

HB

75

<TARGET><BILL>HB 75</BILL><SUBJECT>HB
75</SUBJECT><COMM>SJUD29</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/15/15

FURTHER: Rules
 DATE TURNED IN TO OFFICE: 4/18/15

Judiciary Committee considered CS FOR HOUSE BILL NO. 75(JUD) am

HB 75 MARIJUANA REG;CLUBS;MUNIS;LOCAL OPT ELECT

"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 CS HB 75 (JUD) [] Same Title [] Technical Title Change
 [] New Title/SCR No. _____

[] adopt previous SCS SCS/CS- Forthcoming [] 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 #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CED			✓	1

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Coghiti	✓			
	MICICHE	✓			
	CASTELLO	✓			
CHAIR:	McLure	✓			



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

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.



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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.

*municipalities
total #*

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.



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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.

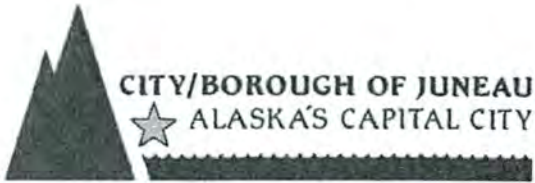
The (H) CRA Committee worked closely with AML; the Municipal Attorneys Association the initiative sponsors and Mayors, Council members and Assembly members throughout the State. Not surprisingly, there were many different opinions on how various municipalities across the State would deal with marijuana, 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



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.

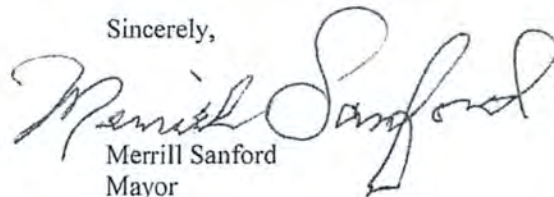
This bill contains many important provisions that will assist the municipalities in our efforts to responsibly regulate the new marijuana industry moving forward. It importantly:

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

MUNICIPALITY OF ANCHORAGE



Office of the Municipal Attorney
Civil Division, Suite 730

Telephone: 907-343-4545
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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,

Dennis A. Wheeler
Municipal Attorney

cc: Anchorage caucus



Marijuana Policy Project
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"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

29-LS0345\R
Martin
4/14/15

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

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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 new subsections 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 (c) Notwithstanding (a)(2) of this section, a municipality may, by ordinance,
9 limit the number of marijuana plants that may be present in a single dwelling to fewer
10 than 24 marijuana plants.

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

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

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

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

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

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

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

29 (d) Within [45 TO] 90 days after receiving an application or renewal
30 application, the board shall issue an annual registration to the applicant unless the
31 board finds the applicant is not in compliance with regulations adopted under

1 [ENACTED PURSUANT TO] AS 17.38.090 or the board receives a protest from a
2 municipality under AS 17.38.105 [IS NOTIFIED BY THE RELEVANT LOCAL
3 GOVERNMENT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH
4 ORDINANCES AND REGULATIONS MADE PURSUANT TO AS 17.38.110 AND
5 IN EFFECT AT THE TIME OF APPLICATION].

6 * **Sec. 8.** AS 17.38.100(e) is amended to read:

7 (e) If a municipality [LOCAL GOVERNMENT] has enacted a numerical
8 limit on the number of marijuana establishments and a greater number of applicants
9 seek registrations, the board shall solicit and consider input received from a
10 municipality under AS 17.38.105 [FROM THE LOCAL REGULATORY
11 AUTHORITY AS TO THE LOCAL GOVERNMENT'S PREFERENCE OR
12 PREFERENCES FOR REGISTRATION].

13 * **Sec. 9.** AS 17.38 is amended by adding a new section to read:

14 **Sec. 17.38.105. Protest and review of registration or renewal.** (a) A
15 municipality may protest the issuance or renewal of a registration by sending the board
16 and the applicant a protest and the reasons for the protest within 60 days after receipt
17 by the municipality from the board of notice of the filing of the application. The board
18 may not accept a protest received after the 60-day period, and, in no event, may a
19 protest cause the board to reconsider an approved renewal of a registration. The board
20 shall consider a protest and testimony received at a hearing conducted under (d)(1) or
21 (2) of this section when it considers the application or continued operation, and the
22 protest and the record of the hearing conducted under (d)(1) or (2) of this section shall
23 be kept as part of the board's permanent record of its review. If an application or
24 continued operation is protested, the board shall deny the application or continued
25 operation unless the board finds that the protest is arbitrary, capricious, or
26 unreasonable.

27 (b) A municipality may recommend that a registration be issued or renewed
28 with conditions. The board shall consider recommended conditions and testimony
29 received at a hearing conducted under (d)(1) or (2) of this section when it considers
30 the application or continued operation. The recommended conditions and the record of
31 the hearing conducted under (d)(1) or (2) of this section shall be kept as part of the

1 board's permanent record of its review. If the municipality recommends conditions,
2 the board shall impose the recommended conditions unless the board finds that the
3 recommended conditions are arbitrary, capricious, or unreasonable. If a condition
4 recommended by a municipality is imposed on a registrant, the municipality shall
5 assume responsibility for monitoring compliance with the condition, except as
6 otherwise provided by the board.

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

13 (d) The board

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

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

18 (3) shall send notice of a hearing conducted under this subsection 10
19 days before the hearing to each community council established within the municipality
20 and to each nonprofit community organization entitled to notification under
21 AS 17.38.100(c).

22 * **Sec. 10.** AS 17.38.110(a) is amended to read:

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

29 * **Sec. 11.** AS 17.38.110(b) is amended to read:

30 (b) A municipality [LOCAL GOVERNMENT] may adopt [ENACT]
31 ordinances or regulations not in conflict with this chapter or with regulations adopted

1 under [ENACTED PURSUANT TO] this chapter, governing the time, place, manner,
2 and number of marijuana establishment operations. A municipality with power to
3 establish civil and criminal penalties [LOCAL GOVERNMENT] may establish civil
4 and criminal penalties for violation of an ordinance or regulation governing the time,
5 place, and manner of a marijuana establishment that may operate in the municipality
6 [SUCH LOCAL GOVERNMENT].

7 * **Sec. 12.** AS 17.38.110(c) is amended to read:

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

17 * **Sec. 13.** AS 17.38.110(d) is amended to read:

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

23 * **Sec. 14.** AS 17.38.110(e) is amended to read:

24 (e) A municipality [LOCAL GOVERNMENT] may establish a schedule of
25 annual operating, registration, and application fees for marijuana establishments,
26 provided, the application fee is [SHALL ONLY BE] due only if an application is
27 submitted to a municipality [LOCAL GOVERNMENT] in accordance with (f) of this
28 section and a registration fee is [SHALL ONLY BE] due only if a registration is
29 issued by a municipality [LOCAL GOVERNMENT] in accordance with (f) [OF
30 THIS SECTION] or (g) of this section.

31 * **Sec. 15.** AS 17.38.110(h) is amended to read:

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

8 * **Sec. 16.** AS 17.38.110(i) is amended to read:

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

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

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

19 * **Sec. 18.** AS 17.38.110(l) is amended to read:

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

23 * **Sec. 19.** AS 17.38.110 is amended by adding new subsections to read:

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

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

1 the borough.

2 * **Sec. 20.** AS 17.38 is amended by adding new sections to read:

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

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

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

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

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

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

31 **Sec. 17.38.230. Prohibition of sale and manufacture after election.** (a) If a

1 majority of the voters vote to prohibit the operation of marijuana establishments under
2 AS 17.38.200, a person may not knowingly sell or manufacture marijuana in the
3 established village.

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

7 (c) Nothing in this section prohibits the personal use of marijuana authorized
8 under AS 17.38.020. *conduct authorized*

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

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

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

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

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

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

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within a five-mile radius of another site selected by the local governing body or by the board if the established village does not have a local governing body.

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

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

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

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

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

Sec. 17.38.265. Bail forfeiture for certain offenses. The supreme court shall establish by rule or order a schedule of bail amounts that may be forfeited without court appearance for a violation of AS 17.38.030 - 17.38.050.

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

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

* **Sec. 22.** AS 17.38.900(6) is amended to read:

(6) "marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, [SALT,] derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate; "marijuana" does

1 not include fiber produced from the stalks, oil [,] or cake made from the seeds of the
2 plant, sterilized seed of the plant that [WHICH] is incapable of germination, or the
3 weight of any other ingredient combined with marijuana to prepare topical or oral
4 administrations, food, drink, or other products;

5 * **Sec. 23.** AS 17.38.900(9) is amended to read:

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

9 * **Sec. 24.** AS 17.38.900 is amended by adding new paragraphs to read:

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

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

15 (17) "manufacture" has the meaning given in AS 11.71.900;

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

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

25 * **Sec. 25.** AS 17.38.900(4) is repealed.

26 * **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).

PAS

29-LS0345/R.2
Martin
4/15/15

AMENDMENT #1

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: SCS CSHB 75(JUD), Draft Version "R"

- 1 Page 1, line 4:
- 2 Delete "**authorizing the registration of marijuana clubs;**"
- 3
- 4 Page 5, line 25:
- 5 Delete "[OR]"
- 6 Insert "or"
- 7 Delete "**, or marijuana clubs**"
- 8
- 9 Page 7, line 26:
- 10 Delete "retail marijuana stores, or marijuana clubs"
- 11 Insert "or retail marijuana stores"
- 12
- 13 Page 11, lines 5 - 8:
- 14 Delete all material.
- 15
- 16 Renumber the following bill sections accordingly.
- 17
- 18 Page 11, lines 16 - 18:
- 19 Delete all material.
- 20
- 21 Renumber the following paragraph accordingly.
- 22
- 23 Page 11, lines 23 - 24:

1 Delete "; "public place" does not include a marijuana club"

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 17, 2015

SUBJECT: Marijuana club amendment SCS CSHB 75(JUD);
(Work Order No. 29-LS0345\R.2)

TO: Senator John Coghill
Attn: Jordan Shilling

FROM: Hilary V. Martin 
Legislative Counsel

You have asked for an explanation of amendment R.2, and specifically the status of marijuana clubs if this amendment is adopted.

Currently, version "R" of the bill, SCS CSHB 75(JUD), authorizes municipalities and established villages to prohibit the operation of marijuana clubs, along with other types of marijuana establishments. Marijuana clubs are included in the definition of "marijuana establishment" for regulatory purposes, and the definition of "public place" explicitly states that it does not include a marijuana club.

Amendment R.2 removes all references to marijuana clubs that exist in version "R" of the bill. Adoption of the amendment would result in marijuana clubs being excluded from registration and other laws pertaining to marijuana establishments. Because a marijuana club would no longer be a marijuana establishment subject to registration, a municipality no longer needs the authority to prohibit the operation of marijuana clubs.

Nothing in current law expressly authorizes, or prohibits, the operation of a marijuana club as defined in the bill, and if the amendment is adopted, the bill would no longer expressly authorize the registration of marijuana clubs. However, the initiative does not provide for the registration of marijuana businesses that are not marijuana establishments.¹ Whether a marijuana club could otherwise operate without being registered is unclear. A marijuana club could potentially be prevented from operating under AS 17.38.040, as amended in the bill, which prohibits consuming marijuana in a public place.

¹ Marijuana establishment is defined in AS 17.38.900(a) to mean a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

Senator John Coghill

April 17, 2015

Page 2

Section 24 of the bill defines "public place" as:

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

A marijuana club may be construed as either a place to which the public has access, or a place of business. However, any determination of whether a person could use marijuana in a marijuana club would depend on the facts of the particular situation. It is unlikely that a retail marijuana store could allow consumption on the premises of the store, because it would almost certainly be considered a public place.

If I may be of further assistance, please advise.

HVM:dla
15-323.dla

PASS

29-LS0345\R.6
Gardner/Martin
4/17/15

AMENDMENT #2

OFFERED IN THE SENATE

TO: SCS CSHB 75(JUD), Draft Version "R"

- 1 Page 9, lines 7 - 8:
- 2 Delete "use of marijuana authorized under"
- 3 Insert "conduct authorized in"

RASS

29-LS0345\R.7
Gardner/Martin
4/17/15

AMENDMENT #3

OFFERED IN THE SENATE

TO: SCS CSHB 75(JUD), Draft Version "R"

- 1 Page 3, lines 8 - 10:
- 2 Delete all material.