

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 4, 2018

2:02 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Jonathan Kreiss-Tomkins, Vice Chair  
Representative Louise Stutes  
Representative Gabrielle LeDoux  
Representative David Eastman  
Representative Chuck Kopp

**MEMBERS ABSENT**

Representative Lora Reinbold  
Representative Charisse Millett (alternate)  
Representative Tiffany Zulkosky (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 387

"An Act relating to scheduled substances; relating to the Controlled Substances Advisory Committee; and authorizing the attorney general to schedule substances by emergency regulation or repeal an emergency regulation that scheduled a substance."

- HEARD & HELD

HOUSE BILL NO. 367

"An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 387

SHORT TITLE: AG SCHEDULE CONTROLLED SUBSTANCES

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

02/21/18	(H)	READ THE FIRST TIME - REFERRALS
02/21/18	(H)	JUD, FIN
03/16/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/16/18	(H)	Heard & Held

03/16/18 (H) MINUTE (JUD)  
04/04/18 (H) JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

ROBERT HENDERSON, Deputy Attorney General  
Criminal Division  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 387, answered questions.

**ACTION NARRATIVE**

[2:02:00 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 2:05 p.m. Representatives Claman, Kopp, Stutes, LeDoux, Kreiss-Tomkins, and Eastman were present at the call to order.

**HB 387-AG SCHEDULE CONTROLLED SUBSTANCES**

[2:03:52 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 387, "An Act relating to scheduled substances; relating to the Controlled Substances Advisory Committee; and authorizing the attorney general to schedule substances by emergency regulation or repeal an emergency regulation that scheduled a substance."

CHAIR CLAMAN advised that HB 367 was previously scheduled for its second hearing today. Earlier this week, the Senate passed SB 202, "An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands," which is a companion bill to HB 367. Accordingly, he stated, the House Judiciary Standing Committee will hold HB 367 in committee, and it will hear SB 202 on Monday.

[2:04:22 PM](#)

CHAIR CLAMAN passed the gavel to Vice Chair Kreiss-Tomkins for purposes of moving Amendment 1.

[2:04:34 PM](#)

CHAIR CLAMAN moved to adopt Amendment 1, labeled 30-LS1461\A.1, Martin, 4/2/18, which read as follows:

Page 3, following line 17:

Insert a new subsection to read:

"(c) The attorney general may schedule a substance by emergency regulation under this section only if the substance has been listed on a federal controlled substance schedule."

Reletter the following subsections accordingly.

REPRESENTATIVE STUTES objected for purposes of discussion.

[2:04:38 PM](#)

CHAIR CLAMAN explained that Amendment 1 responds to concerns raised in this committee, described as the "twinkie" discussion, as to whether the attorney general could list twinkies as a controlled substance under this bill. In recognizing those concerns, he explained that Amendment 1 would limit the attorney general to only list substances by emergency regulation if the substances had already been listed on a federally controlled substance schedule. He explained that the point of the amendment is to limit the attorney general's discretion.

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REPRESENTATIVE EASTMAN proposed a conceptual amendment to delete the words on Amendment 1, page 1, line 4, "has been" listed, and change it to "is currently" listed, because the language "has been" listed may include marijuana, for example, and if it were to be removed from the federal list tomorrow, the attorney general...

CHAIR CLAMAN interjected that he did not have a problem with Representative Eastman's conceptual amendment.

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ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Department of Law (DOL), advised that based upon his understanding of the conceptual amendment, "would it impair our ability to schedule those (indisc.) drugs as they come on the market."

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VICE-CHAIR KREISS-TOMKINS asked Mr. Henderson, as to Amendment 1, whether there are any substances the attorney general's office would like to list that are not federally listed presently.

MR. HENDERSON answered that there are no current drugs the attorney general's office would like to list. There are some controlled substances that are listed differently, but none at this point, he said.

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REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 1 to Amendment 1, and replace "has been" listed, with "is currently" listed. There being no objection, Conceptual Amendment 1 to Amendment 1 was adopted.

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REPRESENTATIVE STUTES removed her objection to Amendment 1, as amended. There being no objection, Amendment 1, as amended, was adopted.

[2:08:21 PM](#)

CHAIR CLAMAN moved to adopt Amendment 2, labeled 30-LS1461\A.2, Martin, 4/2/18, which read as follows:

Page 6, line 31, through page 7, line 14:

Delete all material and insert:

"(c) A substance scheduled by the attorney general by emergency regulation under AS 11.71.125 will remain on the schedule under the emergency regulation for a period not to exceed three years unless the legislature schedules the substance by law or annuls the regulation by law."

REPRESENTATIVE STUTES objected for purposes of discussion.

[2:08:25 PM](#)

CHAIR CLAMAN noted that Amendment 2 contains a handwritten modified amendment changing "three years" to "1,095 days" which is three years, and the drafting change was suggested by the Department of Law (DOL). The purpose of Amendment 2 is to make

certain the legislature is involved in this discussion, and if the legislature chooses not to make the substance part of the schedule, it would lapse. He explained that it gives the attorney general authority for a period of time to list a controlled substance, but if the attorney general could not convince the legislature of the merits of that action, it would no longer be listed as a controlled substance.

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REPRESENTATIVE LEDOUX commented that three years appears to be a long period of time for an emergency regulation to exist, and suggested a conceptual amendment of one-year.

VICE CHAIR KREISS-TOMKINS suggested hearing from the sponsor of Amendment 2 and any other committee discussion prior to suggesting conceptual amendments.

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CHAIR CLAMAN offered that on the one hand, three years seems like a long time, but this is his fourth year in the legislature and the speed with which the legislature sometimes takes action does not always inspire folks. He opined that the time here recognizes that oftentimes controlled substances have taken longer than one year for the legislature to pass even though there was not a lot of debate about the merits of listing that substance. Therefore, he pointed out, the reason for the three years is to allow enough time to potentially give two different legislatures an opportunity to act.

REPRESENTATIVE LEDOUX responded that perhaps the reason the legislature, "although there was not a huge amount of debate about it, perhaps it wasn't actually a true emergency." She related that she could not imagine that the legislature would not get its act together if a significant number of people were dying from a substance.

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REPRESENTATIVE EASTMAN noted that the last line of Amendment 2 states that the legislature might annul the regulation by law, and he questioned how the legislature would go about doing so.

CHAIR CLAMAN advised that the language was proposed by Legislative Legal and Research Services.

MR. HENDERSON answered that the Alaska Supreme Court has spoken to this issue and for the legislature to annul or repeal a regulation, the legislature must follow the mechanics of legislation. He then referred to his 3/16/18 testimony wherein he discussed the State of Alaska v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980) lawsuit.

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REPRESENTATIVE EASTMAN asked whether the governor is required to act in any manner, or whether once the bill passed both houses the action would be complete.

MR. HENDERSON responded that the governor would have to sign the annulment into law.

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REPRESENTATIVE STUTES removed her objection to Amendment 2.

VICE-CHAIR KREISS-TOMKINS objected for purposes of discussion.

[2:13:33 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 1 to Amendment 2, by deleting "three years or 1095 days" and inserting "one year or 365 days" on page 1, line 5.

CHAIR CLAMAN objected to Conceptual Amendment 1.

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REPRESENTATIVE EASTMAN said that one year is more than enough time for the legislature to take action if there truly is an emergency, and in the event the legislature is not inspired to act, he questioned whether it should actually be an emergency regulation. He related that he would like to see this emergency provision used only in dire emergencies.

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REPRESENTATIVE KOPP stated that he will not support Conceptual Amendment 1. When thinking back through all of the substance control bills, he could remember, he could not remember a single bill moving through the legislature in one year. Generally, he pointed out, it is a full legislative session and an additional year, even with an agreement, because many things that cannot be

controlled affects the speed in which legislators can act. He asked whether the sponsor would be willing to move to two years because limiting it to one year assumes the legislature will move quickly through the process and debate.

REPRESENTATIVE LEDOUX commented that if she could obtain additional votes by moving from one year to two years, she would be happy to change the conceptual amendment.

VICE-CHAIR KREISS-TOMKINS related that he is averse to any conceptual amendments as he has "pretty low faith" in the legislature to act decisively or intelligently on most issues.

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CHAIR CLAMAN noted that he understands the appeal to make it 720 days, but in the end this provision is about trying to give maximum flexibility to the administration's prosecutorial function without being hindered by possible legislative delays. In the event the state has a controlled substance that is actively being prosecuted, he does not want to have to explain to someone that last month something could be prosecuted, and this month it could not because the legislature "just didn't quite get done." The 1,095 days is a vital step in protecting public safety and he will not support lowering the base, he said.

REPRESENTATIVE KOPP offered his understanding, from reading the amendment in context, that the legislature could, if it so desired, act swiftly because there is nothing in the amendment to prevent that action.

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REPRESENTATIVE LEDOUX withdrew Conceptual Amendment 1 to Amendment 2, but she said she probably cannot support the bill without the amendment.

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REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 2 to Amendment 2, which would change the time period to 912 days, or 2.5 years.

CHAIR CLAMAN objected.

VICE CHAIR KREISS-TOMKINS clarified that the conceptual amendment would delete the word "1095" and insert "912," as to Amendment 2, page 1, line 5.

CHAIR CLAMAN maintained his objection.

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A roll call vote was taken. Representative Eastman voted in favor of the adoption of Conceptual Amendment 2 to Amendment 2. Representatives LeDoux, Kreiss-Tomkins, Kopp, Stutes, and Claman voted against it. Therefore, the adoption of Conceptual Amendment 2 to Amendment 2 failed to be adopted by a vote of 1-5.

VICE CHAIR KREISS-TOMKINS returned the committee to discussion of Amendment 2, and withdrew his objection.

REPRESENTATIVE EASTMAN objected.

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REPRESENTATIVE LEDOUX advised that she was unavailable during the first hearing on HB 387, and referred to [page 7, lines 1-2], which read as follows:

under AS 11.71.125 may remain on the schedule under the emergency regulation for a period not to exceed 720 days.

REPRESENTATIVE LEDOUX asked whether Amendment 2 is increasing it to 1,095 days.

CHAIR CLAMAN answered that when the attorney general lists something under an emergency basis, it has 720 days after the listing to complete the process in making the regulation permanent. In the event the attorney general complied with the process and made it a permanent regulation within that 720 days, the emergency regulation would continue in effect.

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MR. HENDERSON responded that Chair Claman was correct. This legislation was originally drafted to allow the attorney general to make the emergency regulation permanent using the normal process, and within those two years it would give the legislature time to act. The reason being, he explained, is

because when an emergency regulation expires, the emergency regulation cannot be re-issued. For example, if a new drug hits the market and the attorney general schedules the drug, and for whatever reason the legislature fails to act or fails to keep the drug on the schedule, that emergency regulation would come off the schedule. Thereby, he explained, the attorney general's hands would be tied and unable to move forward with that drug until the legislature acted.

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REPRESENTATIVE LEDOUX surmised that under the original bill, emergency regulations expired within 720 days, and due to Amendment 2, the time period moved from 720 days to 1,092 days.

MR. HENDERSON replied that Representative LeDoux was partially correct, and clarified that it moves from 720 days to 1,095; however, under the original draft, the attorney general could make the regulation permanent by going through the normal regulation process. For example, additional public comment period, additional solicitation of input, and filing the regulation with the Lieutenant Governor. Amendment 2 deletes the attorney general's ability to make the regulation permanent through the administrative code. He asked whether his explanation made sense.

REPRESENTATIVE LEDOUX answered "No."

VICE-CHAIR KREISS-TOMKINS explained that Amendment 2 actually weakens the executive branch's power. He further explained that HB 387, as written, the administration can permanently list substances, and with Amendment 2, that power expires after three years unless the legislature acts more readily.

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CHAIR CLAMAN added that if the attorney general finds itself at 600 days, for example, and the legislature had not acted, the attorney general could then start the process of going past the emergency period by applying for an extension with the Lieutenant Governor.

REPRESENTATIVE LEDOUX asked, "Now?"

CHAIR CLAMAN explained that with Amendment 2, there is the two year timeline on the emergency regulation, and the attorney

general then takes the administrative steps to make it a permanent regulation which buys another year of the regulation while waiting for the legislature to act.

MR. HENDERSON added, "If we make the regulation permanent, it stays permanent," so it is not an additional year.

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CHAIR CLAMAN agreed, and he said that if the legislature did not act by the third year, it goes away anyway.

MR. HENDERSON answered, "Under Amendment 2, the AG cannot make a regulation permanent."

REPRESENTATIVE LEDOUX asked, "Under Amendment 2, never. Okay."

REPRESENTATIVE EASTMAN maintained his objection to Amendment 2.

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A roll call vote was taken. Representatives Stutes, LeDoux, Kreiss-Tomkins, Kopp, and Claman voted in favor of the adoption of Amendment 2. Representative Eastman voted against it. Therefore, Amendment 2 was adopted by a vote of 5-1.

[VICE CHAIR KREISS-TOMKINS passed the gavel back to Chair Claman.]

[HB 387 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:28 p.m.