

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 28, 2018

1:03 p.m.

MEMBERS PRESENT

Representative Andy Josephson, Co-Chair
Representative John Lincoln, Vice Chair
Representative Harriet Drummond
Representative Justin Parish
Representative Chris Birch
Representative DeLena Johnson
Representative George Rauscher
Representative David Talerico

MEMBERS ABSENT

Representative Geran Tarr, Co-Chair
Representative Mike Chenault (alternate)
Representative Chris Tuck (alternate)

COMMITTEE CALENDAR

PRESENTATION(S): ALASKA MINERALS COMMISSION

- HEARD

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

WITNESS REGISTER

LANCE MILLER PhD., Chair
Alaska Minerals Commission
Division of Economic Development
Department of Commerce, Community & Economic Development; Vice
President, Natural Resources
NANA Regional Corporation
Anchorage, Alaska

POSITION STATEMENT: Co-provided a PowerPoint presentation
entitled, "Alaska North to Opportunity Report of the Alaska
Minerals Commission," dated January 2018.

ROB RUTHERFORD, Member
Alaska Minerals Commission
Division of Economic Development
Department of Commerce, Community & Economic Development; Owner
Alaska Earth Sciences
Anchorage, Alaska

POSITION STATEMENT: Co-provided a PowerPoint presentation
entitled, "Alaska North to Opportunity Report of the Alaska
Minerals Commission," dated January 2018.

REPRESENTATIVE DAVID GUTTENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor, introduced HB 355.

JOHN "CHRIS" MAISCH, State Forester; Director
Division of Forestry
Department of Natural Resources
Fairbanks, Alaska

POSITION STATEMENT: Testified in support during the hearing of
HB 355.

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

POSITION STATEMENT: Answered questions during the hearing of HB
355.

ACTION NARRATIVE

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CO-CHAIR ANDY JOSEPHSON called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Josephson, Birch, Drummond, Johnson, Parish, Rauscher, Talerico, and Lincoln were present at the call to order.

PRESENTATION(S): ALASKA MINERALS COMMISSION

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CO-CHAIR JOSEPHSON announced that the first order of business would be a presentation by the Alaska Minerals Commission.

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LANCE MILLER PhD., Chair, Alaska Minerals Commission (AMC), Division of Economic Development, Department of Commerce, Community & Economic Development, informed the committee he works for NANA Regional Corporation.

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ROB RUTHERFORD, Member, AMC, informed the committee he is the owner of Alaska Earth Sciences, which is a consulting firm to the minerals and energy industries.

DR. MILLER introduced a PowerPoint presentation entitled, "Alaska North to Opportunity Report of the Alaska Minerals Commission." He pointed out all the members of the commission are appointed thus the commission is not a trade group. Further, seats on the commission are dispersed by region and industry, in order to provide broad coverage of the industry and its related issues. The current report covers the past year and the membership of the commission has changed (slides 1 and 2).

MR. RUTHERFORD added the role of the commission is primarily to look for constraints, or other problems that address the minerals system, and to support the efforts of the legislature and state agencies (slide 1).

DR. MILLER said the topics for discussion would be AMC's top priority, state priorities, federal priorities, and an industry overview of projects (slide 3). The first priority is the establishment of a stable state fiscal policy, which is needed so that businesses can attract capital for long-term investment in the industry, and upon which is based AMC's recommendations for action (slide 5).

MR. RUTHERFORD stressed all industries need consistency in policies with a long-term view toward issues such as taxes and permitting.

DR. MILLER continued to the second priority: reallocate portions of the state mining license tax to communities, while precluding targeted local severance taxes. He explained communities need to feel they are benefitting from development within their jurisdiction, and this can be accomplished by [the mining] company, or by returning some of the money collected in mining license taxes to a community impacted by development, thereby avoiding local severance taxes (slide 6).

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MR. RUTHERFORD said the third priority is to urge for strong legislative support for the minerals industry and for state agencies. He said the Department of Environmental Conservation (DEC), the Department of Natural Resources (DNR), and other agencies, have excellent staff and services. Further, AMC urges the administration to let large companies know Alaska is open to business (slide 7).

REPRESENTATIVE JOHNSON directed attention to the fourth priority and read as follows [original punctuation provided]:

Encourage the Governor's Administration to challenge ballot initiatives that seek to regulate natural resource development

REPRESENTATIVE JOHNSON asked whether AMC has taken a position on [HB 199, introduced in the Thirtieth Alaska State Legislature].

DR. MILLER explained AMC believes the [Yes for Salmon ballot initiative] to be detrimental to all rural economic development. He said AMC applauds the administration for its challenge of said initiative, and questions whether the initiative process is the correct approach for making natural resource policy decisions, instead of the state relying on state agencies and staff (slide 8).

CO-CHAIR JOSEPHSON advised a change in the initiative process requires changes to the Alaska State Constitution.

DR. MILLER agreed, and continued to the fifth priority: address key state regulations governing water use. He said a waterway designated as Tier 3 water quality - which is a waterway with no

degradation whatsoever - should be recommended by agencies, but designated by the legislature, in order to "take it out of the hands of other special interest groups"; similarly, instream flow reservations for water should be granted to the State of Alaska and not to a nongovernmental agency, or to a private interest group, because this is an appropriation of state resources (slide 9).

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MR. RUTHERFORD remarked:

... it's a balance. Obviously, at times industry has to be constrained, so if we wanted a[n] ... instream flow restriction, then we could apply for one, but as a balancing act, it seems like the agencies should be the ones who have the final say.

CO-CHAIR JOSEPHSON recalled public opposition prevented the passage of [HB 77, introduced in the Twenty-Eighth Alaska State Legislature].

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DR. MILLER pointed out the U.S. Environmental Protection Agency (EPA) is directing the state to formulate specific water quality standards for about 96 elements and chemicals; national human health criteria limit the amount of fish that can be consumed per day to about 6.5 grams of fish, including salmon. He explained metals end up in fish, and salmon and marine mammals are included in the amount of fish that can be consumed, although salmon live much of their lives in saltwater, which may make an influence on the metal intake of mammals and fish. He remarked:

... what it could mean to water quality is that ... if you higher the consumption rate of the fish you intake ... if you go by these specific criteria, for the amount of, say selenium, then you're going to have to lower ... the detection limits for the water quality standards, O.K? It basically may make it impossible to, to permit a wastewater treatment plant.

DR. MILLER advised he brought the issue to the committee's attention because it is intertwined with the [water] antidegradation issue.

MR. RUTHERFORD urged for the committee to regard opinions from DEC staff on this issue.

DR. MILLER added, "The human health criteria are really intended to protect the public from chemical uptake through drinking water, fish consumption, and other exposure routes for waterborne chemicals. And the focus has been on fish consumption."

REPRESENTATIVE JOHNSON surmised fish absorb more metals in the ocean and questioned whether this has been proven by science.

DR. MILLER expressed his understanding EPA's original limit for the daily consumption of fish was 175 grams, including salmon, and the limit was reduced due to the influence of special interest groups.

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REPRESENTATIVE JOHNSON asked whether mercury levels are not a problem in Alaska salmon.

DR. MILLER explained the issue is not the actual metal content but the level of fish consumption.

DR. MILLER, in response to Representative Drummond, said the current rate is 6.5 grams per person, per day, excluding salmon.

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REPRESENTATIVE DRUMMOND questioned the validity of the "numbers" and pointed out 6.5 grams is less than 0.25 of an ounce. She agreed there are minerals found in fish, seafood, breastmilk, and other places, which is a valid concern, and urged for further review of the science by representatives of all the relevant disciplines, such as health agencies, minerals producers, and others.

REPRESENTATIVE PARISH inquired as to research into the correlation between the minerals found in fish and the heavy metals found in their stream of origin.

MR. RUTHERFORD explained the research tends to be focused on specific areas because of proposed development, a fishery, or "an industrial thing going on." For example, there is data from the Red Devil area relative to mercury in the streams flowing into the Kuskokwim River; however, it is rare that a project

would have baseline data collected prior to development. He concluded there is insufficient data.

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MR. RUTHERFORD continued to the sixth priority: ensure the state defends the mining reclamation bond pool. He explained miners put money into a [State of Alaska DNR State Wide Bond Pool] fund which covers a large group of miners for poor performance on reclamation. The bond pool was established for small mines - such as placer mines - and has worked very well, thus AMC seeks to maintain the state bond pool for small mines. However, the U.S. Bureau of Land Management (BLM) has suggested a different method of bonding for small mines. He pointed out in the last 25 years, the bond pool has covered several hundred operations per year, and there has never been an incident that required use of the bond pool (slide 10).

REPRESENTATIVE RAUSCHER asked whether funds are returned if the bond pool is not used.

MR. RUTHERFORD surmised the pool is maintained at a certain level thus contributions are adjusted each year, but money is not returned to the individual miners.

DR. MILLER opined - because Alaska contains large amounts of federal lands and wetlands - it is important for the administration and the legislature to work with the federal government. He continued to the seventh priority: waters of the U. S. should be defined in accordance with the intent of the Clean Water Act (CWA). [AMC] supports monitoring federal legislation that defines Waters of the United States (WOTUS), according to the Clean Water Act (slide 11).

MR. RUTHERFORD stated BLM Resource Management Plans (RMPs) are a concern to AMC because during the Obama era, BLM used RMPs to close areas to further development. For example, a management tool within RMPs, Area of Critical Environmental Concern (ACEC), was used to lock up additional land in the Central Yukon Resource Management Plan, which he characterized as overreaching by BLM. [AMC] seeks to ensure the state recognizes this issue, as does the Alaska congressional delegation, and stressed these lands are multiple use areas (slide 12). He cautioned regarding the consideration of outdated public land orders and federal land withdrawals [priorities 9 and 11], AMC recommends the state negotiate with BLM to "free those areas up to whatever multiple use[s] they may have. In many areas there is substantial

mineral potential so these areas, [within] public land orders, currently locked up in there, or within withdrawals ... we need to keep the pressure on to BLM to free those up" (slides 13 and 15).

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DR. MILLER directed attention to priority 10: ensure the state defends Alaska's navigable waters and access corridors. He said it is critical to have access to state lands and to address navigability issues, and urged the administration and the legislature to continue to secure access corridors to public land, and to Native corporation and other private land (slide 14).

DR. MILLER directed attention to a slide of a map entitled, "Mining Activity in Alaska," which illustrated producing mines, advanced exploration projects, other exploration projects, and communities with mining industry employees. Alaska has five metal mines and one coal mine, and he said 7,000-15,000 evaluations of prospects occurred to advance the six mines in Alaska to production; in fact, the chance of an occurrence being developed into a mine is less than 1.0 percent. A slide entitled, "Alaska mineral development timelines & investment" listed successful mines, those in process, and two that are closed. He pointed out the difference between oil and gas development and mining development in Alaska is that to advance a project to a decision to mine takes about sixteen years and an investment of \$250 million to \$300 million. A slide entitled, "Typical project stages" illustrated the stages of mineral development from exploration to construction, and he said this is why mining companies must have a "long view." He provided a slide entitled, "Competing for Capital on a global stage - depends upon project stage" and pointed out capital that is needed at the exploration level is high risk/high return, funding is erratic, and the political/regulatory environment is critical. At the final feasibility stage, return on capital becomes more predictable and with lower risk, financing is more available, and the political/regulatory environment remains critical. Two graphs provided by Orion Resource Partners - a private equity group - illustrated significant declines in global exploration budgets, from a high in 2012, and a decline in capital expenditures, from a high in 2009. In Alaska, total exploration dollars decreased from \$300 million in 2012, to less than \$50 million, and currently are at \$90 million, following the global trend. A slide entitled, "Commodity prices over time:" illustrated the cyclicity of metals on the chart of a

commodity index dated from 1749 to 2009. Dr. Miller stated markets fluctuate; for example, he provided a slide entitled, "Nominal & Real 2017\$Zinc Price:" and noted zinc is an important metal export for Alaska. Red Dog Mine came into production in 1989, and since then there have been three spikes in price, so because of periods of low prices, Red Dog Mine took fourteen years to pay back its capital, even though its feasibility study predicted the payback period would be three to seven years.

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REPRESENTATIVE RAUSCHER questioned whether planing for a mine could include the intervals between the spikes and lows in price, which follow a pattern.

DR. MILLER agreed that's a good idea, when possible. Overall, cycles last about eight years. For example, when the price of zinc is up, many explore to fill the deficit in supply; after mines expand and new mines open, the supply increases and the price goes down. Also, the timeline of development, metal cycles, availability of capital, and permitting all create chaos. An operator searching for base metals seeks a deposit that will produce through at least two cycles.

REPRESENTATIVE RAUSCHER inquired as to the cause of the highest spikes in price.

DR. MILLER credited the fundamentals of supply and demand, and sometimes the influence of world events. He directed attention to a slide entitled, "Zn example-price/mental inventory" which illustrated zinc price and inventory, noting as inventory declined, price increased. In 2007, metal stocks were low, which explains the spike in price shown on the previous slide. A slide entitled, "Global Demand Growth will Continue Even at Lower Rates" was a pie chart of the global demand for zinc and the global zinc consumption rate. He noted global consumption is increasing; the per capital annual consumption of zinc worldwide is four pounds. Dr. Miller described types of mines and informed the committee that placer mines collectively make up the equivalent of one other large mine in Alaska, are mostly gold mines, and represent a family's livelihood. Characteristics of other mining companies in Alaska are:

Junior mining companies

- main explorers and discoverers of new deposits
- small market capitalization
- dependent on equity markets
- high risk

- examples of junior mining companies are Nova Gold, Trilogy Metals, Millrock, Solitario, Constantine, International Tower Hill, and Northern Dynasty

Mid-tier mining companies

- operators
- fairly large market capitalization
- have access to public money, debt financing banks, and royalty firms
- examples of mid-tier mine companies are Hecla Mining, Red Dog Mine, Greens Creek, Usibelli Coal, Hudbay, and Lundin

Major mining companies

- larger projects
- vertically integrated through transportation and fabrication, such as smelting
- large market capitalization
- low-cost debt
- global
- examples of major mining companies are TECK, Barrick, Anglo, Rio Tinto, BHP, MMG, Glencore, and Kinross

DR. MILLER said AMC is not making suggestions related to infrastructure, but wishes to provide information on other jurisdictions. For example, Canada has funded three large initiatives: Yukon Infrastructure program, at a cost of CAD \$360 million; BC Hydro transmission line, at a cost of CAD \$737 million; Ontario road system, at a cost of CAD \$900 million. He explained the foregoing projects were in support of mining or rural development; however, in Alaska, mining companies typically self-fund and build their own infrastructure that has public benefits, such as the Copper River Railway and the DeLong Mountain Transportation System. Other mining activities were illustrated on two maps that showed in 2012, there were over 120 communities with mining industry employees, and in 2014, there were over 50 communities with mining industry employees. He concluded the mining industry provides more local jobs to the Interior than any other industry. For an example of benefits to the state, he related NANA Regional Corporation received \$1.7 billion in royalties, and as of last year has distributed over \$1 billion in Alaska Native Claims Settlement Act Sections 7(i) and 7(j) natural resource revenue distributions to the other Alaska Native corporations.

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REPRESENTATIVE PARISH returned attention to communities with mining industry employees, and inquired as to the percentages of resident and nonresident mining employees in each community - between 2012 and today - and how many jobs moved out of state.

DR. MILLER offered to provide the requested information - he said he was sure the number of employees has increased since 2014 - and added the percentages of resident and nonresident employees vary between each mine.

MR. RUTHERFORD said the Alaska's Minerals Industry 2016 report by the Division of Geological & Geophysical Surveys, DNR, is a good source of information. He remarked:

We did, earlier, take the numbers of the actual production and the actual exploration funds and as so ... I'm not sure if there is a good correlation, but obviously, the more work that's done, the more dollars changing hands, the more people are working. So, it looks like in the last, say, three-year period ... whereas exploration dollars have bottomed out and come back slightly, the production side has leveled and ... dropped just a little bit, but stayed fairly high: \$2.5 billion ... for total dollars.

DR. MILLER turned attention to Alaska's position in global mining and a slide provided by the Fraser Institute entitled, "Global Mining Investment Attractiveness Ranking." Of 91 jurisdictions, Alaska ranks 10th overall because of its mineral potential and geology, but when rated on uncertainty of existing regulations, Alaska ranks 41st. He said AMC's recommendations are to address the low ranking on uncertainty of existing regulations.

CO-CHAIR JOSEPHSON related South America and Africa are continents that were exploited in some ways during recent history. He posited, because of economic pressure and civil war, both continents would be more attractive to industry for exploration and development. For example, a mine in South Africa may be less regulated than a mine in Alaska, and therefore more inviting.

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DR. MILLER opined from his experience in South Africa and Russia, the idea a mining company is attracted by less regulation is not valid - except possibly by an explorer - because a major mining company has a global image and its stock may be affected by negative reports in social media; further, the cost of capital may be affected by certain practices identified by the Dow Jones Sustainability Index. In further response to Co-Chair Josephson, he explained the Dow Jones Sustainability Index is an index of companies that are viewed as engaged in best practices, and thereby have lower cost of capital financing.

CO-CHAIR JOSEPHSON clarified for inclusion in said index, [Teck Resources] must have qualified certain standards.

DR. MILLER said correct. He gave an example of a company terminating a partnership after being held responsible for the partner's transgression. Turning to a local story, he told of the 1982 Haines Consensus and subsequent legislation that created the Chilkat Bald Eagle Preserve and the Haines State Forest Management Area in Haines. He pointed out the signatories of the Haines Consensus included a wide variety of interest groups, and concluded working together to solve an issue can result in both development and preservation.

CO-CHAIR JOSEPHSON questioned whether the consensus is abided by.

DR. MILLER said it is. He stated the proposed Constantine Metal [Palmer Project] mineral deposit, located in the area, was known at the time of the consensus, and described the slow pace of the project.

REPRESENTATIVE LINCOLN asked what AMC expects from the legislature in response to its presentation.

DR. MILLER was unsure. The members of AMC are volunteers who prepare its report; he suggested legislators contact members to garner support regarding their issues of interest.

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REPRESENTATIVE PARISH urged the members of AMC to advocate for its top priority: the establishment of a stable state fiscal policy.

REPRESENTATIVE BIRCH lauded AMC's efforts.

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

[1:56:29 PM](#)

CO-CHAIR JOSEPHSON announced that the final 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."

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REPRESENTATIVE DAVID GUTTENBERG, Alaska State Legislature, sponsor of HB 355, paraphrased from the following sponsor statement [original punctuation provided]:

Most of the current Division of Forestry fire prevention laws were enacted in 1961. HB 355 updates and modernizes the wildland fire prevention and enforcement statutes, with the ultimate goal of reducing the number of human caused fires in Alaska. This bill reduces risks to human life, loss of homes and structures, extensive property damage, and fire suppression costs.

Current burning offenses are unclassified misdemeanors that require a mandatory court appearance and are punishable by a fine of between \$100-\$1,000 or 10 days to 6 months imprisonment. The bill replaces the current system with a tiered prevention and enforcement structure, similar to fish and game violations. Violations of regulations adopted under the bill that would be "bail schedule" offenses, allowing DOF prevention officers to issue citations for violations of these offenses. The bill also gives state fire prevention officers more flexibility in responding to burning violations and investigating wildland fires. "Knowing" violations of the bill provisions would be a class A misdemeanor, and resolution would require a mandatory court appearance. The bill also addresses enforcement gaps in the existing arson and criminally negligent burning statutes in AS 11.46, makes technical changes to clarify the right of state fire prevention officers to enter land to investigate wildland fire and establishes a misdemeanor offense of interfering with

this right of access, and corrects potentially conflicting statutory provisions ..

Over the last 15 years, the length of the wildland fire season and amount of acreage burned each year-especially in and near communities-has increased dramatically. The statutes and regulations that guide our prevention and management of wildland fire need to keep pace with these changes which is why I hope you will join me in supporting this bill.

REPRESENTATIVE RAUSCHER asked how provisions in the bill would affect access to private land.

REPRESENTATIVE GUTTENBERG deferred to legal counsel.

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JOHN "CHRIS" MAISCH, State Forester and Director, Division of Forestry (division), Department of Natural Resources (DNR), expressed his support for HB 355, which would reduce human caused wildland fires and human risk. The bill modernizes existing statute in two areas: to allow firefighters to have a tiered approach to enforcement when needed, and to expand the education aspect of the division's fire prevention program. He explained Fire Prevention Officers are firstly firefighters and, secondly, wildland fire investigators who determine the cause of, and responsibility for, a wildland fire and assess fiscal recovery - when appropriate - through criminal and civil legal proceedings. Fire Prevention Officers do not carry guns and are trained to withdraw when necessary and seek assistance from Alaska State Troopers, Department of Public Safety. In response to Representative Rauscher, he said the division already has in statute the right to enter land for the suppression, control, and prevention of wildland fire, thus the bill seeks to clarify that the division also has the right to enter land for investigative purposes. For example, after a fire starts on private land, part of the control and suppression efforts are to enter the land to determine the point of origin, which may include following the path of the fire to other private land to investigate the source and cause. Mr. Maisch said HB 355 would clarify "that investigative piece is included in the terminology that we used in the previous statute."

REPRESENTATIVE RAUSCHER expressed his understanding the bill would mean private property owners give up their right to give permission to the division to investigate [on their property].

MR. MAISCH stated AS 41.15.040 provides the division the right to enter land to prevent, suppress, or control a wildland fire or a destructive agent. Further, AS 41.15.950 allows police officers, and any DNR employees who are authorized by the commissioner, to request a warrant from an officer or court of competent jurisdiction. He restated in an immediate situation during a fire, the division has the right to enter private land; after control of a fire, the division must request a warrant to investigate.

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REPRESENTATIVE RAUSCHER surmised after a fire is out, the bill allows access without seeking permission through a court order.

MR. MAISCH clarified after the fire is controlled, the division does not have authority to enter land without permission, and if access were denied by the landowner, a search warrant would be necessary. In further response to Representative Rauscher, he said the foregoing statement applies to current statute and after the change proposed by HB 355. In response to Co-Chair Josephson, he said the clarification occurs in the bill [on page 2, line 14] in Section 3, with the addition of the word "investigating."

REPRESENTATIVE GUTTENBERG gave an example of a situation in which an investigator was not present during a fire and was denied permission for access afterward: A warrant or a court order would be necessary.

REPRESENTATIVE RAUSCHER asked who currently completes an investigation.

MR. MAISCH said Division of Forestry employees are trained to investigate wildland fire origin and cause; for more complicated fires and those involving structures, investigators are aided by the office of the Alaska State Fire Marshal/Director, Division of Fire and Life Safety, Department of Public Safety. Fire investigators staff each of the division's area offices.

REPRESENTATIVE RAUSCHER restated his question as to the purpose of proposed Section 3.

MR. MAISCH further explained the purpose is to clarify "that investigating a fire's cause and origin is also covered under this statute." He deferred to the Department of Law (DOL).

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ANNE NELSON, Senior Assistant Attorney General, Natural Resources Section, Civil Division(Anchorage), DOL, advised the proposed bill would not impact the constitutional law that applies to investigative searches and privacy protections, but clarifies the activities undertaken by the division in the investigation of a fire, or when responding to an active fire.

REPRESENTATIVE RAUSCHER restated his question.

MR. MAISCH further explained the investigation aspect - that is implied in the prevention language of the existing statute - is clarified.

REPRESENTATIVE BIRCH expressed his understanding if a firefighter is fighting a fire on property and views items perceived to be the cause of the fire, the bill would allow those items to be used in court at a later date, which is reasonable. He opined the bill is reasonable and provides clarity.

REPRESENTATIVE LINCOLN questioned whether the bill applies to fires that have been suppressed, or only when firefighters are actively fighting a fire. He asked, "but is this also the expectation that once a fire is suppressed, and you're going back to the scene to investigate further, at that point would you need to get the, a prior approval or a warrant ...?"

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MR. MAISCH answered after a fire is out, when the division has permission from the landowner, it can proceed with an investigation; if not, it would seek a warrant to continue the investigation. Mr. Maisch continued to the most important aspect of the bill, which provides the division a three-tier enforcement tool to address violations of burn regulations. Currently, the process to deal with minor infractions is cumbersome, therefore, the division typically issues warnings except for the most egregious offenses. HB 355 provides the division with three tiers of responses: firstly, a ticket with a predetermined bail schedule for an infraction; secondly, a class A misdemeanor offense; thirdly, B and C felony offenses. In addition, the bill clarifies two types of firefighting techniques - more commonly referred to as burnouts or backburns - under the civil immunity statute.

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CO-CHAIR JOSEPHSON asked whether a lawsuit has been brought against the division or against firefighters.

MR. MAISCH recalled there was a lawsuit challenging discretionary immunity related to the Miller's Reach Fire [that burned near Houston, from 6/2/96 to 6/15/96]. He added, "So, since that time we've never had any specific challenge on the discretionary immunity ... unless we do something that's beyond our training or knowledge base, and then, of course, we can be held negligent, just like anybody else." Returning attention to the bill, he noted the bill also seeks to replace terminology that is no longer in use, and brings the statute into a modern format.

REPRESENTATIVE GUTTENBERG assured the committee a property owner would not lose any constitutional rights; after a fire, an investigator still needs permission, or a court order, to access [private] property. He reviewed other aspects of HB 355.

CO-CHAIR JOSEPHSON pointed out AS 41.15.150 - which imposes one to ten years of imprisonment in the case of malicious or wanton setting of a fire - is deleted by the bill. He asked whether this sort of misconduct is still addressed [within provisions of HB 355].

MR. MAISCH said yes; that type of offense would be raised to a felony or arson charge, or a misdemeanor, depending on the gravity of the offense. In further response to Co-Chair Josephson, he confirmed there is still a differentiation between accidental and wanton/malicious offenses.

REPRESENTATIVE PARISH directed attention to the bill on page 2, beginning on line 30 and continuing to page 3, line 1, which read as follows [in part]:

Sec. 41.15.060. Permits. The commissioner shall, by regulation, prescribe the conditions of and the manner for obtaining a permit for the setting of fires, use of burning devices, and other activities and uses of land that increase fire danger [.FAILURE TO OBTAIN THE REQUIRED PERMIT, OR VIOLATION OF A CONDITION OF THE PERMIT IS A MISDEMEANOR].

REPRESENTATIVE PARISH asked whether fires in a burn barrel are affected by the foregoing change.

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MR. MAISCH said no; however, burn barrels and other outdoor fires are required to have a permit during fire season, and permittees must contact the division to verify it is a safe day for open burning in their area.

CO-CHAIR JOSEPHSON noted failure to get a permit is currently a misdemeanor, and questioned how this is changed by the bill.

MR. MAISCH stated currently, one who is burning without a permit would get a warning, except for a repeat offender, who may be issued a violation at the option of the prevention officer. After passage of HB 355, burning without a permit would be a minor offense listed on the bail schedule, and a repeat offender could be issued a citation. In further response to Co-Chair Josephson, he said a misdemeanor would be issued for a more serious offense. He deferred to Ms. Nelson.

CO-CHAIR JOSEPHSON surmised HB 355 reduces a penalty because the offense is more manageable through a bail schedule.

2:25:08 PM

MS. NELSON added violations of any of the provisions from Section 6 through new Section 41.15.140, are a class A misdemeanor or either a bail schedule offense - resolved by the payment of a fine - or a mandatory court appearance misdemeanor. For example, Section 6 would make burning without a permit a misdemeanor; however, depending on regulations and the proposed bail schedule, sentences could be resolved by the payment of bail and would not be criminal in nature.

REPRESENTATIVE TALERICO suggested the intent of changing from violations to a noncriminal bail schedule is so prevention officers can respond appropriately to an offense; in fact, the maximum punishment for a class A misdemeanor can be 30 days in jail and a fine of \$25,000.

MS. NELSON agreed. She said the bail schedule in the bill has an upper limit of \$5,000, and a violation approaching a criminal penalty would require a mandatory court appearance. Ms. Nelson characterized bail schedule offenses as the first tier of prevention and "light enforcement" in response to minor incidents.

CO-CHAIR JOSEPHSON questioned whether the court system added violations of the fire code to the bail schedule.

MS. NELSON advised the Alaska Supreme Court needs specific statutory legislative authority to establish the bail schedule found in Section 21, subsection (b), of the bill.

[2:30:20 PM](#)

REPRESENTATIVE PARISH asked whether tundra would be considered forested land.

MR. MAISCH said the bill defines forested land as any burnable organic material. In further response to Representative Parish, he said the definition of forested land is AS 41.15.170(3) which read:

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

REPRESENTATIVE PARISH suggested that definition would include farmland, tideland beach grass and seaweed.

MR. MAISCH said correct.

[2:33:45 PM](#)

The committee took a brief at-ease.

CO-CHAIR JOSEPHSON set the deadline for amendments to HB 355 at 5:00 p.m. on 3/1/18.

[HB 355 was held over.]

[2:36:59 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:36 p.m.