ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

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SECTIONAL ANALYSIS

CSHB 75()

(29-LS0345\V)

"An Act relating to the registration of marijuana establishments by municipalities; relating to the definition of marijuana by persons 21 years of age or older; prohibiting the public consumption of marijuana; authorizing the registration of marijuana clubs; relating to established villages and to local option elections regarding the operations of marijuana establishments; and providing for an effective date."

NON-SUBSTANTIVE

The following sections are non-substantive changes to AS 17.38 that change references of "local government(s)" to "municipality/municipalities" and/or provide grammatical changes to conform to legislative drafting standards.

Section 3 – Page 3, lines 6-9
Section 4 – Page 3, lines 10-13
Section 6 – Page 3, lines 23-30
Section 10 – Page 6, lines 8-17
Section 12 – Page 6, lines 24-31
Section 13 – Page 7, lines 1-8
Section 14 – Page 7, lines 9-14

Section 15 – Page 7, lines 15-19
Section 19 – Page 10, lines 21-24

SUBSTANTIVE

Title (Page 1, lines 1-6) – The title has been significantly tightened from previous versions.

Section 1 (Page 1, line 8 through Page 2, line 9) – Section 1 amends the definition of "marijuana" in AS 11.71.900(14), Alaska's criminal code, to conform to the language established in AS 17.38 (ballot measure 2) with one minor exception. "Salt" (Page 1, line 8), included in the ballot measure language was thought to not have a functional meaning and has been deleted.

Section 2 (Page 2, line 10 through Page 3, line 5) – Section 2 does two things.

1. The term "residence" has been substituted with the term "dwelling" to be more consistent with municipal ordinances. LAA Legal has indicated that the terms are functionally interchangeable in Alaska Statute.
2. This section provides for a household maximum plant limit of "not more than 24 marijuana plants, with 12 or fewer being mature" where two or more adults reside.
3. When looking through the language as adopted by the ballot measure, municipal attorneys expressed some concern about not having a specific definition of "assisting" found in AS 17.38.020(e). Language found on Page 2, lines 21-29 makes express provisions for what ***DOES NOT*** constitute "assisting". Of note, it states that "growing marijuana plants for another person in a place other than that person's residence." The House Community and Regional Affairs Committee believe that growing for another person outside of their own residence constituted a "proxy" grow not intended by the initiative language.

Section 5 (Page 3, Lines 14-22) – The section now contains language conforming to Title 4 provisions regarding the Board's (currently ABC or a Marijuana Control Board, if adopted) notification requirements to municipalities when issuing registrations for commercial marijuana establishments.

Section 7 (Page 3, Line 31 – Page 5, Line 22) – This contains substantially similar language to what appears in Title 4 providing for a notification and protest process for municipalities regarding issuance of registrations for commercial marijuana establishments within its boundaries.

Section 8 (Page 5, lines 23-29) – Section 8 does two important things.

1. First it makes reference to “marijuana clubs” as a new category of marijuana establishments. Municipalities have expressed a desire for the legislature to include and define these types of establishments which would ostensibly provide marijuana users a place for using marijuana products other than within the home. The purpose for including and defining marijuana clubs is to provide municipalities from approving or disapproving these establishments within their jurisdictions.
2. Section 8 begins to close a loophole, unintended by the initiative sponsors, to provide communities not in an organized city or borough to allow for a local option election in an “established village”. This is taken from Title 4 regarding local option elections for alcohol. As a reminder, because of Ravin v. State (537 P .2d 494), personal possession of small amounts of marijuana cannot be prohibited, so the prohibition in this section is limited to the operation of marijuana establishments.

Section 9(Page 5, line 30 through Page 6, line 7) – This change expressly provides that municipalities have the authority to establish civil ***and*** criminal penalties for time/place/manner violations by commercial marijuana establishments. The inclusion of criminal penalties differs from the language in AS 17.38 as included in the ballot initiative.

Section 11 (Page 6, lines 18-23) – On line 22 the phrase “consistent with the”, replacing “subject to all”, has been added to the provisions of the section to clarify that municipalities are not obligated to follow the State’s Administrative Procedures Act for the “issuance, suspension and revocation of a registration” in the event that a municipality has ordinances in place “consistent with the” Administrative Procedures Act.

Section 14 (Page 7, lines 9-14) – This provision was included after the discovery of a potential circumstance regarding a “gap” in potential enforcement. The way the original provision was written a scenario was envisioned where a 2nd class borough (FNSB and MSB, for example), which does not have general public health or police powers, may have issued a registration but the borough’s enforcement would be limited only to the revocation of the registration. This provides that the holder of the registration is ALSO subject to state regulation or enforcement.

Section 16 (Page 7, lines 20-23) – Similar to the change found in Section 11 above, pertaining to the relationship to the State’s Administrative Procedures Act. Again, this allows municipalities to follow their own ordinances, when substantially similar to the AS 44.62.

Section 17 (Page 7, lines 24 through Page 8, line 2) – Stipulates that any powers authorized to boroughs may only be adopted on a “nonareawide” basis, meaning that those powers would not extend into cities that lay within a borough’s boundaries.

Section 18 (Page 8, line 3 through Page 10, line 20) – Section 17 sets forth the process by which an established village can hold a local option election for the prohibition or the removal of a prohibition of marijuana establishments and commercial marijuana activities within the boundary of an established village.

Section 20 (Page 10, lines 25 through Page 11, line 2) – Revises the definition of "marijuana", consistent with Section 1 of this bill. The practical effect is that there is only one definition of "marijuana" in statute, thus eliminating potential confusion and legal challenges.

Section 21 (Page 11, lines 3-6) – Adds "marijuana club" to the definition of "marijuana establishment.

Section 22 (Page 11, lines 7-21) – Provides express definitions of "dwelling", "established village", "marijuana club" and "public place" as recommended by municipalities. It also provides a definition of "dwelling" as necessitated by the plant limit found in Section 2. Of note, "public place" closely follows the definition in AS 11.81.900, but does exempt marijuana clubs from the definition of "public place".

Section 23 (Page11, line 22) – Makes conforming amendments to AS 17.38, necessitated by the bill. Because there has been a household plant limit established in this version of HB 75 and process of the issuance of registrations, AS 17.38.100 (d&e) are no longer needed as is the definition of "local government" in 17.38.900(4).

Section 24 (Page 11, line 23) – Provides an immediate effective date for the provisions of the bill.