

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 22, 2021

1:31 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Liz Snyder, Vice Chair (via teleconference)  
Representative Harriet Drummond  
Representative Jonathan Kreiss-Tomkins  
Representative David Eastman  
Representative Christopher Kurka  
Representative Sarah Vance

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 109

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 29

"An Act relating to liability of an electric utility for contact between vegetation and the utility's facilities; and relating to vegetation management plans."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 109

SHORT TITLE: EXTEND BAR ASS'N BOARD OF GOVERNORS

SPONSOR(S): REPRESENTATIVE(S) CLAMAN

02/22/21	(H)	READ THE FIRST TIME - REFERRALS
02/22/21	(H)	JUD, FIN
03/22/21	(H)	JUD AT 1:30 PM GRUENBERG 120

BILL: HB 29

SHORT TITLE: ELECTRIC UTILITY LIABILITY

SPONSOR(s) : REPRESENTATIVE(s) RAUSCHER

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	JUD, L&C
03/19/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/19/21	(H)	<Bill Hearing Canceled>
03/22/21	(H)	JUD AT 1:30 PM GRUENBERG 120

**WITNESS REGISTER**

LIZZIE KUBITZ, Chief of Staff  
Representative Matt Claman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 109 on behalf of Representative Claman, prime sponsor.

KRIS CURTIS, CPA, CISA, Legislative Auditor  
Division of Legislative Audit  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 109, discussed the division's audit report regarding the Board of Governors of the Alaska Bar Association.

BEN HOFMEISTER, President  
Board of Governors  
Alaska Bar Association  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of HB 109, answered questions and provided invited testimony on the bill.

DANIELLE BAILEY, Executive Director  
Alaska Bar Association  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 109, answered questions related to the bill.

REPRESENTATIVE GEORGE RAUSCHER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, introduced HB 29.

JESSE LOGAN, Staff  
Representative George Rauscher  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented HB 29 on behalf of Representative Rauscher, prime sponsor.

CRYSTAL ENKVIST, Executive Director  
Alaska Power Association (APA)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 29, answered questions and provided information in support of the bill.

JOHN ANDREW LEMAN, Attorney  
Kempel, Huffman and Ellis, PC  
General Counsel, Alaska Power Association (APA)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of HB 29, answered questions and provided information in support of the bill.

JIM BUTLER, Attorney  
Baldwin & Butler LLC  
Advisor, Incident Response Group, Homer Electric Association (HEA)  
Kenai, Alaska

**POSITION STATEMENT:** During the hearing of HB 29, answered questions and provided information in support of the bill.

TRAVIS MILLION, Chief Executive Officer (CEO)  
Copper Valley Electric Association (CVEA)  
Glennallen, Alaska

**POSITION STATEMENT:** During the hearing of HB 29, answered questions and provided information in support of the bill.

JOHN BURNS, President & Chief Executive Officer (CEO)  
Golden Valley Electric Association (GVEA)  
Fairbanks, Alaska

**POSITION STATEMENT:** During the hearing of HB 29, answered questions and provided information in support of the bill.

#### **ACTION NARRATIVE**

[1:31:12 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 1:31 p.m. Representatives Eastman, Drummond, Kurka, Kreiss-Tomkins, Snyder (via teleconference), and Claman were present at the call to order. Representative Vance arrived as the meeting was in progress.

**HB 109-EXTEND BAR ASS'N BOARD OF GOVERNORS**

[1:31:53 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 109, "An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

[1:32:16 PM](#)

LIZZIE KUBITZ, Chief of Staff, Representative Matt Claman, Alaska State Legislature, introduced HB 109 on behalf of Representative Claman, prime sponsor. She explained that HB 109 extends the termination date of the Board of Governors of the Alaska Bar Association ("Bar") from 6/30/2021 to 6/30/2029, in accordance with the recommendation of the legislative auditor. She said the Division of Legislative Audit concluded an audit of the Board of Governors and determined that the board is operating in the public's interest and complied with its duties and responsibilities to the public, and the division recommended that the termination date be extended to 6/30/2029. She said the Division of Legislative Audit has also determined that the Board of Governors should again recommend to the Alaska Supreme Court that it amend the Bar rules to increase the number of mandatory continuing legal education (CLE) credit hours. Currently, she continued, Bar members "shall" complete three hours of ethics CLE and "may" complete nine hours of general CLE.

MS. KUBITZ stated that the Board of Governors serves an important public service by regulating the practice of law, promoting reform in the law and in judicial procedure, facilitating the administration of justice, investigating complaints, requiring continuing legal education for membership, and increasing the public service and efficiency of the Bar.

[1:34:30 PM](#)

CHAIR CLAMAN disclosed for the record that he is a member of the Alaska Bar Association.

[1:34:50 PM](#)

KRIS CURTIS, CPA, CISA, Legislative Auditor, Division of Legislative Audit, stated that the Division of Legislative Audit conducted an audit of the Board of Governors of the Alaska Bar

Association. She explained that the purpose of a sunset audit is to determine whether a board or commission is serving the public's interest and whether it should be extended. She directed attention to the 6/9/2020 audit report in the committee packet, [titled "A Sunset Review of the Alaska Court System, Board of Governors of the Alaska Bar Association (Bar)"]. She stated the audit concluded that the board served the public's interest by effectively admitting qualified members to the Bar and by investigating complaints made against Bar members. She further stated that the division is recommending an eight-year extension, which is the maximum allowed for in statute.

MS. CURTIS brought attention to the schedule of admission and exam statistics for calendar years 2017 through 2019 (page 8 of the audit report). She noted that, on average, 120 members were admitted to the Bar each year, and, on average, the exam pass rate was 54 percent. She specified that the audit reviewed a random sample of 15 new member applications and found all 15 met admission requirements.

[1:35:59 PM](#)

MS. CURTIS discussed the Bar's disciplinary statistics (page 6 of the audit report). She related that between January 2017 and December 2019, 689 complaints were filed with the Bar; 82 percent were not accepted for further investigation because the complaints were incomplete, or did not identify unethical conduct, or were not within the Bar's jurisdiction. She noted that five complaints resulted in discipline and 89 complaints were still open at the time of the audit.

MS. CURTIS said that to promote competency and professionalism, active Bar members are required to obtain three hours of continuing education each year and encouraged to voluntarily obtain nine additional hours. She pointed out that as of March 2020, 37 states required at least 12 continuing education hours each year, making Alaska's required CLE hours significantly below most other states. She further pointed out that the low number of mandatory continuing education hours has been a finding in the prior three sunset audits. She related that in 2011 the board formed a committee to review the mandatory continuing education program. The review, she continued, included an electronic survey of Bar members, and of the over 900 Bar members that responded to the survey 91 percent did not favor increasing the mandatory education hours.

[1:37:24 PM](#)

MS. CURTIS turned to the findings and recommendations (page 11 of the audit report). The first recommendation, she specified, is that the Bar's executive director should ensure meetings are properly posted on the state's online public notice system. She related that of the nine meetings reviewed by the division, seven were not published on the state's online public notice system and six did not include public comment as an agenda item. She said that according to the executive director the notices were posted in the Bar's publication called the "Bar Rag" and were posted on the Bar's website. However, she pointed out, that does not technically comply with the law that requires they be posted on the state's public notice system.

MS. CURTIS addressed the second recommendation that states the board should improve internal controls over the Bar's online admission system and case management database [page 12]. She said two deficiencies were identified by the audit that could affect the security and availability of data. The pertinent details, she explained, were communicated to management in a separate confidential document and not reported in the audit to ensure that the weaknesses are not exploited. She said management did provide Legislative Audit corrective action.

[1:38:33 PM](#)

MS. CURTIS spoke to the third recommendation that states the board should recommend an increase in the non-ethics mandatory continuing legal education for attorneys (page 12). In 2019, she related, 99 percent of Bar members completed the mandatory ethics education, but only 55 [percent] voluntarily completed the nine additional hours. She explained that continuing education is important because it benefits the public by helping ensure that attorneys remain competent regarding the law and the profession's obligations and standards.

MS. CURTIS concluded her testimony with a review of management's response to the audit (pages 29-33 of the report). She said the court system's general counsel agrees that the board should make a new recommendation on the number of mandatory continuing education hours for the court's consideration. The board's response, she continued, agrees with recommendations one and two. Regarding recommendation three, the board agreed to discuss the appointment of a committee to review the mandatory continuing education at its October 2020 meeting.

[1:40:16 PM](#)

REPRESENTATIVE EASTMAN asked whether the Alaska Bar Association has any other duties in addition to admitting applicants and dealing with disciplinary issues.

MS. CURTIS replied that under the "Organization and Function" section of the report, page 1 describes the board composition and page 2 talks about the board's two primary functions. She said it's an interesting dynamic because of how the Alaska Supreme Court and the Bar work together to oversee the legal occupation profession.

REPRESENTATIVE EASTMAN stated that this seems like a short list. He asked whether statute or official policy delegates any other official duties to the Bar.

MS. CURTIS responded that the board's purpose includes regulating the practice of law through regulation, promoting reform in the law and the judicial procedure, facilitating the administration of justice, encouraging education, administering the Bar exam, admitting members to the Bar, and disciplining the Bar. She explained that that is the typical function of any occupational board.

[1:42:24 PM](#)

REPRESENTATIVE KURKA related that he has looked at how many attorneys comprise the [board] and how many are appointed by the governor and how many are appointed internally. He said he hasn't made a comparison to other boards and commissions, but the normal process is that the governor appoints members to a state board to be confirmed by the legislature. He stated that this board seems lopsided in that it is heavily controlled by the Alaska Bar Association without input from the legislature.

MS. CURTIS answered that she never considered that. She said this association appoints its members and the governor appoints only three, and that typically on an occupational board the governor appoints more. She said she doesn't have the background on that to talk about why that is the case.

REPRESENTATIVE KURKA inquired whether Ms. Curtis is aware of any other boards that are structured this way where it comes internally from the industry and not from the governor.

MS. CURTIS replied there are plenty of other boards, although maybe not occupational boards, that have identified composition

that might come from other places, but she doesn't have any statistics to provide.

REPRESENTATIVE KURKA asked whether it is true that Board of Governors or the members at large of the Bar select the attorney appointee to the Judicial Council.

REPRESENTATIVE CLAMAN clarified that Representative Kurka is asking about the three members of the Judicial Council that are selected by the Alaska Bar Association.

MS. CURTIS responded that the audit did not look at that specifically and has no comment about that.

[1:44:57 PM](#)

REPRESENTATIVE SNYDER stated that these seem to be essential primary functions. She asked who would pick up those functions and what the anticipated repercussions would be if this board was terminated.

MS. CURTIS replied she doesn't have a good answer for that and doesn't know what would happen if that was the case. She noted, however, that typically if it's an occupational board it falls within the Department of Commerce, Community, and Economic Development and if the board goes away the licensing function reverts to the department and there is no break in the actual occupation. With this board, she continued, rather than it terminating she sees this as more of a legislative oversight process as opposed to actually considering it for termination, like the Board of Parole and those type of boards.

CHAIR CLAMAN added that it is unlike other boards because the licensing of attorneys is in the end a matter for the court because the court is a third branch of government as the people who are admitted to practice before the court. Unlike any other board, he continued, it is not entirely clear that it could go back to another part of the Executive Branch because the supervision in the end is ultimately the court's responsibility, not the Executive Branch's responsibility.

[1:47:12 PM](#)

REPRESENTATIVE SNYDER requested clarification on the word "terminate" given that is the word used in the audit provided to the committee.

MS. CURTIS answered that a sunset date is in statute for this board, so technically it would terminate if a bill were not submitted to the legislature to formally extend the board.

CHAIR CLAMAN asked whether anyone from the Alaska Bar Association would like to add perspective regarding this specific function should the legislature not extend the sunset date as well as who is supervising and how that works.

[1:48:14 PM](#)

BEN HOFMEISTER, President, Board of Governors, Alaska Bar Association, noted he is an assistant attorney general in the attorney general's office, but that he is before the committee in his capacity as the Alaska Bar Association president. He said this was analyzed briefly in prior conversations with the Board of Governors over the past three years, and he agrees with Chair Claman, which is that the functions would fall underneath the court, specifically the supreme court. "So," he continued, "if this were terminated, we would probably follow the same model of other states that do not have a bar association like we do." He said if he remembers correctly Nebraska was one of the other states looked to and all of Nebraska's disciplinary and admissions issues fall directly under the supreme court. "We would also terminate the funding source that comes from our dues," he said, "and that would be something that the legislature would have to pick up in terms of funding ... all the things that we do that are pointed out in ... Ms. Curtis's legislative audit report."

[1:49:29 PM](#)

REPRESENTATIVE KREISS-TOMKINS referenced the results of the member survey about increasing the number of CLE hours required. He inquired whether the Bar has a position about what may happen to the current requirement.

[1:50:02 PM](#)

DANIELLE BAILEY, Executive Director, Alaska Bar Association, replied that after receiving the audit the Bar formed the "MCLE Subcommittee." She related that the subcommittee has had five meetings and at this point has decided it will not be polling the membership, and that it's looking like the subcommittee is going to increase the number of CLE hours. However, she noted, the subcommittee's work is not yet finished, and that

recommendation would go to the board and the board has not had time to process all those results yet.

CHAIR CLAMAN noted that even if the board suggests increasing the number of mandatory CLE hours, it would ultimately be a decision for the Alaska Supreme Court. He recalled that in 2008 or 2009 the supreme court approved the three mandatory ethics hours, but during years prior to that the board had suggested more than just the three hours of ethics and the supreme court rejected the request. He explained he knows about this because he was president of the board at the time.

[1:51:30 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked whether there is a list of courses or trainings that are approved by the Alaska or national bar associations that one must select from to fulfill the CLE requirement.

MS. BAILEY responded that attorney members can receive their CLE credits in a variety of ways. She said the essentially one hour of education equates to one CLE credit. The Alaska Bar Association has lots of offerings, she continued, and that information is provided in the Bar's annual report to the legislature. Members are also free to get continuing legal education from other sources, she added.

[1:52:36 PM](#)

REPRESENTATIVE EASTMAN said there seems to be a lot of focus on CLE requirements in the audit. He asked how that came to be a focus of the audit.

MS. CURTIS answered that the criteria used is in Appendix A to the audit. The division, she explained, uses specifically set statutory criteria to evaluate a board or commission. One criterium is to what extent a board or commission is operating in the public's interest and, given this has been a finding in the previous three sunset audits, it was already on the division's radar to focus in and provide the current status of that prior recommendation.

REPRESENTATIVE EASTMAN asked why eight years was the recommended for the board's extension.

MS. CURTIS replied that eight years is the maximum allowed for in the sunset statute. She said this board is operating fairly

well and that, in her opinion, there are not any serious concerns that should impact the term of extension.

[1:53:45 PM](#)

CHAIR CLAMAN recalled the question about what would happen financially if the legislature doesn't extend the sunset date. He inquired whether the membership dues collected from members would be self-sustaining or whether the board relies on any state funds to run the Alaska Bar Association.

MS. CURTIS responded that Appendix A is comprised of the Alaska Bar Association's statements of financial position showing the Bar's fund balance and it looks like the association does have adequate fund balance now to be self-supporting. To her knowledge, she continued, the association does not receive any funding from the legislature.

CHAIR CLAMAN asked whether, based on previous audits, there was ever a time in which the Alaska Bar Association relied on state funds to be self-supporting.

MS. CURTIS answered that she doesn't remember.

CHAIR CLAMAN stated he is "pretty sure the answer is no, there was never a time."

[1:54:49 PM](#)

CHAIR CLAMAN opened public testimony on HB 109 and noted he doesn't see anyone wishing to testify. He requested Mr. Hofmeister to provide the association's invited testimony.

[1:55:23 PM](#)

MR. HOFMEISTER testified on behalf of the Board of Governors and the Alaska Bar Association. He said he thinks the audit speaks for itself and that the testimony of Ms. Curtis is a positive note on the Bar and what it does. Regarding the earlier question about the goals and purposes of the association, he stated it is correct that discipline and admissions are primary focuses. However, he continued, as explained by Ms. Curtis the association also has [other] purposes as set out in Section 3 of Article I of the association's bylaws. He related that as the Bar president he constantly finds himself going back to the five purposes when he is considering initiatives that the Bar Association and the Board of Governors are taking on. He said

these purposes are to: regulate the practice of law; promote reform in the law and in judicial procedure; facilitate the administration of justice; encourage continuing legal education for the membership; and increase the public service and efficiency of the Bar. All of those are very important, he opined, and not only does the Bar Association do an excellent job of that, but it also has staff that know what they are doing. He added that with him today are Phil Shanahan, Bar Counsel, and Danielle Bailey, Executive Director, both amazing attorneys who have taken on roles very recently and have led the machine that is the Alaska Bar Association onward into 2021. The association lost a lot of history last fall when the prior executive director, Deborah O'Regan, retired after 38 years of service, but Ms. Bailey has seamlessly led the association forward. He stated that anyone reviewing this audit should be comforted that the association does a good job in its purposes of admissions and discipline. He said the Alaska Bar Association believes HB 109, as proposed, is solid and should be passed by the committee.

[1:58:31 PM](#)

CHAIR CLAMAN closed public testimony on HB 109 after ascertaining the committee had no questions of the witness and no one else wished to testify.

CHAIR CLAMAN offered his belief that Ms. O'Regan's 38 years of serving as executive director is the longest in any bar association in the history of the U.S.

[1:59:40 PM](#)

REPRESENTATIVE KREISS-TOMKINS inquired about the length of time of the last extension for the Board of Governors.

CHAIR CLAMAN replied it was eight years.

CHAIR CLAMAN announced that HB 109 was held over.

[2:00:13 PM](#)

The committee took an at-ease from 2:00 p.m. to 2:02 p.m.

**HB 29-ELECTRIC UTILITY LIABILITY**

[2:02:41 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 29, "An Act relating to liability of an electric utility for contact between vegetation and the utility's facilities; and relating to vegetation management plans."

[2:03:22 PM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, as prime sponsor, introduced HB 29. He stated that HB 29 makes clear that an electric utility would not be held liable for a fire caused by vegetation outside the utility's easement contacting electric facilities. He said the bill requires utilities to create, adopt, and adhere to a vegetation management plan that would mitigate the risks of contact with electrical facility's lines for vegetation within their easement and right-of-way. Ultimately, he continued, this bill helps protect utilities from lawsuits that arise from things outside of the utilities' control and thus helps protect ratepayers by keeping their costs down.

[2:04:35 PM](#)

JESSE LOGAN, Staff, Representative George Rauscher, Alaska State Legislature, presented HB 29 on behalf of Representative Rauscher, prime sponsor. He reiterated that HB 29 helps to protect utility customers by clarifying that the utility is not liable for fire damage caused by vegetation outside the utility right-of-way and outside the utility's control. He said that without this clarity, legal liability with wildfire that is caused by vegetation contacting electrical lines poses a serious threat to Alaska's electrical utilities and consequently to their customers. The bill, he explained, stipulates that a utility will be held liable for damages that are the result of fire from vegetation located entirely within the boundary of a right-of-way or if the utility fails to have a written vegetation management plan or fails to comply with the management plan. He pointed out that utilities are prohibited from entering adjacent properties without the consent of the property owner, yet they can still be held liable for the damages that are the result of the vegetation located where they are prohibited to enter or manage.

MR. LOGAN drew attention to the document in the committee packet titled ["Alaska Electric Utility Liability Bill (House Bill 29), General Information"], which was produced by the Alaska Power Association (APA). He cited an example given in the document from a 2015 case where litigation was brought against an

electrical cooperative. In that instance, he related, a spruce tree located beyond the boundary of the utility easement fell and contacted the cooperative's distribution line, resulting in a wildfire. Damaged property owners sued the utility and the case was eventually settled, he said, but the cooperative was required to defend the lawsuit. Those costs of the legal defense and the settlement, he continued, would most likely result in a rate increase to the cooperative customers.

[2:06:04 PM](#)

MR. LOGAN reminded committee members that one of the main missions of an electric utility is to provide reliable power. It is in the best interest of the utility and therefore its customers, he stated, to manage vegetation in a way that mitigates any risks that may occur. He related that all the utilities he is aware of have adopted vegetation management plans as one of the many safety policies. As an example, he drew attention to a draft plan from the Copper Valley Electric Association (CVEA) provided in the committee packet. He pointed out that these management plans include such things as right-of-way maintenance schedules, hazard tree identification, removal methods, and notification. He said he formerly worked as a renewable energy project manager and safety policy coordinator for Kotzebue Electric Association and even thought there isn't one tree within 20 miles of the utility lines the association had a vegetation management plan, illustrating that these management plans are commonplace and taken seriously.

MR. LOGAN concluded his presentation by stating that without the proposed reforms in HB 29 electric utilities would be held liable for things outside their control, or they must look at other options that are prohibitively expensive to consumers such as burying the electric lines or widening the easements, costs that would be passed on to consumers. He stressed the bill does not give immunity to electric utilities, instead it sets up clear rules and expectations for vegetation management.

[2:08:26 PM](#)

REPRESENTATIVE VANCE referenced last year's wildfires and asked how HB 29 would impact a broader scope of fires, how the utilities would need to respond, and whether any liability would be had versus a singular tree.

[2:09:28 PM](#)

CRYSTAL ENKVIST, Executive Director, Alaska Power Association (APA), requested that the question be answered by Mr. Andy Leman, APA's general counsel.

[2:09:40 PM](#)

JOHN ANDREW LEMAN, Attorney, Kempel, Huffman and Ellis, P.C., General Counsel, Alaska Power Association (APA), replied that the impact of the bill is dependent on the determined cause of the fire. "If it was because vegetation from outside the easement contacted a tree then this says ... the utility is not going to be responsible for that," he stated. If the fire is inside the easement, he continued, then a look would be taken at the vegetation management plan and whether the utility followed it. He said he isn't personally familiar with the details of what was determined to be the cause of last year's big wildfires, but "you would certainly be looking at a bill like this in a situation where you had a fire around the utility line."

[2:10:33 PM](#)

REPRESENTATIVE VANCE recalled that during the Swan Lake Fire the Homer Electric Association's transmission line received considerable damage. She inquired whether the association was responsible for paying to get that repaired or whether the federal government was responsible because it was a federally managed wildfire.

[2:12:07 PM](#)

JIM BUTLER, Attorney, Baldwin & Butler LLC, Advisor, Incident Response Group, Homer Electric Association (HEA), responded that the large Swan Lake Fire burned throughout summer 2019. He said the fire originated off the [federal] wildlife refuge and was started by lightning. It came in through electrical facilities, he stated, and HEA worked closely with the different fire teams, but the fire did not originate because of an electrical energized line. However, he continued, HEA has had those in the urban interface context and those have typically been from either a failure to an old electrical facility or related to vegetation that had come in from outside the right-of-way into the energized line. "In each of those cases," he related, "[HEA] worked with forestry to do an investigation and resolve any causal factors that might lead to assessment of suppression cause."

[2:13:18 PM](#)

REPRESENTATIVE VANCE asked whether HEA was held liable to repair the lines that were destroyed through that fire.

MR. BUTLER answered that the damaged transmission line in the Swan Lake Fire carried electrical power from the Kenai Peninsula to the Railbelt. He said other parties were involved in the ownership administration of that line and the repair cost to the facility was the responsibility of the utilities. Of primary concern, he explained, was the exposure to suppression cost because those costs can far exceed any potential coverage that utilities might have.

REPRESENTATIVE VANCE mused about whether HB 29 would have helped put repair liability for the transmission line onto the federal government or whether she is conflating two different issues.

CHAIR CLAMAN asked whether repair of electric lines damaged by lightning caused fires is considered a cost of doing business in the utility world.

MR. BUTLER replied yes, in most cases the utility absorbs the repair cost of a damaged facility if it is through an act of God where it is hard to find a third party that may be responsible, which has been the case on several large fires on the Kenai Peninsula. In instances where a facility is damaged through someone's negligence, he continued, HEA looks at options for pursuing a claim for third party liability.

[2:16:05 PM](#)

REPRESENTATIVE KREISS-TOMKINS, regarding the cost of suppression being of foremost interest, surmised the cost of suppression is a part of the liability that electric cooperatives assume. He requested elaboration on that relationship.

MR. LEMAN responded that suppression costs are a civil liability. He stated that in a situation where it is something outside the utility's control, such as a tree entering the easement that causes a fire, the utility and its ratepayers should not be looked to for paying those suppression costs.

[2:17:39 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted the bill clarifies where liability ultimately exists. He asked whether there has been an

instance in Alaska in which a utility was held liable for a fire which started because of vegetation that was outside the utility's legal right-of-way.

MR. LEMAN offered his belief that there has been at least one case involving an electric utility from which suppression costs were sought, but he is unsure whether that was a tree matter. He pointed out that sometimes when the state seeks suppression costs it can be quite a while after the fire occurred. He deferred to Mr. Butler for further response as to whether there have been recent examples.

MR. BUTLER answered that the instances of property damage seem to be more likely than the ones for wildland fire, but wildland fire suppression costs are growing. He added that the concept of utilities being held responsible for the large suppression costs of wildland fire is a national trend and he thinks it is just a matter of time before it gets to Alaska. In general, he continued, the utilities have tried to do a good job. He said it's whether vegetation from outside the utility could add confusion in seeking the suppression cost for a high-expense fire or a high-damage fire and how a utility might be forced to defend itself in protracted litigation to get to a resolution.

[2:20:56 PM](#)

REPRESENTATIVE KREISS-TOMKINS said his takeaway is that HB 29 is mostly preemptive and prophylactic, and it is instances in the Lower 48 that are prompting this legislation. As presented, he continued, it does seem that electric cooperatives are in a powerless position that there be vegetation outside their right-of-way that could potentially foul their lines or cause fire. He stated he is surprised that the rights-of-way would be sufficiently narrow in the first place that utilities couldn't attend to vegetation that is problematic. He asked how it is that this situation is in place, and nothing can be done about trees outside the legal right-of way that could take down a utility's lines and cause wildfires.

MR. BUTLER explained a right-of-way is a portion of property that allows the utility to run powerlines through that area. Most rights-of-way are narrow, he further explained, anywhere between 20 and 30 feet, which means 15 feet on either side of the line. Many trees grow much taller than the height of the facility, i.e., the powerline poles, and can easily blow or fall into that energized facility and cause a fire, he continued. In many cases on private property, the ability to clean those

rights-of-way from the ground to the sky is limited because private property owners must grant access and most people don't prefer to have their trees trimmed or maintained over time. It is over time that is problematic, he noted, particularly in Alaska with the spruce bark beetle infestation.

[2:23:51 PM](#)

CHAIR CLAMAN invited Mr. Leman to respond to the question from Representative Kreiss-Tomkins.

MR. LEMAN agreed with Mr. Butler. He noted that when utility facilities are in another easement, such as a highway easement, there sometimes isn't much extra room to begin with. In dedicated utility easements, such as municipal or public easements, the utility may not even have a choice about the width. Regarding easements from utility customers, he specified that most electric consumers in Alaska are served by cooperatives and most cooperatives require a member to provide a free easement so service can be delivered. He pointed out that having those easements on one's private property is a burden because the trees get cut or the property owner cannot build a house in the easement or get permission to build a deck or shed within the easement. So, he continued, there are some good reasons why easements tend to be as narrow as possible to allow the utility to install the facilities, get access for them, and get access for things like guy wires.

[2:25:31 PM](#)

REPRESENTATIVE EASTMAN observed page 1 of the bill talks about civil liability. He inquired whether workers' compensation claims would, in this case, fall under that civil liability.

MR. LEMAN offered his belief this would not impact workers' compensation. He stated workers' compensation is a separate system of compensation for workplace injuries that is apart from Alaska's civil litigation system.

REPRESENTATIVE EASTMAN requested Mr. Leman to explain how that would not be interpreted at some point down the line to deny someone a workers' compensation claim.

MR. LEMAN responded he doesn't believe that that is the intent, nor would it be the outcome, of the civil liability language in HB 29 because workers' compensation and the obligation to carry insurance and for insurers to pay those claims wouldn't be

changed by the bill. He qualified he is not a workers' compensation lawyer, but said an administrative system is set up for adjudicating workers' compensation claims. One purpose of workers' compensation, he explained, is to preclude civil liability for employers for workplace injuries. Part of the grand bargain of workers' compensation, he continued, is that in exchange for not having to fight over causation the worker gets his or her workplace injuries taken care of.

[2:28:03 PM](#)

REPRESENTATIVE EASTMAN stated he would like to hear from someone on the workers advocate side to confirm that Mr. Leman's interpretation is their interpretation as well. He explained that his question stems from having been involved with and hearing of cases where firefighters have incurred some nasty injuries dealing with these types of situations. If the liability is now not on the side of the utility, what other sidebars are there other than following a vegetation management plan. He pointed out that a vegetation management plan could be written that is lacking and only dealt with grass and ignored trees and if there is a fire dealing with trees and that wasn't part of their management plan and by the way he is reading this language the utility would be off the hook. He asked whether there is somewhere else that spells out all the different things that must be included in that management plan.

MS. ENKVIST suggested that Mr. Travis Million is the person best able to answer this question because he provided the committee with CVEA's draft vegetation management plan.

[2:30:06 PM](#)

TRAVIS MILLION, Chief Executive Officer (CEO), Copper Valley Electric Association (CVEA), related that the CVEA plan gives criteria regarding rotation of the vegetation management and how often, and that this is based on what the utility sees prudent for the different areas it serves. He said the plan also establishes the methods of clearing the right-of-way, what type of machine is used, and the width of the right-of-way. That is the generalized criteria that would be covered in a standard vegetation management plan, he explained. Some plans will have more detail than others based on location of the rights-of-way, he added; for example, some areas of Alaska don't have any trees or vegetation that the utility needs to worry about.

[2:31:07 PM](#)

REPRESENTATIVE EASTMAN posed a scenario in which HB 29 has passed and a utility's vegetation management plan calls for a good look at trees every 20 years, but a fire occurs in year 15. He asked whether the utility would be covered.

MR. MILLION deferred to Mr. Leman to answer the question.

CHAIR CLAMAN added to Representative Eastman's question about the adequacy of the plan. He asked whether it would go to the reasonableness of the plan itself if the plan doesn't seem to have worked, which may or may not come under a question of would time and circumstances.

MR. LEMAN answered, "Exactly." Responding further to Chair Claman, he stated HB 29 does not include a set standard for what would go into a vegetation management plan because there are such different circumstances across the state. For example, he continued, there may be no vegetation at all or, if there is vegetation, then what is the vegetation, how fast does it grow, and how susceptible is it to damage; so, it would be difficult to have a one-size-fits-all vegetation management plan. He said that even without the protection that is being offered by HB 29, utilities across Alaska already have vegetation management plans, including Kotzebue where it's hard to come up with a lot of vegetation that could contact electrical facilities. He explained that utilities already have these plans because to assure their operations they must. He stated that no utility is going to have a plan that says its plan is to have no plan, or that its plan is to look every 50 years, because they wouldn't be able to operate. The utilities already have all kinds of incentives operationally and financially to protect their transmission lines, he noted. He pointed out that even if utilities or cooperatives do everything that they can under their plans that were developed to protect their ratepayers or member owners, they still can be sued by someone saying they were not being reasonable enough. He said that tying it to these vegetation management plans that the utilities already have will provide a clear standard that the utilities and their ratepayers can rely on.

[2:34:47 PM](#)

REPRESENTATIVE EASTMAN inquired how the committee should understand the language "entirely within" that is located on page 1, line 14. He posed a scenario of a stand-alone tree that is entirely within versus a scenario of a root system that is

partly within and further inquired about the meaning of "entirely within."

MR. LEMAN replied that the "entirely within" language is included because there is a difference in how liability would be evaluated for something the utility could control, vegetation that is within the easement, and vegetation that is outside of the easement. The idea, he said, is for situations such as a tree growing partly inside and partly outside the easement and whether it is completely within the utility's control given the utility would probably have to work with the landowner who may or may not be willing to cooperate. From the perspective of the utility, the utility would much rather deal with a tree like that, he continued. Utilities will trim or remove trees that are outside the easement if the utility thinks the tree is going to threaten the powerline, he stated, but that requires cooperation with the landowner that is not always there.

[2:37:09 PM](#)

REPRESENTATIVE KURKA asked whether HB 29 would affect the liability of large property owners like the State of Alaska or the federal government regarding stewardship of the vegetation on their property; for example, managing dead trees killed by spruce bark beetles.

MR. LEMAN responded that HB 29 is a shield, not a sword. He stated he doesn't think it changes the situation one way or the other for a utility if the utility thinks its facilities have been damaged by anyone, whether it is someone crashing a vehicle into a pole or someone causing a fire. He said the bill is just about what happens when there is a tree or other form of vegetation that contacts a powerline.

REPRESENTATIVE KURKA inquired whether it would be appropriate to consider that in an amendment or in terms of the consequences to be consistent.

CHAIR CLAMAN asked whether Mr. Leman has any opinion about an amendment that addresses the liability of adjacent property owners, whether they be a private property owner or a governmental property owner.

MR. LEMAN answered that it is an interesting question, but he does not have an opinion at this time.

[2:40:21 PM](#)

REPRESENTATIVE SNYDER posed a scenario in which a tree is growing on the boundary of the easement or is outside of the easement and the tree has a limb that is growing into the easement. She asked whether it is correct that the utility is not allowed to remove that limb.

CHAIR CLAMAN requested Mr. Million to answer the question because CVEA has a vegetation clearance plan within its vegetation practices.

MR. MILLION replied that CVEA's easement or right-of-way is, in most places, 30 feet wide ground to sky. He said CVEA has equipment that allows it to stay within its right-of-way and mow or cut the trees or cut the limbs growing into the easement. So, he continued, if a tree outside the right-of-way has a limb coming inside the right-of-way, CVEA has the means to clip it and that is how CVEA practices it within its utility.

REPRESENTATIVE SNYDER qualified she would not suggest that a utility would find any value in not continuing the practice of removing limbs that cross into [the easement]. However, she stated, it seems the bill's current language that if it's not completely within the easement could release the utility from liability should the utility not clear those limbs. She asked for comment on her interpretation of this possible loophole.

MR. MILLION responded that one of CVEA's main drivers for being an electric cooperative is reliable, economic, and safe electric services for members. Even if there was a small loophole, he said, from a liability standpoint that could affect CVEA's reliability to its members. So, he continued, just from good utility practice CVEA would be clearing those regardless of whether there was a liability loophole just because of the reliability of the electric service to its members.

[2:43:14 PM](#)

REPRESENTATIVE SNYDER, regarding who the liability might be shifted to and its implications, inquired about the percentage of the different entities that are adjacent to the easements, such as the State of Alaska, federal government, and individual Alaskans.

[2:43:56 PM](#)

JOHN BURNS, President & Chief Executive Officer (CEO), Golden Valley Electric Association (GVEA), stated that there is no shifting of liability, the utilities are not trying to avoid any responsibility for that which the utilities control. He said the clarification being requested here is within the context of the right-of-way, which is the only area that any utility has the authority to control. He pointed out that if a utility were to arbitrarily go on to someone's property and expand its right-of-way, the utility would be subject to trespass and potentially treble damages under state statute. He said the legislation seeks to clarify that a utility is not liable for trees or vegetation that are outside of its right-of-way that fall into the utility's right-of-way. He related that GVEA has 2,600 miles of right-of-way easements and has a vegetation management plan under which it tries to clear on a five-year cycle at a cost of about \$3 million annually. He pointed out that weather patterns have changed, and Fairbanks is now experiencing heavy winds, freezing rains in November and December, and a proliferation of growth on trees. If heavy winds knock a 60-foot-tall tree that is two feet outside GVEA's 30-foot-wide easement into GVEA's line and causes a fire, this bill says that GVEA is not liable for that fire. The bill doesn't say somebody else is liable for it, he continued; the bill makes it clear that GVEA would not be liable for that provided it has a vegetation management plan.

[2:48:07 PM](#)

CHAIR CLAMAN opened public testimony on HB 29. He noted that the only people online for public testimony are those the committee has already been hearing from and that the committee understands that all the people online support HB 29. He invited those online to add testimony if they so wished.

[2:49:20 PM](#)

MR. LEMAN indicated he did not have anything to add.

[2:49:26 PM](#)

MR. MILLION said everything has been covered on which he had planned to testify,

[2:49:37 PM](#)

MS. ENKVIST stated that several of the points in her testimony had been covered.

[2:49:49 PM](#)

MR. BUTLER clarified he is an attorney, has worked with HEA for many years, and his practice is dealing primarily with incident management.

[2:50:28 PM](#)

MR. BURNS added that GVEA has a vegetative management plan, that it is best practices, and that it is always evaluated. He stated that it is the reasonableness of the plan that is evaluated. Just because a utility has a plan doesn't make it an appropriate plan, he said; for example, a plan that says the utility is not going to have a plan is not a reasonable plan, and that will always come into question. He reiterated that the bill is not shifting liability, it is posing liability for that which a utility has control over.

CHAIR CLAMAN noted Mr. Burns is a licensed attorney as well as the CEO of GVEA.

MR. BUTLER confirmed he is still a licensed attorney.

[2:51:42 PM](#)

CHAIR CLAMAN closed public testimony on HB 29 after ascertaining no one else wished to testify.

[2:51:58 PM](#)

REPRESENTATIVE EASTMAN said he doesn't see any exception in the bill for negligence. He asked whether the bill would preclude a utility being held liable for a claim of negligence on the part of the utility.

MR. BURNS responded that the answer is no from the perspective that if a utility fails to do something which it should have done, which is within the utility's control, then the utility would not be shielded from negligence. From the standpoint of a utility's right-of-way, side to side clearing, he said he does not see the bill shielding utility companies from basic negligence. The bill says utility companies are not liable for that which they cannot control, he continued, and if a utility can control and fails to do it, then the utility is negligent.

MR. LEMAN responded that HB 29 makes it clearer what the legal standard is that the utility is going to be held to. In the absence of HB 29, he said, the situation is that lawyers get to argue about whether a utility was negligent. He said HB 29 makes it clearer for landowners and the utilities about when a utility is going to be liable for a wildfire that resulted from vegetation contacting the facilities. If that vegetation is outside the easement the utility is not going to be liable, he continued, and if the utility is liable a look will be taken at the vegetation management plan and when the utility follows it. He further stated that in the industry's mind, the bill is providing more certainty and more clarity than would be had with a negligence standard, which is very general and with lots of room for lawyers to argue about what it means.

[2:55:13 PM](#)

REPRESENTATIVE EASTMAN said a question that might be asked later is whether there is anything wrong in pulling out liability after negligence or gross negligence here since that doesn't seem to be what the bill is about. He said there is also the question of timing. For example, he noted, negligence can occur after the fire has already happened and so it's not a question of negligence on the vegetation management plan. He related that there have been times when [firefighters] receive calls about sparking from vegetation contact but the fire may not start until several days later. He inquired about the point at which the liability happens.

MR. LEMAN answered that he would turn back to the language of the bill - if the tree that eventually caused the fire by contacting the facility is outside the easement it's got the standard in there; if it's inside the easement it's the other standard. He maintained it would be unlikely to have a situation where vegetation sits for a week on a powerline without that becoming obvious operationally and something that somebody would deal with quickly.

[2:57:24 PM](#)

REPRESENTATIVE VANCE stated the committee may need to speak to its legislative intent about what is a reasonable management plan. She observed that HB 29 specifically speaks to vegetation and the liability. She asked whether there are instances of liability that involve a buildup of ice which causes damage or possible flooding that is not being addressed.

MR. BURNS replied he is not aware of that type of incident in GVEA's service territory.

MR. BUTLER responded he is not aware of those types of circumstances which arguably are an act of God or force majeure beyond the ability of the utility to practically manage for. He said utilities manage their facilities for reliability and safety; if something that was outside the control of the utility caused the problem, then that would probably be beyond the scope of what this bill is trying to do. He offered his understanding that HB 29 is trying to just make clear that if a utility adopts best practices and has an effective vegetation management plan that the lines of responsibility and liability are clear and not as ambiguous as they are now.

[2:59:48 PM](#)

CHAIR CLAMAN announced that HB 29 was held over.

[3:00:26 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.