

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1388 SCOMM 52 JOINT SPEC. COMMITTEE ON LOCAL OPTION LAWS 1985-86

1 order entered by the court. The court shall order destroyed any
2 property forfeited under this section that [WHICH] is harmful to the
3 public. Other property shall be ordered sold and the proceeds used
4 for payment of expenses of the proceedings for forfeiture and sale,
5 including expenses of seizure, custody and court costs. The remainder
6 of the proceeds shall be deposited in the general fund.

7 * Sec. 8. AS 04.21.010(a) is amended to read:

8 (a) A municipality may adopt ordinances governing the barter,
9 sale, and consumption of alcoholic beverages within the municipality
10 as necessary for the orderly conduct of the business of selling alco-
11 holic beverages within the municipality and may ban possession of
12 alcoholic beverages under AS 04.11.498(c). An ordinance adopted under
13 this section may not be inconsistent with this title or regulations
14 adopted under this title.

15 * Sec. 9. AS 04.21.080(b)(1) is repealed and reenacted to read:

16 (1) "alcoholic beverage" means spirituous, vinous, malt or
17 other fermented or distilled liquids, whatever the origin, that are
18 intended for human consumption and that contain more than one percent
19 alcohol by volume, whether produced commercially or privately;

20 * Sec. 10. AS 29.10.200 is amended by adding a new paragraph to read:

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

22 * Sec. 11. AS 29.20.270(a) is amended to read:

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

27 * Sec. 12. AS 29.20.270 is amended by adding a new subsection to read:

28 (e) The veto does not extend to an ordinance adopted under
29 AS 04.11.498. This subsection applies to home rule and general law

1 municipalities.

2 * Sec. 13. AS 29.25.020 is amended by adding a new subsection to read:

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

5 * Sec. 14. AS 29.25.070 is amended by adding a new subsection to read:

6 (d) This section does not apply to an ordinance adopted under
7 AS 04.11.498(c).

8 * Sec. 15. AS 29.35.080(a) is amended to read:

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

14-1943
Ford
3/19/86

BY THE RULES COMMITTEE BY
REQUEST OF THE JOINT SPECIAL
COMMITTEE ON LOCAL OPTION LAWS

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

26 (7) the economic cost of alcohol abuse is high, and cannot be
27 afforded by the state or small rural communities.

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

29 Sec. 04.11.498. PROHIBITION OF POSSESSION OF ALCOHOLIC

1 BEVERAGES. (a) The following question, appearing alone, may be
2 placed before the voters of a municipality or an established village
3 in accordance with AS 04.11.502: "Shall the possession of alcoholic
4 beverages be prohibited in (name of municipality or vil-
5 lage)? (yes or no)."

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

23 (c) If a majority of the voters of a municipality vote "yes" on
24 the question set out in (a) of this section, an ordinance is adopted
25 that becomes effective beginning on the first day of the month follow-
26 ing certification of the results of the election, and a person may not
27 knowingly possess an alcoholic beverage in the municipality, unless
28 the alcoholic beverage is sacramental wine to be used for bona fide
29 religious purposes based on tenets or teachings of a church or

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

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

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

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

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

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

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

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

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

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

22 (c) The supreme court shall establish by rule or order a sched-
23 ule of bail amounts that may be forfeited without a court appearance
24 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-
25 11.498. In establishing the bail schedule the supreme court may
26 consider the quantity of alcoholic beverages possessed and the number
27 of prior violations of the person cited. The maximum bail amount may
28 not exceed \$1,000, and if a citation is issued that may be disposed of
29 without court appearance, the issuing officer shall write on the

1 citation the amount of bail applicable to the violation.

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

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

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

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

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

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

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

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

7 (a) The following are subject to forfeiture:

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

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

29 (3) aircraft, vehicles, or vessels used to transport, or

1 facilitate the transportation of

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

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

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

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

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

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

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

17 (h) Property forfeited under this section shall be placed in the
18 custody of the commissioner of public safety for disposition according
19 to an order entered by the court. The court shall order destroyed all
20 alcoholic beverages [ANY PROPERTY] forfeited under this section and
21 any other property that [WHICH] is harmful to the public. Other
22 property shall be ordered sold and the proceeds used for payment of
23 expenses of the proceedings for forfeiture and sale, including ex-
24 penses of seizure, custody and court costs. The remainder of the
25 proceeds shall be deposited in the general fund.

26 * Sec. 7. AS 04.21.010(a) is amended to read:

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

*equipment
home brew*

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

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

6 (1) "alcoholic beverage" means spirituous, vinous, malt or
7 other fermented or distilled liquids, whatever the origin, that are
8 intended for use as a beverage and that contain more than one percent
9 alcohol by volume, whether produced commercially or privately;

10 * Sec. 9. AS 29.10.200 is amended by adding a new paragraph to read:

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

12 * Sec. 10. AS 29.20.270(a) is amended to read:

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

17 * Sec. 11. AS 29.20.270 is amended by adding a new subsection to read:

18 (e) The veto does not extend to an ordinance adopted under
19 AS 04.11.498. This subsection applies to home rule and general law
20 municipalities.

21 * Sec. 12. AS 29.25.020 is amended by adding a new subsection to read:

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

24 * Sec. 13. AS 29.25.070 is amended by adding a new subsection to read:

25 (d) This section does not apply to an ordinance adopted under
26 AS 04.11.498(c).

27 * Sec. 14. AS 29.35.080(a) is amended to read:

28 (a) A municipality may regulate the possession, barter, sale,
29 importation, and consumption of alcoholic beverages in accordance with

1 AS 04.11.480 - 04.11.506 and AS 04.21.010.
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

14-1943 ✓
Ford
3/4/86

1 IN THE HOUSE

BY THE JOINT SPECIAL COMMITTEE
ON LOCAL OPTION LAWS

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. AS 04.11 is amended by adding a new section to read:

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

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

1 renewed because of a local option election held under this section are
2 void on the first day of the month following certification of the
3 election.

4 (c) If a majority of the voters of a municipality vote "yes" on
5 the question set out in (a) of this section, an ordinance is adopted
6 that becomes effective beginning on the first day of the month follow-
7 ing certification of the results of the election, and a person may not
8 knowingly possess an alcoholic beverage in the municipality, unless
9 the alcoholic beverage is sacramental wine to be used for bona fide
10 religious purposes based on tenets or teachings of a church or reli-
11 gious body, is limited in quantity to the amount necessary for reli-
12 gious purposes, and is dispensed only for religious purposes by a
13 person authorized by the church or religious body to dispense the
14 sacramental wine. The board shall be notified immediately after the
15 enactment of the ordinance and thereafter may not issue, renew, or
16 transfer between holders or locations a license for licensed premises
17 located within the boundaries of the municipality and within unincor-
18 porated areas within five miles of the boundaries of the municipality.
19 Licenses that may not be renewed because of a local option election
20 held under this section are void on the first day of the month follow-
21 ing certification of the election.

22 (d) If a majority of the voters vote "no" on the question set
23 out in (a) of this section or vote "yes" on the questions set out in
24 AS 04.11.492 or 04.11.500 in an election conducted in accordance with
25 AS 04.11.502 after an election in which the voters voted "yes" on the
26 question set out in (a) of this section, the prohibition on the pos-
27 session of alcoholic beverages is removed effective 90 days after the
28 results of the election are certified except as those prohibitions
29 continue to be imposed in accordance with the results of the

1 subsequent election.

2 (e) For the purposes of this section, "possession" means having
3 physical possession or exercising dominion or control over alcoholic
4 beverages, but does not include containing alcoholic beverages within
5 the digestive system of a person.

6 * Sec. 2. AS 04.11.502 is amended by adding a new subsection to read:

7 (c) A petition filed with the local governing body of a munic-
8 ipality in accordance with (a) of this section, that places on the
9 ballot the question set out in AS 04.11.498, shall constitute a pro-
10 posed ordinance of the municipality.

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

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

20 (b) A person cited for a violation of AS 04.11.498 for which a
21 bail amount has been established under (c) of this section may, within
22 30 days after the date of the citation

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

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

1 (c) The supreme court shall establish by rule or order a sched-
2 ule of bail amounts that may be forfeited without a court appearance
3 for a violation of AS 04.11.498. In establishing the bail schedule
4 the supreme court may consider the quantity of alcoholic beverages
5 possessed and the number of prior violations of the person cited. The
6 maximum bail amount may not exceed \$1,000, and if a citation is issued
7 that may be disposed of without court appearance, the issuing officer
8 shall write on the citation the amount of bail applicable to the
9 violation.

10 (d) Community work shall be performed at the direction of the
11 governing body of the municipality or the village council of the
12 established village. The value of community work in lieu of a fine is
13 \$5.00 per hour. When the community work is completed, the person
14 cited for the violation shall mail or personally deliver to the clerk
15 of the court in which the citation is filed by the peace officer

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

18 (2) a copy of the citation, indicating that the right to an
19 appearance is waived, a plea of no contest is entered, and that the
20 bail is forfeited or community work has been performed.

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

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

1 (g) Notwithstanding other provisions of law, if a person cited
2 for a violation of AS 04.11.498 for which a bail amount has been
3 established under (c) of this section appears in court and is found
4 guilty, the penalty that is imposed for the offense may not exceed the
5 bail amount for that offense established under (c) of this section.

6 * Sec. 4. AS 04.16.220(a) is amended to read:

7 (a) The following are subject to forfeiture:

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

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

29 (3) aircraft, vehicles, or vessels used to transport, or

1 facilitate the transportation of

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

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

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

9 (D) alcoholic beverages possessed in violation of
10 AS 04.11.498;

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

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

16 * Sec. 5. AS 04.21.010(a) is amended to read:

17 (a) A municipality may adopt ordinances governing the barter,
18 sale, and consumption of alcoholic beverages within the municipality
19 as necessary for the orderly conduct of the business of selling alco-
20 holic beverages within the municipality and may ban possession of
21 alcoholic beverages under AS 04.11.498(c). An ordinance adopted under
22 this section may not be inconsistent with this title or regulations
23 adopted under this title.

24 * Sec. 6. AS 04.21.080(b)(1) is repealed and reenacted to read:

25 (1) "alcoholic beverage" means spirituous, vinous, malt or
26 other fermented or distilled liquids, whatever the origin, that are
27 intended or capable of use as a beverage and that contain more than
28 one percent alcohol by volume, whether produced commercially or pri-
29 vately;

1 * Sec. 7. AS 29.10.200 is amended by adding a new paragraph to read:

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

3 * Sec. 8. AS 29.20.270(a) is amended to read:

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

8 * Sec. 9. AS 29.20.270 is amended by adding a new subsection to read:

9 (e) The veto does not extend to an ordinance adopted under
10 AS 04.11.498. This subsection applies to home rule and general law
11 municipalities.

12 * Sec. 10. AS 29.25.020 is amended by adding a new subsection to read:

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

15 * Sec. 11. AS 29.25.070 is amended by adding a new subsection to read:

16 (d) This section does not apply to an ordinance adopted under
17 AS 04.11.498(c).

18 * Sec. 12. AS 29.35.080(a) is amended to read:

19 (a) A municipality may regulate the possession, barter, sale,
20 importation, and consumption of alcoholic beverages in accordance with
21 AS 04.11.480 - 04.11.506 and AS 04.21.010.
22
23
24
25
26
27
28
29

WORK ORDER REQUEST FORM

N14 - 1943

KEYWORDS: alcohol

ASSIGNED TO Ford

REQUEST FOR: BILL ☒ RESOLUTION ☐ RESEARCH ☐ OTHER ☐

SUBJECT Local Option

REQUESTED FOR JSpLO BY Laurie Otto EXT.

* DELIVER TO Rep. Binkley TAKEN BY Ford

INSTRUCTIONS, EXPLANATIONS Use HB 659 but add:

- 1) Define "alcoholic beverage" to include "home brew"
- 2) Provide for election banning possession - will establish an ordinance for municipalities.
- 3) Allow substitution of community work on a dollar for dollar basis, for fine, at option of defendant.
- 4) Allow forfeiture of fine - similar to fish and game law.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: TSC Director, Legal Services

REVIEWED

IN 7/27/86 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☒

FINAL ☐

WORK ORDER REQUEST FORM

N14-1511

KEYWORDS: alcohol

ASSIGNED TO Ford

the

municipalities

REQUEST FOR: BILL ☒ RESOLUTION ☐ RESEARCH ☐ OTHER ☐

SUBJECT Local Option

REQUESTED FOR Rep. Binkley BY Rep. Binkley EXT. 4117

* DELIVER TO Rep. Binkley Cap. 501 TAKEN BY Binkley

INSTRUCTIONS, EXPLANATIONS

Draft bill relative to local option, per attached.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: 4/17 Director, Legal Services

REVIEWED

IN 7/1/61 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐

FINAL ☐

STATE OF ALASKA

MEMBER
FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES



POUCH V
JUNEAU ALASKA 99811
(907) 485-4737
PO BOX 1065
BETHEL ALASKA 99559
(907) 543-2922

REPRESENTATIVE JOHNE BINKLEY

February 5, 1986

Tamara Cook, Director
Division of Legal Services
Legislative Affairs Agency
P. O. Box Y
Juneau, Alaska 99811

Re: Legislative Drafting Request
Joint Special Committee on Local Option Laws

Dear Ms. Cook:

After having held hearings throughout the State of Alaska, and after having considered the testimony presented during the hearings, the Joint Special Committee on Local Option Laws has decided that legislation amending Alaska's local option laws should be introduced this year. On behalf of the Committee I am requesting that you assist us by drafting legislation as outlined in this letter. Please contact me as soon as possible to discuss the timetable on this drafting request.

The general purpose of the proposed amendments to Title 4 is to allow communities to ban possession of alcohol, in addition to the options which are already available under present law for regulating alcohol. Although at this time the Committee is asking only for assistance in drafting statutory amendments, you should be aware that specific legislative findings will be added to the bill before final passage of the legislation is sought. The findings will set forth the reasons the Committee believes that such legislation is necessary to protect the public health, safety, and welfare.

The Committee has received legal counsel throughout the hearing process from Laurie H. Otto, P. O. Box 1672, Bethel, Alaska 99559, telephone number 543-3573. Ms. Otto is currently in the process of drafting a Committee request. Please feel free to contact her at any time.

Proposal: Local Option Legislation Allowing a Ban on Alcohol

Title 4 should be amended by adding a new section which allows both incorporated municipalities and established villages as defined in A.S. 04.21.080(b)(8) to ban possession of alcohol. Although both types of communities would be able to ban possession of alcohol, the procedure for passing and implementing the ban would be different for incorporated municipalities and established villages.

Incorporated Municipalities

The statute would allow the following question to be placed on the ballot: "Should the possession of alcohol be banned in _____?" The procedure to be followed for holding an election would be that specified in A.S. 04.11.502. However, if the majority of voters in the community elected to ban possession of alcohol, the result would be creation of a municipal ordinance, as opposed to making the state statute apply to the local community, as is the case with the existing alcohol options allowed under Title 4 of the Alaska Statutes.

The statute would spell out the permissible penalty for violations of the ordinance. Communities adopting an ordinance banning possession of alcohol would not be allowed to deviate from either the language of the ordinance, which would be set forth in the statute, or from the permissible penalty, which would also be set forth in the statute. The penalty for violating the ordinance would be a quasi-criminal fine of no greater than \$1,000, with authorization for a bail forfeiture schedule to be set by the Supreme Court. The Supreme Court could take into consideration the quantity of alcohol possessed, as well as the number of prior convictions for violating the statute, in setting the bail forfeiture schedule.

Community service would be able to be substituted for the fine or bail at the discretion of the person cited for violating the law, with one hour of community service being equal to \$5.00 of fine or bail. Community service work is to be completed under the direction and supervision of the city council. The statute should require the Alcohol Beverage Control Board to designate, by regulation, the form to be used by the city council for reporting completion of community service work to the court. Either the bail, or a form confirming completion of the appropriate amount of community service work, should be posted with the court within 30 days of the date of the citation for those violator who wish to forfeit bail.

In addition to the changes to Title 4, A.S. 29.35.080(a) should be amended to give communities the authority to adopt ordinances consistent with, and by following the procedures set forth in, this statute.

Established Villages

The statute would allow the following question to be placed on the ballot: "Should the possession of alcohol be banned in _____?" The procedure to be followed for holding an election would be that specified in A.S. 04.11.502. If the majority of voters in the community elected to ban possession of alcohol, it would trigger the applicability of a state statute making possession of alcohol a quasi-criminal violation.

The penalty for violating the statute would be a fine of no greater than \$1,000, with authorization for a bail forfeiture schedule to be set by the Supreme Court. The Supreme Court could take into consideration the quantity of alcohol possessed, as well as the number of prior convictions for violating the statute, in setting the bail forfeiture schedule.

Community service would be able to be substituted for the fine or bail at the discretion of the person cited for violating the law, with one hour of community service being equal to \$5.00 of fine or bail. Community service work is to be completed under the direction and supervision of the village council. The statute should require the Alcohol Beverage control board to designate, by regulation, the form to be used by the village council for reporting completion of community service work, should be posted with the court within 30 days of the date of the citation for those violators who wish to forfeit bail.

General Provisions

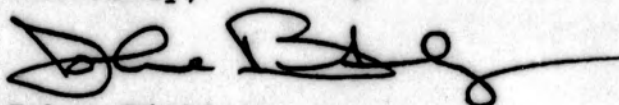
The statute would include a definition of "alcoholic beverage" that includes home brew. The definition of "possession" should specifically exclude an interpretation of possession under which an intoxicated person could be charged with possession of alcohol purely on the basis of having alcohol within his blood stream.

Confiscation of the alcoholic beverage from the violator would be permitted. If a person either forfeits bail, or is otherwise convicted of violating the ordinance or statute, the alcoholic beverage is also forfeited to either the state or the municipality and must be destroyed.

Ms. Tamara Cook
February 5, 1986
Page 4

Thank you for your assistance with this drafting question. As I indicated earlier, if you have any questions about the content of the request, please contact Ms. Otto in Bethel.

Sincerely,

A handwritten signature in black ink, appearing to read "John Binkley", with a long horizontal flourish extending to the right.

Johne Binkley
Representative
Yukon-Kuskokwim Delta

cc: Senator Sackett
Senator DeVries
Senator Fischer
Representative Hurley
Representative Sund



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

12/15/89
Date

SCOMM

#52:5

3 pgs for Rep. BOKLEY

EXPLANATION OF DIFFERENCES BETWEEN
CSSSHB700 AND SSHB700

Section 1.: No change.

Section 2.: Subsection (b) in SSHB700 was broken down into Subsections (b) and (c) in CSSSHB700 and Subsection (c) in SSHB700 was broken down into Subsections (d) and (e) in CSSSHB700. As rewritten in CSSSHB700, subsections (b) and (d) of the bill provide that a ban on possession of alcohol goes into effect immediately in communities which have previously banned the sale and importation of alcohol. However, in communities where a prior ban on the sale and importation of alcohol has not been in effect, subsections (c) and (e) of CSSSHB700 allow a 90 day delay in the effective date on an alcohol ban. The delay is to provide consistency with existing law, and to allow licensed premises a reasonable period of time to wind down their business and dispose of their inventory. Subsections (d) and (e) in SSHB700 were renamed as subsections (f) and (g) in CSSSHB700, however, no substantive changes were made in either subsection.

Present law provides that sacramental wine dispensed for religious purposes by a person authorized to do so by a church or religious body, is exempt from the limitations on importation of alcohol. A similar exemption is provided in SSHB700. However, the language of the exemption is changed in CSSSHB700 in subsections (b), (c), (d), and (e) to delete the word "sacramental" as a modifier for wine, and to allow dispensation by persons "recognized by the church as authorized" to dispense the wine. This change reflects the tenets and values of the Jewish religion.

Section 3.: No change.

Section 4.: In subsection (b), the due date of mailing in a bail amount, or proof of community service, is clarified in CSSSHB700 by adding the words "is issued" at the end of the phrase which reads "within 30 day after the date the citation is issued."

In subsection (c), which authorizes the Supreme Court to set up a bail forfeiture schedule, CSSSHB700 designates the makeup of an advisory committee created to advise the Court on the appropriate amounts of bail to be set in the schedule.

In subsection (d), which provides that community work is to be performed at the direction of the governing body of a municipality or established village, the words "governing body of the established village" were substituted in CSSSHB700 for the words "village council" used in SSHB700 to reflect the diversity in methods of government in Alaska communities. In addition, CSSSHB700 specifies that the form used to prove completion of community work be prescribed by the administrative director of the Alaska Court System, rather than the ABC Board which had been designated to prepare the form in SSHB700.

In subsection (e), the language "judgment of conviction" which was used in SSHB700, has been changed in CSSSHB700 to "entry of judgment" to reflect the non-criminal nature of the offense of possessing alcohol in violation of law. In addition, CSSSHB700 requires the clerk of court to provide a person with a receipt showing satisfaction of the penalty only if a receipt is requested by the offender.

In subsection (f), CSSSHB700 substituted the language "provide proof of performance" for the language "send proof of performance" which had been used in SSHB700. This change clarifies that it is the offender's obligation to ensure that the court receive proof of performance, and is designed to avoid disputes about whether, for example, a mailing was lost by the U.S. Postal Service.

New subsections (i) and (j) are added in CSSSHB700. These subsections specify that a uniform form prescribed by the Commissioner of Public Safety is to be used for issuing citations for violating a community ban on the possession of alcohol. A uniform citation form is necessary to simplify procedures for both law enforcement officers and the court system.

Section 5.: CSSSHB700 deletes subsection (3)(D) in SSHB700 which had provided that "aircraft, vehicles, or vessels used to transport, or facilitate the transportation of alcoholic beverages possessed in violation of" law could be forfeited. It was felt that forfeiture of these items for violation of a non-criminal offense was unnecessarily draconian.

Section 6.: The changes made to AS 04.16.220(b)(1) in SSHB700 which allowed for seizure of alcoholic beverages possessed in violation of a ban without a court order, incident to issuance of a citation, were deleted in CSSSHB700. Instead, CSSSHB700 amends AS 04.16.220(b)(3)

which presently allows for seizure of items subject to forfeiture without a court order. The effect of the amendment is to make an exception for alcoholic beverages to the current requirement that property so seized may be held for only 48 hours unless a court order is issued authorizing forfeiture of the property. The exception reflects the reality that alcoholic beverages seized in a dry community are contraband which could not be returned to the offender even if the seizure were illegal, and that, as a result, there would be no purpose to holding a court hearing to consider whether the seizure was valid or invalid.

Section 7.: The reference to "conviction" of a person for violating a ban on possession of alcohol used in subsection (d)(1) of SSRB700 was changed in CSSRB700 to "entry of judgment" to reflect the non-criminal nature of the offense of possessing alcohol in violation of law.

Section 8.: The language "destroyed no later than 30 days after forfeiture" used in SSRB700 was changed to "destroyed no earlier than 30 days after forfeiture" in CSSRB700. This change is to accommodate the appellate rights of offenders.

Section 9.: No change.

Section 10.: The definition of "alcoholic beverage" used in SSRB700 is modified in CSSRB700 by adding the words "as a beverage." This change narrows the definition of alcoholic beverage to avoid inclusion of medicines containing alcohol within the terms of the statute.

Section 11.: CSSRB700 adds a definition of "community work" which parallels the definition contained in AS 12.55.055(b).

Section 12.: No change from Section 11 of SSRB700.
Section 13.: No change from Section 12 of SSRB700.
Section 14.: No change from Section 13 of SSRB700.
Section 15.: No change from Section 14 of SSRB700.
Section 16.: No change from Section 15 of SSRB700.
Section 17.: No change from Section 16 of SSRB700.

Sectional Analysis

Committee Substitute for Sponsor Substitute Bill for House Bill 700

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sectional Analysis

Sponsor Substitute for House Bill No. 700

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

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

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

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

SECTION 4: Sets penalty for possession of alcohol in violation of law as a maximum \$1,000 fine, for which community work, supervised by the governing body of the community, may be substituted at the option of the offender. Authorizes the Supreme Court to set a bail forfeiture schedule, and allows for appearance on a citation to be waived, a plea of no contest to be entered, and bail and all alcoholic beverages seized to be forfeited. Specifies that possession of alcohol in violation of law is not a criminal offense, and does not give rise to the right to jury trial or to court appointed counsel.

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

SECTION 6: Allows for the immediate seizure of alcohol possessed in violation of a ban. This section does not change Alaska law relating to search and seizure.

SECTION 7: Specifies that forfeiture occurs upon conviction of a person for violating the law.

SECTION 8: Requires the destruction of alcoholic beverages forfeited under the law.

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

SECTION 10: Clarifies that the definition of alcoholic beverage includes "homebrew."

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

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

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

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

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

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

SECTIONAL ANALYSIS

PROPOSED CSHB 700

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

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

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

SECTION 4: Sets penalty for possession of alcohol in violation of law as a maximum \$1,000 fine, for which community work, supervised by the governing body of the community, may be substituted at the option of the offender. Authorizes the Supreme Court to set a bail forfeiture schedule, and allows for appearance on a citation to be waived, a plea of no contest to be entered, and bail and all alcoholic beverages seized to be forfeited. Specifies that possession of alcohol in violation of law is not a criminal offense, and does not give rise to the right to jury trial or to court appointed counsel.

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

SECTION 6: Allows for the immediate seizure of alcohol possessed in violation of a ban. This section does not change Alaska law relating to search and seizure.

SECTION 7: Specifies that forfeiture occurs upon conviction of a person for violating the law.

SECTION 8: Requires the destruction of alcoholic beverages forfeited under the law.

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

SECTION 10: Clarifies that the definition of alcohol beverage includes "homebrew."

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

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

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

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

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

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

Ford
4/1/86.

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) The following are subject to forfeiture:

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

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

1 permits under this title in the area;

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

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

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

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

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

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

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

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

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

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

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

1 prior judgment in favor of the state; or

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

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

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

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

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

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

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

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

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

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

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

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

10 * Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:

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

12 * Sec. 12. AS 29.20.270(a) is amended to read:

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

17 * Sec. 13. AS 29.20.270 is amended by adding a new subsection to read:

18 (e) The veto does not extend to an ordinance adopted under
19 AS 04.11.498. This subsection applies to home rule and general law
20 municipalities.

21 * Sec. 14. AS 29.25.020 is amended by adding a new subsection to read:

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

24 * Sec. 15. AS 29.25.070 is amended by adding a new subsection to read:

25 (d) This section does not apply to an ordinance adopted under
26 AS 04.11.498(c).

27 * Sec. 16. AS 29.35.080(a) is amended to read:

28 (a) A municipality may regulate the possession, barter, sale,
29 importation, and consumption of alcoholic beverages in accordance with

WORK DRAFT

WORK DRAFT

WORK DRAFT

AS 04.11.480 - 04.11.506 and AS 04.21.010.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator

12/15/89
Date

SCOMM

#52:6

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 700
 Title : "An Act relating to regulation
of alcoholic beverages and enactment
of municipal ordinances."
 Sponsor : Rules Committee
 Requestor : House C & RA
 Date of Request : 4/14/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : DPS Administration
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

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

Phone : 465-4336
 Date : 4/14/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 4/14/86

Distribution (by Agency preparing fiscal note) :

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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SSHB 700

Support

April 11, 1986

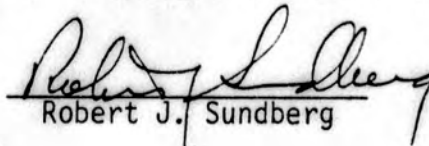
SSHB 700 - "An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."

The Department of Public Safety supports SSHB 700.

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

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

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


Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 700
 Title : An Act Relating to Possession
 of Alcohol
 Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		19.9				
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		19.9				

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		19.9				
FEDERAL FUNDS						
OTHER						
TOTAL		19.9				

POSITIONS :

FULL TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attachments

Prepared by : Robert G. Fisher
 Division : Alaska Court System

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

Approved by Commissioner : Arthur H. Snowden, II
 Agency : Alaska Court System

Date : 4/11/86

Distribution (by Agency preparing fiscal note) :

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

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

FROM	TO	ESTIMATED AIR FARE COST	--- PER DIEM --- \$/DAYS	RATE	--- COST	ESTIMATED TOTAL COST
First District Magistrates:						
Angoon	Anchorage	\$366	3	\$80	\$240	\$606
Craig	Anchorage	366	3	80	240	606
Haines	Anchorage	366	3	80	240	606
Hoonah	Anchorage	366	3	80	240	606
Kake	Anchorage	452	3	80	240	692
Pelican	Anchorage	366	3	80	240	606
Skagway	Anchorage	366	3	80	240	606
Yakutat	Anchorage	268	3	80	240	508
Bethel Area Magistrates:						
Aniak	Anchorage	328	3	80	240	568
Emmonak	Anchorage	328	3	80	240	568
Hooper Bay	Anchorage	328	3	80	240	568
Mekoryuk	Anchorage	428	3	80	240	668
Quinhagak	Anchorage	328	3	80	240	568
St. Marys	Anchorage	328	3	80	240	568
Second District Magistrates:						
Gambell	Anchorage	428	3	80	240	668
Kiana	Anchorage	428	3	80	240	668
Noorvik	Anchorage	428	3	80	240	668
Point Hope	Anchorage	428	3	80	240	668
Savoonga	Anchorage	428	3	80	240	668
Selawik	Anchorage	428	3	80	240	668
Shungnak	Anchorage	428	3	80	240	668
Unalakleet	Anchorage	428	3	80	240	668
Third District Magistrates:						
Cordova	Anchorage	130	3	80	240	370
Dillingham	Anchorage	320	3	80	240	560
Glennallen	Anchorage	94	3	80	240	334
Naknek	Anchorage	292	3	80	240	532
Seward	Anchorage	63	3	80	240	303
Unalaska	Anchorage	594	3	80	240	834
Whittier	Anchorage	37	3	80	240	277
Fourth District Magistrates:						
Delta Junction	Anchorage	272	3	80	240	512
Ft. Yukon	Anchorage	322	3	80	240	562
Galena	Anchorage	358	3	80	240	598
Healy	Anchorage	130	3	80	240	370
Tanana	Anchorage	272	3	80	240	512
Tok	Anchorage	165	3	80	240	405

Total Cost

\$19,857

=====

CSHB 700

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

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

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

4-11-86

Karla Forsythe
Court System

Re: Fiscal Note to HB 700

Karla stopped by the office to let you know she is having a small fiscal note prepared for HB 700. It is not, she emphasized, a "kill the bill" action.

The fiscal note will cover a one time magistrate training. Urban areas are accustomed to mail in bail procedures, but this will be something new for rural areas. It is extremely important that it is done correctly. If the bail is not posted accurately at some point a bench warrant will be issued and the person can sue the court for false arrest. It is a mess that can be avoided by emphasizing the importance of following procedures accurately.

Magistrate training has no dollars appropriated this year. That is the reason for the Fiscal Note. If other training had been planned, this would simply be included.

Karla says this is money that will be very well spent.

*I put a
Copy in
your book
after HB 700*

FX



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

April 9, 1986

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

Dear Rep. Goll:

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

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

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

Peter Goll
April 9, 1986
Page 2

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

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

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

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

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

APR 09 '86 13:04 ACA 2ND JUD DIST FAX276-6342

Peter Goll
April 9, 1986
Page 3

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

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

Sincerely,



Karla L. Forsythe
Staff Counsel

KF/k1

cc: Arthur H. Snowden, II
Rep. Binkley

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 700
 Title : "An Act relating to regulation of alcoholic beverages and enactment of municipal ordinances."
 Sponsor : Rules Committee
 Requestor : Joint Committee on Local Option Laws
 Date of Request : April 1, 1986

FISCAL DETAIL

Agency Affected : Health & Social Services
 BRU : Alcoholism and Drug Abuse
 Components : Alcohol Abuse Grants

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Matthew C. Felix
 Division : Office of Alcoholism and Drug Abuse

Phone : 586-6201
 Date : _____

Approved by Commissioner : John R. Pugh
 Agency : Health and Social Services

Date : 7/7/86

Distribution (by Agency preparing fiscal note) :

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



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

12/15/89
Date

SCOMM

#52:7

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 28, 1986

REPLY TO:

- ☒ CRIMINAL DIVISION CENTRAL OFFICE
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 485-3428
- ☐ OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

The Honorable John Binkley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: House Bill 700

Dear Representative Binkley:

This letter is in response to your request for an opinion by the Department of Law on the constitutionality of House Bill 700. You asked that we pay particular attention to the right of privacy under Art. I, sec. 22 of the Alaska Constitution.

House Bill 700 would create another "local option" whereby communities may vote to ban possession of intoxicating beverages. Possession of alcoholic beverages in the home (including homemade liquor) would be a violation of the ban, but possession of alcohol in the body would not. Violation of the ban would be made an infraction punishable by a maximum \$1,000 fine and the person would not be entitled to publicly-financed counsel or trial by a six or twelve-person jury.

The most obvious question raised by this proposal is whether banning possession of alcohol in the home violates the right to privacy under Art. I, sec. 22, of the Alaska Constitution. We believe that the answer is no, and the state is prepared to defend the validity of such a law when a court challenge is brought. A brief discussion follows.

Right to Privacy

Despite the minimal penalties provided by this bill (and the ability to "pay" a fine through community work service), there is no doubt that such a law will be challenged as an invasion of privacy under Art. I, sec. 22 and Ravin v. State, 537 P.2d 497 (Alaska 1975) (possession of small amounts of marijuana, by adults in their homes, is protected).

The many public hearings held by your committee throughout the state elicited hours of testimony from people from all walks of life on the problems created by alcohol in

rural Alaska and are summarized in your committee's detailed report. A Search For Control: The Effect Of Alcohol On Public Rights And Private Wrongs, Report to the Legislature, Joint Special Committee on Local Option Laws (March 1986) (hereafter Report). The problems created by alcohol are well known and beyond dispute (see Findings 1 through 9 and 11, Report at 108-09). There seems to be ample evidence, and it stands to reason, that in communities banning sale and importation of alcohol, much drinking takes place in private homes. (Finding 10, id.) Given the enormous economic and social costs of alcohol abuse, it is not surprising that communities would want to ban possession. (Finding 12, id.)

Giving communities this additional option (and allowing community work service to be administered through village councils) provides a greater measure of local control over a problem which, although it exists statewide, has its most severe impact at the local level. This bill represents the legitimate view that each community should be the sole judge of whether an expectation of privacy in the possession of alcohol is one that their localized society believes is reasonable and deserving of protection. In other words, the balance between one person's right to possess and consume alcohol and the public's right to safety and security should be made on a village by village basis by the voters in each locale.

One of the most important of the committee's findings is that present laws are not adequate to deal with problems created by possession of alcohol, including homebrew. (Finding 14, Report at 110.) Because present laws are inadequate, the legislature may devise different means to achieve its legitimate health and safety purposes. This is not to say that the legislature is free to devise draconian and irrational solutions to a problem once a less intrusive method has failed. For example, we understand that there are some who have advocated ideas that amount to a virtual suspension of search and seizure protections in order to completely eradicate all traces of alcohol from a village. This bill obviously does not go that far, and is consistent with state and federal law regarding searches and seizures. In the absence of a person's consent, or exigent circumstances, a search warrant issued by a judicial officer will still be required to gain entrance to a person's home. See Report at 107.

The means chosen by the committee to make alcohol laws more effective helps cure a problem created by current local option laws and by opinions such as Ravin v. State. As noted in Finding 14, Report at 110, Alaska law prohibits sale and importation of alcoholic beverages but permits possession. Similarly, the Ravin case left intact criminal prohibition of sale or public possession of marijuana, but legitimized home

possession. Laws such as these tend to create an incentive to do precisely what is prohibited, i.e., to acquire these controlled substances. The general populace knows very well that if you can get it to your house (or if you can make it yourself) you are literally home free. If possession is prohibited then it may very well lead to less importation and less manufacturing, which has always been a legitimate goal.

We have not reviewed the transcripts of the hearings, as a judge might do, nor have we perused the many reports and publications that are part of the committee record. Nonetheless, if the summary of the evidence contained in the committee's report is accurate, we believe that there is ample justification for the legislative findings contained in the report and for upholding the validity of the law. 1/ See, Harrison v. State, 687 P.2d 332 (Alaska App. 1984); State v. Erickson, 574 P.2d 1 (Alaska 1978).

If you have any questions, please contact me.

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Dean J. Guaneli

Dean J. Guaneli
Assistant Attorney General

DJG/gb-08

1/ Another obvious question is whether the potential monetary penalty or public opprobrium resulting from a violation is sufficiently indicative of criminality so as to require full criminal procedural rights such as court-appointed counsel or trial by jury. See Report at 103-06. We believe that the answer is no. There is some authority to suggest that the nature of the penalty should be determined based on "community" attitudes. See, Beran v. State, 705 P.2d 1280, 1284, n.4 (Alaska App. 1985). As we understand it, the testimony elicited during the hearings is that the villages want this local option as a preventive, rather than punitive, measure. The committee's findings in this regard (Findings 15-16, Report at 110) are entitled to deference by the courts and would probably be overturned only if they were irrational or without a basis. The figure of \$300 has long been accepted as permissible for infractions, and the present day value of that amount probably approaches \$1,000. However, in light of the fact that the actual fine will be set by bail schedule, and that community work service can be substituted as payment of the fine, this provision will probably not be struck down. Even if invalid, this is a severable part of the law, and the remainder will not be affected.