

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 11, 2015

1:06 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Neal Foster
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 75

"An Act relating to the regulation of marijuana by municipalities; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

CONFIRMATION HEARING(S):

ALASKA COMMISSION ON JUDICIAL CONDUCT

George R. Boatright

- CONFIRMATION ADVANCED -

BILL: HB 75

SHORT TITLE: MUNI REGULATION OF MARIJUANA; ADV. BOARDS

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

01/23/15	(H)	READ THE FIRST TIME - REFERRALS
01/23/15	(H)	CRA, JUD
02/21/15	(H)	CRA AT 10:00 AM BARNES 124
02/21/15	(H)	-- MEETING CANCELED --
02/24/15	(H)	CRA AT 8:00 AM BARNES 124

02/24/15	(H)	Heard & Held
02/24/15	(H)	MINUTE(CRA)
03/03/15	(H)	CRA AT 8:00 AM BARNES 124
03/03/15	(H)	Moved CSHB 75(CRA) Out of Committee
03/03/15	(H)	MINUTE(CRA)
03/05/15	(H)	CRA AT 8:00 AM BARNES 124
03/05/15	(H)	Moved CSHB 75(CRA) Out of Committee
03/05/15	(H)	MINUTE(CRA)
03/06/15	(H)	CRA RPT CS(CRA) NT 3DP 3NR
03/06/15	(H)	DP: NAGEAK, SEATON, TILTON
03/06/15	(H)	NR: DRUMMOND, REINBOLD, HUGHES
03/11/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

GEORGE BOATRIGHT
Anchorage, Alaska

POSITION STATEMENT: As appointee to the position of Alaska's Commission on Judicial Conduct, discussed his qualifications and answered questions.

CHARLES MCKEE
Anchorage, Alaska

POSITION STATEMENT: During the confirmation hearing of George Boatright testified regarding the "Oath Bonded Commission".

REPRESENTATIVE CATHY TILTON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSHB 75 on behalf of the House Community and Regional Affairs Standing Committee, of which she chairs.

HEATH HILYARD, Staff
Representative Cathy Tilton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified regarding CSHB HB 75 on behalf of the House Community and Regional Affairs Standing Committee, sponsor by request, chaired by Representative Tilton.

SCOTT BLOOM, City Attorney
City of Kenai
Kenai, Alaska

POSITION STATEMENT: Testified in support of CSHB 75.

LUKE HOPKINS, Mayor

Fairbanks North Star Borough
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of CSHB 75 offered testimony and answered questions.

TODD SHERWOOD, Assistant Municipal Attorney
Anchorage Department of Law
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 75 offered testimony and answered questions.

RENE BROKER, Borough Attorney
Fairbanks North Star Borough
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of CSHB 75 answered questions.

CATHY WASSERMAN
Alaska Municipal League
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 75 offered testimony and answered questions.

BRUCE SCHULTE
Coalition for Responsible Cannabis Legislation
Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSHB 75 offered testimony and answered questions.

ACTION NARRATIVE

[1:06:19 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Keller, Lynn, Millett, Claman, and LeDoux were present at the call to order. Representatives Gruenberg and Foster arrived as the meeting was in progress.

^CONFIRMATION HEARING(S): ALASKA COMMISSION ON JUDICIAL CONDUCT

CONFIRMATION HEARING(S)
ALASKA COMMISSION ON JUDICIAL CONDUCT

[1:06:41 PM](#)

CHAIR LEDOUX brought before the committee the appointment of George R. Boatright to a position on the Committee on Judicial

Conduct. [Packets contain biographical information on the appointee.]

CHAIR LEDOUX advised the committee that it would be hearing the qualifications of this individual today and recommending that his name be referred to the Joint House and Senate for consideration. Chair LeDoux reminded the committee that its job is only to review the history and qualifications of these men. She stated that there will be no vote for or against their confirmations. Committee members should feel free to ask questions, but to bear in mind that the committee is not voting on qualifications, merely reviewing them, she highlighted.

[1:07:32 PM](#)

CHAIR LEDOUX asked Mr. Boatright if there was anything he would like to point out.

[1:08:07 PM](#)

GEORGE BOATRIGHT said that primarily his experience in law enforcement with the Alaska Court System is most relevant.

[1:08:49 PM](#)

REPRESENTATIVE KELLER asked Mr. Boatright why he is willing to serve on the commission.

MR. BOATRIGHT noted that he has been retired for almost three years and is looking for something to do as he has always been involved in public service.

[1:09:35 PM](#)

CHAIR LEDOUX remarked that in his professional career in law enforcement had he ever had the opportunity to appear before many of the judges.

MR. BOATRIGHT opined that most of the judges he has dealt with have long since retired or moved on to other things. He said there are a few judges left that he is familiar with from his time as Chief of Police in Palmer, but he has not had any contact or interaction with the current serving judges.

CHAIR LEDOUX opened public testimony.

[1:11:04 PM](#)

CHARLES MCKEE advised he told the [Alaska Commission on Judicial Conduct [when the vacancy arose] must have an "Oath Bonded Commission" on file with the clerk of court as after 30 days they are an imposter. He cited the 1863 Act of Congress signed by Lincoln.

CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

[1:13:00 PM](#)

REPRESENTATIVE KELLER moved to forward the name of George R. Boatright to the joint session of the House and Senate for confirmation. There being no objection, the confirmation of George R. Boatright was advanced from the House Judiciary Standing Committee.

[1:13:29 PM](#)

The committee took an at-ease from 1:13 to 1:15 P.M.

HB 75-MUNI REGULATION OF MARIJUANA; ADV. BOARDS

[1:15:24 PM](#)

CHAIR LEDOUX announced that the last order of business would be HOUSE BILL NO. 75, "An Act relating to the regulation of marijuana by municipalities; and providing for an effective date."

[1:15:28 PM](#)

REPRESENTATIVE CATHY TILTON, Alaska State Legislature, said HB 75 is essentially a collaborative effort between the House Community and Regional Affairs Standing Committee, Alaska Municipal Leagues, Alaska Municipal Attorneys Association, community governing stakeholders, and community members. She noted that when the marijuana initiative was passed, communities looked to the legislature for guidance in whether to opt in or opt out. During the hearings, rather than telling the communities what to do, she listened to what communities need from the legislature.

[1:17:02 PM](#)

HEATH HILYARD, Staff, Representative Cathy Tilton, Alaska State Legislature, referred to the "S" version and stated it follows the identical definition provided in the initiative language, with the exception of the removal of the reference "salt." To the extent possible, the drafter aligned definitions in specific provisions that also exist in other marijuana related legislation. He pointed out that Sec. 1 pertains to a definition in Title 11 of the Alaska Criminal Statute. In the course of drafting, they created a structure whereby if HB 75 was the only related piece of marijuana legislation that passed this year the appropriate statutory references would be provided. He related that other pieces completely remove the definition under Title 11 of the Alaska Criminal Statute. He further related that the functional effect is the same as the goal is to provide a standard definition through statute for marijuana.

[1:19:56 PM](#)

CHAIR LEDOUX questioned that other than taking the language "salt" out, was anything done with the comma.

[1:20:07 PM](#)

MR. HILYARD responded that his research did not direct the drafters to do or not do anything with the comma. He referred to Sec. 2 [AS 17.38.020(2)], page 2, lines 16-18, which read:

(2) ... were grown, except that not more than 12 marijuana plants, with six or fewer being mature, flowering plants, may be present in a single residence where two or more persons 21 years of age or older reside;

MR. HILYARD continued that municipalities provided a specific number of plant limits per household. He advised that this bill is largely a work product of municipal attorneys and they asked that the legislature provide a bright line regarding the total limit on a household. In attempting to make a legitimate justification for 12 plants, they reviewed federal laws as they pertain to alcohol and particularly the home brewing of alcohol.

[1:22:39 PM](#)

CHAIR LEDOUX interjected that because she has concerns that the [number of plants for personal use] might contravene the terms of the initiative, she asked Legislative Legal and Research

Services for an opinion, which the committee has not yet been provided.

She advised that her question was whether or not this contravenes the initiative, and whether it contravenes the initiative in such a manner that would be inappropriate, unconstitutional, or illegal, under Alaska law relating to initiatives.

[1:23:21 PM](#)

MR. HILYARD noted that there were several municipal attorneys on line to testify, and some specifically like 12 as a number, and some simply say they do not care what the number is so long as there is a definitive number per household. He described the legislation as a work product designed to be responsive to the needs of municipal communities.

The House Community and Regional Affairs Standing Committee is the sponsor of this bill and, he related, that the committee would be satisfied with whatever number the House Judiciary Standing Committee offers.

[1:24:00 PM](#)

CHAIR LEDOUX opined that one of the progeny of the Ravin v. State of Alaska, 537 P.2d 494 (Alaska 1975), decision discusses how many plants a person can possess.

MR. HILYARD advised that Ravin pertains only to the privacy issue and under Noy v. State of Alaska, No. A-8327, August 29, 2003, the Alaska Court of Appeals defined four ounces or less for personal possession. His research did not reveal case law directed at 12 plants versus 24 plants.

[1:27:32 PM](#)

CHAIR LEDOUX asked Mr. Hilyard the definition of a marijuana club.

MR. HILYARD pointed to [Sec. 21. AS 17.38.900(16)], page 11, lines 3-5, and said that the definition of a marijuana reads as follows:

(16) "marijuana club" means an entity registered to allow consumption of marijuana by paying members of

the club on the registered premises and whose members are 21 years of age or older;

MR. HILYARD advised there has been discussion about providing additional sideboards in which the input of the House Judiciary Standing Committee would be very valuable. He offered that this is an initial first blush based on the discussions of the House Community and Regional Affairs Standing Committee.

[1:28:18 PM](#)

CHAIR LEDOUX questioned whether a marijuana club could have employees.

MR. HILYARD responded there has been discussion relating to bottle clubs versus private club as it pertains to provisions in Title 4, but the committee did not weigh in on that issue.

CHAIR LEDOUX stated that many municipalities ban the consumption of the smoking of cigarettes and that there is currently legislation concerning a statewide ban. She wondered how marijuana legislation will gel with anti-smoking legislation.

MR. HILYARD stated that as this legislation was being drafted it did not have the luxury of the presumption of other pieces of legislation passing. He noted there would have to be a reviser's bill to address any potential differences between what passes. He pointed out that Sec. 8, addresses an unintended omission in the initiative regarding the local option provision as AS 17.38 made no provision for local option elections for established villages. In going through the drafting process, they put in sideboards regarding the process in which an established village can hold a local option election, and how the perimeters of an established village are determined.

[1:30:34 PM](#)

CHAIR LEDOUX asked if this would basically work as it does for the local option with respect to alcohol.

MR. HILYARD answered in the affirmative, and stated with the exception that Ravin provides protection for personal consumption of marijuana and not for alcohol. The local option election in this circumstance would pertain only to the banning of commercial [marijuana] activities within the perimeters of an established village.

[1:31:02 PM](#)

MR. HILYARD referred to Sec. 9, [AS 17.38.110(b), page 5, lines 26-31 and Page 6, lines 1-2, and stated that at the express request of municipalities, the House Community and Regional Affairs Standing Committee allowed municipalities to establish civil and criminal penalties for time, place, and manner violations by commercial marijuana establishments. He pointed out it was not originally included in the initiative, and Legislative Legal and Research Services advised it was not specifically prohibited in the initiative language. He opined that Title 29 provisions would allow the municipalities to do that even though it was not expressly defined. The committee, at the express request of the municipalities, provided that they have criminal authority for time, place, and manner, violations for commercial establishments. He referred to Sec. 16, [AS 17.38.110], page 7, lines [15]-22, which stipulate that any of the powers authorized to the boroughs is on a non-areawide basis. Essentially, he noted, in the case of the Fairbanks North Star Borough, the borough may adopt prohibitions or regulations within the borough boundaries. Due to the fact they are non-areawide, any prohibition or ordinance on the borough-wide level would not apply to cities within its boundaries. He said that was at the request of cities like the City of Fairbanks and the City of Wasilla that are first-case cities within second class boroughs.

[1:32:37 PM](#)

CHAIR LEDOUX surmised that the boroughs, many of which do not have area-wide powers, cannot currently adopt anti-smoking regulations. She questioned whether they would be able to under this legislation adopt regulations vis-à-vis marijuana establishments.

MR. HILYARD used the example of the Fairbanks North Star Borough and remarked that it could adopt borough ordinances pertaining to borough land outside of the boundaries of first class cities like North Pole and Fairbanks, which lay within the boundaries of the Fairbanks North Star Borough.

CHAIR LEDOUX questioned that even if one of their powers is not health or public safety, as many boroughs do not have that power.

MR. HILYARD opined that they still have zoning and planning authority and that could fall under that circumstance. He said

the intent of the policy call of the House Community and Regional Affairs Standing Committee, with regard to stipulating non-areawide, is that a borough could not supersede a city within its boundaries.

[1:33:49 PM](#)

MR. HILYARD pointed to Sec. 17, [AS 17.38.200 - AS 17.38.260], page 7, lines 26-31 through page 10, lines 1-[11] and stated it sets forth the proper process by which an established village can have a local option election to prohibit a commercial marijuana operation within its boundaries. He advised it is virtually identical language to Title 4, for the purpose of commercial marijuana establishments. Sec. 19, [17.38.900(9)], page 10, lines [16-19], adds to the definition of marijuana club to marijuana establishment, he explained. Sec. 20, [AS 17.38.900(6)], page 10, lines [20-28], revises the definition of marijuana to be consistent with Sec. 1, of the bill. He noted that essentially the practical effect is that the committee prefers a singular definition of marijuana throughout statute for municipalities to adopt ordinances. Sec. 21, [AS 17.38.900], page 10, lines [29-31] through page 11, lines [1-12] offers the express definition for an established village, marijuana club, public place, and residence. The public place definition follows AS 11.81.900, he noted. "Sec. 22 removes local government from the definition section found in AS 17.38. ... let me just refresh myself why that was the case ... there was ... that's kind of a conforming amendment and quite honestly I don't remember exactly why local government was removed but there was a drafting reason." Sec. 23 provides for the effective date of the bill, he explained.

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CHAIR LEDOUX asked that if public place doesn't include a marijuana club then under what opuses would the local government ban the marijuana club.

MR. HILYARD explained that it would be determined as a commercial marijuana establishment. The initiative provides for various types of commercial establishments regarding the cultivator, transporter, wholesaler, or retailer, and this provision adds marijuana club to the list of commercial establishments.

CHAIR LEDOUX offered a scenario of a person forming a marijuana club like a book club, or a non-profit, and asked how that would work.

MR. HILYARD answered that he did not have a response as perhaps the House Community and Regional Affairs Standing Committee definition of marijuana club is not as sufficient as necessary. He reiterated it was a first blush based on requests from municipalities to offer them a definition so they could determine, by local ordinance, whether they would allow or disallow marijuana clubs within their boundaries.

[1:37:07 PM](#)

CHAIR LEDOUX referred to [Sec. 1, AS 11.71.900] page 2, lines 2-4, which read:

(14) ... , or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

CHAIR LEDOUX asked whether that language differed from current law.

MR. HILYARD opined that as it is referring to AS 11.[71.900], of the Alaska Criminal Statute, and the language needed to be included to conform to the initiative language. He said the definition must be reviewed in the event a substantive criminal regulatory bill package is not adopted by this legislature.

[1:38:02 PM](#)

REPRESENTATIVE KELLER referred to Sec. 14, [AS 17.38.110(i)], page 7, lines 5-9, which read:

(i) A registration issued by a municipality [LOCAL GOVERNMENT] in accordance with (f)[OF THIS SECTION] or (g) of this section shall have the same force and effect as a registration issued by the board in accordance with AS 17.38.100. The holder of the [SHALL] registration is [SHALL] not [BE] subject to regulation or enforcement by the board during the term of that registration.

REPRESENTATIVE KELLER and asked Mr. Hilyard to explain the language.

MR. HILYARD answered that the House Community and Regional Affairs Standing Committee amended existing statute for the initiative language which changed local government to municipality. He said he could not speak to language from the initiative.

REPRESENTATIVE KELLER asked for verification that the initiative made the deletions on line 8.

MR. HILYARD said that Sec. 14 includes the deletion of local government with the inclusion of municipality, which is clarifying and using the standard. In going forward, he offered, when looking at the holder of the registration "is not subject" is a grammatical change based on Legislative Legal and Research Services. He posited there was no policy direction by the committee or any members of the municipal attorneys working with them as it was drafting language.

[1:40:21 PM](#)

CHAIR LEDOUX opined that the way the initiative works is that if the board does not act on an application for registration, then the municipality can act. She said the language is changing from local government action to municipality action.

MR. HILYARD said the initiative language would read "The holder of such registration shall not be subject to regulation or enforcement by the board during the term of that registration." He related that the new revision reads "The holder of the registration is not subject to a regulation or enforcement by the board during the term of that registration." He suggested asking the drafter, Hilary Martin, but remarked it was essentially a grammatical issue by the Legislative Legal and Research Service. He reiterated there was no policy direction by the House Community and Regional Affairs Standing Committee or any requests from municipalities for the language change.

[1:41:27 PM](#)

REPRESENTATIVE KELLER pointed to [Sec. 2, AS 17.38.020], page 2, lines 6-7, and referred to the wording "NOTWITHSTANDING any other provision of law ..." and said it was taken out of HB 79.

CHAIR LEDOUX offered that one of the work drafts took the language out, but it is still being considered.

[1:41:59 PM](#)

REPRESENTATIVE KELLER asked for clarification of [Sec. 5, AS 17.38.100(c)] page 3, lines 13-14, which read:

(c) Within 10 days after receipt of [UPON RECEIVING] an application or renewal application for a marijuana establishment, the board shall notify the municipality of the board's receipt of the application and [IMMEDIATELY] forward a copy of each application and half of the registration application fee to the local regulatory authority for the municipality [LOCAL GOVERNMENT] in which the applicant desires to operate the marijuana establishment, unless the municipality [LOCAL GOVERNMENT] has not designated a local regulatory authority under [LOCAL GOVERNMENT] has not designated a local regulatory authority under [PURSUANT TO] AS 17.38.110(c).

REPRESENTATIVE KELLER questioned whether the language is a policy decision for the House Judiciary Standing Committee.

MR. HILYARD opined that there has been debate as to revenue sharing for the license registration fees and based upon his conversations with municipal attorneys, municipalities would like the 50-50 split. He advised there are people on line who could speak to that issue.

[1:43:00 PM](#)

CHAIR LEDOUX pointed to a legal opinion in each packet suggesting it is not legally appropriate.

MR. HILYARD remarked that he does not recall the above-mentioned opinion as this issue was not discussed in the House Community and Regional Affairs Standing Committee.

CHAIR LEDOUX said she is referring to the legal opinion of 2/27/15, and noted that page 3 refers to dedication of funds without appropriation.

MR. HILYARD said that he does not have an opinion.

CHAIR LEDOUX commented that the committee would consider the issue during the next hearing.

[1:44:55 PM](#)

REPRESENTATIVE KELLER quiered whether this requires the board to notify the municipality when it receives an application, and asked if there is a fiscal note.

MR. HILYARD advised there is a singular fiscal note from the Department of Commerce, Community, and Economic Development (DCCED) under the Division of Alcohol, Division of Economic Development, within the Alcoholic Beverage Control Board (ABC Board) that is a zero fiscal note. The language and the provision Representative Keller spoke to was essentially taken directly from Title 4. He advised that the House Community and Regional Affairs Standing Committee wanted to apply provisions with regard to notification and/or protest that exists for alcohol licensures to municipalities to commercial marijuana.

CHAIR LEDOUX opened public testimony.

[1:46:53 PM](#)

SCOTT BLOOM, City Attorney, City of Kenai, said that Representative Tilton and Mr. Hilyard have worked closely with many local municipal representatives regarding their concerns about implementation of the initiative and opined that the current CSHB 75 fairly represents those efforts. Options for local control and clarity in enforceable rules will benefit the City of Kenai and other municipalities as well. The bill preserves local options and provides clarity for the public and agency's charged with enforcement. He said he supports a bright line rule for a particular number of plants per household as it provides clarity to all potential interested parties. He related that he does not advocate for any particular limit as long as there is a specific number. He opined that without the amendment in this regard the initiative language would either result in scant enforcement or constant litigation. He further opined that the committee's support for CSHB 75 will help to provide guidance and uniformity as municipalities move forward in this process.

[1:48:21 PM](#)

REPRESENTATIVE GRUENBERG requested that Mr. Bloom and others remain available.

MR. BLOOM stated he would be available.

CHAIR LEDOUX asked why would it be difficult for a municipality when there are four people in a household with 24 plants, why isn't that as bright of a line as saying 12 or 18 plants. She opined that when there are four adults it would be relatively easy to figure out how many plants they are entitled to.

MR. BLOOM responded that there is difficulty in determining how many people actually live at that residence and used the example of police responding to a domestic violence call and the police find 36 plants, except the 2 people at the residence say that 6 adults live in the house. He described a person having large quantities of marijuana in a college-like setting where there are numerous adults living together and stated it can lead to other problems.

CHAIR LEDOUX related that is a different scenario than a bright line just for purposes of making things easier to figure out.

MR. BLOOM agreed that it is a little different in that when the municipality knows a household can only have 12-24 plants and law enforcement shows up at a residence for whatever reason and there are a given number of plants within the limit, that is the end of the inquiry. Otherwise, he said, it is a more complicated process in determining who lives there and who possesses the plants.

[1:50:50 PM](#)

REPRESENTATIVE GRUENBERG asked if the focus in the discussion was on page 2, lines 16-18.

CHAIR LEDOUX advised that Mr. Bloom was testifying on the bill before the committee.

REPRESENTATIVE GRUENBERG offered a scenario of having a 4-plex and a backyard or a greenhouse, how would law enforcement know to which residence the plants belonged.

MR. BLOOM said he does know that they could, and opined that the police department would have to investigate in that regard.

REPRESENTATIVE GRUENBERG directed that the committee received a three page legal memo, dated 2/27/15, from Emily Nauman, which discussed equal protection on the first page. He questioned whether Mr. Bloom had reviewed it.

MR. BLOOM said he does not know whether he has read that particular memo, however, he has looked into some case law and analyzed under Alaska law more as a privacy type interest. He offered that the Alaska Supreme Court has looked at whether a regulation has a close and substantial relationship to a legitimate government interest. He stated that the Alaska court previously decided that the state has a substantial interest in regulating the use of marijuana in driving, use by children, regulating in public places, and regulating the buying and selling of marijuana. He opined that when there is a lot of marijuana in one place it triggers that interest in the buying and selling of marijuana. He further opined that there is an interest in reasonable enforcement of regulations as without more clarity on this subject it will be difficult for enforcement because it is too vague for law enforcement to determine whose marijuana plants are whose.

[1:53:53 PM](#)

REPRESENTATIVE GRUENBERG said that his questions will relate to the practical problems of enforcing this law and constitutional issues. He posed a question of how law enforcement and prosecutors are going to do this.

CHAIR LEDOUX said there are three people listed to testify, Scott Bloom, Luke Hopkins, Fairbanks Mayor, Todd Sherwood, Anchorage Municipal Attorney, and Bruce Schulte, available to answer questions. She noted that Cathy Wasserman is in the audience from the Alaska Municipal League to testify.

REPRESENTATIVE GRUENBERG surmised that law enforcement was not available to testify.

[1:56:02 PM](#)

CHAIR LEDOUX referred Representative Gruenberg to the initiative and pointed out that under AS 17.38.030(1)(A) which read:

(A) marijuana plants shall be cultivated in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aides.

CHAIR LEDOUX said it may answer Representative Gruenberg's question regarding a greenhouse in the backyard.

REPRESENTATIVE GRUENBERG offered that he would change his question to a common basement.

1:57:10 PM

LUKE HOPKINS, Mayor, Fairbanks North Star Borough, asked that Representative Gruenberg restate his question for the borough attorney.

1:57:47 PM

REPRESENTATIVE GRUENBERG questioned how will growing marijuana be legally enforced in a situation where marijuana is being grown in an area in a multi-family residence accessible to a number of people. He offered that it could be a greenhouse that a person cannot see what is growing inside, in a basement, or hallway.

1:58:35 PM

TODD SHERWOOD, Assistant Municipal Attorney, Anchorage Department of Law, responded to Representative Gruenberg that as an important aside on the equal protection issue, advised he spoke with an attorney in the City of Denver's law department on this issue. He explained that the Colorado initiative is part of their constitution, unlike Alaska which has the identical language regarding the six plant limit. He advised that the City of Denver, prior to legalization January 1, 2014, established a 12 plant per dwelling unit limit. He expressed that Denver has had no equal protection challenges and in fact there have been no challenges of any kind on the 12 plant limit. In some manner this may speak to whether it would be a credible challenge, he opined. He noted that on one hand, he does not know if Colorado has the same privacy clause in its constitution as Alaska. On the other hand the Colorado amendment that legalized recreational marijuana is part of its constitution, he further noted. He offered that the question illustrates the importance of a bright line rule in Alaska as to whether marijuana is grown in a basement or backyard. The 12 plants are in essence owned in common and however many adults are living there are arguably in possession of those plants, he remarked. He said that within the Anchorage Municipal Code the term single residence is not used for a separate residence for one household as it is called a dwelling or dwelling unit, and the code defines household. He opined that in order to address the issue raised, municipalities may need to further define what the 12 plant limit applies to in terms of a greenhouse. He noted that

the definition is fine when it applies to inside the building. For Anchorage, he said, it further underlines the need to leave maximum flexibility to the municipalities in moving forward.

[2:02:05 PM](#)

REPRESENTATIVE GRUENBERG pointed to existing law, AS 11.81.900[(52)], which read:

(52) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

REPRESENTATIVE GRUENBERG stated that the statute moved the committee closer to specific language for CSHB 75. He assumed that definition would apply to this bill in Title 17. He mentioned that Chair LeDoux nodded in agreement.

[2:04:05 PM](#)

RENE BROKER, Borough Attorney, Fairbanks North Star Borough, added that the Fairbanks North Star Borough also uses the term dwelling units.

REPRESENTATIVE GRUENBERG noted that dwelling units may be better as it is not as narrow.

[2:05:46 PM](#)

MR. HOPKINS referred to [Sec. 2, AS 17.38.020] page 2, lines 16-19, which read:

- (1) possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;
- (2) possessing, growing, processing, or transporting **not** [NO] more than six marijuana plants, with three or fewer being mature, flowering plants, ...

MR. HOPKINS posited that six plants per dwelling unit is his hope, and harvesting three adult fully flowering plants for a household. He questioned whether more than six flowering plants are necessary in a dwelling unit to satisfy personal use of

adults over 21 years of age. He opined that adults in Fairbanks ask him why more than six plants [per household] are necessary to suffice personal use. He opined there is a slogan to regulate marijuana like alcohol, but in his mind marijuana is different than alcohol and he asked that the committee consider that issue. Another point, he said, is language that a "second class borough may exercise by ordinance on a non-areawide or areawide basis the power to regulate, prohibit, and provide for civil penalties for a public ... for the public use of marijuana." He noted that this language was forwarded to Representative Tilton's staff, Heath Hilyard. He referred to the above language and explained that second class boroughs have to adopt different degrees of the Department of Health & Social Service (DHSS) powers. He opined it would be best for the Fairbanks North Star Borough and other second class boroughs that the law allow the ability to adopt civil fines for public use of marijuana by ordinance. He said his plan was for a \$100 fine for public consumption of marijuana and had to pull it back because it currently doesn't fit in the Fairbanks North Star Borough. Should the [fine] be by law it could be brought before the Fairbanks North Star Borough Assembly and adopt an ordinance. He used the example of it being placed under AS 29 or AS 17.38 as it would be most beneficial to local municipalities and offers them the ability to do as the local legislative body finds appropriate for its communities. He noted that the aspect of an areawide borough has incorporated cities has a more restrictive code on marijuana that it be considered on an areawide basis so the borough does not have to "spray paint lines" in the snow where the city and borough limits are.

[2:10:54 PM](#)

REPRESENTATIVE GRUENBERG said the issue is complicated and hoped the municipalities would be of a like mind and asked for language so the committee could understand their concerns.

CHAIR LEDOUX said the sponsor does have other language and the committee will be working with that.

[2:11:46 PM](#)

CHAIR LEDOUX asked in relating to the wording of CSHB 75, without new language, whether the boroughs have areawide powers to enforce the DHSS laws.

MR. HOPKINS responded that it depends upon the powers that have been given to second class boroughs.

[2:12:42 PM](#)

MS. BROKER explained that second class boroughs do not have that power unless it has separately acquired it through voter approval. She noted that the Fairbanks North Star Borough does not currently possess that power because it has not been provided by city law or voter approval.

CHAIR LEDOUX asked which boroughs have the authority and which boroughs do not.

MS. BROKER answered that she would not like to speak with authority, but does not believe that any second class borough has that authority.

[2:13:36 PM](#)

REPRESENTATIVE GRUENBERG raised the issue of whether any state laws should be changed to provide flexibility.

[2:14:15 PM](#)

CATHY WASSERMAN, Alaska Municipal League, said the purpose of the Alaska Municipal League (AML) is to attempt to put municipalities on the same page. The bill expresses what municipalities need to ascertain its residents are safe and that municipalities abide by the provision of the initiative. She noted there are disagreements between areawide and non-areawide and AML does not take a position on that issue. She said that AML appreciates CSHB 75 as it offers the local option to take care of issues on the local level. She opined that municipalities will feel the ramifications first whether or not there are good or bad things that happen and they need to be able to be flexible. She further opined her hope that the municipalities and legislature look at the issue in a couple of years because she is confident there are issues that won't work well and noted that the AML is in favor of CSHB 75.

[2:18:43 PM](#)

CHAIR LEDOUX surmised that the 12 plant limit is a compromise that the municipalities have more or less agreed upon.

MS. WASSERMAN opined that the 12 plant limit is a placeholder and no one is married to 12. It does help keep things from being grey for law enforcement when determining who lives in the residence, are they on the North Slope, in the military, or the National Guard and gone for a month and law enforcement has to wait until the person returns. She opined there are too many questions and too many ifs, ands, or buts, so the more regulation put into this sometimes brings more enforcement and more questions. She further opined that the limit is a stipulation that will keep it more clean cut and allow law enforcement to be more positive in responding to a call. She referred to the committee discussion on tax and she said she found the registration tax similar to the Raw Fish Tax Program which the legislature shares with municipalities.

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REPRESENTATIVE CLAMAN referred to the discussion relating to 12 plants and he surmised there is some tension with what to do with the constitutional protections from Ravin for plants in a residence. In attempting to articulate law enforcement needs is what the 12 plants is attempting to address and, he noted, the detective from a prior meeting showed samples of marijuana except his expertise was in harder drugs. Although, there is concern with the 12 plants limit, he pondered whether municipalities are not going to be doing much with plants at home, whether 12 or 30 plants because it is confusing and difficult to ascertain where Ravin fits. He surmised law enforcement would find the plants because they are at a residence for something else.

[2:22:24 PM](#)

CHAIR LEDOUX asked how Bruce Schulte "squares" the 12 plant limit with the specific wording of the initiative and whether his organization has a position.

BRUCE SCHULTE, Coalition for Responsible Cannabis Legislation, Anchorage, Alaska, said he has given this issue a great deal of thought and determined that many of the numbers thrown out are somewhat subjective in nature as they are based on precedence outside of the state.

He said that everyone would like to see law enforcement and Alaskan citizens have clear guidance on this issue. He pondered substantial arguments for the number of plants as the initiative reads that adults over the age of 21 can have up to six plants,

and the question relates to limits of multiple adults in the home. He said he looked at the legal precedent which was Ravin and he cannot find a specific reference to 24 plants as it may be in a subsequent ruling. He determined that the Ravin decision was a forced issue as Mr. Ravin went out of his way to get arrested just to bring this issue to court. When looking for a benchmark, 24 plants is a compelling number. He submitted that a total of 24 plants in any household is probably the most defensible based upon prior legal precedent and rational arguments. He stated that it points to another opportunity of a home grower license, referenced in another bill, in which there should be a distinction between personal cultivation, possession, and commercial, however, it is a fact that some of the existing commercial market is being supplied by smaller home growers. He remarked that the challenge for the industry and legislature is how to encourage those folks to participate in a regulated marijuana taxed industry. He contends the state should make it as easy as possible for a person to obtain a home grower license so they can participate legitimately in a regulated marijuana industry but, he posited, confusion cannot be entirely avoided.

[2:26:28 PM](#)

CHAIR LEDOUX said the Alcoholic Beverage Control Board (ABC Board) or Marijuana Control Board can consider a home grown license. She opined that there is the Ravin right to privacy issue which is a different issue than the terms of the initiative.

MR. SCHLTE responded that the initiative clearly reads that an individual can grow up to six plants in their home and where there are two or more adults is a grey area, which he surmised exists all the way to 24 plants. He suggested that the only rational manner to address this is to simply say for a single adult, possession is six plants, for multiple adults sharing a residence the number is 24 plants. He said he does not have a good answer for that issue.

[2:28:14 PM](#)

REPRESENTATIVE CLAMAN noted that initiative refers to 6 plants and asked how 12 plants is irrational and 24 plants is rational. He questioned that the number of plants is an arbitrary number as there are households with more than 4 adults.

MR. SCHULTE said it is only slightly less arbitrary based on the fact there is a legal opinion stipulating that anything under 25 plants is considered a protected activity under the person's right to privacy. He said that is the only argument he can make and granted that the difference between 12 and 24, based on his argument is a slim one.

2:30:10 PM

MR. HILYARD offered the rationale as to how the House Community and Regional Affairs Standing Committee came to 12 plants. He said it goes beyond the City and [County] of Denver adopting a similar regulation.

CHAIR LEDOUX said she read the article in the packets which talked about a 36 plant limit for the City [and County] of Denver.

MR. HILYARD stated that is new in response to grow operations in non-residential areas. He noted that the City and County of Denver is attempting to put a different restriction for grow operations that could be considered personal grow in non-residential areas. He opined there is an ordinance before the City and County of Denver that would be a limit of 12 per household in a residential area. In terms of working with municipalities in arriving at a bright line number, he remarked, that the federal government currently provides a limitation on the amount of home brew a person can brew for personal consumption for alcohol. He advised the limitations are 100 gallons per person or not more than 200 gallons per household. Similarly, the thought of the committee was that if there is a standard for the amount of home brew, there should be a limit on the amount that can be personally cultivated for personal consumption. He provided that there is a question in the packets regarding "How much usable marijuana is in an ounce of pot," and the author responded there are roughly 60 joints assuming that a joint is one-half gram of marijuana. He said that the author characterized it as a "keg of pot," as there are roughly 60, 12-ounce beers in a pony keg of beer. The House Community and Regional Affairs Standing Committee determined that an ounce of pot is roughly 5.35 gallons of beer. Depending upon the ability of a home cultivator the amount of usable marijuana could [fluxuate], he remarked. On the low end, he opined, six plants in one year could produce 1.5 pounds or 18-ounces. On the high end, he continued, six plants could generate as much as 13.5 pounds of usable marijuana a year. The committee assumed that 1.5-13.5 pounds per year for 6 plants is

a reasonable estimation of the amount that could be yielded. Using the assumption that 1 ounce is equal to 5.35 gallons of beer, on the low end 18 ounces equates to approximately 101 gallons. Yet, he noted, on the high end 13.5 pounds would equate to 1200 gallons per year. The campaign to promote the initiative was a campaign to regulate marijuana like alcohol so in adopting the 12 plant limit, and attempting to find a bright line and a standard, that was the rationale.

[2:35:10 PM](#)

MR. SCHULTE referred to his 3/11/15, memo to Representative Gabrielle LeDoux and testified regarding Sec. 12, AS 17.38.110(m), page 7, lines 16-20, which read:

(m) A municipality that has not prohibited the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, retail marijuana stores, or marijuana clubs under (a) of this section may create a local advisory board to advise the municipality on issues related to licensing of marijuana establishments and regulation of marijuana.

MR. SCHULTE said he just realized that AS 17.38.110(m) is currently in 29-LS0345\S, and moved to page 3 of his memo regarding the definition of "public place." There will be an issue, whether commercial business or otherwise, wherein marijuana might be lawfully be consumed on the premises, mainly of a private business. He noted that the discussion today had been about marijuana clubs and he offered other examples of a trade show, or the Cannabis Cup. He remarked that those types of events could allow consumption on the premises in a designated area, equivalent to a beer garden. He pointed out that within Title 4 of the alcohol regulations there are 22 different license types articulated, of which are temporary, seasonal, and annual licenses. He submitted that the solution for this issue is not to define what a public space is, but rather provide a simple exception, which read:

AS 17.38.040 Public Consumption [BANNED, PENALTY]

It is unlawful to consume marijuana in public, except on the premises of a marijuana establishment operating under a state or local license or permit. [A PERSON

WHO VIOLATES THIS SECTION IS GUILTY OF A VIOLATION PUNISHABLE BY A FINE OF UP TO \$100].

MR. SCHULTE said the language solves the problem as in the event the Alcoholic Beverage Control Board (ABC Board) determines another permit type, or business type, it had already been addressed in state statute. It is a permit with a classification of temporary, seasonal or annual, he reiterated, and it would be issued under whatever parameters deemed appropriate where marijuana consumption would be lawful. It the most concise solution to the problem, he opined.

[2:40:08 PM](#)

MR. HILYARD responded to Chair LeDoux that at first blush, Mr. Schulte's recommendation could seem reasonable. He reiterated that CSHB 75 is essentially the work product of municipalities, and would ask the municipalities to weigh in.

[2:41:08 PM](#)

CHAIR LEDOUX said she would not close public testimony.

[2:41:29 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:41 P.M.