

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8827 SENATE ○ COMMUNITY & REGIONAL AFFAIRS ( )

1 regulations adopted under this title. In a municipality that has adopted a local  
2 option under AS 04.11.491(a)(1), (2), or (3), an ordinance is not inconsistent with  
3 this title if it limits

4 (1) the monthly amounts of alcoholic beverages a person may  
5 import into the municipality;

6 (2) the percent of alcohol by volume that an alcoholic beverage may  
7 contain; a limit imposed under this paragraph may not be less than 40 nor more  
8 than 76 percent alcohol by volume; or

9 (3) the type of alcoholic beverage container that may be possessed  
10 in the municipality.

11 \* Sec. 46. AS 04.21.010(b) is amended to read:

12 (b) After the adoption of a local option under AS 04.11.491(a), a [IF, AS A  
13 RESULT OF AN ELECTION HELD IN ACCORDANCE WITH AS 04.11.502 IN A  
14 MUNICIPALITY, THE BOARD IS PROHIBITED FROM ISSUING, RENEWING,  
15 OR TRANSFERRING A LICENSE BETWEEN HOLDERS OR LOCATIONS OR IF  
16 THE IMPORTATION OF ALCOHOLIC BEVERAGES IS PROHIBITED IN THE  
17 MUNICIPALITY, THE] municipality may adopt an ordinance making the sale, [OR]  
18 importation, or possession of alcoholic beverages a misdemeanor to the extent  
19 prohibited under the local option. The ordinance may not be inconsistent with this  
20 title or the regulations adopted under this title.

21 \* Sec. 47. AS 04.21.010(c) is amended to read:

22 (c) A municipality may not impose taxes on alcoholic beverages except a

23 (1) property tax on alcoholic beverage inventories;

24 (2) sales tax on alcoholic beverage sales if sales taxes are imposed on  
25 other sales within the municipality;

26 (3) sales tax on alcoholic beverage sales that was in effect before  
27 July 1, 1985; and

28 (4) sales and use tax on alcoholic beverages if the sale of alcoholic  
29 beverages within the municipality has been prohibited under AS 04.11.491(a)(1), (4),  
30 or (5) [AS 04.11.490].

31 \* Sec. 48. AS 04.21.015(b) is amended to read:

1 (b) This section does not apply to AS 04.16.050, 04.16.051, 04.16.080;  
2 AS 04.21.010, 04.21.020; alcoholic beverages manufactured in a quantity that exceeds  
3 the limit imposed on private manufacture under federal law; or an area that has  
4 adopted a local option law under AS 04.11.491 [AS 04.11.490 - 04.11.500].

5 \* Sec. 49. AS 04.21.025(a) is amended to read:

6 (a) As a condition of issuance or renewal of a license and selling alcoholic  
7 beverages under a license, the board shall require a licensee who sells or serves  
8 alcoholic beverages and a licensee's agents and employees who sell or serve alcoholic  
9 beverages or check the identification of a patron to complete an alcohol server  
10 education course approved by the board, if the license is for a

11 (1) beverage dispensary;

12 (2) restaurant or eating place;

13 (3) club;

14 (4) package store;

15 (5) [COMMON CARRIER DISPENSARY;

16 (6)] recreational site;

17 (6) [(7) COMMUNITY;

18 (8)] pub;

19 (7) [(9)] conditional contractor.

20 \* Sec. 50. AS 04.21.025 is amended by adding a new subsection to read:

21 (e) A person licensed as a common carrier dispensary shall train agents and  
22 employees who sell or serve alcoholic beverages or who check the identification of a  
23 patron on provisions of state law regarding sale of alcoholic beverages, including  
24 AS 04.16.015, 04.16.020, 04.16.030, 04.16.051, 04.16.052, 04.16.120, 04.16.125,  
25 AS 04.21.030, and 04.21.050. The training must include the subjects of the effects of  
26 alcohol consumption, identifying a drunken person, determining valid identification,  
27 intervention to prevent unlawful alcohol consumption, and penalties for unlawful acts  
28 by agents and employees of licensees. A common carrier licensee shall, once every  
29 three years, provide the board with a description of its training program including the  
30 subjects taught, teaching method, and testing required.

31 \* Sec. 51. AS 04.21.065(a) is amended to read:

1 (a) A holder of one of the following types of licenses or permits shall post on  
2 the licensed or designated premises two separate warning signs as described in (b) of  
3 this section:

- 4 (1) beverage dispensary license;  
5 (2) restaurant or eating place license;  
6 (3) club license;  
7 (4) brewery license: this paragraph applies only to a brewery that  
8 permits a person to sample portions of the brewery's product;  
9 (5) package store license;  
10 (6) common carrier dispensary license;  
11 (7) recreational site license;  
12 (8) [COMMUNITY LIQUOR LICENSE;  
13 (9)] pub license;  
14 (9) [(10)] winery license: this paragraph applies only to a winery that  
15 permits a person to sample portions of the winery's product;  
16 (10) [(11)] caterer's permit;  
17 (11) [(12)] special events permit;  
18 (12) [(13)] conditional contractor's permit;  
19 (13) [(14)] another license or permit issued by the board authorizing  
20 consumption of alcoholic beverages.

21 \* Sec. 52. AS 04.21.080(b)(1) is amended to read:

22 (1) "alcoholic beverage" means a spirituous, vinous, malt, or other  
23 fermented or distilled liquid, whatever the origin, that is intended for human  
24 consumption as a beverage and that contains one-half of one percent or more of  
25 alcohol by volume, whether produced commercially or privately; however, in an area  
26 that has adopted a local option under AS 04.11.491 [LOCAL-OPTION  
27 PROHIBITION UNDER AS 04.11.490 - 04.11.500], "alcoholic beverage" means a  
28 spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that  
29 is intended for human consumption as a beverage by the person who possesses or  
30 attempts to possess it and that contains alcohol in any amount if the liquid is  
31 produced privately, or that contains one-half of one percent or more of alcohol by

1 volume, if the liquid is produced commercially;

2 \* Sec. 53. AS 04.21.080(b)(9) is amended to read:

3 (9) "established village" means an area not containing any part of  
 4 an incorporated city or another established village ~~that has a perimeter clearly~~  
 5 designated on a map by the local governing body or the board in the absence of  
 6 a local governing body ~~and~~ that is

7 (A) an unincorporated community that is in the unorganized  
 8 borough and that has 25 or more permanent residents; or

9 (B) an unincorporated community that is in an organized  
 10 borough, has 25 or more permanent residents, and

11 (i) is on a road system and is located more than 50  
 12 miles outside the boundary limits of a unified municipality, or

13 (ii) is not on a road system and is located more than 15  
 14 miles outside the boundary limits of a unified municipality;

15 \* Sec. 54. AS 15.07.064(g) is amended to read:

16 (g) In this section, "established village" means an unincorporated  
 17 community that is in

18 (A) the unorganized borough and that has 25 or more  
 19 permanent residents; or

20 (B) an organized borough, has 25 or more permanent  
 21 residents, and

22 (i) is on a road system and is located more than 50  
 23 miles outside the boundary limits of a unified municipality, or

24 (ii) is not on a road system and is located more than  
 25 15 miles outside the boundary limits of a unified municipality

26 [HAS THE MEANING GIVEN IN AS 04.21.080].

27 \* Sec. 55. AS 18.65.085(a) is amended to read:

28 (a) There is established in the Department of Public Safety, division of state  
 29 troopers, a narcotic drugs and alcohol enforcement unit for the purpose of investigating  
 30 and combating the illicit sale and distribution of narcotic drugs and alcoholic beverages  
 31 in the state. Enforcement of the alcoholic beverage control laws shall focus primarily

1 on the investigation, apprehension, and conviction of persons who violate  
2 AS 04.11.010 by selling, importing, or possessing alcoholic beverages in violation of  
3 a local option [AN ORDINANCE] adopted by a municipality or established village  
4 under AS 04.11.491 [AS 04.11.490 - 04.11.500].

5 \* Sec. 56. AS 18.65.085(c) is amended to read:

6 (c) The Department of Public Safety may establish and administer a reward  
7 program, and provide grants to municipalities, established villages, and, at the request  
8 of a municipality or established village, to a nonprofit association that administers a  
9 village public safety officer program, for reward programs leading to the apprehension  
10 and conviction of persons who violate AS 04.11.010 by selling, importing, or  
11 possessing alcoholic beverages in violation of a local option [AN ORDINANCE]  
12 adopted by a municipality or established village under AS 04.11.491 [AS 04.11.490  
13 - 04.11.500].

14 \* Sec. 57. AS 29.20.270(e) is amended to read:

15 (e) The veto does not extend to an ordinance adopted under AS 04.11.501  
16 [AS 04.11.498]. This subsection applies to home rule and general law municipalities.

17 \* Sec. 58. AS 29.25.020(d) is amended to read:

18 (d) This section does not apply to an ordinance proposed under  
19 AS 04.11.507(d) [AS 04.11.502(c)].

20 \* Sec. 59. AS 29.25.070(d) is amended to read:

21 (d) This section does not apply to an ordinance adopted under AS 04.11.501(c)  
22 [AS 04.11.498(d) OR (e)].

23 \* Sec. 60. AS 29.35.080(a) is amended to read:

24 (a) A municipality may regulate the possession, barter, sale, importation, and  
25 consumption of alcoholic beverages under AS 04.11.480 - 04.11.509 [IN  
26 ACCORDANCE WITH AS 04.11.480 - 04.11.506] and AS 04.21.010.

27 \* Sec. 61. AS 34.03.360(6) is amended to read:

28 (6) "illegal activity involving alcoholic beverages" means a person's  
29 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the  
30 results of a local option election have, under AS 04.11.491 [AS 04.11.490 -  
31 04.11.500], prohibited the Alcoholic Beverage Control Board from issuing, renewing,

1 or transferring a liquor license or permit under AS 04;

2 \* Sec. 62. AS 47.37.045(e) is amended to read:

3 (e) In this section,

4 (1) "established village" means an unincorporated community that  
5 is in

6 (A) the unorganized borough and that has 25 or more  
7 permanent residents; or

8 (B) an organized borough, has 25 or more permanent  
9 residents, and

10 (i) is on a road system and is located more than 50  
11 miles outside the boundary limits of a unified municipality, or

12 (ii) is not on a road system and is located more than  
13 15 miles outside the boundary limits of a unified municipality

14 [HAS THE MEANING GIVEN IN AS 04.21.080(b)];

15 (2) "local governing body" has the meaning given in AS 04.21.080(b);

16 (3) "nonprofit organization" means an organization that qualifies for  
17 exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

18 \* Sec. 63. AS 04.11.090(c), 04.11.190, 04.11.490, 04.11.492, 04.11.496, 04.11.498,  
19 04.11.500, 04.11.502, 04.11.504, 04.11.506, and 04.11.510(d) are repealed.

20 \* Sec. 64. TRANSITION: LOCAL OPTIONS EARLIER ADOPTED. Notwithstanding  
21 the provisions of this Act, local options adopted by an area under AS 04.11.490, 04.11.492,  
22 04.11.496, 04.11.498, or 04.11.500 or previous local option laws before the effective date of  
23 this Act shall continue in effect until changed under AS 04.11.493 or removed under  
24 AS 04.11.495. References in this Act to local option elections conducted under AS 04.11.491,  
25 04.11.493, 04.11.495, 04.11.497, 04.11.499, 04.11.501, 04.11.503, 04.11.505, and 04.11.507  
26 are to be interpreted to include local option elections conducted under AS 04.11.490,  
27 04.11.492, 04.11.496, 04.11.498, 04.11.500, or 04.11.502 or previous local option laws in  
28 effect before the effective date of this Act.

29 \* Sec. 65. TRANSITION: COMMUNITY LIQUOR LICENSES. A community liquor  
30 license issued under AS 04.11.190 before the effective date of this Act to operate a beverage  
31 dispensary shall continue as a beverage dispensary license under AS 04.11.090. A community

1 liquor license issued under AS 04.11.190 before the effective date of this Act to operate a  
2 package store shall continue as a package store license under AS 04.11.150.

3 \* Sec. 66. TRANSITION. A person licensed under AS 04.11.160 on the effective date of  
4 this section shall submit the information required under AS 04.11.160(F), added by sec. 9 of  
5 this Act, by September 30, 1995.

6 \* Sec. 67. TRANSITION: IMPLEMENTATION OF BIENNIAL SEASONAL LICENSES.

7 (a) Approximately one-half of the applicants for 1996 renewal of a seasonal license issued  
8 by the Alcoholic Beverage Control Board, as determined by the director of the Alcoholic  
9 Beverage Control Board, shall be eligible for a one-year seasonal license. These licenses  
10 expire, unless renewed, on December 31, 1996, and may be renewed biennially in even-  
11 numbered years after that. The 1996 renewal fee for these licenses is one-half of the seasonal  
12 biennial license fee.

13 (b) Applicants whose licenses are not renewed under (a) of this section shall be  
14 eligible for a two-year seasonal license. These licenses expire, unless renewed, on  
15 December 31, 1997, and may be renewed biennially in odd-numbered years.

16 (c) The director shall notify each licensee in writing as to whether the licensee shall  
17 apply for renewal under (a) or (b) of this section, and of the actual amount of the renewal fee.  
18 The notice must be given not later than December 1, 1995. However, the failure of the  
19 director to provide the notice required in this subsection does not prevent a license from  
20 expiring on February 28, 1996, under AS 04.11.540, if the renewal application is not filed on  
21 or before that date.

22 \* Sec. 68. TRANSITION: REGULATIONS. Notwithstanding sec. 71 of this Act, the  
23 Alcoholic Beverage Control Board may proceed to adopt regulations necessary to implement  
24 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not  
25 before July 1, 1995.

26 \* Sec. 69. PROHIBITION ON PURCHASE OR CERTAIN ALCOHOLIC BEVERAGES.  
27 Beginning July 1, 1995, and ending June 30, 1996, a person licensed as a wholesaler under  
28 AS 04.11.160 may not purchase an alcoholic beverage that contains more than 76 percent  
29 alcohol by volume.

30 \* Sec. 70. AS 04.16.110(2), enacted in sec. 30 of this Act, takes effect July 1, 1996.

31 \* Sec. 71. Except as provided in secs. 68 and 70 of this Act, this Act takes effect July 1,

1 1995.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 87

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Alcoholic Beverages: Local BRU: Alcoholic Beverage Control Board  
 Option and Misc. \_\_\_\_\_ Component: \_\_\_\_\_  
 Sponsor: Senate Judiciary  
 Requester: Senate C & RA COMPONENT SERIAL NO. 0100

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts (approx.)	5.0	5.0	5.0	5.0	5.0	5.0
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Possible increase in revenue from 1) increase to penalty for filing late applications for renewal of license in Section 10, Page 5 and 2) fee collected from wholesale licensees for registration of brands in Section 8, Page 4.

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638  
 Division: Alcoholic Beverage Control Board Date: 3/1/95  
 Approved by: \_\_\_\_\_  
 Commissioner: Deborah Voigt Date: 3/2/95  
 Agency: Revenue

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# Alaska State Legislature

*Rec'd.  
2/27/95  
MAY*

Chairman,  
Judiciary Committee

Vice Chairman,  
Transportation Committee

Member,  
Resources Committee  
Western Legislative Forestry Task Force



**Senator Robin L. Taylor**

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## MEMORANDUM

**TO: Senator John Torgerson, Chairman  
Senate Community & Regional Affairs Committee**

**FROM: Senator Robin L. Taylor *RLT***

**DATE: 2/27/95**

**REF: Hearing Request - SB 87**

\*\*\*\*\*

Please consider this as my formal request for a hearing on Senate Bill 87, "An Act relating to community local options for control of alcoholic beverages", etc., at your earliest convenience.

SB 87 was introduced at the recommendation of the Alcoholic Beverage Control Board. May I suggest you contact Pat Sharrock, ABC executive director, at 277-8638. He acted as our main witness on nearly identical legislation which passed the Senate last year and almost made it through the House despite starting late in the session.

This is primarily a housekeeping measure and with Pat's concise testimony the bill should be able to move from committee in fairly short order.

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## Sponsor Statement

### Senate Bill 87

Before the Senate CRA Committee  
March 8, 1995

Last year the Alcoholic Beverage Control Board, prompted by concerns over a lack of clarity in how local option elections are to be conducted, asked for legislation to simplify the process. The board also asked that the same vehicle be used to address long needed technical and common sense amendments to Title 4.

The result was Senate Bill 372, which passed the Senate and moved through the committee process in the House, only to die in the Rules Committee in the hectic final days of the 18th State Legislature.

Senate Bill 87 is substantially the same as last year's legislation.

The bill addresses the shortcoming in the current statute dealing with local option elections, for which no provision is made for moving from one type of option to another. Under current law, a community must first vote to remove all restrictions on the sale and importation of alcoholic beverages and then conduct another vote on a new option. This burdensome process can cause confusion for municipalities and unincorporated villages alike.

The complete intent of this lengthy bill is better explained by those who will be charged with its' enforcement. However, it should be pointed out that it is mainly a housekeeping measure with little potential for controversy.

District A

Hyder • Ketchikan • Kupreanof • Meiners Chuck • Petersburg • Seward • Sitka • Wrangell

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**Senator Robin L. Taylor**

## Sponsor Sectional Analysis

**CS SB 87**

This legislation basically consists of two parts:

1. Local option clarification and simplification.
2. Technical amendments/improvements.

### 1. Local Option

<u>Section</u>	<u>Page</u>	
20	14-15	a. Menu of local options
21	17	b. Change a local option
21	17	c. Remove a local option
22-26	17-19	d. Description of options

### 2. Technical Amendments

<u>Section</u>	<u>Page</u>	
1	1	Tech. package store may not solicit or receive orders from an agent in a local option area.
4	3	New semi-tavern license - 1 in 10 of restaurant or eating licenses- non-transferable.
5	4	Tech. increases brew-pub gallonage from 16,000 to 75,000 per year.

District A

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Sectional Analysis - CSSB 87  
Page Two

<u>Section</u>	<u>Page</u>		
7	4	Tech.	package store licensee can only ship to purchaser
9	4 - 5	New	register brands by wholesale licensees.
10	5	New	club, package store, restaurant and beverage dispensary licensee must purchase for resale from a wholesale licensee.
11	5	New	if license is not renewed by 12/31 the business may stay open but late filing penalty increases from \$200 to \$500.
17	13	New	board may impose restriction on a license
19	14	Tech	local governing body may protest annually although renewals are biennial
27	21	Tech	local options to change to less restrictive option may not be conducted for 12 months
27	21	Tech	notice of elections to package stores by certified mail
28	21	Tech	makes half-year licenses biennial to agree with current law
30	22	New	prohibits Everclear.

**Sectional Analysis -CSSB 87**  
**Page Three**

<b><u>Section</u></b>	<b><u>Page</u></b>		
4 5	2 7	New	municipality may limit importation amount by ordinance under certain options
5 0	2 9	Tech	simplified server training for common carrier licensees
5 2	3 0	Tech	expands definition of alcohol to include any alcohol intended for consumption.
5 3	3 1	Tech	clarifies definition of established village
6 3	3 3	New	repeals requirement for beverage dispensary bond
6 5-7 1	3 2	New	transition provisions to include half-year licenses regarding section 28
4 5	2 7	New	A municipality may limit importation amount by ordinance under certain option

POSITION PAPER  
ALCOHOLIC BEVERAGE CONTROL BOARD  
SB 87  
March 1, 1995

This bill is substantially identical to SB 372 that passed the senate and all house committees last year but did not get to a floor vote in the house on the last day of the legislative session.

The bill clarifies and simplifies provisions that allow unincorporated villages and incorporated municipalities to hold local option elections to restrict or prohibit alcoholic beverages within those communities. The board's assistant attorney general has noted that

"When the local option scheme was adopted, no provision was made for moving from one type of option to another. The problems primarily arise when a proposal is made to move to a less restrictive option. Under the limited ballot language permitted, the community must first vote to remove all restrictions, and then conduct another vote to reinstate the desired option. The local option law is also ambiguous as to when a community may first conduct an election to remove an option it has adopted. (Subsequent elections must be at least 12 months later.)"

The attached recent newspaper editorial provides an example of the dilemma.

Along with a few insignificant new items, the bill contains several long overdue common sense technical amendments. An abbreviated sectional analysis describing these amendments is also attached.

Except for potential average annual revenue of approximately \$5,000 from registration of "brands" by wholesale licensees provided in Section 8, the bill does not create any fiscal impact on board operations.

The Alcoholic Beverage Control Board is in complete support of this bill. Additionally, this legislation has been supported by Tanana Chiefs, North Slope Borough, Division of Elections, Department of Community and Regional Affairs, Department of Law, and Senator Al Adams.

ALCOHOLIC BEVERAGE CONTROL BOARD  
Sectional Analysis  
SB 87

The legislation basically consists of two parts:

1. local option clarification and simplification
2. technical amendments/improvements

1. LOCAL OPTION

<u>Section</u>	<u>Page</u>	
19	14	a. menu of local options
20	16	b. "change" a local option
20	16	c. "remove" a local option
21-25		d. description of options
		e. cater's permit

2. TECHNICAL AMENDMENTS

<u>Section</u>	<u>Page</u>	
1	1	Tech - package store may not solicit in or receive orders from an agent in a local option area
3	2	New - semi-tavern license - 1 in 10 of restaurant or eating place licenses - non transferable
4	3	Tech - increases brew-pub gallonage from 16,000 to 75,000 gallons per year
6	3	Tech - package store licensee can only ship to the purchaser
8	4	New - register brands by wholesale licensees
9	4	New - club, package store, restaurant, and beverage dispensary licensees must purchase alcoholic beverages for resale from a wholesale licensee

10	5	New -	if a license is not renewed by December 31 the business may stay open but late filing penalty increases from \$200 to \$500
16	12	New/Tech -	board may impose restrictions on a license
18	13	Tech -	local governing body may protest annually even though applications for license renewals are filed biennially
26	20	Tech -	local options to change to a less restrictive option may not be conducted for 12 months
26	20	line 30 Tech -	notice of elections to package stores by certified, not "registered" mail
27	21	Tech -	makes half-year licenses biennial to agree with current law
29	21	New -	prohibits Everclear
44	27	New -	a municipality may limit importation amount by ordinance under certain options
48	28	Tech -	simplified server training for common carrier licensees
50	29	Tech -	expands definition of alcohol to include any alcohol intended for consumption
51	29	Tech -	clarifies definition of established village
61	32	New -	repeals requirement for beverage dispensary bond
65	32	New -	transition for half-year licenses regarding section 27

# Barrow vote

*Anchorage  
News  
1/2/95*

## Give ban a chance

The news from Barrow about the positive effects of prohibition approved in a close fall election are heartening. Public safety has improved in the town and in outlying villages, hospital emergency room personnel aren't swamped with alcohol-related cases, and detoxification beds are in less demand.

Most tellingly, Inupiaq elder Morgan Solomon says "Our children are much happier."

Local option laws, like the one Barrow employed, allow communities to vote on banning the sale, importation and possession of alcohol — and to repeal those laws through the petition and ballot process. "Damp" status allows importation and possession of alcohol, whereas "dry" bans the sale, importation and possession of alcohol by anyone in the city. (The seven outlying villages already banned importation, but villagers were smuggling in booze from Barrow, creating local problems.)

But the heated wrangling in Barrow between supporters and critics of alcohol prohibition demonstrates that there is work ahead for Alaska's legislators as well as the community.

After the dry side won by seven votes, an anti-prohibition group hastily gathered enough signatures to hold another vote on Feb 21. Just days ago, the city council wisely upheld a mayoral veto of the election date, thus delaying it until fall.

State law ought to be clear enough so that community debate about local alcohol option centers on the pros and cons rather than what state law may or may not say. When even Alcoholic Beverage Control Board director Pat Sparrock is unsure about when a repeal election can be held, then it is the job of the legislature to make the laws clear.

The city council and Mayor Long have the right idea in giving the new policy a chance to work.

Prohibition is an extreme measure, and not one to be taken lightly. But given its troubled past, Barrow is on the right track in going dry to battle the devastating effects of alcohol. That's what local option laws are all about. But state law ought not to have gray areas so big as to allow bowhead whales to swim through unimpeded.

# The Almanac

## The Slope and alcohol

The month and year Barrow went dry: November 1994.

Number of calls North Slope Borough Department of Public Safety officials compiled in November 1994 in the seven Slope villages, excluding Barrow: 175.

Number of village calls in November 1994: 103.

Number of November 1993 village calls that were substance-abuse related: 38.

Number of November 1994 village calls that were substance-abuse related: 19.

Number of intoxicated persons removed by public safety officials from premises in Barrow in November 1993: 63.

Number of Barrow drunks removed from premises in November 1994: 18.

Number of Barrow drunks brought to detoxification by safety officials in November 1993: 29.

Number of Barrow drunks brought to detox in November 1994: 3.

Number of calls logged by public safety officials related to Barrow minors consuming alcohol from Sept. 1 through Nov. 1, 1994: 23.

Number of such calls from November 1994 through Dec. 21, 1994: 3.

□ Sources: Daily News and North Slope Borough reports.

SENATE BILL 87  
(S. Judiciary)

Alcoholic Beverages: Local Option & Misc.  
In: 2/14/95           Out:  
Further referrals: Judiciary, Finance  
Request for hearing: 2/27/95  
Hearing date: 3/8/95

Remarks: This bill is similar to legislation introduced by the sponsor during the 18th legislature

Bill (SB 372) was introduced late in session in 1994  
Senate Judiciary Committee replaced with CS  
Senate Finance Committee replaced with CS  
5 amendments offered and adopted by full Senate  
Passed Senate 20-0  
House State Affairs replaced with CS 6DP/1NR (G. Davis)  
last day of session  
Died in House Rules



# CITY OF BARROW

*"farthest north incorporated city"*

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## TESTIMONY OF MAYOR DON LONG OF THE CITY OF BARROW CONCERNING SB87 MARCH 8, 1995

I would like to direct my comments to those sections of SB 87 which affect local option elections and the importation of alcoholic beverages into communities such as Barrow and I will not mention specific language changes.

First, I would like to thank Pat Sharrock from the ABC Board and Teresa Williams from the Attorney General's office for all the work they have done on this bill and for their recent comments.

I understand that much of this bill was before the legislature during the last session and unfortunately it failed to pass.

I say unfortunately, because all of the problems that the community of Barrow has encountered with the local option process in the last six months were all addressed and would have been cleared up by the predecessor to SB87.

For example, before the October 4, 1994 municipal election, petition sponsors wanted to place before the voters the question of prohibiting the importation and possession of alcoholic beverages. Instead of one question the petitioners had to circulate two petitions and voters had to vote on two questions because that is how the options are presently set up.

Immediately after a majority of voters approved banning the importation and possession of alcoholic beverages, opponents to the ban began the process to hold an election to repeal the alcohol ban. Myself and the City Clerk are named as defendants in a lawsuit that is in Superior Court right now over when the City of Barrow has to hold an election on a vote to repeal the ban which was just approved on October 4, 1994.

SB87 makes it clear that no election to repeal an option may be held within 12 months of the option's adoption.

Additionally, in order to go back to the damp status that existed in Barrow prior to October 4, 1994, under the present statutes, voters must first vote to go completely wet and then a new petition must be circulated and another election held on prohibiting the sale of alcoholic beverages in Barrow. SB87 would make this option a one step - one election - process instead of requiring two separate petitions and elections.

SB87 also clarifies what the intent of the petition is. I heard from numerous people in Barrow who signed the most recent petitions which seek to repeal the alcohol ban. They told me that while they

wouldn't mind having a new election on going back to being damp they did not want to have Barrow go wet. They were very upset when they learned that the petitions they had signed would make Barrow go wet. They told me that they signed the petitions because they were told by the sponsor that it was for having Barrow go "damp" and that no one had mentioned "wet". The language in SB87 will clear up the confusion that now exists.

I have two questions that do not seem to be addressed in the present SB87:

First: What happens when competing petitions are submitted, one to impose a restriction and one to repeal a restriction? My understanding is that the first petition submitted is voted on first. If the vote is in favor of imposing a restriction, what happens to the petition to repeal a restriction that was submitted before the election? Does this petition become void since no election to repeal may be held for 12 months, or is it simply deferred for twelve months?

Second: What happens to petitions that are out there right now with the questions under the present statutes? My hope is that this committee will add a Transition Section that clearly states that a new petition with the new language must be submitted for any election that will be conducted after the effective date of this statute. I also hope that the effective date will be set as soon as possible to avoid confusion during the October municipal elections.

Finally, I would like to ask this committee to extend the waiting period before an election to repeal a prohibition may be held. I would like to see a two year waiting period instead of a twelve month wait - at least when it comes to the possession of alcoholic beverages. AS 29.26.190(a) prohibits the repeal of an ordinance created through the initiative process. Since the prohibition on possession of alcoholic beverages creates an ordinance of the municipality it should be clear that AS 29.26.190(a) applies to the ordinance prohibiting the possession of alcoholic beverages.

Again, thanks to Pat Sharrock and Teresa Williams for all their work and to this committee and the legislature for their continued recognition of the harmful effects alcohol can have on a community and their support of local communities having the power to deal with their problems in their own way.

TO: <sup>CRA</sup> The Senate Judiciary Committee

SUBJ: CS For Senate Bill No. 87 "An Act relating to community local options for control of alcoholic beverages; et h.c.

ORAL PRESENTATION BY TELECONFERENCE ON MARCH 17, 1995

Mr. Chairman and Distinguished Members of the Judiciary Committee:

"My name is James Wood. I am a Captain of the North Slope Borough, Department of Public Safety. I reside in Barrow, Alaska. It is my pleasure to comment this afternoon on SB87 relating to the control of alcoholic beverages.

Many communities throughout Alaska have banned the importation, sale and possession of alcoholic beverages. Unfortunately, language in neither the law as written nor the law as proposed is sufficient to convey public condemnation, to positively deter violators, or to facilitate positive enforcement or timely justice.

A major impediment is the manner in which the POSSESSION of alcoholic beverages in local option communities is treated. Although importation or sales of alcoholic beverages in local option communities are crimes, possession of alcoholic beverages in local option communities is a non-crime. It is relegated to a simple violation for which the violator may only be ticketed, but not arrested. Much the same as a parking violator. And, although the maximum admonishment is a \$1000.00 fine, the Alaska Supreme Court, by its' bail schedule, has restricted lower courts to assessing possession violators a simple \$100.00 fine for the first TWO offenses. Enforcement resources simply are not available that allow concerted effort to catch a possession violator three different times before anything more significant than a \$100.00 fine occurs. \$100.00, or even \$1000.00, is not much of a penalty for someone caught only in possession, but who really may be making large profits on importation and sales. There simply is not reason for ANYONE to have illicit possession of an alcoholic beverage in a local option area. This weakness in the law does fairly little to convey public condemnation, to protect innocent citizens, to amend violator behavior, or to keep alcoholic beverages controlled or out of communities that have labored mightily to enact local options that promote health, safety and healing among them.

Possession of alcoholic beverages in a local option community is a crime, and it should be written as such into the law. The actual and potential harm caused by a possession violator to the health, safety and welfare of a local option community must not be minimized. It is the behavior of the illicit possessor of alcoholic beverages that must be targeted and amended to comply with the local option mandates of a community.

Therefore, I encourage you to amend Sec 34, AS 04 16.200 (e), beginning at Line 19 on page 23 of the draft legislation, to include the following parenthetical:

"(e) A person who sends, transports, or brings alcoholic beverages into [, or who possesses an alcoholic beverage within] a municipality or established village in violation of AS 04 11.499 is, upon conviction guilty of...."

Further, please consider including in the law the same mandatory penalties, perhaps coupled with substance abuse treatment and counseling programs, as are provided for the crime of driving while intoxicated. The serious implications of the illicit possession of alcoholic beverages in defiance of local option poses the same unjustifiable, unpredictable risks of death or serious injury as do drunk drivers. And, more, the risks include a greater likelihood of other infamous crimes such as sexual assault, domestic violence, and other morbid crimes. Please, do not forget that these are the reasons why the possession of alcoholic beverages was banned in the first place. Thank you for allowing me to speak before you at this hearing. I trust that you will weight my words carefully during your deliberations and actions on SB87. Thank you.



# CITY OF BARROW

*"farthest north incorporated city"*

## FAX TRANSMITTAL

DATE: March 17, 1995

TO: Senate Committee on Community & Regional Affairs

LOCATION: \_\_\_\_\_

PHONE: BUSINESS

FAX 465-4779

FROM: DON LONG, MAYOR

LOCATION: CITY OF BARROW

PHONE: BUSINESS (907) 852-5211

FAX (907) 852-5871

NUMBER OF PAGES INCLUDING COVER: 3

PLEASE MAKE COPIES FOR: \_\_\_\_\_

ADDITIONAL COMMENTS: \_\_\_\_\_

written comments on SB 87



# CITY OF BARROW

*"farthest north incorporated city"*

TESTIMONY OF MAYOR DON LONG OF THE CITY OF BARROW  
CONCERNING SB87  
MARCH 17, 1995

I would like to thank this committee for listening to the concerns expressed last week and incorporated into new language in SB87.

The addition of a new subsection (g) to AS 4.11.507 would clarify the procedures to follow when competing petitions are being circulated. I feel that this new subsection which is being added to page 21 after line 10 will help communities deal with these competing interests in an organized and orderly manner.

As this committee noted last week, the community of Bethel was subjected to weekly elections on competing petitions. AS 4.11.507 (g) would allow a community to assess the result of the first local option election before proceeding with the petition and election process of subsequent options.

The addition of Section 65 TRANSITION: EXISTING LOCAL OPTION PETITIONS is necessary to make sure that the ballot language of all future elections meets the requirements of this bill. As I mentioned last week, SB87 will streamline the procedures for going between the various community options. Communities should be able to benefit from this streamlining immediately.

Without this transition section, Barrow could still be required to conduct an election on petitions containing the obsolete questions "Shall the possession of alcoholic beverages be prohibited in Barrow?" and "Shall the sale and importation of alcoholic beverages be prohibited in Barrow?".

With this new transition section, the outstanding petitions would be void. Sponsors could circulate new petitions with the new language, and when sufficient signatures are collected, Barrow

could vote on the question "Shall the city of Barrow change the local option currently in effect that prohibits the sale, importation and possession of alcoholic beverages, and adopt in its place a local option to prohibit the sale of alcoholic beverages?".

The addition of the transition language in Section 65 is in keeping with the other changes in SB87 and I hope that this committee will adopt them.

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

November 12, 1982

Ms. Carole A. Baekey  
Statewide Alcohol Coordinator  
Alaska Legal Services Corp.  
615 'H' Street, Suite 100  
Anchorage, AK 99501

Re: Potential problems re local  
option election law

Dear Ms. Baekey:

You requested our opinion on potential problems with Alaska's local option election law, AS 04.11.480 -- 04.11.504. First, how is the conflict between AS 04.11.490 -- 04.11.500 ("appearing alone"), on the one hand, and AS 04.11.502 ("combination of questions"), on the other hand, to be resolved? Second, if more than one local option proposition may be presented to the voters in a single election, and if the voters approve both propositions, which one controls?

AS 04.11.490 and the three succeeding sections begin "The following question, appearing alone, may be placed before the voters of a municipality . . . ." (emphasis added). However, AS 04.11.502 provides: "The local governing body of a municipality . . . shall place upon a separate ballot . . . whichever question or combination of questions set out in AS 04.11.490 - 04.11.500 constitutes the subject of the petition." (Emphasis added.) In a memorandum of advice dated May 20, 1981 (copy attached), we noted that separate ballot requirements have two purposes: First, by requiring separate ballots that are distributed only locally, they insure that voters outside the local precincts do not vote on local ballot questions. Second, they minimize confusion that might result were compound questions or related propositions presented on a single ballot.

We cannot harmonize AS 04.11.490 and AS 04.11.502. The latter clearly contemplates the presentation of more than one proposition at a single election. However, the legislature could not have intended the confusion and uncertainty that would inevitably result were two options presented and both approved by the

1317

Ms. Carole A. Baekey  
AK Legal Services Corp.

November 12, 1995  
Page 1

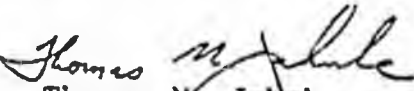
voters. Were two options approved, 1/ it is conceivable that there would be three majorities: one majority might favor option one; another majority might favor option two; and a third majority (composed of some voters who opposed option one, some voters who opposed option two, and some voters who opposed both options) might prefer no change over the disfavored option(s). 2/

It is our recommendation to the municipalities and the Division of Elections that they present only one local option question per election, and that that question be the one first presented to the governing body or the lieutenant governor with the requisite number of valid petition signatures. If another group wishes to present a different question to the voters, they may do so at a special election soon after the first election. AS 04.11.502.

We hasten to add that, were multiple questions presented and confusing election results obtained, we will decline to prosecute persons charged under the community's local option ordinance.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Thomas M. Jahnke  
Assistant Attorney General

TMJ/pjg

cc: Daniel W. Hickey, Chief Prosecutor  
Department of Law -- Criminal

Patty Ann Polley, Director  
Division of Elections

---

1/ AS 04.11.490 - 04.11.500 clearly imply that every voter may vote yes or no on every option presented; thus, the same voter could vote in favor of all options presented.

2/ Petitions with multiple questions suffer the same defect: election officials might not be able to tell which of two options the petitioners favored for placement on the ballot. See AS 04.11.502.

## MEMORANDUM

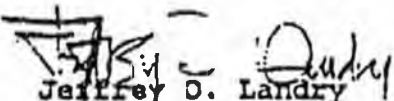
State of Alaska  
Department of LawTO Charlot Thickstun, Director  
Division of Elections

DATE. October 23, 1991

FILE NO. 663-92-0070

TEL. NO. 465-3600

SUBJECT Local option elections



Jeffrey D. Landry  
Assistant Attorney General  
Governmental Affairs - Juneau

FROM

This memorandum is in response to your August 5, 1991, opinion request regarding AS 04.11.502. The section establishes the procedures to be used by municipalities and established villages in conducting elections on the various alcoholic beverage options under AS 04.11.490 -- 04.11.500.

Section 04.11.502(d) provides:

Notwithstanding any other provisions of law, an election under (a) or (b) of this section to remove a restriction on the sale, importation, or possession of alcoholic beverages previously imposed under AS 04.11.490 -- 04.11.500 may not be conducted more than once every 12 months.

(Emphasis added.)

The 12-month limitation established under subsection (d) applies specifically to elections "to remove a restriction." The language is clear and unambiguous. It does not apply to elections to impose a restriction under AS 04.11.490 -- 04.11.500. Therefore, this office concludes that an election to impose restrictions on the sale, importation or possession of alcoholic beverages may be held by a municipality or established village more than once every 12-months.

In addition, subsection (d) is prefaced with the phrase "[n]otwithstanding any other provisions of law." This means that only the 12-month time period established under AS 04.11.502(d) applies to elections to remove an alcoholic beverage restriction. Consequently, the time periods established under AS 29.26.190 do not apply to elections to remove a restriction. 1/

1/ As discussed, elections to impose a restriction may be conducted more than once every twelve months. This conclusion  
(continued...)

Charlot Thickett, Director  
AG File #663-92-0070

October 23, 1991  
Page 2

Finally, with respect to subsection (d), the Department of Community and Regional Affairs' handbook titled "Local Option Law, Controlling Alcohol in Alaska's Cities and Villages" (March 1990) provides that a new petition to choose a more restrictive option than the one voted in can be started 31 days after the previous election was certified. I can find no statutory or regulatory authority for this 31-day restriction on the ability of a sponsor to petition for a more restrictive option.

AS 04.11.502(e) provides:

~~AS 29.26.110--29.26.160~~ applies to a petition under (a) of this section in a general law municipality except the

(1) number of required signatures is determined under (a) of this section rather than under AS 29.26.130;

(2) application filed under AS 29.26.110 shall contain the question or combination of questions set out under AS 04.11.490 -- 04.11.500 rather than containing an ordinance or resolution;

(3) petition shall contain the question or combination of questions set out under AS 04.11.490 -- 04.11.500 rather than material required under AS 29.26.120(a)(1) and (2).

Subsection (e) means that in a general law municipality only, the provisions of AS 29.26.110--29.26.160, with certain exceptions set out in paragraphs (1), (2), and (3), apply to a petition submitted under AS 04.11.502(a). 2/ For example, under AS 29.26.150, if the municipal clerk certifies that a petition is insufficient, a protest may be filed within 7 days. In addition,

1/ (...continued)

follows implicitly from the wording of the subsection. This implied rule is also governed by the preface "[n]otwithstanding any other provision of law." Consequently, subsection (d) alone, and not AS 29.26.190, also applies to elections to impose an alcoholic beverage restriction.

2/ Subsection (e) applies only to an election in a general law municipality. It does not apply to an election held under AS 04.11.502(a) in a home rule municipality or under AS 04.11.502(b) within an established village. So, for example, AS 29.26.110, requiring the filing of an application, does not apply to an election in a home rule municipality or an established village.

Chariot Thakstun, Director  
AG File #663-92-0070

October 23, 1991  
Page 3

under AS 29.26.160, if sufficient signatures are not secured, a new petition may not be filed sooner than six months after the petition is rejected as insufficient.

Finally, the fact that only AS 29.26.110 -- 29.26.160 apply to certain petitions under AS 04.11.502(a) bolsters our previous conclusion that AS 29.26.190 does not apply to local option elections. 1/

I hope this information proves helpful to you. If I can be of further assistance, please don't hesitate to contact me.

JDL:ck

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1/ Except for the applicability of AS 29.26.110 -- 29.26.160 to an AS 04.11.502(a) petition in a general law municipality, it appears that the legislature intended the Title 4 petition process to operate independently from the AS 29.26 petition process. AS 29.26.190 was enacted in 1985. AS 04.11.502(d) and (e) were added in 1988 and 1989, respectively. In 1989, the legislature made specific provisions of the Title 29 petition process applicable to certain local option elections. AS 29.26.190 is not one of those provisions. A letter of intent relating to the enactment of subsection (d) by sec. 5, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H) provides in part: "It is the intent of the legislature, through this piece of legislation, to assist those communities which have elected to adopt one or more of the local option provisions authorized under AS 04.11.490 -- [04.11.]500 by allowing for more local control once the option is adopted . . . ." See 1988 Senate Journal 2939.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

August 29, 1984

Honorable John C. Sackett  
Senator  
Alaska State Legislature  
Box 11  
Ruby, Alaska 99768

Re: Changing a municipality's  
existing local liquor option  
Our file: 366-101-85

Dear Senator Sackett:

You have requested an opinion concerning the necessity of conducting a separate election to repeal a municipality's existing local liquor option before conducting an election on a different option under AS 04.11.470 -- 04.11.506. This question arises from instructions in the pamphlet "Alcohol and the Law," which was prepared by the Alcohol Project for the Alaska Legal Services Corporation. Those instructions state that an existing option must be repealed "before a different option question can be voted on at a third election." In our view, these instructions are incorrect.

State law provides a procedure for a municipality's local option election as follows:

The local governing body of a municipality, whenever a number of registered voters equal to at least 35 percent of the number of votes cast at the last regular municipal election petition the local governing body to do so, shall place upon a separate ballot at the next regular election or at a special election whichever question or combination of questions set out in AS 04.11.490 -- 04.11.500 constitutes the subject of the petition. The local governing body shall conduct the election in accordance with the election ordinance of the municipality. [1/]

1/ We have previously advised that this section must be read with AS 04.11.490 -- 04.11.500 to allow only one option on the

Senator John Sackett  
Alaska State Senate  
366-101-85

August 29, 1  
Page

AS 04.11.502(a). This section requires the governing body of a municipality to place a local option question before the voters whenever it is validly petitioned to do so. Nothing in the language of this section suggests that, before complying with a petition, the local governing body of the municipality is required to conduct an election repealing an existing option. 2/

Language in AS 04.11.490(c), 04.11.492(c), 04.11.496(c), and 04.11.500(c) indicates that the legislature contemplated that a municipality might conduct an election to select a new option to replace an existing option. 3/ This language, d

1/ Cont ...

Ballot at each election; that the first option presented with the requisite number of valid petition signatures should be the option presented to the voters; and that, if another group wishes to present a different option to the voters, it could do so at a special election soon after the first election. 1982 Inf. Op. Att'y Gen. (Nov. 12; 366-264-83).

2/ It may be that the Alcohol Project construed the statute requiring an intermediate election to repeal the existing option in order to avoid confusion that might result if voters are presented with multiple local option elections. However, requiring voters to repeal a previously selected option before selecting another option could be equally confusing and would leave a municipality that has chosen to control the sale of alcoholic beverages with no option in force at all until a new election is held and until the new option becomes effective.

3/ For example, AS 04.11.490(c) provides:

If a majority of the voters vote "no" on the question set out in (a) of this section or vote "yes" on a question set out in AS 04.11.492 or 04.11.500 in an election conducted in accordance with AS 04.11.502 after an election in which the voters voted "yes" on the question set out in (a) of this section, the board shall be notified immediately after certification of the results of the election. Thereafter, the prohibitions imposed under (b) of this section on the issuance, renewal, or transfer of licenses between holders and location as a result of the earlier election are removed except insofar as those prohibitions are imposed in accordance with the results of the subsequent election.

Senator John Sackett  
Alaska State Senate  
366-101-85

August 29, 1984  
Page #3

scribing the effect that an election selecting a new option would have on an existing option, would be rendered meaningless by an interpretation of the statute requiring that an existing option be repealed in a separate election before a new option may be voted on. These provisions also provide for continuity in a municipality's choice to control sale and distribution of alcoholic beverages. That continuity would be broken if a municipality were required to repeal its local option before conducting an election to select a new option.

It is our recommendation that, whenever the local governing body is presented with a valid petition to place a local option question before the voters, it should do so without first conducting an election to repeal the existing option.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By: *Virginia B. Ragle*  
Virginia B. Ragle  
Assistant Attorney General

VBR/pjg

cc: Robert Charles  
Department of Community & Regional Affairs  
Municipal & Regional Assistance Division  
Bethel

3/ Cont ...

This provision applies when the voters of a municipality have elected to select the option provided by AS 04.11.490(a) to prohibit the sale of alcoholic beverages in the municipality. If the voters of the municipality subsequently elect to select the option provided by AS 04.11.492 prohibiting sale of alcoholic beverages unless sold by a specified licensee, the prohibitions of the first option are removed with respect to sale of alcoholic beverages by the specified licensee.

THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

JAN PHILLIPS, SCOTT OWNBEY,  
TOM D. NICOLOS, SALLY A.  
LEHEN, KATHLEEN A. KRUG,  
ROBERT MYRES, JIM BROOKS,  
MARK J. HAMLIN, TERRY P.  
BURROWS, and NANCY NICOLOS,  
  
Plaintiffs,

vs.

DONALD LONG IN HIS CAPACITY  
AS THE MAYOR OF THE CITY OF  
BARROW, and CAROLYN EDWARDS,  
CITY CLERK FOR THE CITY OF  
BARROW,  
  
Defendants.

FILED in the Trial Courts  
State of Alaska, Fourth District

MAR 10 1995

By: \_\_\_\_\_ Deputy

2BA-95-9 Civil

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Before the court is a very complex web of legal issues involving the interpretation of numerous state and local statutes. A detailed analysis of these statutes and the legislative history suggests that legislative clarification may well be helpful.

The court has considered the briefs of the respective parties as well as the amicus curiae brief filed by the firm of Rice, Volland, Gleason & Taylor on behalf of their clients. Additionally, the court has independently researched the legal issues raised.

For the reasons set forth below the court concludes that the veto by Mayor Long was legal and that the next election on the

MEMORANDUM DECISION AND ORDER - 1  
2BA-95-9 Civil

I certify that on 3/10/95  
copies of this document were sent to  
CLASS  
  
Heqvi  
Pearce Johnson  
Taylor (RWSCT)

issue of alcohol possession within the City of Barrow may not be held sooner than 12 months from the date of the last municipal election.

## II. FACTS

The sale of alcoholic beverages in the City of Barrow has been prohibited for several years pursuant to AS 04.11.490. On October 4, 1994, a majority of the voters of Barrow voted "yes" to the question "Shall the sale and importation of alcoholic beverages be prohibited in Barrow?" as set forth in AS 04.11.496, and "yes" to the question "Shall the possession of alcoholic beverages be prohibited in Barrow?" as set forth in AS 04.11.498. The affirmative vote on the question in AS 04.11.198 created an ordinance of the City of Barrow prohibiting the possession of alcoholic beverages within the city, AS 4.11.502(n), which became effective on November 1, 1994. AS 04.11.496(h); AS 04.11.498(d).

On December 2, 1994, the City Clerk certified petitions with the identical questions that had been approved by the Barrow voters on October 4, 1994. Ordinance 94-25, setting a special election date for the two petition questions, was introduced on December 9, 1994, and approved by the City Council on December 15, 1994. Ordinance 94-25 was passed by the Council and set a special election on the petition questions for February 21, 1995.

On December 30, 1994, the Mayor of the City of Barrow, Donald Long, vetoed Ordinance 94-25. The City Council held a special meeting on January 10, 1995, to discuss Mayor Long's veto. The Council did not override the Mayor's veto of Ordinance 94-25.

On January 26, 1995, Plaintiffs filed this action seeking declaratory and injunctive relief in the nature of mandamus. Specifically, Plaintiffs request the Court to: (1) declare that Mayor Long's veto of Ordinance 94-25 was illegal and therefore null and void; and (2) issue a mandatory injunction in the nature of mandamus directing the Barrow City Clerk to comply with AS 29.26.100 -- AS 29.26.180 and schedule a special election on the two petitions previously certified. With the complaint, Plaintiffs filed a motion for preliminary injunction to bar enforcement of Mayor Long's veto and require the special election scheduled for February 21, 1995, to be held. On February 16, 1995, this Court consolidated the hearing on the motion for preliminary injunction with the trial on the merits.

### III. DISCUSSION

AS 04.11.502 governs the procedure for conducting elections on the various alcoholic beverage options under AS 04.11.490 -- 04.11.500. AS 04.11.502(a) provides:

The local governing body of a municipality, whenever a number of registered voters equal to at least 35 percent of the number of votes cast at the last regular municipal election petition the local governing body to do so, shall place upon a separate ballot at the next regular election or at a special election whichever question or combination of questions set out in AS 04.11.490 -- 04.11.500 constitutes the subject of the petition. The local governing body shall conduct the election in accordance with the election ordinance of the municipality.

This section mandates that an election be held after a sufficient petition is placed before the City Council, subject to the other

restrictions in AS 04.11.502. It does not, however, mandate that the question or questions in the petition be placed before the voters at a special, rather than the next general, election. Whether to hold a special election or to wait until the next general election is left to the discretion of the local governing body under a plain reading of the statute.

The Barrow City Council initially chose to set a special election by passing Ordinance 94-25. However, Mayor Long vetoed the Ordinance. The City of Barrow Code of Ordinances § 2.04.050 states that "the Mayor may veto any ordinance, resolution or motion or other action of the council . . . ." Similarly, AS 29.20.270 provides:

- (a) Except as provided in (c) - (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.
- (b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for the veto. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto, or at the next regular meeting, whichever is later.
- (c) The veto does not extend to
  - (1) appropriation items in a school budget ordinance;
  - (2) actions of the governing body sitting as the board of equalization or the board of adjustment;
  - (3) adoption or repeal of a manager plan of government.
- (d) The mayor of a second class city has no veto power.

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

Under both the Barrow Code and AS 29.20.270, Mayor Long was legally empowered to veto Ordinance 94-25; the veto did not extend to the specific prohibitions of AS 29.20.270(c) nor to an ordinance adopted under AS 04.11.498. The legislature specifically addressed local option elections when drafting AS 29.20.270, see AS 29.20.270(e), and did not prohibit the type of veto utilized here by Mayor Long.

Nevertheless, the Plaintiffs argue that the law requires a special election to be held under these circumstances. The linchpin of Plaintiffs' argument is that local option elections are processes of initiative and referendum. The provisions of the Alaska Statutes governing the initiative and referendum require that an election must be held on an issue of initiative or referendum no sooner than 45 days and no later than 75 days after certification of the petition. AS 28.26.170 -- 180. The election ordinance of Barrow incorporates the state law governing the initiative and referendum by reference. It is therefore the Plaintiffs' position that because AS 04.11.502(a) requires Barrow to conduct the election in accordance with Barrow's election ordinance, an election must be held within the 45 -- 75 day confines of state law. The Plaintiffs argue that Mayor Long's veto was therefore unlawful.

However, a local option election under Title 4 is not a process of initiative or referendum. An initiative is where voters create new substantive law. A referendum is where voters repeal existing substantive law. A local option election, by contrast, is a method whereby local voters simply choose which alcohol restriction, if any, will take effect within their community. The available options are the prohibition of sale of alcohol, the prohibition of use of alcohol, the prohibition of importation of alcohol, and the prohibition of possession of alcohol. These options are provided under state statute and are not created by local ordinance. See Shetters v. State, 832 P.2d 181 (Alaska App. 1992).

Moreover, the legislature clearly intended the procedures governing local option elections to operate independently of the procedures governing the initiative and referendum. Certain provisions of the statute governing the initiative and referendum, AS 29.26.110 -- 160, are incorporated into AS 04.00.502(e), the local option election procedure section, with specified exceptions. By exclusion, AS 04.11.502(e) provides that AS 29.26.170 -- 190 do not apply to local option elections.<sup>1</sup> The

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<sup>1</sup> The Court recognizes that this conclusion is based on the maxim expressio unius est exclusio alterius ("expression of one thing is the exclusion of another"), and that this maxim has limited application in Alaska. Chayron U.S.A., Inc. v. LeResche, 663 P.2d 923, 930 (Alaska 1983). It is appropriate, however, to rely on the maxim here, because it is clear from the legislative history that the legislature considered incorporating AS 29.26.110 -- 190 into AS 04.11.502, but in the end only incorporated AS 29.110 -- 160. See e.g. Letter from Senator Al Adams, Sponsor of SB 173, to Senate Community and Regional Affairs Committee

45 -- 75 day time limitation argued for by Plaintiffs is found under AS 29.26.170 and AS 29.26.180 -- sections excluded from AS 04.11.502(e). This selective incorporation by the legislature demonstrates that local option elections were not to be considered processes of initiative or referendum. Accord Op. Att'y Gen. File No. 663-92-0070, October 23, 1991, n.3 ("Except for the applicability of AS 29.26.110 -- 29.26.160 to an AS 04.11.502(a) petition in a general law municipality, it appears that the legislature intended the Title 4 petition process to operate independently from the AS 29.26 petition process."). Based on the foregoing the veto in question was valid.<sup>2</sup>

Members (February 28, 1989) (SB 173 "makes local option petitions . . . subject to the same requirements as municipal initiative and referendum petitions"). Further, interpreting AS 04.11.502 to exclude the 45 -- 75 day requirement is not inconsistent with the purpose of the statute.

<sup>2</sup> AS 04.21.010(a) also demonstrates that local option elections are not initiatives or referenda. AS 04.21.010(a) states:

A municipality may adopt ordinances governing the importation, barter, sale, and consumption of 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.

According to this section, the Barrow City Council could pass an ordinance prohibiting the importation, barter, sale, or consumption of alcohol as long as the ordinance was not "inconsistent" with Title IV. However, it appears that the Council could not pass an ordinance prohibiting possession, for a municipality can prohibit possession only via a local option election (AS 04.11.498(d) or (e)). Local residents cannot pass a law by initiative or call a law into question if the local governing body could not do the same. Municipality of Anchorage v. Frohne, 568 P.2d 3 (Alaska 1977). Therefore, the local residents are not empowered to hold an initiative or referendum on possession of alcohol, but must go

The Court finds, in the alternative, that even if local option elections are processes of initiative and referendum, a special election may not occur within the time frame argued by the Plaintiffs. Article XI, § 6 of the Alaska Constitution, states that ". . . (a)n initiated law . . . may not be repealed by the legislature within two years of its effective date." This constitutional two-year restriction on repeal applies to local actions of initiative as well as initiatives at the state level. See Cons. Political Action Com. v. Anchorage, 745 P.2d 936, 937-38 (Alaska 1987) (applying the Art. XI, § 7 prohibition against appropriations by initiative against the City of Anchorage); see also McQuillan, Municipal Corporations § 16.50 (3d ed.). Recognizing this constitutional limitation, the legislature included it in Title 29 when it preserved the power of initiative and referendum to residents of municipalities. See AS 29.26.190.<sup>3</sup>

Further, even if the constitutional limitation did not apply, the statutory two-year moratorium on elections would apply. Plaintiffs argue that AS 04.11.502(d) excludes AS 29.26.190(a) because the two directly conflict. However, there is no conflict between the two statutes. AS 04.11.502(d) states:

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through the procedures outlined in Title IV, the local option election.

<sup>3</sup> Sec. 29.26.190. Effect. (a) The effect of an ordinance or resolution may not be modified or negated within two years after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

Notwithstanding any other provisions of law, an election under (a) or (b) of this section to remove a restriction on the sale, importation, or possession of alcoholic beverages previously imposed under AS 04.11.490 -- 04.11.500 may not be conducted more than once every 12 months.

The two-year prohibition elections under AS 29.26.190 does not conflict with AS 04.11.502(d) for it does not permit an election to remove a restriction "more than once every 12 months." Taken together, AS 29.26.190 and AS 04.11.502(d) simply mean that once a restriction has been imposed, that restriction stays in effect for two years, after which an election to remove the restriction cannot occur more than once every 12 months.<sup>4</sup>

Finally, even if the Court were to accept Plaintiffs' contentions that AS 04.11.502(d) does, in fact, exclude AS 29.26.190, the one-year moratorium of AS 04.11.502(d) would apply. Plaintiffs argue that the moratorium does not apply because their proposed election would be the first election held to remove a restriction previously imposed. In essence, Plaintiffs argue that once a restriction has been passed by local option election, AS 04.11.502(d) permits an immediate election to remove that restriction, and only thereafter will the opportunity to remove the restriction be limited to elections once every 12 months. While this may be a literal interpretation of the section, it flies in

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<sup>4</sup> AS 04.11.502(d) has a direct effect on -- and was probably aimed at -- AS 29.26.190(c), which permits new petition applications for measures that have failed to receive voter support to be filed every six months. New petitions can only be filed every 12 months under AS 04.11.502(d).


the face of common sense and produces "an absurd and unjust result [that] would clearly be inconsistent with the purposes and policies of the act . . . ." 2A Singer, Southerland Statutory Construction § 45.12 (5th Ed.); see also Alaska Public Emp. v. City of Fairbanks, 753 P.2d 725, 727 (Alaska 1988); Municipality of Anchorage v. Sisters of Providence, 628 P.2d 22, 27 & n.7 (Alaska 1981); LaFever v. State, 877 P.2d 1298, 1299 (Alaska App. 1994) ("Alaska does not adhere to a 'plain meaning rule' of statutory construction . . . we must avoid construing a statute so as to yield patently absurd results or to defeat the obvious legislative purpose of the statute"). When the legislature drafted AS 04.11.498, the provision allowing a local option election on whether possession of alcohol should be prohibited, it found, inter alia, that the abuse of alcohol seriously interfered with the rights and privileges of the people of the state and that the prohibition of alcohol was an effective tool for controlling that abuse. An Act Relating to Regulation of Alcoholic Beverages and Enactment of Municipal Ordinances, ch. 80, § 1, SIA 1986. The letter of intent accompanying the Senate version of the bill adding section (d) with its 12-month prohibition to AS 04.11.502 stated that the purpose of the bill was to "assist those communities which have elected to adopt one or more of the local option provisions . . . by allowing for more local control once the option is adopted . . ." Interpreting AS 04.11.502(d) in such a manner as to allow the voice of the people to be questioned immediately after the vote

is tallied would go against the stated legislative purpose and common sense.

**IV. CONCLUSION**

Based on the above analysis, Plaintiffs' complaint for declaratory judgment and injunctive relief in the nature of mandamus is **DISMISSED** with prejudice. The veto by Mayor Long was legal. The next election on the issue of alcohol possession within the City of Barrow may not be held sooner than 12 months from the date of the last municipal election.

ENTERED at Fairbanks, Alaska, this 10<sup>th</sup> day of March, 1995.



RALPH R. BEISTLINE  
SUPERIOR COURT JUDGE

FRONT



TOP

STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

STATE OF ALASKA

Authority: A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a restaurant or eating place licensee?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

END OF BALLOT

FRONT



TOP

STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except on premises operated by the municipality and under a restaurant or eating place license?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

**END OF BALLOT**

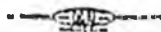
FRONT



TOP

STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a restaurant or eating place licensee?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a beverage dispensary licensee?

YES	
NO	

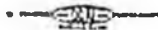
END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the municipality who is also licensed under a beverage dispensary license for premises outside of the municipality?

YES

NO

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except on premises operated by the municipality and under a beverage dispensary license?

YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a beverage dispensary licensee?

YES	
NO	

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.

A "beverage dispensary license" is commonly known as a "bar."

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the established village who is also licensed under a beverage dispensary license for premises outside of the established village?

YES	
NO	

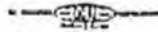
END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: AS 04.11.150(a)  
Except as provided under (g) of this section, a package store license authorizes the licensee to sell alcoholic beverages to a person present on the licensed premises or to a person known to the licensee who makes a written solicitation to that licensee for shipment. A licensee, agent, or employee may only ship alcoholic beverages to the purchase. Before commencing the practice of shipping alcoholic beverages, and with a subsequent application to renew the license, a licensee shall notify the board in writing of the licensee's intention to ship alcoholic beverages in response to a written solicitation. The package store licensee, agent, or employee shall include written information on fetal alcohol syndrome and fetal alcohol effects resulting from a woman consuming alcohol during pregnancy in a shipment of alcoholic beverages sold in response to a written solicitation.

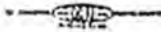
TURN BALLOT OVER

FRONT



STATE OF ALASKA  
OFFICIAL BALLOT

ELECTION



THIS STUB TO BE REMOVED BY ELECTION BOARD

STATE OF ALASKA

AS 04.11.150(g): If a shipment is to an area that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2), a package store licensee, agent, or employee may not ship to a purchaser more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a calendar month.

A "package store license" is commonly known as a "liquor store."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except by a package store licensee?

YES	
NO	

*2nd ballot will be needed if needs to be on the ballot for clarification for the voter.*

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



THIS STUB TO BE REMOVED BY ELECTION BOARD

**STATE OF ALASKA**

Authority: AS 04.11.150(a)  
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TURN PULLY OVER

FRONT



TOP

STATE OF ALASKA  
OFFICIAL BALLOT

ELECTION



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STATE OF ALASKA

AS 04.11.150(g): If a shipment is to an area that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2), a package store licensee, agent, or employee may not ship to a purchaser more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a calendar month.

A "package store license" is commonly known as a "liquor store."

Shall [Municipality] adopt a local option to prohibit the sale of alcoholic beverages except on premises operated by the municipality and under a package store license?

YES	
NO	

*2nd ballot will be needed if needs to be on the ballot for clarification for the voter.*

END OF BALLOT

FRONT



STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



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**STATE OF ALASKA**

Authority: AS 04.11.150(a)  
Except as provided under (g) of this section, a package store license authorizes the licensee to sell alcoholic beverages to a person present on the licensed premises, to a person known to the licensee who makes a written solicitation to that licensee for shipment. A licensee, agent, or employee may only ship alcoholic beverages to the purchase. Before commencing the practice of shipping alcoholic beverages, and with a subsequent application to renew the license, a licensee shall notify the board in writing of the licensee's intention to ship alcoholic beverages in response to a written solicitation. The package store licensee, agent, or employee shall include written information on fetal alcohol syndrome and fetal alcohol effects resulting from a woman consuming alcohol during pregnancy in a shipment of alcoholic beverages sold in response to a written solicitation.

TURN BALLOT OVER

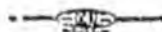
FRONT



TOP

STATE OF ALASKA  
**OFFICIAL BALLOT**

**ELECTION**



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STATE OF ALASKA

AS 04.11.150(g): If a shipment is to an area that has restricted the sale of alcoholic beverages under AS 04.11.491 (a)(1), (2), or (3) or (b)(1) or (2), a package store licensee, agent, or employee may not ship to a purchaser more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages in a calendar month.

A "package store license" is commonly known as a "liquor store."

Shall [Village] adopt a local option to prohibit the sale of alcoholic beverages except by a package store licensee?

YES

NO

*2nd ballot will be needed if ) needs to be on the ballot for clarification for the voter.*

END OF BALLOT

**S B**

**9 6**

WITNESSES

3/22

SB 96

✓ JENNIFER SECAY - KODIAK

486-9300

MARIC EARNST - UTAHASKA

881-1257

PROF. JANET KELLY

CLEMSON UNIVERSITY

(803) 375-1730

SCOTT-BEANOT ERICSON

MUNI ATTORNEYS OFFICE

ANCH 343-4227

FAX 4550

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/22/95

FURTHER: Finance

Date of 5-Day Notice: 3/2/95  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/30/95

CRA Committee considered      SENATE BILL NO. 96

"An Act relating to municipal activities or services mandated by state statute."

and recommends:

- be replaced with \_\_\_\_\_ CS SENATE BILL 96 (CRA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- technical change
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	<input checked="" type="checkbox"/>	<i>Fred T. Zwick</i>	<input checked="" type="checkbox"/>		
<i>Robert E. Cooper</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>John Torgerson</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

<i>LEGISLATIVE BUDGET &amp; AUDIT</i>	<i>3/22/95</i>		<input checked="" type="checkbox"/>

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

CS FOR SENATE BILL NO. 96(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR KELLY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal activities, services, or programs mandated by the  
2 state."

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

4 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
5 has the power during each session to dramatically change the laws of the state. Statutes can  
6 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
7 this state is always changing. Additional changes in the law from year to year based upon  
8 the legislature's funding choices are not different in nature from legislative statutory  
9 amendments because both the statutory changes and the funding decisions are within the  
10 control of the legislature.

11 (b) The legislature finds that

12 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
13 that demands action from a subordinate government without adequate provision for funding  
14 the cost to the subordinate government of implementing the demanded action;

1 (2) unfunded mandates are a nationwide problem because federal or state  
2 governments have tended to balance their budgets on the backs of subordinate governments,  
3 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
4 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
5 the blame for higher taxes or service cuts falls to local elected officials rather than the  
6 government that made the decision;

7 (3) the legislature has proposed strong measures against the imposition of  
8 unfunded mandates by the federal government on the state;

9 (4) in the United States, 16 states currently have legislation to limit or prohibit  
10 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
11 mandates legislation was introduced in 22 state legislatures in the 1993 - 1994 legislative  
12 session to protect municipalities;

13 (5) according to a September 1994 research report by the National League of  
14 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
15 difficult to quantify the overall effect of mandates because most municipalities are faced with  
16 hundreds of unfunded mandates, many of which have relatively low costs, but that together  
17 are very expensive and annually increasing in cost; the cost of unfunded mandates is partially  
18 covered by state revenue sharing or other state aid to municipalities; however, the problem is  
19 intensified because state governments often tend to cut funding programs as they shift services  
20 and new mandates to municipalities;

21 (6) state government has cut state aid to municipalities in this state far more  
22 deeply than any other major program (over 55 percent in the past 10 years) while it has  
23 significantly increased the number of unfunded mandates on municipal governments through  
24 statutes, appropriation bills, regulations, and administrative actions;

25 (7) the effects of unfunded mandates and decreased state aid on municipalities  
26 has substantially decreased the quality of life in most municipalities through decreases in  
27 municipal basic services such as public safety, road maintenance, culture and recreation  
28 services, social services, public education, and waste management;

29 (8) the imposition of new unfunded mandates on municipalities while  
30 incrementally decreasing state aid to municipalities to implement existing mandates has been  
31 a major cause of increased property taxes and other local taxes, as well as a major cause of

1 the destabilization of some communities that has lead, and will lead, to dissolution of  
2 municipalities.

3 \* Sec. 2. AS 24.08 is amended by adding a new section to read:

4 Sec. 24.08.120. MANDATED MUNICIPAL SERVICES. (a) Except as  
5 provided in (d) of this section, a bill enacted after January 1, 1996, that imposes or  
6 increases costs mandated by the state as a result of a new activity, service, or program  
7 or an increase in the level of municipal funding for an activity, service, or program  
8 required of municipalities by the bill is not effective unless sufficient funds are  
9 appropriated at the time of enactment to fully fund the mandated activity, service, or  
10 program. Unless sufficient levels of funding continue to be appropriated in each  
11 successive legislative session that the mandate is in effect, or new funding is otherwise  
12 provided annually, the mandate shall be inoperative in its effect upon a municipality  
13 until sufficient state funds are provided to pay the additional costs directly required for  
14 the actual performance of the activity, service, or program.

15 (b) Each bill enacted after January 1, 1996, that applies to municipalities must  
16 include findings regarding its effect on municipalities prepared by the legislative  
17 finance division. Each regulation or administrative order adopted under the authority  
18 of a bill enacted after January 1, 1996, that applies to municipalities must include  
19 findings regarding its effect on municipalities prepared by the Department of  
20 Community and Regional Affairs. A bill, regulation, or order without findings  
21 required under this subsection is void. The findings must address whether

22 (1) the bill, regulation, or order mandates a new activity, service, or  
23 program, significantly increases a current activity, service, or program, or causes a  
24 significant increase in the level of municipal funding for an activity, service, or  
25 program; and

26 (2) a mandate contained in the bill, regulation, or order will have a  
27 significant financial effect on municipalities.

28 (c) If a municipality disputes findings made under (b) of this section, it may,  
29 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
30 in writing, with the legislative audit division for a determination of the accuracy of the  
31 findings. The legislative audit division shall make its determination public within 60

1 days after receipt of the petition.

2 (d) This section does not apply to a

3 (1) bill passed in response to a disaster emergency declared by the  
4 governor under AS 26.23.020;

5 (2) bill passed by two-thirds of the members of each house;

6 (3) mandate requested by resolution from the Alaska Municipal League;

7 (4) bill that affirms existing law as it has been construed by the courts  
8 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
9 or

10 (5) bill that creates, eliminates, or changes an offense; in this  
11 paragraph, "offense" has the meaning given in AS 11.81.900.

12 (e) For purposes of this section,

13 (1) "costs mandated by the state" means any increased cost creating a  
14 significant financial effect that a municipality is required to incur as a result of any bill  
15 that, when enacted, mandates a new activity, service, or program, significantly  
16 increases a current activity, service, or program, or causes a significant increase in the  
17 level of municipal funding for an activity, service, or program; costs mandated by the  
18 state do not include costs of the type experienced equally by private and public entities  
19 that are incurred by a municipality in its proprietary capacity; costs mandated by a bill  
20 include any costs associated with regulations adopted under the authority of the bill  
21 if it is enacted;

22 (2) "increase in the level of municipal funding for an activity, service,  
23 or program" means any change in a municipality's delivery of a current service,  
24 activity, or program, or a reduction in the level of state funding for an activity, service,  
25 or program that is required by either a new or amended statute or that would be  
26 required by a bill if it is enacted;

27 (3) "new activity, service, or program" means an activity, service, or  
28 program that is required as a result of a statute or bill that was not required before  
29 enactment of the statute or that is not required unless the bill is enacted and that  
30 results in costs mandated by the state;

31 (4) "new funding" means a new appropriation;

1  
2  
3

(5) "significant financial effect" means the employment of additional personnel in one or more municipalities or an increase in expenditures for contracted services or equipment of more than \$20,000 in each of one or more municipalities.

ACCEPTED BY S. CRH 3/22

9-LS0751\G.2 ✓  
Cook  
3/24/95

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 96(CRA), Work Draft 9-LS0751\G, dated 3/22/95

1 Page 3, line 16:

2 Delete "audit"

3 Insert "finance"

4 Page 3, after line 30:

5 Insert a new paragraph to read:

6 "(1) bill passed in response to a disaster emergency declared by the  
7 governor under AS 26.13.020;"

8 Renumber the following paragraphs accordingly.

9 Page 4, line 1:

10 Delete "the affected municipalities"

11 Insert "resolution from the Alaska Municipal League"

AMENDMENTS TO BE BEFORE SENATE COMMUNITY & REGIONAL AFFAIRS  
COMMITTEE REGARDING SENATE BILL 96 (UNFUNDED MANDATES)

AMENDMENT G.2

(ADOPTED BY COMMITTEE 3/22)

AMENDMENT G.3

(NEW PROPOSAL BY SENATOR KELLY)

AMENDMENT G.4

(NEW PROPOSAL BY SENATOR KELLY)

AMENDMENT #5

(NEW PROPOSAL BY SENATOR TORGERSON)

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 96(CRA), Work Draft 9-LS0751\G, dated 3/22/95

1 Page 3, line 16:

2 Delete "audit"

3 Insert "finance"

4 Page 3, after line 30:

5 Insert a new paragraph to read:

6 "(1) bill passed in response to a disaster ~~emergency~~ declared by the  
7 governor under AS 26.23.020;"

8 Renumber the following paragraphs accordingly.

9 Page 4, line 1:

10 Delete "the affected municipalities"

11 Insert "resolution from the Alaska Municipal League"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 96(CRA) (Work Draft 9-LS0751\G, dated 3/22/95)

1 Page 3, line 9:

2 Delete "new"

3

4

5

*Approved*

6 Page 3, lines 14 and 15:

7 Delete ", and each regulation or other administrative order adopted after January 1,  
8 1996,"

9 Page 3, line 17, after "division.":

10 Insert "Each regulation or administrative order adopted under the authority of a bill  
11 enacted after January 1, 1996, that applies to municipalities must include findings regarding  
12 its effect on municipalities prepared by the Department of Community and Regional Affairs."

13 Page 4, line 31, through page 5, line 9:

14 Delete all material.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 96(CRA) (Work Draft 9-LS0751\G, dated 3/22/95)

1 Page 4, lines 26 - 27:

2 Delete "it does not include transfers or reductions in another appropriation;"

*Approved*

AMENDMENT #5

BY SENATOR TORGERSON

*Approved*

TO: CSSB 96(CRA) (WORK DRAFT 9-LS0751\G, DATED 3/33/95)

PAGE 3, LINE 13:

DELETE "REVOKED"

INSERT NEW LANGUAGE TO READ:

"INOPERATIVE IN ITS EFFECT UPON A MUNICIPALITY UNTIL SUFFICIENT STATE FUNDS ARE PROVIDED TO PAY THE ADDITIONAL COSTS DIRECTLY REQUIRED FOR THE ACTUAL PERFORMANCE OF THE ACTIVITY, SERVICE OR PROGRAM."

PAGE 4, LINE 30:

AFTER "\$20,000 IN"

INSERT NEW LANGUAGE TO READ:

"EACH OF"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 96(CRA) 9-LS0751\G (3/22/95)

- 1 Page 3, line 16:
- 2 Delete "audit"
- 3 Insert "finance"

*ADOPTED*

PROPOSED AMENDMENTS BY SENATOR KELLY TO  
CS SB 96(CRA) WORK DRAFT G

TO PAGE THREE, LINE 14:

After "1996", delete [AND EACH REGULATION OR OTHER ADMINISTRATIVE  
ORDER ADOPTED AFTER JANUARY 1, 1996]

TO PAGE 3, LINE 16:

Delete [AUDIT] and replace with "finance"

TO PAGE 3, LINE 17:

After "division". add new language to read:]

"Each regulation or other administrative order adopted after January 1,  
1996, as a result of a bill enacted after January 1, 1996, must  
include findings regarding its effect on municipalities as prepared  
by the Department of Community and Regional Affairs."

TO PAGE 4 AND 5:

Delete Section 3.

9-LS0751G

Cook

3/22/95

## CS FOR SENATE BILL NO. 96(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR KELLY

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to municipal activities, services, or programs mandated by the  
2 state and requiring increased costs to municipalities to be included in fiscal notes  
3 on regulations."

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

5 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
6 has the power during each session to dramatically change the laws of the state. Statutes can  
7 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
8 this state is always changing. Additional changes in the law from year to year based upon  
9 the legislature's funding choices are not different in nature from legislative statutory  
10 amendments because both the statutory changes and the funding decisions are within the  
11 control of the legislature.

12 (b) The legislature finds that

13 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
14 that demands action from a subordinate government without adequate provision for funding

1 the cost to the subordinate government of implementing the demanded action;

2 (2) unfunded mandates are a nationwide problem because federal or state  
3 governments have tended to balance their budgets on the backs of subordinate governments,  
4 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
5 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
6 the blame for higher taxes or service cuts falls to local elected official rather than the  
7 government that made the decision;

8 (3) the legislature has proposed strong measures against the imposition of  
9 unfunded mandates by the federal government on the state;

10 (4) in the United States, 16 states currently have legislation to limit or prohibit  
11 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
12 mandates legislation was introduced in 22 state legislatures in the 1993 - 1994 legislative  
13 session to protect municipalities;

14 (5) according to a September 1994 research report by the National League of  
15 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
16 difficult to quantify the overall effect of mandates because most municipalities are faced with  
17 hundreds of unfunded mandates, many of which have relatively low costs, but that together  
18 are very expensive and annually increasing in cost; the cost of unfunded mandates is partially  
19 covered by state revenue sharing or other state aid to municipalities; however, the problem is  
20 intensified because state governments often tend to cut funding programs as they shift services  
21 and new mandates to municipalities;

22 (6) state government has cut state aid to municipalities in this state far more  
23 deeply than any other major program (over 55 percent in the past 10 years) while it has  
24 significantly increased the number of unfunded mandates on municipal governments through  
25 statutes, appropriation bills, regulations, and administrative actions;

26 (7) the effects of unfunded mandates and decreased state aid on municipalities  
27 has substantially decreased the quality of life in most municipalities through decreases in  
28 municipal basic services such as public safety, road maintenance, culture and recreation  
29 services, social services, public education, and waste management;

30 (8) the imposition of new unfunded mandates on municipalities while  
31 incrementally decreasing state aid to municipalities to implement existing mandates has been

1 a major cause of increased property taxes and other local taxes, as well as a major cause of  
2 the destabilization of some communities that has lead, and will lead, to dissolution of  
3 municipalities.

4 \* Sec. 2. AS 24.08 is amended by adding a new section to read:

5 Sec. 24.08.120. MANDATED MUNICIPAL SERVICES. (a) Except as  
6 provided in (d) of this section, a bill enacted after January 1, 1996, that imposes or  
7 increases costs mandated by the state as a result of a new activity, service, or program  
8 or an increase in the level of municipal funding for an activity, service, or program  
9 required of municipalities by the bill is not effective unless sufficient new funds are  
10 appropriated at the time of enactment to fully fund the mandated activity, service, or  
11 program. Unless sufficient levels of funding continue to be appropriated in each  
12 successive legislative session that the mandate is in effect, or new funding is otherwise  
13 provided annually, the mandate shall be revoked.

14 (b) Each bill enacted after January 1, 1996, and each regulation or other  
15 administrative order adopted after January 1, 1996, that applies to municipalities must  
16 include findings regarding its effect on municipalities prepared by the legislative audit  
17 division. A bill, regulation, or order without findings required under this subsection  
18 is void. The findings must address whether

19 (1) the bill, regulation, or order mandates a new activity, service, or  
20 program, significantly increases a current activity, service, or program, or causes a  
21 significant increase in the level of municipal funding for an activity, service, or  
22 program; and

23 (2) a mandate contained in the bill, regulation, or order will have a  
24 significant financial effect on municipalities.

25 (c) If a municipality disputes findings made under (b) of this section, it may,  
26 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
27 in writing, with the legislative audit division for a determination of the accuracy of the  
28 findings. The legislative audit division shall make its determination public within 60  
29 days after receipt of the petition.

30 (d) This section does not apply to a

31 (1) bill passed by two-thirds of the members of each house;

1 (2) mandate requested by the affected municipalities;

2 (3) bill that affirms existing law as it has been construed by the courts  
3 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
4 or

5 (4) bill that creates, eliminates, or changes an offense; in this  
6 paragraph, "offense" has the meaning given in AS 11.81.900.

7 (c) For purposes of this section,

8 (1) "costs mandated by the state" means any increased cost creating a  
9 significant financial effect that a municipality is required to incur as a result of any bill  
10 that, when enacted, mandates a new activity, service, or program, significantly  
11 increases a current activity, service, or program, or causes a significant increase in the  
12 level of municipal funding for an activity, service, or program; costs mandated by the  
13 state do not include costs of the type experienced equally by private and public entities  
14 that are incurred by a municipality in its proprietary capacity; costs mandated by a bill  
15 include any costs associated with regulations adopted under the authority of the bill  
16 if it is enacted;

17 (2) "increase in the level of municipal funding for an activity, service,  
18 or program" means any change in a municipality's delivery of a current service,  
19 activity, or program, or a reduction in the level of state funding for an activity, service,  
20 or program that is required by either a new or amended statute or that would be  
21 required by a bill if it is enacted;

22 (3) "new activity, service, or program" means an activity, service, or  
23 program that is required as a result of a statute or bill that was not required before  
24 enactment of the statute or that is not required unless the bill is enacted and that  
25 results in costs mandated by the state;

26 (4) "new funding" means a new appropriation; it does not include  
27 transfers or reductions in another appropriation;

28 (5) "significant financial effect" means the employment of additional  
29 personnel in one or more municipalities or an increase in expenditures for contracted  
30 services or equipment of more than \$20,000 in one or more municipalities.

31 \* Sec. 3. AS 44.62.195 is amended to read:

1           Sec. 44.62.195. FISCAL NOTES ON REGULATIONS. if the adoption,  
2 amendment, or repeal of a regulation would require increased appropriations by the  
3 state, the department or agency affected shall prepare an estimate of the appropriation  
4 increase for the fiscal year following adoption, amendment, or repeal of the regulation  
5 and for at least two succeeding fiscal years. If the adoption, repeal, or amendment  
6 of a regulation would require increased costs to municipalities, the Department  
7 of Community and Regional Affairs shall prepare an estimate of the increased  
8 costs for the fiscal year following the regulation change and for at least two  
9 succeeding fiscal years.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 96 (CRA)

Revision Date: \_\_\_\_\_ Dept. Affected: Legislative Audit  
 Title: As Act related to MHTIA, activities or services provided with state BRU: \_\_\_\_\_  
 Sponsor: Senator Kelly Component: \_\_\_\_\_  
 Requester: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	- 0 -	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0.0 -	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ \_\_\_\_\_

POSITIONS

FULL-TIME						
PART-TIME	N/A					
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Candy S. Willet  
 Division: Legislative Audit  
 Approved by Commissioner: Hardy S. Willet  
 Agency: \_\_\_\_\_

Phone: 465-3830  
 Date: 3/22/95  
 Date: \_\_\_\_\_

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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

March 15, 1995

**SUBJECT:** State mandates on municipalities (CSSB 96(CRA))

**TO:** Senator John Torgerson  
Chair, Senate Community and Regional Affairs

**FROM:** Tamara Brandt Cook *TBC*  
Director of Legal Services

Here is a new draft incorporating changes requested by memorandum from Kevin Ritchie dated March 14, 1995. With the exception of the change made to incorporate the definition of offense as it appears in the Criminal Code, be aware that the changes made in this draft in no way alleviate the concerns and questions I expressed in my memorandum to you dated March 8, 1995. With respect to the specific changes made in this draft I have some additional comments. Note that because the bill now seems to be dealing with enactments rather than effective dates, the operative provision has been relocated to AS 24.08.

(1) Sec.24.08.120(a) - This subsection is illogical as reworded. On the one hand, it applies to bills enacted after a particular date. On the other it claims those very bills may not be enacted unless certain things occur. As a substantive matter, it appears that the subsection is intended to prevent the enactment of certain bills and require the repeal of others. Since the legislature, subject to veto by the governor, has the constitutional power to enact and repeal laws, how is this to be accomplished? And, once again, who is to decide whether sufficient new funds have been appropriated for purposes of determining whether or not a bill is enacted (and, whether the funds cease to be provided later, for purposes of determining whether it is repealed)? How is one to know what laws have been enacted and what laws have been repealed?

(2) Sec. 24.08.120(b) - Under this subsection it is now the legislative audit division that must prepare findings for every regulation, administrative order or bill adopted or enacted after the trigger date. Yet under subsection (c) if a municipality disputes findings it files a petition for review with the legislative audit division. Is this review provision useful in any way when it is the same division that originally prepares the findings that must now review them? Does anything happen as a result of the review?

TBC:klb  
95-164.klb

Enclosure

9-LS0751NF

Cook

3/15/95

## CS FOR SENATE BILL NO. 96(CRA)

## IN THE LEGISLATURE OF THE STATE OF ALASKA

## NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR KELLY

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to municipal activities or services mandated by the state and  
2 requiring increased costs to municipalities to be included in fiscal notes on  
3 regulations."

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

5 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) In this state, the legislature  
6 has the power during each session to dramatically change the laws of the state. Statutes can  
7 be, and are, enacted, repealed, and amended each year. The law as it applies to citizens in  
8 this state is always changing. Additional changes in the law from year to year based upon  
9 the legislature's funding choices are not different in nature from legislative statutory  
10 amendments because both the statutory changes and the funding decisions are within the  
11 control of the legislature.

12 (b) The legislature finds that

13 (1) an "unfunded mandate" is any statute, administrative regulation, or order  
14 that demands action from a subordinate government without adequate provision for funding

1 the cost to the subordinate government of implementing the demanded action;

2 (2) unfunded mandates are a nationwide problem because federal or state  
3 governments have tended to balance their budgets on the backs of subordinate governments,  
4 thereby shielding themselves from taking the fiscal responsibility for their own policy and  
5 program decisions; from a purely political standpoint, an unfunded mandate can ensure that  
6 the blame for higher taxes or service cuts falls to local elected officials rather than the  
7 government that made the decision;

8 (3) the legislature has proposed strong measures against the imposition of  
9 unfunded mandates by the federal government on the state;

10 (4) in the United States, 16 states currently have legislation to limit or prohibit  
11 state governments from imposing unfunded mandates on municipalities; in addition, anti-  
12 mandates legislation was introduced in 22 state legislatures in the 1993 - 1994 legislative  
13 session to protect municipalities;

14 (5) according to a September 1994 research report by the National League of  
15 Cities titled "Anti-Mandates Strategies - Reimbursement Requirements in the States," it is  
16 difficult to quantify the overall effect of mandates because most municipalities are faced with  
17 hundreds of unfunded mandates, many of which have relatively low costs, but that together  
18 are very expensive and annually increasing in cost; the cost of unfunded mandates is partially  
19 covered by state revenue sharing or other state aid to municipalities; however, the problem is  
20 intensified because state governments often tend to cut funding programs as they shift services  
21 and new mandates to municipalities;

22 (6) state government has cut state aid to municipalities in this state far more  
23 deeply than any other major program (over 55 percent in the past 10 years) while it has  
24 significantly increased the number of unfunded mandates on municipal governments through  
25 statutes, appropriation bills, regulations, and administrative actions;

26 (7) the effects of unfunded mandates and decreased state aid on municipalities  
27 has substantially decreased the quality of life in most municipalities through decreases in  
28 municipal basic services such as public safety, road maintenance, culture and recreation  
29 services, social services, public education, and waste management;

30 (8) the imposition of new unfunded mandates on municipalities while  
31 incrementally decreasing state aid to municipalities to implement existing mandates has been

1 a major cause of increased property taxes and other local taxes, as well as a major cause of  
 2 the destabilization of some communities that has lead, and will lead, to dissolution of  
 3 municipalities.

4 \* Sec. 2. AS 24.08 is amended by adding a new section to read:

5 Sec. 24.08.120. MANDATED MUNICIPAL SERVICES. (a) Except as  
 6 provided in (d) of this section, a bill enacted<sup>EFFECTIVE</sup> after January 1, 1996, that imposes or  
 7 increases costs mandated by the state as a result of a new activity or service or an  
 8 increase in the level of municipal funding for an activity or service required of  
 9 municipalities by the bill may not be enacted<sup>UNLESS FUNDS OF EFFECTS</sup> unless sufficient new funds are  
 10 appropriated at the time of enactment to fully fund the mandated service or activity.  
 11 Unless sufficient new funds continue to be appropriated in each successive legislative  
 12 session that the mandate is in effect, or sufficient new funds are otherwise provided  
 13 annually, the mandate shall be repealed.

14 (b) Each bill enacted after January 1, 1996, and each regulation or other  
 15 administrative order adopted after January 1, 1996, that applies to municipalities must  
 16 include findings regarding its effect on municipalities prepared by the legislative audit  
 17 division. A bill, regulation, or order without findings required under this subsection  
 18 is void. The findings must address whether

19 (1) the bill, regulation, or order mandates a new activity or service,  
 20 significantly increases a current activity or service, or causes a significant increase in  
 21 the level of municipal funding for an activity or service; and

22 (2) a mandate contained in the bill, regulation, or order will have a  
 23 significant financial effect on municipalities.

24 (c) If a municipality disputes findings made under (b) of this section, it may,  
 25 within 30 days after the effective date of the bill, regulation, or order, file a petition,  
 26 in writing, with the legislative audit division for a determination of the accuracy of the  
 27 findings. The legislative audit division shall make its determination public within 60  
 28 days after receipt of the petition.

29 (d) This section does not apply to a

30 (1) bill passed by two-thirds of the members of each house;

31 (2) mandate requested by the affected municipalities;

1 (3) bill that affirms existing law as it has been construed by the courts  
2 or enacts federal law or regulation in the form in which it was enacted or promulgated;  
3 or

4 (4) bill that creates, eliminates, or changes an offense; in this  
5 paragraph, "offense" has the meaning given in AS 11.81.900.

6 (e) For purposes of this section,

7 (1) "costs mandated by the state" means any increased cost creating a  
8 significant financial effect that a municipality is required to incur as a result of any bill  
9 that, when enacted, mandates a new activity or service, significantly increases a current  
10 activity or service, or causes a significant increase in the level of municipal funding  
11 for an activity or service; costs mandated by the state do not include costs of the type  
12 experienced equally by private and public entities that are incurred by a municipality  
13 in its proprietary capacity; costs mandated by a bill include any costs associated with  
14 regulations adopted under the authority of the bill if it is enacted;

15 (2) "increase in the level of municipal funding for an activity or  
16 service" means any change in a municipality's delivery of a current service or activity,  
17 or a reduction in the level of state funding for an activity or service that is required  
18 by either a new or amended statute or that would be required by a bill if it is enacted;

19 (3) "new activity or service" means an activity or service that is  
20 required as a result of a statute or bill that was not required before enactment of the  
21 statute or that is not required unless the bill is enacted and that results in costs  
22 mandated by the state;

23 (4) "new funding" means a new appropriation; it does not include  
24 transfers or reductions in another appropriation;

25 (5) "significant financial effect" means the employment of additional  
26 personnel in one or more municipalities or an increase in expenditures for contracted  
27 services or equipment of more than \$20,000 in one or more municipalities.

28 \* Sec. 3. AS 44.62.195 is amended to read:

29 Sec. 44.62.195. FISCAL NOTES ON REGULATIONS. If the adoption,  
30 amendment, or repeal of a regulation would require increased appropriations by the  
31 state, or increased costs to municipalities, the department or agency affected shall

- 1 prepare an estimate of the appropriation increase for the fiscal year following adoption,
- 2 amendment, or repeal of the regulation and for at least two succeeding fiscal years.

**DIVISION OF LEGAL SERVICES  
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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

March 8, 1995

**SUBJECT:** Mandated municipal services (CSSB 96)

**TO:** Senator John Torgerson, Chair  
Senate Community and Regional Affairs Committee

**FROM:** Tamara Brandt Cook *TBC*  
Director of Legal Services

Here is the requested draft committee substitute based on a "Proposed Bill" submitted to me. The basic premise behind the bill strikes me as unworkable. If a bill that imposes mandates on municipalities does not become effective unless the state provides funding for the mandates, how is anyone to ever know what laws are in effect and what laws are not? Who is to determine whether the level of funding is sufficient and whether a bill, therefore, takes effect? What if the level of funding is sufficient for some municipalities but not for others? Is the bill in effect or not? In only some, but not all municipalities? Which ones? And who is to determine whether future funding levels are insufficient, so that a statute goes out of effect? How is the state to establish any coherent state-wide policy, if statutes (and implementing regulations) pop into and out of effect?

I have tried to follow the Proposed Bill closely, but did reword language somewhat, so please review this draft carefully in case I misunderstood what was requested. In particular, I tried to untangle the use of "bill" and "statute" somewhat and this should be checked. I reworded some phrases slightly to match the exact wording of the phrases that are defined, to pick up the definitions, and these changes should be checked for substantive effect. I have the following specific observations and questions about this draft:

(1) The findings language contained in sec. 1(a) of the draft is not strictly true in that it leaves out the role of the governor in the enactment of legislation. What is the point of this finding in regard to this particular bill?

(2) In sec. 2 of the draft, AS 01.10.075(a) applies to bills enacted after January 1, 1996. Should this be tied to the effective date rather than the date of enactment? In subsection (b) of the Proposed Bill, the date was not included. I added it, assuming that the finding requirement should also apply only to new bills and regulations. Correct?

Senator John Torgerson

March 8, 1995

Page 2

(3) In (c) certain bills are effective only if new funds are appropriated "in the same session." Does this mean the same regular or special session, or two year legislative session cycle? Does the trigger depend upon the effective date of the appropriation, the time it is passed by the legislature, or the time it is enacted as a result of the governor's signature or expiration of veto period? Who decides whether sufficient new funds have been appropriated in the same session for purposes of determining whether a bill takes effect? Who decides in the future whether a bill goes out of effect? Can a bill go out of effect once it becomes law without legislative action to repeal it?

(4) In subsection (d) a municipality may dispute findings on a bill or regulation and the Legislative Audit Division is required to review those findings for accuracy. The division's determination is made public. What then? If the division decides that the findings are, indeed, wrong, is there any consequence? Also, a municipality, not being sentient, cannot dispute anything. I presume it is the governing body or the mayor that acts to file a petition on behalf of the municipality. What if the mayor and governing body do not agree?

(5) Since the state cannot enact federal law, what does paragraph (e)(3) mean?

(6) Under (e)(4), what is a bill that changes a "crime or misdemeanor?" "Crime" is defined in AS 11.81.900(9) to include misdemeanors and felonies for which a period of imprisonment is possible. "Offense" is defined in AS 11.81.900(34) to include crimes and violations. Are these definitions relevant in the context of this bill?

(7) Under (f), the definitions seem to contain substantive law that probably does not belong in a definition section. I can't say that I understand any of them. In particular the definition of "new funding" is utterly incomprehensible to me.

(8) The provision dealing with fiscal notes for regulations is amended in sec. 3 to require information regarding increased costs to municipalities. The provision currently states that the affected department or agency will prepare the fiscal note. "Agency" is defined in AS 44.62.640 and the word does not include a municipality. Is any executive branch department affected by increased costs to municipalities? If not, who prepares this fiscal note information?

TBC:klb

65-133.klb

Enclosure