

SENATOR DONALD C. OLSON



ALASKA  
STATE CAPITOL  
ROOM 514  
JUNEAU, ALASKA 99801-1182

(907) 465-3707  
FAX (907) 465-4821

## **Sponsor Statement Senate Bill 128**

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

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

The bill also corrects an inadequacy in state liquor law that hampers the ability of large hub communities to attract investment in family oriented restaurants. There are now allowances for the transfer of a borough license to a city within the borough's borders in order to meet public demand and promote economic development.

Version E

**SECTIONAL ANALYSIS  
SENATE BILL 128**

**Sections 1 and 2** require the Alaska Beverage Control (ABC) Board, after working with package store licensees, to create and maintain a database that keeps track of written orders for alcohol from persons residing in damp local option communities. A package store licensee must consult the database before filling a written order from the local option area to ensure that the customer has not already ordered the alcohol that the local option allows for that particular month. Any order filled must be immediately entered in the database. The information would be used to prevent bootleggers from ordering alcohol from numerous package stores in violation of the local option. The information in the database may only be used as specifically allowed by package stores and law enforcement; the information in the database would not be public information.

**Section 3** prohibits a package store from shipping alcohol in response to a written order from a person residing in a local option area to any address other than the address of the person ordering the alcohol. However, if the person ordering the alcohol lives in an area where a community delivery site has been established, the alcohol must be shipped to the delivery site.

**Sections 4 and 5** correct an omission in state law that does not allow for transfer of liquor licenses in large hub communities from the organized borough to within city limits of the community. For example, communities like Wasilla, Kenai, or North Pole may have only a few licenses within the city, but the cities serve large populations outside city limits. The bill would allow transfer of licenses available in the surrounding borough into the city center, to promote economic development in businesses such as family-oriented restaurants. The transfer would require the approval of the governing body of both the borough and the city.

**Sections 6, 7, 11, and 12** prohibit a person from purchasing alcoholic beverages in a local option area from another person who is selling the alcohol in violation of the local option. This conduct would be a class A misdemeanor. Under current law, AS 04.16.200(b), the person selling alcohol in violation of a local option would be guilty of a class C felony. Sections 6 and 11 include conforming amendments for the new provisions in Sections 7 and 12.

**Section 8** extends the period after a local option has been adopted in a community from 12 to 24 months, before an election may be held to remove the option or to change the option to a less restrictive alternative. It would also provide that after a community has adopted a local option, an election removing the option or making it less restrictive may be held once in a 36 month period, rather than the 18 month period in current law.

**Section 9** prohibits a person from purchasing alcohol by written order on behalf of another person who resides in a community that has elected to be dry. The penalty for this violation would be a class A misdemeanor.

**Section 10** prohibits a person in a dry local option area from possessing ingredients or equipment with the intent to use them in the creation of home brew. This conduct would be a class A misdemeanor.

**Sections 13 and 14** amend the forfeiture provisions for violation of AS 04.11.499. The law would allow for the forfeiture of alcohol that was purchased from a person who brought the alcohol into the community in violation of the community's local option. They would not allow for the forfeiture of an airplane or other vehicle upon conviction of a person for the purchase of alcohol from a bootlegger.

**Section 15** would allow the ABC Board to establish pilot alcohol delivery sites in Bethel and Kotzebue, if the Board is requested by either community to do so. If opened, the sites would operate for a period of three years.

**Sections 16 - 20** include an instruction to the revisor of statutes and effective dates.

**SECTIONAL ANALYSIS  
SENATE BILL**

**Sections 1 and 2** require the Alaska Beverage Control (ABC) Board, after working with package store licensees, to create and maintain a database that keeps track of written orders for alcohol from persons residing in damp local option communities. A package store must consult the database before filling a written order from the local option area to ensure that the customer has not already ordered the alcohol that the local option allows for that particular month. Any order filled must be immediately entered in the database. The information would be used to prevent bootleggers from ordering alcohol from numerous package stores in violation of the local option. The information in the database may only be used as specifically allowed by package stores and law enforcement; the information in the database would not be public information.

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**Sections 4, 5, 9, and 10** prohibit a person from purchasing alcoholic beverages in a local option area from another person who is selling the alcohol in violation of the local option. This conduct would be a class A misdemeanor. Under current law, AS 04.16.200(b), the person selling alcohol in violation of the local option would be guilty of a class C felony. Sections 4 and 9 include conforming amendments for the new provision in Sections 5 and 10.

**Section 6** extends the period after a local option has been adopted in a community from 12 to 24 months before an election may be held to remove the option or to change the option to a less restrictive alternative. It would also provide that after a community has adopted a local option, an election removing the option or making it less restrictive may be held once in a 36 month period, rather than the 18 month period in current law.

**Section 7** prohibits a person from purchasing alcohol by written order on behalf of another person who resides in a community that has elected to be dry. The penalty for this violation would be a class A misdemeanor.

**Section 8** prohibits a person in a dry local option area from possessing ingredients or equipment with the intent to use them in the creation of home brew. This conduct would be a class A misdemeanor.

**Sections 11 and 12** amend the forfeiture provisions for violation of AS 04.11.499. They allow for the forfeiture of alcohol that was purchased from a person who brought the alcohol into the community in violation of the community's local option. They do not

allow the forfeiture of an airplane or other vehicle upon conviction of a person for the purchase of alcohol from a bootlegger.

Section 13 would allow the ABC Board to establish pilot alcohol delivery sites in Bethel and Kotzebue, if the Board is requested by either community to do so. If opened, the sites would operate for a period of three years.

Sections 14 – 18 include an instruction to the revisor of statutes and effective dates.

**SECTIONAL ANALYSIS  
SENATE BILL**

**Sections 1, 2, and 9** require the Alaska Beverage Control (ABC) Board, after working with package store licensees, to create and maintain a database that keeps track of written orders for alcohol from persons residing in damp local option communities. A package store must consult the database before filling a written order from the local option area to ensure that the customer has not already ordered the alcohol that the local option allows for that particular month. Any order filled must be immediately entered in the database. The information would be used to prevent bootleggers from ordered alcohol from numerous package stores in violation of the local option. The information in the database may only be used as specifically allowed by package stores and law enforcement, and the information in the database would not be public information.

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**Section 5** extends the period after a local option has been adopted in a community from 12 to 24 months before an election may be held to remove the option or to change the option to a less restrictive alternative. It would also provide that after a community has adopted a local option, an election removing the option or making it less restrictive may be held once in a 36 month period, rather than the 18 month period in current law.

**Section 6** prohibits a person from purchasing alcohol by written order on behalf of another person who resides in a community that has elected to be a dry community. The penalty for this violation would be a class A misdemeanor.

**Section 8** prohibits a person in a dry local option area from possessing ingredients or equipment with the intent to use them in the creation of home brew. This conduct would be a class A misdemeanor.

**Section 10** would allow the ABC Board to establish pilot alcohol delivery sites in Bethel and Kotzebue, if the Board is requested by either community to do so. If opened, the sites would operate for a period of three years.

**Sections 11 – 15** include an instruction to the revisor of statutes and effective dates.

# LEGAL SERVICES

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

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

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

## MEMORANDUM

March 16, 2007

**SUBJECT:** Local or Special Acts Constitutional concern  
(Work Order No. 25-LS0742/A)

**TO:** Senator Donald Olson  
Attn: David Gray

**FROM:** Alpheus Bullard *AB*  
Legislative Counsel

The bill draft relating to the sale, distribution, and purchase of alcoholic beverages is enclosed. Please be advised that section 16 of the bill (the pilot project) might be challenged as a violation of the constitutional prohibition against local or special legislation contained in art. II, sec. 19 of the state constitution. That section states in relevant part:

The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination.

The test employed by the Alaska Supreme Court to determine whether an act violates the prohibition against local or special acts is substantially the same as that applied under a nonsuspect class equal protection analysis. Upon examining the legislative goals and the means used to advance them, the court determines whether the legislation bears a fair and substantial relationship to a legitimate state purpose. State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), cert. denied, 432 US 901, 53 L.Ed.2d 1073 (1977). To satisfy the "fair and substantial relationship" standard, the classification established by the legislation must be tailored to the purpose of the legislation. The classification must be neither overinclusive nor underinclusive. Isakson v. Rickey, 550 P.2d 350, 362 (Alaska 1976). If the "fair and substantial relationship" standard is met, the bill will not be invalidated because of incidental local or private advantages. Lewis, 559 P.2d at 643.

In Lewis, the court agreed that legislation of statewide significance need not have an effect in all parts of the state; legislation does not become "local" merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. The Lewis case involved the Cook Inlet land exchange and the court accepted the premise that the land exchange, while only affecting land in Southcentral Alaska, required legislation to be accomplished and was of common interest to the whole state. The court relied heavily on the record developed by the legislature in support of

Senator Donald Olson

March 16, 2007

Page 2

the need for the land exchange and the decision to resolve serious issues surrounding Alaska Native land selections under the Alaska Native Claim Settlement Act through legislation authorizing the Cook Inlet land exchange.

In a case where a violation of sec. 19 was found, the court said that legislation establishing the Eagle River Borough was special and peculiar to the locality where the borough was established. Since there was nothing in the nature of the Eagle River-Chugiak area that justified a departure from the general law scheme for the establishment of boroughs, the statute violated sec. 19. Abrams v. State, 534 P.2d 91 (Alaska 1975).

More recently the court upheld an act modifying oil and gas leases on the Northstar field because "the Act's exclusive focus on the Northstar leases reflects their unique nature, and because the Act fairly and substantially relates to legitimate state purposes." Baxley v. State, 958 P.2d 422 at 431 (Alaska 1998).

If the state is able to show that the "alcoholic beverage delivery site pilot project" serves a legitimate state purpose and that the establishment of delivery sites in the communities of Bethel and Kotzebue bears a fair and substantial relationship to that purpose, then this bill section should not be interpreted as unconstitutional. However, a court may interpret this bill as a "local or special law," in that the bill operates to single out two communities for a "pilot project," when there exists, under AS 04.11.491(f), a provision for municipalities and established villages to designate delivery sites if they so desire.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med  
07-171.med

Enclosure

## **Informational Primer on State Liquor Law Effect on Local Economic Development**



The City of Wasilla, in partnership with cities, boroughs, and developers from around the State is seeking to rectify an inadequacy in state liquor law that hampers the ability of hub communities to attract investment in high-end and family oriented restaurants. State law currently allows for 1 such license for every 3,000 residents of a community, so in communities such as Wasilla, Kenai, or North Pole there may be only 2-3 full liquor licenses allocated to go around for restaurants to use. The problem is these communities serve population areas outside of their city limits which are many times their own city population thus providing a large market for restaurants. Since so few licenses are allowed and there is no way to augment the number of liquor licenses allowed in a city the result is a lack of dining options, particularly high end or family oriented dining options in these communities and their surrounding areas.

The City of Wasilla itself has been approached by numerous higher end and family oriented dining groups interested in locating in our city, only to learn such location is impossible because a large component of their business model is the sale of wine and mixed drinks with dinner, which they cannot do here without an outlandish outlay of capital to secure an existing liquor license from within the closed liquor license market.

Instead of seeking to create more liquor licenses we feel it would be good public policy to use existing licenses more efficiently by making use of existing borough allocated licenses in hub cities within those boroughs.

We are suggesting the state liquor license law be changed in the following ways:

1. Restaurants within cities should be allowed to use beverage dispensary liquor licenses allocated to their boroughs when and only when both the city and borough agree to such a use.

*Since these licenses are allocated to the boroughs to serve their populations and the cities act as the commercial hub servicing these same populations it would seem logical that a borough could transfer one of its licenses to city control to meet borough commercial needs.*

**2. Such transfers would only be allowed for restaurants transferring beverage dispensary liquor licenses.**

*This legislation is not intended to allow for proliferation of package liquor stores, bars, or other liquor distribution venues outside of sit-down dining establishments.*

**3. Such transfers should only be allowed in boroughs with a population of 40,000 or more.**

*Since this legislation is intended to service the needs of larger suburban populations it seems logical to permit it only where such populations are large enough to warrant such action.*

**Please contact Casey Reynolds, Economic Development Planner for the City of Wasilla at (907) 373-9030 to discuss our ideas and the process to change liquor license laws in Alaska.**



**TANANA CHIEFS CONFERENCE, INC.**

122 FIRST AVENUE  
FAIRBANKS, ALASKA 99701-4897

March 27, 2007

Dear Members of the Senate Community and Regional Affairs,

Re: In support of SB 128

As you know, issues related to the abuse of alcohol remain of grave importance to the health, safety, and welfare to the people of the Tanana Chiefs Conference Region. Senate Bill 128 proposes to take several steps forward in improving the regulation of alcohol in our villages.

- We support the establishment of a statewide database designed to allow a package store licensee to access, reducing the amount of alcohol that might otherwise go into a restricted area under AS 04.11.150(g).
- The provision to prohibit shipment of alcohol to addresses other than where the purchaser lives is of critical importance to our villages. Too often a buyer will have alcohol shipped to a nearby village that does not have a prohibition, cause a great deal of trouble in that village, and then illegally imports that alcohol into their own village.
- Extending the timeframe that local option law may be conducted to a less restrictive option, and extending the timeframe for conducting an election more than once are both excellent amendments to existing law, allowing for more stability and encouraging healthy behaviors.

- We support the provision which adds a prohibition on possession of homebrew ingredients with intent to manufacture alcohol.
- We support the addition of a penalty for a person purchasing alcohol from another person who had transported it illegally into a village.

Thank you for consideration of our support for the measures in Senate Bill 128, and for your hard work during this legislative session.

Sincerely,

**Jerry Isaac, President**

**Tanana Chiefs Conference  
122 First Ave  
Fairbanks, AK 99701  
1-800-478-6822**

Good Afternoon. Thank you for this opportunity to testify on SB 128. My name is Loretta Bullard. I am President of Kawerak, the regional non-profit consortium providing non-health services throughout the Bering Straits Region of Alaska. I also serve on the Alaska Rural Justice and Law Enforcement Commission representing Village Public Safety Officer contractors in the State.

Alcohol and substance abuse is the nucleus around which many of rural Alaska's social problems revolve. Alcohol is a contributing factor in many, if not the majority of suicides, homicides, child sexual abuse and physical neglect, domestic violence situations, and accidental death and injuries in rural Alaska. It is a 100% factor in children diagnosed to be FAS and FAE. I estimate that 90% of the Alaska Natives serving time in Alaska correctional facilities, are serving time for offenses conducted under the influence of alcohol, for consuming alcohol while on probation, or for importing or brewing alcohol in violation of local option laws. Alcohol abuse has a huge impact on Alaska families and on the State fiscal situation.

I am testifying in support of SB 128. Many of the provisions contained in SB 128 are practical solutions that were developed as part of the RJLC work group process. In this process, we had individuals from around the State of Alaska participate in work groups to develop options for consideration by the Commission, which if implemented, would improve rural justice and safety throughout the State of Alaska. Work group members included representatives from the Department of Law, Department of Public Safety, rural residents, Alaska Legal Services, Alaska Federation of Natives as well as several Commissioners.

Provisions contained in SB 128 will help to curtail the importation of alcohol into communities that have opted to be damp or dry under Alaska Statutes by:

- Creating a statewide data base that will enable package store outlets to confirm that duplicate shipments are not being shipped to any particular individual in violation of the limits imposed by law. Currently, an individual could order 20 shipments from 20 different outlets – much of which would no doubt be bootlegged. This would greatly curtail bootlegging activity in rural Alaska.
- Requires that alcohol shipments only be shipped to a purchaser's home address. This prevents alcohol from being shipped to nearby damp or wet communities, and then subsequently being imported into dry communities in violation of the local option law.
- Providing the opportunity for Bethel and Kotzebue to set up Alcohol Beverage Delivery Site Pilot Projects. As we understand it, Barrow established such a site a number of years ago which has proven to be a huge success in controlling the amount and delivery of alcoholic beverages into their community.

The language would also limit the ability of a community to remove a local option or change to a less restrictive option – such that a revote could not be conducted during the first 24 months after the local option was adopted or more than once in a 36 month period. This would give the community time to fully experience whether the local option

law is working for the community – and limit flip flopping due to organizing by very persuasive individuals at the local level.

The recommendations in SB 128 primarily address the supply side of the issue. I encourage the Alaska legislature to also make additional funds available to address the demand for and treatment of alcohol and substance abuse. Alaska families, communities and the State budget would benefit if the State proactively explored and set in place means to prevent and minimize the impact alcohol and substance abuse has on Alaska's communities and families, before problems occur – as opposed to locking up individuals after the fact.

While the provisions contained in SB 128 reflect only a small portion of the options that were developed, if implemented, they are a step in the right direction. Attached to my testimony, is a list of the options that were developed by the Alcohol workgroup for the consideration of the Commission. I wanted to note that there are many more options that have not yet been fully explored and recommended by the Commission, simply because we ran out of funding to continue our work.

Unfortunately, the Rural Justice and Law Enforcement Commission's funding got tied up in the federal budget "continuing resolution no-earmark" policy, such that the Commission has not received 2007 federal funds to continue our work. A request was submitted to the State Legislature in February by the Commission asking for stop gap funding to help the Commission continue its work until such time as federal funding again becomes available. Since its inception in 2004, the Commission has been funded by federal receipts. I hope that the legislature will see fit to support this very worthwhile commission.

Thank you for this opportunity to testify.

Alcohol Workgroup Options

**Options relating to prevention**

- 1. Alcohol abuse prevention .....1
- 2. Public information program.....1
- 3. Liaison in state government for tribal court juvenile proceedings .....2
- 4. Purely private interdiction.....3
- 5. Require private carriers to take reasonable steps to check for illegally shipped alcohol .....4

**Options relating to local option laws**

- 6. Revenue sharing incentives.....5
- 7. Change in local option time frames .....5
- 8. Change local option law to enable councils to adopt local options independently, subject to subsequent plebiscites .....6
- 9. Extend local option laws to encompass public intoxication .....6

**Options relating to the Alcohol Beverage Control Board**

- 10. Adjustment of ABC Board licensing fees for inflation .....7
- 11. Designated program receipt for ABC Board fines.....7
- 12. Adjust membership requirements for ABC Board.....8

**Options relating to enforcement**

- 13. Plastic bottles .....9
- 14. Database for shipments by written orders.....9
- 15. Cross-designations among state and federal agencies .....9
- 16. Prohibition on shipments to residents of dry villages.....9
- 17. Further modifications to drug and alcohol forfeiture laws .....10
- 18. Change in Drug Enforcement Administration policy with respect to forfeitures ..13
- 19. Greater use of alcohol bracelet technology.....13
- 20. Create a "designated program receipt" from the state share of civil forfeitures....14
- 21. Amendment to AS 12.20.010.....15

**Options relating to jurisdiction**

- 22. Alaska Native Village Alcohol and Controlled Substance Interdiction Zones.....16
- 23. Village Circuit Courts.....19
- 24. State statute for full faith and credit to tribal court civil money judgments in alcohol cases .....22
- 25. Compacts .....25

My name is Karen Bitzer and I am presenting testimony today on behalf of the Alaska Rural Justice and Law Enforcement Commission. Formed in 2004 by an act of congress, and supported by Senator Stevens, the Commission was tasked with studying four broad areas related to rural Alaska: law enforcement, judicial services, domestic violence/child abuse and alcohol importation and interdiction. Between October 2004 and June 2005, the Commission established 4 workgroups of professionals, experts, and citizens working on topics related to these 4 broad areas of interest. The workgroups met weekly by teleconference as the Commission traveled to key hub communities to receive testimony from rural Alaskans. The working groups created over 100 action options to be considered by the Commission for adoption and implementation. These are contained in the Initial Report of the AK Rural Justice and Law Enforcement Commission, a report that was delivered to your offices earlier this year.

In late 2006, the Commission formed 4 topic specific work groups – one again related to Alcohol importation and interdiction to review the recommendations of the first working group and expand those which offered the most promise for legislative relief and inter agency cooperation for implementation. The legislation you have before you in SB 128 promote several of the tenets you will find in the initial and subsequent report of the working groups of the Commission. These recommendations include support for a data base to track large shipments of alcohol to village locations, modifications to forfeiture, and prohibition of shipments to dry villages. Other recommendations support banning plastic containers in villages shipments, cross designation of officers, and a greater use of alcohol bracelet technology.

We have submitted a copy of this testimony in writing and have attached a full copy of the Commission's working group recommendations. Thank you for allowing us to speak in support of SB128.

*The Commission is currently without funding as a result of the Federal action regarding designated appropriations and has requested some stopgap funding from the State of Alaska. It is our sincere desire that this body will see the benefit of the recommendations created by citizens in Alaska over the last two years, and support the continued efforts of this Commission to work with this body to improve justice and law enforcement in rural Alaska.*

Alcohol Workgroup Options

Options relating to prevention

- 1. Alcohol abuse prevention .....1
- 2. Public information program.....1
- 3. Liaison in state government for tribal court juvenile proceedings .....2
- 4. Purely private interdiction.....3
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- 25. Compacts .....25

### Options relating to prevention

1. Alcohol Abuse Prevention. This was a last year's recommendation (#15), adopted by the Commission (#29). Our group wanted to mention the successful DARE program.

**Statement of Need:** There is a need to reduce communities' tolerance of alcohol abuse and the number of young people who 'learn' this tolerance from their communities.

**Options:** Support a variety of prevention programs that include:

- Programs geared to helping young people learn to make healthy choices
- Healthy community and cultural activities that link youth and adults.
- Alcohol/Drug Information Schools for first time misdemeanor alcohol/drug related offenses.
- Programs that promote community responsibility for preventing and addressing alcohol related problems.

(All programs need to reflect and respect the culture of the local community.)

**Rational for Options:** Reducing the supply of alcohol to rural Alaska can only go so far to reduce alcohol abuse. Reduction in the demand for alcohol must also play a part. Demand reduction includes both preventing young people from becoming alcohol abusers and treating people who have become abusers. The D.A.R.E. (Drug Abuse Resistance Education) program, a police officer-led series of classroom lessons that teaches children from kindergarten through 12th grade how to resist peer pressure and live productive drug and violence-free lives, is one example of a successful nationwide effort. In rural Alaska, it would be most effective if the police officers leading the sessions were also Alaska Native to the maximum extent possible.

This recommendation addresses prevention.

**Impact Statement:** Fewer young people will become alcohol abusers, with a corresponding reduction in alcohol related violence, crime and intentional and unintentional injuries.

2. Public Information Program

**Statement of Need:** Attitudes towards alcohol and sobriety must change. Legislative changes can only go so far.

**Options:** The State and federal governments should cooperate in creating a "pro-sobriety" public information program to heighten awareness and prevention, with two components: an office to assemble informational resources available to any community group wanting to conduct a public information campaign on the benefits of sobriety; and a system of local grants available to communities or community groups wanting to implement such a public information campaign within their local communities.

**Rational for Options:** Alcohol manufacturers in the private sector devote considerable revenues to marketing alcohol. Pro-sobriety advocates lack a countervailing source of revenues. Public information campaigns have met with success in heightening public awareness and affecting attitudes towards drinking while driving, drinking while pregnant, and smoking.

**Impact Statement:** This would strengthen the efforts of those community activists urging villages to become and remain dry.

3. Liaison in state government for tribal court juvenile proceedings

**Statement of Need:** Alaska Native Villages would like to coordinate their efforts with regard to juvenile justice, particularly cases involving "minor consuming," more closely with state agencies.

**Options:** The State should designate a particular "minor consuming" specialist to act as a liaison with village governments and courts for minor consuming cases. Initially, this position might fit well with the "Disproportionate Contact" position currently in the Division of Juvenile Justice (which addresses the problem of over-representation of Alaska Native children in the Alaska juvenile justice system).

**Rational for Options:** Despite the fact that the State does not have the resources to bring a case for every "minor consuming" in Alaska's rural villages, its agencies might play a constructive backup role to tribal government efforts. In particular, some juveniles appearing before the tribal court might be more responsive to the tribal court's attempts to get the juvenile to address his/her alcohol problem if there were a mechanism under which the case could be "referred" to the State of Alaska for consideration of state court proceedings if the tribal court assessed the minor to be insufficiently responsive to traditional tribal attempts. The State might play a role analogous to that it plays with respect to Youth Court cases.

**Impact Statement:** This would help drive home the message that village governments and state government are determined to work together to address alcohol abuse, and provide a further incentive for juveniles to respond positively to tribal government attempts to get them to avoid alcohol.

#### 4. Purely private interdiction

**Statement of Need:** Private entities, such as airlines, need to do more to interdict the flow of alcohol into dry villages. However, any governmental mandate which might have the effect of branding a private entity as an agent of a law enforcement agency will undercut the efficacy of this approach.

**Options:** *Without* changes in state or federal law, urge that an appropriate non-profit private agency (e.g., Alaska Federation of Natives) approach a private funding source (e.g., the Rasmuson Foundation) for funding to provide commercial air enterprises with resources to carry out private screenings of cargo and passenger luggage for alcohol being transported to dry villages. Have a private entity recognize and reward conscientious businesses.

**Rational for Options:** The Fourth Amendment of the United States Constitution gives us rights as against the federal government; Alaska's Constitutional Right to Privacy gives us rights against the state government; and the Indian Civil Rights Act gives us rights against tribal governments. None of these preclude purely private searches without governmental involvement. This might include such approaches as random or systematic "dog sniffs" of cargo and luggage to detect alcohol, which state constitutional law places off-limits to state law enforcement agencies. It could also include better signage to raise public awareness. The case law is clear that when reports of the results of private searches are made to a law enforcement agency, it can act upon those, assuming that it conforms to its own warrant and/or "reasonable suspicion" requirements. If, however, the private entity conducts the search at the *behest* of a law enforcement agency, the results of the search are likely to be excluded from a subsequent criminal prosecution.

It appears that at least some private air carriers have indicated a willingness to assist in private screening efforts, assuming that these do not result in any significant inconvenience to legitimate (non-bootlegging) customers; but they do not have the resources to arrange the equipment and/or personnel to do so.

**Impact Statement:** If a private entity were able to obtain private funding to make resources available to private companies to conduct private screenings of cargo and luggage, then private interdiction might play a significant role in keeping dry villages dry, and any resulting contraband would not be a "fruit of a poisonous tree" excluded from criminal prosecutions.

5. Require private carriers to take reasonable steps to check cargo for illegally shipped alcohol

**Statement of Need:** Current law sanctions only the "knowing" importation of alcohol in violation of a local option. Transportation businesses which routinely operate within local option areas should be required to implement reasonable standards to screen cargo and luggage for alcohol.

**Options:** Create a category of local option monetary sanction for a business found to have transported alcohol into a local option area in violation of the local option law, with an affirmative defense that the business had implemented reasonable measures to screen its shipments for alcohol.

**Rational for Options:** Businesses need an economic incentive before they will find it advantageous to implement stricter screening measures. Otherwise, competition leads businesses to cater to illegal shippers, rather than tightening procedures, and unfairly penalizes businesses (e.g., Birchwood Air Service) which are trying to be conscientious in their screening. Even if the results of these searches are found to be constitutionally inadmissible in a criminal prosecution, the interdiction effect would be worthwhile, because the alcohol won't get to the village.

**Impact Statement:** This should prevent alcohol from reaching the villages, making it more difficult for illegal alcohol importers/smugglers to dupe businesses into transporting alcohol in violation of local ordinances.

## Options relating to local option laws

### 6. Revenue sharing incentives

**Statement of Need:** There is a tremendous need for rural Alaskan communities to receive a fair share of the State's revenue resources, as their ability to maintain any kind of municipal government at all is at risk. Among these communities, there are significant numbers that have been and remained "dry" for years, some that have remained "wet," and some that have vacillated back and forth, in a series of relatively close local option votes.

**Options:** Assuming state revenue sharing to municipalities is reinstated, it should include a significant financial incentive for communities to become and remain dry, and a lesser incentive for communities to become damp. If state revenue sharing is not generally offered to unincorporated municipalities, some equivalent financial incentive to unincorporated local option communities should be created.

**Rational for Options:** Rural communities that are "wet" present the State with significantly greater law enforcement and alcohol remediation costs than communities that are "dry."

**Impact Statement:** This would hopefully result in a larger proportion of communities voting to become and remain "dry."

### 7. Change in local option time frames

**Statement of Need:** Under 04.11.507(f), an election to remove a local option or to change to a less restrictive option may not be conducted during the first 12 months after the local option was adopted, nor can an election to remove or loosen a local option be held more than once in an 18-month period.

**Options:** Lengthen the initial non-repeal period to 18 months.

**Rational for Options:** Several communities go through periodic "swings of the pendulum" towards and away from the local option. This change would increase the length of the period during which a local option would be the "status quo."

**Impact Statement:** This would help stabilize the community for a longer period after adoption of a local option.

8. Change local option law to enable councils to adopt local options independently, subject to subsequent plebiscites.

**Statement of Need:** Local governing bodies need to have the authority to regulate alcohol independently of conducting a community plebiscite.

**Option:** Amend local option laws to allow local governments to have a greater control over local options, subject to change by local plebiscite. Specifically, change AS 04.11.491(a) to provide that a local option law, besides being enacted by a plebiscite, could be enacted by the local governing body of either a municipality or an established village, without a plebiscite, although such a local option law could still be repealed by plebiscite under AS 04.11.495 or changed by plebiscite under AS 04.11.493.

**Rational for Options:** Local governing bodies are allowed to adopt ordinances on a wide variety of other subjects without conducting a plebiscite.

**Impact Statement:** This decreases the impediments to communities moving towards "dry" status.

**Consideration:** This is also part of our proposal on Village Circuit Courts, but even if that proposal is not adopted, this idea should be independently considered.

9. Extend local option laws to encompass public intoxication

**Statement of Need:** Some villages report that a weakness with local option laws is that "possession by consumption" (i.e., being drunk inside the village) cannot be proscribed under those laws. AS 04.11.501(d).

**Options:** The local options laws would be amended to include the additional provision for a local option prohibiting public intoxication within the local option area.

**Rational for Options:** This gives local option laws increased flexibility to deal with a situation that many villages face.

**Impact Statement:** The local option will become more viable for these villages. It will improve public order.

**Consideration:** This is also part of our proposal on Village Circuit Courts, but even if that proposal is not adopted, this idea should be independently considered.

Options relating to the Alcohol Beverage Control Board

10. Adjustment of licensing fees for inflation.

**Statement of Need:** Some of the options recommended will require additional expenditures by the State of Alaska, and Alcohol Beverage Control Board licensing fees are the most appropriate source for revenues.

**Options:** Urge the legislature to increase all licensing fees to adjust for increases in the costs of remediating alcohol damages since those fees were set. Statutorily tie future fee increases to increases in the Consumer Price Index, in a manner similar to that used for exemption amounts under the Alaska Exemption Act, AS 09.38.115.

**Rational for Options:** Alcohol remediation saddles the State with a tremendous cost each year. The law allows ABC licensees to externalize these costs rather than bear them as a cost of doing business. These fees have remained constant, in most cases for approximately 27 years, in some cases for longer than that. (Section 468 of the Alaska "Carter" Code, enacted in 1900, set the fee for a wholesale license at \$2000 per annum, and barroom licenses at \$500, \$1000 or \$1500 annually depending on community size.) The ABC Board will face increased expenses as a result of several recent or proposed changes designed to enhance its ability to assist in the interdiction of the illegal flow of alcohol into villages, including implementation of the database for written orders suggestion from last year.

**Impact Statement:** Adjusting these fees, and tying future fee amounts to the consumer price index, will be a step towards having the industry bear a fairer share of these externalized costs.

11. Designated program receipt for ABC fines.

**Statement of Need:** The suggested programs for public education are more likely to be sustained if there is an identifiable program receipt designated for those, without violating the Alaska Constitution prohibition on dedicated funds.

**Options:** Urge the legislature to create statutorily a designated program receipt from ABC Board fines. Add a new subsection (81) to Alaska Statute 37.05.146(c) for this category.

**Rational for Options:** This approach has worked for 80 other "designated program receipts" and would be in compliance with the Alaska Constitution. Since the ABC Board has some measure of discretion over fines, the program receipts should not go directly to the ABC Board, to avoid any appearance of a remunerative interest.

**Impact Statement:** This will tie fines imposed for violations of ABC regulations to a funding source for programs designed to remediate the State's problems resulting from alcohol abuse.

12. Adjust membership requirements for ABC Board

**Statement of Need:**

Current law sets aside two of the five seats on the ABC Board for representatives of the alcohol industry. Other perspectives and/or areas of expertise should be represented.

**Options:** Urge the legislature to enact a statutory qualification requirement to balance the two industry seats with a requirement that a seat be designated for a person from rural Alaska, a person knowledgeable about alcohol abuse prevention or treatment, and a person with a law enforcement background. This option should be accompanied by an explicit statement that this is in no way a criticism of current board members, all of whom are very conscientious.

**Rational for Options:** This would merely redress a statutory imbalance.

**Impact Statement:** This would underscore the fact that many different sectors within the State have a vital interest in the work of the ABC Board

### Options relating to enforcement

13. **Plastic bottles:** This was a last year's recommendation (#11), adopted by the Commission (#18). In the absence of any information as to why this was not included in the 2006 legislation or otherwise implemented, there isn't much for the work group to do beyond simply reiterating it.
14. **Database for shipments by written orders:** This was a last year's recommendation (#8), adopted by the Commission (#53). Our group mainly wanted to find out if there was any particular obstacle to implementation. There is apparently a proposal within the Department of Public Safety, but the Work Group has not had an opportunity to review it.
15. **Cross-designations among state and federal agencies:** This was a last year's recommendation (#5) adopted by the Commission (#8). The work group was informed that the Commissioner of Public Safety is moving this forward through negotiations with the Postal Service. Eight AST personnel are close to finishing the cross-designation process. The addition the work group wanted to make was to expand the concept to include having Alaska District Attorneys cross-deputized within the U.S. Attorney's Office; this had worked well with one individual in the past and the work group thought that the idea of institutionalizing it should be explored. The idea was to be referred to the separate Police Standards and Cross-Designation Work Group.
16. **Prohibition on shipments to residents of dry villages:** This was last year's recommendation (#9), adopted by the Commission (#17). The group looked at SB 229, introduced by Sen. Olson in 2003. This year's group supports the idea and had no particular changes to suggest.

17. Further modifications to drug and alcohol forfeiture laws. Some modifications were included in last year's recommendation (#2), adopted by the Commission (#16) and included in SLA 2006, ch. 96.

**Statement of Need:** Prosecutors report a problem that the current statutes have been interpreted to require that civil forfeiture proceedings be initiated simultaneously with criminal proceedings. Criminal proceedings are a higher priority, and requiring initiation of civil proceedings may detract from the efficacy of criminal prosecutions. By the time the criminal case is dismissed, results in an acquittal, or results in a sentence which does not include forfeiture of property, the civil proceeding may be untimely.

**Options:** Urge the legislature to provide statutorily that, when property is validly held by the State during the pendency of criminal charges, the civil forfeiture proceedings need not be initiated as a separate case until the criminal case is resolved at the trial level. This should be applied to both Title 4 (alcohol) forfeitures and Title 17 (controlled substance) forfeitures.

**Rational for Options:** In case of conviction or plea bargain, the forfeiture can be incorporated into the criminal case judgment, saving the resources that would otherwise have to go into initiating (and then, in most cases, staying until resolution of the criminal case) the civil forfeiture proceedings. In case of dismissal or acquittal on the criminal charges, both the State and the individual can make a better informed decision about whether to initiate or contest, respectively, a civil forfeiture claim.

**Impact Statement:** This will give the State the option, even where it is unable to prove a criminal case beyond a reasonable doubt, to pursue a civil remedy against the defendant, without needing to divert resources during the prosecution itself.

Recommendation 18, continued

Draft revised language for AS 04.16.220(c):

- (a) [unchanged]
- (b) [unchanged]
- (c) ~~Within 30 days after a seizure under this section,~~ **The Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, lien, mortgage, or conditional sales contract. As to any item of property with an appraised value of \$500 or more, the Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and, before forfeiture, the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made or, if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The service and publication must be initiated within 30 days of a seizure under this section, except that, for property properly held in connection with the pendency of criminal charges, the mailing and publication must be initiated no later than 30 days after order of dismissal or final judgment is entered. Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming an interest in the property shall file, within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings. Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this title.**
- (d) [unchanged]
- (e) [unchanged]
- (f) [unchanged]
- (g) [unchanged]
- (h) [unchanged]
- (i) [unchanged]
- (j) [unchanged]
- (k) [unchanged]

**Recommendation 18, continued**

**Draft revised language for AS 17.30.116:**

- (a) ~~Within 20 days after a seizure under AS 17.30.110 – 17.30.126,~~ **The commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$ 500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$ 500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The mailing and publication of notice will be initiated within thirty days of a seizure under AS 17.30.110 – 17.30.126, except that, for property properly held in connection with the pendency of criminal charges, the mailing and publication must be initiated no later than 30 days after order of dismissal or final judgment is entered. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.**
- (b) [unchanged]
- (c) [unchanged]

18. Change in Drug Enforcement Administration policy with respect to forfeitures

**Statement of Need:** State law enforcement needs to be able to collaborate with federal forfeiture proceedings, which on occasion present a better option for forfeiture of bootleggers' and/or drug dealers' items of property.

**Options:** The DEA should reconsider its change in policy which required that the property to be forfeited must be in DEA control with 30 days. If changes in federal regulations or statutes are necessary to accomplish this, these should be enacted.

**Rational for Options:** On occasion, federal forfeiture laws provide a more appropriate vehicle for depriving dealers and bootleggers of the items of property being used to further their criminal activities. Formerly, state law enforcement authorities could invite the DEA to consider forfeiture proceedings at the conclusion of a state criminal case. Subsequently, DEA policy was changed to require that the property to be forfeited be in DEA's possession within 30 days, a policy apparently applicable only in Missouri and Alaska. This had the effect of precluding referrals for federal forfeiture unless the State of Alaska was able to surrender the property during its own criminal prosecutions, which created obvious roadblocks in the efficacy of those prosecutions.

**Impact Statement:** This would heighten State/Federal collaboration, and expand the range of remedies available against alcohol and drug-related criminal activity.

19. Greater use of alcohol bracelet technology

**Statement of Need:** Particularly in village Alaska, more efficient ways of monitoring and enforcing orders that individuals abstain from alcohol should be developed. Otherwise, the resources simply do not exist to adequately monitor individuals for compliance.

**Options:** The Division of Juvenile Justice, the Department of Corrections, and the Alaska Court System should expand the use of "alcohol bracelets."

**Rational for Options:** The technology exists for "alcohol bracelets" which monitor alcohol intake for a period of several days. These were used experimentally in the state courts for the Second District in Kotzebue, with favorable results. When no-alcohol conditions were placed on pretrial releasees and probationers, the bracelets provided a systematic and convenient method for actual alcohol consumption to be monitored. At least one individual reported that he found it easier for him to exercise the willpower to abide by the no-alcohol condition, knowing that the bracelet was being used. The bracelet's data can be transmitted by the individual to the supervising agency via the telephone; unfortunately, the Kotzebue pilot program indicated that telecommunications with bush communities outside Kotzebue were not capable of transmitting the data satisfactorily. Still, many releasees were willing to come into Kotzebue in order to transmit the data from their bracelets.

**Impact Statement:** Wider availability of this technology will help reinforce individuals' willpower to avoid alcohol, especially if the problem with telecommunications with bush villages can be addressed.

20. Create a "designated program receipt" from the state share of civil forfeitures

**Statement of Need:** Alcohol interdiction efforts are more likely to be sustained if there are designated program receipts for those efforts, without violating the Alaska Constitution's prohibition on dedicated funds.

**Options:** Urge the legislature to create statutorily designated program receipts fro civil forfeitures to support alcohol interdiction efforts. Add new subsection to AS 04.16.220 and AS 17.30.116 for that purpose.

**Rational for Options:** Current law (AS 04.16.220(k)) provides for the State to share a portion of forfeiture proceeds with participating municipal law enforcement agencies, but the remaining state share just goes back to the general fund. These could be used to fund some of the other options and recommendations. This approach has worked for other "designated program receipts" and would comply with the Alaska Constitution.

**Impact Statement:** This will support alcohol interdiction efforts by using proceeds of those efforts to continue them.

21. Amendment to AS 12.20.010

**Statement of Need:** Tribal remedies to stem the flow of alcohol should not reduce the state's jurisdiction in pursuing the same goal.

**Options:** The legislature should amend AS 12.20.010 so that a court judgment of the sort entered by the Metlakatla Tribal Court in the case of *Booth v. State* is not given statutory "double jeopardy" effect in Alaska State Courts.

**Rational for Options:** In *Booth v. State*, Booth had been charged with the same offense (assault) in both the Metlakatla Tribal Court and in state court. Having been convicted and sentenced (imposition of a fine) in Metlakatla, the defendant moved to dismiss the state case based on double jeopardy. The Alaska Court of Appeals found that neither the federal nor the state constitutional double jeopardy clauses would prevent state prosecution, but that the "statutory double jeopardy" law, AS 12.20.010, would. The State argued that, because Metlakatla's tribal ordinance made the offense punishable only by a fines or community service, and not incarceration, the statute should not apply, but the Court of Appeals disagreed.

**Impact Statement:** Particularly for alcohol offenses, but for other actions as well, imposition of a remedy such as a monetary fine or community service should not preclude a subsequent state prosecution. The United States and Alaska Constitutions do not require this, and the State should not require this by statute. Suggested language follows.

Sec. 12.20.010. Conviction or acquittal elsewhere as bar.

When an act charged as a crime is within the jurisdiction of the United States, another state, or a territory, as well as of this state, a conviction or acquittal in the former is a bar to the prosecution for it in this state. This bar shall not apply to an offense which is not punishable by a sentence of incarceration under the law of the jurisdiction entering the conviction or acquittal. A crime punishable by a sentence of community labor or community service shall not be deemed the equivalent of a crime punishable by a sentence of incarceration.

Options relating to jurisdiction

22. Village Alcohol and Controlled Substance Interdiction Zones

**Statement of Need:** There are numerous drawbacks to the present state and municipal law enforcement systems as applied to rural villages. Laws are enforced and prosecuted primarily from regional centers. Penalties for initial offenses are neither certain nor severe; youthful offenders, for whom serious intervention is needed when the youth first gets into trouble, can accumulate numerous minor offenses before significant attention can be paid by the state justice system. Geographic and cost constraints will always prevent the state from having adequate magistrates, troopers, prosecutors, etc., anywhere but in the largest communities. Second-class city governments, where they exist, have little or no tax base, no authority to establish municipal courts, and little ability to enforce municipal criminal ordinances because of the costs associated with prosecuting cases in distant state courts. Law enforcement authorities at both state and municipal levels are required to abide by state and federal rules that (1) preclude them from implementing some of the most effective interdiction methods to keep alcohol out of Alaska Native Villages and (2) may be culturally inappropriate for those Alaska Native Villages.

**Options:** Congress should enact legislation authorizing Alaska Native Villages to establish "Alaska Native Village Alcohol and Controlled Substance Interdiction Zones". A draft is attached.

**Rational for Options:** The best solutions to community alcohol problems are those which begin within the community. Tribal governments are in place, and are the only government in many villages. They are better situated to enforce and adjudicate minor offenses in remote communities than the state; they can intervene earlier and more effectively. Tribal courts are already dealing with juvenile offenses and child protection cases, many of which entail alcohol problems which the tribal courts need to deal with. Interdiction efforts under state and "local option" laws are limited by the privacy provisions of the Alaska and United States Constitutions, which the Workgroup was informed by the Department of Law prohibit random or systematic searches for alcohol. No matter how inappropriate the court rulings from the Ninth Circuit or the United States Supreme Court may be when applied to Alaska Native Villages, Congress cannot enact legislation under which state or municipal law enforcement authorities can act inconsistently with those decisions. With respect to tribal governments, however, Congress has plenary power and can authorize Alaska Native Villages to establish protection zones within which Alaska Native Villages can impose their own culturally appropriate rules. These could function as an important supplement to the local option laws. At least three Alaska Native Villages promulgated their own alcohol control ordinances, published by the Secretary of the Interior. These initiatives should be encouraged.

**Impact Statement:** Allowing Village Governments to promulgate and enforce their own rules would enable them to select legal solutions that are more likely to work for their local community. It might also enhance state prosecutorial efforts; searches that the Native Village conducts pursuant to its own civil authority, independent of State authority, could result in evidence that, once reported to the State authorities by the Tribe, might be admissible into evidence in state court criminal proceedings, as long as the search was not conducted at the behest of the State.

**Option 22 continued**

**Considerations:** This proposal provides for separate, not shared, power between the tribes and the state, although it provides for negotiated agreements between the State and tribes. It may increase the number of conflicts over jurisdiction, causing more divisiveness between tribes and the state. This proposal would extend tribal civil jurisdiction to non-Indians and non-members. These proceedings would occur under the Indian Civil Rights Act, as is now the case in Metlakatla. This proposal could increase the number of Alaska citizens who may be subject to a third set of civil rights standards, under ICRA, which may in some respects be less protective and in some respects more protective than those under the two standards already set by the United States and Alaska Constitutions. Without a change to AS 12.20.010, which we have proposed, this proposal may create statutory double-jeopardy problems that would impede state prosecutions. It would be helpful to have standards for the Secretary's review of tribal ordinances, if those standards are not already contained in existing regulations. There are those who believe that this proposal constitutes an unprecedented expansion of tribal jurisdiction, in that it creates the prospect of tribal jurisdiction over non-members outside Indian country, albeit only within an "Interdiction Zone."

(Draft statute on following pages)

Option 22 continued

Recommend that a new 18 USC 1157 be enacted, and amendments made to 18 USC 1161, as set out below.

§ 1157. Alaska Native Village Alcohol and Controlled Substance Interdiction Zones

(a) The federally recognized tribal governments of Alaska Native villages, regardless of whether or not they occupy "Indian country," have authority to enact and enforce ordinances prohibiting or regulating the manufacture, distribution, importation, possession, and consumption of alcoholic beverages and of other substances illegal or regulated under state, federal or tribal law, within an Interdiction Zone as defined herein and consistent with the provisions of this section and other applicable federal Indian laws.

(b) The area encompassed within an Interdiction Zone shall be the area within a five-mile radius of the post office of the village or, if the village does not have a post office, the area within a five-mile radius of another central site within the Village selected by the Village Council and identified in the Village Ordinance as approved by the Secretary of the Interior. Authority is hereby delegated to the Secretary to adjust the boundaries of an Interdiction Zone for a particular Alaska Native Village as necessary to account for local circumstances.

(c) Within an Interdiction Zone, any use of or transactions involving alcohol or other controlled substances must conform with the tribal ordinance, with the laws of the State of Alaska, and with any applicable federal laws. In addition, in any areas in which an Interdiction Zone overlaps with an area governed by an ordinance enacted by a local municipality, or by an area governed by a local option law, any use of or transactions involving alcohol or other controlled substances must conform with the tribal ordinance and with the municipal and local option laws, as well as state law and any applicable federal laws. If any applicable laws set inconsistent standards, the most restrictive of those standards shall govern.

(d) Alaska Native villages shall submit laws adopted pursuant to this section to the Secretary of the Interior, and the Secretary shall certify and publish those laws within the Federal Register within 180 days, under the same criteria and procedures as the Secretary uses for Indian country tribal alcohol laws under 18 U.S.C. 1161(a).

(e) Alaska Native villages and the State of Alaska are authorized to enter into agreements with each other, or subdivisions thereof, respecting jurisdiction over and enforcement of alcohol and drug control laws.

(f) For violations of Ordinances enacted under this section, an Alaska Native Village Tribal Court may impose civil sanctions, including but not limited to fines, forfeitures, community service, and treatment requirements, on any individual, regardless of tribal membership, found to have violated the applicable ordinance, but may not impose any criminal sentences on any individual who is not a member of a federally recognized tribe.

Option 22 continued

and may not entertain a case against state or municipal officials for actions taken to carry out their official duties under state or municipal law within an Interdiction Zone.

(g) Notwithstanding 25 U.S.C. 1302(2), an Alaska Native Village may by ordinance adopted pursuant to this section impose a systematic search requirement, random search requirement, or similar mechanism, on any cargo or personalty transported across the boundary into an Alaska Native Village Alcohol Interdiction Zone, provided that the Tribe takes reasonable steps to post notices of such search requirements, including requests that such notices be posted at airports from which aircraft are embarking to travel to the village.

(h) Nothing in this section is to preclude the State of Alaska or its municipalities from prosecuting individuals for violations of state laws, municipal laws, or local option laws due to any decision by the tribe to pursue any tribal case against the same individual for the same transaction or occurrence. Nothing in this section is to preclude an Alaska Native Village from initiating tribal proceedings against an individual based upon any decision by the State of Alaska or a municipality to prosecute that individual for that same transaction or occurrence. As used herein, the term "individual" shall mean and include a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

(i) Nothing in the amendment is intended to enhance, diminish, or otherwise affect the issue of whether any particular areas in Alaska do or do not constitute "Indian country."

§ 1161. Application of Indian liquor laws

(a) Except as provided in subsection (b), the provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title [18 USC §§ 1154, 1156, 3113, 3488, and 3669], shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

(b) The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title [18 USC §§ 1154, 1156, 3113, 3488, and 3669], shall not apply within any area of the State of Alaska that is not within Indian country or an Alaska Native Village Alcohol Interdiction Zone, nor to any act or transaction within Indian country or an Alaska Native Village Alcohol Interdiction Zone provided such act or transaction is in conformity both with the laws of Alaska and with an ordinance duly adopted by the tribe located within the Indian country or Alaska Native Village Alcohol Interdiction Zone, certified by the Secretary of the Interior, and published in the Federal Register.

### 23. Village circuit courts

**Statement of Need:** The state judiciary needs to have a larger profile in the enforcement of local option laws in Alaska Native Villages. Village Councils need to be given the opportunity to play a larger role in local option determinations, at both the enactment and the adjudication stages.

**Options:** Change state law to create specialized alcohol courts called "Village Circuit Courts," to be created within the rural villages (outside the seven specified boroughs) which have adopted or may adopt a local option. Change local option laws as specified below to allow local governments to have a greater control over local options, subject to change by local plebiscite. Specifically:

- 1) A 04.11.491(a) would be amended to provide that a local option law, besides being enacted by a plebiscite, could be enacted by the local governing body of either a municipality or an established village, without a plebiscite, although such a local option law could still be repealed by plebiscite under AS 04.11.495 or changed by plebiscite under AS 04.11.493.
- 2) The local options laws would be amended to include the additional provision for a local option prohibiting public intoxication within the local option area.
- 3) Each village would have its own court. The territorial jurisdiction of the court would equal the territorial reach of the local option law as set out in state statute. The subject matter jurisdiction would be limited to violations of the local option law adopted for each village. The village courts would have personal jurisdiction over any person committing an offense against the local option ordinance, regardless of tribal membership or residence within the village.
- 4) Offenses against a village's local option ordinance would be charged and tried in the Village Circuit Court of the village whose ordinance was violated. Trials would be held in the village, although telephonic participation would be allowed. Trials could be prosecuted by the State, by a municipality, or by an established village within the meaning of AS 04.21.080; if a municipality or established village initiates the proceeding, notice will be provided to the Department of Law which will have 30 days so that prosecutors could exercise their discretion at that point to file charges in other state courts to address more serious offenses warranting incarceration, criminal conviction or more significant fines. Similar to traffic offenses, proceedings could be prosecuted through an attorney or through a non-attorney representative.
- 5) The Village Circuit Court would be a three judge court consisting of one Alaska Court System magistrate (appointed and supervised under the usual court procedures) and two individuals appointed by the tribal council.
- 6) The magistrate would be responsible for conducting trials and ruling on evidence and other matters. The magistrate would "ride circuit," conducting trials in several village circuit courts on a regular schedule. The same magistrate would serve a group of villages.
- 7) The tribal appointees would have to be full-time residents of the village who, in the judgment of the tribal council, are respected members of the village community. Tribally-appointed judges would serve a set term and would be subject to dismissal only for cause. Pro tem appointments by the tribal council would be permitted where a regular tribal appointee was unable to serve due to unavailability or conflict of interest.

"Unavailability" and "conflict of interest" and "dismissal for cause" would be defined by tribal ordinance and the state statute establishing Village Circuit Courts, and could be negotiated by the state and individual tribes or tribal groups.

- 8) Verdict and sentence would be decided by majority vote of the Village Circuit Court panel.
- 9) Trials would be conducted under state and federal constitutional standards and court rules that would be promulgated by the Alaska Supreme Court.
- 10) The offenses that could be tried in the courts would be classified as "infractions" under state law and thus would not be considered criminal convictions. Penalties would be limited to fines of no more than \$1,000 and/or community service (as decided by the panel) not to exceed 500 hours.
- 11) Appeals would be through the Alaska superior court, with review thereafter by the Alaska Supreme Court.
- 12) The costs of Village Circuit Courts would be shared by the federal and state governments. Tribes would make in-kind contributions to the system by providing the temporary facilities for trials, temporary housing for circuit magistrates and by providing tribal appointees to the court, who would not be paid or who would be paid a daily stipend by the tribes.
- 13) This proposal would be initially implemented as a pilot project covering a limited area and number of villages. It would be assessed after two to three years. All sovereigns involved in the pilot project would have an equal voice in the assessment process with a view toward producing a consensus evaluation. The state court system would be involved in the assessment process to the extent it wished to be involved.

**Rational for Options:** The "touchstone" of the concept is "shared power." The concept requires significant participation of the three sovereigns that have a role in improving conditions in rural Alaska. The proposal acknowledges that tribal councils and tribal judges have an important and meaningful role to play in the challenges facing their communities. It requires the state to be a true partner with tribes in addressing jurisdiction over alcohol offenses. It comports with the RJC's charge to establish "a *unified* . . . court system and system of local laws or ordinances for Alaska Native villages and communities" in the area of alcohol jurisdiction. (emphasis added)

**Impact Statement:** This would be a significant experiment in state/tribal cooperation, and could significantly heighten state court presence and enforcement of local option laws in the villages.

**Considerations:** This would not be effective unless it was adequately funded. Past proposals for circuit riding have had problems getting off the ground. Significant training would have to be provided for the Village appointees to the Village Circuit Courts. The proposal may require some villages to have better infrastructure (housing) than they currently have. It would require legislation on the state and federal levels, and court rule changes. This proposal is not intended to supplant tribal courts.

24. State statute for full faith and credit to tribal court civil money judgments in alcohol cases

**Statement of Need:** Tribal remedies for alcohol abuse would benefit from state assistance in enforcement.

**Options:** The Alaska Legislature should enact a statute granting full faith and credit to tribal court civil money judgments in alcohol cases.

**Rational for Options:** Tribal governments should be encouraged to use civil-type sanctions to stem the flow of alcohol. The State has enacted statutes allowing enforcement of civil money judgments from other jurisdictions. A parallel statute granting recognition to civil money judgments issued by tribal governments in alcohol-related cases would enhance enforcement mechanisms in the bush, without significant expense to the State. The mere availability of state court judgment enforcement procedures would serve as an incentive for individuals to pay any civil money judgments imposed on them by tribal governments.

**Impact Statement:** This would provide for more effective enforcement mechanisms as well as emphasize the collaboration between state and village governments in addressing alcohol abuse problems. Draft language follows.

**Considerations:** This proposal provides for separate, not shared, power between the tribes and the state, although it contemplates that the tribal and state systems would be mutually supportive. It may increase the number of conflicts over jurisdiction, causing more divisiveness between tribes and the state. Some tribes may be uncomfortable having a state court pass judgment on tribal jurisdiction – although those tribes could refrain from filing requests for full faith and credit under the proposal. This proposal would extend tribal civil jurisdiction to non-Indians and non-members. These proceedings would occur under the Indian Civil Rights Act (ICRA), as is now the case in Metlakatla. This proposal could increase the number of Alaska citizens who may be subject to a third set of civil rights standards, under ICRA, which may in some respects be less protective and in some respects more protective than those under the two standards already set by the United States and Alaska Constitutions. There are those who believe that this proposal constitutes an unprecedented expansion of tribal jurisdiction, in that it contemplates that there is tribal jurisdiction over non-members outside Indian country.

Alaska Statute 09.30.180. Full Faith and Credit for Tribal Court Money Judgments. Notwithstanding AS 04.21.020(a), the courts and agencies of the State of Alaska shall give full faith and credit to any Alaska Native Village Tribal Court judgment that meets the following requirements.

- a. The community is a federally recognized tribe, without regard to whether the tribe occupies Indian country or not, which has enacted a tribal ordinance regulating alcohol or other intoxicants.
- b. The ordinance creates a tribunal, which may or may not be the tribe's governing body, to hear cases arising under the ordinance.
- c. The tribunal has conducted a proceeding under the ordinance which has resulted in a civil money judgment being entered for violation of the

ordinance, against either (1) a tribal member or (2) an individual or business not a tribal member which has engaged in a consensual transaction with a tribal member (or with a child eligible for tribal membership) involving alcohol or another intoxicant.

- d. The proceedings were conducted in accordance with the due process and other requirements of the Indian Civil Rights Act, 25 U.S.C. §1301 et seq.
- e. The burden of proof required for proceedings under the ordinance is at least that of a preponderance of the evidence.
- f. If the money judgment is based on statutory rather than actual damages, the amount of the civil money judgment for any one incident does not exceed the ceiling on criminal fines imposable by a tribal court under the Indian Civil Rights Act.

**Alaska Statute 09.30.190. Filing and status.**

- a. A copy of a tribal judgment under §09.30.180 may be filed in the office of the clerk of the court with jurisdiction in this state. The clerk shall treat the tribal judgment in the same manner as a domestic judgment. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a domestic judgment and may be enforced or satisfied in like manner.
- b. A person filing a foreign judgment shall pay to the clerk of court the fee prescribed for the filing of an action. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for domestic judgments.
- c. At the time of the filing of the tribal judgment, the judgment creditor or the judgment creditor's lawyer shall file with the clerk of court a document with the name and last known mailing address of the judgment debtor and of the judgment creditor. Promptly upon the filing of the tribal judgment, the clerk shall mail notice of the filing of the tribal judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.
- d. No execution or other process for enforcement of a foreign judgment filed under this chapter shall issue until 20 days after the date the judgment is filed.
- e. If the judgment debtor shows the court that an appeal from the tribal judgment is pending or is available and will be taken, or that a stay of execution has been granted, the court may stay enforcement of the tribal judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the tribe before whose tribunal the appeal is pending, or the tribe whose tribunal has granted the stay.
- f. If the judgment debtor shows the court any ground upon which enforcement of a judgment of the court of this state would be stayed, the court shall stay

enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment that is required in this state.

**g.** The court shall grant a request by the judgment debtor to refuse full faith and credit if the judgment debtor establishes by a preponderance of the evidence that:

- (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of the due process clause or other requirements of the Indian Civil Rights Act applicable to civil proceedings;
- (2) the tribal court did not have subject matter jurisdiction over the case under the laws of the tribe;
- (3) the judgment debtor is not a tribal member, the judgment debtor does not maintain a residence in the community in which the tribal court sits, the consensual transaction on which tribal jurisdiction is based took place outside the State of Alaska, the defendant in the tribal court proceedings was served outside the State of Alaska, and the defendant lacks other minimum contacts with the tribe;
- (4) the defendant in the proceedings in the tribal court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;
- (5) the judgment was obtained by fraud;
- (6) the cause of action on which the judgment is based is repugnant to the public policy of this state;
- (7) the judgment conflicts with another final and conclusive judgment;
- (8) the proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.

**h.** If the judgment debtor shows the court any ground upon which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment that is required in this state.

## 25. Compacts

**Statement of Need:** Current state laws for controlling alcohol in rural Alaska are not working. Everything from prohibition of alcohol sales to Alaska Natives to present-day attempts at curbing alcohol importation under the State's local option laws have been tried with only limited success. The result has been piecemeal policy approaches, with the ultimate outcome being a series of jurisdictional disputes. To the extent the jurisdiction of Alaska's tribes over the conduct of its members is established, one possible solution might be a Tribal-State Compact along the lines of the agreements authorized under the Indian Gaming Regulatory Act.

**Option:** Authorize Tribal-State Compacts which outline how the two sovereigns will share jurisdiction and law enforcement authority in the regulation of alcohol. The Workgroup did not have sufficient time to fully explore this option, but believe it is one that is worth further development.

**Rationale for Options:** Compacts under IGRA recognize tribal and state regulatory authority and jurisdiction and provide for cooperative enforcement efforts.

**Impact statement:** Jurisdictional issues could be resolved by agreement and the State and the Tribe could maximize their respective resources to address the regulation of alcohol in rural Alaska villages.

**Considerations:** Such agreements would be very difficult to negotiate. The State would have difficulties negotiating variant agreements with numerous villages, and may feel that federal or state statutory authorization to enter into an agreement would be required. The work-group urges this be considered, but not to the exclusion of other jurisdictional options.

In an effort to regulate the sale, distribution, purchase and shipment of alcoholic beverages into damp local option communities within the State of Alaska, Senate Bill 128 requires the Alcoholic Beverage Control Board (ABC), to create and maintain a database that will allow businesses that sell alcoholic beverages to keep track of written orders for alcohol shipped to each buyer. Anytime a written order for alcohol is received from a resident of a local option area, the package store licensee must consult the database prior to filling the order, to ensure that the customer has not already ordered their monthly quota for that month. Alcohol may only be shipped to the personal residence of the person placing the order, unless they reside in an area which has a community delivery site, in that case, all alcohol shipped must be delivered to that site and not the personal address of the buyer. The alcoholic beverages ordered cannot be sold to another person in the community. Such conduct would be a class A misdemeanor.

Having information readily available in a database will prevent bootleggers from ordering alcohol from multiple package stores in violation of the local option. The information in the database will be accessible only to package stores and law enforcement - none of the information would be public information.

Senate Bill 128 also contains a provision to correct an omission in state law relative to the transfer of liquor licenses between an organized borough and communities in that borough. Many communities across the state have used their allotment of liquor licenses, while their borough has not. Boroughs may now transfer alcoholic beverage licenses to those communities.

There are several people signed up to testify on this legislation. Annie Carpeneti, from the Criminal Division of the Department of Law is here to answer questions you may have.

*Rural Justice Commission*