

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5280 SHES SCR 18 - SJR 4 852

Penalties Under Importation

If, under the other alcohol local options, a village votes to stop sale and importation of alcoholic beverages, the penalty for importing depends on the amount of alcohol that is brought into the community.

Less than 12 liters (about 16-1/2 fifths) of hard liquor or 24 liters (about 13 half gallons) of wine or 45 liters of beer (about 22 six-packs) is a Class "A" misdemeanor. Penalty is up to one year in jail and/or up to a \$5,000 fine.

More than 12 liters (about 16-1/2 fifths) of hard liquor or 24 liters (about 13 half gallons) of wine or 45 liters (about 22 six-packs) of beer is a Class "C" felony. Penalty is up to five years in jail and/or up to a \$50,000 fine.

ENFORCEMENT

If the ban on possession of alcohol is the only local option law in the village, it becomes effective 90 days after the certification of election. If the village has another local option law such as a ban on sale and importation, possession of alcohol becomes illegal on the first day of the month following certification of election results. The village public safety officer (VPSO) or other law enforcement officer can then take alcohol and issue a citation. The chief, village council members or anyone in the community can take alcohol away from someone but this could be dangerous and the Department of Public Safety prefers that it be done by law enforcement officers. Loss of the alcohol can be a large punishment in itself. It can also stop potential problems by keeping people from getting drunk or more drunk.

Fines

If a citation is issued, the fines for possessing alcohol are:

- \$100 for each of the first two offenses.
 - A mandatory court appearance for the third or more offenses.
- If convicted, the fine could be up to \$1,000.

Paying the Fine

A person has three choices in paying the fine. He or she can:

1. Mail or deliver the money to the clerk of the court.
2. Perform community work at \$5 per hour to work off the fine. The community work is directed by the city council or by the village council if there is no city. After the work is completed, a form and a copy of the citation must be mailed into the clerk of the court.

3. Pay some money and work off the rest of the fine.

If a citation has been issued and a person does not pay the fine or do community work, the citation becomes a summons to court. The date and place will be written on the citation. The person must go at his or her own expense. If the person then does not appear in court, he is then in contempt of court and can be punished for that offense.

Violating the ban on possession of alcohol in the village is not a criminal offense, and a person is not jailed for breaking that law. If a person wishes to contest (protest) the citation, he or she does not have the right to a trial by jury or to a court-appointed attorney. However, if a person fails to pay a fine or do assigned community work and then fails to appear in court, he or she is then guilty of a criminal offense (contempt of court) and can be punished for that offense.

Search and Seizure

State law regarding search and seizure must be followed. If alcohol is in plain sight it can simply be taken away. If the alcohol is out of sight, the VPSO or VPO (Village Police Officer) must have "probable cause" in order to get a search warrant. The definition of "probable cause" is ultimately determined by the courts. The basic idea is, however, that the VPSO or VPO must have solid reason to believe that alcohol is in the place where he wants to look. Baggage coming through the airport cannot all be searched for alcohol. There must be certain reason to believe that alcohol is in a bag, and then a search warrant must be obtained. Search warrants can be gotten over the phone if there isn't a state judge, or a magistrate in the village.

Community's Role in Enforcement

How well this law is enforced will depend upon village attitudes and efforts. The village must support their VPSO or VPO. The councils need to complain to the court system if contempt of court proceedings are not begun when fines aren't paid and court appearances aren't made.

The village can encourage people to comply with their laws by posting signs at the airport, along roads and rivers leading into the village, and in neighboring communities. The councils should also contact local air carriers so they will know not to bring alcohol into the village. Ads can be placed in local newspapers or aired on local radio or TV stations. The community can take an aggressive stand and go beyond minimum requirements to help enforce the law.

UNINCORPORATED COMMUNITY - ESTABLISHED VILLAGE
NO POSSESSION

PETITION FOR SPECIAL ELECTION

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

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

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

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

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

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

INCORPORATED COMMUNITY
NO POSSESSION

PETITION FOR SPECIAL ELECTION

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

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

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

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

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

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

SAMPLE BALLOT FOR MUNICIPALITIES

NO POSSESSION

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

Date: _____

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

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

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

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

QUESTION:

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

YES

NO

SAMPLE BALLOT FOR ESTABLISHED VILLAGES

NO POSSESSION

(Name of village) SPECIAL ELECTION BALLOT

Date: _____

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

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

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

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

QUESTION:

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

YES

NO



LAWS OF ALASKA

1986

Source

GSSSIB 700(Fin) am

Chapter No.

80

AN ACT

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

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

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

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

Chapter 80

AN ACT

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

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

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

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

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

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

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

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

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

(9) a fine in the amount of \$1,000 or 200 hours of community work, is not so severe a penalty as to indicate criminality in either rural or urban Alaska communities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The following are subject to forfeiture:

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

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

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

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

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

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

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

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

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

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

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

(1) the seizure is incident to a valid arrest or search;

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

prior judgment in favor of the state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 80

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

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

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

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

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

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

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SCR 18
Publish Date: SENATE 3/2/87

Revision Date: _____
Title: Extending the Joint Special Committee
on Local Option Laws.

Agency Affected: Legislative Affairs Agency
BRU: Legislative Council

Sponsor: Senator John Binkley
Requestor: Senate HESS Committee

Components: Council & Subcommittees

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	50.0	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	50.0	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	50.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Joint Special Committee on Local Option Laws has requested a budget of \$50.0 for FY 88.

Prepared by: Pamela A. Stoops, Manager
Division: Administrative Services

Phone: 465-3850
Date: 3/20/87

Approved by: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency

Date: 3/20/87

Distribution (by preparer):

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

cate the taxes which Alaska has levied on Alyeska's receipts, we conclude that the challenged tax did not violate the "internal consistency" test of the commerce clause.

(c) *The Due Process Clause Does Not Prevent Alaska From Taxing Alyeska's Gross Receipts.*

In *Sjong* we discussed the subject of commerce clause and due process infirmities in state taxation. There we said in part:

[C]ourts . . . have usually placed considerations of minimum contacts and sufficient nexus under the due process heading, while questions regarding the proper apportionment of income to the taxing state and the discriminatory impact of taxes are covered by the Commerce Clause.

622 P.2d at 973 (citations omitted).

[10] Alyeska does not develop its due process argument independently of its commerce clause argument, making only passing reference to the due process clause in its reply brief. We hold that Alyeska, in light of the protection, opportunities, and benefits Alaska provided it, has no basis for a due process challenge to the tax, under the test of "minimum contacts" outlined in *Sjong*:

In determining what constitutes sufficient minimum contacts for the purposes of taxation, the Supreme Court has adopted the following basic test first stated in *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267 (1940): "That test is . . . whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. *The simple but controlling question is whether the state has given anything for which it can ask return.*" 311 U.S. at 444, 61 S.Ct. at 250, 85 L.Ed. at 270-71 (emphasis added). As we stated in *North Slope Borough v. Puget Sound Tug & Barge*, 598 P.2d 924, 928 (Alaska 1979):

Due process requires that a tax be related "to opportunities, benefits, or

protection conferred or afforded" by the taxing authority and such a relationship exists "if the tax is fairly apportioned to the commerce [there] carried on." *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 174 [69 S.Ct. 432, 434], 93 L.Ed. 585, 589 (1949).

Id. at 970. There is thus no merit in Alyeska's due process argument.

AFFIRMED.



Hugh HARRISON, Appellant,

v.

STATE of Alaska, Appellee.

No. 7407.

Court of Appeals of Alaska.

Aug. 31, 1984.

Defendant was convicted in the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of importing alcohol into village which chose to prohibit both sale and importation of alcoholic beverages under local option law, and he appealed. The Court of Appeals, Bryner, C.J., held that: (1) local option law does not violate equal protection and due process clauses of Federal or State Constitution or privacy clause of State Constitution, and (2) conviction was not barred on ex post facto grounds by reason that federal approval of local option law was pending at time of defendant's offense.

Affirmed.

1. Constitutional Law \ominus 239(1)
Intoxicating Liquors \ominus 14

Local option law does not constitute impermissible racial classification, since it

permi-
tablish
against
erages
plies t
lage, 1
§§ 1.

2. Cor
Co
home,
on pri
terms
sonal ;
seeks
throug
bears
as leg
Const.

3. Cou
Inte
E
betwe
health
and c
justify
village
hibit
erage
ing su
tionsl
probl
had
that
may i
04.11

4. Co
C
not p
Const
5. C
l
feet
of r
Ame

6. Co
In
lage
tation

permits any municipal government or established village to enact prohibition against sale or importation of alcoholic beverages, which prohibition, once enacted, applies to all persons in municipality or village, regardless of race. Const. Art. 1, §§ 1, 7; U.S.C.A. Const.Amend. 5, 14.

2. Constitutional Law ⇨82(7)

Consumption of alcoholic beverages in home, while not fundamental right, touches on privacy interest that is manifested in terms of interest more squarely within personal autonomy, and thus, even when state seeks to regulate consumption indirectly, through restrictions on importation, state bears heavy burden of justifying regulation as legitimate health and welfare measure. Const. Art. 1, § 22.

3. Constitutional Law ⇨81

Intoxicating Liquors ⇨14

Evidence which established correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime, established State's burden of justifying local option law, which permitted villages and municipalities to vote to prohibit sale and importation of alcoholic beverages, as health and welfare measure having sufficiently close and substantial relationship with legislative purpose of curbing problem of alcohol abuse in which State had compelling interest, despite evidence that moderate use of alcoholic beverages may be beneficial. Const. Art. 1, § 22; AS 04.11.496(b).

4. Constitutional Law ⇨82(7)

Consumption of alcoholic beverages is not protected privacy right under Federal Constitution.

5. Constitutional Law ⇨211(3)

Equal protection does not require perfect equality and uniformity in application of regulatory scheme. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 1.

6. Constitutional Law ⇨239(1)

Intoxicating Liquors ⇨14

Local option law, which permits villages and municipalities to prohibit importation and sale of alcoholic beverages, does

not violate equal protection simply because moderate consumers may not have access to alcoholic beverages in community which has enacted such law or because it gives individual communities discretion to determine level of alcohol availability which will be permitted within their boundaries; differences in treatment of citizens from different communities resulting from extent to which individual communities elect to implement law are not constitutionally significant, and similarly situated persons are treated alike. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

7. Constitutional Law ⇨211(2)

Every citizen of state need not be treated exactly alike, regardless of geographical location and other similar considerations, for purpose of equal protection; rather, question is whether differences in treatment are reasonable in light of balance between importance of legislative intent, on one hand, and interest of individual, on other. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

8. Constitutional Law ⇨209

When state attacks complex problem, it need not choose between attacking every aspect of that problem and doing nothing at all to survive equal protection challenge. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

9. Constitutional Law ⇨211(2)

Classifications need not be perfect to survive equal protection challenge. AS 04.11.496(b); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 14.

10. Constitutional Law ⇨250.1(2)

Intoxicating Liquors ⇨19

Felony classification rather than misdemeanor based on quantity and type of alcoholic beverage imported into village which has voted to prohibit it does not violate equal protection; classification is not irrational, as potential for harm increases with amount of alcohol consumed. AS 04.11.496(b), 04.16.200(e); Const. Art. 1, § 1; U.S.C.A. Const.Amend. 5, 14.

or afforded" by and such a relaxation is fairly appropriate [there] *Carroll v. Mississippi Valley* U.S. 169, 174 [69] L.Ed. 585, 589

to merit in Ayles-

Appellant.

Appellee.

of Alaska.

in the Superior District, Fairbanks, of importing those to prohibit of alcoholic beverages, and he appeals. Bryner, the law does not and due process Constitution or violation, and (2) an ex post facto general approval of being at time of

29(1)

14

not constitute violation, since it

11. Constitutional Law ⇨258(2)**Intoxicating Liquors** ⇨19

Statutory distinction between misdemeanor and felon based on type and quantity of alcoholic beverages imported into village which voted to prohibit it did not deny defendant due process, as distinction does not create irrebuttable presumption that larger quantities of alcoholic beverages are imported for sale rather than personal use, but, rather, statute is silent on issue of intent, simply sanctioning importation. AS 04.11.496(b); U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 7.

12. Constitutional Law ⇨258(3)**Intoxicating Liquors** ⇨14

Local option law does not deny due process by denying defense of lack of profit to persons charged with importation, as defense is unavailable in felony prosecution for either sale or importation, with result that all persons charged with felonies are treated alike, and thus, fairly. AS 04.11.496(b); Const. Art. 1, § 7; U.S.C.A. Const. Amends. 5, 14.

13. Intoxicating Liquors ⇨176

No person charged with felony under any section of statute which classifies criminal levels for sale and importation of alcoholic beverages can properly assert defense of lack of profit, which was meant to be available in cases of casual distribution which occurred as incident of lawful possession, where distributor did not unlawfully import alcoholic beverages in his or her possession. AS 04.16.200(e).

14. Intoxicating Liquors ⇨14

Defendant, who was charged with felony importation of alcoholic beverages into village which had voted to prohibit it, had no standing to challenge misdemeanor provisions of local option law. AS 04.11.496, 04.16.200, 04.16.200(a), (b)(3), (c), (e), (e)(1, 2).

15. Intoxicating Liquors ⇨21

Local option law was enacted to regulate importation of alcoholic beverages, not to regulate simple possession. AS 04.11.496(b).

16. Constitutional Law ⇨200

Defendant's conviction of importing alcohol into village which voted to prohibit both importation and sale of alcoholic beverages did not violate constitutional prohibition against ex post facto laws by reason that federal approval of local option election was pending at time of his offense, as purpose of federal approval of preventing discriminatory electoral practices was not implicated and approval was ultimately obtained, with result that prohibition was in effect at time that defendant committed offense. U.S.C.A. Const. Art. 1, § 9, cl. 3; Const. Art. 1, § 15; Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

17. Elections ⇨12(8)

Failure to obtain federal preclearance of state election law does not automatically invalidate election results, at least where preclearance is ultimately granted; rather, where state fails to obtain required preclearance, election results are subject to invalidation, but substantive violation must be shown which could result in denial of preclearance and mere technical violations of procedural requirements for preclearance are insufficient basis for invalidation. Const. Art. 1, § 15; Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

18. Elections ⇨12(1)

Voting Rights Act of 1965 was enacted to prevent discriminatory practices that exclude minorities from electoral process. Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c.

19. Intoxicating Liquors ⇨241

In prosecution for importing alcohol into village which voted to prohibit it, in which defendant did not allege that he detrimentally relied on good-faith belief that village's election had not obtained federal preclearance and vote was thus potentially invalid, but admitted rather that he was fully aware of illegality of his actions, defendant could not claim on appeal that he was deprived of adequate notice that his conduct was criminal by reason that preclearance for election had not been ob-

tained at time Const.Amends.

Randall Simpson Jermain, Dumas for appellant.

Peter A. Mielchorage, and Gen., Juneau, f

Before BRYNER, SINGLETON,

BRYNER, C

Following a was convicted village of St. 04.11.496(b). lenges the cor cal option law, equal protection the United Sta and the privat itution. Har viction on ex reviewing Har that his convic

In order to in context, it i ground of Ala hol abuse has problem in study of this the Analysis Several of the ed the extent ka. For exam due directly from 1959 to mortality rat than the nati colhol Problem

1. In 1981, tl Crime was en violent crime ing public be ported:

Another was the r Alaska Rep 6

Cite as 687 P.2d 332 (Alaska App. 1984)

tained at time of his offense. U.S.C.A. Const. Amends. 5, 14; AS 04.11.496(b).

Randall Simpson and Gary C. Sleeper, Jermain, Dunnagan & Owens, Anchorage, for appellant.

Peter A. Michalski, Asst. Atty. Gen., Anchorage, and Norman C. Gorsuch, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

BRYNER, Chief Judge.

Following a jury trial, Hugh Harrison was convicted of importing alcohol into the village of St. Mary's in violation of AS 04.11.496(b). On appeal, Harrison challenges the constitutionality of Alaska's local option law, arguing that it violates the equal protection and due process clauses of the United States and Alaska Constitutions and the privacy clause of the Alaska Constitution. Harrison also challenges his conviction on *ex post facto* grounds. After reviewing Harrison's claims, we conclude that his conviction must be affirmed.

In order to place Harrison's arguments in context, it is helpful to review the background of Alaska's local option law. Alcohol abuse has been and continues to be a problem in Alaska. A comprehensive study of this issue was released in 1977 by the Analysis of Alcohol Problems Project. Several of the study's conclusions illustrated the extent of alcohol problems in Alaska. For example, Alaska's rate of death due directly to alcoholism increased 153% from 1959 to 1975, and Alaska's alcoholism mortality rate in 1975 was 418% higher than the national average. Analysis of Alcohol Problems Project, *Working Papers*:

1. In 1981, the House Task Force on Violent Crime was established to examine the causes of violent crime. The Task Force began by holding public hearings throughout the state; it reported:

Another dominant theme in the testimony was the relationship between violent crime

Alaska Rep. 607-609 P.2d-4

Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975, vol. V at 14 (1977). From 1958 to 1975, Alaska's rate of annual consumption increased at almost twice the rate of the national average. *Id.* at 42. The total economic cost of alcoholism and alcohol abuse to Alaska in 1975 was reported to be 131.2 million dollars. *Id.* at 32. The study noted that the impact of alcohol-related problems was greater in rural areas. *Id.* at 4.

In 1976, the Governor's Commission on the Administration of Justice concluded that crime in Alaska is significantly related to the excessive and unregulated consumption of alcohol. Governor's Commission on the Administration of Justice, *Standards and Goals for Criminal Justice* at 41 (1976). The Commission noted that, according to the National Council on Alcoholism, one out of every ten Alaskans is an alcoholic. *Id.* The Commission recommended that rural villages be allowed to control alcoholic beverages. *Id.* at 14.

In 1980, the Alaska Judicial Council published a report entitled *Alaska Felony Sentences: 1976-1979*. The report found a significant relationship between the use of alcohol and criminal behavior. This association was most significant in rural areas of the state where, according to the Council, 77.9% of violent crimes and 55.6% of property crimes were committed under the influence of alcohol. Alaska Judicial Council, *Alaska Felony Sentences: 1976-1979* at 45-48, 65-67 (1980).¹

In response to the growing evidence of a strong relationship between alcohol abuse and crime, Alaska's local option law was enacted in 1980. Under the law, any municipal government that desires to regulate the importation or distribution of alcoholic beverages can conduct a referendum election. A community choosing to hold a ref-

and alcohol abuse. Police, prosecutors, judges, community leaders and victims testified that alcohol abuse and violent crime are inseparable.

House Task Force on Violent Crime, *Report to the First Session Twelfth Alaska Legislative at 8-9* (1981).

200

of importing alcohol to prohibit of alcoholic beverages constitutional prohibitions by reason local option election of his offense, as well of preventing practices was not was ultimately ob- prohibition was in ndant committed Art. 1, § 9, cl. 3; ng Rights Act of 1973e.

ederal preclearance not automatically s, at least where granted; rather, ain required pre- es are subject to ive violation must esult in denial of echnical violations ents for preclear- s for invalidation. ng Rights Act of 1973e.

1965 was enacted practices that ex- electoral process. § 5, 42 U.S.C.A.

241

importing alcohol to prohibit it, in allege that he de- faith belief that obtained federal s thus potentially ther that he was of his actions, de- m appeal that he e notice that his reason that pre- ad not been ob-

erendum election is given several options. It may completely prohibit the sale of alcoholic beverages, AS 04.11.490. It may prohibit the sale except by specifically licensed establishments, AS 04.11.492, or by those holding selected types of licenses, AS 04.11.500. Or, it may completely prohibit both the sale and importation of alcoholic beverages, AS 04.11.496. Local referendum elections are conducted under state supervision, and when the results of a local election are certified by the state, violations of any restrictions adopted in the election are subject to criminal prosecution by the state. AS 04.11.502; AS 04.16.200.

The village of St. Mary's held a referendum election under the local option law on September 22, 1981, and voted to prohibit the sale and importation of alcoholic beverages. The prohibition became effective October 1, 1981. During the latter part of 1981, Harrison, a state trooper, was transferred to St. Mary's. On April 16, 1982, Harrison flew an airplane from St. Mary's to Nome, where he purchased vodka and several cases of beer. He returned to St. Mary's with the liquor. The police searched Harrison's residence on April 18th and found over sixty-two liters of beer and 1.75 liters of vodka. Harrison was indicted for the importation of alcohol, in violation of AS 04.11.496(b).² AS 04.11.496 provides, in relevant part:

(a) The following question, appearing on the ballot, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the sale and importation of alcoholic beverages be prohibited in . . . (name of municipality or village)? (yes or no)".

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring

alcoholic beverages into the municipality or established village.

Prior to trial, Harrison moved to dismiss his indictment on constitutional grounds. He argued that the St. Mary's local option law violated his right to privacy and equal protection and that the distinction between the misdemeanor and felony classifications in the statute violated his right to due process. Harrison also contended that the application of the local option law to his conduct violated the constitutional prohibition against *ex post facto* laws. At the pretrial hearing before Superior Court Judge James R. Blair, Harrison expressly acknowledged the evidence presented by the state indicating a correlation between alcohol abuse and serious health and social problems. Harrison did, however, present expert testimony that the incidence of coronary disease was lower among moderate drinkers than non-drinkers. Harrison's expert also testified that an increased availability of alcohol results in a proportional increase in moderate drinkers and a proportional decrease in heavy users and abstainers. Judge Blair denied Harrison's motions to dismiss. Harrison was subsequently convicted, and now appeals the denial of his motions.

PRIVACY

Harrison claims that the prohibition against importation of alcohol into St. Mary's violates his right to privacy under the Alaska Constitution.³ In *Ravin v. State*, 537 P.2d 494 (Alaska 1975), the defendant argued that the prohibition of the possession of marijuana violated his right to privacy. The court in *Ravin* noted the traditional standard that applied to a claimed infringement of a fundamental constitutional right:

Once a fundamental right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right

Right of Privacy. The right of the people to privacy is recognized and shall not be infringed....

has been impaired, then the court should be forward and make every effort of establishing a clear question as to whether government intrusion into the privacy of the citizen is justified. *Ravin*, 537 P.2d 494 (quoting *Breese v. State*, 537 P.2d 498 (Alaska 1972)). The court in *Ravin* pressed consideration of the traditional balancing state interest in the regulation of alcohol against the citizen's privacy claim.

It is appropriate to consider whether there is a substantial interest in marijuana use and whether the traditional purpose of the restrictions interferes with the right to privacy relationship between the citizen and the state, not merely a substantial interest.

Thus, our analysis must first determine whether the citizen's right, if a state prohibition is justified, and, if any right is violated, then the state's interest in the regulation of alcohol is justified.

Ravin, 537 P.2d 494.

The court in *Ravin* was to use the balancing state interest in the regulation of alcohol against the citizen's federal constitutional right to privacy in the possession of marijuana. *Ravin*, 537 P.2d 494. However, because the traditional standard of the Alaska Constitution for the ingestion of food and drugs, subject to certain considerations, is that its analysis is without a closer privacy and the right is exercised

² Harrison was also indicted on two other charges, which are not relevant to this appeal.

³ Article I, section 22 of the Alaska Constitution states in part:

the municipality

moved to dismiss
ational grounds.
ary's local option
ravity and equal
inction between
y classifications
is right to due
ntended that the
ption law to his
stitutional prohibi-
o laws. At the
Superior Court
arrison expressly
ce presented by
relation between
health and social
however, present
ncidence of coro-
among moderate
Harrison's ex-
increased avail-
a proportional
ers and a propor-
ers and abstain-
Harrison's mo-
son was subse-
appeals the de-

the prohibition
cohol into St.
o privacy under
In *Ravin v.*
a 1975), the de-
robhibition of the
olated his right
Ravin noted the
applied to a
fundamental con-

at under the con-
een shown to be
n further shown
protected right
of the people to
shall not be infring-

has been impaired by governmental ac-
tion, then the government must come
forward and meet its substantial burden
of establishing that the abridgement in
question was justified by a compelling
government interest.

Ravin, 537 P.2d at 497 (footnote omitted)
(quoting *Breese v. Smith*, 501 P.2d 159, 171
(Alaska 1972)). However, the court ex-
pressed considerable dissatisfaction with
the traditional fundamental right/compel-
ling state interest test. *Ravin*, 537 P.2d at
498. The court went on to determine Ra-
vin's privacy claims in the following man-
ner:

It is appropriate in this case to resolve
Ravin's privacy claims by determining
whether there is a proper governmental
interest in imposing restrictions on mari-
juana use and whether the means chosen
bear a substantial relationship to the leg-
islative purpose. If governmental re-
strictions interfere with the individual's
right to privacy, we will require that the
relationship between means and ends be
not merely reasonable but close and sub-
stantial.

Thus, our undertaking is two-fold: we
must first determine the nature of Ra-
vin's right, if any, abridged by [the sta-
tute prohibiting possession of marijuana],
and, if any rights have been infringed
upon, then resolve the further question
as to whether the statutory impairment
is justified.

Ravin, 537 P.2d at 498.

The court in *Ravin* held that even if it
were to use the fundamental right/compel-
ling state interest test, there was no funda-
mental right, either under the Alaska or
federal constitutions, to possess or ingest
marijuana. *Ravin*, 537 P.2d at 502. How-
ever, because the right of privacy under
the Alaska Constitution clearly shielded the
ingestion of food, beverages and other sub-
stances, subject to overriding public health
considerations, the court also concluded
that its analysis would not be complete
without a closer examination of the right to
privacy and the "relevancy of where the
right is exercised." *Id.* The court "recog-

nized the distinctive nature of the home as
a place where the individual's privacy re-
ceives special protection." *Ravin*, 537 P.2d
at 503. It concluded:

This right to privacy would encompass
the possession and ingestion of sub-
stances such as marijuana in a purely
personal, non-commercial context in the
home unless the state can meet its sub-
stantial burden and show that proserip-
tion of possession of marijuana in the
home is supportable by achievement of a
legitimate state interest.

Ravin, 537 P.2d at 504. The court re-
viewed the evidence presented at the omni-
bus hearing and concluded that the use of
marijuana does not constitute a significant
public health problem, with the exception
of persons driving under the influence of
cannabis. *Ravin*, 537 P.2d at 506, 509, 511.
The court held that, given the evidence
demonstrating the relative harmlessness of
the drug, an individual's right of privacy in
the home outweighed the government's in-
terest in regulating the personal use of
marijuana in the home. *Ravin*, 537 P.2d at
511.

In *State v. Erickson*, 574 P.2d 1 (Alaska
1978), the court applied the *Ravin* standard
to a claim that the prohibition against co-
caine possession and use in the home violat-
ed the right to privacy. The court ob-
served that the authorities agreed that co-
caine is a more dangerous drug than mari-
juana. *Erickson*, 574 P.2d at 21-23. For
example, cocaine, unlike marijuana, can
cause death. *Id.* The court noted the spe-
cial protection accorded to the home, stat-
ing that "[w]here the right to privacy is
manifested in terms of interests more
squarely within personal autonomy, the
balance [of the individual's interest in pri-
vacy and the government's interest in
health and safety] requires a heavier bur-
den on the state to sustain the legislation in
light of the right involved." *Erickson*, 574
P.2d at 22 n.14. In upholding the prohibi-
tion against the personal use and posses-
sion of cocaine in the home, the court found
a "sufficiently close and substantial rela-
tionship" between the prohibition and the

legislative purpose of protecting the general health and welfare. *Erickson*, 574 P.2d at 22.

[1] Our first step under *Ravin* is to evaluate the nature of the right abridged by the local option law. Harrison apparently concedes that the right to consume alcohol is not a fundamental or absolute right.⁴ Moreover, the right to consume alcohol in the home is not directly at issue in this case. AS 04.11.496(b), the statute under which Harrison was convicted, merely prohibits a person from knowingly sending, transporting, or bringing alcoholic beverages into the community. It does not prohibit the use of alcoholic beverages in the home. Although we conclude that there is no fundamental right to possess or consume alcohol, *see Ravin*, 537 P.2d at 502, this conclusion does not end our analysis. Since there is a strong, if not direct, relationship between regulating importation of alcohol and regulating consumption of alcohol, and since the privacy amendment of the Alaska Constitution clearly "shields the ingestion of food, beverages or other substances," *Ravin*, 537 P.2d at 502, (quoting *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974)), we must more closely examine the right to privacy asserted in this case.

[2] Harrison characterizes the interest in drinking alcoholic beverages as "fundamental to personal lifestyle." We believe that the consumption of alcoholic beverages in the home, while not a fundamental right, touches on a privacy interest that is "more squarely within personal autonomy." *Erickson*, 574 P.2d at 22 n.144. Therefore, even when the state seeks to regulate consumption indirectly, through

4. We reject Harrison's claim that the local option law constitutes an impermissible racial classification. Any municipal government or established village may enact a prohibition against the sale or importation of alcoholic beverages. Once enacted, the prohibition applies to all persons in the municipality or village, regardless of race.

5. Harrison vigorously asserts that the legislature's true purpose in enacting the local option law was to "invade the privacy of individual

restrictions on importation, it bears a heavy burden of justifying the regulation as a legitimate health and welfare measure.

These considerations lead us to the second step in the *Ravin* analysis: whether the state has shown both that the local option law is justifiable as a health and welfare measure, and that the means chosen to regulate alcoholic beverages bears a sufficiently close and substantial relationship to the legislative purpose of protecting the public health and welfare.⁵ *Ravin v. State*, 537 P.2d at 504. *See also State v. Erickson*, 574 P.2d at 22 (applying the *Ravin* standard to possession of cocaine). In making this determination, we must keep in mind the general proposition set forth in *Ravin*: "the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large as it relates to matters of public health or safety, or to provide for the general welfare." *Ravin*, 537 P.2d at 509.

[3] The evidence presented at the omnibus hearing unmistakably established a correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime. Harrison did not dispute this evidence. Given this evidence, we conclude that the state has met its burden of justifying the local option law as a health and welfare measure. Our conclusion is supported by the supreme court's express recognition of the deleterious effects of consuming alcoholic beverages. In *Ravin v. State*, 537 P.2d at 509-10, the court observed:

It appears that effects of marijuana on the individual are not serious enough to justify a widespread concern, at least

Alaska residents in their homes and prevent them from consuming alcoholic beverages." This claim is without merit. We think the legislature's purpose was to regulate the distribution and availability of substances that are harmful to the health and welfare of Alaskans. The legislature's purpose would be improper only if the consumption of alcoholic beverages was not substantially harmful. *See Erickson*, 574 P.2d at 16.

compared with the effects of alcohol and amphetamines.

In *State v. Erickson*, the supreme court, after reviewing the evidence, held that "cocaine is more harmful than alcohol." The court, in concluding that the law was a relatively harmless and not a dangerous enough regulation of its privacy, found that alcohol was either drug.

We further believe that the relationship between the local option law and the legislative purpose of protecting the public health and welfare is sufficiently close and substantial that each community has a right to regulate the location, and consumption, of a group of moderate to heavy drinkers and to evidence suggesting a presumption of alcohol consumption of alcohol. Harrison argues, the moderate use of alcohol in order to address the relatively serious alcohol abusers. Nothing can be obtained from the prohibition of alcohol is not substantially harmful to the state purpose.

[4] While more evidence may be needed to show the harm to the state is undisputed.

6. We are, further, persuaded that the state's argument that the law violates privacy is not supported by the constitution. The court held that there is no fundamental right to consume alcoholic beverages. *Oxford v. State*, 4 (N.D. Miss. 1980), 1983, cert. denied, 82 L.Ed.2d 855, 53 F.Supp. 1360, 13 F.Supp. 739.

compared with the far more dangerous effects of alcohol, barbiturates and amphetamines.

In *State v. Erickson*, 574 P.2d at 22, the court, after reviewing the record, noted that "cocaine is probably less dangerous than alcohol." Thus, the Alaska Supreme Court, in concluding that marijuana is a relatively harmless drug and that cocaine is a dangerous enough drug to warrant criminalization of its possession, has expressly found that alcohol is more dangerous than either drug.

We further believe that there is a sufficiently close and substantial relationship between the local option law and the legislative purpose of protecting the public health and welfare. Harrison contends that each community, regardless of size, location, and composition, has a large group of moderate users and small groups of abstainers and abusers. Harrison points to evidence suggesting that moderate consumption of alcoholic beverages may be medically beneficial. The prohibition of sale and importation enacted by St. Mary's, Harrison argues, improperly punishes all the moderate users of alcoholic beverages in order to address the problems created by the relatively small number of alcohol abusers. Noting that alcoholic beverages can be obtained in other areas, Harrison asserts that prohibiting the sale and importation of alcoholic beverages in St. Mary's is not substantially related to any legitimate state purpose. We disagree.

[4] While moderate use of alcoholic beverages may be beneficial, the evidence showing the harmful effects of consumption is undisputed. The legislature, after

6. We are, furthermore, not persuaded by Harrison's argument that Alaska's local option law violates privacy rights protected by the federal constitution. The federal cases have uniformly held that there is no federal right to consume alcoholic beverages. See *Dunagin v. City of Oxford, Miss.*, 489 F.Supp. 763, 771-72 n. 11 (N.D.Miss.1980), *aff'd* 718 F.2d 738 (5th Cir. 1983), *cert. denied*, — U.S. —, 104 S.Ct. 3554, 82 L.Ed.2d 855 (1984); *Felix v. Milliken*, 463 F.Supp. 1360, 1371-72 (E.D.Mich.1978); *Republican College Council of Pennsylvania v. Winner*, 357 F.Supp. 739, 740 (E.D.Pa.1973). Examples

considering the severe social costs of alcohol abuse, concluded that all communities should have the option of controlling the level of local distribution and availability. Even though decreased restrictions on the availability of alcoholic beverages may, as Harrison argues, increase the proportion of moderate consumers to alcohol abusers, broadened access to alcoholic beverages will undoubtedly increase the absolute number of alcohol abusers. The threat posed to society by widespread alcohol abuse is enormous. We believe that enactment of Alaska's local option law bears a close and substantial relationship to the legitimate legislative goal of protecting the public health and welfare by curbing the level of alcohol abuse in our state.⁶ See *State v. Erickson*, 574 P.2d at 22 and n.144. Cf. *Ravin v. State*, 537 P.2d at 511 (state demonstrated sufficient justification for prohibiting possession of marijuana while driving).

EQUAL PROTECTION

Harrison argues that the state cannot, in the absence of a compelling governmental interest, permit one community to ban the importation of alcoholic beverages and simultaneously permit other communities to allow importation. He argues that, as enacted in St. Mary's, the statute is overinclusive because moderate consumers' access to alcoholic beverages is limited and underinclusive because alcohol-related problems will still occur in nearby areas that have not enacted a local option law.

Alaska takes the following approach to equal protection analysis:

of privacy rights protected by the federal constitution are the right to abortion, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), the right to choose one's spouse, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967), the right to receive information about birth control, *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and the right to reproduce, *Skinner v. Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942). We believe that the consumption of alcoholic beverages does not rise to the same level as these rights.

In contrast to the rigid tiers of federal equal protection analysis, we have postulated a single sliding scale of review ranging from relaxed scrutiny to strict scrutiny. The applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classification scheme. As legislation burdens more fundamental rights, such as rights to speak and travel freely, it is subjected to more rigorous scrutiny at a more elevated position on our sliding scale. Likewise, laws which embody classification schemes that are more constitutionally suspect, such as laws discriminating against racial or ethnic minorities, are more strictly scrutinized. This approach was first announced in *State v. Erickson*, . . .

Having selected a standard of review on the *Erickson* sliding scale, we then apply it to the challenged legislation. This is done by scrutinizing the importance of the governmental interests which it is asserted that the legislation is designed to serve and the closeness of the means-to-ends fit between the legislation and those interests. As the level of scrutiny selected is higher on the *Erickson* scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-ends fit be correspondingly closer. On the other hand, if relaxed scrutiny is indicated, less important governmental objectives will suffice and a greater degree of over-/or underinclusiveness in the means-to-ends fit will be tolerated. As a minimum, we require that the legislation be based on a legitimate public purpose and that the classification "be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation . . ."

State v. Ostrosky, 667 P.2d 1184, 1192-93 (Alaska 1983) (footnotes and citations omitted), appeal dismissed, — U.S. —, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984).

As we have previously indicated in connection with the privacy issue, the individual interest asserted by Harrison is not a fundamental right; however, it should be viewed with a higher level of scrutiny than is required under the traditional "rational basis" test, because the consumption of alcoholic beverages is an interest "squarely within personal autonomy." *Erickson*, 574 P.2d at 22 n. 144. We believe that the state's compelling interest in curbing the problem of alcohol abuse cannot be ignored. In addressing regulations of the commercial sale of alcohol, the supreme court has noted:

The legislature was dealing with a business which, unlike other commercial enterprises, possesses the capacity for grave and harmful effects upon the public welfare. . . . It is because of this that there may be either complete prohibition, if the legislature chooses to follow that course, or if not, that there may be conditions imposed which will have the tendency to afford the greatest degree of protection to the citizens of the state.

Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 589 (Alaska 1960) (footnote omitted). Given the compelling nature of the interest asserted by the state, we conclude that the provisions of Alaska's local option law are reasonable and sufficiently related to the legislative goal sought to be accomplished by the statute.

[5, 6] Equal protection does not require perfect equality and uniformity in the application of a regulatory scheme. *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 554 (Alaska 1966). Thus, the statute does not violate equal protection simply because moderate consumers may not have access to alcoholic beverages in a community that has enacted a local option law. As we have already indicated in our privacy analysis, the use of the local option law to address the alcohol abuser bears a close and substantial relationship to the legislative goal of protecting the public health and welfare, even though the law may have the effect of preventing moderate users from consuming alcoholic beverages.

[7, 8] Harrison's local option law is not unconstitutional because it permits alcohol abusers in communities that have the consumption of alcohol. However, every citizen should not be treated exactly the same regardless of geographical location. Considerations. *McGowan v. Maryland*, 368 U.S. 420, 427, 81 S.Ct. 393, 400 (1961). The differences in treatment are not in light of the balance of the legislative hand, and the interests of the other. The law applies with equal force and effect to all communities and applies equally to all established villages and cities. In addition, the law enacted a local option law equally to all persons. For the purpose of protecting communities and boundaries, the law is not the established governments previously enacted to permit a variety of governmental structures. No basis for concluding that the treatment of communities and boundaries should be considered significant when the law is applied from the extent to which communities elect to implement the state attacks. The law does not choose between communities and boundaries of that problem. *Ravin*, 537 P.2d 1001, 1002 (Alaska 1975) local option law, are treated alike. 574 P.2d at 11. The law does not violate

7. AS 04.16.200(e)
A person who sells or distributes alcoholic beverages in an established village or city is, upon conviction, (1) guilty of a crime if the quantity is less

[7, 8] Harrison also argues that the local option law is underinclusive because it permits alcohol abuse to continue in communities that have chosen not to regulate the consumption of alcoholic beverages. However, every citizen of the state need not be treated exactly alike, regardless of geographical location and other similar considerations. *McGowan v. Maryland*, 366 U.S. 420, 427, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393, 400 (1961). The question is whether differences in treatment are reasonable in light of the balance between the importance of the legislative intent, on the one hand, and the interest of the individual, on the other. The local option law applies with equal force on two distinct levels. It applies equally throughout the state by conferring upon all municipalities and established villages the option of restricting the importation or sale of alcoholic beverages. In addition, once a community has enacted a local option law, that law applies equally to all persons in that community. For the purpose of differentiating between communities and defining community boundaries, the local option law relies on the established system of municipal governments previously created by our legislature to permit local handling of a wide variety of governmental matters. We see no basis for concluding that differences in the treatment of citizens from different communities under the local option law should be considered constitutionally significant when those differences result only from the extent to which individual communities elect to implement that law. When the state attacks a complex problem it need not choose between attacking every aspect of that problem and doing nothing at all. *Ravin*, 537 P.2d at 512 n. 71. Under the local option law, similarly situated persons are treated alike. See *State v. Erickson*, 574 P.2d at 11. We conclude that the law does not violate equal protection merely

because it gives individual communities the discretion to determine the level of alcohol availability that will be permitted within their boundaries.

Harrison next argues that the penalties for violating the St. Mary's local option law violate equal protection. The penalty provisions classify alcoholic beverages into distilled spirits, wine, and malt beverages. The importation of each type of beverage, up to a specified maximum volume, is punishable as a misdemeanor. The maximum volumes correspond to the percentage of alcohol in each type of beverage. Thus, the maximum volume of distilled spirits that is punishable as a felony is substantially less than that prescribed for malt beverages. Importation of an amount of alcohol that exceeds the maximum levels prescribed for a misdemeanor is punishable as a felony.⁷

Harrison maintains that the felony classification based upon quantity and type of alcoholic beverage violates equal protection because it does not bear a fair and substantial relation to the protection of the public health and welfare. Harrison argues that a quantity distinction should not apply to alcoholic beverages because alcohol is not contraband.

[9, 10] We disagree. Classifications need not be perfect. *Suber v. Alaska Bond Committee*, 414 P.2d 546, 554 (Alaska 1966). The classification in this case is not irrational. The potential for harm increases with the amount of alcohol consumed; therefore, the legislature could have reasonably believed that punishing the larger importer more severely bore a fair and substantial relationship to the goal of reducing alcohol-related problems. More severe sanctions based on increased quantities of drugs are common. See generally AS 11.71.040-.080 (statutes govern-

its, 24 liters of wine, or 45 liters of malt beverages; or

(2) guilty of a class C felony if the quantity imported is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

7. AS 04.16.200(e) provides:

A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.496 is, upon conviction,

(1) guilty of a class A misdemeanor if the quantity is less than 12 liters of distilled spir-

ated in con-
the individu-
ison is not a
it should be
scrutiny than
onal "rational
consumption of
rest "squarely
Erickson, 574
veve that the
n curbing the
cannot be ig-
ations of the
the supreme

g with a busi-
ommercial en-
capacity for
upon the pub-
e of this that
e prohibition,
o follow that
may be condi-
e the tenden-
egree of pro-
e state.

nc., 349 P.2d
ote omitted).
of the interest
clude that the
ption law are
elated to the
accomplished

is not require
ty in the ap-
ne. *Suber v.*
ec, 414 P.2d
s, the statute
ction simply
may not have
a communi-
ion law. As
our privacy
option law to
ears a close
o the legisla-
public health
aw may have
erate users
rages.

ing controlled substances).⁸ Moreover, the quantity distinctions between the respective beverages are reasonable. Distilled spirits have the highest percentage of alcohol, with wine and beer, respectively, having lower percentages. As the percentage of alcohol increases, the amount of beverage required to become intoxicated decreases. Thus, the significantly lower threshold volumes for felony criminal sanctions for importation of distilled spirits, as opposed to wine, and for wine, as opposed to malt beverages, are reasonable. We therefore do not find Harrison's equal protection challenge persuasive.

DUE PROCESS

Harrison argues that his constitutional right to due process was violated because, under AS 04.16.200(e), the statutory distinction between a misdemeanor and a felony is based solely on the type and quantity of alcoholic beverages imported. Harrison posits that it would be irrational to enhance the punishment for importation based on the quantities of alcoholic beverages involved if the importation were solely for the personal use of the importer. Thus, Harrison reasons that the distinction between felony and misdemeanor importation creates an irrebuttable presumption that larger quantities of alcoholic beverages are imported for sale. Harrison therefore concludes that the trial court erred in refusing to instruct the jury that if it found credible evidence that he did not intend to sell or distribute the alcoholic beverages he im-

8. Harrison submits that the criminal statutes subjecting offenders to varying degrees of punishment based on quantities, e.g., theft, forgery, and sale of drug laws, are irrelevant because the conduct of importing alcohol is *malum prohibitum* rather than *malum in se*. We do not find this distinction persuasive. We note that Harrison has not cited any cases that would require us to condemn the quantity distinctions because the regulated conduct is *malum prohibitum* rather than *malum in se*. Moreover, it is arguable that many of the offenses established by statutes dealing with controlled substances are *malum prohibitum*, rather than *malum in se*. Thus, the validity of the distinction Harrison seeks to draw between alcoholic beverages and

ported to St. Mary's, it was required to acquit him.

[11] Harrison's claim is without merit, since his initial premise is mistaken. The greater the volume of alcoholic beverages imported, the greater the potential for abuse, whether importation is for sale or personal use. A person who imports a larger quantity of alcoholic beverages for personal use will be capable of maintaining a high level of intoxication for an extended period of time and may create a continuing problem of alcohol abuse. A long-term problem of this type is potentially as costly and dangerous to a community as the shorter term problem that might result if the same quantity of alcoholic beverage was imported and sold to a number of people who consumed it immediately. As Judge Blair found, the statute is silent on the issue of intent: it sanctions importation, whether it be for personal use or for sale. The cases upon which Harrison relies, *Leary v. United States*, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969), and *Manley v. Georgia*, 279 U.S. 1, 49 S.Ct. 215, 73 L.Ed. 575 (1929), are inapposite, because each of the statutes in those cases specifically sets forth a presumption and each presumption was found to be invalid. Harrison speculates on the legislature's intent and asks us to imply a presumption on the basis of his speculation. We decline to do so.

Harrison also alleges that the local option law unfairly permits persons charged with sale of alcoholic beverages to raise a defense that is unavailable to persons charged with importation. AS 04.11.010⁹

other controlled substances is subject to serious question.

9. AS 04.11.010 provides:

(a) Except as provided in AS 04.11.020, a person may not manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage unless under license or permit issued under this title.

(b) A person may not solicit or receive orders for the delivery of an alcoholic beverage in an area where the results of a local option election have, under AS 04.11.490-04.11.500, prohibited the board from issuing, renewing, or transferring one or more types of licenses or permits under this title, unless the person

has two provis
the sale of alc
license or perm
solicitation or
livery of alcoho
areas. Imports
is separately
496(b).¹⁰ Un
son convicted
of selling, or
orders for alcoh
tion area, is gu
ty of alcohol in
fied amount.
spond to thos
penalty provis
local option at
496, under wh
However, one
with sale or so
a local option
fense. AS 04

It is an affir
tion under
profit was
receipt of a
alcoholic be
This defense
with importin
local option
Harrison argu

is licensed
actually res
chaser of
who violat
upon convi

10. AS 04.11.2

If a maj
question s
son, begin
following
election, n
or bring a
pality or c

11. AS 04.16.7

Unlicensed
lates AS 0
of a class

(b) A p
an area w
election b
prohibited
or transfe

has two provisions. Section (a) prohibits the sale of alcoholic beverages without a license or permit. Section (b) prohibits the solicitation or receipt of orders for the delivery of alcoholic beverages in local option areas. Importation into local option areas is separately prohibited by AS 04.11.496(b).¹⁰ Under AS 04.16.200(b)(3), a person convicted under AS 04.11.010(a) or (b) of selling, or of soliciting or receiving orders for alcoholic beverages in a local option area, is guilty of a felony if the quantity of alcohol involved is more than a specified amount. The specified amounts correspond to those in AS 04.16.200(e)(2), the penalty provisions for importation into a local option area in violation of AS 04.11.496, under which Harrison was convicted.¹¹ However, one charged under AS 04.11.010 with sale or soliciting or receiving orders in a local option area has an affirmative defense. AS 04.16.200(c) provides:

It is an affirmative defense to a prosecution under (a) of this section that no profit was involved in the solicitation or receipt of an order for the delivery of an alcoholic beverage.

This defense is not available to one charged with importing alcoholic beverages into a local option area under AS 04.16.200(e). Harrison argues that restriction of the stat-

utory defense of lack of profit constitutes a violation of due process.

[12, 13] We disagree. Harrison was charged with felony importation under AS 04.11.496 and 04.16.200(e) because he brought over forty-five liters of malt beverages into a local option area. The lack of profit defense in AS 04.16.200(e) applies only to misdemeanor prosecutions under AS 04.16.200(a). Thus, the defense is unavailable in a felony prosecution under either AS 04.16.200(b)(3) (sale, or solicitation or receipt of orders in a local option area for large quantities), or AS 04.16.200(e)(2) (importation into a local option area of large quantities). No person charged with a felony under any section of AS 04.16.200 can properly assert the defense of lack of profit. The statute treats all persons charged with felonies alike and, therefore, fairly.

[14, 15] The affirmative defense of lack of profit might be construed to apply to one charged with the misdemeanor sale of a small quantity of alcoholic beverages in a local option area and not to apply to the misdemeanor importation of the same quantity in a local option area. See AS 04.16.200(c) and (e)(1). However, Harrison, as a felon, has no standing to challenge the misdemeanor provisions. In any event, the legislature enacted the local option law to

or permits under this title in the area is, upon conviction, guilty of a class C felony, if

(1) he has previously been convicted of a violation of AS 04.11.010;

(2) the sale or offer for sale was made to a person under 19 years of age; or

(3) the quantity of alcoholic beverages sold or offered for sale is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

(c) A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.496 is, upon conviction,

(1) guilty of a class A misdemeanor if the quantity imported is less than 12 liters of distilled spirits, 24 liters of wine, or 45 liters or more of malt beverages; or

(2) guilty of a class C felony if the quantity imported is 12 liters or more of distilled spirits, 24 liters or more of wine, or 45 liters or more of malt beverages.

is licensed under this title and the order is actually received by that person from the purchaser of the alcoholic beverage. A person who violates this subsection is punishable upon conviction under AS 04.16.200(a) or (b).

10. AS 04.11.496(b) provides, in pertinent part:

If a majority of the voters vote "yes" on the question set out in (a) of this section, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring alcoholic beverages into the municipality or established village . . .

11. AS 04.16.200 states, in pertinent part:

Unlicensed persons. (a) A person who violates AS 04.11.010 is, upon conviction, guilty of a class A misdemeanor.

(b) A person who violates AS 04.11.010 in an area where the results of a local option election have, under AS 04.11.490-04.11.500, prohibited the board from issuing, renewing, or transferring one or more types of licenses

required to
hout merit,
aken. The
beverages
ential for
for sale or
imports a
verages for
maintaining
n extended
continuing
long-term
ly as costly
ty as the
t result if
verage
number of
ately. As
s silent on
s importa-
use or for
arrison re-
U.S. 6, 89
and Man-
Ct. 215, 73
a, because
ses specifi-
and each
alid. Har-
re's intent
tion on the
cline to do

e local op-
is charged
to raise a
o persons
04.11.010?

t to serious

04.11.020, a
ll offer for
raffic in, or
ss under li-
title.
receive or-
beverage
local option
-04.11.500,
g renewing
of licenses
the person

regulate the importation of alcoholic beverages, not to regulate simple possession. The affirmative defense of lack of profit was meant to be available in cases of casual distribution that occurred as an incident of lawful possession, where the distributor did not unlawfully import the alcoholic beverages in his or her possession. It would not necessarily be irrational for the legislature to refuse to extend the defense to a person who unlawfully imports alcohol into a community that has voted to prohibit both the sale and importation of alcoholic beverages.

EX POST FACTO LAW

Alaska's local option statute was enacted in 1980. A local option election was held in St. Mary's on September 22, 1981. The community voted to ban importation; the prohibition became effective October 1, 1981. According to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, Alaska must preclear all changes relating to "voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting." Alaska submitted the local option legislation on April 1, 1982, and obtained conditional clearance on May 17, 1982. Final approval was obtained soon after. When Harrison imported alcohol into St. Mary's on April 16, 1982, the local statute had been submitted but approval had not yet been obtained.

Article I, § 15 of the Alaska Constitution provides, "No bill of attainder or ex post facto law shall be passed." Judge Blair denied Harrison's motion to dismiss the indictment on *ex post facto* grounds, ruling:

There's no argument or finding of any deliberate defiance of the Voting Rights Act; there does not appear to be any discriminatory purpose or effect. The Supreme Court does have three cases that are on point: *Allen v. State Board of Elections*, 393 U.S. 544 [89 S.Ct. 817, 22 L.Ed.2d 1]; *Perkins v. Matthews*, 400 U.S. [379] at 379 [91 S.Ct. 431 at 431, 27 L.Ed.2d 476] and *Berry v. Doles*, 438 U.S. 190 [98 S.Ct. 2692, 57 L.Ed.2d 693].

The Supreme Court has adopted the rule that if the election is precleared by the Justice Department within 30 days of the Court's decision, then the election will not be invalidated. This case didn't have any approval prior to the criminal conduct but we have now had that clearance by the Justice Department. It would appear that the U.S. Supreme Court decisions would indicate that the appropriate—or that it would be inappropriate to declare that the ordinance is not effective and that the election should be invalidated. Accordingly, that motion is denied.

Harrison contends that since the local option statute had not been approved by the federal government when he brought alcoholic beverages into St. Mary's, his conduct was not criminal. In support of his argument, Harrison quotes *Hotch v. United States*, 212 F.2d 280, 284 (9th Cir.1954) (emphasis in original): "a law which has not been duly enacted is not a law, and therefore a person who does not comply with its provisions cannot be guilty of any crime." Relying on *Berry v. Doles*, 438 U.S. 190, 98 S.Ct. 2692, 57 L.Ed.2d 693 (1978), Harrison also contends that election results are invalid and unenforceable until approval is obtained.

[16] Harrison's analysis is not persuasive. In *Hotch*, the conviction was overturned because the regulation had not been published, as required by the Federal Register Act and the Administrative Procedure Act. The Federal Register Act expressly provided that a document was not valid until published. The Voting Rights Act, which Harrison claims was violated in this case, does not contain an analogous provision. Thus, the statutory interpretation in *Hotch* is not controlling.

[17] In addition, *Berry* does not support Harrison's position. At issue in that case was a 1968 statute that provided for a partial staggering of the terms of three posts of the Peach County Board of Commissioners of Roads and Revenues. *Berry* unsuccessfully tried to enjoin the 1976 primary election on the ground that § 5 preclearance for the 1968 law had not been

obtained. A court enjoining the 1968 statute but retaining but re because the "cal" and the pose or effect ed States S case, holding issue an ord to obtain S obtained, the approval is renew to th for simultan the Board : *Berry*, 438 U L.Ed.2d at failure to ot tomatically least where *Sec also P*, 379, 396-97, L.Ed.2d 470 violation an determine a *Lucas*, 472 1979) (regi implementa fied preclea

[18] The Act and the us that Ju Congress e: 1965 to pu that exclud process. S 383 U.S. 30 (1966). As allegation effect or a ing Rights tion, *Allen* 393 U.S. 5 22 L.Ed.2d raises not no indicat

12. We not of crimine from thome merely of cess. Ho

Cite as 687 P.2d 332 (Alaska App. 1984)

obtained. After the election, a district court enjoined the future enforcement of the 1968 statute until approval was obtained but refused to set aside the election, because the electoral changes were "technical" and there was no discriminatory purpose or effect. Berry appealed. The United States Supreme Court remanded the case, holding that the district court should issue an order giving the state thirty days to obtain § 5 approval: "[I]f approval is obtained, the matter will be at an end. If approval is denied, appellants are free to renew to the District Court their request for simultaneous election of all members of the Board at the 1978 general election." *Berry*, 438 U.S. at 193, 98 S.Ct. at 2694, 57 L.Ed.2d at 696. Thus, under *Berry*, the failure to obtain preclearance does not automatically invalidate election results, at least where clearance is ultimately granted. See also *Perkins v. Matthews*, 400 U.S. 379, 396-97, 91 S.Ct. 431, 440-41, 27 L.Ed.2d 476, 489 (1971) (court finds § 5 violation and remands to district court to determine appropriate remedy); *Crowe v. Lucas*, 472 F.Supp. 937, 945 (N.D.Miss. 1979) (registration changes cleared after implementation but prior to election satisfied preclearance requirement of § 5).

[18] The purpose of the Voting Rights Act and the facts of this case also convince us that Judge Blair's ruling was proper. Congress enacted the Voting Rights Act of 1965 to prevent discriminatory practices that exclude minorities from the electoral process. *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). As Judge Blair found, there was no allegation of any discriminatory purpose or effect or a deliberate defiance of the Voting Rights Act that may invalidate the election, *Allen v. State Board of Elections*, 393 U.S. 544, 571-72, 89 S.Ct. 817, 834-35, 22 L.Ed.2d 1, 20-21 (1969), and Harrison raises none on appeal. The record contains no indication that Alaska's local option law

12. We note Harrison's claim that the enactment of criminal sanctions makes this case different from those cases where the challenged statute merely changed an aspect of the electoral process. However, Harrison has not cited us to

or the St. Mary's election were in any way improper under the Voting Rights Act except for the formality of not obtaining preclearance. Nor did Harrison allege any irregularities. In these circumstances, we think Justice Powell's concurrence in *Berry* is particularly apt:

[W]hen courts are called upon to decide whether to grant retroactive relief, they should distinguish the minor or technical change from the substantive change that is likely to result in discrimination....

It must be remembered that the Voting Rights Act imposes restrictions unique in the history of our country on a limited number of selected States. [Courts] need to bring a measure of common sense to its application....

Berry, 438 U.S. at 200-01, 98 S.Ct. at 2697-98, 57 L.Ed.2d at 701 (footnotes omitted).

We do not read the federal cases to hold that the results of an election are invalid or unenforceable until preclearance is obtained. Rather, these cases indicate that where a state has failed to obtain the required preclearance, the election results are subject to invalidation. Mere technical violations of the procedural requirements for preclearance, however, are an insufficient basis for invalidation: a substantive violation, one that could result in denial of preclearance under the act, must be shown. However, "[i]f approval is obtained, the matter will be at an end." *Berry*, 438 U.S. at 193, 98 S.Ct. at 2694, 57 L.Ed.2d at 696.

In the present case, the federal government ultimately approved Alaska's local option law. We hold that the prohibition against the sale and importation of alcoholic beverages into St. Mary's was in effect at the time Harrison brought alcoholic beverages into St. Mary's. Therefore we reject Harrison's claim that his conviction constitutes a violation of the constitutional prohibition against *ex post facto* laws.¹²

any case that makes this distinction or would require us to suspend the enforcement of the St. Mary's local option law while preclearance was pending.

[19] Harrison argues in the alternative that even if the prohibition was in effect when he brought alcohol into St. Mary's, he was deprived of adequate notice that his conduct was criminal because preclearance for the election had not been obtained. This argument is without merit. Harrison does not allege that he detrimentally relied on a good faith belief that the St. Mary's election had not been precleared and was potentially invalid. In fact, Harrison admitted that he was fully aware of the illegality of his actions. He cannot now claim he lacked notice.

The conviction is AFFIRMED.



Jeffery WELLS, Appellant,
v.
STATE of Alaska, Appellee.
Nos. 7479, 7663.
Court of Appeals of Alaska.
Sept. 7, 1984.

Defendant was convicted in Superior Court, First Judicial District, Juneau, Rodger W. Pegues, J., of fraudulent use of a credit card, and sentenced as a second felony offender based on prior Oregon conviction. Following his escape from prison, defendant was convicted in the Superior Court, Third Judicial District, Anchorage, Daniel A. Moore, Jr., J., of escape, sentenced as a third felony offender, and he appealed. The Court of Appeals, Singleton, J., held that: (1) escape under Alaska law is a continuing offense; defendant relying on necessity to justify escape must present some evidence justifying his continued absence from custody as well as his initial departure; (2) evidence was insufficient to establish necessity defense to justify defendant's escape; (3) decisions to treat

defendant as a second and third felony offender were proper; and (4) defendant's escape sentence was not clearly mistaken.

Affirmed.

1. Escape ⇨1, 6

Escape under Alaska law is a continuing offense; defendant relying on necessity to justify escape must present some evidence justifying his continued absence from custody as well as his initial departure. AS 01.10.010, 11.81.320.

2. Escape ⇨6

Evidence that State had failed to provide defendant with adequate medical attention while he was present and to meet his needs for psychological counseling was insufficient to raise necessity defense to justify defendant's escape. AS 01.10.010, 11.81.320.

3. Escape ⇨11

Evidence that defendant, while in prison, faced immediate threat of physical injury by gang of fellow prisoners outraged that he had warned another inmate of gang's intent to hijack some marijuana, without evidence indicating that defendant's continued absence from prison following escape resulted from duress, or otherwise justifying defendant's continued absence, did not warrant jury instruction on defense of necessity to justify escape. AS 01.10.010, 11.81.320.

4. Criminal Law ⇨1202.7

Defendant who was convicted of escape while serving two-year presumptive sentence for fraudulent use of a credit card was properly treated as a second felony offender following fraudulent use of credit card conviction and third felony offender following escape conviction where he had been previously convicted of burglary in the second degree in Oregon under statute substantially identical to Alaska second-degree burglary statute, although Oregon court had reduced felony conviction to misdemeanor at sentencing. AS 11.46.285, 11.46.310, 11.56.310(a)(1)(A), 12.55.145(a)(2); ORS 161.705, 164.215.

5. P...
De...
was no...
was thi...
that he...
conclud...
extreme...
310(a)(1...
55.155(c...

Susan...
and Da...
age, fo...
John...
chorage...
Gen., J...

Before...
SINGL...

SING

After...
was co...
gree. ...
serving...
the Pal...
Juneau...
credit c...
had bee...
Judge...
prior fe...
sumptiv...
of a cr...
agreed

1. Well...
for hi...
threat...
Dear...
I...
deal...
have...
I do...
I ca...
I'm...
to d...

At the...
repor...
appoi...
having...
doctor...

SCR

37

Senator Rick Uehling

Senate District H
Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee
Chair, International Trade Committee
Vice-Chair, State Affairs Committee
Labor & Commerce Committee

MEMORANDUM

TO: Senator Paul Fischer
Chair, Senate HESS Committee

FROM: Senator Rick Uehling

DATE: January 21, 1988

SUBJECT: SCR 37, "Relating to the Young Astronaut Program."

I have asked staff to provide the following background to SCR 37, "A Resolution relating to the Young Astronaut Program."

SCR 37 encourages school districts in Alaska to adopt the Young Astronaut Program by starting Young Astronaut Chapters in their schools.

The Young Astronaut Program is a national educational program for elementary and junior high students designed to promote the study of science, mathematics and technological subjects. It was designed to equip students at an early age with the interest and educational skills to live in the technological world of tomorrow.

Solely financed through private sector support, the program costs are minimal: only \$20.00 per Chapter per year for up to 30 students per Chapter. For that \$20.00, teachers receive high-quality, technically up-to-date teaching materials each month. In contrast, a science textbook costs approximately \$17.00 per student, thus necessitating an expenditure of approximately \$510 for a classroom of 30 students and which would become out-of-date much more quickly.

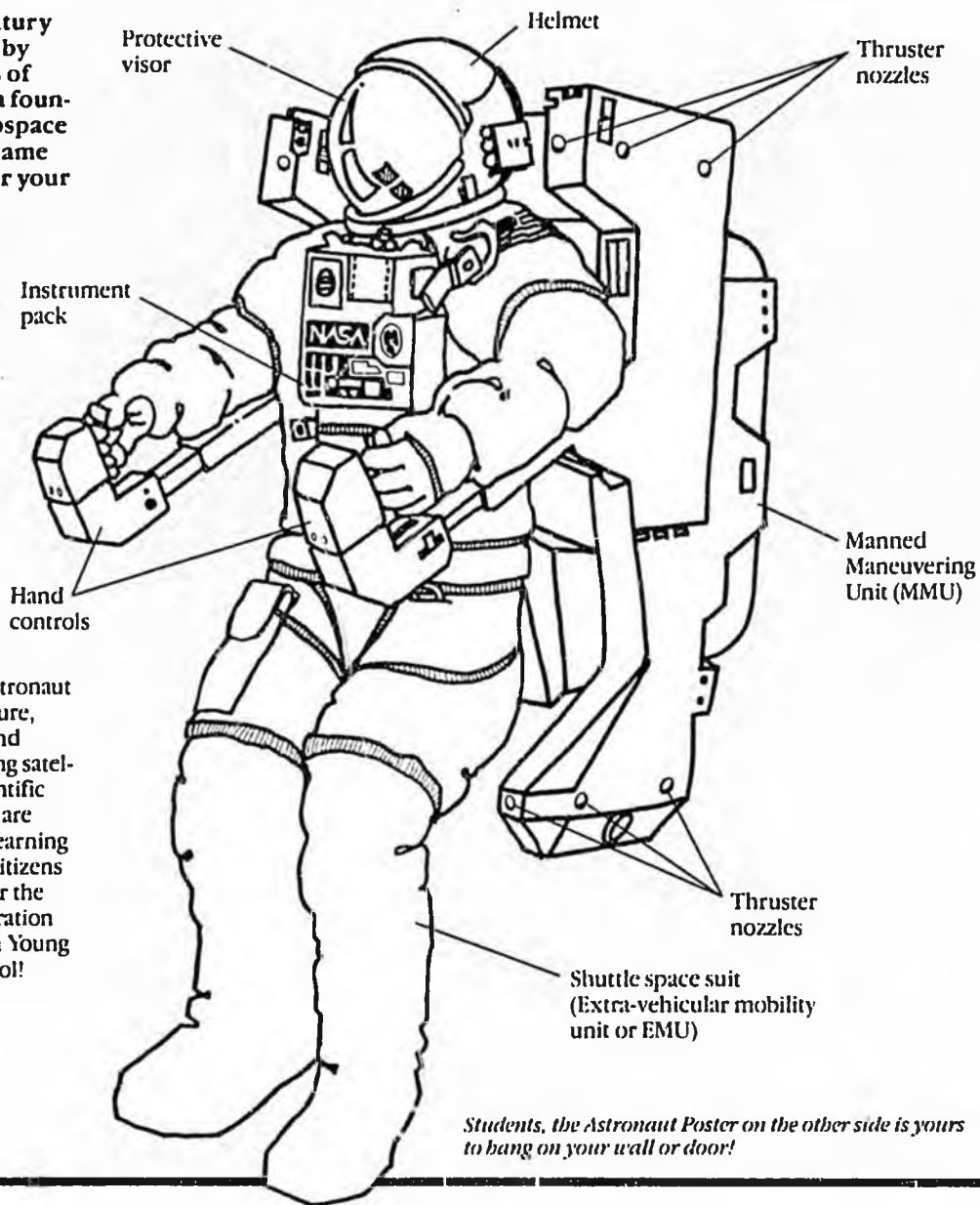
The materials that are distributed by the Young Astronaut Council are high quality as they are reviewed by the Education and Technology Advisory Board composed of representatives from leading U.S. education and space organizations. Additionally, the materials receive preview from fifty Pilot Schools before finally being nationally distributed to Chapters.

Young Astronaut Program



Information Young Astronauts receive about life in space.

Astronauts of the 20th Century prepared for their careers by learning the fundamentals of Math and Science *early* as a foundation to the rigorous aerospace training. You must do the same or better to be prepared for your life in the 21st Century.



The EMU and MMU make an astronaut into a tiny spaceship. In the future, astronauts will be darting around building space stations, repairing satellites and servicing orbiting scientific instruments. Young Astronauts are finding out about all this, and learning about things they will need as citizens of the 21st Century. Be ready for the future. Take the attached registration form to your teacher and start a Young Astronaut Chapter in your school!

Students, the Astronaut Poster on the other side is yours to hang on your wall or door!



Young Astronaut Pledge

"I pledge my best efforts to improve my grades in science, mathematics and related subjects, to learn about space and to help others towards these goals."

GET READY FOR THE 21st CENTURY!



Get involved...

KEEP AMERICA #1

Young Astronauts and their teachers participate in many exciting activities which include:

- Receiving NEWSLETTERS, POSTERS and other educational-enriching materials
- Receiving accurate computer UPDATES on space exploration through ASTRONET™
- Taking FIELD TRIPS to space installations and other educational facilities
- Joining in national CONTESTS with exciting prizes
- Working on Young Astronaut CHAPTER activities
- Teaching each other for better grades in MATHEMATICS, SCIENCE and related subjects
- Keeping up with SPACE missions and astronomical events
- Participation in international youth exchanges

Start a Chapter!

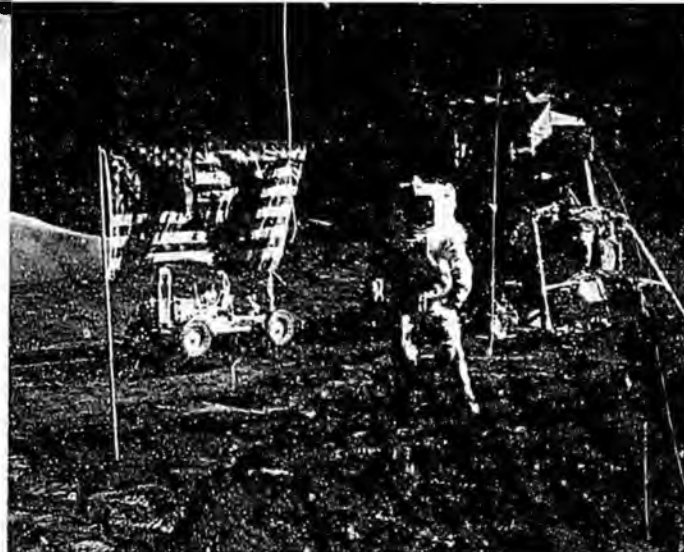
To participate in the Program fully, students should belong to a Young Astronaut Chapter. Thousands of Chapters of Young Astronauts have been set up across the country as either a co-curricular or extracurricular activity, or outside of schools by community organizations and interested adults.

It costs \$20.00 to start a Chapter which can have from 5 to 30 student members. This annual registration fee for each Chapter partially covers the production and mailing costs of the Young Astronaut materials and Program administration. Corporate funding covers the additional costs. Chapter leaders are also encouraged to seek local support for field trips and other supplemental activities.

Your enrollment fee covers a year of activities for your Chapter of 5 to 30 students. Chapter Leaders receive the **Handbook**, the **Adventure Series**, four color **Curriculum Posters**, **Curriculum Activity Packages**, **Contest and Competition** entrance information, **Newsletters** and access to **ASTRONET™**, the Young Astronaut computer data network with its several monthly features.

Students receive **Membership Cards**, **Certificates** and other items. Information on contests with prizes such as trips to launches, computers, etc. are provided.

1. Regular Competitions are held for Young Astronaut members. Details of these Contests are communicated to Chapters.
2. Another in-Chapter feature of the curriculum is a mentoring program, where students who are qualified assist their peers in Chapter activities. Incentives to encourage student mentoring are provided.
3. A teacher training program is currently being developed for Chapter leaders. This will consist of seminars to be held at locations all around the country.
4. A Supply Depot for Young Astronaut items is being established.



Exciting information on all space missions and aerospace developments will be sent to Young Astronauts. Above is Scientist-Astronaut Harrison M. "Jack" Schmitt, lunar module pilot of the Apollo 17 lunar landing mission, standing beside the deployed U.S. flag at the Taurus-Littrow landing site.



Two Young Astronauts learn about space exploration on a chapter field trip.

As a Teacher: Use the attached registration form to start a Chapter today for up to 30 students.

As a Parent: Give the attached registration form to an interested teacher and ask them to start a Young Astronaut Chapter in their school. This is a very tangible way to make a difference in your children's education.

As a Student: Rush the attached registration to a teacher in your school to start a Chapter today. If you move fast, your teacher will get the activities fast for you.

If you need more registration forms or information:
Write to Young Astronaut Council, P.O. Box 65432,
Washington, D.C. 20036.

Join the Space Team™ and KEEP AMERICA #1



The Young Astronaut Program is a privately sponsored, non-profit, educational organization established by the White House to develop and deliver high-quality curricular material to Chapters formed by schools and community groups. The purpose is to encourage students in elementary and junior high schools to study science, mathematics, technology and related subjects. By receiving information and activities related to the Space Program, Young Astronauts will gain the knowledge and skills they need for the coming decades.

All materials are reviewed by our Education and Technology Advisory Board, composed of representatives of all the major professional education associations as well as aerospace experts. These materials are then sent to classrooms across the country for additional review. In this way we ensure that learning and fun are effectively blended.

"YOUNG ASTRONAUT(S)" AND ALL LOGO AND EMBLEM DESIGNS ARE TRADEMARKS OF THE YOUNG ASTRONAUT COUNCIL.
COPYRIGHT © 1986 THE YOUNG ASTRONAUT COUNCIL. ALL RIGHTS RESERVED.

"YOUNG ASTRONAUT(S)" AND ALL LOGO AND EMBLEM DESIGNS ARE TRADEMARKS OF THE YOUNG ASTRONAUT COUNCIL.
COPYRIGHT © 1986 THE YOUNG ASTRONAUT COUNCIL. ALL RIGHTS RESERVED.

Why is this so critical?

As technological challenges have increased, the educational standing of young Americans has fallen. We put up the buildings, and we hand out diplomas by the millions. But the quality of education has declined.

Warns the National Space Commission: "An estimated 90 percent of America's high school graduates may not be capable of accomplishing even the most routine high-technology tasks. While up to 90 percent of high school graduates in other countries are proficient in math and science, a mere six percent of U.S. graduates attain the same proficiency."

If this trend isn't dramatically reversed, the United States could forfeit its technological leadership and lose its superiority in the factory and the field.

President Reagan established the Young Astronaut Program as a catalyst to prepare our children for the future. In the words of the National Space Commission, "The privately sponsored Young Astronaut Program is effectively reaching out to elementary and junior high school students to ignite their enthusiasm for studying science, mathematics and high technology."

Young people are fascinated by space. To channel that fascination into the hot pursuit of the studies required for the exploration and settlement of other worlds, to make school work less forbidding by dramatizing that it is the key to the universe beyond, to attract students to the disciplines that are prerequisite to tackling the challenge of the stars—these are the objectives of the Young Astronaut Program.

And...

- The Young Astronaut Program is designed for in-school activities to encourage further study in math and science.
- The curriculum is timely (within months of new breakthroughs), prepared by the finest educators from multiple disciplines, and piloted in school systems nationwide.
- The curriculum focus is *activity based...doing is learning*, and designed to involve the students.
- The curriculum is interdisciplinary; students use all learning skills.
- The Program is cost efficient! The average science textbook today is \$17, yet \$20 provides annual materials for up to 30 students in the Young Astronaut Program.
- The Program includes specialized materials for the following grades:
 - Grades 1-3 (Trainee)
 - Grades 4-6 (Pilot)
 - Grades 7-9 (Commander)

President Reagan congratulates Executive Director Wendell Butler on YAC first-year accomplishments.



TEACHERS...

START A YOUNG ASTRONAUT CHAPTER AND KEEP AMERICA #1



Over 80% of Young Astronaut Chapters are led by teachers in schools around the country, directly committed to improving the science and mathematics ability of the youth of America. Get involved by starting a Chapter yourself or handing this registration form to an interested teacher or educator.

DO NOT WRITE IN THIS SPACE

CHAPTER REGISTRATION FORM

PRINT ANSWERS TO RIGHT ▾

DETACH HERE AND GIVE TO AN INTERESTED TEACHER IN YOUR SCHOOL

1. Chapter Leader's Name ▾ 1.

2. School Name ▾ 2.

3. Chapter Name ▾ 3.

4. Mailing Address ▾ 4.

CITY STATE

COUNTRY ZIP

5. Chapter Telephone Number ▾ 5. () -

6. Telephone Number of Chapter Leader ▾ 6. () - (Optional)

7. Grade Level (Check One) ▾ 7. 1-3 (Trainee) 4-6 (Pilot) 7-9 (Commander)

8. Number of Members in Your Chapter ▾ 8. (Chapters consist of 5 to 30 Members)

9. Sponsor's Name (if any) ▾ 9.

10. Sponsor's Address ▾ 10.

CITY STATE

COUNTRY ZIP

11. Where did you first hear of the Young Astronaut Program? 11. _____

As Leaders of this Chapter, we will maintain a spirit of cooperation, encourage the joy of learning and endorse the goals of the Young Astronaut Program.

Chapter Leader(s) _____ Date _____ [At least one signature required]
 _____ Date _____
 (Must be at least 21 years of age)

Chapter Advisors _____ Date _____
 (Optional) _____ Date _____
 (Must be at least 21 years of age)

The users of/or subscribers to educational programs and materials sponsored or supported by the Young Astronaut Council agree not to hold the Council responsible for any injury resulting from or proximately caused by the person's participation in any activity.
 To form a Chapter, please submit this registration form and the \$20.00 registration fee (check, money order or purchase order) payable to the Young Astronaut Council. (Please allow 4-6 weeks for initial delivery.)
 Note: All Chapter Memberships begin on September 1 and expire on August 31 of the following year. If you form your Chapter any time after September 1, you will still receive the entire school year's curriculum material, but you should expect to be billed for the next school year by September 1.

Send to: Young Astronaut Council, P.O. Box 65432, Washington, D.C. 20036



**WHAT YOU
REQUESTED
FROM THE
YOUNG
ASTRONAUTS!**



Young Astronaut Council
P.O. Box 65432
Washington, D.C. 20036

A M E N D M E N T

Offered in the SENATE

By Uehling

TO: SCR 37

Page 2, line 2, after "state;":

Insert "to the president of each local teachers association;"

SCR

39

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Alaska history and government. Agency Affected: Education
 BRU: _____
 Sponsor: Henslev
 Requestor: Senate HESS Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Steve Hole Phone: 465-2800
 Division: Commissioner's Office Date: 2-19-88
 Approved by Commissioner: William G. Demmert Date: 2-19-88
 Agency: Department of Education

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

SCR

46

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to "better safe than
Sorry" programs
Sponsor: Fisher
Requestor: Senate HESS

Agency Affected: Education
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Steve Hole 
Division: Commissioner's Office

Phone: 465-2800
Date: 2-12-88

Approved by Commissioner: William G. Demmert
Agency: Education

Date: 2-12-88

Distribution (by preparer):

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

SCR

449

FISCAL NOTE

REQUEST:

Revision Date: _____
Title : Encouraging mining education
Sponsor : Coghill
Requestor : Sponser

Agency Affected : Education
BRU : _____
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Steve Hole Phone : 465-2800
Division : Commissioner's Office Date : 3-10-88

Approved by Commissioner : William G. Demmert Date : 3-10-88
Agency : Department of Education

Distribution (by preparer) :

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

SCR

53

POSITION PAPER
SENATE CONCURRENT RESOLUTION NO. 53

"Relating to the Funding of Community Mental Health Services."

This resolution requests the governor to direct the Alaska Mental Health Board to propose legislation or recommend other action to the legislature regarding a funding allocation formula for mental health services. The report would be due to the legislature on January 9, 1989.

BACKGROUND

The Community Mental Health Services Act, passed in 1975, mandated the State of Alaska, through the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities to finance community mental health centers. Initially, funds were appropriated based on identified community needs in a written proposal. As more funds became available, programs received incremental funding based on variables, such as: 1) the mental health needs of the area; 2) Division of Mental Health and Developmental Disabilities data such as site review reports, fiscal reports, management information system reports; 3) populations of service area; 4) cost of living in the service area; 5) state of development of the community mental health center; 6) support from the community; and 7) the presence of other providers in a region.

In 1985, a formal task force was formed to develop an allocation formula. After considering a wide range of variables upon which to base the allocation of funds, the task force selected the following variables:

- 1) the population of the mental health district;
- 2) the cost of hiring and the cost of living in the mental health district;
- 3) a base level of funding which ensures that all centers receive enough funding for a mental health clinician and base support costs. In order to reduce the impact of a sudden decrease in funding, the task force proposed that each community mental health center receive at least 90% of its previous year's allocation.

The proposed funding formula was accepted by the governor's Mental Health Advisory Council in September 1986. In 1988, new funds were available to the mental health system. At that time, small centers were brought up to a base level of funding (in accordance with the funding formula) and services to special populations in need (for example, the severely mentally ill) were funded.

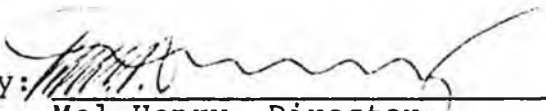
SCR 53 continued

Although these previous efforts to develop an equitable allocation formula produced mixed results, an equitable funding mechanism could benefit a growing mental health system. It is an administrative tool which assures consistency and continuity as well as equity in distribution of funds. Additionally, it serves as an administrative planning and implementation tool. However, to be effective, the funding mechanism must be flexible, with the ability of revision to reflect changing needs. The creation and ongoing evaluation of such a formula is an appropriate activity of the Mental Health Board.

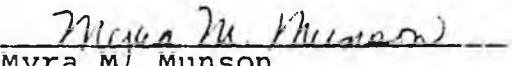
The Mental Health Board has, as part of its mandate under Chapter 48, SLA 1987, the responsibility to work with the Department of Health and Social Services to "establish criteria to utilize in funding allocation . . ." The Board already is aware of the issue and intends to study it.

POSITION

The Department of Health and Social Services endorses the Mental Health Board's efforts to study the creation of a funding formula for mental health services.

Recommended by: 
Mel Henry, Director
Division of Mental Health
and Developmental
Disabilities

Date: 19th April, 1988

Approved by: 
Myra M. Munson
Commissioner
Department of Health
and Social Services

Date: 4-22-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to the funding of
Community Mental Health services
Sponsor: Josephson and Kelly
Requestor: _____

Agency Affected: Health & Social Services
BRU: Community Mental Health
Grants
Components: Community Mental Health
Grants

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of SCR53 would have no direct fiscal impact on the Department of Health and Social Services

Prepared by: Mel Henry, Director
Division: Mental Health and Developmental Disabilities

Phone: 465-3370

Date: _____

Approved by Commissioner: Myra M. Munson
Agency: Health and Social Services

Date: 4-22-88

Distribution (by preparer):

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

SCR

57

Governor's Council on Vocational Education

Von Harris
Chair

Linda Hulbert
Vice Chair



Rosie Peterson
Executive Director

Mary Stone
Administrative Assistant

211 Fourth Street, Suite 101 • Juneau, Alaska 99801
(907) 586-1736

TO: Senator Paul Fischer, Chair
Senator Ken Fanning
Senator Joe Josephson
Senator Jay Kerttula

FROM: Rosie Peterson
Executive Director

SUBJECT: Senate Concurrent Resolution No. 57

DATE: April 11, 1988

In my testimony supporting Senate Concurrent Resolution No. 57, I reported results of a survey conducted in 1983 where employers and personnel officers were asked: "What are the three competencies or job preparation skills whose lack causes recent high school graduates or dropouts to lose their jobs or to be unsuccessful in their employment after they are hired?" I have attached a synopsis of that survey as requested by Senator Fanning.

I have also enclosed the Executive Summary of a National Alliance of Business Report entitled: "The Fourth R: Workforce Readiness," which I also referred to in my testimony.

If I can be of further assistance please do not hesitate to call upon me.

Employer Nominations of Skills Lacked by Recent High School Graduates or Dropouts Which Cause Them to Lose Their Jobs or To Be Unsuccessful After They Are Hired

(Employers: Personnel Officers)^a

Question: What are the three competencies or job preparation skills whose lack causes recent high school graduates or dropouts to lose their jobs or to be unsuccessful in their employment after they are hired?

Competencies/Skills	First		Second		Third		Total N
	N	(%)	N	(%)	N	(%)	
Work with others, settle differences	21	(5%)	12	(3%)	24	(5%)	57
Willing to improve job skills, advance	6	(1)	5	(1)	7	(2)	18
General attitudes toward work	69	(15)	61	(13)	44	(9)	174
Understands value/importance of work	12	(3)	18	(4)	23	(5)	53
Mathematics	4	(1)	1 (**)#		1 (**)#		6
Reading	0	(0)	2	(.5)	0	(0)	2
Writing	0	(0)	1 (**)#		1 (**)#		2
Speaking well enough to be understood	0	(0)	1 (.5)		1 (**)#		2
Listening well enough to understand	3	(.5)	5	(1)	6	(1)	14
Spelling, grammar	2	(.5)	0	(0)	1 (**)#		3
Use of tools & equipment	2	(.5)	3	(.5)	5	(1)	10
Quantity of work, amount of output	16	(3)	56	(12)	41	(9)	113
Quality of work, accuracy, no waste	24	(5)	55	(11)	52	(11)	131
Accepting advice and supervision	13	(3)	32	(7)	50	(11)	95
Following through on assignments	7	(2)	26	(6)	20	(4)	53
Initiative, plans, directs own work	12	(3)	18	(4)	15	(3)	45
Work habits, on time, dependable	192	(41)	58	(12)	41	(9)	291
General knowledge of business operations	1 (**)#		3	(.5)	4	(1)	8
Recognizing, solving problems by self	6	(1)	7	(2)	11	(2)	24
Making decisions in own area of work	0	(0)	5	(1)	7	(2)	12
Understands U.S. economic system	0	(0)	1 (**)#		1 (**)#		2
Applying & interviewing for a job	0	(0)	0	(0)	0	(0)	0
Personal health (avoiding illness, etc.)	2	(.5)	4	(1)	2	(.5)	8
Good appearance (grooming, dress)	1 (**)#		1 (**)#		1 (**)#		3
Safety conscious	0	(0)	3	(.5)	6	(1)	9
Flexible	1 (**)#		3	(.5)	2	(.5)	6
Specific skills required to perform job	6	(1)	4	(1)	9	(2)	19
Applying job skills to new situations	2	(.5)	5	(1)	3	(.5)	10
Understands career ladders, advancement	1 (**)#		0	(0)	0	(0)	1
Other (Specify)	3	(.5)	1 (**)#		0	(0)	4
No Response	64	(14)	77	(16)	92	(20)	659
TOTAL	470	(101)	470	(100)	470(99.5)***		1836

^aEmployer Form A-2 respondents: 54% were personnel officers or personnel managers

N = number of responses

(**)# = less than 1/2%

*** Total does not equal 100% due to rounding

SOURCE: Business and Education Survey. Parker Project - Wisconsin 1983.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 53 (HESS)

Publish Date: HOUSE 1/30/87

Revision Date: _____

Agency Affected: Labor

Title: "An Act relating to penalties for violation of workplace safety laws"

BRU: Occupational Safety and Health

Sponsor: Koponen and Goll

Components: Occupational Safety and Health

Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL		3.2	1.7			
CONTRACTUAL		60.0	27.5			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	63.2	29.2	0	0	0

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

REVENUE	0	242.9	132.0	91.1	91.1	91.1
---------	---	-------	-------	------	------	------

FUNDING: (Thousands of Dollars)

GENERAL FUND		31.6	14.6			
FEDERAL FUNDS		31.6	14.6			
OTHER						
TOTAL	0	63.2	29.2	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Prepared by: Tom Stuart, Director *TSA*
Division: Labor Standards and Safety

Phone: 465-4870
Date: 1/30/87

Approved by Commissioner: Jim Samoson *JMS*
Agency: Labor

Date: 1/30/87

Distribution (by preparer):

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

CSHB 53(HESS) Page 2 of 4 1/30/87
Fiscal Note Analysis
For Committee Substitute for House Bill 53 (HESS)

Committee Substitute for House Bill 53 increases penalties for violations of workplace safety and health laws and is viewed as an effective deterrent to such violations. However, it is anticipated that a two-year period will be required for the deterrent effects of the increased penalties to be fully realized. Until the deterrent effect is fully realized, it is projected that the increased penalties will result in increased contests which will temporarily result in increased expenditures. Likewise, it is expected that revenues from penalties will initially increase and then decline as the deterrent effect materializes.

The increased costs are:

Contractual:

In FY 88 an additional \$45,000 will be required for legal costs for services provided by the Department of Law in connection with contested citations, and collection of penalties. This amount will decrease in FY 89 as the increased deterrent effect of the increased penalties is realized, and by FY 90, contests will have returned to present levels.

In FY 88, an additional \$10,000 in hearing officer costs will also be incurred for the OSHA Review Board which decides contested cases. As with the Department of Law costs, this fiscal note anticipates a decline in the caseload in FY 89, and a return to present levels in FY 90.

A one-time cost of \$5,000 is also included for mailing a notice to all employers in the state to inform them of the increased penalties.

Travel:

In FY 88, an additional \$3,200 in per diem costs will be incurred for the three-member OSHA Review Board which decides contested cases. The Board will meet an additional 8 days to hear the additional cases. These costs would likewise decrease in FY 89 and dissipate in FY 90.

Following are the specific workload assumptions used in projecting costs and revenues:

1. Increased penalties will take effect July 1, 1987;
2. In FY 88, there will be a 25% reduction in the number of serious violations and the number of serious citations. In FY 89 and FY 90, there will be further reductions of 35% and 20%, respectively. After FY 90, further reductions are not anticipated.

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Serious violations	250	190	125	100
Number of Serious citations	165	125	80	65

(Serious citations average 1½ serious violations each. Therefore, the number of citations issued is less than the number of serious violations.)

3. 40% of the Serious citations issued by the Department will be contested. (This is the present contest rate for citations with penalties of \$500 or more.)

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>
Number of Contested citations	25	50	32	25

The increased revenues are projected upon increases in penalties as follows:

Type of of Violation	FY 87		FY 88		FY 89		FY 90	
	Violations	Penalties	Violations	Penalties	Violations	Penalties	Violations	Penalties
Repeat	30	\$10,700	20	\$71,400	10	\$35,700	5	\$17,850
Serious	250	45,000	190	342,000	125	225,000	100	180,000
Failure to Abate	1	300	1	3,000	0	0	0	0
Willful	0	0	1	15,000	0	0	0	0
Proposed Penalties		\$56,000		\$431,400		\$260,700		\$197,850
Less penalty reduction as a result of negotiated settlements and uncollect- ible penalties		(\$18,480)		(\$151,000)		(\$91,200)		(\$69,200)
Less Current Revenues		(37,520)		(37,520)		(37,520)		(37,520)
Additional Revenues		0		\$242,880		\$131,980		\$91,130

SJR

I

Alexis G. Gray

COMMITTEE BILL FILE WORK-UP ON:

Bill #: SJR1 University Fund
Sponsor: Falks
Room #: B107 Phone #: 3755

- 1/19 1 Receive Original Bill and Log In.
- 1/19 2 Duplicate Work Copies for Committee File and Senator's File.
- 1/19 3 File Original Bill in Special Locking File.
- 1/22/29 4 Set-Up Weekly Schedule of Hearings (2 Weeks in Advance if possible).
- 1/29 5 Notify Senate Secretary (5 Day Rule Applies - Allows Time to Get it Printed in Journal). A Copy of the Committee Agenda is Sufficient.
- 1/29 6 Move Work File to "Active" File Drawer.
- 1/29 7 Notify the Following Persons of the Hearing Date:

Committee	_____	Department	_____
Members	_____	Liaisons	_____
	_____		_____
	_____		_____

Bill Sponsor _____ 1/2/29 Governor If Necessary Bob Evans 3500 1/30

- 1/29 8 Request Back-Up Information from Bill Sponsor As Soon As Possible.
- 1/29 9 Request Witness Roster of Persons the Sponsor Has Notified or Desires to Have Notified.
- 1/30 Bob Evans 10 If First Committee of Referral, Request Fiscal Note from Pertinent Department Liaison(s) for each bill change (ie. SS, CS etc) - (5 Day Rule Applies).
- _____ 11 If Necessary, Prepare or Request Sectional Analysis from Legal (3867) when pertinent for each change (ie. SS, CS etc). This is Pretty Much a Judgement Call.
- _____ 12 Research and Prepare Back-Up Material as Necessary.
- _____ 13 Prepare Committee Files (8 Copies: 1 ea for: Committee Members, Committee Aide, Senate Pool Secretary).
- _____ 14 Prepare 10-15 Copies of All Documents to Hand Out to Public During the Hearing (ie. Bill, Short Synopsis, Others at Sponsor's Request). 1/31
- 1/29/1/30 15 Distribute Committee Agenda (Schedule).
- _____ 16 If Requested, Provide Files As Soon As Possible On the Day of the Hearing. Otherwise, Provide the Files at the Beginning of the Hearing in the Committee Room.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 12/SJR 1
Publish Date: _____

REQUEST:
Revision Date: _____
Title: Creating the University Fund/
Amending the Constitution
Sponsor: Paiks
Requestor: _____

Agency Affected: Revenue
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Millions of Dollars)

GENERAL FUND			(16.3)	(34.1)	(33.2)	(33.5)
Univ. Fund Prin. Balance			15.8	48.9	81.1	113.6
Univ. Fund Income			.5	1.9	3.9	5.8
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: Robert Elliott Phone: 2173
Division: Research Section Date: _____

Approved by Commissioner: [Signature] Date: 1/23/87
Agency: REVENUE (CORIGINAL)

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 12/SJR 1

Analysis:

Figures are based on estimated mineral revenues for January 1987 Revenue Sources, and assume a six percent nominal interest rate and voter approval of the Constitutional Amendment (SJR 1). University Fund Income represents amount transferred to the Board of Regents at the end of each fiscal year. The above decrease in General Fund revenues includes not only the loss of mineral revenues but the subsequent decrease in General Fund investment earnings. Estimated revenues from proposed bonus sales were not included since bids are impossible to anticipate prior to sales.

Alaska State Legislature

PRESIDENT
907-465-3755

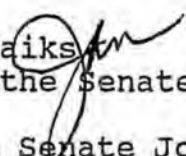
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 2, 1987

MEMORANDUM

TO: Senator Paul Fischer, Chairman
Senate Health, Education, and Social Services
Committee

FROM: Senator Jan Faiks 
President of the Senate

SUBJECT: Background on Senate Joint Resolution Number 1

This resolution provides the amendments to the Constitution of the State of Alaska necessary to create a university fund.'

Section 1 of the resolution amends the Dedicated Funds provision, Article IX, sec. 7, Constitution of the State of Alaska. That section currently prohibits the proceeds of any state tax or license to be dedicated to any special purpose, except as provided in section 15, the Alaska Permanent Fund. Section 1 of SJR No. 1 would also exempt the proposed University Fund (Section 17, discussed below) from the restrictions of the Dedicated Funds provision.

Section 2 of the resolution amends Article IX of the Constitution of the State of Alaska to create the University Fund, through the addition of a new section 17. That section provides that at least 5% of all mineral revenues received by the state shall be placed in a university fund. The principal of that fund is to be used only for income-producing investments specifically designated by law. All income from the university fund shall be transferred to the Board of Regents of the University of Alaska to be used for the state university.

Section 3 of the resolution provides that the Constitutional amendments it proposes shall be placed before the voters at the next general election.

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

Alaska State Legislature

PRESIDENT
907-465-3755

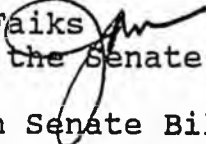
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 2, 1987

MEMORANDUM

TO: Senator Paul Fischer, Chairman
Senate Health, Education, and Social Services
Committee

FROM: Senator Jan Faiks 
President of the Senate

SUBJECT: Background on Senate Bill 12
An Act relating to the university fund; and
providing for an effective date.

Senate Bill 12 has been referred to your committee for consideration. This bill represents an effort to provide a stable source of funding for the university system. SJR 1 is the accompanying legislation which amends the Constitution and places a ballot question before the voters in the 1988 general election to create a University Fund.

This fund would be capitalized by 5% of the mineral royalty income received by the state after January 1, 1989. That amount is estimated as follows for the next four years:

<u>Year</u>	<u>Total amount (Millions of Dollars)</u>
FY 89	16.3
FY 90	34.1
FY 91	33.2
FY 92	33.5

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

These estimates were derived from the Department of Revenue's estimated mineral revenues for January 1987 Revenue Sources. They reflect the loss of mineral revenues and the subsequent decrease in General Fund investment earnings.

All income received from the University Fund would be transferred to the Board of Regents to be used for the University. Legislative appropriation would not be required to spend the money.

The University Fund would be handled by the Permanent Fund Corporation, and current investment procedures of the Permanent Fund would be followed, with allowances for additional legislative appropriations.

SJR

4

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

3/5/87
Senate HESS
No SFC Referral

REQUEST: _____

Bill Version: _____
Publish Date: _____

Revision Date: SJR #4
Title: Amend. to Consti. providing that an individual's privacy not extend to possession of controlled sub.
Sponsor: Fischer
Requestor: Fischer

Agency Affected: Office of the Governor
BRU: Division of Elections

Components: II

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			2.2			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING			2.2			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			2.2			
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

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

(cont.)

Prepared by: Linda Edgeworth Phone: 465-4611
Division: Elections Date: 2-24-87

Approved by Commissioner: Carol P. Kastelic Date: 2-27-87
Agency: Office of the Governor/ Division of Elections

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

RECEIVED
MAR 03 1987

LEGISLATIVE FINANCE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR #4

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

Under these circumstances the fiscal note would be:

53.4