

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 19, 2018

2:04 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

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

**COMMITTEE CALENDAR**

HOUSE BILL NO. 355

"An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 75

"An Act relating to gun violence protective orders; relating to the crime of violating a protective order; relating to a central registry for protective orders; relating to the powers of district judges and magistrates; requiring physicians, psychologists, psychological associates, social workers, marital and family therapists, and licensed professional counselors to report annually threats of gun violence; and amending Rules 4 and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 355

SHORT TITLE: FIRE;FOREST LAND; CRIMES;FIRE PREVENTION

SPONSOR (s) : REPRESENTATIVE (s) GUTTENBERG

02/16/18	(H)	READ THE FIRST TIME - REFERRALS
02/16/18	(H)	RES, JUD
02/28/18	(H)	RES AT 1:00 PM BARNES 124
02/28/18	(H)	Heard & Held
02/28/18	(H)	MINUTE(RES)
02/28/18	(H)	RES AT 6:00 PM BARNES 124
02/28/18	(H)	Heard & Held
02/28/18	(H)	MINUTE(RES)
03/05/18	(H)	RES AT 1:00 PM BARNES 124
03/05/18	(H)	Heard & Held
03/05/18	(H)	MINUTE(RES)
03/09/18	(H)	RES AT 1:00 PM BARNES 124
03/09/18	(H)	Moved CSHB 355(RES) Out of Committee
03/09/18	(H)	MINUTE(RES)
03/12/18	(H)	RES RPT CS(RES) NT 4DP 3NR 1AM
03/12/18	(H)	DP: LINCOLN, DRUMMOND, JOSEPHSON, TARR
03/12/18	(H)	NR: BIRCH, PARISH, TALERICO
03/12/18	(H)	AM: RAUSCHER
03/14/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/14/18	(H)	Heard & Held
03/14/18	(H)	MINUTE(JUD)
03/19/18	(H)	JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

ALLIANA SALANGUIT, Staff  
Representative David Guttenburg  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 355, answered questions on behalf of Representative Guttenburg, prime sponsor.

AARON PETERSON, Assistant Attorney General  
Fish & Game Section  
Office of Special Prosecutions  
Criminal Division  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 355, answered questions.

CHRIS MAISCH, State Forester/Director  
Division of Forestry  
Department of Natural Resources  
Fairbanks, Alaska

**POSITION STATEMENT:** During the hearing of HB 355, answered questions.

ANNE NELSON, Senior Assistant Attorney General  
Natural Resources Section  
Civil Division  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 355, answered questions.

**ACTION NARRATIVE**

[2:04:05 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 2:04 p.m. Representatives Claman, Kopp, LeDoux, Kreiss-Tomkins, and Eastman were present at the call to order. Representatives Stutes, and Reinbold arrived as the meeting was in progress.

**HB 355-FIRE;FOREST LAND; CRIMES;FIRE PREVENTION**

[2:04:46 PM](#)

CHAIR CLAMAN announced that the only order of business would be HB 355 CS FOR HOUSE BILL NO. 355(RES), "An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; requiring the Alaska Supreme Court to establish a bail schedule; and providing for an effective date."

CHAIR CLAMAN advised that this is the second hearing on HB 355 in the House Judiciary Standing Committee, during the first hearing the committee members reviewed the bill and opened and closed public testimony. He reminded the committee that Legislative Legal and Research Services has permission to make any technical and conforming changes to the bill, and Chair Claman then reiterated the amendment process.

[2:05:46 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 1, labeled 30-LS1382\J.1, Radford, 3/15/18, which read as follows:

Page 2, line 14, following "**suspected**":

Insert "wildland"

REPRESENTATIVE KREISS-TOMKINS objected.

[2:05:55 PM](#)

REPRESENTATIVE KOPP explained that Amendment 1 addresses a concern voiced during public testimony, and he referred to HB 355, Sec. 3, page 2, lines 13-17, which read as follows:

an officer or employee of the United States or the state may, when responding to a wildland fire or suspected fire or administering the provisions of this chapter, [AT ANY TIME] enter upon any land, whether publicly or privately owned, for the purpose of preventing, investigating, suppressing, or controlling a wildland fire or a destructive agent.

REPRESENTATIVE KOPP noted that the testifier offered concern regarding an officer entering private land with the idea that they could be responding to more than just a wildland fire, which appeared to be the overall purpose. The language here is "or suspected fire," and whether that would include a campfire or any other small controlled fire. In the event the goal is to emphasize the danger of wildland fires and wildland enforcement, Amendment 1 would provide clarity that this section is referring to wildland fires for the purposes of fire prevention, control, and suppression as to why a [fire protection officer] would enter private property. He explained that it is with respect to wildland fire investigation and control, and not to any other range of legitimate fires a property owner could undertake on their property. He opined that Amendment 1 addresses some constitutional concerns and provides more protections for landowners.

CHAIR CLAMAN asked Ms. Salanguit, staff to Representative Guttenberg, whether the sponsor supports or opposes Amendment 1.

[2:08:04 PM](#)

ALLIANA SALANGUIT, Staff, Representative David Guttenberg, Alaska State Legislature, responded that she believes Representative Guttenberg is in support of Amendment 1.

[2:08:15 PM](#)

REPRESENTATIVE KREISS-TOMKINS withdrew his objection. There being no objection, Amendment 1 was adopted.

[2:08:32 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 2, labeled 30-LS1382\J.2, Radford, 3/16/18, which read as follows:

Page 6, following line 16:

Insert a new bill section to read:

"\* **Sec. 21.** AS 41.15.950 is amended by adding a new subsection to read:

(c) Nothing in this section requires a person to disclose a deadly weapon under AS 11.61.220(a)(1)(A) to a peace officer described under (a)(1) of this section."

Renumber the following bill sections accordingly.

Page 7, line 2:

Delete "sec. 21"

Insert "sec. 22"

Page 7, line 3:

Delete "sec. 21" in both places

Insert "sec. 22" in both places

Page 7, line 4:

Delete "Sections 23 and 24"

Insert "Sections 24 and 25"

Page 7, line 5:

Delete "sec. 25"

Insert "sec. 26"

REPRESENTATIVE KREISS-TOMKINS objected.

[2:08:35 PM](#)

REPRESENTATIVE EASTMAN explained that Amendment 2 makes clear that that provision of law will not be applied to [fire prevention officers], and there should be no confusion going forward over whether an individual is required to disclose their concealed weapon. Although, he noted, under this bill those [fire protection officers] do have the title of "peace officer," and Amendment 2 deals with the types of peace officers separately.

CHAIR CLAMAN asked Ms. Salanguit whether Representative Guttenburg was in support of Amendment 2, or would she prefer to hear from the Department of Law (DOL) as to the administration's perspective on Amendment 2.

MS. SALANGUIT asked that the Department of Law (DOL) offer its perspective.

[2:10:05 PM](#)

AARON PETERSON, Assistant Attorney General, Fish & Game Section, Office of Special Prosecutions, Criminal Division, Department of Law (DOL), referred to AS 11.81.900[44], which read as follows:

(44) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

MR. PETERSON advised that the statute specifically read that "the duty extends to all offenses or is limited to a specific class of offenses or offenders." In the event it is the intent of the legislature to exclude fire prevention officers from this particular statute and the requirement that people declare they have a firearm concealed on their person when making contact with a peace officer, Amendment 2 would accomplish that goal. He opined that this requirement risks causing confusion among the public as to who to advise that they are carrying a concealed weapon. From a purely legal perspective, Amendment 2 would likely be necessary in order to exclude people from reporting to a fire prevention officer that they are carrying a concealed weapon, he said.

[2:12:22 PM](#)

MS. SALANGUIT, in response to Chair Claman advised that Representative Guttenburg opposes Amendment 2.

[2:12:39 PM](#)

REPRESENTATIVE KOPP posed that, under current law, a homeowner was contacted by any recognized peace officer, whether there is a duty for the homeowner to disclose that they are carrying a concealed weapon in their own home or on their own property outside of the home.

MR. PETERSON answered that there is case law on that specific topic, but he would have to research the issue.

[2:13:44 PM](#)

The committee took an at-ease from 2:13 p.m. to 2:14 p.m.

[2:14:49 PM](#)

REPRESENTATIVE KOPP opined that the courts have ruled that in a person's home or property, there is not a duty to disclose but because the answer cannot be found at this moment, he supports the spirit of the amendment.

[2:15:25 PM](#)

MR. PETERSON, in response to Chair Claman as to when expects to complete his research, answered that it should be another few minutes.

CHAIR CLAMAN advised that Amendment 2 would be held and Mr. Peterson would get back to the committee.

[2:16:42 PM](#)

REPRESENTATIVE KOPP noted that another clarification the committee might request is whether this amendment applies to being contacted by a peace officer on public lands, and also on a person's private property. He asked whether Amendment 2 is inclusive of both of those issues.

MR. PETERSON responded to Chair Claman that he would research Representative Kopp's additional question.

[2:17:18 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 3, labeled 30-LS1382\J.4, Radford, 3/16/18, which read as follows:

Page 2, lines 14 - 15:

Delete "or administering the provisions of this chapter"

REPRESENTATIVE KREISS-TOMKINS objected.

[2:17:21 PM](#)

REPRESENTATIVE EASTMAN referred to HB 355, page 2, lines 12-17, which read as follows:

upon request of an officer or employee of the United States or the state may, when responding to a wildland fire or suspected fire or administering the provisions of this chapter [AT ANY TIME] enter upon any land, whether publicly or privately owned, for the purpose of preventing, investigating, suppressing, or controlling a wildland fire or a destructive agent.

REPRESENTATIVE EASTMAN advised that this section deals with the right of anyone who is "doing any of these listed activities" to enter private property and perform a service on that property with or without the notification or permission of the property owner. He opined that that is an important issue to consider before "we do that blindly." He suggested that the committee better tailor what it is that someone who would be entering private property without permission "would be able to do." He described this chapter as quite broad, and suggested the language could read, such that anyone responding to a wildfire or suspected wildfire would have the go-ahead to enter someone's private property and take care of that fire or suspected fire. However, he described, "administering the provisions of this chapter" is overly broad and situations will occur wherein the committee did not intend these individuals to perform. Some of the [fire protection officers] might be employed temporarily and they are performing these types of activities on a seasonal or other basis with minimal training, he said. There is concern that these individuals, by entering the private property, see items they would otherwise be unable to see, and it comes up missing later, he said.

[2:20:36 PM](#)

CHAIR CLAMAN asked whether Representative Guttenburg supports or opposes Amendment 3.

MS. SALANGUIT advised that Representative Guttenburg opposes Amendment 3. She pointed out that this was actually an amendment taken up in the House Resources Standing Committee with Representative Rauscher. She said, "It was kind of a compromise" to be a little more specific as to when "we can enter land." Prior to this, the language was "at any time" and Representative Guttenburg added "when responding to a wildland

fire or suspected fire or administering the provisions of this chapter" to be more specific.

2:21:10 PM

CHRIS MAISCH, State Forester and Division Director, Division of Forestry, Department of Natural Resources, noted that he would now recap the key points of the discussion within the House Resources Standing Committee as follows:

In no way does an individual's criminal rates for search and seizure stop from this section of this particular statute. There is also, of course, their constitutional rights. And then, as necessary, if it is after the fire, so its not control or suppression of the fire, a warrant is required if we do not have the permission of the landowner to enter the property to determine cause and origin of the fire, which are two key aspects our [fire protection officers] FPO's are trained to do. So, we feel this language is necessary for our staff to properly do their charge.

2:22:12 PM

REPRESENTATIVE LEDOUX asked Mr. Maisch to described exactly what "administering the provisions of this chapter" means, and where the bill read that a warrant would be required.

MR. MAISCH answered that a warrant is required if a suspected criminal charge may be pending based upon the investigation. He related that while his officers are not badge or gun carrying officers, they are trained to enforce the provisions of this chapter, the safe burning practices in regulation and statute, which includes determining cause and origin of all wildland fires, thereby requiring a fire investigation. Sometimes, he offered, investigations can be completed at the time the suppression action and on other occasions, the investigations must take place after the suppression actions.

2:23:29 PM

REPRESENTATIVE LEDOUX noted that she did not see where the bill read that a warrant was required. She asked someone from the Department of Law (DOL) offer its perspective on Sec. 3 because that section talks about "when we're talking about what we're talking about," the word "investigating," whether a warrant is

required, or whether this supersedes other law requiring a warrant.

[2:24:21 PM](#)

ANNE NELSON, Senior Assistant Attorney General, Natural Resources Section, Civil Division, Department of Law (DOL), answered that the requirement for a warrant is a matter of constitutional law and there is nothing in state statute that would even purport to supersede that constitutional law. The warrant requirement is a Constitution of the United States and Constitution of the State of Alaska requirement that still applies and overlays all statutes on the books, including this statute, she said.

[2:25:00 PM](#)

REPRESENTATIVE LEDOUX surmised that if a fire protection officer was responding to a suspected wildland fire, a warrant was clearly not required.

MS. NELSON responded that a warrant would not be required because with exigent circumstances that authority is a little broader. The investigation the fire prevention officers typically perform is related to the cause and origin of the fire because that is valuable information needed to develop suppression tactics and actively fight the fire, she explained. When it comes to criminal liability, she further explained that that investigation is typically performed under the direction of the Alaska State Troopers and the criminal division of the Department of Law (DOL).

[2:25:56 PM](#)

REPRESENTATIVE LEDOUX questioned whether the investigation is performed under the auspices of the DOL.

MS. NELSON replied that the initial investigation as to the cause and origin of a fire is often performed in the field during the initial attack of the fire by the fire prevention officers. In the event it appears there is a question of criminal liability, that investigation is performed under the auspices of the criminal division of the DOL, the Alaska State Troopers, and regular law enforcement, she said.

[2:26:37 PM](#)

REPRESENTATIVE LEDOUX noted that if administering the provisions of this chapter or investigating the criminal liability is all performed under the DOL with a warrant and so forth, she asked why this needs to be in the statute. She further asked why it should not read, "when responding to a wildland fire or suspected fire," thereby, removing the phrase "administering the provisions of this chapter" and to also remove the word "investigating."

MS. NELSON responded that in addition to the criminal provisions in this bill, there are also a number of provisions addressing "bail schedule offenses" and enforcing the permit program that the Division of Forestry currently administers. This right of entry, she explained, would actually enable the officers to follow up on issued permits and on complaints that burning was being conducted, either in violation of a permit or on a day when burning was closed statewide.

[2:28:06 PM](#)

REPRESENTATIVE LEDOUX asked whether that would be a criminal issue under the DOL anyway.

MS. NELSON answered, "Not necessarily," and referred to HB 355, Sec. 21, page 6, lines 18-20, authorizing the Alaska Supreme Court to publish a schedule of bailable offenses, which are akin to parking tickets a person can pay in complete satisfaction of the offense without appearing in court.

[2:28:53 PM](#)

REPRESENTATIVE LEDOUX related that she still does not understand why the investigation and the administering of all of this would not be under the DOL.

CHAIR CLAMAN asked Ms. Nelson whether part of the investigation in fire prevention is trying to determine where the fire started in order to extinguish the fire. In the event, a warrant was required as part of the investigation in determining the location of the smoke and where the fire started, an officer could put significant danger to properties by going to the courthouse to obtain a warrant, he remarked. He asked Ms. Nelson to clarify because Sec. 3 is specific to the employees of the Division of Forestry so it is a fairly narrow number of people who actually have this authority. He further asked whether an investigation as to where the smoke was coming from was different from a criminal investigation.

MS. NELSON answered that Chair Claman was correct, "investigating" has a number of meanings in terms of the Division of Forestry's fire program.

[2:30:24 PM](#)

REPRESENTATIVE LEDOUX commented that it appears the term "investigating" should have parameters in order for the public to know that the fire protection officers are investigating in order to determine where the fire was located rather than investigating a criminal issue.

CHAIR CLAMAN asked Mr. Maisch to describe the range of conduct involved in investigating.

MR. MAISCH responded that with regard to the term "investigating," there are different kinds and needs for investigation (audio difficulties). In the event of a smoke report, oftentimes the fire protection officers must cross numerous pieces of private property to determine whether there actually is a fire. Another type of investigating, he offered, is that once the fire protection officers have located the fire, to investigate the cause of that fire, the ignition source, the origin, and on what property the fire was located. He explained that that is a more formal investigation, which his staff is highly trained to perform because a fire investigation is a fairly complex effort and is solely focused on the cause and origin of the fire. In the event the investigation of the fire appears to lead to a charge under the statutes, the State Fire Marshals and Alaska State Troopers become involved, he explained.

CHAIR CLAMAN referred to the audio difficulties in ascertaining Mr. Maisch's testimony and asked him to again explain the range of investigations and to speak slowly.

MR. MAISCH repeated that the two types of investigations that are easiest to describe would be as follows: when there is a smoke report, oftentimes the fire protection officers must enter numerous pieces of private property to determine whether there is an actual fire; and when a fire has been located, a formal investigation is performed to determine the origin of the fire, the cause of the fire, and how it actually ignited. He described that as a fairly extensive investigation, and his enforcement officers are highly trained to make determinations as to the cause and origin of the fire. In the event that

investigation appeared to lead to a criminal charge against the private landowner for a violation of the statute, the Alaska State Troopers or the State Fire Marshals become involved with that aspect of the investigation, he said.

[2:33:53 PM](#)

REPRESENTATIVE LEDOUX surmised that expensive investigating could be performed under this proposed statute, investigations that might lead to criminal charges, and this investigation could be performed without a warrant.

MR. MAISCH answered that when they are trying to determine whether there is a fire, and suppressing or controlling the fire, it is considered the early stage of investigating for cause and origin. At the point the fire is controlled, if it is believed the investigation will lead to criminal charges, the State Fire Marshal and Alaska State Troopers become involved, he reiterated. Oftentimes, he related, landowners offer their permission to enter the property, but if a warrant is necessary, that would be performed through law enforcement and not through his staff.

[2:35:06 PM](#)

REPRESENTATIVE EASTMAN asked Mr. Maisch to describe a destructive agent.

MR. MAISCH responded that a destructive agent is defined AS 41.15.170(2), which read as follows:

(2)"destructive agent" means an insect, pathogen, or other environmental agent that causes damage to a forest resource;

[2:36:14 PM](#)

REPRESENTATIVE EASTMAN asked that while someone is controlling the destructive agent based on this bill, would they need a warrant or any type of permission to be able to do perform that control aspect on someone's private property, or could they go ahead and [investigate] without notifying the private property owner.

MR. MAISCH replied that the best example would be the Spruce Bark Beetles that can kill large tracts of trees and create a fire hazard from the resulting dead materials. He noted that

through other regulations, the commissioner of the Department of Natural Resources (DNR) can establish a zone of infestation, which includes a best interest finding, and then emergency regulations can be put in place to deal with the destructive agent. He explained that this was initially created in 1961, and since that time, additional regulations have been developed to deal with destructive agents, but this does not give that right in conjunction with the other activities he previously described.

[2:37:54 PM](#)

REPRESENTATIVE EASTMAN clarified that his question was in the event Mr. Maisch was to administer the provisions of this chapter to control a destructive agent, whether there are any requirements under this bill to notify the private property owner.

MR. MAISCH answered that the property owner would have to be notified, and those sections are addressed in the Alaska Forest Resources and Practices statute.

CHAIR CLAMAN noted that this particular section is about the right to enter property to control and suppress fires, and the destructive agents become a factor in what is burning. It appears that this section would not give authority to deal with suppression issues just because there was a destructive agent, it is the combination of a fire where a destructive agent is involved, he opined.

[2:38:58 PM](#)

REPRESENTATIVE EASTMAN related that that is the question because the language is, "or controlling a wildland fire or a destructive agent." He opined that that now is being opened up to be anyone who is administering any of the provisions of this chapter. He asked whether the fact that a fire protection officer cannot go onto someone's property without notifying them is located in another area of the bill. He commented that he did not see any requirement for notification in this statute and asked whether another statute being drawn upon to reach that conclusion.

MR. MAISCH answered that Representative Eastman was correct and he then referred to AS 41.17, Forest Resources and Practices statute. Mr. Maisch commented that he had previously outlined that process that the commissioner of the Department of Natural

Resources (DNR) would follow. He reiterated that a zone of infestation would be declared through a best interest finding, emergency regulations would be put in place, and if the landowner did not comply with those regulations, AS 41.15 gives the authority for the fire prevention officers to enter and deal with the destructive agent.

[2:40:15 PM](#)

REPRESENTATIVE EASTMAN surmised that in administering the provisions of this chapter, the reason for this expanded scope of administering the provisions of this chapter is to enter someone's private property and issue a citation of some kind. In the event this permissive language is not here, a warrant "or whatnot" would be required because the landowner had not provided their permission to enter that private property.

MR. MAISCH remarked that he could not follow Representative Eastman's question and asked that he repeat his question.

[2:41:01 PM](#)

REPRESENTATIVE EASTMAN surmised that the reason for this broaden scope of administering the provisions of this chapter, rather than simply responding to a suspected wildland fire, is because the bail schedules are part of this bill with the intent to issue citations and so forth. In order to enter someone's private property to issue the homeowner a citation, this broadened scope is necessary to be able to enter the property. Otherwise, he commented, the department would have to go about it in a different manner and obtain a warrant, or something.

MR. MAISCH answered that he would not interpret it in quite the manner in which Representative Eastman phrased his question. He explained that in the event someone committed a criminal act, law enforcement would have the right to enter that property to issue the ticket or charge. He said that "administer the provisions of this act" are the things he previously had discussed, which is to suppress the wildland fire, investigate whether there is an actual fire as to a smoke report or other complaints, and then determine the origin and cause of the fire through an investigation which can occur at the time of the fire or after control of the fire.

[2:42:32 PM](#)

REPRESENTATIVE EASTMAN posed a scenario of a residential fire and someone

CHAIR CLAMAN pointed out to Representative Eastman that this section, including Amendment 1, does not deal with residential fires, it only deals with wildland fires and to limit his questions to wildland fires.

[2:42:54 PM](#)

REPRESENTATIVE EASTMAN noted that he would like to contrast a residential fire with a wildland fire. He asked that when responding to a residential fire, a warrant or this type of provision would not be necessary because responding to such a fire already includes, and once the fire scene is controlled, an investigation can take place without obtaining a new warrant. Except, he said, at the time the fire protection officers cease to have control of the fire scene, a warrant would be necessary to go back onto the property. He asked whether, this situation is similar to the right to have that investigation without a new warrant or is something different taking place here.

MR. MAISCH related that he did not believe anything different was taking place as to whether it was a structure or a wildland fire. He commented that as he had previously testified, after the fire is controlled and the landowner has given permission to continue the investigation, if they suspect the investigation could lead to criminal charges, the Alaska State Troopers and the State Fire Marshal's Office becomes involved and they will seek a warrant if it is appropriate for the circumstances. He commented that he does not see that there is a difference between how a structure or wildland fire would be treated as Representative Eastman had described.

[2:44:39 PM](#)

REPRESENTATIVE EASTMAN asked Mr. Maisch to make clear for the committee that if something criminal was suspected, a warrant would be necessary. In the event "you are leaving the property and you no longer are in control of it, you want to come back later, normally you would have to get some kind of warrant." He asked why this authority is necessary to enter onto the private land.

MR. MAISCH reiterated that again, that is a requirement when trying to determine whether there actually is a fire from a smoke report taken from a neighbor, aircraft often reports

smoke/fires, or someone else, and it is their job to determine where that fire is located. Oftentimes, significant amounts of private property are crossed during the investigation of that smoke report. Essentially, he advised, that is what this chapter does, it gives them that authority to enter that property.

2:46:16 PM

REPRESENTATIVE KOPP commented that exigent circumstances apply to municipal firefighting and wildland firefighting, which is an exception to the warrant requirement due to the fantastically destructive potential of fire. In the event a burn ban is in effect and something is going on in a person's backyard, it will be clear when the fire department shows up because they will be pulling hoses around the house. The firefighters would not be knocking on the door because they are there to extinguish the fire and ask questions later. There are exigent circumstances that apply due to well documented catastrophic fires losses, Alaska is replete with horrific fires, and the fire service agencies must respond quickly, he pointed out. Representative Eastman asked that once the scene was secure and something criminal was discovered, whether the agency would go to the courthouse for the warrant. In response, Mr. Maisch's answer was that they would, as is the current process with the municipal and state forestry. As far as administering the provisions, he opined, that would include issuing citations. Once the fire protection officers arrive and extinguish the fire, at that point, the administering portion is the civil action of issuing a summons or citation. Currently, he advised, there is nothing in the law requiring a police officer to obtain a search warrant in order to go back onto a person's private property to simply issue a citation; therefore, the officer can go back to that person and issue the citation. He opined that it is consistent with the exceptions to the current search warrant requirement that applies to the fire services when they are in active response mode. This bill puts the current practice into statute, he related that it is constitutionally sound and it speaks practically as far as firefighting.

2:49:09 PM

REPRESENTATIVE EASTMAN referred to Sec. 41.15.040, Right of entry to control and suppress fires, [page 2, lines 9-17], and commented that that is exactly what this section should represent. Except, he noted, this [section] is about responding to wildland fires, suspected fires, or administering the

provisions of this chapter, which deals with destructive agents and so forth. Elsewhere in this section there is the opportunity for officers, once they are on the [private] land to suppress, prevent, and control using all of the sorts of duties firefighters perform. He opined that that is where the line should be drawn because the idea that someone, who is not responding to a fire or suspected fire, could enter onto someone's land to administer the provisions of this chapter and write citations and so forth, is not a good idea. In the event firefighters are responding or coming back from responding that is fine, he said, but not for them to enter onto private property when there is no fire or suspected fire and write citations on someone's private property.

[The committee treated the objection to Amendment 3 as maintained.]

[2:50:26 PM](#)

A roll call vote was taken. Representatives Eastman and LeDoux voted in favor of the adoption of Amendment 3. Representatives Kopp, Stutes, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 3 failed to be adopted by a vote of 2-4.

[2:51:13 PM](#)

The committee took a brief at-ease.

[2:51:37 PM](#)

CHAIR CLAMAN advised that the committee would now return to the discussions on Amendment 2, and he asked Mr. Peterson to provide his research as to the two questions previously discussed.

[2:51:52 PM](#)

MR. PETERSON responded that he does not believe there are any exclusions for a person being in their dwelling, for example, specifically with respect to informing a peace officer that they are concealing a deadly weapon. Mr. Peterson referred to AS 11.61.220(a)(1)(A), which read as follows:

- (a) A person commits the crime of misconduct involving weapons in the fifth degree if the person
  - (1) is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon,

(A) that is concealed on the person, and, when contacted by a peace officer, the person fails to

- (i) immediately inform the peace officer of that possession; or
- (ii) allow the peace officer to secure the deadly weapon, or fails to secure the weapon at the direction of the peace officer, during the duration of the contact;

MR. PETERSON advised that there is an affirmative defense for being in "your dwelling or on land pertinent to the dwelling" for other offenses under that same statute, but not for informing the peace officer that a person has a concealed weapon, as that is an officer's safety issue.

[2:52:34 PM](#)

CHAIR CLAMAN asked Mr. Peterson to explain his statement "what is in the statute."

MR PETERSON referred to AS 11.61.220(a)(1)(A) and explained that it is the requirement that a person advise a peace officer [under subparagraph (A)] that they are carrying a concealed weapon.

[2:53:02 PM](#)

CHAIR CLAMAN surmised that that is for the protection of the officer.

MR.PETERSON answered that it is to let the officer know the entirety of the situation, which is the reason there is not a statutory exception for where that contact occurs. He noted, for example, AS 11.61.220(a)(6), which read as follows:

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(6) is less than 21 years of age and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person.

MR. PETERSON advised that the cite it is for possessing a deadly weapon while being under the age of 21 years if some other things apply. He then offered that the drafters of this statute specifically considered that private property question, and the

drafters did not add that affirmative defense to the requirement that a person inform a peace officer that they have a deadly weapon on their person.

[2:53:56 PM](#)

REPRESENTATIVE KOPP asked whether Amendment 2 applies to both public and private land.

MR. PETERSON responded that the amendment does not appear to distinguish between public and private land. Certainly, AS 11.61.220 does not for the purposes of subsection (a)(1), have an exception for public land either. For example, he offered, in the event someone is in the field fishing and they are contacted by a peace officer, they are required to disclose that they are carrying a deadly weapon.

[2:55:03 PM](#)

REPRESENTATIVE KOPP commented that he thought there was [an exception] for a person's home and property, and because there is not [an exception] already in the law, he does not support Amendment 2.

Representative Kopp explained that it is very important for the safety and protection of the state's law enforcement when they have contact with someone in the field, wherever that contact occurred, while on official duty. The law currently provides that the person disclose that they are carrying a concealed weapon, thereby, allowing the officer to be aware of all of the facts in the situation. He pointed out that the law does not require law enforcement to take possession of the gun, it simply read that a person must notify the officer of the concealment gun. He stressed that it is very important for officer safety reasons that the legislature not change the law as it is currently written.

[2:56:03 PM](#)

REPRESENTATIVE KREISS-TOMKINS maintained his objection to Amendment 2.

REPRESENTATIVE EASTMAN noted that Amendment 2 simply read that nothing in this section requires a person to disclose a deadly weapon to a peace officer, as defined in this section. He opined that when the average Alaskan comes upon Smoky the Bear and they discuss fire, fire prevention, or wildfires, the person

is probably not thinking that they are speaking with a peace officer. He said he does not believe "they were ever intended to" because these are not peace officers wearing guns and Alaska State Trooper uniforms, and [the person] is to disclose that they are carrying a deadly weapon. This is a completely different concept, he stressed, these are peace officers performing a very different function. The legislature should not require this language from "our traditional law enforcement" to apply to these kinds of special condition peace officers.

[2:57:11 PM](#)

REPRESENTATIVE KOPP declared a point of order. Representative Kopp offered that the entire Amendment 2 is out of order because the committee was clearly advised that these persons, for purposes of that definition, do not fall under peace officer. The testifier advised that fire protection officers are not armed and do not wear badges and, to begin with, the duty to disclose may not even apply to those persons. In the event that is the case, he opined that the amendment is unnecessary even by the intent of the sponsor.

[2:58:07 PM](#)

REPRESENTATIVE EASTMAN declared a point of order.

REPRESENTATIVE LEDOUX questioned whether he was making a point of order on a point of order.

[2:58:17 PM](#)

REPRESENTATIVE KOPP explained that they are not sworn peace officers, they are firefighters.

CHAIR CLAMAN noted that the definition in the bill is about who is a peace officer.

REPRESENTATIVE EASTMAN said that he did need to make a point of order.

CHAIR CLAMAN advised Representative Eastman that he could make a statement because until he ruled on Representative Kopp's point of order, another point of order is not appropriate.

REPRESENTATIVE EASTMAN opined that it is important to correct the record because during this hearing today, the Department of Law (DOL) testified that these peace officers, whether or not

they have badges and hats, very much fall under this, and he asked that DOL re-testify to clarify its answer to that question.

[2:59:26 PM](#)

CHAIR CLAMAN asked Mr. Maisch to describe what the [fire protection officers], who are a "limited authority peace officer" under the Division of Forestry, look like, what they carry, and Mr. Maisch's understanding of the scope of their authority.

REPRESENTATIVE KOPP asked whether Title 11 applies.

MR. MAISCH referred to AS 41.15.950(a), which read as follows:

(a) The following persons are peace officers of the state and they shall enforce the provisions of this chapter and the regulations adopted under this chapter:

(1) solely for the purpose of enforcing this chapter, an employee of the department, or other person, authorized by the commissioner;

(2) a police officer in the state.

(b) A person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

(1) execute a warrant or other process issued by an officer or court of competent jurisdiction;

(2) administer or take an oath, affirmation, or affidavit; and

(3) arrest a person who violates a provision of this chapter or a regulation adopted under this chapter.

MR. MAISCH replied that their scope is narrowly defined. He explained that they are peace officers by definition, except there is a range of peace officers from the fully sworn peace officer to the type of fire prevention officer within the Division of Forestry, who do not carry a gun or wear a badge.

3:00:29 PM

CHAIR CLAMAN asked whether a peace officer designated under AS 41.15.950 is covered within the meaning of Title 11 peace officer that is at issue in Amendment 2.

MS. NELSON responded that whether they are or not depends upon the enforcement context. The fire prevention officers working for the Division of Forestry are commissioned by the commissioner in accordance with AS 41.15.950(a) and pursuant to the definition of peace officer in AS 01.10.060(7)(F), which read as follows:

(a) In the laws of the state, unless the context otherwise requires,

(7) "peace officer" means

(F) an officer whose duty it is to enforce and preserve the public peace;

MS. NELSON advised that that definition of peace officer definitely applies, and it is outside of Title 11.

3:02:16 PM

REPRESENTATIVE KOPP pointed to Amendment 2, page 1, lines 4-5, which read as follows:

(c) Nothing in this section requires a person to disclose a deadly weapon under AS 11.61.220(a)(1)(A) to a peace officer under (a)(1) of this section.

REPRESENTATIVE KOPP then referred to AS 11.61.220(a)(1)(A), which read as follows:

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon,

(A) that is concealed on the person, and, when contacted by a peace officer, the person fails to

(i) immediately inform the peace officer of that possession; or

(ii) allow the peace officer to secure the deadly weapon, or fails to secure the weapon at the direction of the peace officer, during the duration of the contact;

REPRESENTATIVE KOPP described this as the section of law requiring that a person notify a peace officer that they have concealed on their person a deadly weapon. He asked whether this would apply to a fire [prevention officer] in the field who entered a person's land, or whether it depends upon the scope of duty of that fire [protection officer]. He explained that the committee would like to understand whether this requirement of notification to a peace officer would apply to the Division of Forestry [fire prevention officer].

MS. NELSON opined that the answer to that question turns on whether fire prevention officers fall within the Title 11 definition of peace officer. She advised that peace officer, as described for the purposes of Title 11, means a public servant who is vested by law with a duty to maintain public order, make arrests whether the duty extends to all offenses, or is limited to a specific class of offenses or offenders. Therefore, even though that description is located under Title 11, AS 11.81.900 read that those definitions are for the purpose this title unless otherwise specified or unless the context requires otherwise. Fire prevention officers would fall under the scope of both of those definitions; however, they do not have general Title 11 enforcement authority, she advised.

[3:05:42 PM](#)

REPRESENTATIVE KREISS-TOMKINS surmised that Representative Kopp's point of order was unnecessary because such a duty to disclose does not already exist. He asked whether such a duty to disclose does not presently exist.

MS. NELSON responded that in the 10-years she has been advising the Division of Forestry, she was unsure that issue had ever been researched. She related a situation where fire prevention officers had gone to someone's private property to investigate a report that a neighbor was burning, and the fire appeared to be uncontrolled and dangerous. Those officers, she noted, were met at the bottom of the driveway by a number of individuals

carrying loaded weapons, and in that situation, there was never a question as to whether those weapons would be disclosed. She explained that the fire prevention officers are trained to not engage in such situations, to back off and avoid the conflict, and contact the Alaska State Troopers.

3:07:23 PM

REPRESENTATIVE LEDOUX noted to Representative Kopp that prior to this philosophical or legal discussion as to whether these fire prevention officers fall under the definition of peace officer pursuant to Title 11, it sounded like Representative Kopp wanted to make sure that the existence of a concealed weapon was disclosed. For example, she offered, if the committee determines that the fire protection officers do not fall under AS 11.61.220(a)(1)(A), she asked whether Representative Kopp would like to see that the existence of a concealed weapon must be reported. She further asked whether Representative Kopp's rationale for reporting the concealed gun to peace officers is whether they fall enough into the peace officer category in order to make sure someone reports their concealed weapon.

REPRESENTATIVE KOPP stressed that he wants to make sure the committee is not undoing current law. Representative Kreiss-Tomkins was correct in asking whether this amendment was redundant. He pointed out that he wants to make sure that if these people are peace officers, and the testifiers were unsure, then he does not want to undo what the law currently requires. He explained that in the event they are recognized as peace officers, the current law read that if a person is carrying a concealed weapon and contacted by a peace officer, the person must notify the peace officer of the concealed weapon on their person. He stressed that that is a very good officer safety law that the legislature passed many years ago to protect the safety of peace officers in the line of duty. He related his concern that in the event Amendment 2 undoes that law, if they are peace officers, this amendment would actually undo what current law requires. He reiterated that he wants to understand the status of fire protection officers because he does not support undoing Alaska's current law.

3:09:59 PM

REPRESENTATIVE LEDOUX related her understanding for his response, and offered a scenario that "they decided that they -- that we were just told that these are not peace officers under AS 11, etc., would you want to see them protected like that, or

not. Or, is the big thing the definition whether they are covered by AS 11.?" In the event there is good rationale for making sure [the peace officer is aware of the concealed deadly weapon], she asked whether it really matters whether they are currently covered under Title 11. She asked whether Representative Kopp would like to see these folks covered or not covered and commented that she has a feeling that when Title 11 was passed, no one had considered this issue because no one currently knows the answer to this question.

REPRESENTATIVE KOPP responded that he is not favorable to expanding the definition of peace officer beyond current law. He said he was trying to get at what the definition is in order that the committee does not unintentionally upend current law with this amendment, that is a whole separate public policy question. Once the definition of peace officer is expanded, he advised, it gets into all kinds of questions about benefits and it opens a pandora's box. It is important, he expressed, that the committee is careful on these types of amendments and understands what is actually before the committee.

REPRESENTATIVE LEDOUX advised that she did not believe the committee had any idea of what was before it based upon the answers to the questions posed to the testifiers.

[3:12:09 PM](#)

CHAIR CLAMAN noted that when the police are executing warrants, they come wearing big jackets with "POLICE" written all over it because they do not people to make no mistake. He opined that in the somewhat narrow scenario being discussed today, say for example, a fire was taking place and a fire protection officer, a designated peace officer pursuant to Title 41, who does not look exactly like a police officer because they are not wearing "POLICE" jackets and they are not clearly identified as a public safety officer in the traditional sense. The fire protection officers wear firefighting gear and wildland firefighting gear and if everyone was running around trying to extinguish that fire, and someone did not disclose in that instance, he opined, that based on Ms. Nelson's testimony, the person would unlikely be charged. He explained that if the person was charged, their defense would be that they had no idea this was a police officer, and that knowledge about whether the person was a police officer would be a prerequisite to charging someone under AS 11.61.220. He opined that the question being discussed today is whether the committee wants to weaken the protections the state is trying to provide for easily identified and recognized

public safety officers, or does the committee want to diminish those protections in current law, or to maintain the status quo.

3:14:00 PM

REPRESENTATIVE KOPP noted that according to testimony, those folks are either not authorized to carry firearms or in fact, do carry firearms. It appears there would be little within which to identify the folks working for the Division of Forestry, other than possibly their wildland firefighter grey shirt and green pants or whatever is the standard of duty. He explained that the reason for the notification requirement in the law is to protect readily recognized uniformed peace officers from bodily injury harm and allow them the ability to know whether a threat was present or the possibility of an elevated threat, to keep them safe. He stated that this definition is important because if these people were for all intents and purposes peace officers, he would not want to deny them that same protection. Although, he advised, he has a high doubt in his mind that the intent of the enactment of this statute was to extend this protection to these types of folks, but the question is unanswered in his mind.

3:15:43 PM

REPRESENTATIVE KREISS-TOMKINS agreed with Representative LeDoux's statement that the committee does not know what is before it, and Ms. Nelson did not appear to know the answer to his question because it enters an obscure realm. In practice, these fire protection officers run up peoples' driveways to investigate smoke or a potential fire currently, he asked whether the Division of Forestry presently has an expectation that the people they encounter will disclose whether they are carrying firearms.

MR. MAISCH answered that the Division of Forestry does not have that expectation, and its officers are noticeable because they arrive in a lime green truck with flashing lights, wearing yellow firefighter shirts, helmets, and shoulder patches identifying them as a Division of Forestry firefighter.

CHAIR CLAMAN surmised that the Division of Forestry does not expect their folks to be advised that a person is carrying a concealed weapon.

MR. MAISCH stated, "We do not."

[3:17:21 PM](#)

REPRESENTATIVE EASTMAN opined that this amendment is trying to preserve that same expectation because this bill expands the definition of firefighter to encompass things such as citations that are more typically thought of as police officers. He opined that firefighters would like the public to be clear as to exactly what they are there to do, that they are not the police. He commented that just because "we're given" the right to (audio difficulties) he did not think that should change the way the public will be looking at fire protection officers.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

[3:19:08 PM](#)

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

[HB 355 was held over.]

[3:21:05 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:21 p.m.