

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 9, 2021

1:05 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

Representative Jonathan Kreiss-Tomkins

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Alaska Commission on Judicial Conduct

Aldean Kilbourn - Fairbanks
Jane Mores - Juneau

- CONFIRMATION(S) ADVANCED

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 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
03/22/21 (H) Heard & Held
03/22/21 (H) MINUTE (JUD)
03/29/21 (H) JUD AT 1:00 PM GRUENBERG 120
03/29/21 (H) Heard & Held
03/29/21 (H) MINUTE (JUD)
04/09/21 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

ALDEAN KILBOURN, Appointee
Alaska Commission on Judicial Conduct
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Commission on Judicial Conduct.

JANE MORES, Appointee
Alaska Commission on Judicial Conduct
Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Commission on Judicial Conduct.

LYN ELLIOTT, Assistant Vice President
State Government Relations
American Property Casualty Insurance Association (APCIA)

POSITION STATEMENT: Answered questions during the hearing on HB 29.

KAREN COLLINS, Assistant Vice President of Personal Lines
American Property Casualty Insurance Association (APCIA)

POSITION STATEMENT: Testified during the hearing on HB 29.

ANDY LEMAN, General Counsel
Alaska Power Association
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 29.

NORM MCDONALD, Fire Program Manager
Division of Forestry
Department of Natural Resources
Palmer, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 29.

ACTION NARRATIVE

[Due to technical difficulties, the call to order and attendance was reconstructed from the committee secretary's log notes.]

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Snyder (online), Drummond, Kurka, Vance, and Chair Claman were present at the call to order. Representative Eastman arrived as the meeting was in progress.

CONFIRMATION HEARING(S): **Commission on Judicial Conduct**

[1:05:11 PM](#)

CHAIR CLAMAN announced that the first order of business would be confirmation hearings for the governor's appointees to the Alaska Commission on Judicial Conduct. He noted that the first appointee for consideration would be Aldean Kilbourn who was appointed to her first term March 1, 2021, and that term would expire March 1, 2025.

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ALDEAN KILBOURN, Appointee, Alaska Commission on Judicial Conduct, testified as appointee to the Alaska Commission on Judicial Conduct and provided some biographical background including her education and career, and told the committee that she had been a resident of Fairbanks, Alaska since 1972. Her education included a degree in political science and a minor in French, and she had also earned her teaching certificate and taught in Fairbanks North Star Borough secondary schools. She earned her master's degree in library and information science. She explained that part of her teaching experience included encouraging her students to learn and engage with the judicial system.

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REPRESENTATIVE DRUMMOND referred to the document entitled, "Commission on Judicial Conduct Appointment - Aldean Kilbourn Application 4.9.2021.pdf" [included in the committee packet] and asked Ms. Kilbourne to explain more about the detail in her work history "Project CRISS trainer."

MS. KILBOURN explained that Creating Independence through Student's own Strategies (Project CRISS) had originated in Kalispell, Montana among teachers who identified that students were not achieving test results which she learned, taught, and used as a student herself during earning her master's degree.

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CHAIR CLAMAN stated that the second appointee for consideration would be Jane Mores who was appointed to her first term April 2, 2019, and had expired on March 1, 2020, at which time she was reappointed, and that term would expire March 1, 2024.

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JANE MORES, Appointee, Alaska Commission on Judicial Conduct, testified as appointee to the Alaska Commission on Judicial Conduct. She stated that she was reappointed as an attorney member of the commission. She stated that she resides in Juneau and had been practicing law for nearly 30 years in different locations in Alaska. She stated that ethical conduct as a personal guiding beacon to her career, her service on the commission had been meaningful to her. She emphasized that oversight of judicial conduct was important to public trust in the judiciary.

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CHAIR CLAMAN opened public testimony on the governor's appointees to the Alaska Commission on Judicial conduct and, after ascertaining that no one wished to testify, he closed public testimony.

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REPRESENTATIVE SNYDER stated that the House Judiciary Standing Committee has reviewed the qualifications of the governor's appointees and recommends that the following names be forwarded to a joint session for consideration: Aldean Kilbourne and Jane Mores to the Alaska Commission on Judicial Conduct. She said that signing the report regarding appointments to boards and commissions in no way reflects an individual member's approval or disapproval of the appointee, and the nomination is merely forwarded to the full legislature for confirmation or rejection.

^#hb29

HB 29-ELECTRIC UTILITY LIABILITY

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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."

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LYN ELLIOTT, Assistant Vice President, State Government Relations, referred to a joint letter from the American Property Casualty Insurance Association (APCIA) and the National Association of Mutual Insurance Companies (NAMIC) entitled, " HB 29 Additional Document - APCIA and NAMIC Joint Letter to HJUD 4.9.2021.pdf," [included in the committee packet]. She stated that the letter addressed two concerns with HB 29, as drafted. She stated that the first concern was that HB 29 would grant broad immunity of liability to utilities [companies], and the second concern was the vegetation management plan requirement that lacks specificity and oversight authority. She suggested that a proper balance considering the needs of utilities, property owners, and the insurers should be sought.

MS. ELLIOTT referred to a document entitled, "HB 29 Additional Document - APCIA and NAMIC Draft Amendment to HB 29 (Distributed by the HJUD Committee) 4.9.2021.pdf," [included in the committee packet] which contains suggested language to include in a potential future proposed amendment.

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REPRESENTATIVE KURKA referred to the joint letter entitled, "HB 29 Additional Document - APCIA and NAMIC Joint Letter to HJUD 4.9.2021.pdf," [included in the committee packet], in paragraph 3, which read as follows [original punctuation provided]:

"If a utility company's negligence causes a wildfire, the company would have the argument that they are statutorily immune from civil liability,"

REPRESENTATIVE KURKA asked whether, should HB 29 pass, utilities would be immune from any liability whether the [precipitating event to cause a wildfire] was within the utility's control or not.

MS. ELLIOTT answered that, should a utility act negligently, it would not have immunity from liability should HB 29 pass as drafted.

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KAREN COLLINS, Assistant Vice President of Personal Lines, American Property Casualty Insurance Association (APCIA), offered additional information in reference to Representative Kurka's question. She stated that among the concerns expressed by insurers with HB 29, one was that although the easements upon which utility equipment is situated, vegetation control is not an issue, but an issue may arise in the case where a private property owner's vegetation [encroaches on an easement, contributing to a wildfire,] and that the current proposed language in HB 29 does not clearly address the issue of liability.

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REPRESENTATIVE VANCE referred to a document entitled, "HB 29 Additional Document - APCIA and NAMIC Draft Amendment to HB 29 (Distributed by the HJUD Committee) 4.9.2021.pdf," [included in the committee packet, and drew attention to page 1, item 1(b), which read as follows [original punctuation provided]:

(b) If an electric utility identifies vegetation along but outside of its real property, lease, permit, easement, or right-of-way that poses a particular hazard as defined in the electric utility's filed and approved wildland protection plan, it may enter onto the property and perform vegetation management pursuant to the wildland protection plan. The electric utility may not be held liable for trespass as long as its actions are limited to those necessary to comply with the wildland protection plan.

REPRESENTATIVE VANCE asked what the intent had been of the drafter of the proposed amendment language and stated that property owners may take issue with trespassing allowed on his/her property.

CHAIR CLAMAN offered that the proposed language had been modeled after a law that had been passed in the State of Utah in 2020. He stated that, should an amendment be adopted and HB 29 pass, the Regulatory Commission of Alaska would be responsible for

reviewing and approving vegetation management plans put forth by utility companies.

MS. COLLINS answered that the intent of the language would address right of way access. She stated that many states have laws regarding right of way and [the complexities that may exist among] multiple property owners but there exists a threat to public safety because of wildfires caused by hazardous vegetation. She gave an example in which branches from a tree or a fallen tree from an adjacent property could cause a wildfire. She stated that [a utility company,] as a part of its vegetation management plan, would request that a property owner remove the hazardous vegetation and should the owner not address it, the proposed language would allow the utility company to remove the hazardous vegetation.

REPRESENTATIVE VANCE expressed her concern that communication with property owners take place prior to any trespass. She explained that the City of Homer had removed hazardous vegetation in rights of way, and it had caused concern to property owners who may have wished to remove the vegetation themselves.

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REPRESENTATIVE KURKA cited Article 1, Section 7 of the Alaska State Constitution and commented that the proposed language would permit utilities property rights. He stated his agreement that additional language should be included to address issues of liability.

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REPRESENTATIVE VANCE referred to the document entitled, "HB 29 Additional Document - APCIA and NAMIC Draft Amendment to HB 29 (Distributed by the HJUD Committee) 4.9.2021.pdf," [included in the committee packet,] and drew attention to page 2, which read in part [original punctuation provided]: "The proposed civil liability immunity provision in the bill could adversely impact affordability of homeowners' insurance for consumers" and asked whether a property owner would be subject to insurance rate increases.

MS. COLLINS answered that the losses resulting from catastrophic wildfires have resulted in higher insurance premiums for property owners. She stated that in the case when utility companies or any party responsible for the ignition of a

wildfire on insured property occurs, the insurance company will pay to restore the property but that it would pursue cost recovery, known as subrogation, to offset the costs. She stated that, if an insurance company would lose its ability to pursue cost recovery from an at-fault party, the costs to policy holders would increase.

REPRESENTATIVE VANCE asked whether Ms. Collins had observed rate increases to policy holders in states that have passed legislation similar to HB 29.

MS. COLLINS answered that recently passed legislation in other states has been in response to wildfires and stated that the right to subrogation would provide a balance to keep rates from increasing. She recalled that wildfires in California in 2017, 2018, and 2020 had prompted the passing of legislation and that other states had been affected. She noted that the risk of wildfires was compounded by climate change and drought over time are expected to become more problematic and costly.

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REPRESENTATIVE VANCE asked the number of Alaskan policy holders represented by the APCIA.

CHAIR CLAMAN stated that the APCIA represented insurers and not policy holders directly.

MS. ELLIOTT stated that there exist 520 companies that provide property casualty insurance, of which, five are domiciled in Alaska and three are headquartered in Alaska.

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REPRESENTATIVE EASTMAN asked, in states that allow utility companies to conduct vegetation control on private property, whether there exists any "hold harmless" language for the property owner.

MS. ELLIOTT answered that the bill that had passed in the State of Utah had only very recently passed, and that data was not yet available on approved vegetation mitigation plans. She added that the insurance industry and utility companies had consulted on the language that had been included in the passage that bill.

CHAIR CLAMAN asked Ms. Elliott to confirm that this type of legislation had not been passed in very many states, other than the State of Utah and the State of California.

MS. ELLIOTT confirmed this as correct.

MS. COLLINS stated her understanding that the laws had been passed in the State of Utah and the State of California in each of their most recent legislative sessions as a result of the 2020 wildfire season in western states.

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CHAIR CLAMAN asked whether increased liability in states affected by wildfire had resulted in insurers reluctant to issue insurance policies.

MS. COLLINS answered that there existed an "availability crisis" in the State of California due to wildfires in the state. She cited factors such as climate change, drought, accumulated fuel wells, and the increasing number of properties being built in wildland/urban interface all had accelerated issues over the last 5 to 10 years. She stated catastrophic wildfires had increased due to these factors and wildfires had increased in frequency. She stated the importance of managing costs to insurers as critical to maintaining affordable insurance availability.

CHAIR CLAMAN stated that it was possible for insurers to either raise costs or cease providing insurance and asked whether either consequence had occurred in the State of California.

MS. COLLINS stated that both had occurred in the State of California. She stated that proposed rate increases were subject to approval by the State of California Regulatory Authority, Department of Insurance. She stated that other regulations had been imposed on insurers that made it difficult to manage the portfolio of [liability] exposures in a manner common in other states, and that destabilization in the marketplace had resulted.

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REPRESENTATIVE SNYDER asked whether there existed in current statute a clear directive on what should be included in a vegetation management plan and what regulatory oversight would exist, or whether that was the intent of HB 29, as proposed.

CHAIR CLAMAN stated his understanding that it would be the intent to establish regulatory authority by the Regulatory Commission of Alaska for vegetation management plans for utilities in statute with the passage of HB 29. He added that the legislation passed in the State of Utah had resulted in its regulatory commission establishing standards for vegetation management plans. He asked Mr. Leman, General Counsel for the Alaska Power Association (APA) to further explain.

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ANDY LEMAN, General Counsel, Alaska Power Association, stated his belief that the statements made by Representative Snyder and Chair Claman were correct, that no such statutory requirement exists. He expressed his desire to continue conversations to address any concerns on behalf of utility companies, and that some locations in the state would not require vegetation management plans [due to terrain] and that other companies would be compelled to have a plan for operational stability. He stated that it was worth noting for the committee that many of the utility customers in Alaska are owners of cooperative utility companies, which results in a high level of accountability on the part of the utility companies that may not otherwise exist.

CHAIR CLAMAN asked whether a lack of any regulatory oversight for determining the adequacy of vegetation management plans could result in potential litigation regarding the adequacy of any such plans.

MR. LEMAN answered that the determination of liability in the case of [damages from a] wildfire would be a reasonable person's standard of negligence and that experts would likely be called upon to analyze whether a plan existed and whether it had been adequate. He stated that it had not been a goal [of the proposed bill] to provide absolute immunity to utilities but to better define in advance where liability may exist, such as in the case of vegetation inside or outside of a utility right of way, and to set a standard for such a plan.

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CHAIR CLAMAN asked how much the state had spent on fighting the McKinley fire, the Swan Lake fire, and the Deshka [Landing] fire and to explain the funding mechanisms associated with fighting fires.

NORM MCDONALD, Fire Program Manager, Division of Forestry, Department of Natural Resources, answered that the final billing would take place within the next month and offered preliminary cost data. He explained that the Swan Lake fire cost \$44.5 million and had originated on U. S. Fish & Wildlife Service land and was 100 percent reimbursable resulting in no cost to the state. He stated that the Deshka Landing fire was approximately a couple thousand acres which he characterized as relatively small. He added that it had occurred west of the Parks Highway in the state-owned Matanuska-Susitna (Mat-Su) area and cost \$3.9 million. He stated that it had been caused by a four-wheeler and had not occurred due to any power line [mishap.] He explained that the McKinley fire, which had also occurred in the Mat-Su area outside of Willow, Alaska cost \$14.3 million and 86 percent had occurred on state land. He added that the remainder of that fire [liability] was borne by the U. S. Department of the Interior.

CHAIR CLAMAN asked for clarification that the Sawn Lake fire had cost the state approximately \$44.5 million, and that the federal government would reimburse the state 100 percent [of the cost.]

MR. MCDONALD answered that the cost had been approximately \$27 million to the state, and that costs would be reimbursed through a mechanism called cross-billing.

CHAIR CLAMAN asked whether [the difference between the \$44.5 million and the \$27 million] was the amount paid directly by the federal government to fight the fire.

MR. MCDONALD confirmed this as correct.

CHAIR CLAMAN asked whether the \$3.9 million for the Deshka [Landing] fire had been spent by the State of Alaska.

MR. MCDONALD confirmed this as correct and explained that any fire that starts on state, private, or municipal land is the responsibility of the State of Alaska, Department of Natural Resources, Division of Forestry and added that the Deshka Landing fire had started on state land and [had been contained to] state, private, or municipal lands.

CHAIR CLAMAN asked whether there existed a potential for the state to recover any costs associated with the fire.

MR. MCDONALD answered that a potential cost recovery could exist via the Federal Emergency Management Agency (FEMA) Fire Management Assistance Grants (FMAG) for both the Deshka Landing and McKinley fires, both of which qualified for an estimated 75 percent cost recovery from FEMA.

CHAIR CLAMAN asked what potential exists for cost recovery for insurance companies or private entities for cost recovery in the Deshka Landing or McKinley fires.

MR. MCDONALD answered that there exists a process in which each fire is investigated by the Alaska Department of Natural Resources and the Alaska Attorney General's Office to determine origin and cause and whether negligence exists. He further explained that, should negligence be determined in the investigation, cost recovery would be sought. He explained that the investigation of the Deshka Landing fire had determined the origin of the fire to be on state land and to have been caused by a four-wheeler but that it had not determined who had been operating the four-wheeler and so no attempt at cost recovery could be made. He added that costs not covered by FEMA FMAG funds would be borne by the state.

CHAIR CLAMAN asked whether additional cost recovery mechanisms had been identified for the McKinley fire.

MR. MCDONALD stated that he was aware that some civil claims associated with the McKinley fire existed for individuals who lost property, but he stated he was unaware of any other cost recovery efforts underway.

CHAIR CLAMAN asked to confirm that those claims [for cost recovery] were being sought by individual homeowners and were not efforts put forth by the state.

MR. MCDONALD confirmed this as correct.

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REPRESENTATIVE DRUMMOND asked whether it had been the intent of the APCIA and NAMIC to promote the Alaska Regulatory Commission to create a wildfire protection plan. She asked whether such a plan already exists.

CHAIR CLAMAN answered that the state does not have a wildfire protection plan and stated that the language suggested by the

groups had been to model Alaska law similarly to that which had passed in the State of Utah.

REPRESENTATIVE DRUMMOND asked what the difference would be between a wildfire protection plan and a wildland protection plan.

CHAIR CLAMAN suggested that the committee should consider whether the Regulatory Commission of Alaska should be involved in creating plans or approving plans for vegetation management [for utility companies.]

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REPRESENTATIVE KURKA asked whether any fires in Alaska had occurred because of negligence on the part of a utility company.

CHAIR CLAMAN referred to a document entitled, "HB 29 Additional Document - Anchorage Daily News Article (Distributed by HJUD Committee) 3.28.2021.pdf," [included in the committee packet] in which the Matanuska Electric Association was involved in a lawsuit brought by insurance companies which had not yet been ruled on in court.

MR. LEMAN offered that he believes there was one other lawsuit with a similar scenario. He stated that interest in the proposed legislation on the part of utility companies had been prompted by wildfires and resulting lawsuits that had occurred in other states.

REPRESENTATIVE KURKA asked for additional information resulting from investigations by the State of Alaska determining whether liability for wildfires had been found to be on a utility company.

MR. MCDONALD offered that between 2011 and 2019, there had occurred 313 power line fires within Alaska, the largest and most expensive of which were the McKinley fire, Twin Creek fire, and the Tyonek fire. He stated that the Tyonek fire was the only fire to his recollection that could have been litigated but was instead settled out of court.

CHAIR CLAMAN asked whether any lawsuits had been associated with the Twin Creek fire on Kodiak.

MR. MCDONALD answered that none had been filed by the State of Alaska and he stated that he was unaware of any private lawsuits that may have occurred.

REPRESENTATIVE KURKA asked whether any finding of fault had been determined to have originated outside of the [utility] easement.

MR. MCDONALD stated that he would inquire with the Attorney General's Office and follow up with the committee.

REPRESENTATIVE EASTMAN stated that two of the fires had occurred in his district and that the costs that had been provided in earlier testimony had been associated with fire suppression efforts and did not include structural damages.

CHAIR CLAMAN asked the will of the committee on whether it wished to move HB 29 out of committee.

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REPRESENTATIVE VANCE said that she would like to hear from utility companies about proposed language. She mentioned the balance that needed to be struck between the insurance industry and utility companies regarding liability and increased costs to consumers. She asked whether a vegetation management plan definition [in statute] would further achieve that balance.

CHAIR CLAMAN asked if APA was prepared to offer its opinion on proposed Utah statute

MR. LEMAN stated that APA would appreciate additional time to consider the recommended language.

REPRESENTATIVE VANCE offered to clarify her previous statement to ask whether a clarified vegetation management plan would be helpful or burdensome to the rate payers.

CHAIR CLAMAN echoed Representative Vance's previous statement that there exists a third consideration of the potential impact to rate payers and homeowners regarding cost of rebuilding. He stated that the committee would be interested in hearing additional testimony from interested parties, including testimony from the APA on its position on whether a uniform plan or an approval structure with the Regulatory Commission of Alaska.

CHAIR CLAMAN stated that HB 29 would be held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:12 p.m.