

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 27, 2015

3:22 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Cathy Tilton
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Mike Chenault (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."

- MOVED CSHB 123(L&C) OUT OF COMMITTEE

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

WITNESS REGISTER

KONRAD JACKSON, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained amendments to HB 123 on behalf of the House Labor and Commerce Standing Committee, Representative Kurt Olson, Chair.

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

POSITION STATEMENT: Testified and answered questions during the discussion of HB 123.

KATHLEEN FREDERICK
Chief Administrative Law Judge
Office of Administrative Hearings (OAH)
Anchorage, Alaska

POSITION STATEMENT: Testified with respect to the fiscal note for HB 123.

ACTION NARRATIVE

[3:22:38 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:22 p.m. Representatives LeDoux, Tilton, Kito, Colver, Josephson, Hughes, and Olson were present at the call to order.

HB 123-ESTABLISH MARIJUANA CONTROL BOARD

[3:22:52 PM](#)

CHAIR OLSON announced that the only 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."

[3:23:12 PM](#)

CHAIR OLSON directed attention to three pending amendments. He stated that an objection to adopting the proposed committee substitute (CS) for HB 123 was pending.

[3:23:48 PM](#)

REPRESENTATIVE HUGHES removed her objection. There being no further objection, Version W was before the committee.

[3:24:12 PM](#)

REPRESENTATIVE HUGHES moved to adopt Amendment 1, labeled, 29GH1110\W.1, Martin, 3/17/15, which read:

Page 5, line 20, following "chapter":
Insert "and AS 11.71"

Page 7, following line 15:

Insert a new subsection to read:

"(c) The Alcoholic Beverage Control Board may carry out the functions of the board under AS 17.38 as they existed on the day before the effective date of this Act and continue and complete the process for adoption of regulations proposed but not adopted before the effective date of this Act until members of the Marijuana Control Board are appointed by the governor under AS 17.38.080(b), as repealed and reenacted by sec. 2 of this Act."

Page 5, line 20, following "chapter":
Insert "and AS 11.71"

CHAIR OLSON objected for the purpose of discussion.

[3:24:35 PM](#)

KONRAD JACKSON, Staff, Representative Kurt Olson, Alaska State Legislature, on behalf of the committee, stated Amendment 1 would make two changes to the bill. Amendment 1 would add "AS 11.71" to page 5, line 20, to allow for prosecution of controlled substance statutes. On page 7, subsection (c) would add language to allow the Alcoholic Beverage Control Board (ABC Board) to carry out the functions of the proposed Marijuana Control Board (MCB) to avoid a gap in service prior to the new board being established.

[3:26:04 PM](#)

REPRESENTATIVE LEDOUX asked for further clarification of the reason this was needed since the initiative indicated the Alcoholic Beverage Control Board (ABC Board) will adopt regulations.

MR. JACKSON said she was absolutely correct; however, assuming that HB 123 passes the legislature, the ABC Board's authority will cease and the Marijuana Control Board (MCB) will gain the authority. In further response to Representative LeDoux, he explained that Amendment 1 would add AS 11.71, controlled substances to allow for prosecutions to occur.

[3:29:03 PM](#)

CYNTHIA FRANKLIN, Executive Director, Alcoholic Beverage Control Board (ABC Board), Department of Commerce, Community & Economic Development (DCCED), stated the provisions for enforcement of the criminally punishable provisions of this chapter were written into HB 123 at the time when the crime bill contemplated criminally punishable offenses for marijuana crimes in AS 17. These provisions would be similar to the criminally punishable

offenses for alcohol crimes reflected in [AS] 04. However, the crime bill reverted back to a structure in which the marijuana offenses remain in the controlled substances act. She described the lawful activities around commercial marijuana as a "carve out" to the marijuana crimes. She said it was imperative that the enforcement staff of the boards have full authority to enforcement marijuana crimes. Without this provision, the enforcement officer would be limited to enforcing rules for licensees, but it would not have authority for those violating the law by starting commercial marijuana activities without the appropriate licenses. She emphasized that it's important that enforcement officers have authority over anyone who purports to start a commercial establishment but has not obtained the license to do so.

[3:31:04 PM](#)

REPRESENTATIVE LEDOUX asked what would happen if the direction changed again.

MS. FRANKLIN said the language being added to this bill provides specific authority to enforce marijuana crimes in AS 11.71. She suggested that if the crime bill, HB 79/SB 30, reverted to one of its previous forms and marijuana was removed from the Controlled Substances Act, this language would not harm anything. She suggested that it would provide extra authority for enforcement officers to enforce Controlled Substances Act crimes. Further, enforcement officers were given special commissions by the Department of Public Safety's commissioner that typically match the statutory authority and purpose. No matter which bill passes, this attempts to ensure that the officers have the necessary authority to work enforcement against the marijuana black market. She offered her belief that this will be fine, that it will be great if the crimes are as easily understandable as the crimes surrounding alcohol are. She explained that the Alcoholic Beverage Control Board (ABC Board) released a "preliminary considerations" document on February 12, 2015, specifying that the board supports having all the crimes listed in one Act. The ABC Board would favor that approach; however, the language in Amendment 1 will not cause problems.

[3:33:57 PM](#)

REPRESENTATIVE COLVER expressed concern that the language in Amendment 1 that adds AS 11.71 was too broad. He said that this would turn the board and its enforcement officer into a quasi-law enforcement agency with "super powers." Further, he was concerned about the cost and would much prefer to have troopers and other law enforcement pursue crimes. He suggested that the agency could do the investigation, but allow police officers to pursue the crimes. He suggested that the committee delete this portion of Amendment 1 and allow the House Judiciary Standing Committee an opportunity to consider it. He was not sure that it would be relevant as the bill moves to different committees.

[3:35:28 PM](#)

REPRESENTATIVE COLVER made a motion to adopt Amendment 1 to Amendment 1 to strike "Insert "and AS 11.71".

CHAIR OLSON suggested the next bill moves to the House Judiciary Standing Committee.

[3:36:03 PM](#)

REPRESENTATIVE LEDOUX clarified that a vote to support Amendment 1 doesn't mean the House Judiciary Standing Committee will not reach a different conclusion.

[3:36:31 PM](#)

REPRESENTATIVE JOSEPHSON offered his recollection that the purpose of Amendment 1 was to have parity and a parallel between the alcohol provisions and enforcement powers for marijuana control.

MS. FRANKLIN answered yes.

[3:37:28 PM](#)

REPRESENTATIVE JOSEPHSON recalled one approach was to take the Alcoholic Beverage Control Board statutes, "scrub out" and rebuild the framework to apply to marijuana. Another approach would be to leave everything in place, and "carve out" what the initiative called for. He asked whether that was basically correct.

MS. FRANKLIN answered rather than use the rather the term "scrub out" she suggested that SB 30/HB 79 was identifying every section where alcohol appears and adding "marijuana" so a significant number of titles were affected. Further, it removed marijuana from the controlled substances and instead the proposed statutes treated marijuana as a regulated substance. This parallels the regulation of alcohol, such that the crimes around alcohol are in AS 04, as well as having regulations and commercialized activities. She recalled that Representative LeDoux referred to a previous version of SB 30/HB 79 that creates a series of crimes in AS 17 that identify misconduct involving marijuana. She reiterated that the Alcoholic Beverage Control Board (ABC Board) had expressed its approval for the foregoing approach.

[3:39:07 PM](#)

REPRESENTATIVE JOSEPHSON referred to page 5, line 18, and said that whatever was left in terms of marijuana criminality would be enforceable by the Alcoholic Beverage Control Board (ABC Board). He offered his belief that including AS 11.71 will mean that the legislature is adopting the controlled substance language rather than regulated language. He asked whether this would fall more on the criminal side than the non-criminal infraction side.

MS. FRANKLIN responded that there are many crimes related to alcohol that are misdemeanors and felonies, which are located in AS 04. When the ABC Board's enforcement officers, who are peace officers commissioned by DPS, are enforcing crimes, they are acting as law enforcement officers. This helps to ensure that no commercial alcohol establishments crop up that are not regulated by the board. She stated that AS 17.38 [the initiative] as passed by the voters, it grants the Alcoholic

Beverage Control Board (ABC Board) or Marijuana Control Board (MCB) the authority to make rules, but it doesn't grant any enforcement powers. She said the aforementioned language doesn't reference AS 04, but the language is "lifted" directly from AS 04, and it attempts to mirror the enforcement powers for marijuana that the ABC Board has for alcohol.

MS. FRANKLIN elaborated that the reason to request this language was because the board could only enforce rules on those licensed by the board, but not for businesses who avoid licensure and simply open a business. She advised that the board already receives calls on operating marijuana businesses, but the ABC Board does not have the ability to have officers investigate potential violations of marijuana per AS 17.38. However, the ABC Board has the authority to make the rules. Therefore Amendment 1 attempts to acknowledge that not all crimes related to marijuana pertain to AS 17. In fact, in CSSB 30(FIN) none of the crimes around marijuana were in AS 17, but pertained to civil penalties for licensee violations, or those already licensed not following the rules, yet none of the crimes for opening a business without a license would be reflected in AS 17. Therefore the enforcement officers who may be the logical first choice to begin an investigation would not have the statutory authority to do so.

[3:43:02 PM](#)

The committee took an at-ease from 3:43 p.m. to 3:50 p.m.

[3:50:18 PM](#)

MR. JACKSON read Conceptual Amendment 1 to Amendment 1 offered by Representative Colver, to delete lines 1 and 2 from Amendment 1.

[3:50:40 PM](#)

CHAIR OLSON asked for the ABC Board's comments.

MS. FRANKLIN responded that the absence of the ability to enforce crime related to marijuana in the Controlled Substances

Act in AS 11.71 could result in board enforcement that cannot effectively control and regulate the black market. She said this was one of provisions in the mission statement in implementing the voter's initiative, which is to limit commercial marijuana operations. She offered that the board would be concerned that if there were not any [references"] in AS 17, it will not give enforcement officers the ability to shut down black market operators.

[3:52:09 PM](#)

CHAIR OLSON related his understanding that [Conceptual] Amendment to Amendment 1 would gut the amendment and the bill. He asked whether that would be an oversimplification.

REPRESENTATIVE COLVER interjected yes.

MS. FRANKLIN answered that the amendment would severely curtail the ability of the board to effectively regulate the [marijuana] substance and would makes the law completely different from the way that alcohol is regulated by not allowing enforcement of illegal operators.

[3:52:38 PM](#)

REPRESENTATIVE LEDOUX said the committee does not know the final provisions of the marijuana crime bill [SB 30/HB 79] in its final permutation. She suggested that at some point [language might be added to HB 123 that allows] enforcement for criminally punishable provisions of this chapter or of any other chapter which criminalizes marijuana. She asked what effect the foregoing language would do.

MS. FRANKLIN answered that would have the same effect as referencing AS 11.71.

[3:53:37 PM](#)

REPRESENTATIVE LEDOUX suggested it may have the same effect, but it would not allow the board to enforce against anything else.

MS. FRANKLIN agreed it would limit enforcement to marijuana crimes.

[3:54:00 PM](#)

REPRESENTATIVE LEDOUX asked whether it makes any difference if a person is charged with a crime if marijuana was listed as a controlled substance or not, as long as crimes are associated with the activity. In other words, the language of the initiative that states "notwithstanding" anything else, but "else" could be amended so that marijuana is still considered a controlled substance but the penalties are reduced or eliminated. She suggested that alcohol was regulated yet the agency is called the Alcoholic Beverage Control Board (ABC Board).

MS. FRANKLIN answered that it does make a big difference. She stated that as a controlled substance, the substance itself is declared to be illegal. The Controlled Substances Act defines illegal substances in Alaska; however, regulated substance with crimes defines the conduct around the substance that is illegal. For example, alcohol is not considered an illegal substance, but it is illegal to furnish alcohol to a minor. Thus the crime is the conduct surrounding the substance, not the substance itself. She offered her belief that by taking marijuana out of the Controlled Substances Act, it becomes a regulated substance like alcohol and it ceases to be an illegal substance.

MS. FRANKLIN stated that the practical differences were not in the person charged with the crime, since what matters most to individuals is the level of crime the person is being charged with. By reducing the penalties, it would have the same effect for the person charged; however, what makes it difficult is to have one substance, marijuana, be controlled and regulated, and legal and illegal, since it will create confusion for law enforcement and the public in terms of what is allowed regarding the substance. For example, not everyone knows what is illegal, but people know they can't do whatever they want to do. The crimes for alcohol are found in one place and the Alcoholic Beverage Control Board (ABC Board) and its staff become de facto experts on what is and isn't allowed with regard to alcohol.

She emphasized this was the key to keeping the public safe, such as keeping marijuana out of the hands of minors and to keep the public informed on rules pertaining to alcohol. The ABC Board and staff can help educate everyone else in the state. Certainly she appreciated the sentiment that it would be nice for law enforcement officers to lead the charge on marijuana, but the simple fact is that those law enforcement officers have rapes, murders and domestic violence crimes to investigate and pursue and must develop priorities, but enforcement of the rules for marijuana would be the priority of Marijuana Control Board (MCB).

[3:58:51 PM](#)

REPRESENTATIVE LEDOUX asked whether the ABC Board has authority to make criminal laws with respect to alcohol or if it only enforces criminal laws that the legislature has enacted.

MS. FRANKLIN answered that the crimes are defined in statutes and the regulations help interpret the conduct around licensed activities. She said that crimes for alcohol apply to licensees and some to unlicensed persons, under AS 04.16.051, which pertains to furnishing alcohol to a minor by a person who is not licensed. The ABC enforcement officers have the authority to write tickets to meet the mission of preventing diversion of alcohol to underage persons. She reiterated that the authority to cite unlicensed activities was missing in AS 17.38.

[4:00:38 PM](#)

REPRESENTATIVE JOSEPHSON said there are felonies and misdemeanors in AS 04. He asked for further clarification on whether she was saying that the committee should be comfortable with a comparable subsection in HB 123 that references AS 11.71 due to the parallel.

MS. FRANKLIN answered yes; that the board would be working in AS 11.71 to enforce marijuana in the black market whereas in AS 04 all the crimes related to alcohol are located within the same title.

[4:01:47 PM](#)

REPRESENTATIVE JOSEPHSON asked whether Amendment 1 would open the door to controlled language under AS 11.71; yet he understood that the ABC board would prefer marijuana not be both a controlled substance and a regulated substance.

MS. FRANKLIN answered that the portion of Amendment 1 related to AS 11.71 was in response to the concern that the session would end with marijuana crimes only being included in AS 11.71. She said she was equally comfortable with Representative LeDoux's language that the board would have enforcement authority over any criminally punishable provisions of this chapter or any other criminally punishable provisions of crimes involving marijuana. This would be different than the language in Amendment 1 adding the reference to AS 11.71, since that statute refers to the entire Controlled Substances Act. The idea was not to expand the board's authority over any other substances, but to encompass all marijuana crimes in the board's authority so when marijuana activity is encountered that the enforcement staff have the ability work on that activity. She offered her belief that inserting AS 11.71 language is the response to ensure that the authority exists to diminish the market for marijuana and does not represent a preference.

[4:03:59 PM](#)

REPRESENTATIVE JOSEPHSON expressed concern that referencing AS 11.71 creates flags since some things will be legal under the initiative.

[4:04:41 PM](#)

MS. FRANKLIN shared the same concern. She related a scenario in which HB 123 passed the legislature, but the crime bill did not. The current statutory framework for anyone engaged in marijuana activities but not licensed by the board would exist in AS 11.71. She reiterated that her concern was to ensure that if the legislature creates a Marijuana Control Board (MCB), it has enforcement authority comparable to the enforcement authority for alcohol. The purpose of Amendment 1 was to help accomplish

that, but she understood the concern about overreach; however, if the Marijuana Control Board (MCB)'s enforcement activities are limited to AS 17.38 and no crimes are listed in AS 17, then questions arise as to whether the enforcement officers have authority to enforce any marijuana crimes.

4:06:40 PM

KATHLEEN FREDERICK, Chief Administrative Law Judge, Office of Administrative Hearings (OAH), discussed the Office of Administrative Hearings' (OAH) involvement. She stated that one of the formulations was for OAH to conduct hearings on licensing denials and appeals. The OAH subsequently submitted a fiscal note and depending upon the bill's outcome, if the OAH conducts hearings, it charges for that service. She explained the fiscal note was based on the current charges to the Alcoholic Beverage Control Board (ABC Board) and an estimate of hearings based on Washington State's experiences with its marijuana program.

CHAIR OLSON asked to return to consider [Conceptual Amendment 1 to Amendment 1.

4:07:51 PM

REPRESENTATIVE COLVER said he thought the debate was helpful to focus in on the controlled substance under AS 11.71. He felt the committee needed to decide the duties and function of the board. He offered his belief that their function is to issue licenses and enforce licensees. He asked whether this function was so broad that the Marijuana Control Board (MCB) enforcement officers should take on the role of another law enforcement agency similar to a Bureau of Alcohol, Tobacco, Firearms and Explosive. He was unsure of the costs, but he offered that the state has a good criminal justice system in place. His impression was that the state was replicating the ABC Board, but in referencing the controlled substances [under AS 11.71] with broad undefined powers, he was unsure of the breadth of the MCB's enforcement powers. He expressed concern about how many plants were legal for residences or if residential activity would be investigated and prosecuted for commercial activity if the individuals had 13 plants growing. He suggested members

should have a policy discussion to determine the role and enforcement aspects. He suggested the House Judiciary Standing Committee can look at these issues and the ramifications of referencing AS 11.71, or if the approach should be to decriminalize marijuana. He had further concerns about growing a bigger agency that the state cannot afford and duplicating law enforcement. He suggested that the [MCB] agency could conduct the investigation, develop the finding of fact and have existing law enforcement enforce the activities to avoid duplication of services.

[4:10:40 PM](#)

CHAIR OLSON suggested it would have been helpful to have one bill since it could evolve into a "train wreck" with only half of the necessary bills passing this session without the other half. He was unsure about the cohesiveness of the overall program since several bills exist.

[4:11:12 PM](#)

REPRESENTATIVE LEDOUX offered her belief that it was appropriate for the marijuana control board to conduct enforcement activities similar to the ABC Board enforces alcohol laws. She suggested that instead of referencing AS 11.71.

[4:11:50 PM](#)

CHAIR OLSON reminded members a motion was on the table.

[4:12:08 PM](#)

A roll call vote was taken. Representatives Colver and Josephson voted in favor of Conceptual Amendment 1 to Amendment 1. Representatives Tilton, Kito, Hughes, LeDoux, and Olson voted against it. Therefore, Conceptual Amendment to Amendment 1 failed by a vote of 2-5.

[4:13:15 PM](#)

The committee took an at-ease from 4:13 p.m. to 4:17 p.m.

[4:17:54 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 2 to Amendment 1.

CHAIR OLSON objected for the purpose of discussion.

[4:18:31 PM](#)

REPRESENTATIVE LEDOUX explained Conceptual Amendment 2 to Amendment 1. Since it was uncertain whether marijuana crimes would be subject to controlled substances that instead of referring to AS 11.71, she suggested changing the language to "or any other chapter referencing marijuana crimes."

[4:19:01 PM](#)

CHAIR OLSON commented that it made sense to him.

MS. FRANKLIN agreed it would work better.

[4:19:21 PM](#)

CHAIR OLSON removed his objection to Conceptual Amendment 2 to Amendment 1. There being no further objection, Conceptual Amendment 2 to Amendment 1 was adopted.

[4:19:52 PM](#)

CHAIR OLSON stated that Conceptual Amendment 1 was before the committee.

[4:20:09 PM](#)

REPRESENTATIVE COLVER suggested that additional language could be added in the House Judiciary Standing Committee. He suggested adding "under the jurisdiction of this board" to the language "or any other chapter referencing marijuana crimes" [just adopted as Conceptual Amendment 1 to Amendment 1].

REPRESENTATIVE LEDOUX responded that [Conceptual Amendment 1 to Amendment 1] was crafted "on the fly" and the bill will be considered in the next committee of referral.

[4:20:44 PM](#)

CHAIR OLSON removed his objection to Amendment 1.

There being no further objection, Amendment 1, as amended, was adopted.

[4:21:04 PM](#)

REPRESENTATIVE HUGHES moved to adopt Amendment 2, labeled 29-GH1110\W.2, Martin, 3/17/15, which read:

Page 3, line 21:

Delete "an area of human habitation"

Insert "a community"

CHAIR OLSON objected for the purpose of discussion.

[4:21:23 PM](#)

MR. JACKSON explained Amendment 2 was drafted in response to questions people had on the definition of "an area of human habitation" and replaced it with "a community" since that seemed to be more appropriate.

[4:22:19 PM](#)

REPRESENTATIVE LEDOUX asked for clarification on the definition of rural and whether a city of 6,000 or less that falls within a borough with more than 6,000 would be considered rural.

MS. FRANKLIN answered that under alcohol regulations a municipality or established village that falls within the borough would be considered separate for the purpose of defining population. She said a community under 6,000 with a boundary would be considered rural.

[4:24:22 PM](#)

REPRESENTATIVE LEDOUX asked whether she was aware of any such communities.

MS. FRANKLIN answered that she did not immediately recall any, but it doesn't mean these communities don't exist, since she hasn't been the executive director for a long time. She was aware of established villages within the boroughs and provisions in [AS] 4 that allow the community to draw the boundary around itself to be an established village for purposes of [alcohol control] under Title 4.

[4:25:19 PM](#)

CHAIR OLSON suggested that the City of Houston would apply.

REPRESENTATIVE KITO suggested that the City of Palmer falls within the Mat-Su Borough, and he was unsure if it constitutes a rural community. In addition some communities within the Lake and Peninsula Borough are smaller than 6,000 would be considered rural.

CHAIR OLSON suggested that the topic could be addressed in the next committee of referral.

REPRESENTATIVE HUGHES expressed her concern about the communities that are considered as rural and hoped that the House Judiciary Standing Committee will further consider it to fulfill the intent of "rural" and other statutes may address it. She suggested that the City of Houston and Palmer may be close to those figures. She reiterated that the definition should be fixed.

[4:26:59 PM](#)

CHAIR OLSON removed his objection. There being no further objection, Amendment 2 was adopted.

[4:27:24 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Conceptual Amendment 3 labeled 29-GH1110\W.3, Martin, 3/20/15, which read as follows:

Page 7, lines 3 - 5:

Delete "instead appoint two persons with experience in the alcohol retail or wholesale business. The governor shall appoint the two individuals to serve the term of two years under (a)(2) of this section"

Insert "consider a person's

(1) understanding of the marijuana industry;
(2) business experience; and
(3) background in regulatory compliance or rulemaking"

[4:27:34 PM](#)

REPRESENTATIVE JOSEPHSON began by stating that he was a "no" vote on the marijuana initiative. He also told voters he would be voting against it and he would probably vote no again. He expressed concern with Section 8 [pages 6-7] since it preempts people knowledgeable about the industry to serve on the board. He was unsure that the skills derived from working in the alcohol industry provided skills compatible to the marijuana industry. Section 8, Version W, turns the Marijuana Control Board (MCB) into a second ABC Board by requiring the two industry seats be filled by people from the alcohol industry. He suggested that this will undermine the entire purpose for creating a separate MCB. Some would argue that this will be cured in two to three years, but that cure will happen after regulations are written, which he found to be problematic.

REPRESENTATIVE JOSEPHSON suggested this would be the only industry board in Alaska in which no member is required to have any experience or understanding of the industry, in which some say will be a competing industry. In addition, not only are the industries very different from one another, but page 4 states that "The board shall control the cultivation, manufacture, possession" He suggested that these powers and duties speak to the need to understand the value added portions. He found the concept of edibles was something he was unsure he

grasped. He argued that there was nothing inherently valuable in having experience with the alcohol industry. For example, he suggested a person could have experience with the alcohol industry without having any relevant skills for helping develop good industry regulations. In fact, they could have worked on a loading dock or wholesale and might not understand anything about what's happening "on the ground" to customers or how to keep minors safe. He suggested that Section 8 will limit the board with the appointments to the Marijuana Control Board (MCB). The central question was what criteria to use for board members to ensure they are best suited to assist in the regulatory process during the formative period since Alaska does not currently have a legitimate marijuana industry.

[4:31:03 PM](#)

REPRESENTATIVE JOSEPHSON turned to Amendment 3 and said that this amendment has a cumulative test, which would evaluate all three criteria, including some understanding of the marijuana industry, business expertise, and a background in regulatory compliance or rulemaking. He suggested that adding the criteria would help ensure that the Marijuana Control Board (MCB) will not consist of members with broad experience in the alcohol industry. He suggested that Amendment 3 would address the core concerns, including that someone would have a regulatory background, it could expand the pool of potential appointees, and it would also allow the governor to choose someone from the alcohol industry. It would also give flexibility in appointment process. He acknowledged that people could learn about the industry through travel, reading, and the Internet without being lawbreakers or residents of Colorado or Washington.

[4:32:54 PM](#)

REPRESENTATIVE COLVER suggested that everyone has been struggling with the qualifications for the proposed MCB. He agreed with the intent. He suggested inserting "agriculture" after industry as another qualification.

[4:33:29 PM](#)

REPRESENTATIVE LEDOUX shared Representative Josephson's concerns. She acknowledged that the next committee will be seriously considering this bill and the issues raised.

[4:33:58 PM](#)

The committee took an at-ease from 4:33 p.m. to 4:35 p.m.

[4:35:40 PM](#)

REPRESENTATIVE COLVER moved Conceptual Amendment 1 to Amendment 3, [labeled Amendment to Amendment, Version W.3], which read,

On line 6 after "marijuana" insert "or agriculture."

CHAIR OLSON objected for purpose of discussion.

REPRESENTATIVE COLVER referred to the qualifications in (a)(2) of HB 123. He further referred to Amendment 3, lines 6-8, which read:

- (1) understanding of the marijuana industry;
- (2) business experience; and
- (3) background in regulatory compliance or rulemaking"

REPRESENTATIVE COLVER stated that Conceptual Amendment 1 to Amendment 3, on line 6, [paragraph] (1), following "marijuana": insert "or agriculture".

[4:36:33 PM](#)

MS. FRANKLIN said some individuals have already identified themselves as knowledgeable and they could be good candidates for [the proposed MCB] based on the aforementioned qualifications. She deferred to the committee. She understood the concerns Representative Kito raised [earlier] and the reason for the change in the first place; however, not everyone who has information on this substance and has business experience is necessarily a criminal operator. She suggested that was the original concern.

[4:37:38 PM](#)

REPRESENTATIVE HUGHES appreciated the concern. She recalled the Chair of the House Judiciary Standing Committee has agreed this needs to be discussed and it needs to be vetted. She acknowledged that someone with pharmaceutical experience or a laboratory background might be useful. She appreciated the importance of a regulatory background or rulemaking since this process will be intense. She appreciated the discussion; however, she said she would not support [Conceptual 1 Amendment] since the House Judiciary Standing Committee Chair plans to work on it further in the next committee of referral.

[4:38:39 PM](#)

CHAIR OLSON maintained his objection.

A roll call vote was taken. Representative Colver voted in favor of Conceptual Amendment 1 to Amendment 3. Representatives LeDoux, Tilton, Kito, Josephson, Hughes, and Olson voted against it. Therefore, Conceptual Amendment 1 to Amendment 3 failed by a vote of 1-6.

[4:39:38 PM](#)

CHAIR OLSON directed attention to Amendment 3.

REPRESENTATIVE HUGHES remarked that her earlier comments also applied to Amendment 3.

[4:40:01 PM](#)

CHAIR OLSON added that someone truly qualified with marijuana experience in Alaska would likely have been engaged in illegal activities or have recently arrived from Washington or Colorado. He suggested that some board members might be selected for other reasons that might enhance the industry in ways the legislature can't envision yet since most members are not knowledgeable about the industry. He preferred to leave the board qualifications to the next committee of referral to consider.

REPRESENTATIVE LEDOUX affirmed that the House Judiciary Standing Committee will consider the issues. She offered her belief that under the Ravin decision [Ravin v. State, 537 P.2d 494 (Alaska 1975)], people were allowed to grow a certain amount of marijuana in their homes so experience in growing might not mean the individuals were involved in felonious activities.

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CHAIR OLSON said he stood corrected, but pointed out that growing marijuana for personal use would not be considered an industry. In response to a question, he indicated he meant that people may have other motives the committee wasn't aware of since members are not familiar with the industry.

[4:42:21 PM](#)

REPRESENTATIVE JOSEPHSON, speaking to Amendment 3, stated that a person could study Swahili in Anchorage, never having been to East Africa and not know anything about East African culture, but still have some value. He declared that people can learn substantial information from books, communications, and interactions. He suggested that members of the advocacy group should have a powerful role in this process, which he viewed as showing respect to the voters.

[4:43:34 PM](#)

CHAIR OLSON pointed out that within two years, there will be a new board that will consist of individuals with a broader experience.

[4:43:54 PM](#)

REPRESENTATIVE COLVER stated that Amendment 3 was an improvement since it adds business experience and regulatory compliance. He suggested that college students or people in graduate school could be learning about the marijuana industry from states who regulate it such as Colorado. He suggested some could be Alaskan residents. He viewed Amendment 3 as an improvement.

[4:44:50 PM](#)

CHAIR OLSON recalled that the marijuana initiative suggested the marijuana industry be regulated like the alcohol industry.

[4:45:15 PM](#)

REPRESENTATIVE HUGHES suggested as it goes to next committee it's important to keep in mind how the marijuana industry could be regulated like alcohol if the potential board members are not familiar with how the alcohol industry is regulated so it could be better to have someone who has been under the regulations as part of the decision-making process.

[4:45:40 PM](#)

CHAIR OLSON recalled that several years ago the Alcoholic Beverage Control Board (ABC Board) was under Department of Public Safety, but was relocated to the Department of Commerce, Community & Economic Development (DCCED) to make the agency "more friendly."

CHAIR OLSON maintained his objection to Amendment 3, as amended.

[4:46:25 PM](#)

A roll call vote was taken. Representatives Colver and Josephson voted in favor of Amendment 3. Representatives Hughes, LeDoux, Tilton, Kito, and Olson voted against it. Therefore, Amendment 3 failed by a vote of 2-5.

[4:47:11 PM](#)

CHAIR OLSON commented that he appreciated Representative Josephson bringing the foregoing amendment forward since it has created an interesting discussion on the issue.

[4:47:28 PM](#)

REPRESENTATIVE LEDOUX said she shared some of Representative Josephson's concerns so she would look forward to his advice and

suggestions as this bill is considered in the next committee of referral.

[4:48:22 PM](#)

REPRESENTATIVE LEDOUX referred to page 5, proposed AS 17.38.085, and to the long discussion on AS 11.71. She noticed that the board can enforce criminally-punishable laws and regulations [page 5, lines 21-24], which read, "investigation of violations of 23 laws against prostitution and sex trafficking described in AS 11.66.100 - 11.66.135 24 and laws against gambling, promoting gambling, and related offenses described in 25 AS 11.66.200 - 11.66.280." She asked for further clarification.

MS. FRANKLIN answered that the language contained in this provision mirrored provisions in the existing Alcoholic Beverage Control Board's (ABC Board) statutes. She explained when enforcement officers are in the field enforcing alcohol statutes, and are working under limited commission as previously discussed to enforce alcohol crimes, but encounter other crimes being committed, such as a gambling or a prostitution den, that they can take action. Often these types of offenses occur together. Again, this provision mirrors AS 04, related to alcohol, as part of the enforcement effort on marijuana, to have the authority to enforce laws for illegal operations of alcohol, gambling, and prostitution. Although discussions were held when this language was added to the bill, the state does not yet know what the industry looks like or what types of illegal activities around marijuana might consist of, she said. She acknowledged that marijuana exists in Alaska and that illegal activities have occurred. She related a scenario in which an illegal marijuana club was operating and enforcement officers entered to enforce marijuana crimes on people illegally running a marijuana club, observed other crimes being committed specific to AS 11. She emphasized that the marijuana enforcement officers would need to have same ability to enforce all criminal activities occurring in that illegal setting.

[4:52:15 PM](#)

REPRESENTATIVE LEDOUX indicated she had several questions. First, the language doesn't seem to indicate this activity was ancillary. Second, she related her understanding that it was limited to the specific things in AS 11.66, but it seemed to be broader. She read [page 5, lines 20-21], the phrase "... other criminally punishable laws and regulations including" She offered her belief that language doesn't seem limited, but instead that marijuana enforcement officers could enforce just about anything. She asked whether this language parallels the new Title 4 [AS 04], which is not yet law or existing statute.

[4:53:21 PM](#)

MS. FRANKLIN explained that this language has been current language in AS 04 since 1980. She affirmed the law was written in 1980, and was amended in 1999 and 2012. She acknowledged that the language was fairly general. She reminded members that the Alcoholic Beverage Control Board (ABC Board) consists of five officers statewide who work on all alcoholic crimes pertaining to the 1,875 liquor licenses. She understood the committee's concerns that these officers will be granted broad powers, but the practical matter is that these officers can barely keep up with duties pertaining to the alcohol industry. These provisions were intentionally placed in the alcohol enforcement section to allow enforcement of other activities. She reported significant problems exist in Anchorage involving illegal night clubs, which are not licensed to operate, but are essentially a black market for alcohol. When enforcement officers enter illegal night clubs, they occasionally find illegal gambling and prostitution operations. She suggested that this language allows enforcement officers who are conducting activities related to their mission to shut down illegal alcohol operations, that they have authority to take action on illegal gambling and prostitution.

MS. FRANKLIN indicated there was absolutely no evidence that this broad power has been abused by the ABC Board's enforcement officers. Instead, it was designed to prevent law enforcement officers from ignoring illegal acts because they don't have the authority to enforce. She emphasized that this provision was designed to ensure that if enforcement officers are shutting

down illegal marijuana operations, and an enforcement officer observed other activities then they will have the authority to address that conduct.

[4:56:41 PM](#)

REPRESENTATIVE LEDOUX understood, but she wondered if the language needs to be tightened up to address those situations in this provision, but also in AS 04.

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REPRESENTATIVE LEDOUX, with respect to this broad language, asked why it was necessary to discuss AS 11.71 since it seemed as though the language "other criminally punishable laws and regulations" should cover the enforcement.

MS. FRANKLIN answered that the reason the board asked for specific language was to have this discussion about enforcement authority. She spoke to the Department of Law about the foregoing language, "other criminally punishable laws and regulations" and while the agency could argue that it gives the enforcement officers broader authority over all kinds of activities, the agency really doesn't want to be in that position, but to be in the position in which the mission was clear and the enforcement duties are clear. She suggested that the board would rather have an express discussion about the expectation for enforcement duties than to rely on the foregoing language. She agreed that even though this language has been in statute for many years, that the enforcement officers have much broader authority; however, she suggested that it is better for things to be clearly defined [in statute] and to have discussions.

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CHAIR OLSON removed his objection.

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REPRESENTATIVE HUGHES moved to report the proposed committee substitute (CS) for HB 123, labeled 29-GH1110\W, Martin, 3/14/15, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[4:59:32 PM](#)

REPRESENTATIVE COLVER asked to comment. He said he hoped the House Judiciary Standing Committee would fix the loose language. He offered his belief that this bill moves farther from regulating marijuana like alcohol to regulating every other crime. He suggested that the focus should be narrowed.

REPRESENTATIVE LEDOUX said that the House Judiciary Standing Committee will be considering [law enforcement authority and scope of duties].

There being no further objection, the CSHB 123(L&C) was reported from the House Labor and Commerce Standing Committee.

CHAIR OLSON commented that it was the wishes of the people who drafted the initiative that there be some regulation modeled after the Alcoholic Beverage Control Board (ABC Board).

[5:00:36 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:00 p.m.