

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 28, 2018

6:06 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Representative Harriet Drummond  
Representative Mike Chenault (alternate)  
Representative Chris Tuck (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 367

"An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

- MOVED HB 367 OUT OF COMMITTEE

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 367

SHORT TITLE: NATIVE CORP. LIABILITY FOR CONTAMINATION

SPONSOR(s): REPRESENTATIVE(S) MILLETT

02/21/18	(H)	READ THE FIRST TIME - REFERRALS
02/21/18	(H)	RES, JUD

02/26/18 (H) RES AT 1:00 PM BARNES 124  
02/26/18 (H) Heard & Held  
02/26/18 (H) MINUTE (RES)  
02/28/18 (H) RES AT 6:00 PM BARNES 124

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) RES AT 6:00 PM BARNES 124

**WITNESS REGISTER**

JEFFREY MAKIN, Attorney/Partner  
Arent Fox  
Los Angeles, California

**POSITION STATEMENT:** Speaking on behalf of the Alaska Native Village Corporation Association, offered to answer questions during the hearing of HB 367.

NATHAN MCCOWAN, Chair, Board of Directors  
Alaska Native Village Corporation Association; President/CEO  
St. George Tanaq Corporation  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support during the hearing of HB 367.

REPRESENTATIVE DAVID GUTTENBERG  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Speaking as the sponsor, answered questions during the hearing of HB 355.

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

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

JAMES SQUYRES  
Rural Deltana, Alaska

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

MIKE TRIMMER, Acting Fire Management Officer  
Valdez Copper River Area  
Division of Forestry  
Department of Natural Resources  
Glennallen, Alaska

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

**ACTION NARRATIVE**

[6:06:35 PM](#)

**CO-CHAIR ANDY JOSEPHSON** called the House Resources Standing Committee meeting to order at [6:06] p.m. Representatives Josephson, Johnson, Talerico, Lincoln, and Tarr were present at the call to order. Representatives Parish, Birch, and Rauscher arrived as the meeting was in progress.

**HB 367-NATIVE CORP. LIABILITY FOR CONTAMINATION**

[6:06:57 PM](#)

CO-CHAIR JOSEPHSON announced the first order of business would be HOUSE BILL NO. 367, "An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

[6:07:15 PM](#)

CO-CHAIR JOSEPHSON opened public testimony on HB 367.

[6:08:31 PM](#)

JEFFREY MAKIN, Attorney/Partner, Arent Fox, informed the committee he serves as outside counsel to the Alaska Native Village Corporation Association (ANVCA), and was available to answer questions.

[6:08:54 PM](#)

NATHAN MCCOWAN, Chair, Board of Directors, ANVCA, and President/CEO, St. George Tanaq Corporation, stated ANVCA strongly supports HB 367. The bill is part of a multi-party longitudinal effort to bring resolution to a problem that has affected village corporate entities since lands were conveyed to the corporations that were formed pursuant to provisions of the

Alaska Native Claims Settlement Act, beginning in the '70s. Further, HB 367 is needed to correct the injustice that occurred when the federal government - without notification - conveyed contaminated lands to Native corporations. Mr. McCowan stressed ANVCA supports the bill in its current form, without the inclusion of protections for post-conveyance contamination.

[6:10:28 PM](#)

CO-CHAIR JOSEPHSON, after ascertaining no one further wished to testify, closed public testimony.

REPRESENTATIVE PARISH expressed his support for the bill.

[6:11:21 PM](#)

CO-CHAIR TARR moved to report HB 367 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 367 was reported from the House Resources Standing Committee.

[6:11:52 PM](#)

The committee took an at-ease from 6:11 p.m. to 6:14 p.m.

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

[6:14:56 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."

CO-CHAIR JOSEPHSON reminded the committee the deadline for amendments to HB 355 was 5:00 p.m. on [3/1/18].

REPRESENTATIVE RAUSCHER stated his intention to offer amendments.

CO-CHAIR JOSEPHSON opened public testimony.

REPRESENTATIVE PARISH stated his intention to offer an amendment related to the definition of forested land.

CO-CHAIR JOSEPHSON questioned whether Representative Parish was concerned about the definition because it may be used in criminal proceedings.

REPRESENTATIVE PARISH pointed out all disputes may not be resolved in court; for example, the legality of firecrackers set off on a beach.

[6:18:13 PM](#)

REPRESENTATIVE DAVID GUTTENBERG, Alaska State Legislature, speaking as the sponsor of HB 355, informed the committee amendments that strengthen and clarify a bill are not a problem; however, he cautioned an amendment to a definition in HB 355 may affect other statutes.

[6:18:51 PM](#)

JOHN "CHRIS" MAISCH, State Forester; Director, Division of Forestry, Department of Natural Resources (DNR), stated forested land is defined in several sections of statute, particularly in the Alaska Forest Resources and Practices Act, and thus has multiple meanings across various statutes. He also cautioned an amendment to HB 355 could affect other statutory citations. Mr. Maisch pointed out the definition of forested land must be broad enough to include all flammable materials, and gave an example of burning material flying through the air and igniting fires in a nearby subdivision. He said the definition is written to include "any type of burnable material that's vegetative in nature."

REPRESENTATIVE PARISH asked whether the aforementioned subdivision was "temporarily forested land."

MR. MAISCH remarked:

Forested land would be where the fire was ignited, and the point of origin, which was in the yard, in that fluff ... so, for the purposes of this statute and how it's enforced, that would have been a burnable fuel type. So, whether you would include unburnable, you know, surfaces in forested land, now that gets ... down in the weeds a bit, but it's where the fire originates from is the issue. It would not originate from asphalt, typically, but it could. ... Hot brakes can start fires, it's pretty amazing the type of ignition sources we have for fires ....

6:22:05 PM

CO-CHAIR JOSEPHSON opened public testimony on HB 355.

6:22:20 PM

JAMES SQUYRES testified in opposition to HB 355 as currently written. He urged the committee to amend the bill in order to bring AS 42.15 "in line with constitutional elements" within [Article 12 - General Provisions, Section 5. Oath of Office], of the Alaska State Constitution. He directed attention to the bill [on page 2, lines 7-15], which read:

Sec. 41.15.040. Right of entry to control and suppress fires. Upon approval by the commissioner or an authorized agent, an employee of the division of forestry [LANDS], or of any organization authorized to prevent, control, or suppress a fire or a destructive agent, and others assisting in the control or suppression of a fire upon request of an officer or employee of the United States or the state may at any time enter upon any land, whether publicly or privately owned, for the purpose of preventing, investigating, suppressing, or controlling a wildland fire or a destructive agent.

MR. SQUYRES remarked:

Director Chris Maisch testified before this committee earlier today that prevention terminology, that was used in the past, is being used as a basis for extending language to include investigations of an event after the fact. ... What is in question is current prevention terminology that is currently in conflict with [Article 1 - Declaration of Rights, Section 14. Searches and Seizures, of the Alaska State Constitution]. Currently, a forestry employee is considered a peace officer under Alaska Statute 41.15.950, and may climb over a locked and posted gate, and walk down your driveway ... where you've clearly expressed your expectation of privacy, without probable cause that a crime is being committed to prevent a wildfire. Now, none of us have a problem if there is probable cause, but [Article 1 - Declaration of Rights, Section 22. Right of Privacy, of the Alaska State Constitution] indicates that the right of ...

people to privacy is recognized and shall not be infringed. The reason they want to add investigation language is to put into statute this veil of authority to enter onto private property without warrant. The scary part is when Director Maisch indicates that they already have the right simply because it's already in statute. It is in conflict with the constitution.

MR. SQUYRES further noted testimony related to constitutional elements was directed to the statute and not to the proposed amendment to statute. He advised the committee to remove both the words "prevention" and "investigation" from AS 41.15.040 to realign the statute with its title, and with the Alaska State Constitution. Mr. Squyres also urged for a title change in AS 41.15.040 from "Right" to "Authority." Further, within AS 41.15.950, he cautioned against the terminology of peace officer as applied to "employees of forestry" who are not trained as peace officers; he described a procedure pursuant to AS 11.61.220, Misconduct of Weapons in the Fifth Degree, and opined that is a procedure a person on a fire crew is not trained to perform.

[6:26:05 PM](#)

REPRESENTATIVE RAUSCHER referred to two forthcoming amendments "that take care of some of the problems that you mentioned."

CO-CHAIR JOSEPHSON asked Mr. Squyres whether he was concerned that Division of Forestry officers have a hidden agenda.

MR. SQUYRES said there are opportunities for abuse. He gave an example of a former fire prevention officer who proposed a fire prevention plan to the Deltana Community Corporation. A provision in the prevention plan said, "after three calls, according to its plan, they were just going to come by your place and walk down your driveway ... whether you were burning that fire at that time, or not." Although this provision was removed from the plan, he restated his concerns about the opportunity for abuse by fire prevention officers, and about [untrained] members of fire crews designated as peace officers. Mr. Squyres agreed it is time to align and modernize the affected statute.

[6:29:35 PM](#)

MIKE TRIMMER, Acting Fire Management Officer, Valdez Copper River Area, Division of Forestry, DNR, expressed his support of

HB 355. He informed the committee the bail schedule [provision within HB 355] is an important enforcement piece of the fire prevention program that has been missing. Currently, enforcement options are a verbal warning, or a written warning, or a misdemeanor citation and mandatory court appearance. He said multiple verbal and written warnings are weak; therefore, frontline firefighters and initial attack incident commanders need to take care of some enforcement issues directly at the scene, and avoid a later investigation. In addition, a bail schedule would provide a component of public education through a commonly known schedule of fines. Mr. Trimmer said fire prevention officers do not want to make criminals out of those who forget to get a burn permit. From his experience, he said it is a rare occurrence that a fire investigator needs to come to the fire scene after the fact, because initial attack firefighters are trained to preserve the point of origin, and to perform basic preliminary fire investigations; if they could also issue a violation for non-misdemeanor/felony events, the work would be done. In fact, there are few qualified fire investigators in the state, which creates delays in investigations and staffing issues, and fewer investigations would also mean fewer right-of-entry concerns.

[6:33:57 PM](#)

REPRESENTATIVE PARISH asked for Mr. Trimmer to comment on the definition of fire prevention officer as peace officer, and on the concealed carry [law].

MR. TRIMMER expressed his understanding he and his employees are noncommissioned officers who do not - and do not wish to - carry badges or guns. As to the forested land issue, he advised the fuel has to be able to support the carry and spread of wildland fire. In further response to Representative Parish, he opined forested land has to be able to support the ignition and spread of fire, and sparse green grass on a beach at the side of the ocean is not forested land, although by definition it may be. Tundra supports fire, as do hayfields and grass before turning green, and he added, "... I don't think you'd find a prevention officer in the state trying to cite anybody for anything different than that, regardless of, of what the definition is."

REPRESENTATIVE PARISH referred to earlier testimony that investigations performed at the time of the fire reduce division staffing.

MR. TRIMMER restated engine captains and incident commanders are trained in basic investigation and prevention skills, and thus can define the point of origin, determine the cause, and establish protection. Although a fire that spreads and damages property would require a fully qualified fire investigator, most incidents can be handled by the initial attack resources if a bail schedule of violations were in place.

REPRESENTATIVE PARISH asked whether the bill's definition of forested land would confuse members of the public.

MR. TRIMMER, speaking from his experience, said there was no confusion by Alaskans; fireworks discharged on a graveled area over a body of water are legal by state statute, unless prohibited by local ordinances.

[6:40:23 PM](#)

CO-CHAIR JOSEPHSON, after ascertaining no one else wished to testify, closed public testimony on HB 355.

HB 355 was held over.

[6:41:19 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [6:41] p.m.