

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SCR 18 cont., SCR 18-H, HJR 18, HCR 19 170

INCORPORATED COMMUNITY

NO POSSESSION

PETITION FOR SPECIAL ELECTION

WHEREAS, we, the undersigned registered voters of the City of _____ wish to take action regarding alcohol use in our community, and;

WHEREAS, we the undersigned registered voters of the City of _____ wish to vote on an option under State Title 4 Alcohol Local Option Law as soon as possible, now, therefore,

WE, THE UNDERSIGNED voters of _____ HEREBY petition the Director of the Division of Elections that a special election be conducted pursuant to Alaska Statute 04.11.502, with the following question on the ballot:

"Shall the possession of alcoholic beverages be prohibited in _____? (Yes or No)."

The date of the first circulation of this petition is the _____ day of _____, 198_. All signatures on this petition must be secured within 90 days of this date of first circulation.

Signature	Printed Name	Date of Signature (Printed)	Residence Address (Printed)
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____

SAMPLE BALLOT FOR MUNICIPALITIES

NO POSSESSION

City of (Name of municipality and type of election) ELECTION BALLOT

Date: _____

Mark only by use of "x" marks. Place marks at the right of the YES or NO under the question on this ballot.

The "x" mark must be inside or touching the square so that it shows the intent of the voter. DO NOT erase or correct your marks. Ask for a new ballot if you make a mistake.

Mark only one square. A "YES" vote would mean that you want to ban the possession of alcoholic beverages under state law.

If you spoil your ballot, give it back to one of the election judges and get another ballot.

QUESTION:

"Shall the possession of alcoholic beverages be prohibited in
_____?"
(name of municipality)

YES

NO

SAMPLE BALLOT FOR ESTABLISHED VILLAGES

NO POSSESSION

(Name of village) SPECIAL ELECTION BALLOT

Date: _____

Mark only by use of "x" marks. Place marks at the right of the YES or NO under the question on this ballot.

The "x" mark must be inside or touching the square so that it shows the intent of the voter. DO NOT erase or correct your marks. Ask for a new ballot if you make a mistake.

Mark only one square. A "YES" vote would mean that you want to ban the possession of alcoholic beverages under state law.

If you spoil your ballot, give it back to one of the election judges and get another ballot.

QUESTION:

"Shall the possession of alcoholic beverages be prohibited in
_____?"
(name of village)

YES

NO



LAWS OF ALASKA

1986

Source

CSSSHB 700(Fin) am

Chapter No.

80

AN ACT

Relating to regulation of alcoholic beverages and enactment of municipal ordinances.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 5, 1986
Actual Effective Date: September 3, 1986

Chapter 80

AN ACT

Relating to regulation of alcoholic beverages and enactment of municipal ordinances.

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

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

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

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

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

(5) there is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, suicide, domestic violence, and crime;

(6) the dangers resulting from alcohol abuse are particularly acute in rural areas of the state because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent;

(7) in communities that have chosen to ban the sale and importation of alcohol, most drinking takes place in private homes;

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

(9) a fine in the amount of \$1,000 or 20 hours of community work, is not so severe a penalty as to indicate criminality in either rural or urban Alaska communities.

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

Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC BEVERAGES. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the possession of alcoholic beverages be prohibited in (name of municipality or village)? (yes or no)."

(b) If a majority of the voters of an established village vote "yes" on the question set out in (a) of this section, and the sale of alcoholic beverages, or the sale and importation of alcoholic beverages, has been previously prohibited in the established village in accordance with AS 04.11.490 or 04.11.494, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly possess an alcoholic beverage in the established village, unless the alcoholic beverage is wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes, by a person recognized by the church or religious body as authorized to dispense the wine. The board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the perimeter of the established village as defined in AS 04.21.080(b)(8).

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

alcoholic beverages, or the sale and importation of alcoholic beverages, has not been previously prohibited in the established village in accordance with AS 04.11.490 or 04.11.494, a person, beginning 90 days after certification of the results of the election, may not knowingly possess an alcoholic beverage in the established village, unless the person is licensed by the board or the alcoholic beverage is wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person by the church or religious body as authorized to dispense the wine. The board shall be notified immediately after certification of the results of the election and thereafter may not issue, renew, or transfer between holders or locations a license for licensed premises located within the perimeter of the established village as defined in AS 04.21.080(b)(8). Licenses that may not be renewed because of a local option election held under this section are void 90 days after the results of the election are certified. A license that will expire during the 90 days after the results of a local option election under this section are certified may be extended until it is void under this section, by payment of a prorated portion of the annual license fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If the person fails to pay the bail amount established under (c) of this section, or fails to provide proof of performance as specified in (d)(1) of this section to the court, the citation is considered a summons.

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

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

(i) The commissioner of public safety shall prescribe and provide a suitable standard citation form that is in a form necessary to identify the offender, to identify the offense, and to meet the needs of public safety and administration of justice.

(j) A municipality shall adopt a citation form that is equivalent to that prescribed by the commissioner under (i) of this section.

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

(a) The following are subject to forfeiture:

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

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060;

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

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

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

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

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

(4) alcoholic beverages found on licensed premises that [WHICH] do not bear federal excise stamps if excise stamps are required under federal law;

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

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

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

- (1) the seizure is incident to a valid arrest or search;
- (2) the property subject to seizure is the subject of a

prior judgment in favor of the state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Except as provided in (c), (AND) (d) and (e) of this section, the mayor may veto an ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

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

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

Chapter 80

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

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

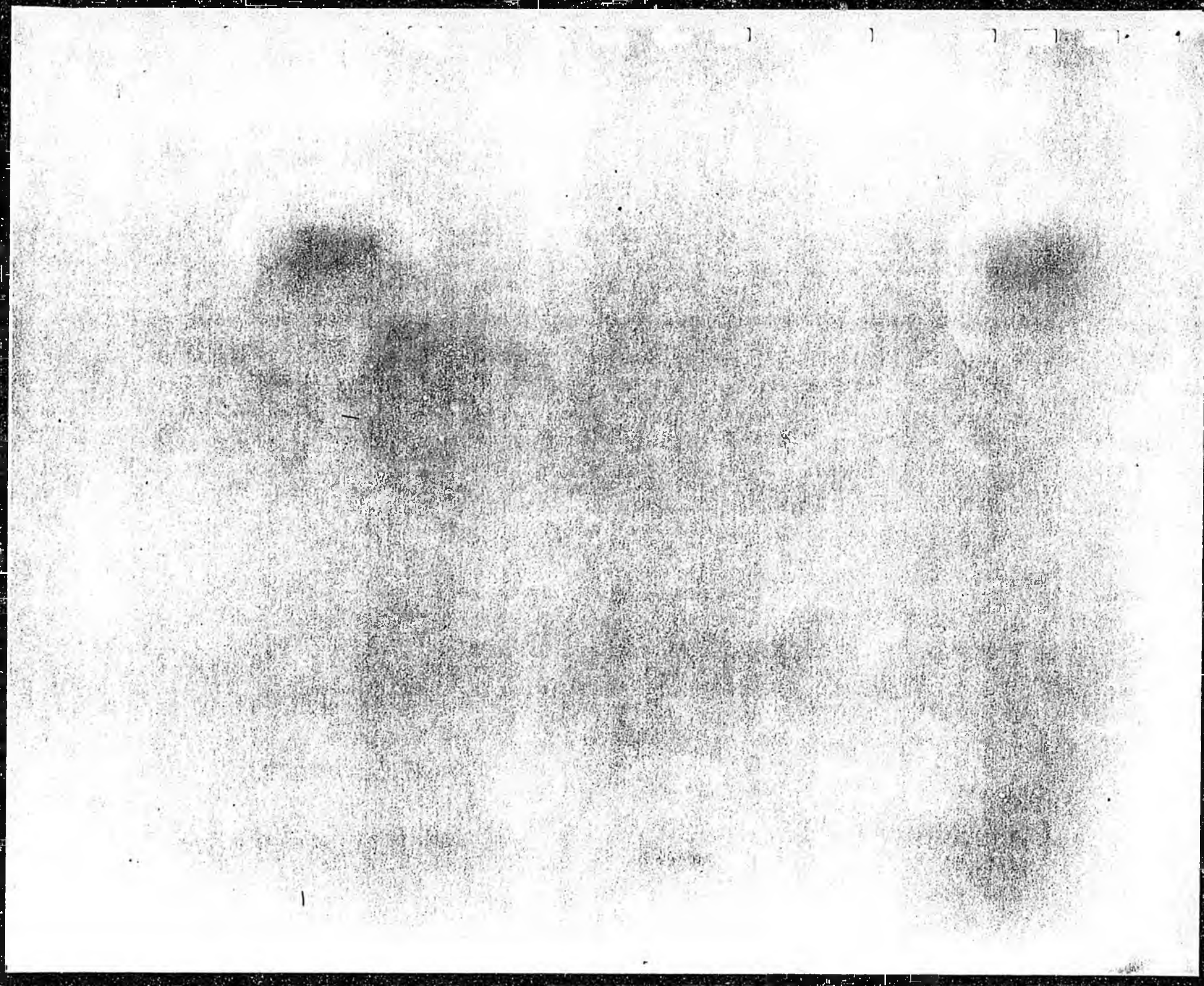
4 (d) This section does not apply to an ordinance proposed under
5 AS 04.11.502(c).

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

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

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

10 (a) A municipality may regulate the possession, barter, sale,
11 importation, and consumption of alcoholic beverages in accordance with
12 AS 04.11.480 - 04.11.506 and AS 04.21.010.



SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3/18/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED 1 **
IN ACCORDANCE WITH AS 24.08.035
(see below)

DATE TURNED INTO OFFICE 3/26/87

Mr. President:

HESS

Committee considered SCR 18

Extending the Joint Special Committee on Local Option Laws.

and recommended:

[] replace with CS _____ [] same title
[] new title

[] attached amendment(s) and

majority
[X] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

** Committee [X] attached or [] adopted fiscal note(s)
[] zero [X] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

David Jones
Gov. P. Josephson
Rich Halford

Gaul Fiske Do Pass
Chairman signature and recommendation

[] Committee Backup Attached

SCR

18-H

HOUSE COMMITTEE REPORT

(11)

Date referred: 5/11/87

FURTHER REFERRALS:

5/16
Ruler

(HESS waived 5/11)

DATE: 5-16-87

The Finance Committee has considered SCR 18

Extending the Joint Special Committee on Local Option Laws.

RECOMMENDS:

- replace with _____ the same title
- 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 same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Ray Collins
Ronald J. Jura
Al Swick
Steve Rein
Raynellis

SIGNING OTHER RECOMMENDATIONS:

Pat Fawcett *Don't need additional monies in 88 budget*
Mike W.
Rita Jura
Mark Boyer
Mark
Jay Brown
Ceberso. Adis

Chairman's signature

No 215

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SCR 18
Publish Date: 4-7-87

Revision Date: _____
Title: Extending Joint Special
Committee on Local Option Laws
Sponsor: Sen. Binkley
Requestor: Senate Finance

Agency Affected: Legislative Affairs
BRU: Legislative Council
Components: Council & Subcommittees

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--


FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: 
Division: Senator John Binkley, Co-chairman
Senate Finance Committee

Phone: 465-4985
Date: April 7, 1987

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

1 IN THE SENATE BY BINKLEY

2 SENATE CONCURRENT RESOLUTION NO. 18

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 Extending the Joint Special Committee on

6 Local Option Laws.

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

8 WHEREAS the First Session of the Fourteenth Legislature passed Senate
9 Concurrent Resolution 23 establishing a Joint Special Committee on Local
10 Option Laws; and

11 WHEREAS this joint special committee was intended to dissolve on the
12 30th day of the First Session of the Fifteenth Legislature; and

13 WHEREAS the joint special committee requires additional time in which
14 to address the problems associated with alcohol abuse and the use of local
15 option elections to combat this abuse;

16 BE IT RESOLVED by the Alaska State Legislature that the joint special
17 committee established by the First Session of the Fourteenth Legislature by
18 Senate Concurrent Resolution 23, shall not dissolve on the 30th day of the
19 First Session, but shall dissolve on the last day of the Second Session of
20 the Fifteenth Legislature, after submitting a written report to the legis-
21 lature that addresses the merits of and makes recommendations concerning
22 these local option elections.

A M E N D M E N T

Offered in the SENATE FINANCE COMMITTEE

TO: CS__ ____(Fin) am

ADD:

* Sec. _____. The unexpended and unobligated balance of the appropriation made in sec. 21, ch. 129, SLA 1986, page 101, line 26 (joint committee on local option - \$50,000) lapses into the general fund June 30, 1988.

Senator John Binkley

Alaska State Senate

P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

Finance Committee
Co-Chairman

M E M O R A N D U M

May 15, 1987

TO: House Finance Committee

FROM: Senator John Binkley *J. Binkley*

RE: Senate Concurrent Resolution 18
Extending the Joint Special Committee on
Local Option Laws

The Joint Special Committee on Local Option Laws, created by the Fourteenth Legislature, was mandated to review the alcohol local option laws. The committee traveled throughout Alaska, taking testimony, and collecting data on the subject of alcohol problems and the effectiveness of the local option laws.

As a result of the findings of the committee, the alcohol local option laws (AS 04.11) were amended in 1986 to include a fifth option which allows individual communities to choose to ban possession of alcohol.

This is an important law to many villages. In the course of our hearings, the committee determined that follow-up efforts would be required to assist communities that wished to consider this option. It is very important that the law is understood completely and that procedures for adopting and enforcing the law are followed very carefully. During the interim the Local Option Committee contracted with Tanana Chiefs Conference for follow-up services, including outreach and training.

Outreach efforts have included public service announcements, letters, bulletins, extensive telephoning to communities and organizations that indicated an interest in the new law. A training manual was developed, and TCC traveled to those communities that requested training on the fifth option.

To date, eight communities in Alaska have voted and adopted the option to ban possession of alcohol within their community. It has become apparent that the need to oversee the implementation of the local option law continues. Additional villages have expressed a desire for training. Also, the committee may wish to consider technical amendments to the law.

May 15, 1987
Page 2

This resolution would extend the life of the Local Option Committee through the Fifteenth Legislature. It is important that the committee continue to monitor the new Fifth Option, and to identify any changes that may be required.

1 IN THE SENATE

BY BINKLEY

2

SENATE CONCURRENT RESOLUTION NO. 18

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

Extending the Joint Special Committee on

6

Local Option Laws.

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

8

WHEREAS the First Session of the Fourteenth Legislature passed Senate

9

Concurrent Resolution 23 establishing a Joint Special Committee on Local

10

Option Laws; and

11

WHEREAS this joint special committee was intended to dissolve on the

12

30th day of the First Session of the Fifteenth Legislature; and

13

WHEREAS the joint special committee requires additional time in which

14

to address the problems associated with alcohol abuse and the use of local

15

option elections to combat this abuse;

16

BE IT RESOLVED by the Alaska State Legislature that the joint special

17

committee established by the First Session of the Fourteenth Legislature by

18

Senate Concurrent Resolution 23, shall not dissolve on the 30th day of the

19

First Session, but shall dissolve on the last day of the Second Session of

20

the Fifteenth Legislature, after submitting a written report to the legis-

21

lature that addresses the merits of and makes recommendations concerning

22

these local option elections.

HJR

18

HOUSE COMMITTEE REPORT

(11)

Date referred: 1/20/88

FURTHER REFERRALS:

DATE: 3-16-88

The Finance Committee has considered HJR 18

Proposing an amendment to the Constitution of the State of Alaska relating to resident preference under the equal protection clause.

RECOMMENDS:

- replace with CS HJR 18 (Finance) the same title
- 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 same as previous fiscal note published 1-20-88
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

Ronald J. Turner

Mark Somper

Steve Regis

Fay Brown

Althea Davis

[Signature]

Pat Pouchot

SIGNING OTHER RECOMMENDATIONS:

[Signature]
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHJR 18(FIN)
PUBLISH DATE: HOMER 1/20/88

FISCAL NOTE

REQUEST:

Revision Date: 1/15/88
Title: Constitutional Amendment
Resident Preference/Equal Protection
Sponsor: Donley
Requestor: House Judiciary

Agency Affected: Office of the Governor
BRU: Elections
Components: II

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2 *	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	2.2	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (continued pg. 2)

Maw

Prepared by: Linda Edgeworth
Division: Elections

Phone: 465-4611
Date: 1/15/88

Approved by Commissioner: [Signature]
Agency: Office of the Governor

Date: 1/15/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR #18

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

Original sponsors: Donley, Gruenberg,
Boyer, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 18 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 resident preference.

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

9 * Section 1. Article I, Constitution of the State of Alaska, is amended
10 by adding a new section to read:

11 SECTION 23. RESIDENT PREFERENCE. This constitution does not
12 prohibit the State from granting preferences, on the basis of Alaska
13 residence, to residents of the State over nonresidents to the extent
14 permitted by the Constitution of the United States.

15 * Sec. 2. The amendment proposed by this resolution shall be placed
16 before the voters of the state at the next general election in conformity
17 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
18 tion laws of the state.

Original sponsors: Donley, Gruenberg,
Boyer, et al.

[] Deleted
Language

New
Language

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE JOINT RESOLUTION NO. 18 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 resident preference.

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

9 * Section 1. Article I, Constitution of the State of Alaska, is amended
10 by adding a new section to read:

11 SECTION 23. RESIDENT^[EMPLOYMENT] PREFERENCE. This constitution does not
12 prohibit the State from granting^[employment] preferences, on the basis of Alaska
13 residence, to residents of the State over nonresidents to the extent
14 permitted by the Constitution of the United States.

15 * Sec. 2. The amendment proposed by this resolution shall be placed
16 before the voters of the state at the next general election in conformity
17 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
18 tion laws of the state.

HJR 18

BURKE, Justice, concurring.

I concur in the determination that Alaska's "local hire" law¹ violates the Privileges and Immunities Clause of the Constitution of the United States,² for the reasons stated in the opinion of the court, authored by Justice Matthews. In my judgment, however, we should decide this case on an independent ground. Thus, as Francis urges us to do in one of his alternative arguments, I would hold the local hire law invalid upon the ground that it violates the clear and unambiguous language of article I, section 1 of the Alaska Constitution.³

When called upon to determine the constitutionality of an Alaska statute under both the state and federal constitutions, it is my belief that this court should consider first the requirements of the Alaska Constitution. Shafer v. Vest, 680 P.2d 1169, 1172 (Alaska 1984) (Burke, C.J., concurring). Although this approach has been criticized by some, it is the one favored by a number of respected judges and legal commentators, whose reasons appear far more persuasive to me than do those of the persons in the opposite camp. See R.F. Utter, Freedom and

1. AS 36.10.

2. U.S. Const. art. IV, § 2.

3. Article I, section 1 of the Alaska Constitution provides, in part, "that all persons are equal and entitled to equal rights, opportunities, and protection under the law."

Diversity in the Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491 (1984). In any event, it is the approach that I would employ in the case at bar, for the following reasons.

A decision by this court that the local hire law violates the Alaska Constitution would bring this case to an immediate end, since it has long been held that it is beyond the power of the United States Supreme Court to review a state court's interpretation of its state constitution, "as long as the state ground is independent of any federal ground and is adequate to support the judgment." Id. at 505, citing Michigan v. Long, 463 U.S. 1032, 77 L.Ed.2d 1201, 103 S.Ct. 3469 (1983) and Fox Film Corp. v. Miller, 296 U.S. 207, 80 L.Ed. 158, 56 S.Ct. 183 (1935). The majority opinion, however, leaves the final result still uncertain.

Given the understandable popularity of local hire measures in Alaska, it is a foregone conclusion that state officials will be under considerable pressure to seek review of our determination of the federal question by the final arbiter of such disputes, the United States Supreme Court. Should the advocates of local hire prevail in that forum, it will still be necessary for this court to decide whether the present statute

violates the Alaska Constitution. Thus, the ultimate outcome could remain unsettled until there is a second decision by this court. Rather than expose the parties and the people of this state to such uncertainty, and the added cost of future litigation, I think we should decide this critical issue of state law here and now.

Another reason for us to examine the requirements of the Alaska Constitution is the almost certain fact that the state legislature will be asked to enact new local hire legislation, after the announcement of our decision. The main difficulty that the legislature faces, as I see it, is the clear and unambiguous statement contained in our state constitution, "that all persons are equal and entitled to equal rights [and] opportunities." Alaska Const. art. I, § 1 (emphasis added). The fact that it may be possible to draft a statute that would satisfy the requirement of the United States Constitution does not mean that the same statute will pass muster under this or some other provision of the Alaska Constitution. It is important, I think, to make this clear to the people of this state and their elected representatives.

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

January 22, 1988

M E M O R A N D U M

To: Representative Al Adams, Chair
House Finance Committee

From: Representative Dave Donley **DB**

Re: Request for hearing on HJR 18

I am writing to request a hearing before the House Finance Committee on HJR 18, relating to local hire laws under Alaska's Constitution.

HJR 18 would put a proposed constitutional amendment before the voters that would clarify the State's right to grant employment preferences to its own citizens.

The measure was sparked by remarks made by Justice Burke in reviewing the Francis case that Alaska's constitution has a stronger prohibition against local hire preferences than the U.S. Constitution mandates. Justice Burke commented that local hire laws adopted by the Legislature may have a harder time meeting constitutional muster under our own Constitution than they would experience under federal review.

HJR 18 has a small fiscal note to cover the cost of putting the measure on the ballot. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

Original sponsors: Donley, Gruenberg,
Boyer, et al.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE JOINT RESOLUTION NO. 18 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 Proposing an amendment to the Constitu-
6 tion of the State of Alaska relating to
7 resident employment preference.
8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. Article I, Constitution of the State of Alaska, is amended
10 by adding a new section to read:
11 SECTION 23. RESIDENT EMPLOYMENT PREFERENCE. This constitution
12 does not prohibit the State from granting employment preferences to
13 residents of the State.
14 * Sec. 2. The amendment proposed by this resolution shall be placed
15 before the voters of the state at the next general election in conformity
16 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
17 tion laws of the state.

1 IN THE HOUSE

BY DONLEY, GRUENBERG, BOYER,
HOFFMAN, KOPONEN, SPRINGER
AND GRUSSENDORF

2

HOUSE JOINT RESOLUTION NO. 18

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

Proposing an amendment to the Constitu-

6

tion of the State of Alaska relating to

7

resident preference under the equal

8

protection clause.

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

10 * Section 1. Article I, sec. 1, Constitution of the State of Alaska, is
11 amended to read:

12 SECTION 1. INHERENT RIGHTS. This constitution is dedicated to
13 the principles that all persons have a natural right to life, liberty,
14 the pursuit of happiness, and the enjoyment of the rewards of their
15 own industry; that all persons are equal and entitled to equal rights,
16 opportunities, and protection under the law; and that all persons have
17 corresponding obligations to the people and to the State. This sec-
18 tion does not prohibit the State from granting preferences consistent
19 with the Constitution of the United States to residents of the State.

20 * Sec. 2. The amendment proposed by this resolution shall be placed
21 before the voters of the state at the next general election in conformity
22 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
23 tion laws of the state.

HCR

19

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/17/87

FURTHER REFERRALS:

DATE: 4/29/87

The Finance Committee has considered HCR 19

Relating to dependent care benefits under the Supplemental Benefits System.

RECOMMENDS:

- replace with CS HCR 19 (Fin.) the same title
- 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 same as previous fiscal note published _____
- zero fiscal note
- zero with analysis same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

<u>[Signature]</u>	ADAMS <u>Al Adams - NO Rec.</u>
<u>[Signature]</u>	LARSON <u>Ronald J Larson - NO Rec</u>
<u>[Signature]</u>	WALLIS <u>Ray Wallis -11-</u>
<u>[Signature]</u>	BROWN <u>Ray Brown - NO rec</u>
<u>[Signature]</u>	DAVIS <u>Mike Davis NO REC</u>
<u>[Signature]</u>	
<u>[Signature]</u>	
<u>[Signature]</u>	
<u>[Signature]</u>	

Alberto Adams
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHCR 19 (Fin.)
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: Relating to dependent care
benefits under SBS

Agency Affected: Administration
BRU: Retirement and Benefits

Sponsor: Frank and Boyer
Requestor: House, State Affairs

Components: Retirement and Benefits

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Any costs required by changes in Supplemental Benefits System (SBS) will be borne by SBS participants through the program's administrative fees.

Prepared By: Michael B. Coughlin, Deputy Director Phone: 465-4470
Division: Retirement and Benefits Date: April 15, 1987

Approved by Commissioner: Garrey Peska Date: 4/16/87
Agency: Department of Administration

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

Original sponsors: Frank, Boyer,
Koponen and Sund

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 19 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 Relating to dependent care benefits
6 under the Supplemental Benefits System.

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

8 WHEREAS changes to the federal income tax laws require changes to the
9 state's supplemental employee benefits program; and

10 WHEREAS changes and clarifications of federal tax law since the sup-
11 plemental employee benefits program was designed in 1979 will permit the
12 state to offer a cafeteria plan with a variety of benefits from which
13 employees may make selections; and

14 WHEREAS one of the options permitted by federal tax law is a dependent
15 care assistance program in which certain costs for dependent care may be
16 paid from income not subject to federal taxation; and

17 WHEREAS child care expenses can be a significant expense for working
18 parents;

19 BE IT RESOLVED that the Alaska State Legislature respectfully urges
20 the Governor to direct the Department of Administration to offer dependent
21 care assistance in the revised supplemental employee benefits program and
22 to submit appropriate legislation to the legislature by January 20, 1988.

Alaska State Legislature

2

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701
(907) 452-3421



While in Ill.
P. O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: all members, House State Affairs Committee
FROM: Rep. Steve Frank
RE: House Concurrent Resolution 19
DATE: April 15, 1987

The purpose of this resolution is to encourage the administration to include dependent care benefits in the list of options offered under the Supplemental Benefits System (SBS). This will allow state employees to pay for dependent care services with pre-tax dollars, instead of after-tax dollars.

In order to conform with the 1986 Tax Act, SBS will be revised and will requalify under a different section of the tax code (IRC 125). As such, SBS will be able to offer a dependent care plan, whereas previously their treatment by the IRS would not allow that.

Three compelling arguments for this legislation are:

- 1) as mentioned, SBS will be revised to conform to the new tax code,
- 2) the cost of dependent care will be paid for by those who opt for it, and
- 3) the state can set a standard that, hopefully, the private sector will adopt.

Probably the best model to look at regarding flexible benefit plans that offer dependent care services is the Anchorage Municipality. According to their benefits director they are pleased with the program and have about a 5.2% participation rate.

Statutory changes will be necessary later to accomplish the SBS requalifying. HCR 19 will send a message to the administration encouraging them to include dependent care in the revised SBS.

Thank you for your consideration.

SECTION 1
DEFINITIONS

When used herein, the terms defined in Section 1 of the Program shall have the same meaning as therein defined and the following additional terms shall have the following meanings:

1.01 Dependent

"Dependent" means:

- (a) a child who is under the age of 15 and with respect to whom an employee or his spouse is entitled to a dependency exemption under Section 151(e) of the Code; or
- (b) a relative or household member of an employee over half of whose support is received from the employee and who is physically or mentally incapable of caring for himself; or
- (c) the spouse of an employee who is physically or mentally incapable of caring for himself.

1.02 Dependent Care Expenses

"Dependent Care Expenses" means the expenses specified in Section 3 that qualify as Eligible Expenses.

1.03 Earned Income

"Earned Income" means wages, salaries, tips and other employee compensation, plus net earnings from self-employment, computed without regard to any community property laws and excluding any amounts received as a pension or annuity, as reimbursement of Eligible Expenses under the Program or as dependent care assistance under any other employer's program. An employee's spouse who is either a student or incapable of caring for himself shall be deemed, for each month during which such spouse is either a full-time student at an educational institution or a Dependent, to be gainfully employed and to have Earned Income of not less than;

- (a) \$200 per month, if the employee has only one Dependent for the Plan Year, or
- (b) \$400 per month, if the employee has two or more Dependents for the Plan Year.

1.04 Plan

"Plan" means the Anchorage Dependent Care Assistance Plan as described in this document and any amendments thereto.

APR 15 1987

LEGISLATIVE FINANCE

POSITION PAPER

House Concurrent Resolution 19

This resolution requests the Governor to direct the Department of Administration to offer dependent care assistance as a benefit option under the Supplemental Benefits System (SBS) after the SBS has been qualified under Section 125 of the Internal Revenue Code.

The Tax Reform Act of 1986 will require basic changes to the structure of the SBS since it will be subject to Section 125 rules. Any costs involved in these changes will be borne by SBS participants through the program's administrative fees. Section 125 will allow a dependent care plan to be offered as a benefit option. This option could provide reimbursement of up to \$5000 per year in dependent care expenses using before-tax dollars.

The Department supports this resolution. Dependent care assistance under a requalified SBS will be a valuable benefit to many employees.

for Michael B. Campbell
J.K. Humphreys, Director
Division of Retirement & Benefits

4/15/87
Date

Garrey Peska
Commissioner Garrey Peska
Department of Administration

4/15/87
Date

H 12111

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460

2600 DENALI ST. SUITE 401
ANCHORAGE, ALASKA 99503
PHONE (907) 277-7504

Public Employees' Retirement System
Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

3

STEVE COWPER, GOVERNOR

March 23, 1987

The Honorable Steve Frank
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Frank:

I am writing to confirm my discussions with Mr. Rick Solie of your office regarding a dependent care option under the Supplemental Benefits System (SBS).

The only way that an employee may pay for dependent care on a pre-tax basis is for the employer to offer such a program through a flexible benefit plan. The SBS is not currently a flexible benefit plan in the eyes of the Internal Revenue Service.

The Tax Reform Act of 1986 will require some important changes to the SBS. The most significant change will be the requalification of the plan as a flexible benefit plan under Internal Revenue Code (IRC) 125. This qualification would allow both taxable and non-taxable benefits to be offered to employees. Dependent care benefits could then be implemented. Other changes such as having the annuity portion of SBS become a freestanding plan, rather than an integral part of the SBS as it is now, will also be required.

Mr. Solie has stated your intentions of providing some assistance to employees requiring dependent care services. I believe that the requalified SBS plan would be an ideal vehicle to provide such a benefit after the changes required by Tax Reform are accomplished.

While I am confident that legislative changes will be required in the future to accommodate changes in the program, it is not clear at this time as to the extent of these changes. I have suggested to Mr. Solie that a resolution stating the Legislature's wishes regarding dependent care be introduced this year rather than legislation. Legislation can then be drafted in the next session to provide for any benefit changes or other changes that may be required.

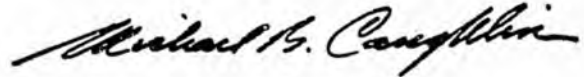
The Honorable Steve Frank

-2-

March 23, 1987

Please contact me should you have any questions or required further information on this subject.

Sincerely,



Michael B. Coughlin
Deputy Director

MBC/cam/3

cc: Marsha Hubbard
Deputy Commissioner
Administrative Management
Department of Administration

RECEIVED

MAR 05 1987

WILLIAM M.
MERCER - Meidinger
INCORPORATED

Division of Retirement & Ben

*Impact of
SBA to introduce leg.
to effect for Medicare*

March 2, 1987

Mr. Michael B. Coughlin
Deputy Director
State of Alaska
Department of Administration
Division of Retirement & Benefits
P.O. Box CR (M0203)
Juneau, AK 99803

Re: SBS After-Tax Reform

Dear Mike:

The Tax Reform Act 1986 (TRA) requires important changes in the Supplemental Benefits System. Prior to discussing our recommendations on restructuring SBS, we believe that a brief history of SBS will be helpful.

Current Structure of SBS

A cafeteria plan, which is governed under IRC 125, permits employees to choose among various benefits. In the past, a plan had to offer both taxable and non-taxable benefits to satisfy the definition of a cafeteria plan. The only deferred compensation arrangement, allowed in a cafeteria plan, is a 401(k) profit sharing plan.

When SBS was designed in 1979, cafeteria plans and 401(k) plans were brand new. It was uncertain whether a public entity such as the State of Alaska could maintain a "profit-sharing" plan. Thus, the Supplemental Annuity Plan was established as a 401(a) Money Purchase Pension Plan, and SBS offered only non-taxable benefits.

SBS had to be structured to avoid any possibility of an employee choosing a taxable benefit to avoid being considered a cafeteria plan. For example, employer-paid group term life coverage over \$50,000 is a taxable benefit. For this reason, the maximum life insurance option in SBS was set at \$48,000, which, in conjunction with the \$2,000 of life insurance provided to all state employees, would prevent anyone from having more than \$50,000 of employer-paid life insurance.

Mr. Michael B. Coughlin
Page Two
March 2, 1987

Tax Reform Act Changes

Since 1979, the IRS has formally approved 401(k) plans for the State of Tennessee, the Municipality of Anchorage, and other local governments. However, the Tax Reform Act of 1986 prohibits the state governments from establishing 401(k) Profit Sharing Plans after May 5, 1986 (existing plans may be continued). TRA also states that any plan which offers choices only among non-taxable benefits is now subject to the Section 125 rules. This creates a major dilemma for the Supplemental Benefits System. SBS is now considered a 125 cafeteria plan, and the only deferred compensation arrangement allowed under a cafeteria plan is a profit sharing plan. The very same law which caused SBS to become a cafeteria plan also prohibits the state from establishing a 401(k) profit-sharing plan. The inescapable conclusion is that the Supplemental Annuity Plan must be a free-standing plan, which is separate and apart from the Supplemental Benefit System. For your consideration, we recommend the following changes in the Supplemental Benefit System.

Supplemental Annuity Plan

As a freestanding plan, the Supplemental Annuity Plan should be amended so that the annual contribution, for every employee, is X% of salary up to the wage base. For example, X might be 6.13%, but need not be. The average SBS member contributes 11.3% to the Supplemental Annuity Plan. Thus, in the revised Annuity Plan, you might contribute 11.3% (up to the wage base) for each member.

This change to the Supplemental Annuity Plan can be accomplished with a relatively minor amendment to the current plan. Administration of the Supplemental Annuity Plan and all other aspects of the plan, would remain unchanged, except for the fact that each employee would have the same percentage contributed to the plan.

Supplemental Benefits System

Under the revised program, the Supplemental Annuity Plan is not technically a part of the Supplemental Benefit System. SBS is a 125 cafeteria plan which can allow employees to choose between taxable and non-taxable benefits. The new SBS could have life insurance in excess of \$50,000/year, could have a cash-option, and could have dependent care options, in addition to existing benefit options. The contribution to a new SBS would be Y%. Most likely, Y% would equal 12.26% minus X% (from the Supplemental Annuity Plan). The new SBS could also allow participants to elect additional salary deferrals (greater than Y%) in order to pay for additional SBS benefits with before-tax dollars.

Mr. Michael B. Coughlin
Page Three
March 2, 1987

Dependent Care

Section 125 allows employees to elect reimbursement of up to \$5,000 per year dependent care expenses. Under the new SBS, some of the dependent care money could come from the Y% and some from additional salary deferrals. In any event, this will be a very valuable benefit for some employees. In the Municipality of Anchorage Flexible Benefit Plan, 5.2% of the members have elected to utilize the dependent care option, at an average annual rate of approximately \$3,400. The ability to provide for this expense with before-tax dollars is a significant enhancement to SBS.

Cash Option

Because of the state's budget constraints, the lack of pay increases, and in fact pay decreases, some employees may be under financial strain. Thus, a new cash option in SBS may be appreciated by employees. Practically, cash is a necessary feature of the new plan. In the old plan, monies that did not go to health/life/disability, automatically went into the annuity plan. Now, a cash option can be the "safety valve" for monies not used for health/life/disability premiums.

Advantages

Some of the advantages of new SBS are:

- (1) The dependent care option.
- (2) The cash option.
- (3) More flexibility in adding additional benefits.
- (4) Via additional salary deferrals, employees can pay for benefits which are more costly than the 12.26% SBS contribution.
- (5) By utilizing the cash option, in conjunction with an increase in deferrals to the Deferred Compensation Plan, most employees will be able to continue to defer at least 12.26% of pay. Furthermore, employees will be able to select among investment options in DCP while they do not have investment choices in the Supplemental Annuity Plan.

Mr. Michael B. Coughlin
Page Four
March 2, 1987

- ? OPTNL
- (6) The Supplemental Life Insurance Program could be eliminated while at the same time coverage limits for life insurance under SBS could be extended. This will simplify administration as well as eliminate the cost of one program.

Disadvantages

- (1) Approximately 6% of the state employees have already maximized their contributions to the Deferred Compensation Plan. Many of these employees, depending where the X% is established in the Annuity Plan, will see a net reduction in overall salary deferrals between the Annuity Plan and DCP. If "X" is 11.26%, then these few employees would only lose deferrals on 1% up to the wage base; i.e., the most anyone could lose would be \$440 in deferrals. Based upon June 30, 1986 data, 526 employees would lose an average of \$237 in deferrals. Of course, if an individual elects pre-tax contributions to fund dependent care or other SBS benefits, DCP plan deferrals could be further limited.
- (2) Some legislators may feel the cash option is not in the spirit of the Social Security Opt Out Program.
- (3) Very few, if any, employees will have exactly 12.26% of their pay being contributed to the annuity plan and SBS. Virtually all employees will be having additional salary deferrals, or be receiving cash. Consequently, the payroll system will have to be modified to handle this.
- (4) Employees may no longer individually select the amount contributed to the annuity plan on their behalf.

Effective Dates

The changes required by the Tax Reform Act must become effective:

- (1) January 1, 1988, if the IRS issues regulations prior to October 1, 1987; or
- (2) on January 1, 1989.

There has been no indication from the IRS that regulations will be issued by this October. Consequently, I believe it is likely that the effective date for the Tax Reform Act changes will be January 1, 1989.

William M. Mercer-Meidinger, Incorporated

Mr. Michael B. Coughlin
Page Five
March 2, 1987

Summary

Because of the Tax Reform Act, several changes must be made to the Supplemental Benefit System. We believe that the recommended changes described in this letter are, for the vast majority of employees, a significant improvement. We look forward to working closely with you on SBS over the following months.

Sincerely,



Robert F. Richardson, ASA
Principal

RFR/js

cc: Mr. Kevin Wilma

Percent of Wage Base Contributed
to Supplemental Annuity Plan
As of June 30, 1986

<u>Contribution Rate</u>	<u>Number of Employees</u>	
to 9.99%	751	
10.0 - 10.49%	1398	
10.5 - 10.99%	2533	
11.0 - 11.49%	3132	
11.5 - 11.99%	2401	
12.0 - 12.26%	<u>3419</u>	
	13,339	Average Rate = 11.30%

Percentage of Wage Base Contributed
to Deferred Compensation Plan
As of June 30, 1986

<u>Contribution Rate</u>	<u>Number of Employees</u>	
0%	11,727	
.1 - 4.9	376	
5.0 - 9.9	125	
10.0 - 14.9	257	
15.0 - 19.9	835	
20.0 - 21.9	<u>215</u>	
	13,339	Average Rate =

*From Jeff Johnson
CPA - Pkts.*

WAGE REDUCTION PLAN

(Section 125 Cafeteria Plan)

The basic idea is to pay for child care with pretax dollars.

Employer allows employee to have his gross taxable wage reduced by an amount the employee selects. Annual maximum \$5,000 or may not exceed the total gross income of the lowest paid spouse. Such amount is used by the employer to pay the employee upon submittal by the employee of paid child care expense.

Employee makes his estimate of child care expenses annually and can not change the amount unless the employee terminates from the company or a change in family status occurs.

How does it work?

EXAMPLE

ATTACHED

BENEFITS TO EMPLOYER -

Saves social security taxes which will offset plan administration expenses.

AFFECT ON SOCIAL SECURITY BENEFITS -

Because taxable income is reduced, social security benefits that you will receive upon retirement may be slightly reduced as well.

AFFECT ON UNEMPLOYMENT -

Unemployment benefits may also be reduced as a result of lower taxable income.

ADDITIONAL COMMENT -

This type of plan can be combined with a similar wage reduction to fund--

Medical premiums and medical payments (deductibles)

WAGE REDUCTION PLAN VS. NO PLAN

EXAMPLE

- Mr. & Mrs. Smith
- Mrs. Smith employer has a wage reduction program
- 2 children under age 15
- Child care expenses of \$5,000
- 1987 marginal tax rate of 28%
- AGI \$40,000

	<u>PARTICIPANT</u>	<u>NONPARTICIPANT</u>
Annual wages, Mrs. Smith	\$18,000	\$18,000
Pretax payment of child care expense	<u>(5,000)</u>	<u>-</u>
	13,000	18,000
Less		
FICA .0715	(930)	(1,287)
Federal (28% bracket)	(3,640)	(5,040)
After tax payment of child care expense	-	(5,000)
Plus		
Child care credit	<u>-</u>	<u>960</u>
Pay after taxes and expenses	<u>\$ 8,430</u>	<u>\$ 7,633</u>
Savings	<u>\$ 797</u>	

Department of the Treasury
Internal Revenue Service (O)

▶ Attach to Form 1040.
▶ See Instructions below.

1985
23

Name(s) as shown on Form 1040

Your social security number

- 1 Write the number of qualifying persons who were cared for in 1985. (See the instructions below for the definition of qualifying persons.)
- 2 If payments listed on line 3 were made to an individual, complete the following:
 - a If you paid \$50 or more in a calendar quarter to an individual, were the services performed in your home?
 - b If "Yes," have you filed appropriate wage tax returns on wages for services in your home (see the instructions for line 2)?
 - c If the answer to b is "Yes," write your employer identification number.
- 3 Write the amount of qualified expenses you incurred and actually paid in 1985 for the care of the qualifying person, but do not write more than \$2,400 (\$4,800 if you paid for the care of two or more qualifying persons).
- 4 You must write your earned income on line 4c. See the instructions for line 4 for the definition of earned income.
 - If you were **unmarried** at the end of 1985, write your earned income on line 4c, **OR**
 - If you are **married**, filing a joint return for 1985, you must complete lines 4a and 4b.
 - a Write your earned income
 - b Write your spouse's earned income
 - c Compare amounts on lines 4a and 4b, and write the smaller of the two amounts on line 4c
- 5 Compare amounts on lines 3 and 4c, and write the smaller of the two amounts on line 5
- 6 Write the percentage from the table below that applies to the adjusted gross income on Form 1040, line 33

1		
2a	Yes	No
2b		

3	Employer ID number
4a	
4b	
4c	
5	
6	
7	
8	
9	

If line 33 is:		Percentage is:	If line 33 is:		Percentage is:
Over—	But not over—		Over—	But not over—	
	\$0-10,000	30% (.30)	\$20,000-22,000	24% (.24)	
	10,000-12,000	29% (.29)	22,000-24,000	23% (.23)	
	12,000-14,000	28% (.28)	24,000-26,000	22% (.22)	
	14,000-16,000	27% (.27)	26,000-28,000	21% (.21)	
	16,000-18,000	26% (.26)	28,000	20% (.20)	
	18,000-20,000	25% (.25)			

- 7 Multiply the amount on line 5 by the percentage shown on line 6, and write the result.
- 8 Multiply any child and dependent care expenses for 1984 that you paid in 1985 by the percentage that applies to the adjusted gross income on Form 1040, line 33, for 1984. Write the result. (See line 8 instructions for the required statement.)
- 9 Add amounts on lines 7 and 8. Write the total here and on Form 1040, line 41. This is the maximum amount of your credit for child and dependent care expenses

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

What Is the Child and Dependent Care Expenses Credit?

You may be able to take a tax credit for amounts you paid someone to care for your child or other qualifying person so you could work or look for work in 1985. The credit will lower the amount of your tax. The credit is based on a percentage of the amount you paid during the year. The most you may take as a credit is \$720 if you paid for the care of one qualifying person, or \$1,440 if you paid for the care of two or more qualifying persons.

Additional information.—For more information about the credit, please get Publication 503, Child and Dependent Care Credit, and Employment Taxes for Household Employers.

Who Is a Qualifying Person?

A qualifying person is any one of the following persons:

- Any person under age 15 whom you claim as a dependent (but see the special rule later for Children of divorced or separated parents).
- Your disabled spouse who is mentally or physically unable to care for himself or herself.
- Any disabled person who is mentally or physically unable to care for himself or herself and whom you claim as a dependent, or could claim as a dependent except that he or she had income of \$1,040 or more.

Note: You must have shared the same home with any person you claim as a qualifying person.

Children of divorced or separated parents.—If you were divorced, legally separated, or lived apart from your spouse during the last 6 months of 1985, you may be able to claim the credit even if your child is not your dependent. If your child is not your dependent, he or she is a qualifying person if all five of the following apply:

1. You had custody of the child for the longer period during the year; and
2. The child received over half of his or her support from one or both of the parents; and
3. The child was in the custody of one or both of the parents over half of the year; and
4. The child was under age 15, or was physically or mentally unable to care for himself or herself; and

(Continued on back)

Department of the Treasury
Internal Revenue Service (0)

▶ Attach to Form 1040.
▶ See Instructions below.

Name(s) as shown on Form 1040

Your social security number

1 Write the number of qualifying persons who were cared for in 1985. (See the instructions below for the definition of qualifying persons.)

1

2 If payments listed on line 3 were made to an individual, complete the following:

a If you paid \$50 or more in a calendar quarter to an individual, were the services performed in your home?

Yes No

b If "Yes," have you filed appropriate wage tax returns on wages for services in your home (see the instructions for line 2)?

2a 2b

c If the answer to b is "Yes," write your employer identification number.

Employer ID number

2c

3 Write the amount of qualified expenses you incurred and actually paid in 1985 for the care of the qualifying person, but do not write more than \$2,400 (\$4,800 if you paid for the care of two or more qualifying persons).

3

4 You must write your earned income on line 4c. See the instructions for line 4 for the definition of earned income.

• If you were **unmarried** at the end of 1985, write your earned income on line 4c. **OR**

• If you are **married**, filing a joint return for 1985, you must complete lines 4a and 4b.

a Write your earned income.

4a

b Write your spouse's earned income

4b

c Compare amounts on lines 4a and 4b, and write the smaller of the two amounts on line 4c.

4c

5 Compare amounts on lines 3 and 4c, and write the smaller of the two amounts on line 5

5

6 Write the percentage from the table below that applies to the adjusted gross income on Form 1040, line 33

6

If line 33 is:		Percentage is:	If line 33 is:		Percentage is:
Over—	But not over—		Over—	But not over—	
	\$0-10,000	30% (.30)	\$20,000-22,000	24% (.24)	
	10,000-12,000	29% (.29)	22,000-24,000	23% (.23)	
	12,000-14,000	28% (.28)	24,000-26,000	22% (.22)	
	14,000-16,000	27% (.27)	26,000-28,000	21% (.21)	
	16,000-18,000	26% (.26)	28,000	20% (.20)	
	18,000-20,000	25% (.25)			

7 Multiply the amount on line 5 by the percentage shown on line 6, and write the result.

7

8 Multiply any child and dependent care expenses for 1984 that you paid in 1985 by the percentage that applies to the adjusted gross income on Form 1040, line 33, for 1984. Write the result. (See line 8 instructions for the required statement.)

8

9 Add amounts on lines 7 and 8. Write the total here and on Form 1040, line 41. This is the maximum amount of your credit for child and dependent care expenses

9

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

What Is the Child and Dependent Care Expenses Credit?

You may be able to take a tax credit for amounts you paid someone to care for your child or other qualifying person so you could work or look for work in 1985. The credit will lower the amount of your tax. The credit is based on a percentage of the amount you paid during the year. The most you may take as a credit is \$720 if you paid for the care of one qualifying person, or \$1,440 if you paid for the care of two or more qualifying persons.

Additional information.—For more information about the credit, please get Publication 503, Child and Dependent Care Credit, and Employment Taxes for Household Employers.

Who Is a Qualifying Person?

A qualifying person is any one of the following persons:

- Any person under age 15 whom you claim as a dependent (but see the special rule later for Children of divorced or separated parents).
- Your disabled spouse who is mentally or physically unable to care for himself or herself.
- Any disabled person who is mentally or physically unable to care for himself or herself and whom you claim as a dependent, or could claim as a dependent except that he or she had income of \$1,040 or more.

Note: You must have shared the same home with any person you claim as a qualifying person.

Children of divorced or separated parents.—If you were divorced, legally separated, or lived apart from your spouse during the last 6 months of 1985, you may be able to claim the credit even if your child is not your dependent. If your child is not your dependent, he or she is a qualifying person if all five of the following apply:

1. You had custody of the child for the longer period during the year; and
2. The child received over half of his or her support from one or both of the parents; and
3. The child was in the custody of one or both of the parents over half of the year; and
4. The child was under age 15, or was physically or mentally unable to care for himself or herself; and

(Continued on back)

Credit for Child and Dependent Care Expenses

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040.
▶ See instructions below.

1986
Attachment
Sequence No. 23

Name(s) as shown on Form 1040: **MR. & MRS. SMITH**
Your social security number: **111-11-1111**

Note: If you paid cash wages of \$50 or more in a calendar quarter to an individual for services performed in your home, you must file an employment tax return. Get Form 942, Employer's Quarterly Tax Return for Household Employees, for details.

- 1 Enter the number of qualifying persons who were cared for in 1986. (See the instructions below for the definition of qualifying persons.) **1**
- 2 Enter the amount of qualified expenses you incurred and actually paid in 1986 for the care of the qualifying person. (See What Are Qualified Expenses in the instructions.) Do not enter more than \$2,400 (\$4,800 if you paid for the care of two or more qualifying persons) **4,800**
- 3a You must enter your earned income on line 3a. See the instructions for line 3 for the definition of earned income **12,000**
- b If you are married, filing a joint return for 1986, you must enter your spouse's earned income on line 3b **9,000**
- c If you are married filing a joint return, compare the amounts on lines 3a and 3b, and enter the smaller of the two amounts on line 3c **9,000**
- 4 • If you were unmarried at the end of 1986, compare the amounts on lines 2 and 3a, and enter the smaller of the two amounts on line 4.
• If you are married filing a joint return, compare the amounts on lines 2 and 3c, and enter the smaller of the two amounts on line 4. **4,800**
- 5 Enter the percentage from the table below that applies to the adjusted gross income on Form 1040, line 33 **23**

If line 33 is:		Percentage is:	If line 33 is:		Percentage is:
Over —	But not over —		Over —	But not over —	
\$0 - 10,000		30% (.30)	\$20,000 - 22,000		24% (.24)
10,000 - 12,000		29% (.29)	22,000 - 24,000		23% (.23)
12,000 - 14,000		29% (.28)	24,000 - 26,000		22% (.22)
14,000 - 16,000		27% (.27)	26,000 - 28,000		21% (.21)
16,000 - 18,000		26% (.26)	28,000		20% (.20)
18,000 - 20,000		25% (.25)			

- 6 Multiply the amount on line 4 by the percentage shown on line 5, and enter the result **1,104**
- 7 Multiply any child and dependent care expenses for 1985 that you paid in 1986 by the percentage that applies to the adjusted gross income on your 1985 Form 1040, line 33, or Form 1040A, line 15. Enter the result. (See line 7 instructions for the required statement.) **7**
- 8 Add amounts on lines 6 and 7. Enter the total here and on Form 1040, line 41. This is the maximum amount of your credit for child and dependent care expenses **1,104**

EXAMPLE II

- 2 Children under age 15	
- Qualifying child care expenses	\$ 4,800
- Mr. Smith's W2 wages	12,000
- Mrs. Smith's W2 wages	9,000
- Adjusted gross income	
Form 1040, Line 33 or 32	23,000

5. The child is not your dependent because—

- a. As the custodial parent, you have signed Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, or a similar statement, agreeing not to claim the child's exemption for 1985; or
- b. You were divorced or separated before 1985 and your divorce decree or written agreement states that the other parent can claim the child's exemption, and the other parent provides at least \$600 in child support during the year. (*Note: This rule does not apply if your decree or agreement was changed after 1984 to specify that the other parent cannot claim the child's exemption.*)

Who May Take the Credit?

To claim the credit all five of the following must apply:

1. You paid for the care so you (and your spouse if you were married) could work or look for work (but see the rules at the line 4 instructions for Spouse who is a full-time student or is disabled).
2. You and the qualifying person(s) lived in the same home.
3. You (and your spouse if you were married) paid over half the cost of keeping up your home. The cost includes: rent; mortgage interest; property taxes; utilities; home repairs; and food eaten at home.
4. The person you paid to provide the care was not your spouse or a person you could claim as a dependent.

Note: If the person you paid to provide the care was your child, he or she must have been 19 or over by the end of 1985.

5. If you were married at the end of 1985, generally, you must file a joint tax return. However, there are two exceptions to this rule. You will be treated as unmarried and still be eligible to take the credit if:
 - a. You were legally separated; or
 - b. You were living apart from your spouse during the last 6 months of the year, and:
 - The qualifying person lived with you in your home over 6 months, and
 - You provided over half the cost of keeping up your home.

What Are Qualified Expenses?

Qualified expenses include amounts paid for household services and care of the qualifying person while you work or look for work.

Household services.—These services must be needed to care for the qualifying person as well as to run the home. They include, for example, the services of a cook, maid, babysitter, housekeeper, governess, or cleaning person if the services were partly for the care of the qualifying person.

Care of the qualifying person.—Care includes the cost of services for the qualifying person's well-being and protection.

Generally, care does not include food or schooling expenses. However, if these items

are included as part of the total care, and they are incident to, and cannot be separated from, the total cost, you may count the total payment. However, you may not count the cost of schooling for a child in the first grade or above.

Care outside the home.—You may count care provided outside your home if the care was for:

- a. Your dependent under age 15; or
- b. Any other qualifying person who regularly spends at least 8 hours each day in your home.

Care that is provided by a dependent care center may be counted if the center complies with all applicable state and local laws and regulations. A dependent care center is a place that provides care for at least seven persons (other than persons who live there), and receives a fee, payment, or grant for providing the services for any of those persons, regardless of whether the center is run for profit.

Medical expenses.—Some dependent care expenses may qualify as medical expenses. If you itemize deductions, you may want to take all or part of these medical expenses on Schedule A (Form 1040). If you cannot use all the medical expenses on Form 2441 because of the dollar limit or earned income limit (explained later), you may take the rest of these expenses on Schedule A. But if you deduct the medical expenses first on Schedule A, you may not use any part of these expenses on Form 2441.

Specific Instructions

The following are specific instructions for most of the lines on the form. Lines which have no instructions here are self-explanatory.

Line 2.—In general, if you paid cash wages of \$50 or more in a calendar quarter for household services provided by a person such as a housekeeper, maid, babysitter, or cook, you must file an employment tax return. If you are not sure whether you should file an employment tax return, get Form 942, Employer's Quarterly Tax Return for Household Employees.

Note: You should file a Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, for 1985 by January 31, 1986, if you paid cash wages of \$1,000 or more for household services in any calendar quarter in 1984 or 1985.

Line 3. Dollar limit.—On line 3 write the amount of qualified child and dependent care expenses you incurred and actually paid in 1985. However, the most you may figure the credit on is \$2,400 a year for one qualifying person, or \$4,800 a year for two or more qualifying persons. Do not include amounts paid or incurred by your employer if, and to the extent, such amounts are excluded from your gross income.

Note: Do not include on line 3 qualified expenses that you incurred in 1985 but did not pay until 1986. Instead, you may be able to increase the amount of your 1986 credit when you pay the 1985 expenses in 1986.

Line 4. Earned income limit.—Figure your earned income limitation on line 4. The amount of your qualified expenses may not be more than your earned income or, if married filing a joint return, the smaller of your earned income or your spouse's earned income.

In general, earned income is wages, salaries, tips, and other employee compensation. It also includes net earnings from self-employment. For more information on what is earned income for purposes of the credit, see Publication 503.

Unmarried taxpayers.—If you were unmarried at the end of 1985 or are treated as being unmarried at the end of the year, write your earned income on line 4c.

Married taxpayers.—If you are married, filing a joint return, figure each spouse's earned income separately and disregard community property laws. Write your earned income on line 4a and your spouse's earned income on line 4b. Then, write the smaller of your earned income or your spouse's earned income on line 4c.

Spouse who is a full-time student or is disabled.—If your spouse was a full-time student or was mentally or physically unable to care for himself or herself, figure your spouse's earned income on a monthly basis to determine your spouse's earned income for the year. For each month that your spouse was disabled or a full-time student, your spouse is considered to have earned income of not less than \$200 a month (\$400 a month if more than one qualifying person was cared for in 1985).

If, in the same month, both you and your spouse were full-time students and did not work, you may not use any amount paid that month to figure the credit. The same applies to a couple who did not work because neither was capable of self-care.

A full-time student is one who was enrolled in a school for the number of hours or classes that the school considers full time. The student must have been enrolled at least 5 months during 1985.

Self-employment income.—You must reduce your earned income by any loss from self-employment. If your net earnings from self-employment are less than \$1,600, and you use the optional method to figure your self-employment tax, you may be able to increase your net earnings to \$1,600 for this credit. See Publication 533, Self-Employment Tax, for details. If you only have a loss from self-employment, or your loss is more than your other earned income and you do not use the optional method, you may not take the credit.

Line 8.—If you had qualified expenses for 1984 that you did not pay until 1985, you may be able to increase the amount of credit you may take in 1985. To do this, multiply the 1984 expenses you paid in 1985 by the percentage from the table on line 6 that applies to the adjusted gross income shown on your 1984 Form 1040, line 33. Your 1984 expenses must be within the 1984 limits. Attach a computation showing how you figured the increase. (Use the example in Publication 503 as a guide.)

ANCHORAGE
DEPENDENT CARE ASSISTANCE PLAN
(A COMPONENT PLAN OF THE ANCHORAGE
FLEXIBLE BENEFIT PROGRAM)

ADOPTED
EFFECTIVE APRIL 1, 1985

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SECTION 3 - DEPENDENT CARE EXPENSES.	5
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PREAMBLE

The Municipality of Anchorage (hereinafter "Employer") establishes this "Anchorage Dependent Care Assistance Plan" (hereinafter "Plan") effective April 1, 1985, to allow Eligible Employees of the Employer to elect to receive dependent care assistance benefits which are excludable from gross income under Section 129(a) of the Internal Revenue Code of 1954, as amended (hereinafter "Code"), as provided herein and in the terms of the "Anchorage Flexible Benefit Program" (hereinafter "Program").

The Anchorage Dependent Care Assistance Plan is a Component Plan of the Anchorage Flexible Benefit Program and, except to the extent otherwise expressly provided herein, is governed by the rules and regulations of that Program. The Plan is intended to qualify as a "dependent care assistance program" within the meaning of Section 129(d) of the Code and to meet the requirements of any other applicable provisions of law.

SECTION 1
DEFINITIONS

When used herein, the terms defined in Section 1 of the Program shall have the same meaning as therein defined and the following additional terms shall have the following meanings:

1.01 Dependent

"Dependent" means:

- (a) a child who is under the age of 15 and with respect to whom an employee or his spouse is entitled to a dependency exemption under Section 151(e) of the Code; or
- (b) a relative or household member of an employee over half of whose support is received from the employee and who is physically or mentally incapable of caring for himself; or
- (c) the spouse of an employee who is physically or mentally incapable of caring for himself.

1.02 Dependent Care Expenses

"Dependent Care Expenses" means the expenses specified in Section 3 that qualify as Eligible Expenses.

1.03 Earned Income

"Earned Income" means wages, salaries, tips and other employee compensation, plus net earnings from self-employment, computed without regard to any community property laws and excluding any amounts received as a pension or annuity, as reimbursement of Eligible Expenses under the Program or as dependent care assistance under any other employer's program. An employee's spouse who is either a student or incapable of caring for himself shall be deemed, for each month during which such spouse is either a full-time student at an educational institution or a Dependent, to be gainfully employed and to have Earned Income of not less than;

- (a) \$200-per month, if the employee has only one Dependent for the Plan Year, or
- (b) \$400 per month, if the employee has two or more Dependents for the Plan Year.

1.04 Plan

"Plan" means the Anchorage Dependent Care Assistance Plan as described in this document and any amendments thereto.

SECTION 2

BENEFITS

2.01 Reimbursement Options

Subject to the conditions set forth in the Plan and Program, each Participant who elects to participate in the Plan may elect to receive reimbursement for Dependent Care Expenses in any amount which is a multiple of \$25 up to a maximum of \$300 per bi-weekly period, subject to the following limitation. The total amount of reimbursement elected per Plan Year, combined with any other dependent care assistance received through an employment-related plan by the Participant or his spouse, may not exceed the lesser of;

- (a) the Participant's Earned Income for the Plan Year, and
- (b) if the Participant is married on the last day of the Plan Year, the spouse's Earned Income for the Plan Year.

Although this benefit is described in biweekly terms, the benefit elected for a Plan Year may be paid and expenses may be incurred at any time during the Plan Year, subject to the other provisions of the Plan and Program. For example, a Participant may elect a \$50 biweekly benefit to cover \$1,300 of Dependent Care Expenses incurred during the last three months of the Plan Year.

2.02 Election of Reimbursement

A Participant may elect to participate in the Plan by submitting an Annual Election Form to the Employer as provided in Section 4.04 of the Program, and may claim reimbursement on a bi-weekly basis by submitting a Request for Reimbursement to the Employer. In the event a Participant does not qualify for reimbursement of the amount elected during the Plan Year, the difference between the amount elected and actual reimbursement shall be forfeited at the end of the Plan Year or upon termination.

2.03 Payment of Reimbursements

The Employer shall pay reimbursements offered under Section 2.01 only to the extent permitted by a Participant's account balance and the maximum reimbursement elected. The Employer shall pay reimbursements as soon as practicable after receipt of each Request for Reimbursement. No Participant shall have any rights or be entitled to any such reimbursements under the Plan unless a Request for Reimbursement is submitted. The Employer will review each Request for Reimbursement submitted to determine whether (i) the expenses for which reimbursement is sought are reimbursable Eligible Expenses and (ii) the request is accompanied by any required documentation.

2.04 Maximum Reimbursements

Reimbursements during a Plan Year shall not exceed the lesser of:

- (a) the amount designated on an Annual Election Form for dependent care assistance for such Plan Year, or
- (b) the amount of Eligible Expenses for which reimbursement is properly requested.

SECTION 3

DEPENDENT CARE EXPENSES

3.01 Dependent Care Expenses are amounts paid by a Participant for expenses for household services and for the care of a Dependent which are incurred to enable the Participant to be gainfully employed by the Employer for any period for which he has one or more Dependents, provided that:

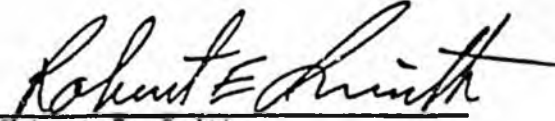
- (a) if such expenses are incurred for services outside a Participant's household, they are incurred for the care of a child as defined in Section 1.01(a), or of an other Dependent defined in Section 1.01(b) or (c) who regularly spends at least eight hours each day in the Participant's household, and
- (b) if such outside services are provided by a dependent care center, such center (i) complies with the applicable State and local government laws and regulations, (ii) provides care for more than six individuals (other than individuals who reside at the facility), and (iii) receives a fee, payment or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

3.02 Dependent Care Expenses shall in no event include amounts paid by a Participant to an individual;

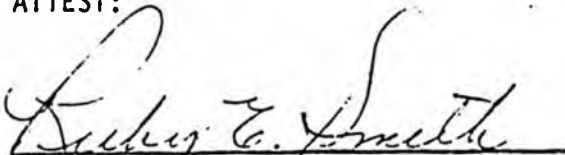
- (a) with respect to whom a deduction is allowable to the Participant or the spouse under Section 151(e) of the Code (relating to personal exemptions for dependents), or
- (b) who is a child (within the meaning of Section 151(e)(3) of the Code) of the Participant under the age of 19 at the close of the Plan Year in which such amounts are paid.

IN WITNESS WHEREOF, the Municipality of Anchorage has caused this Anchorage Dependent Care Assistance Plan to be executed by its duly authorized representative this 31st day of December 1985, effective April 1, 1985.

MUNICIPALITY OF ANCHORAGE


Robert E. Smith
Municipal Manager

ATTEST:


Municipal Clerk



Alaska Public
Employees Association

APEA⁴

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative Fran Ulmer, Chairwoman
House State Affairs Committee

FROM: Cherie Shelley, Executive Director

SUBJECT: HCR 19 - Dependent Care Benefits

DATE: 15 April 1987

The Alaska Public Employees Association supports House Concurrent Resolution 19 and urges the committee to consider the measure favorably.

The Tax Reform Act of 1986 will require substantive changes to the Supplemental Benefits System. In the process of complying with federal law, the options available under the SBS can be expanded to provide additional benefit offerings to employees. Among those options now available is that of dependent care.

APEA has long supported addition of dependent care benefits to the SBS program. Similar options are available to employers of the Municipality of Anchorage and numerous corporations.

It is appropriate at this time to direct the Department of Administration to offer dependent care assistance as an option in the revised SBS.

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825 College Road
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833 Gambell Street, Suite A
Anchorage, AK 99501
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Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-8305

1 IN THE HOUSE

BY FRANK AND BOYER

2

HOUSE CONCURRENT RESOLUTION NO. 19

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

Relating to dependent care benefits

6

under the Supplemental Benefits System.

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

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WHEREAS changes to the federal income tax laws require changes to the

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state's supplemental employee benefits program; and

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WHEREAS changes and clarifications of federal tax law since the sup-

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plemental employee benefits program was designed in 1979 will permit the

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state to offer a cafeteria plan with a variety of benefits from which

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employees may make selections; and

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WHEREAS one of the options permitted by federal tax law is a dependent

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care assistance program in which certain costs for dependent care may be

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paid from income not subject to federal taxation; and

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WHEREAS child care expenses can be a significant expense for working

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parents;

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BE IT RESOLVED that the Alaska State Legislature respectfully urges

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the Governor to direct the Department of Administration to offer dependent

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care assistance in the revised supplemental employee benefits program.