

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 2, 2018

2:50 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Gabrielle LeDoux  
Representative Lora Reinbold  
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

**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
03/19/18	(H)	Heard & Held
03/19/18	(H)	MINUTE(JUD)
03/26/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/26/18	(H)	Scheduled but Not Heard
03/30/18	(H)	JUD AT 1:00 PM GRUENBERG 120
03/30/18	(H)	<Bill Hearing Canceled>
04/02/18	(H)	JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

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

**POSITION STATEMENT:** During the hearing of CSHB 355, spoke in opposition to Amendment 4, and answered questions.

**ACTION NARRATIVE**

[2:50:17 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 2:50 p.m. Representatives Claman, Eastman, Kopp, LeDoux, and Kreiss-Tomkins were present at the call to order. Representative Stutes arrived as the meeting was in progress.

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

[2:50:50 PM](#)

CHAIR CLAMAN announced that the only order of business would be 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."

CHAIR CLAMAN referred to the hearing of 3/19/18 and noted that the committee considered Amendments 1-3; Amendment 1 was adopted and Amendments 2, and 3, failed to be adopted.

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REPRESENTATIVE EASTMAN referred to the discussion on one of the earlier amendments which was put to the side pending a legal interpretation on the question of fire fighters serving as police officers. He advised that Legislative Legal and Research Services confirmed that this could potentially be an issue and that no matter what the circumstances of (indisc.), that due to an officer status as a police officer the requirement would "kick in." He offered to share Legislative Legal and Research Services memorandum with the committee.

CHAIR CLAMAN advised Representative Eastman that he was welcome to share the memorandum with the committee, and asked whether Representative Eastman was prepared to move Amendment 4.

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REPRESENTATIVE EASTMAN commented that when the committee left off, he believed there was still open discussion on Amendment 2.

CHAIR CLAMAN pointed out that Amendment 2 failed by a vote of 2-5.

[2:53:06 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 4, labeled 30-LS1382\J.5, Radford, 3/16/18, which read as follows:

Page 3, lines 7 - 9:

Delete all material and insert:

"(b) A person may not set fires or use burning devices without a permit as prescribed by the commissioner in regulation."

REPRESENTATIVE KREISS-TOMKINS objected.

[2:53:11 PM](#)

REPRESENTATIVE EASTMAN advised that Amendment 4 states, as follows: "a person may not set fires or use burning devices without a permit as prescribed by the commissioner in regulation." He opined that that language matches the original intent, it is reasonable, and makes sure the prohibition is not overly broad, which was his main concern.

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CHRIS MAISCH, Director, Division of Forestry, Department of Natural Resources, advised that the Department of Natural Resources opposes Amendment 4 because it would curb the department's existing authorities that are "very important for us to have," rather than a broad definition because there are many different reasons fires can be set that may not be covered under "burning devices." For example, during timber harvest activities fires can be set by a "hot saw," which is a big saw on a piece of heavy equipment, that hit a rock, caused a spark, and started a fire. He noted that it is not defined as a burning device, but it set a fire, and other examples can include ATV's with hot mufflers and dry grass, or a lawnmower in the urban interface sparking rocks with its blades. This amendment would limit the ability for people to report these types of fires, he said.

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REPRESENTATIVE LEDOUX asked that if Sec. 7 is violated, is the person subject to criminal liability.

MR. MAISCH answered that it depends upon the circumstances, but a person could potentially be cited if the event was viewed as a negligent act under current law.

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REPRESENTATIVE LEDOUX offered concern that where there is actual criminal liability, the phrase, "or conduct other activities or use land that increases fire danger without a permit," appears to be somewhat broad. While she understands where Mr. Maisch is going when citing his examples, she said that she would be more comfortable if Mr. Maisch put those examples into Sec. 7. Representative LeDoux related that before someone is guilty of a crime, there actually should be something specific that says what a person cannot do under the law.

MR. MAISCH answered that it would be difficult to anticipate all of the potential reasons or uses of land that might cause a fire because the types of issues that can occur might be quite surprising. For example, he said, a compost pile started a fire a few years ago, which was a first in Alaska, and it would be basically impossible to anticipate the various causes and list them. Simply because someone is charged, he added, does not mean their due process rights are not in place to have a fair and impartial hearing on a charge.

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REPRESENTATIVE LEDOUX agreed that a person may have procedural safeguards after being charged, but there is nothing in place that advises them as to exactly what they can and cannot do, which bothers her, she commented.

MR. MAISCH replied that a lot of this is common-sense during fire season as to what can and cannot take place, and the person needs to think of their actions and the potential consequences of their actions. He referred to the education piece of this statute and the department is trying to educate the public as to safe burning practices. The department's statutes and regulations are structured toward that type of a safe burning program and educating people to basically be fire-wise during the fire season. Under AS 41.15.070, some specific examples are listed regarding lighted tobacco, cigars, cigarettes, matches, firecrackers, and other burning materials. He offered that "other burning materials" is a fairly generic and open-ended definition, but a lot of it is common sense.

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REPRESENTATIVE EASTMAN referred to Mr. Maisch's testimony that this is "already authority the department has," but in reviewing Sec. 7, it read that Sec. 7 is added as a new subsection. He noted that if the authority is already elsewhere, why is this new subsection necessary.

MR. MAISCH answered that he would have to look at the subsection ordering because he was unsure whether the subsection changed due to previous changes to the section. This section does currently exist, and subsection (b) is added to make clear the general types of activities that can cause a situation wherein the FPOs need a person to report a fire when it occurs. He described that it is actually about reporting and public safety. In the event a person starts a fire on their property by

accident and does not report the fire promptly, there can be some pretty serious consequences for their neighbors which includes, loss of homes and business infra-structure. Unfortunately, that has taken place several times in Alaska and it is all about reporting a fire when it starts.

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REPRESENTATIVE EASTMAN noted that the language being proposed is "increases fire danger," and asked what that means. He acknowledged that Mr. Maisch had offered examples of sparks and so forth, where a person might actually be starting a fire, but does "increases fire danger" mean that a fire is started, or exactly what does it mean.

MR. MAISCH responded that "increasing fire danger" is simply an action or activity during the wrong time, such as during a red flag warning. He used the example that a timber harvest operation will shut down because the danger is so high that it is likely their activities could spark a fire, "increased fire danger." He explained that it is the type of activity undertaken. Another example is agricultural burning, wherein a person wants to burn when it is safe to burn, and not when there is an increased danger from burning.

[3:01:48 PM](#)

REPRESENTATIVE EASTMAN asked whether Mr. Maisch would want to put language in there as a sideboard or some type of limitation. He related that the language now, "increases fire danger whenever" even if it is -30 degrees and someone is moving snow around on their property, or during red flag warnings, or it is fire season.

MR. MAISCH answered that this provision is during the legal fire season, April 1st through August 31st.

[3:02:43 PM](#)

REPRESENTATIVE EASTMAN asked where that information is located, and how is it known (indisc.) fire season.

MR. MAISCH answered that it actually mentions that without a permit as prescribed by the regulation, and the permits are required under AS 41.15.060.

REPRESENTATIVE EASTMAN commented that that did not answer his question.

CHAIR CLAMAN advised that Mr. Maisch had answered to the best of his ability.

[3:03:18 PM](#)

REPRESENTATIVE KOPP referred to the language currently written in the bill draft, and asked whether this is consistent with what the commissioner can do now through their authority. He referred to AS 41.15.050, which read as follows:

The period from April 1 to August 31, inclusive, of each year is designated the fire season. The commissioner may designate other periods as fire season. The commissioner may proclaim an additional period for all or any portion of the state when weather or other conditions require action for the protection of forested land. The commissioner may also, during the fire season, prohibit, or allow only by permit, the setting of fires, smoking, entry, or other use on the land, when, in the judgment of the commissioner, the activities would unduly increase the fire danger.

REPRESENTATIVE KOPP referred to AS 41.15.060, which read as follows:

The commissioner shall, by regulation, prescribe the conditions of and the manner for obtaining a permit. Failure to obtain the required permit, or violation of a condition of the permit is a misdemeanor.

REPRESENTATIVE KOPP explained that he was trying to distinguish how the language in the bill, and the two statutes differ.

MR. MAISCH explained that AS 41.15.050 sets the fire season and the other conditions he previously referenced. It differs from the proposed addition, in that that this subsection makes clear that a person needs to report a fire, for whatever cause, when it occurs. Subsection (b) makes clear that that is the case under CSHB 355, and that a permit is required at the same time a person undertakes any of those activities.

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REPRESENTATIVE EASTMAN commented that Mr. Maisch is asking the committee to take a "whole lot on faith" as to how this will be interpreted and applied by the state. He related that the language before the committee does not put the limitations that "any of us would find reasonable," as there is a requirement that in order for a person to use their land in any manner that might increase fire danger, they must obtain a permit. He described it as unrealistic and excessive on the part of government to require that of Alaskans, and it does not support the purposes intended.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

[3:06:17 PM](#)

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

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The committee took an at-ease from 3:06 p.m. to 3:08 p.m.

[3:08:15 PM](#)

CHAIR CLAMAN noted that certain members had previous appointments

[HB 355 was held over.]

[3:08:58 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:09 p.m.