

HB

75

<TARGET><BILL>HB 75</BILL><SUBJECT>HB
75</SUBJECT><COMM>SCRA29</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/3/15

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 4/15/15

Community and Regional Affairs Committee considered CS FOR HOUSE BILL NO. 75(JUD) am

HB 75 MUNI REG OF MARIJUANA; LOCAL ELECTION

"An Act relating to the registration of marijuana establishments by municipalities; relating to the definition of 'marijuana'; clarifying standards for personal use of marijuana by persons 21 years of age or older; prohibiting the public consumption of marijuana; authorizing the registration of marijuana clubs; relating to established villages and to local option elections regarding the operation of marijuana establishments; and providing for an effective date."

and recommends:

be replaced with SCS CSHB 75 (CRA) Same Title Technical Title Change
 New Title/SCR No. 14

adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____

attached amendment(s)

adopt _____ Letter of Intent

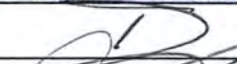


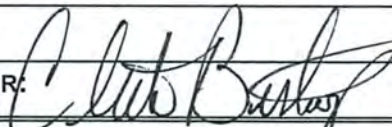
further referral to _____ Committee

| Dept Abbr. | |
|------------|-----|
| ADM | LWF |
| CED | LAW |
| COR | LEG |
| EED | MVA |
| DEC | DNR |
| DFG | DPS |
| GOV | REV |
| DHS | DOT |
| AJS | UA |

| NEW FISCAL NOTE(S) | | | | |
|--------------------|--------|--------|------|------|
| Dept. | Fiscal | Indet. | Zero | FN # |
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| PREVIOUS FISCAL NOTE(S) | | | | |
|-------------------------|--------|--------|------|------|
| Dept. | Fiscal | Indet. | Zero | FN # |
| CED | | | ✓ | 1 |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | PRINTED LAST NAME | Do PASS | Do NOT PASS | No REC | AMEND |
|--|-------------------|---------|-------------|--------|-------|
|  | Egan | | | | ✓ |
|  | STEWART | | | | ✓ |
|  | Hoffman | | | | ✓ |
| | | | | | |
| | | | | | |
| CHAIR:  | Bishop | | | | |



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee


REP. CATHY TILTON
Chairman
State Capitol, Rm. 411
Juneau, AK 99801

Rep. Paul Seaton, Vice-Chair
Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

MEMORANDUM

TO: Sen. Click Bishop, Chair
Senate Community and Regional Affairs Committee

FROM: Rep. Cathy Tilton, Chair 
House Community and Regional Affairs Committee

DATE: April 30, 2015

RE: Hearing Request – CSHB 75(JUD)am

I am respectfully requesting CSHB 75(JUD)am (29-LS0345\U.A) be scheduled for a hearing before the Senate Community and Regional Affairs Committee.

While not nearly as expansive as other marijuana legislation being considered by the Legislature, it addresses several immediate needs highlighted by Alaska's boroughs and cities.

We believe the provisions of CSHB 75 constitute the most urgent triage fixes resulting from unintended gaps in the initiative itself.

Attached you will find:

- 1) Current Sponsor Statement
- 2) Explanation of Changes – House Floor Amendments
- 3) Current Sectional Analysis
- 4) Most current version of the bill (U.A version)
- 5) Current Fiscal Note
- 6) Supporting material

If you need anything in addition to these materials, please feel free to contact me at your earliest convenience. You can also contact my committee aide, Heath Hilyard, at 907.465.6580 or Heath.Hilyard@akleg.gov.

Mr. Hilyard will spend time with your committee members, briefing them on the bill and answering their questions prior to a Judiciary hearing.

I appreciate your time and look forward to having this heard in your committee.

Thank you.



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SPONSOR STATEMENT

CSHB 75(JUD)am

(29-LS0345\U.A)

“An Act relating to the registration of marijuana establishments by municipalities; relating to the definition of marijuana by persons 21 years of age or older; prohibiting the public consumption of marijuana; authorizing the registration of marijuana clubs; relating to established villages and to local option elections regarding the operations of marijuana establishments; and providing for an effective date.”

In short, CSHB 75 (JUD) is “fix it” legislation on behalf of Alaska’s boroughs and cities intended to further define and clarify provisions of Ballot Measure 2 and provide additional processes for implementing AS 17.38 at the municipal level.

Shortly after the conclusion of the November 2014 General Election, municipalities throughout Alaska began contacting the House Community and Regional Affairs Committee seeking direction on a variety of provisions of AS 17.38 as passed by the voters. It became clear that while the drafters of the initiative language were thorough and thoughtful in crafting the language of the initiative, there were a number of “gaps” stemming from their unfamiliarity of Title 29 (Local Government) in Alaska statute.

Through every step of developing the current iteration of this bill, the Committee worked closely with Alaska’s municipalities, the Alaska Municipal League and the initiative sponsors to ensure that the bill addressed the needs expressed by boroughs and cities while remaining consistent with the provisions of the initiative.

CS FOR HOUSE BILL NO. 75(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/2/15
Offered: 3/30/15

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the registration of marijuana establishments by municipalities;
2 relating to the definition of 'marijuana'; clarifying standards for personal use of
3 marijuana by persons 21 years of age or older; prohibiting the public consumption of
4 marijuana; authorizing the registration of marijuana clubs; relating to established
5 villages and to local option elections regarding the operation of marijuana
6 establishments; and providing for an effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 11.71.900(14) is amended to read:

9 (14) "marijuana" means all parts [THE SEEDS, AND LEAVES,
10 BUDS, AND FLOWERS] of the plant (genus) Cannabis, whether growing or not, the
11 seeds thereof, [; IT DOES NOT INCLUDE] the resin [OR OIL] extracted from any
12 part of the plant, and [PLANTS, OR] any compound, manufacture, [SALT,]
13 derivative, mixture, or preparation of the plant, its seeds, or its resin, including

1 **marijuana concentrate; "marijuana"** [FROM THE RESIN OR OIL, INCLUDING
 2 HASHISH, HASHISH OIL, AND NATURAL OR SYNTHETIC
 3 TETRAHYDROCANNABINOL; IT] does not include [THE STALKS OF THE
 4 PLANT,] fiber produced from the stalks, oil or cake made from the seeds of the plant,
 5 [ANY OTHER COMPOUND, MANUFACTURE, SALT, DERIVATIVE,
 6 MIXTURE, OR PREPARATION OF THE STALKS, FIBER, OIL OR CAKE, OR
 7 THE] sterilized seed of the plant **that** [WHICH] is incapable of germination, **or the**
 8 **weight of any other ingredient combined with marijuana to prepare topical or**
 9 **oral administrations, food, drink, or other products;**

10 * **Sec. 2.** AS 17.38.020 is amended to read:

11 **Sec. 17.38.020. Personal use of marijuana.** Notwithstanding any other
 12 provision of law, except as otherwise provided in this chapter, the following acts, by
 13 persons 21 years of age or older, are lawful and **are not** [SHALL NOT BE A] criminal
 14 or civil **offenses** [OFFENSE] under Alaska law or the law of any political subdivision
 15 of Alaska or **bases** [BE A BASIS] for seizure or forfeiture of assets under Alaska law:

16 (1) possessing, using, displaying, purchasing, or transporting
 17 marijuana accessories or one ounce or less of marijuana;

18 (2) possessing, growing, processing, or transporting **not** [NO] more
 19 than six marijuana plants, with three or fewer being mature, flowering plants, and
 20 possession of the marijuana produced by the plants on the premises where the plants
 21 were grown, **except that not more than 24 marijuana plants, with 12 or fewer**
 22 **being mature, flowering plants, may be present in a single dwelling regardless of**
 23 **the number of persons 21 years of age or older residing in the dwelling;**

24 (3) transferring one ounce or less of marijuana and up to six immature
 25 marijuana plants to a person who is 21 years of age or older without remuneration;

26 (4) consumption of marijuana, except that nothing in this chapter
 27 **permits** [SHALL PERMIT] the consumption of marijuana in **a public place;** and

28 (5) assisting, **aiding, or supporting** another person who is 21 years of
 29 age or older in any of the acts described in (1) - (4) of this section.

30 * **Sec. 3.** AS 17.38.020 is amended by adding a new subsection to read:

31 (b) In this section, assisting is limited to the quantities described in (a) of this

1 section and does not include

2 (1) using, displaying, purchasing, or transporting marijuana in excess
3 of the amount allowed in this section;

4 (2) possessing, growing, processing, or transporting marijuana plants
5 in excess of the amount allowed in this section; or

6 (3) growing marijuana plants for another person in a place other than
7 that other person's dwelling.

8 * **Sec. 4.** AS 17.38.040 is amended to read:

9 **Sec. 17.38.040. Public consumption banned, penalty.** It is unlawful to
10 consume marijuana in a public place. A person who violates this section is guilty of a
11 violation punishable by a fine of up to \$100.

12 * **Sec. 5.** AS 17.38.070(f) is amended to read:

13 (f) Nothing in this section prevents the imposition of penalties on [UPON]
14 marijuana establishments for violating this chapter or rules adopted by the board or a
15 municipality under [LOCAL GOVERNMENTS PURSUANT TO] this chapter.

16 * **Sec. 6.** AS 17.38.100(c) is amended to read:

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

25 * **Sec. 7.** AS 17.38.100(d) is amended to read:

26 (d) Within [45 TO] 90 days after receiving an application or renewal
27 application, the board shall issue an annual registration to the applicant unless the
28 board finds the applicant is not in compliance with regulations adopted under
29 [ENACTED PURSUANT TO] AS 17.38.090 or the board is notified by the relevant
30 municipality [LOCAL GOVERNMENT] that the applicant is not in compliance with
31 ordinances enacted and regulations adopted under [MADE PURSUANT TO]

1 AS 17.38.110 and in effect at the time of application.

2 * **Sec. 8.** AS 17.38 is amended by adding a new section to read:

3 **Sec. 17.38.105. Protest and review of registration or renewal.** (a) A
 4 municipality may protest the issuance or renewal of a registration by sending the board
 5 and the applicant a protest and the reasons for the protest within 60 days after receipt
 6 by the municipality from the board of notice of the filing of the application. The board
 7 may not accept a protest received after the 60-day period, and, in no event, may a
 8 protest cause the board to reconsider an approved renewal of a registration. The board
 9 shall consider a protest and testimony received at a hearing conducted under (e)(1) or
 10 (2) of this section when it considers the application or continued operation, and the
 11 protest and the record of the hearing conducted under (e)(1) or (2) of this section shall
 12 be kept as part of the board's permanent record of its review. If an application or
 13 continued operation is protested, the board shall deny the application or continued
 14 operation unless the board finds that the protest is arbitrary, capricious, or
 15 unreasonable.

16 (b) If the permanent residents residing outside of but within two miles of an
 17 incorporated city or an established village wish to protest the issuance or renewal of a
 18 registration within the city or village, they shall file with the board a petition meeting
 19 the requirements of (e)(3) of this section requesting a public hearing within 30 days
 20 after the receipt of notice required under AS 17.38.100(c). The board shall consider
 21 testimony received at a hearing conducted under (e)(3) of this section when it
 22 considers the application, and the record of a hearing conducted under (e)(3) of this
 23 section shall be retained as part of the board's permanent record of its review of the
 24 application.

25 (c) A municipality may recommend that a registration be issued or renewed
 26 with conditions. The board shall consider recommended conditions and testimony
 27 received at a hearing conducted under (e)(1) or (2) of this section when it considers the
 28 application or continued operation. The recommended conditions and the record of the
 29 hearing conducted under (e)(1) or (2) of this section shall be kept as part of the board's
 30 permanent record of its review. If the municipality recommends conditions, the board
 31 shall impose the recommended conditions unless the board finds that the

1 recommended conditions are arbitrary, capricious, or unreasonable. If a condition
 2 recommended by a municipality is imposed on a registrant, the municipality shall
 3 assume responsibility for monitoring compliance with the condition, except as
 4 otherwise provided by the board.

5 (d) In addition to the right to protest under (a) of this section, a municipality
 6 may notify the board that the municipality has determined that a registrant has violated
 7 a provision of this chapter or a condition imposed on the registrant by the board.
 8 Unless the board finds that the municipality's determination is arbitrary, capricious, or
 9 unreasonable, the board shall prepare the determination as an accusation against the
 10 registrant under AS 44.62.360 and conduct proceedings to resolve the matter.

11 (e) The board

12 (1) may, except as provided in (2) of this subsection, hold a hearing to
 13 ascertain the basis of a protest to an application by a municipality;

14 (2) shall hold a public hearing if a protest to the issuance or renewal of
 15 a registration made by a municipality is based on a question of law;

16 (3) shall hold a public hearing on the question of whether the issuance
 17 or renewal of a registration in a city or village would be in the public interest if a
 18 petition containing the signatures of 35 percent of the adult residents having a
 19 permanent place of abode outside of but within two miles of an incorporated city or an
 20 established village is filed with the board;

21 (4) shall send notice of a hearing conducted under this subsection 20
 22 days before the hearing to each community council established within the municipality
 23 and to each nonprofit community organization entitled to notification under
 24 AS 17.38.100(c).

25 * **Sec. 9.** AS 17.38.110(a) is amended to read:

26 (a) A **municipality** [LOCAL GOVERNMENT] may prohibit the operation of
 27 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana
 28 testing facilities, [OR] retail marijuana stores, **or marijuana clubs** through the
 29 enactment of an ordinance or by a voter initiative. **An established village may**
 30 **prohibit the operation of marijuana establishments by a voter initiative as**
 31 **provided in AS 17.38.200.**

1 * **Sec. 10.** AS 17.38.110(b) is amended to read:

2 (b) A municipality [LOCAL GOVERNMENT] may **adopt** [ENACT]
3 ordinances or regulations not in conflict with this chapter or with regulations **adopted**
4 **under** [ENACTED PURSUANT TO] this chapter, governing the time, place, manner,
5 and number of marijuana establishment operations. A municipality with power to
6 establish civil and criminal penalties [LOCAL GOVERNMENT] may establish civil
7 **and criminal** penalties for violation of an ordinance or regulation governing the time,
8 place, and manner of a marijuana establishment that may operate in **the municipality**
9 [SUCH LOCAL GOVERNMENT].

10 * **Sec. 11.** AS 17.38.110(c) is amended to read:

11 (c) A municipality [LOCAL GOVERNMENT] may designate a local
12 regulatory authority that is responsible for processing applications submitted for a
13 registration to operate a marijuana establishment within the boundaries of the
14 municipality [LOCAL GOVERNMENT]. The municipality [LOCAL
15 GOVERNMENT] may provide that the local regulatory authority may issue [SUCH]
16 registrations should the issuance by the municipality [LOCAL GOVERNMENT]
17 become necessary because of a failure by the board to adopt regulations **under**
18 [PURSUANT TO] AS 17.38.090 or to accept or process applications in accordance
19 with AS 17.38.100.

20 * **Sec. 12.** AS 17.38.110(d) is amended to read:

21 (d) A municipality [LOCAL GOVERNMENT] may establish procedures for
22 the issuance, suspension, and revocation of a registration issued by the municipality
23 [LOCAL GOVERNMENT] in accordance with (f) [OF THIS SECTION] or (g) of this
24 section. These procedures shall be **consistent with the** [SUBJECT TO ALL]
25 requirements of AS 44.62 (Administrative Procedure Act).

26 * **Sec. 13.** AS 17.38.110(e) is amended to read:

27 (e) A municipality [LOCAL GOVERNMENT] may establish a schedule of
28 annual operating, registration, and application fees for marijuana establishments,
29 provided, the application fee **is** [SHALL ONLY BE] due **only** if an application is
30 submitted to a municipality [LOCAL GOVERNMENT] in accordance with (f) of this
31 section and a registration fee **is** [SHALL ONLY BE] due **only** if a registration is

1 issued by a **municipality** [LOCAL GOVERNMENT] in accordance with (f) [OF
2 THIS SECTION] or (g) of this section.

3 * **Sec. 14.** AS 17.38.110(h) is amended to read:

4 (h) A local regulatory authority issuing a registration to an applicant shall do
5 so within 90 days **after** [OF] receipt of the submitted or resubmitted application unless
6 the local regulatory authority finds and notifies the applicant that the applicant is not
7 in compliance with ordinances and regulations **adopted under** [MADE PURSUANT
8 TO] (b) of this section in effect at the time the application is submitted to the local
9 regulatory authority. The **municipality** [LOCAL GOVERNMENT] shall notify the
10 board if an annual registration has been issued to the applicant.

11 * **Sec. 15.** AS 17.38.110(i) is amended to read:

12 (i) A registration issued by a **municipality** [LOCAL GOVERNMENT] in
13 accordance with (f) [OF THIS SECTION] or (g) of this section shall have the same
14 force and effect as a registration issued by the board in accordance with AS 17.38.100.
15 The holder of **the** [SUCH] registration **is** [SHALL NOT BE] subject to **state**
16 regulation or enforcement [BY THE BOARD] during the term of that registration.

17 * **Sec. 16.** AS 17.38.110(j) is amended to read:

18 (j) A subsequent or renewed registration may be issued under (f) of this
19 section on an annual basis only upon resubmission to the **municipality** [LOCAL
20 GOVERNMENT] of a new application submitted to the board **under** [PURSUANT
21 TO] AS 17.38.100.

22 * **Sec. 17.** AS 17.38.110(l) is amended to read:

23 (l) Nothing in this section **limits the** [SHALL LIMIT SUCH] relief [AS MAY
24 BE] available to an aggrieved party under AS 44.62 (Administrative Procedure Act)
25 **or an ordinance consistent with AS 44.62.**

26 * **Sec. 18.** AS 17.38.110 is amended by adding new subsections to read:

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

1 (n) Except as provided in AS 29, the exercise of the powers authorized by this
 2 section by a borough may be exercised only on a nonareawide basis. In this
 3 subsection, "nonareawide" means throughout the area of a borough outside all cities in
 4 the borough.

5 * **Sec. 19.** AS 17.38 is amended by adding new sections to read:

6 **Sec. 17.38.200. Local option.** (a) If a majority of the voters voting on the
 7 question vote to approve the option, an established village shall exercise a local option
 8 to prohibit the operation of marijuana establishments.

9 (b) A ballot question to adopt a local option under this section must at least
 10 contain language substantially similar to the following: "Shall (name of village) adopt
 11 a local option to prohibit the operation of marijuana establishments? (yes or no)."

12 **Sec. 17.38.210. Removal of local option.** (a) If a majority of the voters voting
 13 on the question vote to remove the option, an established village shall remove a local
 14 option previously adopted under AS 17.38.200. The option is repealed effective the
 15 first day of the month following certification of the results of the election.

16 (b) A ballot question to remove a local option under this section must at least
 17 contain language substantially similar to the following: "Shall (name of village)
 18 remove the local option currently in effect, that prohibits the operation of marijuana
 19 establishments, so that there is no longer any local option in effect? (yes or no)."

20 (c) When issuing a registration in the area that has removed a local option, the
 21 board shall give priority to an applicant who was formerly registered and whose
 22 registration was not renewed because of the results of the previous local option
 23 election. However, an applicant described in this subsection does not have a legal right
 24 to registration, and the board is not required to approve the application.

25 **Sec. 17.38.220. Effect on registrations of prohibition of marijuana**
 26 **establishments.** If a majority of voters vote to prohibit the operation of marijuana
 27 establishments under AS 17.38.200, the board may not issue, renew, or transfer,
 28 between persons or locations, a registration for a marijuana establishment located
 29 within the perimeter of the established village. A registration that may not be renewed
 30 because of a local option election held under AS 17.38.200 is void 90 days after the
 31 results of the election are certified. A registration that expires during the 90 days after

1 the results of a local option election are certified may be extended, until it is void
2 under this section, by payment of a prorated portion of the annual registration fee.

3 **Sec. 17.38.230. Prohibition of sale, purchase, and manufacture after**
4 **election.** (a) If a majority of the voters vote to prohibit the operation of marijuana
5 establishments under AS 17.38.200, a person may not knowingly sell, purchase, or
6 manufacture marijuana in the established village.

7 (b) If there are registered establishments within the established village, the
8 prohibition on sale, purchase, and manufacture is effective beginning 90 days after the
9 results of the election are certified.

10 (c) A person who violates this section is guilty, upon conviction, of a class A
11 misdemeanor. Each violation is a separate offense.

12 **Sec. 17.38.240. Procedure for local option elections.** (a) An election to adopt
13 a local option under AS 17.38.200 or remove a local option under AS 17.38.210 shall
14 be conducted as required in this section.

15 (b) Upon receipt of a petition of 35 percent or more of the registered voters
16 residing within an established village, the lieutenant governor shall place on a separate
17 ballot at a special election the local option or removal of local option that constitutes
18 the subject of the petition. The lieutenant governor shall conduct the election under
19 AS 15.

20 (c) An election under (b) of this section to remove a local option may not be
21 conducted during the first 24 months after the local option was adopted or more than
22 once in a 36-month period.

23 (d) After a petition has been certified as sufficient to meet the requirements of
24 (b) of this section, another petition may not be filed or certified until after the question
25 presented in the first petition has been voted on. Only one local option question may
26 be presented in an election.

27 **Sec. 17.38.250. Establishment of perimeter of established village.** (a)
28 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.200 and
29 17.38.220, the perimeter of an established village is a circle around the established
30 village that includes an area within a five-mile radius of the post office of the
31 established village. If the established village does not have a post office, the perimeter

1 of an established village is a circle around the established village that includes an area
 2 within a five-mile radius of another site selected by the local governing body or by the
 3 board if the established village does not have a local governing body.

4 (b) If the perimeter of an established village determined under (a) of this
 5 section includes any area that is within the perimeter of another established village
 6 and, if the other established village has

7 (1) also adopted a local option under AS 17.38.200, the local option of
 8 the established village that is less restrictive applies in the overlapping area;

9 (2) not adopted a local option under AS 17.38.200, the local option
 10 does not apply in the overlapping area.

11 (c) If the board determines that the perimeter of an established village as
 12 provided under (a) and (b) of this section does not accurately reflect the perimeter of
 13 the established village, the board may establish the perimeter of the established village
 14 and the areas of overlapping perimeter described under (b) of this section for purposes
 15 of applying a local option selected under this chapter.

16 **Sec. 17.38.260. Notice of the results of a local option election.** If a majority
 17 of the voters vote to prohibit or remove a local option under AS 17.38.200 or
 18 17.38.210, the lieutenant governor shall notify the board of the results of the election
 19 immediately after the results are certified. The board shall immediately notify the
 20 Department of Law and the Department of Public Safety of the results of the election.

21 * **Sec. 20.** AS 17.38.900(5) is amended to read:

22 (5) "local regulatory authority" means the office or entity designated to
 23 process marijuana establishment applications by a municipality [LOCAL
 24 GOVERNMENT];

25 * **Sec. 21.** AS 17.38.900(6) is amended to read:

26 (6) "marijuana" means all parts of the plant of the genus cannabis
 27 whether growing or not, the seeds thereof, the resin extracted from any part of the
 28 plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation
 29 of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does
 30 not include fiber produced from the stalks, oil, or cake made from the seeds of the
 31 plant, sterilized seed of the plant that [WHICH] is incapable of germination, or the

1 weight of any other ingredient combined with marijuana to prepare topical or oral
2 administrations, food, drink, or other products;

3 * **Sec. 22.** AS 17.38.900(9) is amended to read:

4 (9) "marijuana establishment" means a marijuana cultivation facility, a
5 marijuana testing facility, a marijuana product manufacturing facility, [OR] a retail
6 marijuana store, or a marijuana club;

7 * **Sec. 23.** AS 17.38.900 is amended by adding new paragraphs to read:

8 (15) "dwelling" has the meaning given in AS 11.81.900;

9 (16) "established village" means an area that does not contain any part
10 of an incorporated city or another established village and that is an unincorporated
11 community that is in the unorganized borough and that has 25 or more permanent
12 residents;

13 (17) "marijuana club" means an entity registered to allow consumption
14 of marijuana by paying members of the club on the registered premises and whose
15 members are 21 years of age or older;

16 (18) "public place" means a place to which the public or a substantial
17 group of persons has access and includes but is not limited to highways, transportation
18 facilities, schools, places of amusement or business, parks, playgrounds, prisons, and
19 hallways, lobbies, and other portions of apartment houses and hotels not constituting
20 rooms or apartments designed for actual residence; "public place" does not include a
21 marijuana club.

22 * **Sec. 24.** AS 17.38.100(d), 17.38.100(e), and 17.38.900(4) are repealed.

23 * **Sec. 25.** This Act takes effect immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

REP. CATHY TILTON
Chairman
State Capitol, Rm. 411
Juneau, AK 99801

Rep. Paul Seaton, Vice-Chair
Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

EXPLANATION OF CHANGES

CSHB 75(JUD)am

(29-LS0345\U & 29-LS0345\U.A)

“An Act relating to the registration of marijuana establishments by municipalities; relating to the definition of ‘marijuana’ by persons 21 years of age or older; prohibiting the public consumption of marijuana; authorizing the registration of marijuana clubs; relating to established villages and to local option elections regarding the operations of marijuana establishments; and providing for an effective date.”

Section 3 (Page 2 line 30 through Page 3, line 7) – This was a floor amendment and was adopted by unanimous consent. This amendment changed the structure and language of what was considered outside the definition of “assisting”. From a policy perspective, the amendment had no practical effect. It was primarily intended to clarify the language in order to avoid confusion. This provision stipulates that “assisting” another does not negate personal possession limits as provided for in AS 17.38.

Section 8 (Page 4, lines 14-15) – This was a floor amendment and was adopted by unanimous consent. The entirety of Section 8 comes from language, of a similar nature, found in Title 4 pertaining municipal protest and review for alcohol licenses. After reviewing the existing language carefully, it became clear that the existing statutory language of “arbitrary, capricious AND unreasonable” needed to be changed to

"arbitrary, capricious OR unreasonable." That is the only change made by that amendment.

Section 19 (Page 9, lines 7-9) – This was a floor amendment and was adopted by unanimous consent. This was an amendment to correct a drafting error not previously noted. The previous version of the bill included additional language in the section as follows:

"If there are no registered establishments within the established village, the prohibition on possession is effective beginning 60 days after the results of the election are certified."

The above language was a vestige of similar language, again found in Title 4, that cannot be included for marijuana because of Ravin v. State (537 P .2d 494). The above language was deleted.



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

REP. CATHY TILTON
Chairman
State Capitol, Rm. 411
Juneau, AK 99801

Rep. Paul Seaton, Vice-Chair
Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

SECTIONAL ANALYSIS

CSHB 75(JUD)am
(29-LS0345\U.A)

“An Act relating to the registration of marijuana establishments by municipalities; relating to the definition of ‘marijuana’ by persons 21 years of age or older; prohibiting the public consumption of marijuana; authorizing the registration of marijuana clubs; relating to established villages and to local option elections regarding the operations of marijuana establishments; and providing for an effective date.”

NON-SUBSTANTIVE

The following sections are non-substantive changes to AS 17.38 that change references of “local government(s)” to “municipality/municipalities” and/or provide grammatical changes to conform to legislative drafting standards.

Section 4 – Page 3, lines 8-11

Section 5 – Page 3, lines 12-15

Section 7 – Page 3, line 25 through Page 4, line 1

Section 11 – Page 6, lines 10-19

Section 13 – Page 6, line 26 through Page 7, line 2

Section 14 – Page 3, lines 3-10

Section 16 – Page 7, lines 17-21

Section 20 – Page 10, lines 21-24

SUBSTANTIVE

Title (Page 1, lines 1-6) – The title has been significantly tightened from previous versions.

Section 1 (Page 1, line 8 through Page 2, line 9) – Section 1 amends the definition of “marijuana” in AS 11.71.900(14), Alaska’s criminal code, to conform to the language established in AS 17.38 (ballot measure 2) with one minor exception. “Salt” (Page 1, line 12), included in the ballot measure language was thought to not have a functional meaning and has been deleted.

Section 2 (Page 2, lines 10-29) – This section provides for a household maximum plant limit of “not more than 24 marijuana plants, with 12 or fewer being mature” where two or more adults reside.

Section 3 (Page 2, line 30 through Page 3, line 7) - When looking through the language as adopted by the ballot measure, municipal attorneys expressed some concern about not having a specific definition of “assisting” found in AS 17.38.020(e). Section 3 stipulates that “assisting” another does not negate personal possession limits as provided for in AS 17.38.

Section 6 (Page 3, Lines 16-24) – The section now contains language conforming to Title 4 provisions regarding the Board’s (currently ABC or a Marijuana Control Board, if adopted) notification requirements to municipalities when issuing registrations for commercial marijuana establishments.

Section 8 (Page 4, Line 2 – Page 5, Line 24) – This contains substantially similar language to what appears in Title 4 providing for a notification and protest process for municipalities regarding issuance of registrations for commercial marijuana establishments within its boundaries.

Section 9 (Page 5, lines 25-31) – Section 9 does two important things.

1. First it makes reference to “marijuana clubs” as a new category of marijuana establishments. Municipalities have expressed a desire for the legislature to include and define these types of establishments which would ostensibly provide marijuana users a place for using marijuana products other than within the home. The purpose for including and defining marijuana clubs is to provide municipalities a statutory

definition when approving or disapproving these establishments within their jurisdictions.

2. Section 9 begins to close a loophole, unintended by the initiative sponsors, to provide communities not in an organized city or borough to allow for a local option election in an “established village”. This is taken from Title 4 regarding local option elections for alcohol. As a reminder, because of Ravin v. State (537 P .2d 494), personal possession of small amounts of marijuana cannot be prohibited, so the prohibition in this section is limited to the operation of marijuana establishments.

Section 10 (Page 6, lines 1-9) – This change expressly provides that municipalities have the authority to establish civil **and** criminal penalties for time/place/manner violations by commercial marijuana establishments. The inclusion of criminal penalties differs from the language in AS 17.38 as included in the ballot initiative. The section expressly clarifies that municipalities only have the existing power granted to them under AS 29.25.070.

Section 12 (Page 6, lines 20-25) – On line 24 the phrase “consistent with the”, replacing “subject to all”, has been added to the provisions of the section to clarify that municipalities are not obligated to follow the State’s Administrative Procedures Act for the “issuance, suspension and revocation of a registration” in the event that a municipality has ordinances in place “consistent with the” Administrative Procedures Act.

Section 15 (Page 7, lines 11-16) – This provision was included after the discovery of a potential circumstance regarding a “gap” in enforcement. The way the original provision was written a scenario was envisioned where a 2nd class borough (FNSB and MSB, for example), which does not have general public health or police powers, may have issued a registration but the borough’s enforcement would be limited only to the revocation of the registration. This provides that the holder of the registration is ALSO subject to state regulation or enforcement.

Section 17 (Page 7, lines 20-23) – Similar to the change found in Section 12 above, pertaining to the relationship to the State’s Administrative Procedures Act. Again, this allows municipalities to follow their own ordinances, when substantially similar to AS 44.62.

Section 18 (Page 7, line 26 through Page 8, line 4) – Stipulates that any powers authorized to boroughs may only be adopted on a “nonareawide” basis, meaning that those powers would not extend into cities that lie within a borough’s boundaries.

Section 19 (Page 8, lines 5-24) – Section 19 sets forth the process by which an established village can hold a local option election for the prohibition or the removal of a prohibition of marijuana establishments and commercial marijuana activities within the boundary of an established village.

Section 21 (Page 10, lines 25 through Page 11, line 2) – Revises the definition of “marijuana”, consistent with Section 1 of this bill. The practical effect is that there is only one definition of “marijuana” in statute, thus eliminating potential confusion and legal challenges.

Section 22 (Page 11, lines 3-6) – Adds “marijuana club” to the definition of “marijuana establishment”.

Section 23 (Page 11, lines 7-21) – Provides express definitions of “dwelling”, “established village”, “marijuana club” and “public place” as recommended by municipalities. It also provides a definition of “dwelling” as necessitated by the plant limit found in Section 2. Of note, “public place” closely follows the definition in AS 11.81.900, but does exempt marijuana clubs from the definition of “public place”.

Section 24 (Page 11, line 22) – Makes conforming amendments to AS 17.38, necessitated by the bill. Because there has been a household plant limit established in this version of HB 75 and process of the issuance of registrations, AS 17.38.100 (d&e) are no longer needed as is the definition of “local government” in 17.38.900(4).

Section 25 (Page 11, line 23) – Provides an immediate effective date for the provisions of the bill.

Fiscal Note

State of Alaska
2015 Legislative Session

| | |
|---------------------|--------------|
| Bill Version: | CSHB 75(CRA) |
| Fiscal Note Number: | 1 |
| (H) Publish Date: | 3/6/2015 |

Identifier: HB075-DCCED-ABC-02-20-15
 Title: MUNI REGULATION OF MARIJUANA; ADV. BOARDS
 Sponsor: COMMUNITY & REGIONAL AFFAIRS
 Requester: HOUSE COMMUNITY & REGIONAL AFFAIRS

Department: Department of Commerce, Community and Economic Development
 Appropriation: Alcoholic Beverage Control Board
 Allocation: Alcoholic Beverage Control Board
 OMB Component Number: 2690

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2016 Appropriation Requested | Included in Governor's FY2016 Request | Out-Year Cost Estimates | | | | |
|-------------------------------|--------------------------------------|--|-------------------------|----------------|----------------|----------------|----------------|
| | | | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
| OPERATING EXPENDITURES | FY 2016 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **YES**
 If yes, by what date are the regulations to be adopted, amended or repealed? **11/24/16**

Why this fiscal note differs from previous version:

| |
|----------------------------------|
| Not applicable, initial version. |
|----------------------------------|

Prepared By: Cindy Franklin, Director
 Division: Alcoholic Beverage Control Board
 Approved By: Catherine Reardon, Director
 Agency: Division of Administrative Services

Phone: (907)269-0351
 Date: 02/20/2015 09:00 AM
 Date: 02/20/15

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Analysis

HB75 amends AS 17.38 to refer to municipalities instead of local governments, and adds requirements for municipalities that have not already taken action related to the regulation of marijuana, to establish advisory boards. The bill also requires municipalities to designate a local regulatory authority that is responsible for processing applications submitted for registration to operate a marijuana establishment.

There is no anticipated fiscal impact to the Alcoholic Beverage Control Board from this bill.

From: Joe Hardenbrook <
Sent: Tuesday, April 07, 2015 4:18 PM
To: Sen. Click Bishop
Cc:
Subject: FNSB Comments on Current Draft of HB 75

Senator Bishop:

Thank you for the opportunity to testify before the Senate Community and Regional Affairs Committee regarding HB 75. Please find below the comments of the Mayor's Office regarding the current draft of the bill:

1. Marijuana clubs – FNSB likes this language, wants to be able to have some sort of consumption venue and regulate it at the local level. (version UA, addressed in sections 9, 18, 22, 23)
2. Section 15 changes the language of the initiative with respect to registrations issued by the municipality should the state miss its deadlines. Where the initiative said that a local license issued in lieu of a state license, that license would be good for a year and would *not* be subject to state regulation. Now the provision says that such a registration *is* subject to state regulation. This appears to be directly contrary to the initiative language and intent.
 - a. Scenario of a local business obtaining a license from the municipality and the state enacting regulations a month later and making the local business subject to those new regulations.
3. HB 75 makes the initiative powers non-areawide (version UA, section 18), FNSB would like to see these powers as areawide or at least that a city within a borough can be *more* restrictive than the borough but not less restrictive with respect to commercial facilities.
 - a. An argument for areawide is that the borough will be the entity exercising the zoning authority, which really goes hand-in-hand with the regulation of time/place/manner/number contemplated by the initiative.

Best,

Joe Hardenbrook

Special Assistant to the Mayor

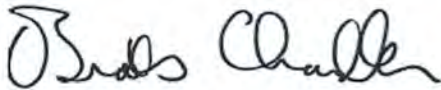
Fairbanks North Star Borough

BOYD, CHANDLER & FALCONER, LLP

Attorneys At Law
Suite 302
911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcfaklaw.com

MEMORANDUM

TO: House Judiciary Committee



FROM: Brooks W. Chandler

RE: HB 75 Ver. X [29LS035\X- Martin]

DATE: March 23, 2015

Please accept these additional comments on the latest draft of HB 75. These are written from my perspective as the contract municipal attorney for a number of cities in Alaska representative of a wide range of citizens (Nome, Dillingham, Unalaska, Soldotna, Adak, Haines Borough, Whittier, Galena, and Sand Point). These comments are also inspired by my participation with other municipal attorneys in a group which has discussed various drafts of this bill and other marijuana-related legislation. These are not official comments of any of the communities I represent.

HB 75 is not a perfect bill. But through a lot of effort and input from a variety of local government attorneys, legislative staff and initiative sponsors the bill is more "good" than "bad".

It addresses an obvious issue based on Colorado's experience by adding substance to the concept of "assist" in regards to personal marijuana grows. The exact language is not word for word what was proposed by the Fairbanks North Star Borough but it is an improvement over a vacuum. Without passage of HB 75 "assist" becomes an instant loophole. In Colorado unregulated commercial growing operations have resulted from claims the growers were "assisting" others in growing the allowed 6 plants for personal use.

HB 75 also fixes another glaring problem with Proposition 2- the illogical reference to the Administrative Procedure Act (AS 44.62) as applicable to local regulations. AS 44.62 by its terms has limited application to local government. It made no sense to reference this chapter in a sentence regarding adoption of local regulations. HB 75 solves this by requiring municipalities to enact ordinances in order to establish local regulations of commercial marijuana facilities. Again the fix is not perfect but in my opinion it does the job.

There remain problems with the bill. In particular the 24 plant "limit" in Section 2. As currently drafted a literal interpretation would allow a single person to grow 24 marijuana plants in "a single dwelling" (and even more perhaps if recreational cabins are considered a separate dwelling). This is not likely what is intended. There are two possible fixes. One is to add the phrase "which is the primary place of residence for at least four adults" after "dwelling". The other is to add the phrase "Unless otherwise provided by ordinance" to the beginning of this sentence. The latter approach allows each incorporated community to decide a plant per dwelling limit for themselves. The existing legislative language would apply in the unorganized borough and by default in any municipality that had not adopted a different limit by ordinance. Municipal attorneys, again based on actual experiences in Colorado, had asked for a standard statewide plant per dwelling limitation. But there is little support for the 24 plant limit reflected in the current draft. If the committee cannot agree to a specific limit leaving this policy decision to those most directly impacted is a logical alternative.

Another issue which may be a source of disagreement among members of the committee is the reference to criminal penalties that appears in Section 9. It is standard for municipalities to have both civil and criminal penalties available for violation of local ordinances. Criminal penalties are part of the landscape of business regulation. This category of penalty typically applies to illegal alcohol sales (including sales to minors); sales tax obligations, taxi regulations, and any number of permit violations. Local governments should have the option to establish criminal penalties for any commercial marijuana store that sells pot to minors. Why anyone would be opposed to this is baffling.

Criminal penalties are so much the norm that in my opinion the omission of the word "criminal" in Proposition 2 does not operate as an implied prohibition on the general authority of an Alaskan municipality to enforce an ordinance through criminal sanctions. If the sponsors of Proposition 2 had wanted to limit local authority to adopt criminal sanctions language similar to the phrase used in 17.38.020 ("shall not be subject to") explicitly banning a criminal penalty for selling marijuana to minors or any other violation of applicable limits on commercial marijuana facilities should have been included in the proposition. That being said it still made sense to include the reference to criminal penalties in HB 75 to remove any doubt on the question. All the municipal attorneys that participated in our informal group agreed this request made sense and that is why this phrase is in HB 75. It is not just a "big city" provision. If this reference is a sticking point, it is better not to adopt any bill at all than to remove the reference to criminal penalties.

On the whole, it makes sense to advance HB 75 to the next step in the legislative process preferably with changes to the per household limit. I hope the committee moves the bill.



OFFICE OF THE MAYOR

Telephone: (907) 586-5240; Facsimile: (907) 586-5385
Mayor@ci.juneau.ak.us

April 14, 2015

Representative Cathy Tilton, Chair
House Community and Regional Affairs Committee
State Capitol, Room 411
Juneau, AK 99801

Dear Representative Tilton:

On behalf of the City and Borough of Juneau Borough Assembly, I wish to extend our support of CSHB 75(JUD)am.

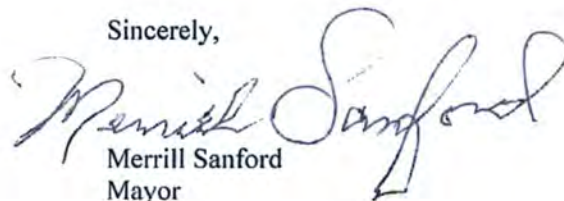
This bill contains many important provisions that will assist the municipalities in our efforts to responsibly regulate the new marijuana industry moving forward. It importantly:

1. Defines "assisting."
2. Addresses the "Administrative Procedure Act" issue from the initiative, allowing those municipalities that have an appeal process in place to utilize it.
3. Allows municipalities to impose criminal sanctions – in addition to civil sanctions – for time, place, and manner code violations, just as municipalities may do with respect to alcohol regulations.
4. Creates a registration protest process for the municipalities, again, very much like the process contained in Title 04.
5. It expands upon the types of "marijuana establishments" requiring a registration to operate to include marijuana clubs.

As you know, some of the task of regulating this new industry falls (appropriately) on the municipalities. We appreciate your efforts to provide municipalities with the tools necessary to do so effectively and reasonably.

Thank you for moving this legislation forward, and for affirmatively including us in the process.

Sincerely,



Merrill Sanford
Mayor

cc: Senator Dennis Egan
Representative Cathy Muñoz
Representative Sam Kito III
Borough Assembly
Kevin Jardell, CBJ Lobbyist



Coalition for Responsible Cannabis Legislation

To: Senator Click Bishop

Attn.: Brittany Hutchison

From: Bruce Schulte, CRCL

Date: April 13, 2015

Re: House Bill 75 – CRCL Objections to amendment 1

Dear Senator Bishop;

We wish to express our adamant opposition to proposed amendment 1 to HB75 – a motion to preemptively opt-out the unincorporated boroughs from all legal marijuana businesses.

I would point out that any portion of the state that currently has a market for marijuana probably has a black-market supply industry already, therefore to opt-out of a regulated marijuana industry will only benefit that black-market and do little to change consumption patterns among youth or any other portion of the community.

We do not dispute that the legislature has some legal authority to take this action however, I would suggest that having the legal authority does not necessarily make it an appropriate action to take.

Almost every established village affected by this amendment voted in favor of Ballot Measure 2. Those voters acted on the best information available to them last November and they chose to legalize marijuana in their part of the state.



Now, roughly 6 months later, there is no further information available to the legislature than the voters had last fall. The statewide rulemaking process has not even begun – although most active participants have agreed in principle on the major issues pertaining to potency, labelling, packaging, etc.

I submit that to opt-out any part of the state before the rulemaking process is finalized is premature and would do a tremendous disservice to those constituents who voted in good faith and expect their representatives to respect their will. It is our position that any move to opt-out any community before those rules are completed can only be viewed as a preemptive repeal of this voter initiative.

It would be more appropriate to wait until the statewide rules have been completed and then reconsider this matter against the backdrop of a completed regulatory framework. Since permit applications will not even be accepted until February 2016, there is ample time for such consideration.

Thank you for considering our input on this bill, we appreciate the opportunity to contribute to this effort and look forward to working with you and your committee further.


Respectfully,

Bruce Schulte, CRCL

Bruce.Schulte@gmail.com

BOYD, CHANDLER & FALCONER, LLP
ATTORNEYS AT LAW
SUITE 302
911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcf.us.com

MEMORANDUM

TO: REP. TILTON
FROM:  BROOKS CHANDLER
CC: RAY GILLESPIE
DATE: January 23, 2015
RE: *INITIAL ISSUES PERTAINING TO PROPOSITION 2*

I coordinated a teleconference with a group of 10 municipal attorneys and police chiefs (Fairbanks North Star Borough, City and Borough of Sitka, City and Borough of Juneau, Municipality of Anchorage, City of Soldotna) and private firms that represent Homer, Cordova, Nome, Dillingham and Unalaska among other communities to discuss initial issues for potential state legislation or local regulation related to legalization of possession, use, cultivation, manufacture and sale of marijuana in Alaska. Please bear in mind that our group does not purport to speak either for AML or the Alaska Municipal Attorneys Association as a whole.

We currently see a need for state legislation or at least discussion of state legislation addressing the following topics:

1. A "default" definition of "in public".
2. Presumptive concentration limits for DUI enforcement.
3. Implied consent for testing for DUI enforcement (assuming valid testing protocols become available).
4. Whether hash oil is considered marijuana.
5. The testing process and transportation for purposes of testing.

Representative Tilton
January 23, 2015
Page 2

6. Regulation of edible marijuana products.
7. Detail regarding weighing marijuana vs. marijuana concentrates for purposes of establishing what is "1 ounce" of marijuana.
8. Allowing local option equivalent to Title 4 local options in two years.
9. Marijuana use in so-called "private" clubs.
10. Default provisions regarding a "local regulatory authority".

There are many more issues surrounding this topic than set forth on this list and our understanding of them will continue to advance as we contact our colleagues both in Alaska and in Colorado whose marijuana law is currently the closest fit to Alaska law. Many of the communities impacted by legalized marijuana will be considering local legislation for adoption before the end of February.

We appreciate your efforts to solicit input and we hope to continue to communicate with you and your staff during the session. Our next teleconference will be on February 3. I am certain members of the group will be willing to review proposed legislation and provide coordinated comments as needed outside of scheduled teleconference sessions.



Fairbanks North Star Borough

Department of Law

809 Pioneer Road • PO Box 71267 • Fairbanks, AK 99707 - (907) 459-1318 FAX 459-1155

January 30, 2015

Via email: heath.hilyard@akleg.gov

Heath Hilyard
Chief of Staff to Rep. Cathy Tilton
State Capitol Room 411
Juneau, Alaska 99801

Dear Mr. Hilyard:

The following is in response to your request for municipal input regarding Alaska's new marijuana laws, enacted at AS 17.38. Initially, please allow me to thank you, on behalf of the Fairbanks North Star Borough ("FNSB"), for soliciting our input and allowing our community to have a voice in this process. What follows is initial input from FNSB's administration and, in particular, the views of FNSB's Mayor, Luke Hopkins. The opinions expressed herein do not necessarily reflect the view of the FNSB Assembly.

Of initial note and of utmost importance, FNSB would like to ultimately see laws and regulations that grant maximum authority and control to be exercised at the local level. In what follows, I will address the specific questions you posed in your email dated January 26, 2015 and will then provide input from the FNSB on other topics.

1. ALTERNATIVE DEFINITION FOR "PUBLIC USE" OR "IN PUBLIC."

The definition of "public" as used in AS 17.38 was one of the first points of concern identified by the FNSB with the Act as currently written. It is the FNSB's position that, because the personal use provisions of the Act will go into effect on February 24, 2015, and because those provisions prohibit the consumption of marijuana in "public," implementing an enforceable and understandable definition of "public" is of utmost importance.

Unfortunately, simply defining "public" is not as straightforward as it might seem at first glance. There is a problem with the repeated use of the word "public" in different contexts of the Act. For instance, the word "public" is used to ban the consumption of marijuana in public¹ and it is also used to state that cultivated marijuana must remain out of "public view,"² and that it cannot be visible to the "general public from a public right-of way."³

¹ AS 17.38.020(d) and 17.38.040.

² AS 17.38.030(a)(1).

³ AS 17.38.070(a)(1).

This language creates two options: 1. Redraft the Act's language to more artfully reflect what is intended by the initiative without using the word "public" in several different ways. 2. Define "public" specifically and expressly for the purposes of AS 17.38.020 and 17.38.040, then separately define what "public view" means, what "general public" means, and what "public right-of-way" means. Option 1 appears to be the more efficient of the two options and suggested language is presented below.

Sec. 17.38.020. Personal use of marijuana.

(d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public;

Sec. 17.38.030. Restrictions on personal cultivation, penalty.

(a) The personal cultivation of marijuana described in AS 17.38.020(b) is subject to the following terms:

(1) Marijuana plants shall be cultivated in a location where the plants are not subject to ~~public~~ view from a highway without the use of binoculars, ~~aircraft~~, or other optical aids, including aircraft.

Sec. 17.38.040. Public consumption banned, penalty.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

(a) Notwithstanding any other provision of law, the following acts... are lawful...:

(1) Possessing, displaying, storing, or transporting marijuana or marijuana products, except that marijuana and marijuana products may not be displayed in a manner that is visible ~~to the general public~~ from a highway, sidewalk, or similar location ~~public right-of-way~~;

Add a definition that "highway" has the meaning set forth in AS 11.81.900(30).⁴

Add a definition that, for the purposes of AS 17.38, "public" means a place to which the people as a whole or a substantial group of persons has access without restriction and includes, but is not limited to, any building that used by or open to the people as a whole or a substantial group of persons, in or upon any highway as defined by AS 11.81.900(30), whether in a vehicle or not, sidewalks, rivers, lakes, parks, convention centers, shopping centers, transportation facilities, school facilities, correctional facilities, lobbies, doorways and other portions of apartment buildings and hotels that are not designed for actual dwelling or residence, any outdoor location where the consumption of marijuana is clearly observable from the foregoing public places, and any location similar to those

⁴ AS 11.81.900(30) defines highway as follows: "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities.

places delineated herein. Notwithstanding the foregoing, a location with proper licensure in place pursuant to AS 17.38 and that is in compliance with applicable municipal ordinances, including municipal licensure requirements, if any, and that is operating within the restrictions of such licensure is not a public place within the meaning of AS 17.38.

**2. ADDRESS POINT 8 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"ALLOWING LOCAL OPTION EQUIVALENT TO TITLE 4 LOCAL OPTIONS IN TWO YEARS."**

Although the FNSB does not at this time intend to exercise a local option to ban either commercial marijuana facilities as allowed currently, nor to ban personal possession and consumption if that option were available in two years, the FNSB does support the proposition that local communities should have maximum control over such decisions. As such, the FNSB would support amending AS 17.38 in two years to allow local governments to opt-out and make their communities "dry" from marijuana in the same way communities may be made "dry" from alcohol.

**3. ADDRESS POINT 9 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"MARIJUANA USE IN SO-CALLED 'PRIVATE' CLUBS."**

The FNSB would like the decision of whether to allow marijuana consumption bars or private, members-only marijuana consumption clubs to be made at the municipality level, based on what each municipality determines is in the best interests of their constituents.

The FNSB does not object to the state creating a basic structure under which such consumption facilities would be regulated at the state level, so long as the municipalities can choose to ban such facilities or regulate them more restrictively at the local level. The FNSB believes that such facilities should be prohibited from serving alcohol or allowing the consumption of alcohol on such marijuana consumption facility premises.

The FNSB is aware that, in combination with Colorado's marijuana laws and its Clean Indoor Air Act, at least one legal, licensed marijuana consumption club⁵ has been able to open. To FNSB's understanding, this club is for members only and is not open to the public, thus skirting the no-consumption-in-public ban, it ensures that the consumption activities inside the club are not viewable from the outside, and it employs no more than three employees, which skirts Colorado's Clean Indoor Air Act, which bans smoking in any location that employs more than three people. This type of private consumption club is potentially acceptable to the FNSB, so long as the club is properly licensed under AS 17.38 and any municipal licensure scheme.

⁵ ClubNed Café's website is found at www.clubnedcafe.com. An article outlining ClubNed's venture through Colorado's regulatory process can be found at <http://www.forbes.com/sites/jacobsullum/2014/03/11/colorado-couple-to-open-first-officially-approved-cannabis-club>.

**4. ADDRESS POINT 10 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"DEFAULT PROVISIONS REGARDING A 'LOCAL REGULATORY AUTHORITY.'"**

It is the FNSB's position that there should be very little, if any, state-level dictate regarding Local Regulatory Authorities ("LRA"). Instead, the FNSB believes that each municipality should be given wide latitude to establish the LRA structure that best suits its needs. For example, a community that will not locally regulate or license commercial marijuana establishments may only need an LRA to provide input to the state agency on state license applications as well as be the point of contact for receiving the state application fees to which the locality is entitled. On the other hand, a community which intends to actively regulate commercial establishments at the local level, and which may then set up a local licensure scheme, may find itself needing a much more complex LRA to perform its tasks.

As such, from the FNSB's perspective, AS 17.38's general suggestion that a municipality may choose to set up an LRA is acceptable. The state may wish to specify how the municipality's LRA will communicate with the state agency on license applications (i.e. the LRA must provide the state agency with contact information and/or the LRA must respond to the state agency within a certain period of time) or similar details of state concern but the structure of and tasks performed by an LRA, as well as other LRA details, should be left to each municipality to formulate.

5. OTHER PROVISIONS OF AS 17.38 THAT NEED TO BE ADDRESSED.

In addition to the implementation of the definition of "public" as being an issue of utmost importance, the FNSB has identified several other concerns within the personal-use provisions of the Act that the FNSB feels need immediate attention. The FNSB believes that its concerns may be addressed with appropriate definitions of certain terms.

Of extreme concern to the FNSB is the evidence in Colorado of individual marijuana users attempting to create marijuana extractions using highly flammable or combustible chemicals, which has led to many explosions, fires, injury, and death. The current wording of AS 17.38.020, personal use of marijuana, states that processing of marijuana shall not be a criminal or civil offense. Clearly, in the general sense of the term, "processing" could mean virtually anything a person does to marijuana, from taking the usable marijuana off the plant to drying it, to packaging it, to screening it, to creating extractions or tinctures, to putting marijuana in oils or butters – the list goes on.

As with "public" the word "processing" is used in several different places and in different ways throughout the Act. Because it may be appropriate to allow commercial marijuana establishments to prepare the flammable or combustible extractions with proper safeguards in place, which safeguards the state may wish to address, a definition of "processing" specific to AS 17.38.020 seems appropriate. The FNSB proposes the following language:

As used in AS 17.38.020, "processing" means to handle marijuana, to subject marijuana to an action or a series of actions to alter the form of marijuana, or to otherwise treat marijuana. As used in AS 17.38.020, "processing" does not

include performance of marijuana extractions using flammable or combustible chemicals including, but not limited to, butane, acetone, hexane, naphtha, ethanol, methanol, petroleum ether, and alcohol.

In addition, the FNSB has concerns regarding the Act's personal-use provision which allows a person to possess up to six marijuana plants, three of which may be mature.⁶ The Act does not make clear what it means to possess those plants. For example, if four adults over the age of 21 live in one home, may they each possess six plants, thus allowing 24 plants in that one home, 12 of which can be mature at any given time? Further, if these four adults chose to coordinate their grows, assuming a three month grow-to-maturity period, it would appear that this example household could easily have one mature plant every month for the entire year. Estimates of usable marijuana from each plant vary widely,⁷ but assuming a four-ounce yield, that household could be producing four ounces each month. Further, while this author is no mathematician, it would appear that the same four-person household, with the same assumed three-month grow period, could coordinate their grow and cycle their plants to have *four* mature plants each month. Assuming a four-ounce yield per plant, that household could be producing a full pound of marijuana each month. On the high end of yield estimates, if those plants yield one pound each, that household could be producing four pounds of marijuana a month. To say that this is a lot of marijuana would be an understatement. Further, the personal-use provisions of the Act appear to allow a person to essentially stockpile the harvested marijuana from their plants without limit.⁸ The Act also allows persons to transfer marijuana amongst themselves, one ounce at a time, so long as that transfer is done without "remuneration."⁹ This is not to say that a transfer of marijuana could not be done without *benefit*, setting up a potential barter or trade market under the personal-use provisions of the Act.

Given these concerns and to prevent the above scenarios, the FNSB proposes the following:

A. That the state set forth the following presumption:

As used in AS 17.38.020(b), every person 21 years of age or older living in a residence is presumed to possess each and every marijuana plant in that residence.

B. That the state expressly reaffirm *Noy v. State's*¹⁰ four-ounce limitation on personal use.

The FNSB recognizes the potential for challenge of such a provision, given that the language of the Act appears to allow unlimited personal stockpiling of the marijuana harvested so long as the marijuana is grown and stockpiled at the same location. However, this author believes that a valid argument can be made for expressly reaffirming *Noy's* four-ounce limitation.

The provisions at issue in the Act are under the title of "personal use of marijuana." Therefore, the intent is quite clear that the growing and stockpiling is for marijuana intended for personal

⁶ AS 17.38.020(b).

⁷ Anecdotal estimates obtained by this author range from two ounces to one pound of usable marijuana per plant.

⁸ AS 17.38.020(b).

⁹ AS 17.38.020(c).

¹⁰ 83 P.3d 538 (Alaska App. 2003).

use only. In addition, the Act expressly preserves “the right to privacy as interpreted by the Alaska Supreme Court in *Ravin v. State of Alaska* [537 P.2d 494 (Alaska 1975)].”¹¹ The Act does not speak to *Noy v. State*, in which the court created a bright line rule that a person could possess less than four ounces of marijuana in their home and that amount of marijuana would be presumptively considered for personal use, thus protected under *Ravin*.¹²

Arguably, the layperson voting for Ballot Measure 2 had the general understanding of the state of the law as it related to marijuana prior to voting. Arguably, that understanding was that Alaskans may possess less than four ounces of marijuana in their home for personal use. Arguably, this general understanding of the state of the law has been attributed to the *Ravin* case, the *Noy* case being much less notorious. Given this general understanding from a layperson perspective, it could very well be that the intent of the initiative and of the voters was to allow personal possession of less than four ounces of marijuana in the home, and to allow a person to carry, purchase, and give away one ounce of marijuana at a time.

From the FNSB’s perspective, it appears to be important to create some sort of limit on this personal-use provision within the Act. As the Act stands, it would appear that an arguably-legal barter market is created as of February 24, 2015 and so long as the marijuana is grown and processed by an individual in their home, given to another person one ounce or less at a time, and the exchange is for something other than money, the transaction would be perfectly legal. Clearly, this type of system cannot be properly characterized as “personal use.” Moreover, this type of system undermines the commercial establishment structure that the Act attempts to set forth in other provisions of the Act and would circumvent licensing, testing, and labelling requirements, among other things.

C. Change “remuneration” to “benefit.”

It may be possible to address some of the concerns outlined above by changing the term “remuneration” to “benefit,” then defining the word benefit. In this way, the Act could be restructured to allow a person to give their personal marijuana away for free, with the hope being that fewer people would want to engage in such a transaction and the possibility of a “personal use” barter exchange market would be restricted.

6. INPUT ON WHETHER THE STATE SHOULD ESTABLISH RULEMAKING UNDER THE ALCOHOLIC BEVERAGES CONTROL BOARD, CREATE A MARIJUANA CONTROL BOARD, OR PROCEED WITH NO RULEMAKING UNDER ANY BOARD.

The FNSB is aware that there may be contention at the legislative level as to whether the rulemaking called for by AS 17.38 will occur through the Alcoholic Beverages Control (“ABC”) Board or through a newly-created Marijuana Control Board (“MCB”). The FNSB is further aware that there may be proponents of doing nothing to address the rulemaking provisions of AS 17.38 at the legislative level.

¹¹ AS 17.38.010(c).

¹² *Noy*, 83 P.3d at 540 and 543.

Of note, AS 17.38.090's rulemaking provisions are mandatory. Under that statute, the state is required to take several actions by several deadlines. By default, at a minimum, those mandatory rulemaking deadlines fall to the ABC Board. Because of this default provision, it is the FNSB's understanding that the ABC Board has been and continues to work toward meeting the Act's various deadlines. Whether the responsibilities remain with the ABC Board or are transferred to a new MCB, the FNSB's input is limited to expressing a preference that the state meet its deadlines and implement the scheme envisioned by the Act.

7. OTHER INPUT.

- A. The FNSB can see value in the state considering potential conflicts between Alaskan communities, in particular neighboring communities, created by local regulation being different in each community. The FNSB would suggest considering a mediation-type role to be played by the state board, whether the ABC Board or the MCB, where a community could take a complaint that one community's regulations, enforcement, or lack of enforcement are negatively impacting another community.
- B. The FNSB would suggest that edibles be regulated such that each individual serving be limited to five milligrams of THC, that each individual serving be individually packaged, and that some sort of identifier be required to be a part of the edible itself so as to distinguish it from its non-THC containing counterpart, even outside of its packaging (i.e. each edible must be stamped with a certain recognizable impression or every edible containing THC must be manufactured in a certain recognizable shape, for example, the shape or impression of a marijuana leaf).
- C. The FNSB believes the state should focus its efforts on addressing the eight concerns set forth within U.S. Deputy Attorney General James Cole's memorandum dated August 29, 2013, including laws and regulations to prevent the sale of marijuana to minors and outside of the state of Alaska, preventing violence in the marijuana industry, and preventing drugged driving.

8. INPUT ON WORK DRAFT OF UNNUMBERED SENATE BILL DATED JANUARY 24, 2015.

The FNSB has many areas of concern with respect to the work draft senate bill. However, because that bill has not yet been introduced, the FNSB will provide only general input at this time.

- A. The FNSB does not understand the creation of a new series of marijuana establishments and a new scheme delineating how marijuana can move between the establishments. The new scheme created within this bill is less clear and comprehensive than that established by AS 17.38. In particular, the FNSB objects to the creation of the "marijuana boutique producer."¹³
- B. The FNSB strongly objects to the zoning restrictions set forth in this bill.¹⁴ The FNSB does not object to the state setting forth very general zoning-type restrictions, such as restricting a marijuana establishment from being within 200 feet of a church or school. However, the FNSB believes that zoning should be left to the municipalities in order that each municipality can determine where each type of establishment can best fit into each

¹³ Reference new sections beginning at page 7, line 25.

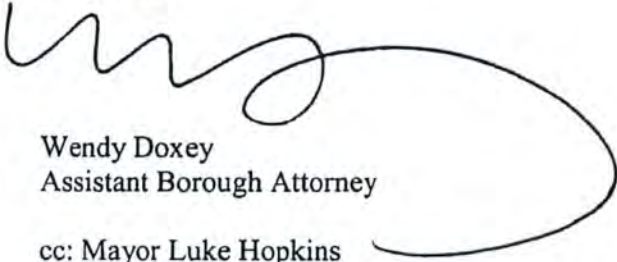
¹⁴ In particular, the FNSB strenuously objects to the provision set forth on page 5, lines 7-10.

individual community. Further, any zoning-type restrictions set forth by the state should allow the municipality to be more restrictive than those created by the state. In short, the FNSB wishes to retain zoning control to the greatest possible extent.

- C. The FNSB believes that the state should not attempt to restrict or designate the fees that a municipality may implement if it chooses to allow marijuana establishments. Pursuant to AS 17.38, municipality may regulate establishments up to and including banning them altogether. As such, if a municipality wishes to make local licensure cost prohibitive, the state should not restrict that.¹⁵ At a minimum, if the state chooses to designate municipal fees, such fees should be adjustable for inflation or other factors as contemplated by the original Act.¹⁶
- D. The FNSB objects to the work draft bill's removal of edibles from the definition of marijuana products.¹⁷
- E. Several provisions of this work draft bill appear to be directly contrary to the intent and language of the original Act, including some restrictions on personal consumption and growing. Other portions of the work draft bill appear to raise due process concerns.

Again, the FNSB thanks you for allowing us to provide our input at this early legislative stage. Should you have any questions, concerns, or request additional input, please do not hesitate to contact me.

Sincerely,



Wendy Doxey
Assistant Borough Attorney

cc: Mayor Luke Hopkins

¹⁵ Reference page 5, lines 30-31.

¹⁶ See AS 17.38.090(a)(2).

¹⁷ Reference page 23, line 7.

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MEMORANDUM

February 26, 2015

SUBJECT: Grounds for revocation of a marijuana establishment's registration
(Work Order No. 29-LS0638'A)

TO: Representative Paul Seaton
Attn: Taneeka Hansen

FROM: Alpheus Bullard *ALB*
Legislative Counsel

Ms. Hansen asked, under the provisions of Ballot Measure No. 2 (the initiative), whether the only grounds permitted for revocation of a marijuana establishment's registration to operate was a failure to pay taxes under the initiative's sec. 43.61.030.

Under the initiative, subject to the adoption of regulations by the Alcohol Beverage Control Board (board), a marijuana establishment's registration to operate may be revoked on grounds other than failing to pay taxes.

Section 17.38.090 of the initiative directs the board to adopt regulations that include "procedures for the . . . revocation of a registration to operate a marijuana establishment[.]" This authority to adopt regulations relating to the revocation of a marijuana establishment's registration to operate is not limited by the specific language of the initiative's sec. 41.61.030(b). AS 17.38.110 also allows a local government to enact ordinances and regulations if the board does not. Under AS 17.38.110(d) a local government may establish procedures for revocation of a registration that it issued. Local governments may enact ordinances and regulations and may issue registrations if the board fails to act. Sec. 17.38.110(f).

Section 41.61.030(b) provides that a marijuana cultivation facility¹ that fails to pay taxes to the state *may* have its registration to operate "revoked in accordance with procedures established under [sec.] 17.38.090(a)(1)." This subsection does not limit the board's authority, or a local government's authority, to adopt regulations that provide for marijuana establishments' registrations to be revoked for other causes.

If you have further questions, please do not hesitate to contact me.

ALB:lem
15-124.lem

¹ Under sec. 17.38.900(9) of the initiative, "marijuana establishment" includes a marijuana cultivation facility.

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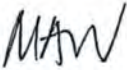
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 27, 2015

SUBJECT: Requirement under AS 17.38.110 that municipalities adhere to the provisions of AS 44.62 (CSHB 75(CRA); Work Order No. 29-LS0345\P)

TO: Representative Cathy Tilton
Attn: Heath Hilyard

FROM: Megan A. Wallace
Legislative Counsel 

You have asked for an opinion relating to the requirements in AS 17.38.110(d) and (l) that make municipalities subject to AS 44.62 (Administrative Procedure Act).

AS 17.38.110(d) provides that "[a] local government may establish procedures for the issuance, suspension, and revocation of a registration issued by the local government in accordance with (f) of this section or (g) of this section. These procedures shall be subject to all requirements of AS 44.62 (Administrative Procedure Act)." *Id.* AS 17.38.110(l) also provides that "[n]othing in this section shall limit such relief as may be available to an aggrieved party under AS 44.62 (Administrative Procedure Act)." *Id.*

It is unclear under AS 17.38.110(d) and (l) whether a court would require municipalities to comply with all requirements of the Administrative Procedure Act, or whether in establishing procedures "for the issuance, suspension, and revocation of a registration," the municipalities must do so in a manner consistent with the Administrative Procedure Act at the local level. It should be noted, however, that the Administrative Procedure Act establishes the regulatory procedures to be followed by "a state agency," including submission of regulations to the Lt. Governor. *See* AS 44.62.030; AS 44.62.040. "Agency" is defined under AS 44.62.800(1) as:

[A] department, an institution, or a division or other administrative unit of the executive branch of state government authorized or required by law to make regulations, except that 'agency' does not include

(A) a board, a commission, a council, an authority, or a public corporation of the executive branch of state government authorized or required by law to make regulations; or

(B) the Department of Corrections;

Representative Cathy Tilton
February 27, 2015
Page 2

Because a municipality or local government is not a unit of the executive branch, the Administrative Procedure Act does not otherwise apply to municipalities, and it is unclear whether a municipality could as a practical matter meet all of the procedures set in place for state agencies. For this reason, I recommend that AS 17.38.110(d) and (I) be amended to clarify that municipalities are not required to strictly follow the Administrative Procedure Act but must establish local procedures "for the issuance, suspension, and revocation of a registration" in a manner that is consistent with the Administrative Procedure Act.¹

Usually, municipalities act by ordinance. It would seem to me that adoption of an ordinance would be consistent with AS 44.62, if not providing greater opportunity for public comment and involvement than is provided by AS 44.62.²

You have also asked about the difference between AS 17.38.250(a) and AS 17.38.250(c), and why subsection (c) does not allow for participation of a local government. In this regard, AS 17.38.250(a) allows a local government to establish the perimeter of an established village, but AS 17.38.250(c) allows the board to reestablish a perimeter if the board determines that the perimeter established by the local government under AS 17.38.250(a) does not accurately reflect the perimeter of the established village. Therefore, it appears that AS 17.38.250(c) does not provide for participation of a local government, because the board has determined that the perimeter established by the local government under AS 17.38.250(a) was not accurate.

If you have any questions, or if I can be of further assistance, please advise.

MAW:lnd
15-154.lnd

¹ In some instances, however, state law can preempt municipal procedures. See *Municipality of Anchorage v. Repasky*, 34 P.3d 302, 311 (Alaska 2001) ("State law can also prohibit a municipality from exercising authority by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. In general, for state law to preempt local authority, it is not enough for state law to occupy the field. Rather, if the legislature wishes to preempt an entire field, [it] must so state."); see also *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974) ("The constitution's authors did not intend to create 'city states with mini-legislature.' They wrote into Art. X, sec. 11 the limitation of municipal authority not prohibited by law or charter".).

² Some municipalities do provide for the adoption of regulations, although I am unable to comment upon whether any particular municipal regulation process might be consistent with AS 44.62.

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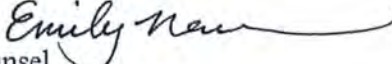
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 27, 2015

SUBJECT: Cap on Number of Plants per Residence (CSHB 75(CRA);
Work Order No. 29-LS0345\I)

TO: Representative Cathy Tilton
Attn: Heath Hilyard

FROM: Emily Nauman 
Legislative Counsel

You requested that a provision be added to CSHB 75(CRA) limiting the number of marijuana plants persons may possess in a residence. I have inserted the provision in the bill, however, it will likely be subject to equal protection and privacy challenges. This memo also notes one other issue, directing a fee to be disbursed to a municipality without an appropriation is unconstitutional.

Equal Protection

A household limit on marijuana plants may violate the equal protection provisions of the state and federal constitutions. You requested that, no matter the number of adults in a residence, the number of plants allowed in a residence be capped at 12. The consequence of this is that an adult living in a residence with more than one other adult will not be allowed to possess the same number of plants as an adult living on his or her own or with just one other person. If a court finds that the two groups of adults are similarly situated but treated differently, equal protection principles apply and the state must demonstrate that it has a legitimate or important interest for the resulting disparate treatment and that the law is linked to that interest. The Alaska Supreme Court has adopted a flexible "sliding scale" test for reviewing equal protection claims. First, the Court determines what weight should be afforded the constitutional interest impaired by the challenged enactment. Second, the Court examines the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest. Finally, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken.¹ Although related to a privacy concern, discussed below, the Court in *Ravin v. State*,² held that possession of marijuana was a fundamental constitutional right

¹ *Ross v. State*, 286 P.3d 495, 498 - 499 (Alaska 2012).

² 537 P.2d 494 (Alaska 1975).

and therefore that a state law must be shown to be "necessary, and not merely rationally related, to the accomplishment of a permissible state policy."³ A court would likely use a similar analysis for an equal protection challenge to this bill draft.

It is worth noting that a court may be persuaded by the analysis in *Nelson v. State* for constructive possession.⁴ Constructive possession in *Nelson* is described by the Court as "knowingly having the power and intention at a given time to exercise dominion and control over the property."⁵ In other words, the existing restriction in AS 17.38.020(2) may only allow a residence to have six plants to the extent that those six plants are in an area where they may be accessed by any adult in the home. Note that *Nelson*, and constructive possession cases in general, usually apply to crimes of theft. That is very different from the case here, since possession of at least some marijuana plants is constitutionally protected.⁶ If the Court were to accept a constructive possession analysis, your change would not be necessary. Alternatively, the restriction may not be necessary at all if you wish to restrict plant possession by residence, rather than by person. As discussed below, even that tactic may be problematic, however.

Privacy

Limiting the number of plants an adult has in their home may violate the privacy provisions of the Constitution of the State of Alaska⁷ and as expounded in *Ravin v. State*.⁸ In *Ravin*, the Court held:

[C]itizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of

³ *Id.*, at 497 (footnotes and citations omitted).

⁴ 628 P.2d 884 (Alaska 1981).

⁵ *Id.*, at 889.

⁶ *Id.*, See also Scott Woodham, *Why does Alaska count 6 pot plants per household, not per person?* Alaska Dispatch News, February 26, 2015. Enclosed.

⁷ Article I, sec. 22, Constitution of the State of Alaska, provides:

SECTION 22. Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

⁸ 537 P.2d 494 (Alaska 1975).

marijuana in the home is supportable by achievement of a legitimate state interest.⁹

The Court held that possession at home of amounts of marijuana indicative of an intent to sell was not protected under the privacy provision of the Constitution of the State of Alaska, however, that reasoning was not sufficient to justify a general law that criminalized all possession of marijuana in all contexts.¹⁰ Related to the amount of marijuana necessary to trigger an intent to sell finding, the Alaska Court of Appeals, in *Noy v. State*¹¹ ruled that possession of marijuana in an amount greater than four ounces is not personal use possession. To help protect against a successful privacy challenge, you may wish to develop a record that this change in your bill is designed to prevent adults from growing marijuana in a home in amounts indicative of an intent to sell.

Dedication of Funds without Appropriation

AS 17.38.100(c) requires that half of the registration application fee be forwarded to the local regulatory authority for the municipality in which the applicant desires to operate the marijuana establishment. An appropriation is necessary to transfer these funds to a municipality.¹² It may be possible to correct this problem by instead directing the state to collect the application fees on behalf of the municipality.

If I may be of further assistance, please advise.

ELN:lem
15-115.lem

Enclosures

⁹ *Id.*, at 504.

¹⁰ *Id.*, 511.

¹¹ 80 P.3d 255 (Alaska App. 2003).

¹² Art. IX, sec. 13, Constitution of the State of Alaska.

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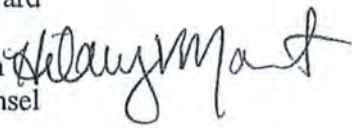
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2015

SUBJECT: Municipal criminal penalties
(CSHB 75(CRA); Work Order No. 29-LS0345\P.1)

TO: Representative Cathy Tilton
Attn: Heath Hilyard

FROM: Hilary V. Martin 
Legislative Counsel

You have asked about the impact of amendment 29-LS0345\P.1 on HB 75, and generally about the power of municipalities to impose criminal penalties. The answer depends on the interpretation given to the civil authority granted to municipalities in the initiative and may depend on whether the municipality is a home rule municipality.

Initiative

The initiative states:

(b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner, and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.^[1]

The first sentence of the subsection is unclear. It states that a municipality may enact ordinances or regulations not in conflict with the chapter or regulations adopted under the chapter governing the time, place, manner, and number of marijuana establishment regulations. One potential reading of this language is as a limitation on the power of a municipality to enact ordinances regarding marijuana -- that a municipality may only enact ordinances governing the time, place, manner, and number of marijuana establishments -- and that a municipality is unable to enact ordinances regarding any other subject contained in the initiative.

¹ AS 17.33.110(b). Note that the initiative uses the term "local government" throughout, which is defined in AS 17.38.900(4) as "both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities." The CS changes "local government" to "municipality" throughout, and the memo will similarly refer to "municipalities."

Representative Cathy Tilton

March 2, 2015

Page 2

Another plausible reading of the sentence is that a municipality may adopt regulations regarding time, place, manner, and number of marijuana establishments, but those ordinances may not conflict with the chapter or regulations adopted under the chapter. This interpretation would not limit a municipality from enacting other ordinances regarding marijuana, but any ordinances governing the time, place, manner, and number of marijuana establishments may not conflict with the chapter or regulations adopted under the chapter.

The second sentence of this subsection states that a municipality may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such municipality. Amendment P.1 adds the words "and criminal" following "civil" to this sentence. It is possible that the intent of this language is to prevent a municipality from imposing criminal penalties on violations of the ordinances, as only civil penalties are mentioned. However, the language does not explicitly limit a municipality from enacting only civil penalties for ordinances.

Municipalities are granted wide powers by art. X, sec. 1 of the Constitution of the State of Alaska, which provides:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Statutory authority granted municipalities echo the constitutional purpose and construction. AS 29.35.400 provides:

A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

AS 29.35.410 provides:

Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title. [Emphasis added.]

AS 29.35.410 provides:

A specific example in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

A municipality also has general authority to enact and enforce ordinances adopted by it, including setting penalties for those ordinances under AS 29.35.010(7).

The fact that a municipality has otherwise broad authority in addition to that expressly provided by the initiative suggests that the municipality can continue to exercise its general authority. This may be particularly true for home rule municipalities which may generally exercise any power not expressly prohibited by the state and general law municipalities that may exercise powers specified in law and powers not otherwise prohibited by law if properly acquired.

Because the subsection is unclear as to whether it is a limitation on the power of municipalities to otherwise enact ordinances, it may be advisable to amend this subsection and clarify the scope of municipal power regarding ordinances related to marijuana. The legislature is authorized to amend initiatives so long as the amendments do not constitute a repeal of the initiative.²

Alcohol

You have also asked about municipal control over alcohol. Under AS 29.35.080(a), a municipality "may regulate the possession, barter, sale, importation, and consumption of alcoholic beverages under AS 04.11.480 - 04.11.509 and AS 04.21.010." These statutes allow a local governing body to protest the issuance, renewal, relocation, or transfer to another person of an alcohol license,³ create the local option system,⁴ and authorizes a municipality to adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and to ban the possession of alcoholic beverages.⁵ AS 04.21.010 also states that an ordinance adopted under that section "may not be inconsistent with this title or regulations adopted under the title."

HVM:lem
15-130.lem

² Article XI, sec. 6, Constitution of the State of Alaska; *Warren v. Thomas*, 586 P.2d 400, 402 (Alaska 1977).

³ AS 04.11.480.

⁴ AS 04.11.491 - AS 04.11.509.

⁵ AS 04.21.010.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

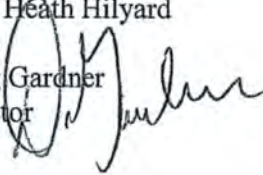
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 4, 2015

SUBJECT: Conceptual Amendment to CSHB 75(CRA)
(Work Order No. 29-LS0345\I)

TO: Representative Cathy Tilton
Chair of the House Community and Regional Affairs Committee
Attn: Heath Hilyard

FROM: Doug Gardner
Director 

Mr. Hilyard of your office called after receiving Legislative Counsel Hillary Martin's memorandum of March 3, 2015, addressing a conceptual amendment that was made to the definition of "marijuana club" in CSHB 75(CRA); Work Order No. 29-LS0345\I.

The concern that Ms. Martin correctly raised was that the conceptual amendment to the definition of "marijuana club" adds substantive material to a definition, creating what we at Legislative Legal Services call a "stuffed definition." The concern with "stuffed definitions" is that people reading the statute, that don't read the definition, are not made aware of substantive law provisions that are, as the saying goes "stuffed in the definition." I did not feel, that even with the latitude that Legislative Legal Services has to "fix" conceptual amendments, that we could fix this concern without going into the bill's substantive sections to do so; these are decisions that the committee needs to make.

The other concern with the conceptual amendment noted above, is that the amendment may create a substantive problem in the bill that the maker of the amendment did not intend, that could undercut the intent of the amendment. The concern we have is that if language in the conceptual amendment regarding persons under 21 not being allowed in a "marijuana club" is inserted in this definition relating to this type of establishment, and is not inserted in relation to other marijuana establishments, the conclusion a court or others interpreting this bill down the road may have is that the legislature inserted the restriction only where it intended it to apply, and where the legislature didn't insert the restriction, it meant to *allow* persons under 21 to accompany an adult patron, etc., into other marijuana establishments.

So, the options are: (1) we draft this provision as requested by the committee despite the issues raised; (2) we draft a substantive provision or provisions as an alternative amendment for the bill that avoids the concerns raised, and if desired, the committee could rescind its action regarding the current conceptual amendment, and replace it with

Representative Cathy Tilton

March 4, 2015

Page 2

the new amendment; or (3) a decision could be made by the committee that the amendment is not necessary in light of the current definition of "marijuana club" that requires patrons who enter to be 21 years of age or older and members.

Please advise us on how you want to proceed as soon as possible as I am aware that the bill is still in the committee's possession, and that it may be heard again on Thursday.

DDG:lem
15-144.lem



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

CRIMINAL DIVISION
Criminal Division Central Office

PO, Box 110504
Juneau, Alaska 99811-0504
Phone: 907-465-1600
Fax: 907-465-3044

March 12, 2015

The Honorable Anna MacKinnon
Senate Finance Co-Chair
State Capitol, Rm. 516
Juneau, Alaska 99801

Re: Opting the Unorganized Borough Out of Ballot Measure #2

Dear Senator MacKinnon:

During the March 9, 2015 hearing on SB 30, Senator Hoffman asked if the legislature, acting as the assembly for the unorganized borough, could opt the entire unorganized borough out of allowing the operation of marijuana establishments. Local governments or established villages in the unorganized borough could then allow marijuana establishments on a community by community basis by enactment of ordinances or voter initiatives. There is no clear answer to this question.

Ballot Measure #2, An Act to Tax and Regulate Production, Sale, and Use of Marijuana (the initiative) allows local governments to prohibit the operation of marijuana establishments in their communities by way of ordinance or voter initiative. This provision is commonly called the "opt out" provision.

Additionally, Article 10, Section 6 of the Alaska Constitution reads:

The legislature shall provide for performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an organized borough which the assembly may exercise in any organized borough.

The Alaska Legislature, being in the role of the assembly of the unorganized borough, is subject to the same requirements under the initiative as the assembly of any organized borough. Therefore, it is possible for the legislature to opt out the unorganized borough. This would be

consistent with the legislature's constitutional duties and would be defensible if subject to a legal challenge.

If challenged, a court would look to see if the action taken by the legislature "vitiates the aims of the initiative."¹ This analysis would require a court to look at whether the initiative, which makes marijuana establishments presumptively legal, is irreconcilable with the "unorganized borough opt out" amendment, which makes marijuana establishments presumptively illegal. It is not clear how a court would rule on this issue, but one of the things it might consider is how the population in the unorganized borough voted on the initiative. Conceivably, if a majority of the voters in the unorganized borough voted in favor of the initiative, they also voted in favor of allowing marijuana establishments to operate in their communities unless they take affirmative actions to prohibit them. Therefore, a court may find that the legislature was acting contrary to the will of the voters within the unorganized borough and attempting to effect a repeal.

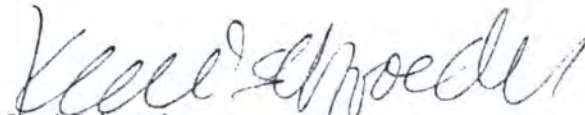
While it is unclear whether an amendment prohibiting marijuana establishments in the unorganized borough would be upheld, it is defensible as an exercise of the legislature's duties under Article 10, Section 6 of the Alaska Constitution. If the legislature chooses to take this action. A clear legislative record and detailed legislative findings will be helpful if this action is challenged.

Please let me know if I can be of any further assistance.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By:


Kaci Schroeder
Assistant Attorney General

Local admendment will come back to us tomorrow

¹ *State v. Trust the People*, 113 P.3d 613, 621 (2005).

AMENDMENT

OFFERED IN THE SENATE
TO: CSHB 75(JUD) am

BY SENATOR HOFFMAN

1 Page 5, lines 29 - 31:

2 Delete "An established village may prohibit the operation of marijuana
3 establishments by a voter initiative as provided in AS 17.38.200."

4 Insert "The operation of marijuana cultivation facilities, marijuana product
5 manufacturing facilities, marijuana testing facilities, retail marijuana stores, and
6 marijuana clubs in the unorganized borough outside of a municipality is prohibited. An
7 established village may permit the operation of marijuana cultivation facilities,
8 marijuana product manufacturing facilities, marijuana testing facilities, retail
9 marijuana stores, or marijuana clubs as provided in AS 17.38.200."

10

11 Page 8, line 6:

12 Delete "option"

13 Insert "options"

14

15 Page 8, line 8:

16 Delete "prohibit the operation of marijuana establishments"

17 Insert "permit the operation of one or more of the following types of marijuana
18 establishments:

19 (1) marijuana cultivation facilities;

20 (2) marijuana product manufacturing facilities;

21 (3) marijuana testing facilities;

22 (4) retail marijuana stores; or

23 (5) marijuana clubs"

- 1
- 2 Page 8, line 11:
- 3 Delete "prohibit the operation of marijuana establishments"
- 4 Insert "permit (specify local option under (a) of this section)"
- 5
- 6 Page 8, line 12:
- 7 Delete "**option**"
- 8 Insert "**options**"
- 9
- 10 Page 8, lines 18 - 19:
- 11 Delete "prohibits the operation of marijuana establishments"
- 12 Insert "permits (current local option under AS 17.38.200(a))"
- 13
- 14 Page 8, lines 20 - 24:
- 15 Delete all material.
- 16
- 17 Page 8, line 25:
- 18 Delete "**prohibition of**"
- 19 Insert "**removal of local options permitting**"
- 20
- 21 Page 8, lines 26 - 27:
- 22 Delete "prohibit the operation of marijuana establishments under AS 17.38.200"
- 23 Insert "remove a local option permitting the operation of marijuana establishments
- 24 under AS 17.38.210"
- 25
- 26 Page 8, line 30:
- 27 Delete "AS 17.38.200"
- 28 Insert "AS 17.38.210"
- 29
- 30 Page 9, lines 3 - 11:
- 31 Delete all material.

1

2 Page 9, lines 25 - 26:

3 Delete "Only one local option question may be presented in an election"

4 Insert "A local option question to permit the operation of marijuana cultivation
5 facilities, marijuana product manufacturing facilities, marijuana testing facilities, retail
6 marijuana stores, or marijuana clubs or to permit all marijuana establishments may be
7 presented in one election"

Brittany Hutchison

From: Patricia Walker
Sent: Thursday, April 09, 2015 10:56 AM
To: Brittany Hutchison; Heath Hilyard
Cc: Tim Grussendorf
Subject: Sen Hoffman amend HB 75 delete local option
Attachments: Sen Hoffman Amd HB 75 delete Local Opt.pdf

Hi Brittany –

Senator Hoffman and Senator Bishop discussed this amendment.
I think they will be discussing this a bit more.

This amendment takes the local option section out of this bill. It also requires a Title change, which is in the attachment.
Requiring the unorganized borough to hold an election to opt-in is still in SB 30.

Any questions, give me a call. My direct line is 465-5047.

Pat

Patricia Walker

Staff to Senator Lyman F. Hoffman
Phone: 907-465-4453 / 1-866-465-4453
Fax: 907-465-4523
Patricia.Walker@akleg.gov



AMENDMENT

OFFERED IN THE SENATE

BY SENATOR HOFFMAN

TO: CSHB 75(JUD) am

1 Page 1, lines 4 - 6:

2 Delete "relating to established villages and to local option elections regarding the
3 operation of marijuana establishments;"

4

5 Page 5, lines 29 - 31:

6 Delete "An established village may prohibit the operation of marijuana
7 establishments by voter initiative as provided in AS 17.38.200."

8

9 Page 8, line 5, through page 10, line 20:

10 Delete all material.

11

12 Renumber the following bill sections accordingly.

29-LS0867A
Martin
4/8/15

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY SENATOR HOFFMAN

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 75, relating to the registration of marijuana**
3 **establishments by municipalities; relating to the definition of 'marijuana'; clarifying**
4 **standards for personal use of marijuana by persons 21 years of age or older; prohibiting**
5 **the public consumption of marijuana; authorizing the registration of marijuana clubs;**
6 **and relating to established villages and to local option elections regarding the operation**
7 **of marijuana establishments.**

8 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
10 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
11 changes to the title of a bill, are suspended in consideration of House Bill No. 75, relating to
12 the registration of marijuana establishments by municipalities; relating to the definition of
13 'marijuana'; clarifying standards for personal use of marijuana by persons 21 years of age or
14 older; prohibiting the public consumption of marijuana; authorizing the registration of

- 1 marijuana clubs; and relating to established villages and to local option elections regarding the
- 2 operation of marijuana establishments.



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation



217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

March 17, 2015

Alaska State House Members
Alaska State Capitol Building
Juneau, Alaska 99801

RE: HB 75: Municipal Regulation of Marijuana; Local Election

Dear House Members,

Since the beginning days of session, (H) CRA Committee has done an exemplary job of working with municipalities to craft a bill that guides municipalities through the upcoming "unknowns" with regards to the legalization of marijuana.

First and foremost, it is imperative that municipalities have the flexibility to deal with issues that we haven't yet identified. We feel it would be a detriment to the people of Alaska for us to not be able to allow our residents the ability to realize those issues for which they voted, while yet being able to protect all of our residents from negative aspects that might unexpectedly occur.

The many "issues" that have suddenly popped up on this bill by various Legislators, are basically impossible to resolve as they are all over the board and, in some cases, conflict with each other. As far as the numerical "limit" of plants, the municipalities are simply concerned with having a "limit" that can serve as an aide to law enforcement. Pick a number. Any number between 12 and 24. We simply need parameters and guidance.

The (H) CRA Committee worked closely with AML; the Municipal Attorneys Association the initiative sponsors and Mayors, Council members and Assembly members throughout the State. Not surprisingly, there were many different opinions on how various municipalities across the State would deal with marijuana, but they were all adamant, that they be given the ability, as stated in the initiative, to have local control at the local level.

This past process has been totally transparent, totally collaborative and the product, HB 75, is as close as we could come to finding solutions to which all parties could agree. To that end, we would hope that this bill would continue to move through the process, so that the thoughtful work done thus far would not go to waste. It would be terribly disappointing to find so many groups collaborate, only to find this bill die in a committee. We understand that there may be changes that are necessary with regards to things we have not yet realized, but this bill offers us the flexibility to address issues further down the road. Please help to see that this bill is made into law.

Sincerely,

Kathie Wasserman
Executive Director

Member of the National League of Cities and the National Association of Counties

MUNICIPALITY OF ANCHORAGE



Office of the Municipal Attorney
Civil Division, Suite 730

Telephone: 907-343-4545
Fax: 907-343-4550

Mayor Dan Sullivan

March 17 , 2015

The Honorable Cathy Tilton
State Capitol Room 411
Juneau, AK 99801

Re: CHB75 (CRA)

Dear Representative Tilton:

The Municipality of Anchorage is very appreciative of the process used to develop CHB75 (CRA). Through several teleconferences, committee testimony, and email exchanges the Municipality has shared with you, your staff, and other legislators in committee the concerns and suggestions the Municipality had for the bill. Many other local governments, through their legal counsel or their elected members, have also had the same opportunity and, together, have seen substantial improvements to the bill. We cannot say enough how critically important this process has been to the Municipality and how thankful I am that our voices have been heard during the development of the bill.

As you may know, most of the concerns for local governments related to this bill have been centered around a singular theme - maintaining as much local input and control as possible, so that each community can do what it thinks is best for its citizens, yet still trying to balance the State's needs and the need, where necessary, for uniform laws. I am happy to say that this bill does a very good job of taking these issues into consideration. I hope you will be able to support the current version of the bill as it goes a long way to helping the Municipality shape marijuana policy at the local level. If you have any questions that we may be able to assist with, please do not hesitate to contact my office.

Regards,

A handwritten signature in black ink, appearing to read 'Dennis A. Wheeler'.

Dennis A. Wheeler
Municipal Attorney

cc: Anchorage caucus



Marijuana Policy Project
P.O. Box 77492
Washington, DC 20013
p: (202) 462-5747 • f: (202) 232-0442
info@mpp.org • www.mpp.org

“We change laws.”

Rep. Cathy Tilton, Chair
House Community and Regional Affairs Committee
State Capitol, Rm. 411
Juneau, AK 99801

March 18th, 2015

Rep. Tilton:

We would like to express our appreciation to you and the Community and Regional Affairs committee for your thoughtful approach to issues arising from the passage of Ballot Measure 2. Specifically, we appreciate your willingness to work with us and the Campaign to Regulate Marijuana Like Alcohol to ensure that any of the amendments to AS 17.38 are consistent with the intent of the initiative.

As we have previously expressed on the record, there are a small number of policy issues in HB 75 that we would prefer to be slightly modified. However we recognize that you, the committee and your staff have taken great care to provide reasonable compromises with the express intent to respect the will of Alaska's voters.

As this bill has worked through the process, you and your committee have identified some legitimate issues unique to Alaska's local government structure that were overlooked in drafting the language of Ballot Measure 2. We applaud your desire to make the changes necessary to provide municipalities the flexibility to draft their local ordinances to implement the local control provisions of AS 17.38.

It was certainly our intent to provide Alaska's local governments significant latitude for local control, which is why we included a section in the initiative that expressly provided them that ability.

While we will stop short of formally endorsing the current version of HB 75, we believe you have provided an open and transparent process that actively involved both the municipal stakeholders and the initiative sponsors. HB 75 addresses several important issues and we look forward to continue working with your office and various committees to produce a piece of legislation that addresses the needs of your local governments while remaining consistent with the intent of Ballot Measure 2.

Sincerely,

Rachelle Yeung, Esq.
Legislative Analyst
Marijuana Policy Project