

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 6, 2015

1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 123

"An Act establishing the Marijuana Control Board; relating to the powers and duties of the Marijuana Control Board; relating to the appointment, removal, and duties of the director of the Marijuana Control Board; relating to the Alcoholic Beverage Control Board; and providing for an effective date."

- HEARD & HELD

CS FOR SENATE BILL NO. 30(FIN)

"An Act relating to controlled substances; relating to marijuana; relating to crimes and offenses related to marijuana and the use of marijuana; relating to open marijuana containers; relating to established villages and local options; relating to delinquent minors; making conforming amendments; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 123

SHORT TITLE: ESTABLISH MARIJUANA CONTROL BOARD

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/23/15 (H) READ THE FIRST TIME - REFERRALS

02/23/15 (H) L&C, JUD, FIN
 03/04/15 (H) L&C AT 3:15 PM BARNES 124
 03/04/15 (H) Heard & Held
 03/04/15 (H) MINUTE(L&C)
 03/11/15 (H) L&C AT 3:15 PM BARNES 124
 03/11/15 (H) Heard & Held
 03/11/15 (H) MINUTE(L&C)
 03/16/15 (H) L&C AT 3:15 PM BARNES 124
 03/16/15 (H) Heard & Held
 03/16/15 (H) MINUTE(L&C)
 03/20/15 (H) L&C AT 3:15 PM BARNES 124
 03/20/15 (H) Heard & Held
 03/20/15 (H) MINUTE(L&C)
 03/23/15 (H) JUD AT 1:00 PM CAPITOL 120
 03/23/15 (H) Scheduled but Not Heard
 03/23/15 (H) L&C AT 3:15 PM BARNES 124
 03/23/15 (H) Heard & Held
 03/23/15 (H) MINUTE(L&C)
 03/27/15 (H) L&C AT 3:15 PM BARNES 124
 03/27/15 (H) Moved CSHB 123(L&C) Out of Committee
 03/27/15 (H) MINUTE(L&C)
 03/30/15 (H) L&C RPT CS(L&C) 1DP 3NR 3AM
 03/30/15 (H) DP: OLSON
 03/30/15 (H) NR: TILTON, HUGHES, KITO
 03/30/15 (H) AM: LEDOUX, JOSEPHSON, COLVER
 03/30/15 (H) JUD AT 1:00 PM CAPITOL 120
 03/30/15 (H) Heard & Held
 03/30/15 (H) MINUTE(JUD)
 04/03/15 (H) JUD AT 1:00 PM CAPITOL 120
 04/03/15 (H) -- MEETING CANCELED --
 04/06/15 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 30

SHORT TITLE: MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

SPONSOR(S): JUDICIARY

01/23/15 (S) READ THE FIRST TIME - REFERRALS
 01/23/15 (S) JUD, FIN
 01/26/15 (S) JUD AT 1:00 PM BUTROVICH 205
 01/26/15 (S) Heard & Held
 01/26/15 (S) MINUTE(JUD)
 01/28/15 (H) JUD AT 1:00 PM CAPITOL 120
 01/28/15 (H) -- Companion Bill --
 01/30/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 01/30/15 (S) -- Meeting Postponed to Monday 2/2/2015
 --
 02/02/15 (S) JUD AT 1:30 PM BUTROVICH 205

02/02/15 (S) -- Rescheduled from 01/30/15 --
02/05/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/05/15 (S) Scheduled but Not Heard
02/06/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/06/15 (S) -- MEETING CANCELED --
02/09/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/09/15 (S) Heard & Held
02/09/15 (S) MINUTE(JUD)
02/11/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/11/15 (S) Heard & Held
02/11/15 (S) MINUTE(JUD)
02/13/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/13/15 (S) Heard & Held
02/13/15 (S) MINUTE(JUD)
02/16/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/16/15 (S) -- MEETING CANCELED --
02/18/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/18/15 (S) Heard & Held
02/18/15 (S) MINUTE(JUD)
02/20/15 (S) JUD AT 1:30 PM BUTROVICH 205
02/20/15 (S) Moved CSSB 30(JUD) Out of Committee
02/20/15 (S) MINUTE(JUD)
02/23/15 (S) JUD RPT CS 1DP 3AM NEW TITLE
02/23/15 (S) DP: MCGUIRE
02/23/15 (S) AM: COSTELLO, COGHILL, MICCICHE
02/24/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/24/15 (S) Heard & Held
02/24/15 (S) MINUTE(FIN)
03/03/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/03/15 (S) Heard & Held
03/03/15 (S) MINUTE(FIN)
03/05/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/05/15 (S) Heard & Held
03/05/15 (S) MINUTE(FIN)
03/06/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/06/15 (S) -- MEETING CANCELED --
03/09/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/09/15 (S) -- MEETING CANCELED --
03/09/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
03/09/15 (S) Departments: Environmental Conservation
and
03/10/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
03/10/15 (S) Departments: Environmental Conservation
and
03/11/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
03/11/15 (S) -- Public Testimony --
03/12/15 (S) FIN AT 1:30 PM SENATE FINANCE 532

03/12/15 (S) Heard & Held
 03/12/15 (S) MINUTE(FIN)
 03/13/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/13/15 (S) -- MEETING CANCELED --
 03/13/15 (S) FIN AT 1:30 PM SENATE FINANCE 532
 03/13/15 (S) Heard & Held
 03/13/15 (S) MINUTE(FIN)
 03/14/15 (S) FIN AT 10:00 AM SENATE FINANCE 532
 03/14/15 (S) -- MEETING CANCELED --
 03/18/15 (H) JUD AT 1:00 PM CAPITOL 120
 03/18/15 (H) <Bill Hearing Canceled>
 03/23/15 (S) FIN RPT CS 1DP 3NR 3AM NEW TITLE
 03/23/15 (S) DP: MACKINNON
 03/23/15 (S) NR: BISHOP, DUNLEAVY, HOFFMAN
 03/23/15 (S) AM: KELLY, MICCICHE, OLSON
 03/23/15 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/23/15 (S) Moved CSSB 30(FIN) Out of Committee
 03/23/15 (S) MINUTE(FIN)
 03/25/15 (S) FIN CS ADOPTED Y16 N4
 03/30/15 (S) TRANSMITTED TO (H)
 03/30/15 (S) VERSION: CSSB 30(FIN)
 03/31/15 (H) READ THE FIRST TIME - REFERRALS
 03/31/15 (H) JUD, FIN
 04/06/15 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MICAELA FOWLER, Legislative Liaison
 Office of the Commissioner
 Department of Commerce, Community, and Economic Development
 (DCCED)
 Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 123, presented changes within the committee substitute and answered questions.

CYNTHIA FRANKLIN, Director
 Alcohol Beverage Control Board
 Department of Commerce, Community, and Economic Development
 Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSHB 123 offered support for Version N.

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

POSITION STATEMENT: Offered testimony during the hearing on CSHB 123.

BRUCE SCHULTE

Coalition for Responsible Cannabis Legislation
Anchorage, Alaska

POSITION STATEMENT: Offered testimony regarding CSHB 123.

HARRIET MILKS, Assistant Attorney General
Commercial and Fair Business Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 123, answered questions.

AMY SALTZMAN, Staff
Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing for SB 30, explained the status of the bill.

JORDAN SHILLING, Staff
Senator John Coghill
Alaska State Legislature, Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 30, explained Version T.

CYNTHIA FRANKLIN, Director
Alcoholic Beverage Control Board (ABC Board)
Department of Commerce, Community, and Economic Development
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SB 30, answered questions.

DOLLYNDA PHELPS
Kenai, Alaska

POSITION STATEMENT: Testified during the hearing of SB 30.

JASON HOWARD
Soldatna, Alaska

POSITION STATEMENT: During the hearing on SB 30, offered his concerns.

RACHELLE YEUNG
Marijuana Policy Project
Washington, D.C.

POSITION STATEMENT: Testified during the hearing of SB 30.

ACTION NARRATIVE

[1:33:02 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:33 p.m. Representatives Keller, Lynn, Claman, and LeDoux were present at the call to order. Representatives Gruenberg, Foster, and Millett arrived as the meeting was in progress.

[1:33:48 PM](#)

CHAIR LEDOUX clarified that there are two versions of SB 30 in that version "T" came out of the Senate and is much different from version "Q" which came out of Senate Judiciary. She explained that while there are many similarities between the two versions, they exemplify two very different strategies for legalization. She advised that during this meeting the members will be briefed on the two different roads that these two different versions of SB 30 travel, their implications, and the options before this committee assuming there is enough time after HB 123.

HB 123-ESTABLISH MARIJUANA CONTROL BOARD

[1:34:51 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 123, "An Act establishing the Marijuana Control Board; relating to the powers and duties of the Marijuana Control Board; relating to the appointment, removal, and duties of the director of the Marijuana Control Board; relating to the Alcoholic Beverage Control Board; and providing for an effective date."

[1:35:08 PM](#)

REPRESENTATIVE KELLER moved to adopt CSHB 123, version 29-GH1110\N, Martin, 4/3/15 as the working document. There being no objection, version "N" was before the committee.

[1:35:36 PM](#)

MICAELA FOWLER, Legislative Liaison, Office of the Commissioner, Department of Commerce, Community, and Economic Development (DCCED), said that version N represents several changes from the prior version. She explained that Sec. 3 has been amended to

clarify and put into statute the intent that the Alcohol Beverage Control Board (ABC Board) and the Marijuana Control Board would meet right after each other in sharing staff. Sec. 7, is a new section which places the Marijuana Control Board on a list of entities whose hearings are conducted by the Office of Administrative Hearings. Sec. 9, is the transition language of which is the most substantive change in this version in that it changes what is considered experience for members of the marijuana industry during the initial formation of the board. Previously, the bill required that two members of the alcohol industry serve the initial board term. She explained that in version N, it is two members who have experience in the marijuana industry obtained through lawful participation in the marijuana industry, or participation in an academic or advocacy role relating to the marijuana industry.

[1:38:22 PM](#)

CYNTHIA FRANKLIN, Director, Alcohol Beverage Control Board, Department of Commerce, Community, and Economic Development, said the ABC Board supports the version going forward as Ms. Fowler indicated, and she does not have anything to add to prior testimony.

[1:39:25 PM](#)

RACHELLE YEUNG, Legislative Analyst, Marijuana Policy Project, said she is speaking on behalf of the Marijuana Policy Project and the Campaign to Regulate Marijuana like Alcohol. She opined that the current committee substitute is a much better version than previously and offered a suggestion regarding the composition of the potential board members. She said the concern is to ensure that people with the most relevant expertise not be excluded, and that members of the board implementing this law actually do support the law passed by the voters. She pointed out that within the version it appears that persons with only one year of experience in either of those professions would qualify, while a person retired from a decades long career in either of those fields, or has moved their career to a private university or other non-profit public sector may not.

MS. YEUNG responded to Representative Gruenberg that she is referring to Sec. 2, [AS 17.38.080] page 2, lines 15-16, which read:

(1) one person from the public safety sector;

(2) one person from the public health sector;

MS. YEUNG explained that it initially lays out the composition of the board, one person from the public safety sector, and one person from the public health sector. Her recommendation is that those two positions allow someone who is a former public health or public safety official to apply.

[1:43:19 PM](#)

REPRESENTATIVE GRUENBERG referred to [Sec. 9], page 7, lines 2-5, which read:

(b) Notwithstanding AS 17.38.080(b)(4) and (5), the governor, in making the initial appointments to the Marijuana Control Board, shall appoint two persons with experience in the marijuana industry obtained through lawful participation in the marijuana industry or participation in an academic or advocacy role relating to the marijuana industry.

REPRESENTATIVE GRUENBERG offered that the above language would clarify the fact that the person could be in the industry now or have experience in it. He said that the intent is to allow anyone with experience.

[1:44:11 PM](#)

MS. YEUNG pointed to Sec. 2, [AS 17.38.080] page 3, lines 14-20, which read:

(4) "public health sector" means a state, federal, or local entity that works to ensure the health and safety of persons and communities through education, policymaking, treatment and prevention of injury and disease, and promotion of wellness;

(5) "public safety sector" means a state, federal, or local law enforcement authority that provides for the welfare and protection of the general public through the enforcement of applicable laws;

MS. YEUNG recommended that the board members not be selected from a professional involved in a federal law enforcement capacity or a federal public safety capacity given that all of the conduct the board will write laws for are illegal under federal law. She recommended that all board members be

committed to safely implementing the initiative given that the board will be responsible for implementing this law. She expressed that it is important all members of the board actually support the initiative or are committed to regulating and taxing marijuana as the voters intended. She submitted that allowing the possible inclusion of hostile board members who could favor unlawful delays which would likely lead to litigation and reduced faith in the government.

[1:47:14 PM](#)

REPRESENTATIVE GRUENBERG referred to her last comment and surmised that she prefers a provision in the law that these board members support the law or support the concept of legalizing marijuana.

MS. YEUNG clarified that she meant that the person appointed to serve on the board supports the implementation of the law even if they do not support the legalization themselves.

[1:48:00 PM](#)

REPRESENTATIVE MILLETT asked whether Ms. Yeung would also like federal taken out of the definition for public health sector.

MS. YEUNG answered "That is correct." She then added to her response to Representative Gruenberg that if the bill were not to explicitly state that persons serving on this board support the initiative, that they be required to state their support in response to a question on the application form.

[1:49:11 PM](#)

CHAIR LEDOUX related that she understands Ms. Yeung recommendation, but on the other hand it is as though Ms. Yeung is requiring a loyal oath. She opined that they do not ask people, or put it into statute, that someone serving on a board must be in favor of something. She described [the action] as implied that a person does their best to fulfill the duties of the board.

[1:49:47 PM](#)

REPRESENTATIVE MILLETT expressed that she could not perceive someone applying for a board position and vehemently oppose the position of the board. She surmised that a person wishes to

serve on a board because they desire to see that board implemented in a correct manner.

CHAIR LEDOUX pointed out that the board is subject to legislative approval so someone along the line will ask the question or it would come out if someone was attempting to join the board because their intention was to railroad it.

[1:50:44 PM](#)

REPRESENTATIVE GRUENBERG offered that Chair LeDoux's comments might also go to the issue of deleting the word "federal" because a federal person would not be appointed if they were basically opposed. He said he hesitates to delete federal because SB 30 will be on the books for a while and the federal law may be modified.

[1:51:31 PM](#)

BRUCE SCHULTE, Coalition for Responsible Cannabis Legislation, referred to [Sec. 3, AS 17.38.084] page 4, lines 15-16, which read:

(a) The board shall control the cultivation, manufacture, possession, and sale of marijuana in the state.

MR. SCHULTE remarked that the word "control" could be more appropriately replaced with the word "regulate." He further remarked that the word "possession" might be stricken from the sentence entirely because the board is actually charged with the regulation of cultivation, manufacture, and sale of marijuana and not personal possession. He stated that personal possession is dealt with under statute with the passage of the initiative.

[1:54:19 PM](#)

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

[1:54:36 PM](#)

REPRESENTATIVE GRUENBERG referred to [Sec. 3, AS 17.38.084], page 4, lines 18-19, which read:

(b) The board shall
(1) propose and adopt regulations;

REPRESENTATIVE GRUENBERG asked whether the adoption of regulations would be under the Administrative Procedures Act.

MS. FOWLER replied "Yes."

REPRESENTATIVE GRUENBERG asked where in the bill it is specifically listed.

[1:55:58 PM](#)

HARRIET MILKS, Assistant Attorney General, Commercial and Fair Business Section, Department of Law (DOL), opined that the language is in the initiative and [Sec. 10], on page 7, lines 12-15, which read:

(b) The Marijuana Control Board, established under AS 17.38.080, as repealed and reenacted by sec. 2 of this Act, may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedures Act), but not before the effective date of this Act.

[1:56:35 PM](#)

REPRESENTATIVE GRUENBERG commented that if the board is going to operate under the Administrative Procedures Act it should not just be in a transitional section as it has to be put in the body of the bill in permanent law.

MS. FOWLER noted that is a legitimate concern and could not see any reason it could not happen.

[1:57:03 PM](#)

MS. FRANKLIN interjected that AS 17.38.090(a)(1) within the voter's initiative provides that all of the regulations are subject to the requirements of the Administrative Procedures Act.

[1:57:47 PM](#)

REPRESENTATIVE MILLETT referred back to the discussion with Mr. Schulte regarding page 4, lines 15-16, and asked whether Ms. Milks had a problem with changing "control" to "regulate" and deleting "possession."

[1:58:03 PM](#)

MS. MILKS replied that the language, including the word "control" comes from Title 4, and it is not absolutely necessary that the word be "control." She explained that elsewhere in the initiative, and in this bill, it is clear that the Marijuana Control Board would regulate marijuana. As to possession, she remarked, there could be circumstances where possession of marijuana would be inconsistent with the marijuana laws currently being drafted, but certainly some possession is protected under the Alaska State Constitution and under case law

REPRESENTATIVE MILLETT argued that possession of marijuana would not be something a board would be concerned with, as that would be under the Department of Law or Department of Public Safety. She questioned why marijuana would be regulated under a possession issue when it would be under the Department of Public Safety to ticket or regulate.

[1:59:43 PM](#)

MS. MILKS responded that it depends upon the scope of the regulation that is anticipated for the Marijuana Control Board. In the event the Marijuana Control Board is anticipated to have enforcement powers, it could conceivably regulate certain circumstances of possession. For example, she pointed out, there are circumstance where the board would regulate more than a certain number of plants in a person's possession, or possessing marijuana while transporting it from a manufacturer to a retail establishment, or a cultivator to a producer.

REPRESENTATIVE MILLETT related that she has an issue because the board is not the Department of Public Safety, therefore, it shouldn't be ticketing on possession issues and that according to the initiative the board is to control the manufacture and sale of marijuana, not the possession. She highlighted that if the board had a problem with possession wouldn't it call the Department of Public Safety who could enforce it. She asked whether the bill is giving powers of enforcement and whether the board would now be monitoring possession. In that regard, she noted, there would be two types of enforcement through the Department of Public Safety law and through the Marijuana Control Board.

[2:01:10 PM](#)

MS. MILKS referred to [Sec. 3, AS 17.38.085, Enforcement powers], page 5, lines 16-23, which read:

The director and the persons employed for the administration and enforcement of the chapter may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this chapter, other criminal statutes relating to substances or activities regulated or permitted under this chapter, regulations of the board, and other criminally punishable laws and regulations relating to marijuana.

MS. MILKS said this paragraph gives certain enforcement powers to the Marijuana Control Board.

[2:01:45 PM](#)

MS. FRANKLIN responded to Representative Millett that the language reflects the direct copy of language the ABC Board has regarding control of alcohol. The ABC Board does control the possession of alcohol because if the board is limited to controlling only those individuals who have licenses then the board's authority has been taken away to shut down commercial enterprises without licenses. With regard to marijuana, it is important when thinking about the term possession in that there is a distinction between personal possession, which is in AS 17.38.020, and what the voters intended with regard to the sanctity of personal possession of marijuana. She explained that in this case the discussion is in a commercial context where someone opens a commercial marijuana enterprise without following the rules, without getting a license of which there are already three examples of facilities in the state. She described the situation that without enforcement authority this board is unable to act on something that it was clearly expected to act on. She further described that when a business advertises it is delivering marijuana the ABC Board gets the call to shut that place down because the individuals who intend to apply for licenses want to see everyone on a level playing field. She opined that it is very important in the alcohol and marijuana industry that the board have that enforcement authority. She stated that separate enforcement really doesn't work in real life as the ABC Board has five officers statewide, and is proposed to be eight officers statewide with the addition

of this substance. She noted that the board works with local law enforcement to ascertain that everyone operating in a commercial context is regulated, is subject to the rules, and has a license. She reiterated that should the legislature determine that the board only has authority over licensed business it completely does away with the ability of the board to shut down anyone who tries to sell without a license. She further reiterated that in this case, possession is commercial possession, and the language is a duplication of the type of control the ABC Board has over alcohol.

[2:05:26 PM](#)

CHAIR LEDOUX asked whether the businesses would be shut down when someone calls law enforcement and everyone is arrested.

MS. FRANKLIN said (indisc.) where in the state this establishment is located and its priorities. She described the situation as frustrating because law enforcement then has confusion about what they are and are not allowed to do. She emphasized that the board and the board's enforcement officers are supposedly the de facto experts of what is and isn't allowed whether it be around alcohol or marijuana. She said she finds herself advising local law enforcement officers or troopers that certain people need to be shut down because the board does not have the ability to do it themselves. On those occasions, it depends upon that law enforcement agency's priorities as many times their priorities are shootings, stabbings, rapes, and murders. In that regard, if the establishment dealing in marijuana doesn't rise high enough on their priority list ... why not get the kind of action the state needs in the time frame needed on an establishment like that.

[2:07:17 PM](#)

REPRESENTATIVE MILLETT asked that absent a decriminalization piece of legislation, how would Ms. Franklin regulate from a board if there are no possession limits, plants limits, and anything set in stone ... how does the board go forward until the legislature gets to a point next session where there is a decriminalization bill.

[2:07:55 PM](#)

MS. FRANKLIN answered that in the event there is not a Marijuana Control Board, it would default to the ABC Board and it would use the rules currently existing in Title 4, in terms of

enforcement authorities and powers. AS 17.38 does provides some guidance regarding a personal grow versus a commercial grow. She explained that the board has been using current case law to interpret the law the courts have generated around what constitutes possession, joint possession, and constructive possession. She related that the ABC Board would like to see the legislature act, but the board will take the framework of the initiative and move forward as best they can until next session.

[2:09:22 PM](#)

REPRESENTATIVE MILLETT asked whether the ABC Board can arrest people.

MS. FRANKLIN responded that the ABC Board has police officers who hold special commissions from the commissioner of public safety and have the ability to make arrests. She highlighted that their enforcement ability is in Title 4, AS 04.06.110, which limits them to enforcing rules around alcohol, prostitution, and gambling as they relate to alcohol. She noted there is a section for other criminally punishable provisions. In the event no legislation is forthcoming, the ABC Board will work with the Department of Public Safety, regarding the commissions, to ascertain that it has authority to regulate the substance in the manner the voters intended, as set forth in AS 17.38, she advised.

[2:10:42 PM](#)

REPRESENTATIVE FOSTER referred to [Sec. 2, AS 17.38.080], page 2, lines 30-31, which read:

(e) The rural member of the board shall reside or have resided in a rural area for not fewer than 180 days within the five years preceding appointment.

REPRESENTATIVE FOSTER said it appears to him that a person could have spent six months in a prior five years and not six months in each of the prior five years.

MS. MILKS responded that his reading was correct as it would be six months within the total period of five years preceding appointment.

REPRESENTATIVE FOSTER noted that the above issue is an area of concern for him. He referred to [Sec. 2, AS 17.38.080], page 3, lines 21-22, which read:

(6) "rural area" means a community with a population of 6,000 or less as determined under AS 29.60860(c).

REPRESENTATIVE FOSTER extended that Bethel, Alaska has a population of 6,080, and it is very much a rural area and suggested pumping it up a bit.

[2:12:07 PM](#)

REPRESENTATIVE CLAMAN referred to page 4, line 15, "The board shall control the cultivation, manufacture ..." and said he understands "control" is in the ABC Board statute and questioned whether there a problem changing the word to "regulate."

MS. MILKS explained that the word "control" here certainly encompasses regulate. She remarked that in the event enforcement powers are given to the board as something beyond just regulate, it would have the ability to go in and say "we are shutting you down, we're taking your marijuana plants, or we're impounding them, or whatever the response is." She expressed that control is a broader range of response than just regulate.

[2:13:10 PM](#)

MS. FRANKLIN commented that the voters decided that should a separate board be created it would be called the Marijuana Control Board, and she believes it is disingenuous to say it didn't mean control.

[2:13:32 PM](#)

REPRESENTATIVE GRUENBERG referred to an earlier discussion regarding enforcement powers under AS 17.38.085, page 5, [lines 16-23] and asked whether there should be a provision that before the employees of the board exercise the duties of peace officers that they are trained and certified in some manner. He asked whether there should be authorization or a requirement for training and certification.

MS. FRANKLIN answered that currently the requirement that those employees are peace officers is in their job description. The

minimum qualifications for those jobs are written so that they are police officers, and then they receive a commission from the Department of Public Safety. She opined that there are a couple of safeguards in place currently that protect against the idea of the department just hiring someone without experience or qualification and putting them into this enforcement position. The applicants must meet the minimum qualifications under the administrations requirement for getting the job, and then the commissioner of public safety has an additional opportunity to review their qualification, she explained. She highlighted that should the commissioner of public safety decline to commission a person then the ABC Board would not have the individual in that job. She noted that historically they have employed these officers over the years under the same language in Title 4, and never had an issue with individuals not being qualified for that commission.

[2:16:04 PM](#)

REPRESENTATIVE GRUENBERG described his question as technical as to whether language had to be put into a statute, but it appears that for the ABC Board this language is sufficient.

MS. FRANKLIN responded "Correct."

[2:16:30 PM](#)

REPRESENTATIVE GRUENBERG pointed out that some of the terms commented on are due to the fact that Title 4, alcohol control statutes were written many years ago when the drafting style was possibly a bit looser. He opined that there may be a revision of those laws and that possibly as the phraseology is updated, that conforming amendments are provided in order to be in line with modern language.

[2:17:43 PM](#)

CHAIR LEDOUX held CSHB 123(CRA) over.

[2:18:59 PM](#)

REPRESENTATIVE GRUENBERG said there had been technical issues the witnesses mentioned of which did not appear to be controversial and asked whether staff would include those issues in the committee substitute.

CHAIR LEDOUX advised that staff may include some of the issues.

[2:19:28 PM](#)

REPRESENTATIVE CLAMAN related that the committee may want to review page 3, [line 9], "(2) "immediate family member" means a spouse, child or parent." He suggested the description is narrower than what is being applied in this day and age for immediate family members and that this was more a conceptual idea and he didn't have the language.

CHAIR LEDOUX asked that Representative Claman work with her office.

[2:20:36 PM](#)

REPRESENTATIVE GRUENBERG referred to [Sec. 2, AS 17.38.080(h)(6)] page, 3, lines 21-22, which read:

(6) "rural area means a community with a population of 6,000 or less as determined under AS 29.60.860(c).

REPRESENTATIVE GRUENBERG commented that he is not familiar with that statute but believes it was the subject of extensive debate on the House floor in 1985. The statute discusses monuments and "strange" things the committee may want to review.

CHAIR LEDOUX asked that Representative Gruenberg work with her office.

[HB 123 was held over.]

SB 30-MARIJUANA REG;CONT. SUBST;CRIMES;DEFENSES

[2:21:27 PM](#)

CHAIR LEDOUX announced that the final order of business would be Senate CS FOR SENATE BILL NO. 30(FIN), "An Act relating to controlled substances; relating to marijuana; relating to crimes and offenses related to marijuana and the use of marijuana; relating to open marijuana containers; relating to established villages and local options; relating to delinquent minors; making conforming amendments; and providing for an effective date." [Before the committee were SB 30, Versions Q and T.]

[2:21:37 PM](#)

REPRESENTATIVE KELLER moved to adopt HCSCSSB 30, Version 29-LS0231\Q, Martin, 4/3/15 as the working document. There being no objection, Version Q was before the committee.

CHAIR LEDOUX announced that Version Q and [Version T] would be discussed during the meeting.

[2:22:42 PM](#)

CHAIR LEDOUX responded to Representative Gruenberg's question and reiterated that the committee would hear the two versions and compare each.

[2:23:40 PM](#)

AMY SALTZMAN, Staff, Senator Lesil McGuire, referred to an earlier version [N] of which there was a House companion, and stated it offered an affirmative defense approach and that concerns were expressed because it was at odds with the intent of the initiative. She offered that creating a defense to a legal activity would cause the expense of avoiding punishment or avoiding prosecution to the person participating in a lawful marijuana activity. The Senate Judiciary Standing Committee found these concerns to be persuasive and redrafted the bill to assure that the activities addressed in the initiative would be affirmatively legal and removed them from controlled substances. She advised it was the only other option presented to the committee by Legislative Legal and Research Services at the time, and later they offered another approach found in the Senate Finance Committee version. She explained that the substantive sections, where crimes were created with implementation of the initiative, are in Secs. 44-51. She noted that several different crimes were created, and were followed through in the Senate Finance Committee of are mirrored with the intent of the Senate Judiciary Standing Committee, to some degree.

[2:25:46 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, explained that the Senate Finance Committee added marijuana back into the controlled substance schedules. He offered that when an affirmative defense approach was attempted in the Senate Judiciary Standing Committee it met with vocal opposition. The committee was advised by Legislative Legal and Research Services that rather than rely on an affirmative defense, to put it back into the controlled substance schedule and use a non-

applicability provision to say that the conduct is allowed under the initiative. He explained that local option provisions were included, essentially opting out by default established villages in the unorganized borough and giving them the possibility of opting in. He further explained that changes were made to the open container law.

[2:27:09 PM](#)

CHAIR LEDOUX surmised that, under the current SB 30, places like the unorganized borough would be able to have a marijuana shop, but if it was not in an established village it wouldn't be able to have anything along the road system.

MR. SHILLING responded that the provision is that only those in an established village can opt in for the commercial side, and everything else in the unorganized borough is opted out with no provision to opt in. He agreed that there would be some places in the unorganized borough on the road that would not have the possibility of a marijuana establishment.

[2:28:23 PM](#)

CHAIR LEDOUX referred to the language regarding how terrible marijuana is and asked where that language came from.

MR. SHILLING surmised that Chair LeDoux was referring to [Sec. 1-2, Purpose and Findings sections of Version T] and said he was not sure where the language originated as the amendment came from Senator Lyman Hoffman's office, but he could get the information to the committee.

[2:28:52 PM](#)

MS. SALTZMAN stated that the amendment was added when the amendment from Senator Hoffman was added to the bill.

MS. SALTZMAN responded to Chair LeDoux that the language was added in the Senate Finance Committee.

[2:30:02 PM](#)

CHAIR LEDOUX surmised that the big difference between the Senate Judiciary Standing Committee version and the bill from the Senate are the felony aspects of the bill.

MR. SHILLING responded in the affirmative and opined that the Senate Judiciary Standing Committee version does not include felony conduct and noted that the highest penalty is a class A misdemeanor which carries up to one year in jail and \$10,000 fine. He pointed out that the Senate Finance Committee version includes three felonies, which are: possessing 25 or more plants, possessing a pound or more of marijuana, and furnishing marijuana to a minor twice in five years. He explained that the [last] felony is congruent to furnishing alcohol to a minor. He related that the only other felony conduct in Title 4, contains provisions related to delivering alcohol to a dry village.

[2:31:26 PM](#)

CHAIR LEDOUX asked whether there are any other differences between the Senate Judiciary Standing Committee version and the final bill.

MS. SALTZMAN responded that there were some differences in class A misdemeanors, class B misdemeanors, and what was considered violations. She explained that with regard to possession, the Senate Finance Committee added that if a person had three, but less than sixteen ounces of marijuana outside the home, or twelve to twenty-four plants it would be a class A misdemeanor. Those were changed from the Senate Judiciary Standing Committee version. On the same note, she offered, having two but less than three ounces of marijuana outside a person's home, or possessing seven to eleven marijuana plants would be misconduct and a class B misdemeanor.

[2:32:20 PM](#)

REPRESENTATIVE FOSTER referred to the question of unorganized boroughs and surmised that within the Senate Finance Committee version a community such as Tok, which is under the Tok Community Umbrella Corporation, is not a village, and is in an unorganized borough, that there are no provisions allowing Tok to sell marijuana.

MR. SHILLING advised that if Tok is not a municipality, not an established village, and in the unorganized borough, it would not have any recourse to opt in.

REPRESENTATIVE FOSTER questioned whether within the Senate Judiciary Standing Committee version there is a provision for communities such as Tok.

MR. SHILLING responded that the Senate Judiciary Standing Committee version contains the traditional local option law as seen for alcohol, and by default they would have to actively opt out.

[2:33:41 PM](#)

REPRESENTATIVE MILLETT referred to a bill passed on the House floor by Representative Tilton, and questioned whether that bill covered the provisions currently covered in this bill. She asked whether the House Judiciary Standing Committee is still dealing with opt in/opt out, unorganized borough, dry, damp, and wet issues in this bill. She related her understanding that the bill sent to the Senate included all of those provisions in that legislation.

CHAIR LEDOUX offered that Representative Millett was correct but it is difficult to determine within 14 days what bill is going to make it and what bill is not going to make it so the committee is considering these issues right now.

MR. SHILLING offered that he is not an expert on HB 75, but it is his understanding that the language for local option mirrors the Senate Judiciary Standing Committee version.

[2:34:47 PM](#)

REPRESENTATIVE MILLETT asked if this committee will rehash [HB 75] again in [SB 30], or just focus on decriminalization.

CHAIR LEDOUX responded that her intent is to basically focus on the decriminalization.

[2:35:21 PM](#)

REPRESENTATIVE CLAMAN questioned if it is appropriate to obtain a sense from the committee regarding how it wants to approach SB 30.

CHAIR LEDOUX relayed that without actually voting on amendments, the idea is to determine a sense of the committee as to whether it wishes to go the route of the Senate Judiciary Standing Committee version, which had been discussed at length in this committee, or go the route of the Senate Finance Committee version, or go a different route.

REPRESENTATIVE MILLETT offered that she would like to fix the Senate's mess.

[2:36:09 PM](#)

REPRESENTATIVE GRUENBERG asked for a side-by-side comparison [of the versions] to determine what the choices are.

CHAIR LEDOUX agreed, but said that the way the versions have gone are far apart in that they are a totally different technique, philosophy, etc. In that regard, she offered, a side-by-side comparison will not work.

[2:36:52 PM](#)

REPRESENTATIVE CLAMAN opined there is a lot to be gained by not inventing too many wheels in one bill. He stated that SB 30 has more to do with criminal sanctions and if the committee works under the basic understanding that HB 75, which passed last week, deals with the local option issues that this committee should focus on criminal penalties and not much more.

[2:38:06 PM](#)

REPRESENTATIVE KELLER expressed that he does not want to write off the work of a committee simply saying they didn't consider all of the bill. He opined that the committee has an obligation to make a rational decision with both versions in mind.

CHAIR LEDOUX responded that is the reason both versions are before the committee today, in order to make a decision as a committee as to where it wants to go. She said she leans toward the Senate Judiciary Standing Committee version, but she did not want to simply strip the bill and substitute the Senate Judiciary Standing Committee version without a discussion in this committee.

REPRESENTATIVE KELLER said he did not mean to imply anything other than the fact that there is no reason to take a sense of the committee without [reviewing both versions].

CHAIR LEDOUX referred to the House Judiciary Standing Committee calendar and noted it will be spending plenty of time on SB 30.

[2:40:17 PM](#)

REPRESENTATIVE GRUENBERG asked that someone from Senate Finance Committee testify in order for the committee to understand its thinking.

CHAIR LEDOUX responded that Mr. Shilling is staff to Senator John Coghill, and questioned whether Senator Coghill is on the Senate Finance Committee.

MR. SHILLING noted that Senator Coghill is not on the Senate Finance Committee, although Mr. Shilling assisted in carrying the bill through that committee.

REPRESENTATIVE GRUENBERG stated he prefers to be certain both sides of the argument are given an opportunity.

CHAIR LEDOUX expressed that someone from Senate Finance Committee is welcome to offer its version.

[2:41:24 PM](#)

CHAIR LEDOUX open public testimony.

[2:41:37 PM](#)

CHAIR LEDOUX stated that she had previously asked Cynthia Franklin, during a House Labor and Commerce Standing Committee meeting, that from the perspective of the regulator which version made more sense. She said she believes Ms. Franklin responded that it made more sense from a regulatory perspective to leave marijuana out of controlled substances.

[2:42:28 PM](#)

CYNTHIA FRANKLIN, Director, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community, and Economic Development, agreed with Chair LeDoux's depiction of her statement and said that the preliminary considerations document the ABC Board released during a February board meeting contains a section addressing this issue. She advised that the board joined with her and the enforcement staff in recommending an approach removing the substance from the Controlled Substances Act and creating crimes around this substance in one place along with the regulations. She offered that Title 4, is modeled in this manner that when looking for the rules around commercial and non-commercial alcohol, other than the vehicle crime in Title 28, all of the alcohol crimes are in Title 4. She described the carve out approach that has crimes involving the

substance in the Controlled Substances Act, in that alcohol itself is not illegal but there is conduct around alcohol that is illegal. Title 4, explains what can and cannot be done around alcohol. The voters said they do not want marijuana to be illegal in Alaska, but do want some conduct around marijuana to be illegal which is reflected in AS 17.38. She indicated that speaking from a regulatory standpoint, it would be simpler to explain to everyone what the rules around marijuana are, what can and can't be done with that dangerous substance, in one place. She advised this is the reason the board recommended the substance be removed and that crimes be created in one place to mirror the scheme around alcohol. She further advised that she spoke with Colorado regulators regarding the "carve out system," and they stated it substantially injured their ability to shut down the black market and prevent diversion because the rules can be confusing for the public and law enforcement. She noted that a police officer has to determine whether the marijuana is illegal as a controlled substance Title 11 marijuana, or whether it is legal but regulated in Title 17 marijuana. She said that putting the police officer in that position while standing on the side of the road, from the board's perspective, is an undesirable way of regulating this substance with public safety in mind and preventing the diversion while staying on the right side of the federal rules (indisc.).

[2:45:58 PM](#)

DOLLYNDA PHELPS, said with regard to the Senate Finance Committee version [Purpose] on page 1, she saw propaganda of the 1960s-1980s, and urged that current information and medical research be involved. She said she found issue with the 16 ounce limit and everything produced from six plants as there should not be any limit within the house, but there should be a limit outside of the home for safety precautions. In truly following the initiative there should not be any limits within the home, she offered. She stated that cannabis should not be considered a controlled substance and should stay off of the VIA schedule list. She related that her research found that under Schedule VI there is "no currently accepted medical use in the United States for the substance." She referred to U.S. Patent No. 6630507, "Cannabinoids as antioxidants and Neuroprotectants" is assigned to the United States of America as represented by the U.S. Department of Health and Human Services. Clearly, there is an accepted medical use for cannabis and it does not belong on Schedule VIA which is in conflict with the current form of SB 30 that does put cannabis in a Schedule VI category.

2:48:30 PM

CHAIR LEDOUX pointed to Ms. Franklin's opinion wherein it might make it better for regulators to control and regulate both liquor and marijuana if they are not in controlled substances, and that both are treated the same. She asked what difference it makes as long as a person is not arrested whether [cannabis] is considered a controlled substance or not.

MS. PHELPS responded that by definition cannabis does not belong [in controlled substances] as there are many accepted medical uses in the United States. She noted that in going further "there is a larger animal at hand, even federally." She related that the initiative clearly states that concentrates are a product of cannabis, and that marijuana and marijuana products would become legal, and that several petitions were signed and sent to the Senate supporting this. She offered that concentrates are commonly used which require enough strength to benefit patients suffering from cancer, Parkinson's disease, fibromyalgia, and epilepsy, among others. A person's right to survival should not be diminished by the United States or the State of Alaska, she opined. She stated that (indisc.) concentrated form otherwise there are not enough health benefits to relieve cancer or fibromyalgia [symptoms] and that research would offer more guidance

2:51:43 PM

JASON HOWARD, referred to [Sec. 2], page 2, lines 24-25, which read:

(2) several hundred adults and children are admitted into treatment each year in Alaska for marijuana abuse, with nearly 46 percent being children under 20 years of age;

MR. HOWARD advised he has researched this issue and found the provision misleading in that it is possibly taken out of context wherein a child has a choice to go to juvenile detention or go to rehab for marijuana, as with adults. He said he also contacted researchers regarding issues of suicide and other problems that children have, and they found that studies have shown that IQ deficiency has led to self-harm, and that the researchers offered they never looked into how the body makes cannabinoids in children. He noted that he spoke with a therapist on the Kenai Peninsula who advised that almost half of the children he treats have a problem with self-harm. Mr.

Howard said that when a person cuts themselves, the body heals with cannabinoids and noted he is confused as to why the legislature is not looking at these things. He referred to [Sec. 2], page 2, lines 26-28, which read:

(3) there is evidence that some users become dependent on marijuana under the clinical standards applied by the Diagnostic and Statistical Manual of Mental Disorders IV; ...

MR. HOWARD referenced the Diagnostic and Statistical Manual of Mental Disorders (DSM) and stated that it should not be used as scientific data in that it was written from work groups and task forces, and is a guide for insurance companies. He explained that the DSM is not based on scientific data and that this information is actually written in the DSM itself, and therefore, is not a reliable source. He referred to [Sec. 2], page 3, lines 4-6, which read:

(5) a significant percentage of persons in treatment for alcohol abuse also abuse a secondary drug, which may include marijuana; nevertheless, the relationship between marijuana and alcohol and other drugs is not fully understood;

[2:54:37 PM](#)

MR. HOWARD stated his disagreement with the above provision in that there is plenty of research on how marijuana and cannabinoids affect the brain, and the reward system. He then referred to [Sec. 2], page 3, lines 7-14, which read:

(6) marijuana consists of hundreds of different chemicals that can affect almost every organ and system in the body, including the lymph system, the heart, and the lungs; THC binds to receptors in the brain that should otherwise bind to naturally occurring brain chemicals; marijuana can affect memory, attention, judgment, and other cognitive functions and can impair motor coordination, time perception, and balance; marijuana smoke contains more carcinogenic hydrocarbons than tobacco smoke; marijuana often contains bacteria or fungi that are dangerous to humans, and may be harvested and sold without removing pesticides and fungicides;

MR. HOWARD disagreed with the above provision in that a person's body has a lipid signaling system that is performed by cannabinoids, and it regulates everything in the human body. Unfortunately, the provision implies it is a negative effect. The issue of bacteria and fungi being dangerous to humans is something that having [cannabis] controlled and regulated would be addressed. He referred to [Sec. 2], page 3, lines 15-16, which read:

(7) about 40 percent of the adults arrested in this state who commit violent offenses have marijuana in their system at the time of the arrest;

MR. HOWARD offered that this provision is also misleading in that most of the tests today do not test for active THC metabolites and test for inactive metabolites. A person could smoke one day and be tested 30 days later and still have those metabolites in their system. He said he disagrees with the six plant limit per household as he is a medical marijuana user, and a disabled veteran who was blown up by two improvised explosive devices (IEDs.) He related that he is on a large amounts of opioids, lorazepan, and heavy narcotics for anxiety, sleep, and migraines. He pointed out that all of those issues are eliminated with large amounts of cannabis an expressed concern regarding limiting cannabis to six plants for those who require large amounts of cannabis.

[2:57:58 PM](#)

RACHELLE YEUNG, Marijuana Policy Project, offered support for the Senate Judiciary Standing Committee's version of SB 30 given that their suggestions were addressed. She then referred to Secs. 1-2, of the bill and stated they should be completely deleted in that Sec. 1, concerns opting out of the unorganized boroughs. She pointed out that this committee deemed that the unorganized borough should not be opted out and instead established villages within the borough should have the option to opt themselves out. She pointed to Sec. 2, and stated it should be stricken for its irrelevancy and unscientific findings, that it does not appear these findings were discussed during any of the hearings, and that she found it curious that by its language should make empty statutes. She offered the recommendation that the bill not ban delivery as it could affect medical patients with mobility issues who are home bound. She suggested reviewing the proposed fines or penalties for some of the crimes as they may not meet up with the standards set by the initiative. She pointed out that possibly a drafting error made

it illegal for adults to display, use, or possess under an ounce of marijuana, which is contrary to the fundamental purpose of the initiative. She suggested amending the definition of open marijuana containers to the Senate Judiciary Standing Committee's definition.

[SB 30 was held over.]

[3:02:05 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.