

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 2, 2018

7:00 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

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

COMMITTEE CALENDAR

HOUSE BILL NO. 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."

- MOVED CSHB 355 (RES) OUT OF COMMITTEE

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
04/02/18	(H)	JUD AT 7:00 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, answered questions.

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 CSHB 355, answered questions.

ACTION NARRATIVE

7:00:13 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 7:00 p.m. Representatives Claman, Kopp, Stutes, Kreiss-Tomkins, and Eastman were present at the call to

order. Representative LeDoux arrived as the meeting was in progress.

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

[7:00:37 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." [Before the committee was CSHB 355(RES).]

CHAIR CLAMAN referred to the hearing on 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, and during the 2:21 p.m. meeting today, Amendment 4 failed to be adopted.

[7:01:32 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 5, labeled 30-LS1382\J.6, Bruce/Radford, 3/16/18, which read as follows:

Page 4, line 1:

Delete "knows of a fire or"

Insert "[KNOWS OF A FIRE OR]"

REPRESENTATIVE KREISS-TOMKINS objected.

[7:01:41 PM](#)

REPRESENTATIVE EASTMAN referred to Section 12, page 3, line 30 through page 4, line 3, which read as follows:

Sec. 12. AS 41.15.110 is amended to read:

Sec. 41.15.110(a). Uncontrolled spread of fire; leaving fire unattended. (a) A person who knows of a fire or sets a fire on forested land owned, possessed, or controlled by the person, shall exercise due care to prevent the uncontrolled spread of the fire.

REPRESENTATIVE EASTMAN commented that separating that language from someone who actually sets a fire or participates in setting a fire, it is appropriate they should exercise "all due care to prevent the uncontrolled spread of the fire." Except, he

questioned how the legislature can legally require a person who receives an alert on their iPhone that there is a fire on their property across the state to prevent the uncontrolled spread of the fire. In the event a person sets a fire, then they own the fire and are responsible for the fire, but if someone else sets the fire (indisc.) be responsible for making sure that fire does not spread in an uncontrolled manner.

[7:03:38 PM](#)

REPRESENTATIVE KOPP referred to Representative Eastman's example, that if a person becomes aware of a fire on land owned by them that is across the state, his read is that the person's knowledge of that fire requires that the person has to be in control of the land. He asked whether the person is actually in control of the land if they are not directly at the fire in person. He then referred to the term "due care" wherein the landowner notified someone that they were not present to observe the fire but were aware of the fire, and asked whether in Representative Eastman's mind, "due care" would be carried out if the person notified the fire control authorities in the area or any other emergency authority.

REPRESENTATIVE EASTMAN answered that Representative Kopp "was not quite catching the meaning of the language before." He noted that [page 4, lines 1-2] read: "forested land owned, possessed, or controlled", and Representative Kopp was "just reading 'or' into an 'and' there," meaning that if it was controlled by a person, then they should be doing certain things. Actually, he said, it is saying that if the land is "just owned by you, controlled by someone else, or whatnot," the language before the committee is that the person still has every bit of the responsibility of someone who either possesses or controls "that." He opined that "and" would be preferable reading because there is a natural logic that goes from that [language]. He reiterated that "owned, possessed, or controlled" is expansive.

CHAIR CLAMAN stated that for purposes of this amendment, there is no language changing "owned, possessed, or controlled" to "owned, possessed, and controlled". The simple question is whether to adopt this amendment with the language "owned, possessed, or controlled", he pointed out.

REPRESENTATIVE EASTMAN reiterated that if the discussion is about exercising "due care" for someone setting the fire, it makes perfect sense. Although, he said, Representative Kopp's

question was more about, what is the due care for someone who simply knows about a fire that is not under their control. This discussion is about a heating fire, for example, and "you might not have anything to do with it other than the fact that you heard about it, or whatnot," he asked, what is the due care at that point because calling 911 would not necessarily be appropriate, he said.

[7:07:21 PM](#)

REPRESENTATIVE KOPP commented that "due care" in the language alleviates the concern of the maker of this amendment because "due care" is a term used to describe the basic speed rule, which is any time a person is driving faster than the conditions permit, such as weather and snow, sleet, or fog limiting visibility, and so forth. A person can drive under the speed limit and still be in violation of the basic speed rule because the person was not exercising "due care." He further explained that "due care" is a term law enforcement uses when citing people for being responsible in some manner for creating a dangerous circumstance. He offered that after listening to the amendment maker and due care, if someone was aware of a heating fire on property they owned, possessed, or controlled, that person is not exposing themselves to liability unless the person believed the heating fire was somehow not attended or had the possibility of becoming dangerously expansive quickly. He related that the manner in which the language is written, the amendment maker's concern is met by the way it is read in context.

[7:09:06 PM](#)

REPRESENTATIVE KREISS-TOMKINS acknowledged that his question did not relate directly to Amendment 5, but in looking at AS 41.14.110, CSHB 355 removes all of the "if such and such person does this, they are guilty of a misdemeanor" language, and asked what Sec. 41.15.110 does in that case.

CHRIS MAISCH, State Forester, Division of Forestry, Department of Natural Resources, asked Representative Kreiss-Tomkins to repeat his question regarding the current AS 41.15.110 and leaving a fire unattended.

REPRESENTATIVE KREISS-TOMKINS pointed out that AS 41.15.110(a) and (b) lay out, "if you do this or you do that, you are guilty of a misdemeanor," and CSHB 355 eliminates the "you're guilty of a misdemeanor" language, and it appears to simply create

definitions. He related that he is trying to understand what AS 41.15.110 does if CSHB 355 passes.

MR. MAISCH responded that those sections as to the type of penalties are addressed later in the new version of CSHB 355. He explained that it updates all of the statutes to establish a bail schedule as well as misdemeanor and felony offenses, which is why it is struck, at this point, in the language.

[7:11:29 PM](#)

REPRESENTATIVE KREISS-TOMKINS said that given the language Representative Eastman is homing in on and the scenario he described relating to the language in Amendment 5, he asked whether his colleagues have encountered a scenario where someone knows of a fire, but isn't reasonably responsible by any common-sense definition, but the person then becomes criminally liable for that fire.

MR. MAISCH answered that he is not aware of a scenario described by Representative Kreiss-Tomkins.

[7:12:14 PM](#)

REPRESENTATIVE LEDOUX noted that when she first looked at Amendment 5, she thought it was with regard to some sort of liability on a person who had no connection with the property, and failed to report. She pointed out that under Alaska criminal law, unless someone has a duty to someone or something, the state generally does not make them liable if they are irresponsible and do not care to report it to the police or the fire department. Except, she since realized that it only relates to land "owned, possessed, or controlled" by the person, it makes sense to her that those people would have a duty to use common sense. She said she will not support Amendment 5.

[7:13:29 PM](#)

REPRESENTATIVE EASTMAN opined that the committee is reading that it is about some type of dangerous fire, or likely to be dangerous fire, or uncontrolled fire, and it is not simply dealing with the existence of a fire. In the event the discussion is about an uncontrolled fire, there should be a duty of care to deal with the fire if it is on a person's property. Except, he said, this is simply talking about the fact that it is a plain fire and the person, by implication, did not start the fire or have any part in starting the fire. He said he is

not supportive of attaching criminal liability in that situation.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

[7:14:14 PM](#)

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

[7:14:53 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 6, labeled 30-LS1382\J.7, Bruce/Radford, 3/16/18, which read as follows:

Page 4, lines 16 - 17:
Delete ", investigate,"

REPRESENTATIVE KREISS-TOMKINS objected.

[7:15:07 PM](#)

REPRESENTATIVE EASTMAN turned to [CSHB 355] Sec. 13. [AS 41.15.120, page 4, lines 15-21], and explained that this provision deals with "failure to assist in preventing or suppressing fires," and he paraphrased the current language as follows:

If an officer or employee of the United States or the state who is authorized to prevent or suppress fires requests a person to assist in the prevention or suppression of a fire and informs the person of the officer or employee's official status, and the person fails to assist the officer or employee in the performance of duties, the person is guilty of a misdemeanor.

REPRESENTATIVE EASTMAN noted that if someone is not authorized to prevent and suppress fires, those individuals should not be added to the list of people who have authority to order a person to do something and the person becomes criminally liable if they do not do what was ordered, he said. For someone who cannot prevent and suppress fires and ordering someone to help them prevent and suppress fires is "a little bit of a leap," he described.

7:17:20 PM

REPRESENTATIVE LEDOUX asked Mr. Maisch whether, under current law, he could request someone who had nothing to do with the starting of the fire to assist.

MR. MAISCH responded that under current law, one of his fire staff could make a request of someone to help, such as call 911 to report the fire, while the fire prevention officer (FPO) undertakes suppression action. All of his officers do have the authority to suppress and control fires in addition to investigate, he advised.

7:18:23 PM

REPRESENTATIVE LEDOUX asked, "So, is that normal?" She then asked Representative Kopp that during the time he was a law enforcement officer, whether a bystander could be arrested if they refused to abide by the officer's instructions, even if they had nothing to do with the crime. She commented that that is not how she thought Alaska's laws worked.

REPRESENTATIVE KOPP answered yes, it is called a failure to respond to request for assistance at the direction of a uniformed police officer. He advised that it is actually a misdemeanor offense to fail to respond to that request, and it has been a while since he read that section of law but it has been on the books for many decades. In response to the immediacy of need for help, he emphasized that law enforcement is a collective societal responsibility and there are times when all hands-on decks are necessary to safely bring a situation to a safe resolution. Personally, he never used that provision, and he commented that by adding the term "investigate," the discussion is definitely about uniformed and badged deputy fire marshals or fire marshals who are sworn peace officers. By having "them in there" indicates that it is logically consistent with Title 11, in that if the urgency of suppressing that fire required immediate assistance from the person who started the fire, there could be criminal liability attached to the person for failing to supply that assistance. The law has always recognized the defense of a person being physically unable or other issues that can cause a person to be immune from prosecution, he said.

7:21:29 PM

CHAIR CLAMAN offered a real-world example wherein the Twin Creeks Fire on Kodiak Island picked up and started racing into forested lands owned by the Kodiak Island Borough. A timber harvesting operation was working on Kodiak Island at the time and the fire folks immediately contacted the harvesters requesting assistance. The harvesting operation stopped to provide equipment in mobilizing the firefighters because it was one of the few sources on Kodiak Island that had any type of equipment available to respond. To the extent the operation incurred costs, it went back later and requested reimbursement, but this company pretty much stopped everything to fight the fire.

7:22:26 PM

REPRESENTATIVE LEDOUX offered that in civil tort liability, there is absolutely no obligation to help someone, and a person will never be civilly liable for failure to assist someone even if the assistance is simply making a telephone call.

REPRESENTATIVE KOPP commented that he will never argue civil tort liability, but for many years now in criminal law, failure to report a violent crime against an adult or a child and having the knowledge of the crime or that it was ongoing, exposes a person to misdemeanor penalties.

7:23:38 PM

REPRESENTATIVE LEDOUX opined that that was only if the person had a duty to the person, for example a doctor, because there are certain mandatory reporters. She asked, under criminal law, "would the word 'investigate' be in there?"

REPRESENTATIVE KOPP reiterated that he has not read that statute in a while and he would have to read it again, but that is one of things police officers do, they investigate. When he looks at the term "investigate," he said it elevates this above a normal fire service officer (FPO) who is there to either prevent or suppress the fire. "Investigation" rapidly gets into the criminal arena, and he said he guesses that "you are insinuating the law enforcement function there, and that is why you are also consistent with the Title 11 directive." He commented that he would like to know if his understanding is correct.

CHAIR CLAMAN commented that a question raised by this conversation is actually whether adding the term "investigate" makes it a narrower class of people that can exercise authority

to give orders, or whether it makes it a broader class of people. He noted that this amendment seeks to remove the word "investigate."

REPRESENTATIVE LEDOUX pointed to the word "or" and said it would not narrow the class of people.

[7:25:31 PM](#)

AARON PETERSON, Assistant Attorney General, Fish & Game Section, Office of Special Prosecutions, Criminal Division, Department of Law (DOL), responded that Representative LeDoux was correct wherein the "or" offsets "investigate" from prevents or suppress and it would add the class of responders investigating separate from prevent or suppress fires. In the event the responders only had authority to prevent fires, for example, they would have the same authority under this statute as someone who only had the authority to suppress or to investigate. The FPOs have the ability and, in fact the duty, to perform all three functions, he advised. The purpose behind this is that the FPOs rely on the public's cooperation when trying to determine whether a fire exists. He offered a hypothetical that the FPOs believed there was smoke located in a certain area, except the only entrance to reach the area was blocked by a truck sitting across the road. The FPOs asked the person to move their truck so they could get to the fire, and he offered that the person has a duty to move their truck in that circumstance. Obviously, he said, without a law creating a duty, the person may simply say that they are parked there and to give them a traffic ticket because they would not move their truck.

[7:27:22 PM](#)

REPRESENTATIVE LEDOUX referred to circumstances involving the police officer that Representative Kopp discussed, and asked whether under Title 11, criminal liability would attach if someone refused to help someone in an investigation.

REPRESENTATIVE LEDOUX, in response to Chair Claman, answered that she is interested in any investigation.

MR. PETERSON referred to AS 11.56.720, Refusal to assist a peace officer or judicial officer, which read as follows:

- (a) A person commits the offense of refusing to assist a peace officer or judicial officer if, upon a request, command, or order by someone the person knows

to be a peace officer or judicial officer, that person unreasonably fails to make a good faith effort to physically assist the officer in the exercise of official duties.

(b) A person who, without expecting compensation, assists a person in accordance with this section is not liable for civil damages as a result of an act or omission in rendering that assistance. This subsection does not preclude liability for civil damages as a result of reckless, wilful, wanton, or intentional misconduct.

(c) Refusing to assist a peace officer or judicial officer is a violation.

MR. PETERSON explained that this law creates the duty to respond appropriately to a request from law enforcement, in their official capacity, to make a good faith effort and physically assist the officer if necessary. He then referred to subsection (b) and advised that it bars civil liability. He offered that there is an axiom of criminal law that someone has to perform an affirmative act or omit to do something they are required to do by law before criminal liability can attach. He said that AS 41.15.120 has, for decades, created that duty for folks to respond appropriately to an officer's request for prevention and suppression of fires, and this would add in those that are investigating.

[7:30:01 PM](#)

REPRESENTATIVE LEDOUX asked how Mr. Peterson sees this playing out as to what additional authority the word "investigate" adds, and where it comes into play.

MR. PETERSON answered that Mr. Maisch previously advised that that the FPOs already have authority to prevent and suppress, and he would have to ask Mr. Maisch whether folks in forestry are solely authorized to investigate. Inasmuch as the discussion is about folks with only the authority to investigate, he referred to his previous hypothetical about the investigators needing to check a certain area of land but it was barricaded off. Barriers, he related, are erected because someone does not want the FPOs coming onto their land, except it would be necessary in that case to determine where the forest fire was headed, where the fire started, or whether there was a forest fire at all, he pointed out. Any situation imaginable

where someone is preventing fire investigators from being able to do their job and determine what is going on with the fire would fall under this category, he advised.

[7:31:49 PM](#)

REPRESENTATIVE LEDOUX offered a scenario where the location fire was known and the FPOs were simply investigating for purposes of who may have started the fire. She related that her scenario did not appear to be something where all hands-on deck would be necessary.

MR. PETERSON asked whether her question was, for example, that after the fact, a fire investigator tried to come onto someone's land to request the landowner's help in determining what took place here.

REPRESENTATIVE LEDOUX answered yes, that is what she was asking.

MR. PETERSON submitted that when statutes are read, no word is read in isolation, "a thing is known by those around it." He opined that when reading this section in whole, under Title 41, it applies to FPOs, Division of Forestry, fire investigators who are in the early stages of their response to a forest fire or potential forest fire, and this discussion is about the potential forest fire. He commented that he did not think that under the constitution the legislature could say that everyone contacted by an investigator must assist regardless of the stage of that investigation. He advised that this is very much in line with the rest of the statute, and it is very much talking about FPOs and the Division of Forestry responding to fires in the early stages of potential fires.

[7:34:19 PM](#)

CHAIR CLAMAN offered a practical example wherein the source of the reported smoke was somewhat uncertain, which caused concern that a fire might be starting and they wanted to determine the reason for the smoke before it became a forest fire. The question then becomes whether those fire investigators have the authority to request assistance during that initial investigation in determining whether there is a fire. Also, specifically for the purposes of this amendment, he asked whether the committee prefers "to not have people that investigate included amongst the description of people who can make the requests."

REPRESENTATIVE LEDOUX remarked that she re-read this section again and while it adds "investigate" to the people who are authorized to prevent, investigate, or suppress, it is very clear that the officers need to request a person to assist in the prevention or suppression of a fire. As opposed, she continued, to assist in the prevention, suppression, or investigation of a fire. She said, "I'm actually happy," and she does not support Amendment 6.

[7:35:59 PM](#)

REPRESENTATIVE EASTMAN commented that adding "investigate" is pointless because it would not affect the FPOs who can already prevent or suppress, and the discussion is about preventing the possibility of fires. He opined that the committee is "back-dooring what we already dealt with in a previous amendment about going onto somebody's land because now we're giving you the obligation to help them with preventing a future fire." He commented that that appears to be a little more than what is being discussed regarding the "investigate" part, and logically it doesn't follow that someone who can only investigate will require someone to help them in preventing or suppressing a fire when they are not authorized.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

[7:37:05 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of the adoption of Amendment 6. Representatives LeDoux, Kreiss-Tomkins, Kopp, Stutes, and Claman voted against it. Therefore, Amendment 6 failed to be adopted by a vote of 1-5.

[7:37:39 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 7, labeled 30-LS1382\J.8, Bullard/Radford, 3/16/18, which read as follows:

Page 3, line 16:

Delete "A"

Insert "Except as provided in AS 41.15.130, a
[A]"

Page 4, lines 22 - 27:

Delete all material and insert:

"* **Sec. 14.** AS 41.15.130 is amended to read:

Sec. 41.15.130. Backfires and burnouts excluded.
AS 41.15.010 - 41.15.040 and 41.15.050 - 41.15.170
[AS 41.15.010 - 41.15.170] do not apply to the setting
of

**(1) backfires and burnouts and other burning
or clearing of land** [A BACKFIRE] under the direction
of an officer or employee of the United States or the
state who is authorized to prevent or suppress fires;
or
**(2) a backfire by a person on land owned by
the person.**"

CHAIR CLAMAN objected for purposes of discussion.

[7:37:47 PM](#)

REPRESENTATIVE EASTMAN referred to Section 14, page 4, lines 22-27, and noted that the discussion is of backfires and burnouts, and basically an exemption on lines 24-27, which read as follows:

do not apply to the setting of **backfires, burnouts,
and other burning or clearing of land** [A BACKFIRE]
under the direction of an officer or employee of the
United States or the state who is authorized to
prevent or suppress fires.

REPRESENTATIVE EASTMAN stated that the legislation neglected to include and authorize the landowner to set a backfire to prevent their property, or neighboring properties, from being burned and possibly propagating a forest fire.

[7:39:11 PM](#)

REPRESENTATIVE LEDOUX requested a description of a backfire and burnout.

MR. MAISCH responded that backfires and burnouts are fires the fire suppression crew members actually set in order to burnout the unburned fuel between an advancing fire and a constructed control line. A natural feature, such as a river or a road, will burnout the fuel in front of the fire's approach to lessen its impact when it hits the control line. He explained that it makes it easier for the officers to defend that control line and safer for the fire fighters in that process.

[7:40:01 PM](#)

CHAIR CLAMAN asked the impact of this proposed amendment on the immunity statute.

MR. MAISCH answered that "this change" makes clear that the discretionary immunity statute does pertain to backfires and burnouts, and "burnout" is a new term added into this piece of legislation. Under the current statute, it begins, "Notwithstanding other provisions of law" which is where the section regarding discretionary immunity is located. He advised that the state successfully defended the current statute in a recent case and the Brewer and the Miller Reach fires both spoke to this point, but this change makes it absolutely clear that it does pertain.

CHAIR CLAMAN asked Mr. Peterson whether he would like to add to the testimony of Mr. Maisch.

MR. PETERSON answered that Mr. Maisch covered it and if that answered the question, he is content to rely upon Mr. Maisch's answer.

[7:41:40 PM](#)

CHAIR CLAMAN asked whether the administration opposes Amendment 7.

MR. MAISCH responded that the Department of Natural Resources (DNR) does oppose the amendment.

CHAIR CLAMAN asked Mr. Maisch to explain the reason for its opposition.

MR. MAISCH replied that it would be rare for a private individual to have the proper training and knowledge to actually safely set their own burnout or backfire, and it could cause safety problems for the fire fighters who are not aware that a fire might be behind them when they are in front of the fire working. He related that it could also cause damage to private homes or businesses which would then be an additional consequence for that untrained individual to perform that type of control. Therefore, he said, DNR opposes Amendment 7.

[7:42:40 PM](#)

REPRESENTATIVE EASTMAN commented that in this particular situation, the discussion is solely about private property

rights and someone using their own private property to aid themselves and their community in preventing their property from spreading a wildfire. In that situation, he said, the committee would be wrong in making someone criminally liable when not allowing them to act in their own best interests. Also, he related, there are recent news stories where this not being in statute was used against ranchers to their detriment and to "ours as well."

CHAIR CLAMAN maintained his objection.

[7:43:38 PM](#)

A roll call vote was taken. Representatives Kopp, LeDoux, and Eastman voted in favor of the adoption of Amendment 7. Representatives Stutes, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 7 failed to be adopted by a vote of 3-3.

[7:44:08 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 8, labeled 30-LS1382\J.9, Bullard/Radford, 3/16/18, which read as follows:

Page 1, line 3, following "land;":

Insert **"providing that a person may be arrested only for a misdemeanor or felony violation of certain statutes and regulations protecting forested land;"**

Page 6, line 14, following "chapter":

Insert **"punishable as a misdemeanor or felony"**

REPRESENTATIVE KREISS-TOMKINS objected.

[7:44:14 PM](#)

REPRESENTATIVE EASTMAN explained that Amendment 8 makes clear that when discussing an arrest, it is only for a misdemeanor or a felony, rather than a citation. The legislature does not want the state's fire service officers "to be known or to be threatening to other people, or to have other people perceive them in any other way than they are," he said.

[7:45:52 PM](#)

CHAIR CLAMAN asked Mr. Peterson whether issues may be raised as to Amendment 8.

MR. PETERSON answered that Amendment 8 might raise some confusion because the text of the amendment says that a person may be arrested only for "insert: punishable as a misdemeanor or felony." Therefore, he said, if this were to be adopted, many of the offenses under Title 41 would be punishable either as a strict liability violation if there was no mental state, and a misdemeanor if there was a culpable mental state. He pointed out that under a broad reading, it could be read to mean that a violation punishable as a misdemeanor due to a culpable mental state, if it were charged that way, could give rise to an arrest, where there is not going to be an arrest for a violation because there is no possibility of incarceration. He advised that he does think Amendment 8 could muddy the waters and lead to some confusion, wherein there is otherwise a pretty clear-cut delineation between strict liability violation and a misdemeanor based on mental state.

[7:47:29 PM](#)

CHAIR CLAMAN requested a description of a setting in which an officer may need to arrest a person based on a violation that does not carry any potential for jailtime where they would still nevertheless believe there was a need for arrest.

MR. PETERSON answered that he could not describe that setting because a person would not be arrested on a violation.

MR. MAISCH remarked he concurred with Mr. Peterson's statement.

[7:48:38 PM](#)

REPRESENTATIVE LEDOUX opined that by the very nature of a citation a person cannot be arrested, which is the difference between a citation and a misdemeanor or felony.

CHAIR CLAMAN commented that the testifiers had confirmed Representative LeDoux's view.

[7:49:11 PM](#)

REPRESENTATIVE KOPP asked to hear clearly from the Department of Law (DOL) whether Amendment 8 makes it more or less confusing for law enforcement.

MR. PETERSON responded that Amendment 8 makes it more confusing, in his opinion, because it could give rise to someone thinking

"this could be punishable as a misdemeanor. I'm charging it as a violation, which I can't arrest for, but it could be punishable as a misdemeanor, so I can arrest." He verified that Amendment 8 would cause confusion which otherwise would not exist.

[7:50:03 PM](#)

REPRESENTATIVE EASTMAN related that the discussion is that officers now have the ability to arrest a person who violates a provision of this chapter, and that (indisc.) not confusing. In the event a person violated a provision of this chapter, the authority has been given that the person may be arrested. He opined that if that is not the committee's intention, it should be changed and not give the public the apprehension that they could be arrested for violating a provision of this chapter. Amendment 8 was created to make it clear in some manner, he said.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

[7:51:12 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of the adoption of Amendment 8. Representatives Kopp, Stutes, LeDoux, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 8 failed to be adopted by a vote of 1-5.

[7:51:43 PM](#)

CHAIR CLAMAN ruled that Amendment 9, labeled 30-LS1382\J.10, Radford, 3/16/18, rolls Amendments 2-8 into a single amendment, and because the committee previously reviewed all of the issues in failed Amendments 2-9, he ruled Amendment 9 out-of-order.

[7:51:59 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 10, labeled 30-LS1382\J.11, Radford, 3/16/18, which read as follows:

Page 1, line 2:
Delete "**forested**"
Following "**land**":
Insert "**with inflammable material**"

Page 1, line 3:
Delete "**forested**"

Following "land":
Insert "**with inflammable material**"

Page 2, line 6:
Delete "**forested**"
Following "land":
Insert "**with inflammable material**"

Page 2, line 26:
Delete "forested"
Insert "[FORESTED]"
Following "land":
Insert "**with inflammable material**"

Page 3, line 13:
Delete "forested"
Insert "[FORESTED]"
Following "land":
Insert "**with inflammable material**"

Page 3, line 17:
Delete "**forested**"
Following "**land**":
Insert "**with inflammable material**"

Page 3, line 22:
Delete "forested"
Following "land":
Insert "with inflammable material"

Page 3, line 26:
Delete "**forested land** [TIMBER, BRUSH, GRASS,] or
other"
Insert "[TIMBER, BRUSH, GRASS, OR OTHER]"

Page 4, line 1:
Delete "forested"
Insert "[FORESTED]"
Following "land":
Insert "**with inflammable material**"

Page 4, line 7:
Delete "forested"
Insert "[FORESTED]"
Following "land":
Insert "**with inflammable material**"

Page 5, line 5:
Delete "**forested**"
Following "**land**":
Insert "**with inflammable material**"

Page 5, line 6:
Delete "forested"
Following "land":
Insert "with inflammable material"

Page 5, line 10:
Delete "forested"
Following "land":
Insert "with inflammable material"

Page 5, line 13:
Delete "**forested**"
Following "**land**":
Insert "**with inflammable material**"

Page 5, line 14:
Delete "forested"
Following "land":
Insert "with inflammable material"

Page 5, lines 19 - 20:
Delete "forested land or other flammable"
Insert "land with inflammable"

Page 5, line 21:
Delete "forested land or other flammable"
Insert "land with inflammable"

Page 5, line 23:
Delete "forested"
Following "land":
Insert "with inflammable material"

Page 6, following line 5:
Insert a new paragraph to read:
 "(6) "inflammable material" means material
that is combustibile and easily set on fire."

Renumber the following paragraph accordingly.

REPRESENTATIVE KREISS-TOMKINS objected.

7:52:10 PM

REPRESENTATIVE EASTMAN explained that Amendment 10 deals with the current failure in Alaska Statutes as to the definition of "forested land." When any member of the public, he advised, sees the words "forested land," they have a general understanding that the phrase probably involves some type of trees, large bushes, and timber. He said that the definition of "forested land" used in CSHB 355, has nothing to do with trees. For example, the current definition of "forested land" would qualify regarding water and land under water, a kelp patty, and a tide moving out to sea, he said. The intent of the use of "forested land" in CSHB 355, is about flammable material. The amendment language, he related, is more specifically about land containing flammable material, it makes the intention clear, and it would bring the public along with that intention.

7:54:35 PM

REPRESENTATIVE KREISS-TOMKINS asked whether there are other instances in which an overly broad definition of "forested lands" has been problematic.

REPRESENTATIVE EASTMAN responded that this bill expands what fire service individuals can and should do, which is fine, but it is in the context of those individuals' perspectives and the public is not necessarily thinking in those terms. Whereas, fire service individuals think more about what can burn, how quickly it can burn, the fuel load on a particular piece of land, and so forth. He acknowledged to Representative Kreiss-Tomkins that he is not aware of what would normally be considered "forested land" being abused or misused. He offered that he is "keying in on ... the old, very tailored definition of forested land," and applying it to this more expansive manner, which will potentially cause new issues going forward with enforcement and educating the public.

7:56:57 PM

REPRESENTATIVE KREISS-TOMKINS asked Mr. Maisch his thoughts on the proposed definition.

MR. MAISCH responded that "forested land" is defined under AS 41.15.170(3), which read as follows:

- (1) "damages" includes costs incurred in suppressing, controlling, or extinguishing a fire;

(2) "forested land" includes all land on which grass, brush, timber, and other natural vegetative material grows;

(3) "forest fire" includes the uncontrolled burning of grass, brush, timber, and other natural vegetative material.

MR. MAISCH explained that "other natural vegetative material" is key because it is difficult to predict what type of vegetative material might actually be flammable and carry a fire. He noted that "inflammable" is a confusing term to the lay person, and in fact the National Fire Protection Association (NFPA) stopped using that term in the 1920s, and instead uses the term "flammable" as opposed to "inflammable." He advised that the department opposes this definition change.

[7:58:22 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that use of inflammable caught him off guard and he could see how it would cause great confusion.

[7:58:45 PM](#)

REPRESENTATIVE KOPP commented that Title 41 is Public Resources, and Chapter 15 is titled "Forests," which is about managing forests and contracting for the care of this resource. The use of the term "forested" is consistent within the statute, and he opined that for the person reviewing the law, it is internally consistent because its heading and intent deals with management of state forests on public lands. He noted that "we could be" unintentionally changing language that could make it not consist with what the law was written for in the first place.

[7:59:52 PM](#)

CHAIR CLAMAN offered curiosity as to the 1920s use of "inflammable" material, and if one had a gas can sitting in a vacant lot, that probably fits the definition of "inflammable material." Except, when looking at forested land, which has some requirement of vegetative growing material, it would be different than fighting forest fires, so he has trouble with the amendment, he said.

[8:00:29 PM](#)

REPRESENTATIVE EASTMAN referred to the requirement of natural vegetation and said that it takes away from what the committee is trying to accomplish. For example, say someone stacked up all sorts of flammable material that is not naturally vegetative, this does not fall into the definition of "forested land." Land that is not flammable, that has no risk of being flammable in the near future, is being called "forested land." Which, he said, is what the request is designed to get away from because if there is really no chance of it burning, the public should not be calling it "forested land."

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

[8:01:26 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of the adoption of Amendment 10. Representatives Kreiss-Tomkins, Kopp, Stutes, LeDoux, and Claman voted against it. Therefore, Amendment 10 failed to be adopted by a vote of 1-5.

CHAIR CLAMAN then brought CSHB 355 back before the committee for discussion.

[8:02:15 PM](#)

REPRESENTATIVE KOPP referred to the 3/14/2018 letter of strong support from the Kenai Peninsula Borough Mayor's Office [contained within the committee packets] and reminded the committee that that borough has suffered a significant rash of wildfires. He went on to describe that the committee discussed some good policy calls, and that perhaps in the next committee of referral, the definition of who a person has a duty to disclose they are carrying a firearm can be fine-tuned. He added that if that committee is able to work in the phrase "sworn law enforcement," that phrase will make the legislation explicitly clear that there is a duty to [disclose to] those uniformed and badged deputy fire marshals or fire marshals who are sworn peace officers. He acknowledged that this committee does not have to address every issue, the above issue is good issue to highlight, and this legislation will have good work put to it as it moves forward.

[8:03:39 PM](#)

REPRESENTATIVE KREISS-TOMKINS moved to report CSHB 355, labeled 30-LS1382\J, as amended, out of committee with individual

recommendations and the accompanying fiscal notes. There being no objection, CSHB 355(JUD) moved from the House Judiciary Standing Committee.

8:04:35 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 8:04 p.m.