

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

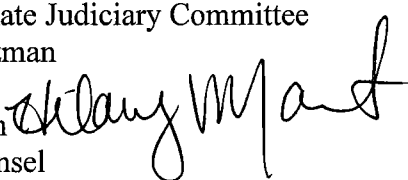
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 18, 2015

SUBJECT: Notwithstanding any other provision of law (CSSB 30(JUD);
Work Order No. 29-LS0231\S)

TO: Senator Lesil McGuire
Chair of the Senate Judiciary Committee
Attn: Amy Saltzman

FROM: Hilary V. Martin 
Legislative Counsel

You have asked for an opinion on the phrase "notwithstanding any other provision of law" that appears in the marijuana initiative, and what the pros and cons are of incorporating this phrase into the Alaska statutes.

Generally, the phrase "notwithstanding any other provision of law" is discouraged.¹ If there is another law that you are specifically trying to override, it is better to put that statute in the bill. Otherwise, any other statute that conflicts with the provision could be overridden by using the phrase "notwithstanding any other provision of law." Without specifying which other statutes are to be canceled by the phrase "notwithstanding any other provision of law," there could be confusion as to which statutes apply and which do not. This confusion could eventually lead to a court deciding what the phrase applies to.

The author of the *Legislative Drafter's Deskbook: A Practical Guide* describes the use of "[n]otwithstanding any other provision of law" by Congress and its interpretation by federal courts in the following manner.

The phrase "notwithstanding any other provision of law" is popular with people who have not really thought through a problem. They think that it is an effective way to ensure that a new rule prevails over an old rule -- but they are wrong.

Courts do not take the phrase very seriously, and for good reason: Even when Congress does use the phrase, Congress does not intend that all other laws are to be disregarded.

¹ The plain meaning of the word "notwithstanding" is "despite" according to *Black's Law Dictionary*.

....

A definitive statement from the Supreme Court is hard to come by, but several federal appeals courts have held that the phrase is not always to be taken literally and does not require that all otherwise applicable laws be disregarded.

....

In short, a court will try to give "notwithstanding any other provision of law" some meaning, but it is never clear precisely what that meaning will be.^[2]

The Alaska Supreme Court has stated that in interpreting a statute it will look to three primary factors: "the language of the statute, the legislative history, and the legislative purpose behind the statute."³ Ultimately, if there is confusion about the phrase, the Court will likely have to interpret what it means. A court could disregard too many laws or too few. The better option to ensure clarity is to specify exactly what laws are not to apply.

The phrase could arguably be helpful if there is a provision that was overlooked and could potentially be relevant to the ballot initiative and the current bill. The phrase would override any other statute that might apply to the contrary. However, it is still better drafting practice to eliminate the phrase and specify what statutes are meant to be overruled by the phrase "notwithstanding any other provision of law."

I also note that in the current version of the bill, both AS 17.38.200 and 17.38.210 contain the phrase "except as authorized in AS 17.38.020," which means that if something is authorized in AS 17.38.020, the action would not be a crime. This language makes it is less necessary to include the phrase "notwithstanding any other provision of law" in the bill.

The phrase "notwithstanding any other provision of law" does currently appear in statute. A brief search turned up 36 results with the phrase.

If I may be of further assistance, please advise.

HVM:ld
15-114.ld

² Tobias A. Dorsey, *Legislative Drafter's Deskbook: A Practical Guide*, 255 - 256 (2006).

³ *Gou-Leonhardt v. State*, 323 P.3d 700, 702 (Alaska 2014).