

**Alcohol Control by Referendum in Northern Native Communities:
the Alaska Local Option Law**

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ABSTRACT: When Alaska became a state in 1959, state laws removed control of alcohol regulation from the federal government and Native communities. In 1981, however, the state legislature changed alcohol laws to give residents broad powers to regulate how alcohol comes into their communities via a local option referendum. By mid-1999, 112 small communities had held 197 alcohol control elections under the state law. Sixty-nine percent of these elections added new restrictions on alcohol, while 13% removed restrictions previously imposed. The remaining 18% of elections did not receive a majority vote needed to change the existing status. Most communities passing local option restrictions chose to ban sale and importation. Although most of these elections occurred during the first eight years after the law was passed, elections continue to occur as the law evolves and as communities debate the merits of alcohol control. Although growing evidence suggests that the local option law may reduce adverse effects of alcohol abuse in Alaska Native communities, its most important contribution may be to restore to these communities a limited form of self-government.

Key words: alcohol, alcohol control, local government, small communities, elections, rural Alaska, Native Americans, First Nations

INTRODUCTION

When Alaska achieved statehood in 1959, state laws superseded federal Indian law, which had kept alcohol scarce in rural Native communities for the first half of the century (Conn, 1986). As alcohol flowed more freely in rural areas during the next two decades, alcohol-related health problems grew rapidly among the Native population (Kraus and Buffler, 1977). By the 1980s, Alaska Natives living in the state's small communities were dying by accident, suicide or homicide at nearly five times the national average rates (Berman and Leask, 1994), with alcohol playing a part in most of these deaths (Hlady and Middaugh, 1988; Landen, et al., 1997).

In 1981, however, the Alaska legislature changed state law to give residents of small communities broad powers to regulate alcohol via a local option referendum. In this paper we describe and analyze how Alaska's small, predominantly Native communities have used the local option law to gain some authority over alcohol distribution and use.

HISTORY OF ALCOHOL REGULATION IN ALASKA

The Alaska local option law allows communities to choose through the initiative and referendum process various options to regulate alcohol traffic in their communities. The history of the local option extends back to territorial times, although not all types of communities (incorporated and unincorporated; settler towns and Native villages) had the options that are available today. Even before Prohibition made sale and importation of alcohol illegal throughout the United States in 1920, federal law proscribed selling liquor to Natives. Enforcement was often limited due to lack of funds. However, in 1909, selling liquor to a Native became a felony, and U.S. marshals -- federal law enforcement

officers -- worked with appointed Native police in each judicial district to enforce the law (Conn, 1986:19).

Table 1 summarizes the major events in the development of alcohol regulation in Alaska during the 20th century. With the repeal of the national Prohibition in 1933, the U.S. Congress granted the Alaska territorial legislature the power to regulate the manufacture and sale of alcoholic beverages. In May of that year, the legislature created the Board of Liquor Control (BLC), whose members initially included the governor, attorney general, treasurer, auditor, and highway engineer -- all the executive officials of the territory (Compiled Laws of Alaska, 1933: ch 9, art. 5, sec. 841, p. 226). In 1935, the territorial legislature amended this statute to authorize the board to select one of its members as the enforcement officer and appoint up to four license officers. These officers had the same powers as the U.S. marshals to enforce the laws of the territory (Territory of Alaska Session Laws, 1935: ch. 81). While the board's regulations nominally applied to the entire territory of Alaska, federal law continued to apply to alcohol sales in *Indian Country*, which *de facto* included most of rural Alaska. For the next 22 years, therefore, Alaska operated under a dual legal system for alcohol control.

The 1935 act also directed the BLC to develop a system for holding local option elections, which the legislature approved in 1937. Under the 1937 local option law, voters in incorporated (mainly settler) communities with the mechanisms in place to hold elections could vote for or against the sale of liquor. Before an election could be held, 50% of voters at the last general election had to sign a petition favoring a referendum vote. Initially, a two-thirds vote against the sale of liquor was required for the restriction to pass (Territory of Alaska Session Laws, 1937: ch. 78, sec. 9(A), pp. 174-175); however, the legislature in 1941 reduced the requirements for local option petitions to 35% of the previous election's turnout, and allowed voters to ban the local sale of alcohol with a simple majority vote (Territory of Alaska Session Laws, 1941: ch. 19, p.54).

The 1937 law addressed areas outside incorporated communities in a limited way. In order to obtain a new license to sell alcohol in an unincorporated area, the applicant had to gather signatures approving the sale of liquor there from a majority of the registered voters residing within two miles of the proposed establishment (Territory of Alaska Session Laws, 1937: ch. 78, sec. 9(B), p. 175). This legal procedure for unincorporated communities remained virtually the same until 1980. Recall, however, that the territorial liquor laws were not generally applied to the aboriginal population. The federal Bureau of Indian Affairs (BIA), which oversaw most of rural Alaska, encouraged Native village councils to use the authority granted them by the Indian Reorganization Act -- extended to Alaska in 1936 -- to establish and enforce bans on alcohol possession in their communities (Conn, 1986:29).

Until 1953, district courts actually issued and revoked liquor licenses. After a successful court challenge to this practice (*Bordellini vs. U.S.*, Alaska Reports, 1957: vol. 16, p. 192), the legislature abolished the BLC and repealed all alcohol statutes (Territory of Alaska Session Laws, 1953: ch. 43, p. 109). When the Ninth Circuit Court of Appeals overturned this ruling, the legislature re-instated the BLC in 1957 and reenacted the alcohol statutes. This time the legislature gave the territorial tax commissioner the authority to issue liquor licenses, after review by the BLC. Provisions for local option elections were basically reinstated from the previous laws, except that the geographic area for petitions favoring new licenses in unincorporated communities was reduced from two miles to one mile of the proposed establishment (Territory of Alaska Session Laws, 1957: ch. 131, pp. 247 ff). During this four-year lapse, however, the Territory had no laws on the books regulating alcohol distribution.

When Alaska entered the union in 1959, the new state legislature adopted the territorial liquor laws substantially intact, transferring the functions and authority formerly held by the Territorial Board of Liquor Control to a newly established Alcoholic Beverage Control Board (ABCB) in the Department of Revenue. (Session Laws 1959: ch. 197, pp.

317ff). Despite the appearance of a smooth transition in the statutes, statehood in practice brought a profound change to the rural Native population. The federal BIA, in administering Native affairs, had generally recognized village council authority to prescribe rules for local residents, even when they differed from territorial statutes. With the end of federal control of rural Alaska, the dual system of urban and rural alcohol regulation came to an end. After statehood, village councils found they could not enforce rules keeping alcohol out of their communities because there were no state laws against importation or possession (Conn, 1986:49). Passage of the Alaska Native Claims Settlement Act in December 1971 brought an end to federal recognition of tribal legal authority as well, a view recently affirmed by the U.S. Supreme court in the *Venetie* decision, rendered in 1998 (*Alaska v. Native Village of Venetie Tribal Government*: 96-1577, 101 F.3d 1286, reversed, February 25, 1998).

Associated with the erosion of village control of alcohol in the statehood era was a steady rise in Alaska Native mortality due to violence. During the 1950s and early 1960s, only about five to ten Natives committed suicide or were murdered each year. But the number of deaths doubled in the last half of the 1960s, and doubled again in the next 10 years (Kraus and Buffler, 1977). The increase in suicide deaths came entirely from among the young, particularly among young men.

THE ALASKA LOCAL OPTION LAW AND SMALL REMOTE COMMUNITIES

Alaska alcohol statutes remained largely unchanged for the first two decades of statehood. Growing concern about the problem of alcohol abuse in Alaska, particularly in Alaska Native communities, however, spawned a grass-roots movement calling for a change in policy (Otto, 1986:20-21). Village councils and elders, allied with clergy, social service professionals and law enforcement personnel serving rural Alaska, began to advocate a comprehensive state response that included a legislative solution as well as

money for treatment programs. As the movement grew in size, it attracted the attention of rural legislators and mainstream political organizations such as the Alaska Federation of Natives (Lonner and Duff, 1983:II-10 - II-13). However, local councils, supported by organizations such as the Bethel-based Association of Village Council Presidents and the Anchorage-based Rural Alaska Community Action Program remained the driving force behind the initiative.

A state commission impaneled to undertake a comprehensive study on alcohol-related problems issued its findings in 1977. The study pointed to the high rate of alcohol-related deaths, the high rate of alcohol consumption, and a cost of alcohol abuse estimated to exceed \$130 million in the state in 1975 (Analysis of Alcohol Problems Project, 1977, vol. 1:8). The legislature responded first with only a minor change: a 1976 law requiring incorporated cities without liquor outlets to hold a local option election before granting a new license (Session Laws 1976: ch. 184). In 1978, however, lawmakers acknowledged that the entire body of law dealing with alcoholic beverages needed comprehensive reform (Legislative Resolve No. 27, Alaska Session Laws, 1978). After two years of study, the legislature replaced major sections of Title 4 dealing with alcoholic beverages with new language that greatly expanded the local alcohol control option.

The Alaska Local Option Law of 1980

Continuing its policy of refusing to recognize a separate Indian law in Alaska, the legislature instead extended the program adopted over the years for the largely settler urban communities to the state's small, rural, largely indigenous communities. In addition to giving unincorporated communities most options offered to incorporated cities, the 1980 law gave cities the addition of an option to ban importation of alcohol. Cities had previously been empowered to choose to prohibit alcohol sales, and several

incorporated communities, including Bethel and Barrow, had sales bans in effect in 1980 under the old law. These sales bans did not, however, prevent people from legally importing alcohol by the case (allegedly) for personal use, using scheduled commercial air service with same-day delivery.

The 1980 local option law gave unincorporated communities three control options:

1. Prohibit sale of alcohol (AS 04.11.490)
2. Allow sale only at a specific, licensed store (AS 04.11.500)
3. Prohibit sale and importation (AS 04.11.496)

The law gave incorporated communities all these options, plus an additional one:

4. Permit sale only at a community-operated liquor store (AS 04.11.492).

The procedure for holding local option elections in incorporated cities -- a petition signed by 35% of the number of votes cast in the last election -- was extended to unincorporated villages. The state elections office (headed by the Lieutenant Governor) arranged for and oversaw elections in unincorporated communities (AS 04.11.502(b)). The State Attorney General's office, however, found technical problems with election procedures in the 1980 law, which the legislature fixed the following year (Alaska Department of Community and Regional Affairs, 1990:1).

Although rural communities immediately began to hold local option elections, residents of some communities grew frustrated when they found that their efforts were not succeeding in eradicating alcohol abuse from their communities (Otto, 1986:29-32). A principal issue of dissatisfaction surrounded the difficulty of enforcing the importation ban with the very limited local police presence in rural Alaska, and a number of village councils asked the legislature to allow them to ban alcohol possession (Otto, 1986:5). In 1985 the legislature established a committee specifically to study local option elections and, more importantly, to consider the issue of banning possession (not just the sale or importation) of alcoholic beverages in a community. The legislature moved carefully, aware of the potential constitutional challenge to a ban on alcohol possession. During

November and December of that year the committee held hearings in 18 rural communities (Otto, 1986:6). The legislature acted the following year by adding another local option alternative -- Section 04.11.498 (a) -- that allowed communities to ban the possession of alcoholic beverages (Session Laws, 1986: ch. 80). The 1986 statutes have remained in effect since that time with only relatively minor amendments to formalize the prohibition on home brew in a dry community (Session Laws, 1989: ch.88), and clarify the ballot wording and scheduling of local option referenda (Laws of Alaska, 1995, ch.101).

Alcohol Control Under the Alaska Local Option Law and U.S. Indian Law

Alaska state law essentially restores to the state's Native villages the same powers over alcohol traffic that Indian reservations have under federal law, with two significant differences (see May, 1976). First, by historical precedent, Indian reservations remain dry until a tribal election legalizes alcohol. For Alaska villages, alcohol may not be sold without a vote, but it may be imported and distributed freely until the community holds a local option vote to outlaw it.

A second major difference from tribal law is that all voters registered in the community may vote in Alaska local option elections, not just Alaska Natives. Even in smaller, predominantly Native communities, non-Natives and Natives may have differing views about alcohol control policies. Of course, both the federal tribal election and Alaska's community local option election are forms of public referenda, where each adult has one vote. In this regard, they differ significantly from traditional decision processes in Alaska Native communities, in which elders provided moral leadership on important issues such as alcohol control (Conn, 1986). Nevertheless, the record of public testimony on the issue makes it clear that elders and traditional tribal leaders strongly

supported legislation granting their communities the right to use referenda to make decisions about alcohol (Lonner and Duff, 1983).

Indian reservation governments in other U.S. states generally have their own police forces that enforce tribal alcohol laws. Only a few of the rural Native communities in Alaska are large enough to support local police, however. Liquor laws are generally enforced by the Alaska Department of Public Safety, and bootlegging arrests are prosecuted through the state court system. Generally speaking, small communities linked by road or ferry to larger towns where alcohol is sold have not tried to control alcohol through the local option law, apparently recognizing that enforcement is not practically possible. Most lower '48 tribes, on the other hand, may drive to bars and liquor stores off the reservation and buy alcohol legally. Alaska's one true Indian reservation town -- Metlakatla -- is dry but easily accessed by ferry from Ketchikan, essentially paralleling the situation of lower '48 reservations.

LOCAL OPTION ELECTIONS

We compiled data on every local option election that we believe has been held in the state of Alaska from the archives of the Alcoholic Beverage Control Board, the state Division of Elections, and Alaska Legal Services (1982). Whenever these sources gave conflicting or incomplete information about a ballot measure or election outcome, we verified the data with written communications or telephone interviews with a knowledgeable official of the respective community. Table 2 summarizes the results of this research. The complete set of local option elections held, including dates, ballot items, and vote totals is available at <http://www.iser.uaa.alaska.edu/projects/alcohol/elections.htm>. City councils of incorporated communities, particularly of larger cities, can and occasionally do pass local ordinances to regulate alcohol sales without holding referendum elections. These

local ordinances generally do not ban sale, much less importation, however, and are not analyzed here.

Between July 1, 1981 -- the effective date of the expanded local option law -- and May 31, 1999, Table 2 shows that 112 small Alaska communities held nearly 200 alcohol control elections under the state law. A total of 106 communities passed at least one referendum regulating alcohol during this period. Sixty-nine percent of the 197 elections held since 1981 passed restrictions on alcohol, while 13% removed restrictions previously imposed. The remaining 18% of elections did not receive a majority vote needed to change the existing status. The stringent petition requirements of the law guarantee that a high percentage of election outcomes favor the referendum item on the ballot.

Table 2 shows clearly how the local option law has increased community involvement in setting alcohol control policies. During the period from the achievement of Alaska statehood in 1959 through the first half of 1981, only six communities held 14 local option elections. (Three of these six communities also held elections after 1981.) About one-third (5) of these early elections added restrictions on alcohol, about one-fifth (3) removed them, and the remainder (6) did not receive a majority for change. About one-third of Alaska's small rural communities have not yet opted to restrict alcohol.

Figure 1 shows that many communities have held more than one alcohol control election. Most of the communities shown holding more than one election took just two votes: one to ban sale and importation, then another to ban possession after that option became available in 1986. However, a number of communities have held multiple elections on the same option during the 18-year period. Figure 1 shows two sets of bars: one set including and one set excluding elections in which a majority elected to keep the local option status unchanged. The figure confirms that relatively few communities have had difficulty making up their minds about alcohol. Only six communities have held an election but failed to pass some control over alcohol.

Figure 2 illustrates which options were most often selected in the 145 ballot measures that passed or reaffirmed restrictions on alcohol and the 25 elections that removed restrictions. When a community holds an election that reduces the control status from a more restrictive to a less restrictive option -- for example, changing from a ban on sale and importation to an option that allows importation but not sale -- Figure 2 includes two ballots, one to remove the stronger option and one to impose the weaker one. While the local option law gave communities a broad spectrum of alternatives, most communities favored the stricter measures. The figure shows that about two-thirds of the ballots which imposed controls involved a ban on sale and importation. Communities adopting relatively strict alcohol prohibition -- banning importation or possession -- are geographically dispersed throughout the state. However, with few exceptions, they are not connected by road to the state highway system. (see Berman and Hull, 1997).

The timing of elections shows a distinct pattern over the years. Figure 3 shows the number of alcohol control elections by election outcome held each year. About one-half the elections took place in the first three years after the law passed. By 1985, only a handful of communities were holding elections, with nearly as many repeals as new restrictions. After the legislature added the option to ban possession in 1986, a second smaller peak of referenda ensued. Communities continue to debate and vote to change their alcohol status under the amended 1981 law, with a few new places joining the list of dry communities each year.

CONCLUSION: ALCOHOL CONTROL POLICY

Within less than twenty years after gaining the opportunity under state statutes, about two-thirds of Alaska's small rural communities have exercised their right to a referendum on alcohol control. Most communities holding elections have decided to

adopt a strict form of prohibition: either banning importation or banning possession. Only a handful have chosen to allow a liquor outlet to open in the community.

Has nearly two decades of community-based activism institutionalized with the Alaska local option law enabled rural Native communities to stop, if not turn around the upward trend in injury morbidity and mortality observed by Kraus and Buffler (1977)? Emerging research on this topic suggests that perhaps it has. A number of recent Alaska studies have associated strict community alcohol prohibition with a reduction in injuries and injury deaths (Berman et al., 2000; Chiu et al., 1997; Landen et al. 1997). Despite the promising results of these preliminary studies, neither researchers nor community leaders are prepared to embrace alcohol control as the simple answer to the complex problem represented by alcohol abuse (see May, 1992).

For one thing, injury death rates in Alaska's dry communities, although lower than in similar wet communities, remain far above the U.S. national rates (Berman et al., 2000). For another, many rural Alaskans in some communities question how far citizens should go in sacrificing their personal freedom in order to meet community objectives. The merits of alcohol control continue to be debated vigorously in Barrow, Bethel, and a number of other Alaska communities that have held multiple inconclusive local option elections.

What is most important about the Alaska local option law is not its potential improvement in measurable social or public health outcomes, but simply the demonstrated fact that communities have been eager to use it, knowing its limitations. With the local option law, the legislature restored to Alaska Native communities a right of limited self-governance with respect to alcohol. The exercise of this right seems to have intrinsic merit, even if the model of governance itself is imperfect and nontraditional, . Even if a decision to ban alcohol from a community is largely symbolic, given the difficulty of enforcement, it is a decision that the community is empowered to make. In this regard, community alcohol petitions mimic the national Prohibition movement of an

earlier era. As Gusfield (1963) noted, the significance of Prohibition in the United States lay in the fact that it occurred, not in its success in stopping alcohol consumption (Gusfield 1963, 117-26).

The symbolic politics of Alaska's local option elections invite another comparison with Prohibition. Edelman (1964, ch. 2) argued that public affirmation of the norm of sobriety may persuade citizens that behavior and norm are consistent. However, the much greater social cohesion of small rural Native communities than the United States as a whole may allow the law to do more than just comfort the non-drinking population. As a public statement of community norms and values, the election results taken by themselves may help some individuals in the community decide to take greater control of their own relationship with alcohol. The degree to which the local option has actually helped communities reduce problems associated with alcohol abuse remains ripe for further research.

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Table 1. Major Events in the History of Alcohol Regulation in Alaska

<i>Year</i>	<i>Legislation</i>
1918	Alaska Territory goes dry after referendum in 1915.
1920	Manufacture, importation, and sale of alcohol outlawed throughout U.S.
1933	Prohibition repealed. Indian reserves and most of rural Alaska remain dry.
1936	Congress extends Indian Reorganization Act (IRA) to Alaska, providing federal recognition to tribal councils in most rural communities.
1941	Territorial legislature expands local option for cities to ban alcohol.
1953	U.S. government allows IRA tribal councils to choose to allow liquor sales on Indian reserves.
1953-57	Alcohol completely unregulated in Territory, except in villages controlled by IRA tribal councils.
1959	Alaska becomes a state. State adopts territorial alcohol laws but refuses to recognize tribal authority in rural communities.
1971	Alaska Native Settlement Act ends federal recognition of tribal legal authority in Alaska (upheld by the U.S. Supreme Court in <i>Venette</i> case in 1998).
1980	State legislature expands local option to unincorporated communities, allows communities to ban importation of alcohol.
1986	Local option law amended to allow communities to ban alcohol possession.

**Table 2. Number of Alaska Communities Holding Local Option Elections
January 1, 1959 - May 31, 1999**

	<i>Number of communities</i>	<i>Number of elections</i>
<i>Communities holding elections between January 1, 1959 and June 30, 1981^a</i>		
All valid elections	6	14
Elections changing control status	6	8
<i>Communities holding elections between July 1, 1981 and May 31, 1999</i>		
All valid elections	112	197
Elections changing control status	106	161
<i>Total, 1959-1999</i>		
All valid elections	115	211
Elections changing control status	109	169
<i>Communities dry under federal Indian law^b</i>	1	
<i>Small communities that did not attempt to control alcohol through 1999^c</i>		
No valid local option elections	52	
No elections that passed a control measure	58	
<i>Total, small Alaska communities</i>	168	

^aVenetie and Arctic Village held a single combined election under tribal law that was implicitly recognized by the state, included as two communities and one election.

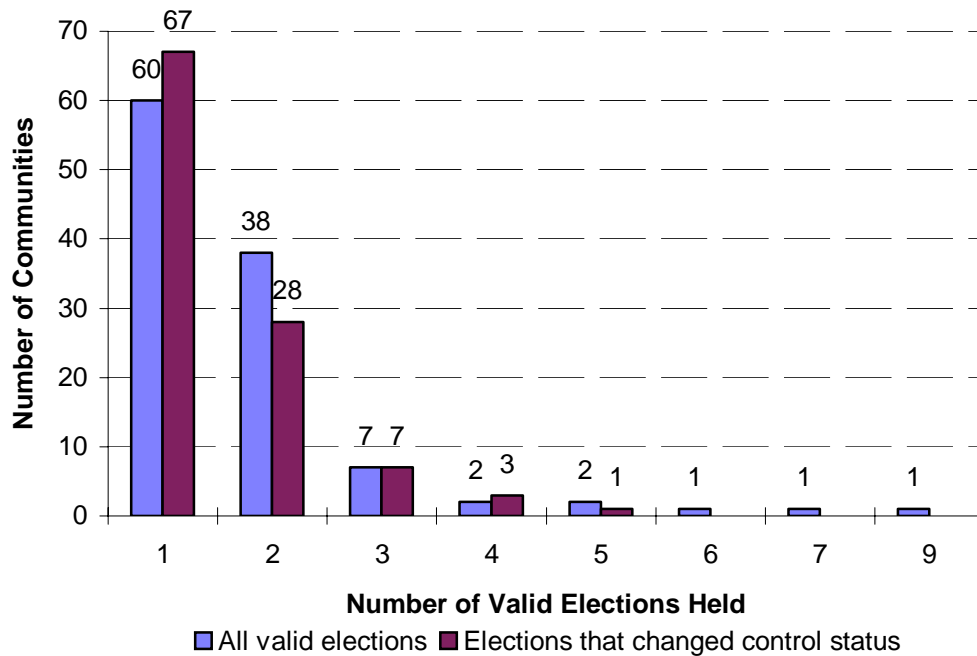
^bMetlakatla, Annette Island Indian Reservation.

^cAlaska communities with less than 1,000 total population but at least 25 Alaska Native residents in 1990 that did not control alcohol through 1999. All communities passing local option elections except Barrow and Bethel had less than 1,000 residents.

Note: An election is defined as a day during which registered voters held a referendum on one or more local option measures. More than one control option may appear on the ballot for a single election.

Source: Alaska Alcoholic Beverage Control Board archives, Alaska Legal Services (1982), and personal communications with various city officials. Excludes elections invalidated by court order.

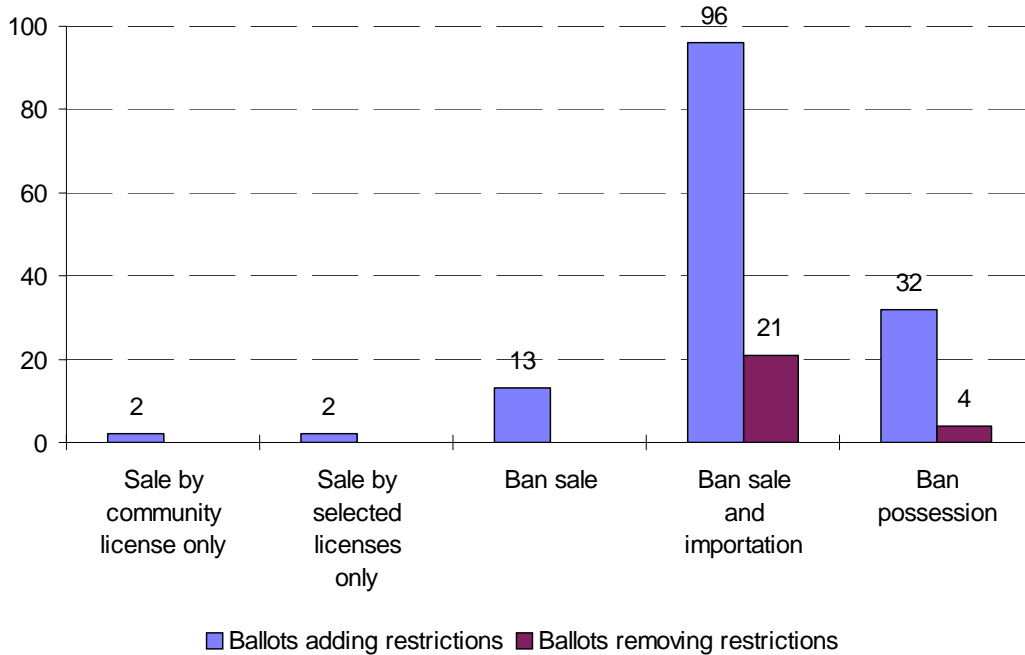
**Figure 1. Number of Local Option Elections Held by Alaska Communities:
July 1, 1981 Through May 31, 1999**



Note: An election is defined as a day during which registered voters held a referendum on one or more local option measures. More than one control option may appear on the ballot for a single election.

Source: Alaska Alcoholic Beverage Control Board archives, Alaska Legal Services (1982), and personal communications with various city officials. Excludes elections invalidated by court order.

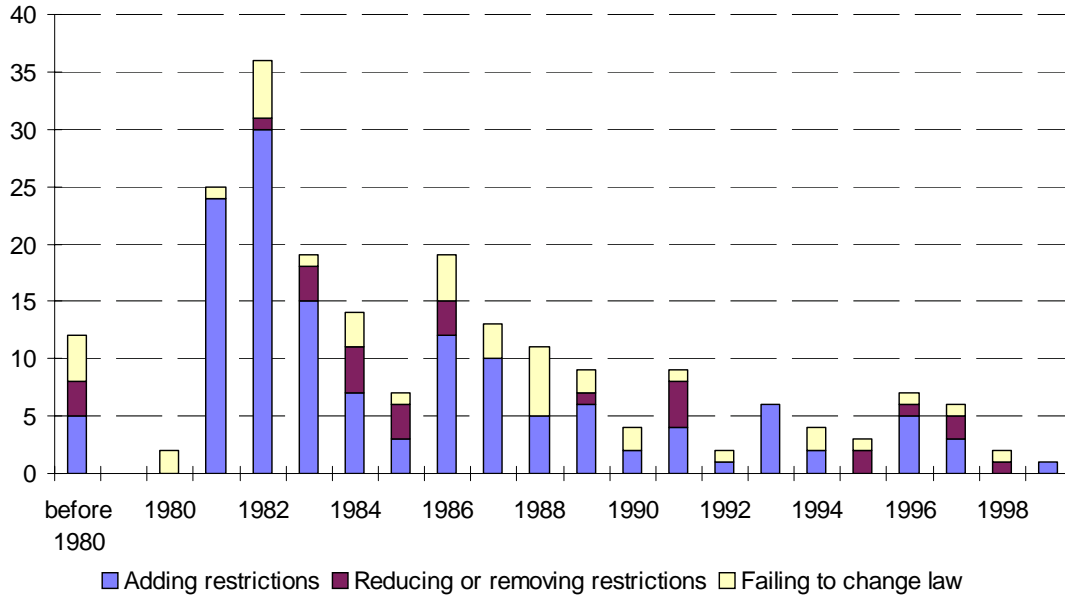
**Figure 2. Type of Local Option Selected by Alaska Communities:
July 1, 1981 Through May 31, 1999**



Note: A ballot measure is defined as a vote taken on a local option. More than one ballot measure may be decided by referendum on the same day. Before 1995, local options ballots had to be worded so that a "yes" vote always indicated a vote for controls, even when such controls were already in effect. Consequently, the figure excludes votes whose outcome was to affirm a restriction previously enacted.

Source: Alaska Alcoholic Beverage Control Board archives, Alaska Legal Services (1982), and personal communications with various city officials. Excludes elections invalidated by court order.

**Figure 3. Timing of Local Option Elections Held in Alaska Communities:
January 1, 1959 Through May 31, 1999**



Source: Alaska Alcoholic Beverage Control Board archives, Alaska Legal Services (1982), and personal communications with various city officials. Excludes elections invalidated by court order.