

ALASKA LEGISLATIVE COMMITTEE FILES 1985-1986  
3214.38 HCRA HB 673 - HB 700

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HB 673

An Act Relating to Transportation of  
Hazardous Substances in Municipalities

This proposed bill amends AS 29.35.140 by adding two new subsections, the first to provide that municipalities may adopt by ordinance a program to monitor the transportation of hazardous substances, which includes four elements:

- (1) a system to monitor transportation in the municipality
- (2) transportation routes and advance notification procedures
- (3) placarding of vehicles
- (4) a requirement that transporters notify the municipalities

Subsection (c) defines hazardous substance.

The Department of Environmental Conservation (DEC) supports the concept of this bill since it would allow municipal public safety agencies to obtain the information on the movement of hazardous substances in their communities. The Department has three specific comments on this bill:

- (1) There may be difficulty in requiring placarding of vehicles beyond that required by the U.S. Department of Transportation because federal transportation requirements prevail in a conflict with State or local requirements. DEC is not aware of whether the bill includes any other conflicts with federal transportation requirements.
- (2) Several definitions of "hazardous substance" have been included in bills being reviewed by this Legislature. I suggest you consider using the definition which appears at AS 46.08.900(6) in the proposed CSHB 470 (Finance) dated 3/8/85.
- (3) The bill does not set any limit on the quantity of material subject to this law. You may wish to indicate that it is intended to apply to the transportation of materials in bulk containers greater than some specific volume.

It might be appropriate, in conjunction with this bill, to repeal AS 46.03.308, which establishes another set of reporting requirements. Passed as part of SB 503 in 1984, AS 46.03.308 requires that generators of hazardous wastes (a subset of materials) notify DEC. DEC is then required to notify local governments of shipments. This bill would be more comprehensive and would achieve the same purpose.

Thank you for the opportunity to comment. My staff is available to work with yours as this proposal moves through the legislative process.

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 673  
 Title : "An Act relating to transportation of hazardous substances in municipalities."  
 Sponsor : Niilo Koonen  
 Requestor : C & RA and Resources  
 Date of Request : 3/10/86

**FISCAL DETAIL**

Agency Affected : Environmental Conservation  
 BRU : Environmental Quality  
 Components : Director's Office

**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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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**FUNDING : (Thousands of Dollars)**

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

**POSITIONS : NONE**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by : S.W. Hungerford Phone : 465-2666  
 Division : Environmental Quality Date : 3/10/86

Approved by Commissioner : Bill Ross Amy DKyle / fr Date : 3/12/86  
 Agency : Environmental Conservation

Distribution (by Agency preparing fiscal note) :

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS

DEPARTMENT Environmental Conservation	DIVISION Environmental Quality	BILL NUMBER HB 673	SPONSOR Niilo Koponen et al.
DEPARTMENT POSITION Supportive			
PREPARED BY S. W. Hungerford	DATE 3/11/86	COMMISSIONER'S SIGNATURE Bill Ross <i>Am DKyl</i>	DATE 3/11/86
<b>SUMMARY</b>			
OTHER AGENCIES AFFECTED BY BILL  None Apparent		CONSTITUENT GROUPS AFFECTED BY BILL Communities Railroad/Trucking Firms	
ORGANIZATIONAL SUPPORT FOR BILL		ORGANIZATIONAL OPPOSITION TO BILL Unknown at this point	
FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL NOTE ATTACHED			
BACKGROUND/LEGISLATIVE INTENT			
ANALYSIS OF BILL/PROGRAM EFFECTS  SEE ATTACHED COMMENTS			
AMENDMENTS PROPOSED			

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

# Training for toxics accidents called lax

WASHINGTON (AP)—Three-fourths of the nation's police and firemen are inadequately trained to respond to accidents involving transportation of hazardous materials, a new congressional study says.

And even if a trained team reaches the scene of a ruptured tank truck, improper labeling of the vehicle's contents can produce a wrong, dangerous response, the Office of Technology Assessment said in a study released today.

OTA quoted state officials as saying that from 25 percent to 50 percent of the identification placards required on hazardous material shipments are incorrect and that shipping documents "are sometimes incomplete or inaccessible."

"Emergency crews must assess the risks of the hazardous material and make decisions on how to respond based on information that may or may not be accurate," said OTA, a nonpartisan congressional agency.

"The wrong response to a hazardous material endangers both

emergency personnel and the neighboring communities," said the study, which urged adoption of federal training and response standards to replace a mishmash of state requirements.

Asked why so many placards are incorrect, Edith Page, who directed the study, said: "In some cases it's ignorance. In some cases it's carelessness."

OTA said the most pressing need is to develop better ways of training safety personnel to handle accidents involving the 500,000 daily shipments of hazardous materials on U.S. highways, rail lines and waterway.

"Three-quarters of the first responders are not adequately trained to deal with hazardous substances," Ms. Page told a news briefing.

She said that a joke among response personnel is that you bring tennis shoes and binoculars to a toxic or nuclear material spill — using the shoes to quickly get a safe distance away and the binoculars to read the placard.

"Then you call for expert help,"

Ms. Page said. "This is often said in jest, but there's a strong element of truth in it."

OTA said that while some states and metropolitan areas have good response programs, "most first responders in smaller urban and rural areas have not been trained to deal with hazardous materials, despite many existing training programs.

"No national standards for training programs are currently in place, leading to the independent development of different training programs, some of which are inadequate," the study said.

Although it did not specifically urge more federal spending, OTA said continued support for state enforcement programs "is important, since federal inspection forces are shrinking due to budget constraints."

OTA recommended better training and a national license for operators of vehicles carrying hazardous substances in an effort to reduce the average of 11,462 accidents the Transportation Department

says occurred yearly between 1973 and 1983.

In most states, Ms. Page said, a truck driver needs no special license for hazardous cargoes. "The nephew or son of the owner can drive a gasoline truck," she said.

Ms. Page said OTA doesn't trust Transportation Department figures indicating that the incidence of accidents involving hazardous materials is decreasing.

"The data collected is so poor we don't know whether things are getting better or worse," said Ms. Page, adding that OTA found "substantial underreporting" in federal accident statistics.

ment agencies, fire departments, ambulance services, and other organizations that are intended to respond to emergency situations of imminent danger to life or property;

(2) "state agency" means a department, division, or office in the executive branch of state government. (§ 10 ch 74 SLA 1985)

**Sec. 29.35.140. Regulation of transportation carriers.** A municipality may not regulate an activity regarding transportation of passengers or freight for hire if the regulation conflicts with the regulation of that activity by the Alaska Transportation Commission as the regulation existed on April 1, 1983 under former AS 02.05, former AS 42.07, or former AS 42.10. (§ 10 ch 74 SLA 1985)

**Sec. 29.35.145. Regulation of firearms.** (a) A municipality may not, except by ordinance ratified by the voters, restrict the right to own or possess firearms within a residence or transport unloaded firearms.

(b) This section applies to home rule and general law municipalities. (§ 10 ch 74 SLA 1985)

## Article 2. Mandatory Areawide Powers.

Section  
150. Scope of areawide powers  
160. Education

Section  
170. Assessment and collection of taxes  
180. Land use regulation

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Effective date of article. — Section  
90, ch. 74, SLA 1985 provides: "This Act  
takes effect January 1, 1986."

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**Sec. 29.35.150. Scope of areawide powers.** A borough shall exercise the powers as specified and in the manner specified in AS 29.35.150 — 29.35.180 on an areawide basis. (§ 10 ch 74 SLA 1985)

**Sec. 29.35.160. Education.** (a) Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation in a borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110 if the military mission is terminated.



From: The Bureau of  
Nat'l Affairs, Inc.  
1231 25<sup>TH</sup> St. N.W.  
Wash, D.C. 20037

RIGHT-TO-KNOW:  
A Regulatory Update on  
Providing Chemical Hazard  
Information

**PUBLIC LAW NUMBER**

CSSB 79 (Res), Toxic and Hazardous Substances in the Workplace

**ENACTED**

July 25, 1983

**REGULATIONS FOUND AT**

Alaska Administrative Code, Title 8, Subchapter 15 - Hazard Communication Code (Effective Sept. 12, 1984)

**EFFECTIVE DATES**

- ▶ July 26, 1983, for the Alaska Department of Labor to publish the first annual list of toxic substances, maintain MSDSs, and assist employers in getting chemical information and developing education programs. Also for employers to begin employee safety education and training programs.
- ▶ July 1, 1984, for MSDSs to accompany all toxic and hazardous substances brought into the state. This does not apply to a substance for which the in-state purchaser has already received the most current information.
- ▶ Nov. 25, 1986, for manufacturing employers to develop and implement a written hazard communication program, and provide labeling and other for warning.

**BRIEF DESCRIPTION OF LAW**

This law parallels and exceeds the federal OSHA standard. It requires manufacturers and importers of chemicals to assess the physical and health hazards of chemicals they produce or import and to provide labeling and material safety data sheets that explain the hazards of the substances, precautions for use, and emergency information.

Inclusion of a substance on any number of recognized lists of hazardous substances automatically deems it a hazardous substance for purposes of the law. Distributors must see that containers of hazardous chemicals are properly labeled and must provide a MSDS with hazardous chemicals sold to customers in the manufacturing sector, Standard Industrial Classification Codes 20-39.

Employers in the manufacturing sector must provide information to their employees concerning chemical hazards through a hazard communication program that must include labeling of hazardous chemicals, MSDSs, training on safe handling and emergency procedures, and access to records about hazardous chemicals.

Trade secret protection is provided with access granted in emergency medical situations. There is a partial exemption for laboratories.

Exemptions are provided for certain chemicals or products regulated by other state or federal agencies.

**TRADE SECRETS/CONFIDENTIALITY**

Trade secret protection must be claimed as entitled under state and federal law.

***How to Claim***

A chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification, of a hazardous chemical from the MSDS if the claim can be supported.

Information on properties and effects of the substance must be disclosed on the MSDS. The MSDS must indicate the chemical identity is being withheld as a trade secret.

The identity must be made available to health professionals.

***Emergency Access***

Manufacturer or employer must disclose the chemical identity to health professionals in an emergency and may require a written statement of need and confidentiality statement as soon as circumstances permit.

***Other Access***

In non-emergency situations, a health professional or the person providing medical or occupational health services to the employee may request chemical identity information in writing and must provide a written confidentiality agreement. The need for the information must be explained in detail.

If the manufacturer, importer, or employer decides to deny the request, the denial must be provided to the health professional within 30 days, be in writing, state why the request is being denied, and explain in detail how alternative information may satisfy the need for information.

Denials may be appealed to the Alaska Occupational Safety and Health Section for consideration. If the AOSHS determines that the specific chemical identity requested is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate medical or occupational health need for the information, and has executed a written confidentiality agreement and shown adequate means to protect the confidentiality of the information as required, then the chemical manufacturer, importer, or employer will be subject to citation by the AOSHS. If after being issued a citation and any protective orders, the employer continues to withhold the information, the matter may be referred to the Occupational Safety and Health Review Board for enforcement of the citation.

**COMMUNITY PROVISIONS**

None.

**PENALTIES FOR VIOLATIONS OF LAW**

Included in occupational safety and health state plan.

**OTHER REQUIREMENTS**

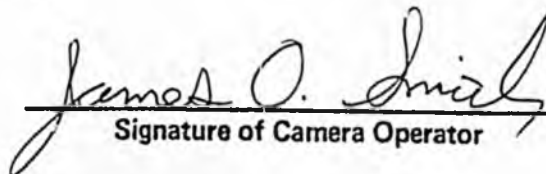
Alaska is an OSHA state plan state.

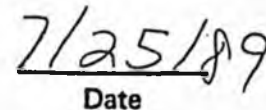


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Date

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Introduced: 2/28/86  
Referred: Community & Regional  
Affairs and Finance

1 IN THE HOUSE

BY THE COMMUNITY AND  
REGIONAL AFFAIRS COMMITTEE

2

HOUSE BILL NO. 694

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 the establishment of the  
7 Metlakatla Housing Authority."

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

9 \* Section 1. AS 18.55.996(a) is amended to read:

10 (a) The following associations are given the authority specified  
11 in (b) of this section:

12 (1) Arctic Slope Native Association (Barrow and Point Hope)

13 (2) Bering Straits Association (Seward Peninsula,  
14 Unalakleet, St. Lawrence Island)

15 (3) Northwest Alaska Native Association (Kotzebue)

16 (4) Association of Village Council Presidents (southwest  
17 coast of Alaska including all villages in the Bethel area and all  
18 villages on the Lower Yukon River and Lower Kuskokwim River)

19 (5) Tanana Chiefs Conference (Koyukuk, the middle and upper  
20 Yukon River villages and the upper Kuskokwim and Tanana River vil-  
21 lages)

22 (6) Cook Inlet Tribal Council (Kenai, Tyonek, Eklutna and  
23 Seldovia)

24 (7) Bristol Bay Native Association (Dillingham, Upper  
25 Alaska Peninsula)

26 (8) Aleut League (Aleutian Islands, Pribilof Islands and  
27 that part of the Alaska Peninsula which is in the Aleut League)

28 (9) North Pacific Rim Native Corp. (Cordova, Tatitlek, Port  
29 Graham, English Bay, Valdez, Seward, Eyak and Chenega)

- 1                   (10) Tlingit-Haida Central Council or Alaska Native Brother-  
2 hood (Southeastern Alaska [INCLUDING METLAKATLA])  
3                   (11) Kodiak Area Native Association (all villages on and  
4 around Kodiak Island)  
5                   (12) Copper River Native Association (Copper Center,  
6 Glennallen, Chitina and Mentasta)  
7                   (13) Alaska Federation of Natives, Inc.  
8                   (14) Sitka Community Association (Baranof and Japonski  
9 Island) [.]  
10                   (15) Metlakatla Indian Community (Metlakatla)

March 10, 1986

POSITION PAPER

RE: House Bill 694

SPONSOR: C&RA Committee


Program Effects of the Bill:

This Bill would amend the Alaska Statute Sec 18.55.996 to include Metlakatla Indian Community for establishment of the Metlakatla Housing Authority.

Comments:

The Metlakatla Housing Authority would have the power to enter into agreements with local governments, political subdivisions of the State, or the Federal government for the exercise of a function or power relating to construction, operation and maintenance of public facilities or public utilities. The Metlakatla Housing Authority would have the power to acquire, construct, operate and maintain housing units within their established jurisdictional boundaries.

The effect that passage of that bill would have on the Department of Community and Regional Affairs, Housing Assistance Division is that Metlakatla Housing Authority would be eligible to receive supplemental funding for on-site water and sewer, roads and electrical distribution facilities from DCRA for future Indian housing projects approved for development by HUD. Passage of the bill would not qualify Metlakatla Housing Authority as eligible to receive these funds for projects currently approved for development by HUD and/or under construction.

  
\_\_\_\_\_  
Emil Notti, Commissioner

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 694  
 Title : Metlakatla Housing Authority  
 \_\_\_\_\_  
 Sponsor : HCRA Committee  
 Requestor : HCRA Committee  
 Date of Request : 3/6/86

**FISCAL DETAIL**

Agency Affected : DCRA  
 BRU : \_\_\_\_\_  
 \_\_\_\_\_  
 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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

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

**POSITIONS :**

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

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

Prepared by : Clark Boston  
 Division : Housing Assistance Division

Phone : 561-0900  
 Date : 3/7/86

Approved by Commissioner : Emil Notti  
 Agency : Community and Regional Affairs

Date : 3/7/86

Distribution (by Agency preparing fiscal note) :

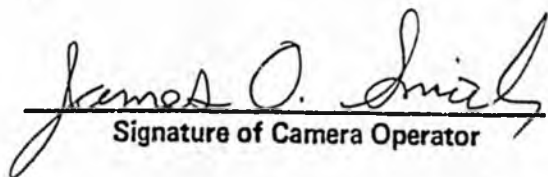
- Legislative Finance
- Legislative Sponsor
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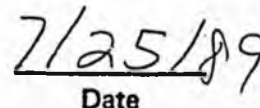


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Signature of Camera Operator

  
Date

H B

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BILL SHEFFIELD, GOVERNOR

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

OFFICE OF THE COMMISSIONER

March 24, 1986

POUCH B  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508  
PHONE: (907) 563-1073

The Honorable Peter Goll  
Alaska State House  
of Representatives  
P.O. Box V  
Juneau, AK 99811

Dear Representative Goll:

RE: HOUSE BILL 697 - PROHIBITION OF MUNICIPAL SALES TAX  
ON PURCHASES MADE WITH FOOD STAMPS

You have asked what effect eliminating sales tax charged on food stamps would have on cities for State Revenue Sharing or general operations. The impact on cities would be minimal, based on the following information:

\* 1984 Alaska Food Stamp Benefits ..... \$19,788,024

Half of this amount is issued in Alaska cities which do not have a sales tax. Therefore, the number we have used in calculating sales tax dollars affected is \$10,000,000 in yearly food stamp purchases.

Taxable 1984 Food Stamp Benefits	\$10,000,000
Statewide Blended Sales Tax Rate	X 3%
<b>SALES TAX REVENUES LOST DUE TO EXEMPTION</b>	<b>\$ 300,000</b>

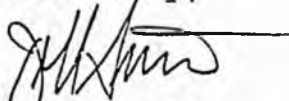
As you know, a \$300,000 yearly tax loss over the entire State would have very little effect on the Revenue Sharing Program or local government operations.

If you have any questions or would like further information, please let me know.

\* Statistics from:

Mark Murray, Food Stamp Quality Control Technician  
Department of Health and Social Services  
Division of Public Assistance

Sincerely,



Emil Notti  
Commissioner



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Western  
Region

550 Kearny Street  
San Francisco, CA 94108

FEB 03 1986

MR JOHN R PUGH  
COMMISSIONER  
STATE DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
ALASKA OFFICE BUILDING POCCH H-01  
JUNEAU AK 99811

Dear Mr. Pugh:

President Reagan signed the Food Security Act of 1985 (Public Law 99-198, commonly known as the Farm Bill) on December 23, 1985. This Act mandates that "a State may not participate in the Food Stamp Program if the Secretary determines that State or local sales taxes collected within the State on purchases of food made with coupons issued under this Act". The Act provides that this provision is to become effective, with respect to a State, beginning on the first day of the federal fiscal year that commences in the calendar year during which the first session of the State legislature is convened following enactment of the law. States may delay the effective date to no later than October 1, 1987, if they can satisfy the Department of Agriculture that implementation of the sales tax provision would have an adverse effect on State program administration or would provide inadequate time for retail stores to implement changes in sales tax policy as a result of the legislation.

The enclosed letter was mailed to your Governor on January 21, 1986, to alert him of the sales taxes requirements as well as those provisions to be implemented by May 1, 1986. This Department is in the process of drafting program regulatory amendments designed to implement the requirements mandated in Section 1505 of the Food Security Act of 1985. However, we suggest that you begin working with your legislature immediately if your State is now charging a sales tax on food stamp transactions. If you determine that a delay in removing the sales tax on food purchased with coupons will be needed, your Governor should notify the Secretary of the Department of Agriculture of the State's intention to seek authority to delay the effective date to no later than October 1, 1987. Simultaneously, all supporting evidence for the delay should be forwarded to this office.

Dear Governors:

The Food Security Act of 1985 (Public Law 99-198) was signed into law by President Reagan on December 23, 1985. Section 1505 of the bill mandates that "a State may not participate in the Food Stamp Program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this Act". The Act provides that this provision is to become effective, with respect to a State, beginning on the first day of the federal fiscal year that commences in the calendar year during which the first session of the State legislature is convened following enactment of the law. States may delay the effective date to no later than October 1, 1987, if they can satisfy the Department of Agriculture that implementation of the sales tax provision would have an adverse effect on State program administration or would provide inadequate time for retail stores to implement changes in sales tax policy as a result of the legislation.

This Department is in the process of drafting regulatory amendments designed to implement the requirements mandated in Section 1505 of the Food Security Act of 1985. However, since many State legislatures will probably convene prior to our issuance of final regulations, we urge your State legislature to complete those actions necessary to change any law(s) in order to avoid exclusion of your State from Food Stamp Program participation under the provisions of Section 1505. Your cooperation in assuring your State's continued participation in our program through this action would be greatly appreciated.

Additionally, we can assure you that the Department has assigned priority status to the formulation of regulations implementing Sections 1511 and 1514 of the Food Security Act of 1985. These sections raise the program's earned income, shelter cost, and child care deductions as well as the asset limit and are effective May 1, 1986. We anticipate that program regulations implementing these provisions of the Act will be issued as final regulations no later than April 1, 1986. Accordingly, the agency responsible for administration of the Food Stamp Program in your State should begin to plan and initiate action as appropriate to ensure that the provisions of Section 1511 and 1514 of the Food Security Act will be implemented promptly on May 1, 1986 as required by law.

Thank you for your cooperation and assistance in this important matter.

Sincerely,

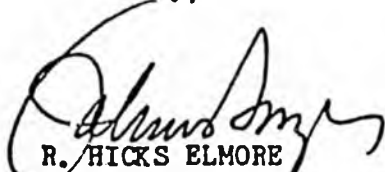
ROBERT E. LEARD  
Administrator

Mr. John Pugh

Page 2

We will be in contact with you in the near future to provide additional guidance on the specific information required to document the need for a delay in implementation of the effective dates.

Sincerely,



R. HICKS ELMORE  
Regional Administrator  
Western Region

Enclosure

# MEMORANDUM

State of Alaska

TO: Honorable John Pugh  
Commissioner  
Department of Health and  
Social Services

DATE: February 14, 1986

FILE NO: 66-3-86-0317

TELEPHONE NO: 465-3603

FROM: Harold M. Brown  
Attorney General

SUBJECT: Sales taxes on food  
stamp purchases

By: George W. Edwards *GWE*  
Assistant Attorney General  
Human Services-Juneau

You have asked for our evaluation of the potential impact of certain recent federal food stamp legislation on the state's food stamp program eligibility.

We believe the legislation in question could result in the termination of state participation in the federal food stamp program if certain sales tax restrictions are not implemented.

Section 1505 of the Food Security Act of 1985 (H.R. 2100) amends the Food Stamp Act at 7 U.S.C. § 2013(a) to provide that:

[A] State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this Act.

Alaska boroughs and cities are currently permitted to collect sales taxes on sales, rents, and services without restriction. AS 29.45.650(a) states:

(a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

AS 29.45.700 states:

(a) A city in a borough that levies and collects areawide sales and use taxes may levy sales and use taxes on all sources taxed by the borough in the manner provided for boroughs, except that the assembly may by ordinance authorize a city to levy and collect sales and use taxes on other sources.

(b) A city in a borough that does not levy and collect sales and use taxes for areawide borough functions may levy and collect sales and use taxes in the manner provided for boroughs.

(c) A city outside a borough may levy and collect sales and use taxes in the manner provided for boroughs.

A study conducted by the Department of Community and Regional Affairs last year found that Alaska's food stamp purchases during 1984 totaled \$19,788,024. The department estimated that these purchases generated approximately \$300,000 in sales tax revenues. Its conclusion was that the loss of sales tax revenues from food stamp purchases would have little effect on revenue sharing or local government operations.

Since Alaska's current sales tax laws do not require that municipalities exempt food items purchased with food stamps, legislative action will be necessary to assure that the state will continue to qualify for the federal program.

Proposed legislation accompanies this memorandum. It creates an exception to existing sales tax law by prohibiting taxation of food purchases made with food stamps. You will note that it conforms to the requirements of section 1505 in not prohibiting taxation of purchases of non-food items made with food stamps. The potential for revenue loss to municipalities resulting from this legislation is minimal compared to the loss to the state's economy which would result from termination of the food stamp program.

Unless an extension is granted by the Secretary of Agriculture, section 1505 will become applicable to Alaska on October 1, 1986. This date represents the beginning of the federal fiscal year and is controlling according to the Congressional Record for December 17, 1985, at H 12398.

An extension to October 1, 1987, may be granted as set forth in section 1505(b)(2):

(2) Upon a showing by a State, to the satisfaction of the Secretary, that the application of paragraph (1), without regard to this paragraph, would have an adverse and disruptive effect on the administration of the food stamp program in such State or would provide inadequate time for retail stores to implement

Honorable John Pugh, Commissioner  
Department of Health and Social Services  
66-3-86-0317

February 14, 1986  
Page 3

changes in sales tax policy required as a result of the amendment made by subsection (a), the Secretary may delay the effective date of subsection (a) with respect to such State to a date not later than October 1, 1987.

We are unable to address the question of how much lead time municipalities and retailers in Alaska may require to implement the sales tax changes proposed in the legislation. If a compelling case for an extension is made before the legislature by municipalities or retailers, the same argument would hopefully convince the secretary. Barring such a showing, the appropriate course of action appears to be the passage of necessary legislation with a special effective date of October 1, 1986.

Please review our proposed legislation in light of the above information and let us know how you wish to proceed.

GWE:nb

where the remaining entitlement is less than six hundred and forty acres. The Secretary is authorized to withdraw, up to two times the Corporation's entitlement, from vacant, unappropriated, and unreserved public lands, including lands solely withdrawn pursuant to section 17(d)(1), and the Regional Corporation shall select such entitlement of subsurface estate from such withdrawn lands within ninety days of receipt of notification from the Secretary.

43 USC 1616.

"(10) Notwithstanding the provisions of subsection 22(h), the Secretary, upon determining that specific lands are available for withdrawal and possible conveyance under this subsection, may withdraw such lands for selection by and conveyance to an appropriate applicant and such withdrawal shall remain until revoked by the Secretary.

Withdrawals.  
43 USC 1621.

"(11) For purposes set forth in subsections (h)(1), (2), (3), (5), and (6), the term Wildlife Refuges refers to Wildlife Refuges as the boundaries of those refuges exist on the date of enactment of this Act."

(e) Any Regional Corporation which asserts a claim with the Secretary to the subsurface estate of lands selectable under section 14(h) of the Alaska Native Claims Settlement Act which are in a Wildlife Refuge shall not be entitled to any in lieu surface or subsurface estate provided by subsections 12(c)(4) and 14(h)(9) of such Act. Any such claim must be asserted within one hundred and eighty days after the date of enactment of this Act. Failure to assert such claim within the one-hundred-and-eighty-day period shall constitute a waiver of any right to such subsurface estate in a Wildlife Refuge as the boundaries of the refuge existed on the date of enactment of the Alaska Native Claims Settlement Act.

Wildlife refuge  
subsurface es-  
tate.  
43 USC 1613  
note.  
43 USC 1613.  
Auth. pp. 2492,  
2494.43 USC 1601  
note.

## SHAREHOLDER HOMESITES

SEC. 1407. Section 21 of the Alaska Native Claims Settlement Act is amended by adding a new subsection at the end thereof, as follows:

43 USC 1620

"(j) A real property interest distributed prior to December 18, 1991, by a Village Corporation to a shareholder of such Corporation pursuant to a program to provide homesites to its shareholders, shall be deemed conveyed and received pursuant to this Act; *Provided*, That the land received is restricted by covenant for a period not less than ten years to single-family (including traditional extended family customs) residential occupancy, and by such other covenants and retained interests as the Village Corporation deems appropriate; *Provided further*, That the land conveyed does not exceed one and one-half acres; *Provided further*, That the shareholder receiving the homesite, if the shareholder subdivides the land received, shall pay all Federal, State, and local taxes which would have been incurred but for this subsection, together with simple interest at six percent per annum calculated from the date of receipt of the land to be paid to the appropriate taxing authority."

## BASIS IN THE LAND

SEC. 1408. Section 21(c) of the Alaska Native Claims Settlement Act is amended to read as follows:

Property value

"(c) The receipt of land or any interest therein pursuant to this Act or of cash in order to equalize the values of properties exchanged pursuant to subsection 22(f) shall not be subject to any form of Federal, State, or local taxation. The basis for determining gain or

43 USC 1621.

Introduced: 3/12/86  
Referred: Community & Regional  
Affairs and Health, Education &  
Social Services

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO. 697

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting municipal sales tax on purchases  
7 made with food stamps; and providing for an effective  
8 date."

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

10 \* Section 1. AS 29.45.650(a) is amended to read:

11 (a) Except as provided in (f) of this section, a [A] borough may  
12 levy and collect a sales tax not exceeding six percent on sales,  
13 rents, and on services provided in the borough. The sales tax may  
14 apply to any or all of these sources. Exemptions may be granted by  
15 ordinance.

16 \* Sec. 2. AS 29 45.650 is amended by adding a new subsection to read:

17 (f) A borough may not levy and collect a sales tax on a purchase  
18 made with food coupons, food stamps, or other type of certificate  
19 issued under 7 U.S.C. 2011 - 2025 (Food Stamp Act).

20 \* Sec. 3. AS 29.45.700(a) is amended to read:

21 (a) A city in a borough that levies and collects areawide sales  
22 and use taxes may levy sales and use taxes on all sources taxed by the  
23 borough in the manner provided for boroughs. The [, EXCEPT THAT THE]  
24 assembly may by ordinance authorize a city to levy and collect sales  
25 and use taxes on other sources except purchases made with food cou-  
26 pons, food stamps, or other type of certificate issued under 7 U.S.C.  
27 2011 - 2025 (Food Stamp Act).

28 \* Sec. 4. This Act takes effect October 1, 1986.

Bob

Backup for HB 675  
Relating to Food Stamps.

Feds recently passed a law requiring  
all states to outlaw municipal sales  
taxes on food stamp purchases —  
must be in place by Oct. 1.

We introduced for the Gov. — of  
course the Dept/Law made a drafting  
error — so you'll have a CS soon.

Can you please schedule?

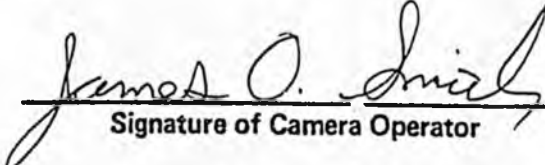
Nancy  
X3759

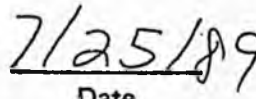
H-HESS STAFF



# 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

  
Date

HB

700

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW**

CRIMINAL DIVISION

March 28, 1986

REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

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 Finding 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

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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.



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

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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.

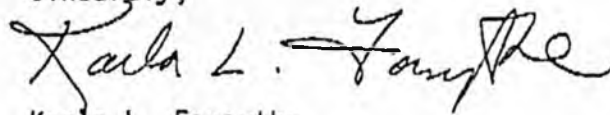
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Peter Goll  
April 9, 1986  
Page 3

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. : 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						
<b>TOTAL OPERATING</b>		19.9				

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

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

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		19.9				
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		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 *AHS 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
<b>First District Magistrates:</b>						
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
<b>Bethel Area Magistrates:</b>						
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
<b>Second District Magistrates:</b>						
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
<b>Third District Magistrates:</b>						
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
<b>Fourth District Magistrates:</b>						
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
<b>Total Cost</b>						<b>\$19,857</b>

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.

~~Bob's copy~~

SHARON

Ford  
4/11/86

Original sponsor: Rules Committee

*Def section -*

*Community service plan*

*used here means 415*

*limited to the definition (PB)*

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700 (C&RA)

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, iso-  
23 lated, 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, and the sale of  
10 alcoholic beverages, or the sale and importation of alcoholic bever-  
11 ages, <sup>no deletion</sup> has been previously prohibited in the established village in  
12 accordance with AS 04.11.490 or 04.11.494, a person, beginning on the  
13 first day of the month following certification of the results of the  
14 election, may not knowingly possess an alcoholic beverage in the  
15 established village, unless the alcoholic beverage is wine to be used  
16 for bona fide religious purposes based on tenets or teachings of a  
17 church or religious body, is limited in quantity to the amount neces-  
18 sary for religious purposes, and is dispensed only for religious  
19 purposes, by a person recognized by the church or religious body as  
20 authorized to dispense the wine. The board shall be notified immedi-  
21 ately after certification of the results of the election and there-  
22 after may not issue, renew, or transfer between holders or locations a  
23 license for licensed premises located within the perimeter of the  
24 established village as defined in AS 04.21.080(b)(8).

25 (c) If a majority of the voters of an established village vote  
26 "yes" on the question set out in (a) of this section and the sale of  
27 alcoholic beverages, or the sale and importation of alcoholic bever-  
28 ages, has not been previously prohibited in the established village in  
29 accordance with AS 04.11.490 or 04.11.494, and a person, beginning 90

1 days after certification of the results of the election, may not  
2 knowingly possess an alcoholic beverage in the established village,  
3 unless the person is licensed by the board or the alcoholic beverage  
4 is wine to be used for bona fide religious purposes based on tenets or  
5 teachings of a church or religious body, is limited in quantity to the  
6 amount necessary for religious purposes, and is dispensed only for  
7 religious purposes by a person by the church or religious body as  
8 authorized to dispense the wine. The board shall be notified immedi-  
9 ately after certification of the results of the election and there-  
10 after may not issue, renew, or transfer between holders or locations a  
11 license for licensed premises located within the perimeter of the  
12 established village as defined in AS 04.21.080(b)(8). Licenses that  
13 may not be renewed because of a local option election held under this  
14 section are void 90 days after the results of the election are cer-  
15 tified. A license that will expire during the 90 days after the  
16 results of a local option election under this section are certified  
17 may be extended until it is void under this section, by payment of a  
18 prorated portion of the annual license fee.

19 'd) If a majority of the voters of a municipality vote "yes" on  
20 the question set out in (a) of this section, and the sale of alcoholic  
21 beverages, or the sale and importation of alcoholic beverages, has  
22 been previously prohibited in the municipality in accordance with  
23 AS 04.11.490 or 04.11.494, an ordinance is adopted that becomes effec-  
24 tive beginning on the first day of the month following certification  
25 of the results of the election, and a person may not knowingly possess  
26 an alcoholic beverage in the municipality, unless the alcoholic bever-  
27 age is wine to be used for bona fide religious purposes based on  
28 tenets or teachings of a church or religious body, is limited in  
29 quantity to the amount necessary for religious purposes, and is

1 dispensed only for religious purposes, by a person recognized by the  
2 church or religious body as authorized to dispense the wine. The  
3 board shall be notified immediately after certification of the results  
4 of the election and thereafter may not issue, renew, or transfer  
5 between holders or locations a license for licensed premises located  
6 within the boundaries of the municipality and within unincorporated  
7 areas within five miles of the boundaries of the municipality.

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

1 this section, by payment of a prorated portion of the annual fee.

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

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

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

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

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

21 Sec. 04.16.205. PENALTY FOR VIOLATING BAN ON POSSESSION OF  
22 ALCOHOLIC BEVERAGES. (a) A person who possesses alcoholic beverages  
23 in a municipality or established village in violation of AS 04.11.498  
24 or an ordinance adopted under AS 04.11.498 may, upon conviction, be  
25 punished by a fine not to exceed \$1,000. When a peace officer stops  
26 or contacts a person concerning violation of AS 04.11.498 or an  
27 ordinance enacted under AS 04.11.498, the peace officer may, in the  
28 officer's discretion, issue a citation to the person as provided in  
29 AS 12.25.180.

★

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

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

10 (2) perform community work as defined in AS 12.55.055(b),  
11 in lieu of payment of the fine or a portion of the fine as provided in  
12 (d) of this section.

13 (c) The supreme court shall establish by rule or order a sched-  
14 ule of bail amounts that may be forfeited without a court appearance  
15 for a violation of AS 04.11.498 or an ordinance adopted under AS 04.-  
16 11.498. In establishing the bail schedule the supreme court may  
17 consider the quantity of alcoholic beverages possessed and the number  
18 of prior violations of the person cited. Before establishing or  
19 amending the schedule of bail amounts required by this subsection, the  
20 supreme court shall appoint and consult with an advisory committee  
21 consisting of the following seven persons: one superior court judge,  
22 one magistrate from each judicial district in the state, a representa-  
23 tive of the Department of Law, and a representative of the Public  
24 Defender Agency. The maximum bail amount may not exceed \$1,000, and  
25 the issuing officer shall write on the citation the amount of bail  
26 applicable to the violation.

27 (d) Community work shall be performed at the direction of the  
28 governing body of the municipality or the governing body of the estab-  
29 lished village. The value of community work in lieu of a fine is

1 \$5.00 per hour. When the community work is completed, the person  
2 cited for the violation shall mail or personally deliver to the clerk  
3 of the court in which the citation is filed by the peace officer

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

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

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

18 (f) If the person fails to pay the bail amount established under  
19 (c) of this section, or fails to provide proof of performance as spec-  
20 ified in (d)(1) of this section to the court, the citation is con-  
21 sidered a summons.

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

28 (h) A violation of AS 04.11.498 or an ordinance adopted under  
29 AS 04.11.498 may not be considered a criminal offense and may not

1 result in imprisonment, nor is a fine imposed for a violation con-  
2 sidered criminal punishment. A person cited for a violation does not  
3 have a right to a jury trial or court appointed counsel.

4 (i) The commissioner of public safety shall prescribe and pro-  
5 vide a suitable standard citation form that is in a form necessary to  
6 identify the offender, to identify the offense, and to meet the needs  
7 of public safety and administration of justice.

8 (j) A municipality shall adopt a citation form that is <sup>(identical)</sup> equiva-  
9 lent) to that prescribed by the commissioner under (i) of this section.

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

11 (a) The following are subject to forfeiture:

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

23 (2) materials and equipment used in the manufacture, sale,  
24 offering for sale, possession for sale, barter or exchange of alco-  
25 holic beverages for goods and services in this state in violation of  
26 AS 04.11.010; materials and equipment used in the stocking, warehous-  
27 ing, or storage of alcoholic beverages in violation of AS 04.21.060;  
28 materials and equipment used in the sale or offering for sale of an  
29 alcoholic beverage in an area where the results of a local option

1 election have, under AS 04.11.490 - 04.11.500, prohibited the board  
2 from issuing, renewing, or transferring one or more licenses or per-  
3 mits under this title in the area;

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

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

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

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

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 su-  
21 perior 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 (2) the property subject to seizure is the subject of a  
28 prior judgment in favor of the state; or

29 (3) there is probable cause to believe that the property is

1 subject to forfeiture under (a) of this section; except for alcoholic  
2 beverages possessed in violation of AS 04.11.498 or an ordinance  
3 adopted under AS 04.11.498, property seized under this paragraph may  
4 not be held over 48 hours or until an order of forfeiture is issued by  
5 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), or AS 04.21.060 or upon entry of judgment under AS 04.11.498  
11 or an ordinance adopted under AS 04.11.498;

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

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

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

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

28 (a) A municipality may adopt ordinances governing the barter,  
29 sale, and consumption of alcoholic beverages within the municipality

90 Content  
ag.

1 as necessary for the orderly conduct of the business of selling alco-  
2 holic beverages within the municipality and may ban possession of  
3 alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopt-  
4 ed under this section may not be inconsistent with this title or  
5 regulations adopted under this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) A municipality may regulate the possession, transfer, sale,

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importation, and consumption of alcoholic beverages in accordance with AS 04.11.480 - 04.11.506 and AS 04.21.010.

Introduced: 4/4/86  
Referred: Community & Regional  
Affairs, Judiciary and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

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

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(1) abuse of alcohol seriously interferes with the rights and

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privileges of the people of the state;

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(2) the public health, safety, and welfare does in fact suffer

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when alcohol abuse is not controlled;

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(3) prohibition of alcohol in rural areas of the state is an

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effective tool for controlling the abuse of alcohol;

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(4) serious crimes and a wide variety of other social problems

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could be prevented if the possession of alcohol were prohibited;

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(5) there is a strong and unmistakable correlation between

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alcohol consumption and poor health, fetal damage, suicide, domestic vio-

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lence, and crime;

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(6) the dangers resulting from alcohol abuse are particularly

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acute in rural areas of the state because the communities are small,

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isolated, without adequate law enforcement, without adequate health care

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facilities, and populated by people who are closely related and interdepen-

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dent;

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(7) in communities that have chosen to ban the sale and importa-

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tion of alcohol, most drinking takes place in private homes; and

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(8) the economic cost of alcohol abuse is high, and cannot be

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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

*Conyon  
W/SB 69*

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 1.498. 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

1 AS 04.11.480 - 04.11.506 and AS 04.21.010.

# Alaska State Legislature

CHAIR  
REPRESENTATIVE JOHNE BINKLEY

MEMBERS  
SENATOR JOHN SACKETT  
SENATOR EDNA DEVRIES  
SENATOR VIC FISCHER  
REPRESENTATIVE KATIE HURLEY  
REPRESENTATIVE JOHN SUND

COUNSEL TO THE COMMITTEE  
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LOCAL OPTION COMMITTEE OFFICE  
P.O. BOX 1672  
BETHEL, AK 99559  
(907) 543-3573

IN SESSION  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4737

## Joint Special Committee On Local Option Laws

### MEMORANDUM

TO: Joint Special Committee on Local Option Laws

FROM: Representative Johne Binkley 

DATE: April 1, 1986

RE: Sponsor Substitute for House Bill 700  
Department of Law Opinion  
Final Committee Report

Attached is a work draft of the SSHB 700, prepared at my request after discussing HB 700 with Laurie Otto, and a sectional analysis of the bill. The changes incorporated in the sponsor substitute are as follows:

Section 1. Legislative Findings. A new number (7) taken from Finding Number Ten of the Committee's report, and specifically the statement that "In communities which have chosen to ban the sale and importation of alcohol, most drinking takes place in private homes." Existing number (7) moved to (8).

New section following Section 5. Amending AS 04.16.220(b). Adds to authority for seizure without a court order the authority to seize if the seizure is made incident to a citation issued under the new statutory authority.

Section 8. Amending AS 04.21.080(b)(1) Definitions. Changes the definition of "alcoholic beverage" to mean "...spiritous, vinous, malt of other fermented or distilled liquids, whatever the origin, that are intended for human consumption and that contain alcohol, whether produced commercially or privately."

I have also included with this memorandum a copy of a letter from the Department of Law indicating their belief that the bill is constitutional and that they are willing to defend it in the event of a court challenge.

The Final Report is being printed and will be available this week. Pat Jackson in my office is keeping a list of persons who have indicated an interest in reading the report when it is available. If you have any names you'd like to have added to the list, please call Pat.

Laurie is working on an Executive Summary of the report, and it will be available shortly.

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4/1/86.

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IN THE HOUSE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 700  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

\* 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; and

(8) the economic cost of alcohol abuse is high, and cannot be 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 (c) 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 ular 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.

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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  
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AS 04.11.480 - 04.11.506 and AS 04.21.010.

# Rural Alaska Community Action Program, Inc.

RESOLUTION # 85 - 22

ENTITLED: IN SUPPORT OF LOCAL OPTION #5

WHEREAS, alcohol continues to be the number one health problem in rural Alaska, and

WHEREAS, Local Option #5 is an attempt to address the issue of alcohol in rural Alaska, and

WHEREAS, Option 4 of the Local Option Law forbids only the sale and importation of alcohol in communities adopting Local Option, and

WHEREAS, Villages adopting Option 4 assumed that voting for Local Option meant voting "dry," and

WHEREAS, the 1985 Village Participation Conference voted in support of Option 5,

now, therefore, be it

RESOLVED: that the Rural CAP Board of Directors supports Villages in their efforts at reducing the effects of alcohol in their Villages and asks the Alaska State Legislature to pass legislation authorizing Option 5.

ADOPTED this 13th day of December, 1985 at the annual meeting of the Board of Directors in Anchorage, Alaska.



Gordon Jackson  
President



Robert A. Lohr  
Executive Director

POSITION PAPER

ON

SPONSOR SUBSTITUTE FOR HOUSE BILL 700

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

Discussion

From a public health and public safety perspective the Department of Health and Social Services is entirely supportive of SSHB 700. Consistent with previous Alaska Judiciary findings in *Boehl vs. Saber Jet and Harrison vs. State of Alaska*, SSHB 700 makes note, under Legislative Findings, of the deleterious relationship between alcohol abuse and a variety of health and social ills. This Department, which too often provides services for the casualties of alcohol abuse, applauds the Joint Special Committee on Local Alcohol Options for the inclusion of this section in the bill.

This bill implements a process to ban possession of alcohol. To the maximum extent possible, SSHB 700 attempts to place the decision for adoption, responsibility, enforcement, and adjudication upon the local government unit. The Department is supportive of this approach because of the unique nature of individual communities in rural Alaska that are likely to be impacted by the passage of this bill. Even though past local option initiatives have generally produced healthier villages, a problem of enforcement does exist. The transfer of this responsibility from the State to local "community governing body", as outlined in section 4, will be most helpful in strengthening the process of local option. An argument may be advanced regarding an individual resident's right to possess alcohol in a dry area. With regard to alcohol in rural Alaska, it is the Department's position that the right of health and well-being of the community exceeds those rights of the individual. This right of the rural community to take an action to ensure its well-being and safety is clearly outlined by the Supreme Court in the *Harrison* case. The State was upheld, in part, because inadequate health and public safety responses are prevalent in rural Alaska to assist with the injuries that occur as a result of alcohol abuse. Furthermore, the problem of alcohol abuse in rural Alaska is of catastrophic proportions and requires a major community response.

The Department did commission a study recently by the Justice Center, University of Alaska/Anchorage, entitled *Feasibility Study on the Effects of Local Option Law on Local Communities*. A principle finding of this study is that the negative consequences of drinking have greatly decreased in villages that have banned importation. The study also indicated, however, that considerable frustration exists in villages if alcohol is imported undetected, since there presently is no legal remedy for this situation. SSHB 700 attempts to go one step further in the array of options available to a community by allowing ordinances to ban possession. A Village Public Safety Officer (VPSO) estimated a 25% decrease in the availability of alcohol in a village that banned importation. It is expected that if a village exercises its option to ban possession the availability of alcohol could be further decreased.

The Department recognizes passage of SSHB 700 will not be a panacea for all of the alcohol problems in rural Alaska but does view it as a vehicle or tool for further improvement of the present condition.

Position

The Department of Health and Social Services strongly supports SSHB 700. This legislation continues the Office of Alcoholism and Drug Abuse's past efforts in the prevention of alcohol abuse in rural Alaska by limiting availability. SSHB 700 gives rural Alaskans a method of fulfilling their apparently strong-desire to improve the health and welfare of their communities.

Recommended by:

*Matthew C. Felix*  
.....  
Matthew C. Felix  
Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

*4/4/80*  
.....

Approved by:

*John R. Pugh*  
.....  
John R. Pugh  
Commissioner  
Department of Health  
and Social Services

Date:

*4/4/80*  
.....

AFN 1985 ANNUAL CONVENTION  
RESOLUTION NO. 85-48

AMENDMENT OF THE LOCAL OPTION LAW

WHEREAS, alcohol abuse has been and continues to be a significant social problem in the State of Alaska;

WHEREAS, alcohol abuse has been one of the major causes in Alaska of family disunity, domestic violence, community violence, sexual abuse of children, and suicides, and as such presents a danger to both the health of individuals and the health of the community;

WHEREAS, Alaska's local option law allows communities to ban the sale and importation of alcohol, but does not allow a ban on the possession of alcohol; and

WHEREAS, it is virtually impossible to enforce a ban on the importation of alcohol, due to the difficulty of proving who the person was that actually brought the alcohol into the dry village; and

WHEREAS, many innocent non-drinkers in villages which have chosen to ban the sale and importation of alcohol are being hurt and damaged by those who abuse alcohol; and

WHEREAS, there is a compelling need for legislation which would allow communities to ban the possession of alcohol to protect the innocent victims of alcohol abuse; and

WHEREAS, the need to protect innocent victims is so strong that it justifies the serious step of invading the privacy of individual adults in their own homes;

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives formally requests and recommends that the Alaska State Legislature amend the Local Option Law contained in Title 4 of the Alaska Statutes to allow communities to ban the possession of alcoholic beverages within the community after holding a local option election.

CONVENTION ACTION: PASSED

