

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

February 12, 2015

8:02 a.m.

MEMBERS PRESENT

Representative Cathy Tilton, Chair
Representative Paul Seaton, Vice Chair
Representative Shelley Hughes
Representative Lora Reinbold
Representative Harriet Drummond
Representative Dan Ortiz

MEMBERS ABSENT

Representative Benjamin Nageak

COMMITTEE CALENDAR

PRESENTATION: MUNICIPAL REGULATION OF MARIJUANA

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control Board (ABC Board)
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Presented local option control of marijuana.

LAWRENCE BLOOD, Local Government Specialist, Acting Director
Division of Community & Regional Affairs (DCRA)
Department of Commerce, Community & Economic Development
Juneau, Alaska

POSITION STATEMENT: Offered a presentation explaining the vested powers of a municipality from the Alaska State Constitution and Alaska Statutes not addressed in AS 17.38.

TIM HINTERBERGER, Ph.D., Chair
Campaign to Regulate Marijuana like Alcohol in Alaska

Anchorage, Alaska

POSITION STATEMENT: During the hearing on local community marijuana issues answered questions.

RACHELLE YEUNG, Legislative Analyst
Marijuana Policy Project (MMP)
Washington, D.C.

POSITION STATEMENT: During the presentation, offered legal support for the Campaign to Regulate Marijuana like Alcohol in Alaska, and answered questions.

ACTION NARRATIVE

[8:02:45 AM](#)

CHAIR CATHY TILTON called the House Community and Regional Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Hughes, Reinbold, Ortiz, Drummond, Seaton, and Tilton were present at the call to order.

Presentation: Municipal Regulation of Marijuana

[8:03:22 AM](#)

CHAIR TILTON announced that the only order of business would be presentations related to the municipal regulation of marijuana.

[8:04:52 AM](#)

CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community & Economic Development (DCCED), said that the ABC Board or Marijuana Control Board, if created, can procure local option regulations clearly from AS 17.38 as there is authority to create the type of menu present in Title 4 for local governing bodies when it comes to regulating alcohol in their community. The biggest priority, she opined, is to have a similar menu of local options for marijuana and the same entities hold elections and create local option rules for their community through Title 4 and be the type of local governing body that can opt in or out through Title 17. Local government is defined in AS 17.38.900(4), which read:

(4) "local government" means both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities;

MS. FRANKLIN maintains there is a glaring omission of "established villages." She explained that "established villages" are entitled under Title 4 "to hold local option elections and create local control of alcohol in their communities," and explained that in the event the legislature does not act on the definition of local government in Title 17.38, "established villages" will not be included in that definition.

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MS. FRANKLIN further explained that AS 17.38.110, "Local Control," uses the term "local governments" throughout the section and defines local governments to exclude "established villages." She opined there is a concept of amending that definition to add "established villages" as they are defined in AS 04.21.080(a)(9), which read:

(9) "established village" means an area that does not contain any part of an incorporated city or another established village and that is

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

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

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

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

MS. FRANKLIN continued that AS 04.21.080(a)(9), "established village" means an area that does not contain any part of an incorporated city or another established village, with a list of other qualities of an established village including areas both inside and outside incorporated boroughs and unincorporated communities, that are in and out of organized boroughs.

[8:07:42 AM](#)

MS. FRANKLIN commented that Mr. Blood will discuss all of the different structures of local governments in Alaska. She said it will be clear there are many areas in Alaska that would be able to hold a local option election for alcohol, but as written would not be able to hold a local option election for marijuana. She expressed that is a concern particularly if the Alcoholic Beverage Control Board (ABC Board), or Marijuana Control Board is sharing resources. She pointed out that it is unknown what the board structure will look like but if there is a relationship between those two agencies, she foresees it being very difficult to tell a local community it can have an option election for alcohol, but not marijuana. She offered that a concern of all of the state legislators and state agencies is not to subvert the intent of the voters or language of the initiative. However, she opined, if the intent is clear to make the local governing structures mirror those that are able to hold Title 4, local options alcohol elections, certainly [the legislature will] make this Act in the local option piece look like alcohol. She posited she does not have any indication that this omission or different definition of local government was on purpose and does not know why this definition was chosen for AS 17.38. Nevertheless, she submitted, if the intent was to include every local governing body able to hold alcohol elections, it would be difficult for anyone to argue that the legislature subverted the intent of the initiative.

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MS. FRANKLIN noted that the ABC Board is meeting today and will discuss marijuana and believes the board will produce its preliminary considerations. She offered that on February 24, 2015, when the Act becomes effective, a direction of the board will be to preserve local control of marijuana. The board will publically state it is considering a menu of local options similar to the menu found in Title 4. She pointed out that the two substances are different and the menus will not be identical. A lot of thought is needed regarding types of licenses available and how those licenses look, and it may be that the menu for local communities is by license types, she explained. In other words, she advised, a community can go down the list to determine the types of licenses it will allow. A major difference between Title 4, "Local Option Elections," and any local elections held under AS 17.38 will be that the option does not exist for local communities to be in possession of marijuana due to the line of Supreme Court cases and the initiative. Unlike local option 5, Title 4 for municipalities,

allows a municipality to ban alcohol in every form, including possession - no local community will be able to ban marijuana in every form. She anticipates it will be a frustration for local communities and some smaller communities that want the substance kept out of their community. Due to Ravin v. State, 537 P.2d 494 (Alaska 1975), and Noy v. State, No. A-8327, August 29, 2003 (Alaska), there is a constitutional right of privacy to possess this substance in a person's home and in that regard no local government or the people themselves can vote to completely ban that substance in their community. That issue will affect the way the menu of local options is written as it will have to be clear what the parameters of those options are, and what a community can and cannot do. Certainly, she offered, the Act entitles the local government, as defined in AS 17.38, to prohibit cultivation and retail licenses as that is the language of the Act. In moving forward, she related, that is the manner she anticipates that regulations or statutes might be crafted to make it clear exactly what activities the local community is opting out of.

[8:14:21 AM](#)

REPRESENTATIVE DRUMMOND referred to a list of communities provided by Mr. Blood [to the committee], of which the front half, she assumed, is everything except "established villages." She noted the list of villages in the back refer "unincorporated," and advised she will address Mr. Blood with her questions.

[8:14:56 AM](#)

REPRESENTATIVE REINBOLD asked whether federal law trumps state laws in regulations.

MS. FRANKLIN explained that federal law will not apply to these regulations because marijuana is a Schedule I Controlled Substance in federal law. In that regard, all activities relating to marijuana are prohibited and no regulations are written around the substance. She remarked that the federal government released a [8/29/13, Memorandum for all United States Attorneys, from James M. Cole, U.S. Deputy Attorney, regarding Guidance Regarding Marijuana Enforcement], also known as the "Cole Memo," that was overlaid on top of a memorandum released when President Barak Obama took office explaining the federal enforcement priorities for marijuana. The basic language of the memo reads that if individual states legalize the substance then it is not a federal priority to enforce the federal prohibition

against marijuana for any entity following strict rules enforced by the states. She submitted that when a state legalizes marijuana and creates regulations and rules around that substance, and the person dealing with marijuana is complying with those rules, then the federal government essentially pledges it will not interfere with activity that is otherwise lawful in the state.

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REPRESENTATIVE REINBOLD found Ms. Franklin's remarks interesting, and she said that in this case as long as it is regarding marijuana it is "state's rights," except recently the federal government struck down the Alaska State Constitution. She related there is an intriguing philosophy in the White House.

MS. FRANKLIN agreed that it is an awkward position for all legalized marijuana states to be in, although aside from the four states with legalized recreational marijuana there are approximately 20 states with legalized marijuana in some form of medical marijuana. There is a dilemma between the state and federal primacy rules that necessitates resolution and Alaska is hanging precariously between the two sets of rules, she remarked.

[8:17:57 AM](#)

REPRESENTATIVE SEATON said that within other bills changing the local option in Title 17 to that of Title 4, has occurred where the term license is used ... change that to license because it is what is being done with alcohol. He advised there has been severe pushback for registration rather than license, and asked that Ms. Franklin contrast the two for him. "Or have you not found that ... has that pushback ... in declaring that we're unconstitutionally changing the bill gone away over the type of discussions."

MS. FRANKLIN replied that she has not heard there is a strenuous objection to changing registration to license. Frankly, she opined, she would be surprised if the group putting forth the initiative will publically say they fully intended to leave giant chunks of Alaska out of the ability to opt out of this substance in their community. She said she suspects that the initiative didn't have the necessary vetting within the area of initiatives as, she related, the vetting process is generally running through a mill of lawyers and experienced legislators to

prevent omissions. Basically, she explained, the legislature would say, if a person lives in a large enough city they can choose to prohibit marijuana conduct in their community, but a smaller community is out of luck and has marijuana whether it wants it or not. She described this issue as requiring a necessary fix and expressed her surprise that the difference between "registration" and "license" has had a lawsuit threatened over that change. She advised she will look into Representative Seaton's comments.

8:22:05 AM

REPRESENTATIVE SEATON offered to share documents with Ms. Franklin. He then referred to Alaska's communities inside and outside of boroughs identified for revenue sharing, and asked whether that subset of villages and communities sit within the qualifications, or whether it was a village as an Alaska Native village she was discussing.

MS. FRANKLIN responded that the definition for "established village" in Title 4 attempts to bring in every group of over 25 people who draw a line around their community as an established village. She then deferred to Mr. Lawrence Blood on how this definition of "established village" interacts with the definition used with revenue sharing.

8:24:00 AM

CHAIR TILTON, with regard to the initiative, asked whether municipalities can choose the types of products they allow to be produced or sold within its jurisdiction, or must municipalities allow all products to be sold, such as edibles.

MS. FRANKLIN opined that it will hinge upon the definition of marijuana, and Representative Seaton has a bill carving out marijuana concentrates. Alaska Statute 17.38 defines marijuana as including concentrates and, she pointed out, in other legalized states there is not a distinction in licensing between different types of products using concentrates to make the marijuana products. In other words, she offered, a retail license in Colorado entitles a retailer to sell all types of products other than just the actual flower and bud themselves, and noted all other products are made using concentrated marijuana. Currently, she pointed out, it is hard to say whether or not there will be separate licenses issued for products using marijuana concentrates. She opined that by including all of those materials in the definition of marijuana

in AS 17.38, every rule including those under AS 17.38.010 Local Control appears to be around whatever is contained in that definition. She explained that an issue not being discussed with local governments is that there is Local Option 1, which permits a local community to run its own alcohol retail outlet. She said that should an established village or municipality run its own marijuana store it could determine the products it would sell in that store. She conveyed that while the federal issue exists she doubts municipal attorneys will allow or encourage their municipalities to have retail sales of a federally prohibited product. In moving forward, using the model in Title 4, the legislature could create the option for a local community to control retail sales of the product by having a community store, she explained. She described it as a good avenue in which to get the funds expended toward that product back into the community, and noted there are a couple of communities with alcohol Local Option 1 such as Kotzebue where it runs its own liquor store and the cost of that substance being in their community is somewhat offset by the sales of the store.

[8:28:03 AM](#)

MS. FRANKLIN remarked that if a community invites retailers in to sell marijuana products with a state license or conditional use permit at the municipal level, the city could write a law authorizing a person to sell flower and bud but not edibles. She submitted there could be a problem with AS 17.38.110(b), which read:

(b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner, and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.

MS. FRANKLIN said that there would be issues with the local government carving out and making a different scheme of how marijuana is defined and regulated, than what this law says and whatever amendments the legislature makes during this session. Individual owners of retail establishments, of course, can decide what products they stock. She posited that one approach to the edibles the board may endorse is to define edible, which is not defined in the Act, and in defining edibles exclude

certain types of edibles that are "worst offenders." She offered that in Colorado "adulteration" is when existing edible products are removed from its packaging and sprayed with marijuana and repackaged. The term adulteration is currently in Alaska's food safety statutes and the board is cognizant to not confuse the public by reusing terms that already have set definitions in state law, she related. For purposes of this discussion, she said she is using the term adulteration and basically asking why edibles could not be defined to exclude those adulterated products in that edibles would still be allowed to be made through a process that includes marijuana concentrates and can be sold as marijuana infused products. Thereby, she remarked, not allowing someone to take a short cut that, in Colorado, has led to risks of public safety with products like gummy bears, little "dubbies," and products appealing to children. She indicated there are strategies in terms of serving sizes, education, and ascertaining that people who buy these products know what they are getting.

[8:31:11 AM](#)

REPRESENTATIVE SEATON noted that edibles appear to be of concern to people in small villages as well as the larger cities. He opined that some jurisdiction having legalized use requiring the product to come before the board for approval prior to selling. He asked whether there is a reason for selecting the one that says a person is free to generate any product that doesn't violate a certain provision versus approval from the board prior to selling.

MS. FRANKLIN replied that Representative Seaton's question is an excellent example of parsing out this work as to the legislature's job, and the job of the regulations and the legislature could determine a definition of edibles that does not include adulterated products. When regulations are promulgated the board can require a pre-approval process for edibles on the shelf such that Washington State Liquor Control Board requires. Whereby, she pointed out, a sample of the prospective product must be brought before the board to obtain approval so it does not violate a set of standards established through regulation, including not being blatantly appealing to children or whatever. "I think you can have both," she offered.

[8:33:33 AM](#)

REPRESENTATIVE SEATON asked whether that will be discussed today during the ABC Board meeting as it would be helpful for the

legislature to know what kind of system the current board may put in place.

MS. FRANKLIN responded in the affirmative.

8:34:04 AM

REPRESENTATIVE REINBOLD put forth her concern that health care costs are rising and there are issues within other states regarding overdoses. Secondly, she pointed out, if a child ingests some of the edibles and there is a health care issue, who is liable. She hopes someone can help the legislature with the packaging and display issues of what can go on the package and display that is very obvious to people.

MS. FRANKLIN responded that packaging, advertising, and display are the heart of promulgating regulations around the substance, and the board anticipates labeling, packaging, and child proof packaging requirements. She related that in determining liability, the parent brought the product into the home and allowed the child access, which is the main cause of all overdoses and poisonings in children. Frankly, she related, the doctors from the Colorado Children's Hospital said that while marijuana overdoses in children are very public and a concern, they are an extreme minority in the types of poisoning and overdoses seen in the emergency rooms, as many more children overdose from Ibuprofen than from marijuana. She said, Alaska does not want that to happen, wants the child proof packaging, and that no one is permitted in marijuana establishments unless they are 21-years of age. She said the security they saw in Colorado (and would like to emulate) was quite high, and was not a situation as in Alaska where a parent can walk into a liquor store with their young child. She pointed out that she would discuss with the board today the concept of high security with these establishments, over 21-years of age only, and for adults that enter the store, as it would not be like a Fred Meyer or Carr-Gottstein situation where products are sitting out on the shelf.

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REPRESENTATIVE REINBOLD said to keep in perspective that this is a new market and marijuana will be available in the retail market and the statistics have not yet been borne out.

8:38:31 AM

REPRESENTATIVE ORTIZ opined that the intent of the initiative is to treat marijuana like alcohol, yet realize the substances are quite different issues. He asked how problematic it is to go down the road of saying the legislature is going to try to treat marijuana like alcohol when they truly are different issues, particularly around regulations, and questioned how problematic the issue is, and whether it would be in the best interests of the state to allow the ABC Board to regulate this area - or whether a Marijuana Control Board would be best.

MS. FRANKLIN replied that a separate board is appropriate as the two substances are quite different with industry representation on the all-volunteer ABC Board. She voiced concern that by adding industry representation to the ABC Board it would suddenly become four industry representatives and three public representatives which is unbalanced. She advised it is the opinion of the ABC Board that the Marijuana Control Board be comprised, as Title 4 stakeholders have recommended, of a five member volunteer board. She further advised there is value in the state employees currently servicing the ABC Board and bringing their expertise to the regulation of marijuana. She pointed out that the ABC Board's official position is advocating for a "two board and one agency hybrid" that would allow a Marijuana Control Board and ABC Board both housed with the same agency and staff so an enforcement officer could enforce on both substances, which represents a fiscal savings to the state. In terms of local control, she said, there is a lot of control in alcohol as there have been two audits, a survey, and a stakeholder's work group in the last five years regarding alcohol, and they have not received any feedback that localities don't feel they have enough control. She commented that they have a good model for local control with alcohol under Title 4 which, hopefully, is what local control of marijuana would look like. She said she recognizes there are marijuana establishment situations wherein a parent could not take their child into the establishment. The legislature can settle issues particularly around definitions and some issues that require regulations, and statutes and regulations will not be perfect in the first year. Alcohol, she noted, is not perfect yet and the board has worked on it for a very long time. She offered that her answer is two boards.

[8:43:05 AM](#)

REPRESENTATIVE DRUMMOND referred to packaging and overdose cases in Colorado, and asked whether she is aware of alcohol overdose cases of children in Alaska.

MS. FRANKLIN said she is not aware of that situation and ascertained through the doctors at Children's Hospital that parents typically do not bring children who overdose on alcohol to the emergency room because most people know what an alcohol overdose looks like and that there will be a period of time where the body will process the alcohol through, unlike a severe alcohol overdose. She expressed that education is imperative around marijuana for adults using the substance to understand dosages, serving sizes, and wait times. She described Colorado as being behind the train because it had medical marijuana dispensaries open for four years before opening the market to recreational marijuana so there were already medical marijuana users with high tolerances to marijuana which lead to changes in the packaging, advertising, and education of consumer requirements. She opined that Alaska can get in front of the train by not allowing stores to sell high concentration and high doses of THC by limiting serving sizes by limiting the total THC in any given product.

[8:47:22 AM](#)

REPRESENTATIVE DRUMMOND inquired as to what a child proof alcohol container looks like.

MS. FRANKLIN responded she has never seen one which is another area where regulation of this product will look different. People have argued that if Alaska could start over with alcohol possibly there would be some of the same considerations. She pointed out that it demonstrates that once the train has left the station it is hard to get it back. A piece of advice received from the regulators in Colorado was to start strict because Alaska will not be able to dial it back, she stated.

[8:48:23 AM](#)

REPRESENTATIVE HUGHES offered that there has been work performed in the last couple of years to rewrite Title 4 and she asked whether there is anything from that process Ms. Franklin learned that will be applicable and that she would advise the committee, including how the state relates to local government.

MS. FRANKLIN referred to a local options subcommittee as part of the stakeholder's group and, she said one recommendation was to eliminate Local Option 4, which controls sale, distribution, trade, manufacture of alcohol in a community allowing possession. In putting Local Option 4 up against Ravin v.

State, 537 P.2d 494 (Alaska 1975), Noy v. State, Alaska App. 83 P.3d 538, 2003 WL 23207968 (2003), and AS 17.38, means that Local Option 4 is the best the community can get because possession cannot be banned. The local option subcommittee heard that local communities are frustrated that the substance can be in the community which in turn causes enforcement to be difficult for all of the other verbs relating to that substance that are prohibited in the community, she conveyed. She pointed out that some of the recommendations reflected penalties addressing profit motivation in that when individuals violate those rules that the penalties are written to address the motivation behind that activity - to make a lot of money such as bootlegging. Currently, under the rules in Title 4, if an individual brings in one bottle and sells it to a person, that individual is subject to the same penalties as if they brought in one case of liquor. She explained that some of the work of the stakeholder's group was to adjust the penalties so that the more a person brought in the higher the fine because profit motive is what is behind that activity. The stakeholder's group takes the board as it exists today and tweaks it to have public safety and public health designees openly represented on the board. In terms of marijuana, that regulation will be particularly important to have all of the voices at the table when the board meets.

[8:52:23 AM](#)

REPRESENTATIVE SEATON referred to fines and asked whether she meant that a fine would be imposed instead of revoking the license if someone is operating outside the parameters of their license.

MS. FRANKLIN explained that she was talking about non-licensed activity.

[8:53:11 AM](#)

The committee took a brief at ease.

[8:54:20 AM](#)

LAWRENCE BLOOD, Local Government Specialist, Acting Director, Division of Community & Regional Affairs (DCRA), Department of Commerce, Community & Economic Development, said a primary charge of the Division of Community & Regional Affairs (DCRA) is to assist and advise municipalities within the State of Alaska. He said he would explain the vested powers of a municipality

from the constitution and statutes not addressed in AS 17.38. He referred to slide 1, and advised the presentation would also include examples identifying questions not answered in the initiative, whether the excise tax means a property tax cannot be levied on a facility and property, whether it means a sales tax cannot be levied, and whether there is any authority on where the cultivation facility is located on different sides of a railroad track. He said his response to the questions are "it all depends," upon the classification of municipality, location of the municipality, and its authority to assume different powers. He reiterated that the public should be informed as to the vested powers of a municipality from the Alaska State Constitution and already in statute not addressed in AS 17.38.

[8:56:03 AM](#)

MR. BLOOD continued his slide presentation and referred to slide 2, "Types of Municipal Government," and advised there are 145 cities, 19 organized boroughs, 80 unincorporated communities in organized boroughs, and 73 unincorporated communities located in the unorganized borough. The first part of the document "sheet" [Community Name, Current Population, Incorporation Type, Borough/Census Area], represents municipalities with the second part being unincorporated. Unincorporated communities include tribal governments, and unincorporated communities with a non-profit that are providing some kind of municipal type services. These numbers, which could be higher, represent communities inside and outside the borough that could potentially qualify for community revenue sharing. Mr. Blood responded to Representative Seaton's earlier question, and said that within Title 4 the definition of community is 25 individuals in a 5-mile radius around the post office, and community revenue sharing is 25 people living as a social unit. Unincorporated communities are one of CRA's biggest issues in that there are no defined boundaries, and depending upon the program or the context, it is a difficult question to answer as to how many communities exist in Alaska.

[8:58:39 AM](#)

MR. BLOOD referred to slide 3, "Classification of Cities and Boroughs," and offered that there are three classification of city governments and that the classification and location of cities are significant in terms of the powers and duties. He explained that a home-rule city has all of the legislative powers not prohibited by law or charter, and first-class and second-class cities being general law in which the state law

defines their powers, duties, and functions. Slide 4, "City Governments in Alaska," he said, depicts each classification of cities and the importance of understanding whether a city is in an unorganized or outside of an organized borough is how it is treated under law. Slide 5, he said, depicts four classification of organized boroughs in that the classification of boroughs are significant in terms of the powers and duties, whereas with the city it was classification and location. Slide 6, "Organized Boroughs in Alaska," he indicated shows how many borough are in Alaska and the different classifications. Slide 6, "Provisions Applicable to All Local Governments," he pointed out are the general law municipalities that have many powers dictated by Title 29. However, he remarked, the Alaska State Constitution provides for maximum local self-government with a minimum of local governing units and preventing duplication of tax levying jurisdiction "a liberal construction shall be given to the powers of local government units." He described the following as powerful statements restated in AS 29.35.400, "a liberal construction shall be given to all powers and functions of a municipality," and further stated in AS 29.35.410 "Extent of powers: Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions." He reiterated that these are powerful statements because in a majority of the states, municipalities are given specific duties and powers by the legislature. The State of Alaska is much different in that it provides broad powers by municipalities to exercise local control outside of the [provisions] in AS 17.38. While general law local governments have broad powers, home-rule local governments have even greater powers, he remarked.

[9:02:47 AM](#)

MR. BLOOD referred to slide 8, which read: "Article X, Section 11 of the Alaska State Constitution provides that: a home-rule borough or city may exercise all legislative powers not prohibited by law or by charter." Slide 9, "Distinctions Between General Law Boroughs," he related is that there is a principal distinction between a first-class borough and a second-class borough relating to authority to assume powers. He stated that a first-class borough may exercise any power not prohibited by law on a non-areawide basis (the area outside of the city municipal boundaries), and a second-class borough must gain voter approval for the authority to exercise many non-areawide powers. On the other hand, he pointed out, home-rule boroughs can exercise on an areawide basis. Slide 9, he stated

that the duties and powers of cities depend upon the classification and city duties and powers also vary in terms of location within or outside of an organized borough. In many cases, he explained, if a second-class city is in the unorganized borough it has greater powers at its disposal. He remarked that all local governments have certain fundamental duties such as, conducting local elections and holding regular meetings, beyond this, duties and powers of municipalities vary considerably. Second-class cities are not obligated by law to provide any particular service, he said. Second-class cities are not required by law, like the other classifications of cities and boroughs, to perform actions, however, the Alaska State Constitution and statutes give them the ability to assume those powers, he offered. Where they find themselves in between those two ends of the spectrum is local control, he pointed out.

[9:05:24 AM](#)

MR. BLOOD referred to slide 11, and said that all organized boroughs, as well as home-rule cities and first-class cities in the unorganized borough must exercise planning, platting, and land use regulations, which refers to what side of the track a cultivation facilities is located is through zoning codes and land use regulations. Second-class cities in the unorganized borough are permitted, but not required, to exercise planning powers which is where DCRA assists second-class cities because not all exercise its planning powers, he advised. Home-rule cities, first-class and second-class cities in organized boroughs may exercise planning, platting, and land-use regulation powers only if those powers have been delegated to them by the borough because all boroughs are mandated by state law to exercise planning and platting, he stated. However, they can delegate those to the cities if they so choose, and the cities must consent to that delegation, however, should the borough revoke that delegation it does not require the consent of the city, he conveyed. Organized boroughs have the duty to collect municipal property, sales, and use taxes, levied within their boundaries, he explained, otherwise municipal powers are exercised at the discretion of local governments. Slide 12, "Powers and Duties of Cities," he said is a "cheat sheet" depicting the rules of home-rule cities, first-class cities, second-class cities and [authority] references. He used the example of planning, platting and land use regulations and how a particular city or borough acquires those powers. With reference to slides 13-14, "Powers and Duties of Organized Boroughs," he said it comes down to whether or not it is an unorganized borough of the borough. He offered, as an example,

planning, platting and land use regulations in that the borough must exercise powers areawide, however, it can delegate. The property tax and sales tax is different depending upon which class of borough a person lives in and the way it applies to the cities.

[9:09:28 AM](#)

MR. BLOOD referred to slide 15, "Powers of Unincorporated Communities," and related that unincorporated communities have no planning, taxing, or policing powers. He stated that the [slide 2] depicts municipalities and also the unincorporated communities that are in no manner referenced in AS 17.38, unlike Title 4. He explained that Title 4 unincorporated communities or what is defined as established villages have the option of adopting a local option whether it is inside or outside an organized borough as it doesn't matter - just an organized village of 25 people can opt to have a local option, and under AS 17.38 they have no options. In addition to not having any powers under AS 17.38 they have none of the municipal powers that the municipalities exercise, such as, planning, platting, land use regulation, and taxation, he pointed out. However, the unincorporated communities inside an organized borough are governed by the areawide and non-areawide powers of a borough, and those policies could be covered by the borough, he explained. Unincorporated communities outside an organized borough could only regulate marijuana in accordance with a legislative enactment. He reiterated that unincorporated communities have no planning, taxing or policing powers and also no boundaries. Slide 16, "Unincorporated Community Boundary Examples," he offered explains how a community is defined that is not a municipality. The established village under Title 4 is the five-mile radius around the post office, or the census designated place (CDP) which is a concentration of population identified by the U.S. Census Bureau for statistical purposes - CDP's are populated areas that lack a separate municipal government but otherwise physically resemble an incorporated place. He remarked that a community for community revenue sharing is a place not incorporated as a municipality in which 25 or more individuals reside as a social unit. He said his point to this slide is that unincorporated communities do not have boundaries.

[9:13:15 AM](#)

REPRESENTATIVE HUGHES asked in areas where there are 25 or more people that build homes in the same general area, whether they

automatically become an established village once it reaches that point due to the census process or whether it is something the community applies for as there may not be a post office.

MR. BLOOD advised that within Title 4 it does not necessarily have to have a post office because within the definition it states that it could be another identified facility, such as, a store, school, or something else. He reiterated that regarding community revenue sharing, for example, 25 people does not necessarily establish that village, wherein if it is in an unorganized it is 25 people living as a social unit. He stated an organized borough requires 25 people living as a social unit providing three of five listed municipal type services in statute, and it must provide or substantially pay for it so there is a difference between organized and unorganized even for the unincorporated communities, he stated.

[9:15:17 AM](#)

REPRESENTATIVE HUGHES referred to slide 12, and suggested adding on the left column an alcohol and marijuana box, and moving across the top adding established villages. She asked Mr. Blood to walk through for home-rule city, first-class city, second-class city, and established villages the present situation with alcohol and the same with marijuana under the initiative language.

MR. BLOOD referred to the alcohol box and unincorporated community and municipalities, and said they are entitled to adopt a local option through the petition process that is in accordance with Title 29 for a municipality. However, a major difference is the number of required signatures on the petition, under Title 29, for a citizen's initiative it is 25 percent, and for the local option it is 35 percent. All municipalities and unincorporated communities throughout the state are allowed to adopt a local option, which is not true for AS 17.38 as it is currently written. He remarked that under AS 17.38 municipalities can adopt a local option by either ordinance or a petition and unincorporated communities are completely left out of AS 17.38.

REPRESENTATIVE HUGHES requested not only the above, but to include taxation and any other powers granted to those different categories of cities.

MR. BLOOD responded that for taxation all municipalities have broad taxing authority in that they are able to levy a tax and

remit it back to the city. The level of taxation it may be able to tax is dependent upon the classification and whether or not it is located inside or outside of a borough, he conveyed. Unincorporated communities, tribes, and non-profits have no taxing authority, he remarked.

[9:18:27 AM](#)

REPRESENTATIVE HUGHES asked Mr. Blood to summarize anything else such as, policing, planning and all of the different issues that may relate to alcohol and marijuana for the different categories.

MR. BLOOD advised that the quickest summary and rule-of-thumb is that all municipalities have all the implied powers not expressly prohibited by law, and unincorporated communities have nothing.

[9:19:14 AM](#)

CHAIR TILTON asked if a slide included a reference of established villages under Title 4, would that be sufficient enough to allow the unorganized communities. Also, she questioned, whether it is correct that the legislature functionally will act as the assembly for the unorganized boroughs.

MR. BLOOD answered that functionally the legislature does in many aspects serve as the assembly for the unorganized borough and can enact any laws it desires. He submitted that a problem with adding established village to AS 17.38 is possibly that an established village cannot adopt an ordinance as it would have to be through the petition process and run the election through the Division of Elections under Title 4.

[9:20:18 AM](#)

REPRESENTATIVE SEATON noted that previous testimony was of some villages looking for a "25-mile buffer zone." The established village can use a CDP as its "area" and asked whether that means an established village has the CDP area if it would opt out for the census designated area.

MR. BLOOD replied that it is a difficult question in that there is no uniform size for a census designated place, for example, Elfin Cove which the CDP is a small area which incorporates Elfin Cove itself, however, the residents of Elfin Cove are on

Indian Island, Idaho Inlet, and different areas around. So the 25 people living as a social area is much larger than the actual census designated place. On the other end of the spectrum, he said, there is the Deltana CDP which is half the size of the State of Rhode Island. He expressed there are many communities that could be located inside that census designated place. Since unincorporated communities have no boundaries, he has not been able to find a perfect fit to say "this is what a community is," he related. Since DCRA performs the community data base online, it struggles with the question of "what is a community," and each time they believe they have an answer they have to change the answer because it doesn't fit another community around the state.

[9:22:38 AM](#)

REPRESENTATIVE SEATON questioned whether under Title 4 if these communities are able to opt out of alcohol, where are they opting out of.

MR. BLOOD responded a five-mile radius around the post office or other designated facility, and there are considerations of making that a ten-mile radius.

[9:23:06 AM](#)

REPRESENTATIVE REINBOLD referred to his comments regarding the powers of responsibility for boroughs, unorganized boroughs and cities, and asked who is addressing the powers of employers, the state or private sector, that does not allow marijuana in their system.

MR. BLOOD opined that the first portion of AS 17.38 reads that nothing in this statute prohibits the state or employers from having drug free rules in the work place regulations, or communities receiving a federal grant regulations, but he would like to follow up with his answer.

REPRESENTATIVE REINBOLD asked whether there is anything the legislature needs to strengthen for the powers of the state or private sector employers with marijuana.

MR. BLOOD replied that definitions are important such as, how is "one ounce" measured, and the definition of "public." He stated that having definitions and terms in statute takes away uncertainty when being interpreted.

[9:25:46 AM](#)

CHAIR TILTON advised Representative Reinbold that these are issues she has been discussing with the Alaska Municipal League and other attorneys to determine definitions and will bring them before the committee.

[9:26:05 AM](#)

REPRESENTATIVE ORTIZ said in following up with Representative Reinbold's question, asked whether the answer includes a landlord deciding there would be no marijuana on their property.

MR. BLOOD deferred to Ms. Franklin as he did not know whether that issue is considered under Ravin v. State, 537 P.2d 494 (Alaska 1975).

[9:26:52 AM](#)

REPRESENTATIVE DRUMMOND commented that the legislature will be acting as an assembly for the first time for the unorganized borough, and she opined it may have to determine land use regulations and local taxing. She called attention to the initiative which put forth that the state will impose a \$50 per ounce tax and questioned whether local communities with taxing powers will be able to add an additional tax, or will all the taxes collected on an ounce of marijuana have to total \$50 and divide it differently.

MR. BLOOD answered in the affirmative, unless it is specifically prohibited by law those municipalities may exercise all the implied taxing powers. Should a sales tax be levied, he said he could not see any reason it would not be mandatory that it also levy that same sales tax on the sale of marijuana products because the municipalities have to levy a tax and then provide a list of exemptions. In the event marijuana is not a listed exemption and it is a retail sale, he could not see a reason the sales tax could not be levied. Also, he opined, if a municipality levies a property tax the facility and land would be subject to the city or borough property tax.

[9:29:47 AM](#)

TIM HINTERBERGER, Ph.D., Chair, Campaign to Regulate Marijuana like Alcohol in Alaska, in response to earlier testimony advised that the intention of the initiative is that local control of marijuana should quite closely mirror local control of alcohol

in Alaska. The omission of "established village" wasn't meant to exclude any local government that has the ability to regulate alcohol use in its community and, in fact, during the campaign they attempted to make it clear, he stated.

9:31:39 AM

REPRESENTATIVE REINBOLD noted that Alaska has a high percentage of alcoholics together with a high rate of traffic related accidents related to alcohol, and a high rate of teen-age drug and alcohol abuse. She contends that Alaska has not done a good job regulating alcohol and questioned why Alaska should regulate marijuana like alcohol.

DR. HINTERBERGER agreed that alcohol has been a serious problem for many people in Alaska and elsewhere, but it is important to remember that marijuana shares few of the pharmacological and toxicological properties of alcohol. He analyzed that marijuana's methods of use and behaviors induced by its use are entirely different than those as a result of alcohol use. He pointed to a common concern that people have that difficulties with alcohol should cause great caution in allowing marijuana to be regulated, except he does not see that much similarity between the two substances.

9:33:16 AM

REPRESENTATIVE REINBOLD reiterated that as marijuana is so different from alcohol, why regulate it the same. Especially, she said, in that Alaska has not done a good job overall of regulating alcohol. She surmised that the conclusion does not bear a good strategy in that if the two substances are different, why regulate them the same.

DR. HINTERBERGER responded that marijuana, from a toxicological and pharmacological point of view, is far less problematic than alcohol. He pointed out that the fact that prior to the initiative being passed, marijuana was prohibited whereas alcohol was permitted and regulated which is the opposite direction these two substances should be dealt with. Simply making marijuana regulated equivalently with alcohol is a step in the right direction as there is no reason marijuana should be regulated more stringently than alcohol or prohibited as it has been in the past and if anything, marijuana should be regulated more leniently than alcohol, he conveyed.

9:34:36 AM

REPRESENTATIVE REINBOLD argued that Dr. Hinterberger's statements were debatable as she was in pharmaceutical sales roughly 10-years and to say some of the things Dr. Hinterberger said about the pharmacology ... it all depends on the efficacy, and concentrate, the size of the individual, et cetra. She advised Dr. Hinterberger to use caution when making his statements.

DR. HINTERBERGER replied that marijuana in any dose is not toxic or lethal which cannot be said about alcohol and, the evidence is clear that marijuana is far less toxic and harmful than alcohol.

CHAIR TILTON pointed out that the goal today is to define terms and not to debate the initiative.

[9:35:53 AM](#)

REPRESENTATIVE SEATON offered from a community and regional affairs standpoint that some of Alaska's rural communities have been dealing with is both tobacco and alcohol addiction. A running question is regarding the mixing of nicotine with THC products, or mixing alcohol with THC products which would effectively increase its dependency or addiction properties, he noted.

DR. HINTERBERGER answered that it was never the intent of the drafters of the initiative to permit alcohol or tobacco to be combined in the same product with marijuana, or necessarily even to be available for sale or use in the same establishment and the legislature could draw a clear line between all of those substances and how and where they may be purchased and used.

REPRESENTATIVE SEATON indicated he appreciated Dr. Hinterberger's statement in making sure the legislature can move the commercial enterprise in a manner that is not going to have unforeseen consequences is important.

[9:37:38 AM](#)

CHAIR TILTON referred to the local option issue and asked whether it was the intent to put municipalities into the all or nothing approach, meaning that a municipality must allow all commercial activities or none. She maintained that the municipalities are willing to allow the cultivation, but not necessarily the retail sales or visa versa.

DR. HINTERBERGER remarked that the initiative states that a local government may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through enactment of ordinance or by voter initiative. He surmised that it spells out that local government can prohibit any number or all of those activities.

[9:38:33 AM](#)

REPRESENTATIVE HUGHES assumed Dr. Hinterberger was involved in the process of drafting the initiative and questioned his intention regarding "established villages."

DR. HINTERBERGER reiterated it was not the intent of the drafters to exclude established villages, as they were trying to mirror the way that local option applies to alcohol. He apologized for the omission as the intent was to mirror local control of alcohol and he did not want to create any problems through that misunderstanding.

[9:40:01 AM](#)

REPRESENTATIVE REINBOLD referred to Dr. Hinterberger's statement that "marijuana is not toxic at any level," and specified that the definition of "toxic" is necessary and his statement is "a very, very debatable statement." She asked whether he is being funded by any entity, or as a volunteer.

DR. HINTERBERGER responded that this is an issue he has personally devoted his time to for over a decade as the prohibition of marijuana causes negative consequences in a free society, such as the black market. He emphasized it is a lesson that should have been learned through alcohol prohibition 80-years ago and applied to marijuana, but better late than never. He stated he is not being paid in any manner for his activities and is a volunteer. He said he is grateful for the assistance received from colleagues in the Marijuana Project, but is receiving no compensation in any manner for his participation with them.

[9:41:37 AM](#)

CHAIR TILTON questioned whether a city can allow the sale of bud yet ban the sale of edibles under the initiative.

DR. HINTERBERGER offered that her question requires more discussion among those on the undecided issue, but opined that it would not be good to tamper with the definition of marijuana as it is given in the initiative. Therefore, he pointed out, any municipality or local government, for example, to forbid the sale of edibles but allow the sale of marijuana plant material would be altering the definition and would require a re-definition. Another issue, he said, is whether a local government could require that marijuana stores be only be municipality owned, such as a city or municipality owned store, which would not be inconsistent with the initiative and as a result then, that store could choose which type of marijuana products to sell and would accomplish the same goal.

[9:43:17 AM](#)

RACHELLE YEUNG, Legislative Analyst, Marijuana Policy Project, echoed Dr. Hinterberger's statement that "established villages" were omitted inadvertently as the drafters' intent was to mirror the local authority under Title 4. She emphasized that unlike alcohol, with Local Option 5 in which it can prohibit all personal use and possession of marijuana is protected both by the initiative and Ravin. She then addressed the question Representative Seaton offered to Ms. Franklin regarding how adding "established villages" to the statute differs from substituting the word "registration" with "license." With regard to his "adamant" opposition, she opined that it did not come from the campaign, for legal reasons the belief that the word "registration" is a better term to use as far as marijuana regulation. She offered a court precedent from Oregon that read "affirmative authorization using words such as license or permitted by" is riskier as far as drawing federal intervention than a term such as "registration," but even laws using the term "license as ... um ... appears to be your intent" are not preempted by federal law and it should be alright. However, she noted, the word "registration" would be the strongest legal footing to defend against potential federal preemption. They were not the ones to make a strong objection to that substitution, and as far as the campaign goes it is not something it would put a lot of energy into fighting, she said. She remarked that Mr. Blood did a much better job than she of outlining the different authorities under various types of local governments.

[9:47:48 AM](#)

REPRESENTATIVE REINBOLD asked whether Dr. Hinterberger is affiliated with a completely separate organization or whether he works with the Marijuana Policy Project (MPP) out of Washington D.C. She further asked whether Dr. Hinterberger and Ms. Yeung are volunteers, or are being paid, and if being paid, she inquired as to the entity funding them.

MS. YEUNG advised she is a full-time paid employee by the MPP, a 501(c)(3) and (c)(4). She explained that her job as a legislative analyst is to support and assist local advocates who elect to bring about marijuana policy reform to their own states, which is the capacity in which she is assisting and supporting the Campaign to Regulate Marijuana like Alcohol in Alaska. Ms. Yeung reminded the committee that Dr. Hinterberger is the chair of the Campaign to Regulate Marijuana like Alcohol in Alaska and is an uncompensated volunteer.

9:49:10 AM

REPRESENTATIVE SEATON pointed out that alcohol in Alaska is regulated by licenses and multiple licenses for different portions instead of a single registration that might cover all aspects. He asked whether Dr. Hinterberger and she are in opposition to the use of licenses for different parts of the industry.

MS. YEUNG responded that MPP believes using the term "license" would not be preempted by federal law, and that the language should be left as is to keep the law on the strongest possible legal footing.

9:50:17 AM

REPRESENTATIVE SEATON recognized that alcohol uses a number of different endorsements to a licenses such as, a distillery, retail establishment, or processing facility. He asked whether MMP objects to those levels of discriminated licenses used in the alcohol industry in Alaska.

MS. YEUNG opined that the initiative lays out a number of marijuana related establishments that can be registered such as, production, retail, testing, and processing. She offered to research the issue and forward a response.

DR. HINTERBERGER, in response to the question concerning the distinction between registration, licensing, and the application of multiple licensing for certain aspects of the industry,

deferred the question to Ms. Yeung's legal expertise and the ramifications of that distinction.

MS. YEUNG explained that under AS 17.38.070, the lawful operation of marijuana operated facilities, there are various provisions for the different types of marijuana related facilities the initiative envisioned being established. She opined that each one of the type of facilities could have its own distinct registration types as each facility would be allowed to do different things under the initiative. She remarked that the four types of marijuana related establishment categories are: retail marijuana store, marijuana cultivation facility, marijuana product manufacturing facility, and marijuana testing facility.

[9:53:43 AM](#)

REPRESENTATIVE SEATON asked whether Dr. Hinterberger agrees that the multiple licenses would be available for those four different parts of the industry.

DR. HINTERBERGER replied yes, and concurred that the licenses or registrations would be received separately for each type of facility.

[9:54:41 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:54 a.m.