

HB

355

<TARGET><BILL>HB 355</BILL><SUBJECT>HB
355</SUBJECT><COMM>HJUD30</COMM></TARGET>

Session:
State Capitol
Juneau, Alaska 99801
(907) 465-4457 Office
(907) 465-3519 Fax
(800) 928-4457 Toll Free

Alaska House of Representatives
David Guttenberg



District 4

Interim:
1292 Sadler Way
Suite 304
Fairbanks, Alaska 99701-3171
(907) 456-8172
(907) 456-2490 Fax

Date: March 1st, 2018

To: Representative Matt Claman
Chair, House Judiciary

From: Representative David Guttenberg

Re: Hearing Request HB355 "FIRE;FOREST LAND; CRIMES;FIRE PREVENTION"

Dear Representative Claman,

I respectfully request that you schedule HB 355 for a hearing before the House Resources Committee. HB 355 updates statute to better address and prevent wildland fires in the state.

Included in this request you will find:

1. A copy of a sponsor statement
2. Current version of the bill
3. Sectional Analysis
4. Supporting Document- Division of Forestry expanded one pager
5. Supporting Document- Alaska Fire Chief's Letter of Support
6. DNR and LAW Fiscal Notes

Please contact my staff, Alliana Salangit, for any additional information. My office will submit names of testifiers and additional information as soon as possible.

I appreciate your time and look forward to working with you on this issue.

Sincerely,


David Guttenberg

Ester Farmers Loop Goldstream 1 & 2 Steese East/Gilmore Steese West University Hills
rep.david.guttenberg@akleg.gov

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SPONSOR STATEMENT

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

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

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

The bill also addresses enforcement gaps in the existing arson and criminally negligent burning statutes in AS 11.46, makes technical changes to clarify the right of state fire prevention officers to enter land to investigate wildland fire and establishes a misdemeanor offense of interfering with this right of access, and corrects potentially conflicting statutory provisions..

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

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EXPLANATION OF CHANGES

HB 355: FIRE; FORESTED LAND; CRIMES; FIRE PREVENTION

Ver. D to Ver. j

Page 1, line 3: Inserts language about giving the Alaska Supreme Court authority to establish a bail schedule for offense.

Section 3: Deletes at "any time." Inserts language specifying that a Division of Forestry employee may only enter land when "*responding to a wildland fire or suspected fire or administering the provisions of this chapter.*"

Section 15: Regarding fines and penalties, deletes page 5, line 1-2 "of not more than \$5,000." Inserts "is punishable by a fine under *AS 12.55*"

Section 21: Deletes Section 21 and replaces it with language authorizing the supreme court to establish a bail schedule for violations of statute specified in this bill.

Section 24: Gives court 120 days after the effective date of this act to establish the bail schedule required in Section 21.

Sections 25: Specifying that Sections 23 and 24 of this Act take effect immediately under *As 01.10.070(c)*

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SECTIONAL ANALYSIS

HB 355: FIRE; FORESTED LAND; CRIMES; FIRE PREVENTION

Ver. J

Section 1. Amends AS 11.46.427(a)(2) by adding references to AS 41.15.060 – 41.15.120 to make it easier for agencies to coordinate enforcement of similar statutes that appear in different Titles of law.

Section 2. Amends AS 41.15.010 to add the word **forested land** to the intent language of this statute. Forested land is already defined in AS 41.15.170 and brings consistency to terminology used in the statutes.

Section 3. Amends AS 41.15.040 by updating terminology by deleting the “division of land” and adding “division of forestry”. Clarifies the right of entry to public or privately owned land for the purpose of preventing, suppressing and controlling a wildland fire to include for the purpose of “investigating” and “when responding to a wildland fire or suspected fire or administering the provisions of this chapter.”

Section 4. Adds a new subsection (b) to AS 41.15.040 that clarifies that a person may not interfere with or prohibit access authorized under (a) of this section, which is the right to enter for the purposes stated.

Section 5. Amends AS 41.15.050 Fire Season to allow the commissioner the ability to designate other periods as fire season **at any time** in order to allow open burning only by permit or to prohibit open burning.

Section 6. Amends AS 41.15.060. Permits. To include obtaining a permit **for setting of fires, use of burning devices, and other activities and use of land that increases fire danger**. This would include burning devices such as burn barrels, a common source of urban interface ignitions. This section is also amended to remove the type of offense a violation of this section would be and relies on a new section to establish types of violations.

Section 7. Adds a new subsection to AS 41.15.060 stating that a person may not participate in any activities that increase fire danger without a permit as prescribed by the commissioner in regulation.

Section 8. Amends AS 41.15.70. Disposal of burning materials to read “**may not discard...burning materials on forested land.**” Repeals language on the type of violation this offense would be and relies on amendments in Section 13 of this bill that provides a new range of violations. It also removes a reference to the “fire season” as the period of time this section applies and removes a reference to “public or private land”.

Anderson • Cantwell • Chena • Denali Park • Ester • Geist • Goldstream • Healy • Pike
University Campus • University Hills • University West
Representative David Guttenberg (@ legis.state.ak.us

Section 9. Amends AS 41.15.090. Building or leaving fires. To read "...may not start a fire...without first clearing the ground." The type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Sections 10. Amends AS 41.15.090 by adding a new subsection (b) **A person who starts a fire in or near forested land may not leave the fire before totally extinguishing the fire.** This change makes it very clear that leaving a fire unattended will result in consequences.

Section 11. Clarifies AS 41.15.100 Setting fires without consent. Updates language to "**may not set on fire forested land...**" to make this section consistent with terminology and intent. The type of offense for a violation of this section is repealed and relies on a new section to establish types of violations.

Section 12. Amends AS 41.15.110 **Uncontrolled spread of fire; leaving a fire unattended** by repealing the type of offense for a violation of this section and relies on a new section to establish types of violations.

Subsection (b) has verbiage change to **shall**, a positive action as opposed to the deleted current language "who neglects to." New language is added to make it clear that a person **may not leave a fire unattended** and the type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Subsection (c) updates terminology and makes it clear in any criminal action brought under this section that the escape of a fire **may be evidence that the person acted knowingly.** This change helps define mental state.

Section 13. Amends AS 41.15.120 by including the term **investigate** as one of the criteria for when an officer or employee of the United States or the state who is authorized to prevent and suppress fire requests a person to assist with such efforts. It also adds the word **shall** as opposed to "fails to" in determining if a person is in violation of the statute. The type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Section 14. Amends AS 41.15.130 Backfires. Adds the terminology and **burnouts** to allow fire suppression activity as "directed by an officer or employee of the U.S. or state who is authorized..." and makes it clear that AS 41.15.045 (Civil immunity) applies to the activities under this section.

Section 15. Repeals and reenacts AS 41.15.140 to establish a range of violations and fines that increase with the seriousness of the offense. This section also links to the criminal statutes to improve the understanding and consistency between enforcement agencies and the courts.

Subsection (a) makes it clear that if AS 41.15.150 applies, a felony charge, the following sections do not apply.

Subsection (a)(1) establishes a class A misdemeanor offense for violations of AS 41.15.010-41.15.130 for persons who knowingly violate this section.

Subsection (a)(2) establishes a fine amount in accordance with AS 12.55

Section 16. Amends AS 41.15.150 to provide specific criteria for criminal burning in the first degree if (a)(1) the person violates AS 41.15.155, and (2) a provision of 41.15.010-41.15.130 or a regulation adopted under AS 41.15.010-41.15.130

Subsection (b) provides for a class B felony if in violation of subsection (a) of this section and is punishable as provided in AS 12.55 the Sentencing and Probation Chapter of Title 12.

Section 17. Amends AS 41.15.150 by adding a new section to provide specific criteria for criminal burning in the second degree if the person (a)(1) knowingly sets a fire, (2) with criminal negligence, the person (a) permits the fire to spread beyond the person's control or (b) fails to prevent the fire from spreading to forested land or other flammable material and (3) as a result, the fire burns forested land or other flammable material located or growing on land that is not owned, possessed or controlled by the person

Subsection (b) provides for a class C felony if in violation of subsection (a) of this section and is punishable as provided in AS 12.55 the Sentencing and Probation Chapter of Title 12.

Subsection (d) provides for an upgrading violation to a class B felony if the initial setting of the fire is in violation of AS 41.15.010 – 41.15.130 or a regulation adopted under AS 41.15.010 – 41.15.130.

Section 18. Amends AS 41.150.160. Double damages in civil actions to clarify applicable statutes for this provision.

Section 19. Amends AS 41.15.170 to add paragraph (5) "knowingly" which has the meaning in AS 11.81.900 and adds paragraph (6) "recklessly" which has the meaning given in AS 11.81.900.

Section 20. Amends AS 41.15.950 to add (b)(4) a new subsection to provide clear authority to issue a citation to a person who violates a provision of AS 41.15.010 – 41.15.170 or a regulation adopted under this chapter.

Section 21. Adds a new section AS 41.15.960 directing the supreme court to establish a bail schedule for violations of statute specified in this bill.

Section 22. Repeals AS 41.15.080 which was a section on equipment and notice requirement for operators of a conveyance on or above forested land to be equipped with a receptacle for the disposal of burning material, shall post or display a copy of AS 41.15.050 - .080 and 41.15.140 in a conspicuous place. Additionally, an operator of a milling, logging or commercial operation shall also post and display a copy of the statute per the previous notation and if found in violation of this section, is guilty of a misdemeanor.

Section 23. Amends the uncodified law of the State of Alaska by adding a new section to read:
TRANSITION: REGULATIONS. The Department of Natural Resources may adopt regulation necessary to implement the changes made by this Act. The regulation take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

Section 24. Provides courts 120 days to establish bail schedule required by Section 21.

Section 25. Sections 23 and 24 take effect immediately under AS 01.10.070 (c)

Section 26. Except as provided in Section 25, this Act takes effect July 1st, 2018.

HB-355 Fire Prevention and Crimes on Forested Land

The Division of Forestry continues to seek opportunity to reduce the number of uncontrolled human cause wildfires. HB-355 “Fire Prevention and Crimes on Forested Land” has been introduced into the 30th Alaska State Legislature to modernize the Division’s Wildland Fire Prevention Program and open burning enforcement.

1. There is a need to comprehensively update the wildland fire prevention and enforcement statutes, most of which were enacted in 1961, at statehood.
2. Current burning offenses are unclassified misdemeanors that require a mandatory court appearance and are punishable by a fine of between \$100-\$1,000 or 10 days to 6 months imprisonment, or both.
3. The Division of Forestry would replace this with a 3-tiered prevention and enforcement structure, similar to fish and game violations.
4. The three tiers are:
 - a. Violations of regulations adopted under the proposal that would be “bail schedule” offenses. The proposal would authorize the Alaska Supreme Court to identify which regulatory violations would be “strict liability” offenses that would be satisfied by paying a fine of up to \$5,000. DOF prevention officers could issue citations, or tickets, for violations of these offenses, and the person issued the citation could either pay the fine set by the Supreme Court or contest the violation by appearing in court.
 - i. The proposal authorizes DOF prevention officers to issue citations for these minor offenses.
 - b. “Knowing” violations of the provisions in the proposal would be a class A misdemeanor, and resolution would require a mandatory court appearance. Under AS 12.55.035 & .135, misdemeanors are punishable by a fine of up to \$25,000 and one-year imprisonment.
 - c. The proposal also replaces the outdated unclassified felony at AS 41.15.150 with a class C “criminal burning of forested land” felony. This crime may be prosecuted as a class B felony if the person violated one of the AS 41.15 misdemeanors or regulations adopted thereunder in setting the fire. Under AS 12.55.125, Class C felonies are punishable by up to 5 years imprisonment. Class B felonies are punishable by up to 10 years.
5. The proposal fixes a technical issue with the existing statute so that AS 41.15.130 cannot be read to subject state and federal fire fighters to liability for backfires, burnouts, and other land-clearing fire suppression techniques.

Passage of this legislation will provide the Division of Forestry with a consistent and effective set of options for wildland fire prevention and enforcement that will reduce risk to the public from preventable wildland fires.

Impacts of Wildland Fires

Previous wildland fire seasons help illustrate the impacts of wildland fire on property values and public safety. In 2015 5.145 million acres was affected by wildland fire. There were 55 residences lost and 44 damaged in the Sockeye Fire (Willow), 6 residences lost in the Rex Fire (Clear), and 3 residences and 8 outbuildings lost in the Card Street Fire (Soldotna). In addition, transportation corridors such as the Parks Highway, Al-Can Highway, and Sterling Highway were compromised. Air quality is another issue and 69 air quality alerts were issued across the state. The Alaska wildland fire season now starts earlier and is trending longer due to changes in weather and climate patterns. The consequences of a human caused start, often in populated areas with high values at risk, are substantial. Cost recovery from individuals having a carelessly lit fire can be life changing. Overall, suppression costs are growing in an era of decreasing revenues. We need updated tools to reduce the number of human caused fires.

Needed Changes

A broad new educational program coupled with amendments to statutes and regulations is needed to reduce human-caused wildland fires in Alaska. Presently the single criminal misdemeanor penalty is inadequate to address all violations of safe outdoor burning requirements and protect our forested lands.

There is a need for improved penalties for lesser offenses because seemingly minor violations, such as fireworks or campfires during a burn closure, can result in major catastrophes. A full spectrum of penalties from very minor to severe is needed, along with effective policies and education to foster needed compliance and bring a significant reduction in wildland fires.

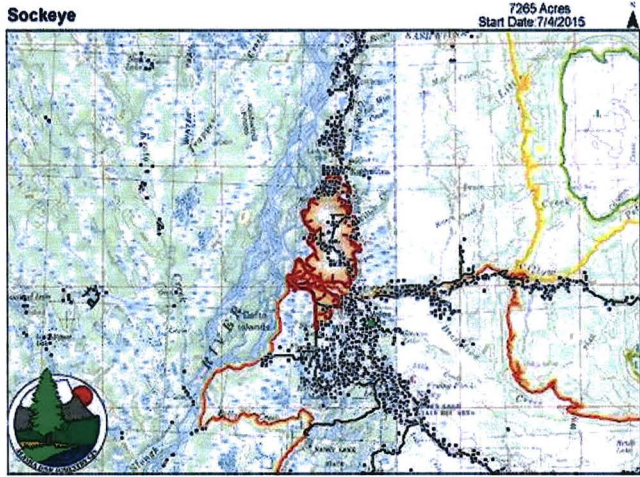
New Compliance Tools

- A statewide education program supporting safe outdoor burning practices will remind the public of fire safety and explain the new law changes.
- Formation of new DOF policies for education and fair methods to correct very minor violations without enforcement action.
- Establishment of a “bail schedule” will eliminate the need for court appearances and provide set fines for minor violations.
- Formation of “strict liability” accountability will allow lesser but potentially dangerous violations to be dealt with fairly.
- Upgrades of current misdemeanor and felony penalties will be utilized in cases where fire damage occurs due to criminal conduct.

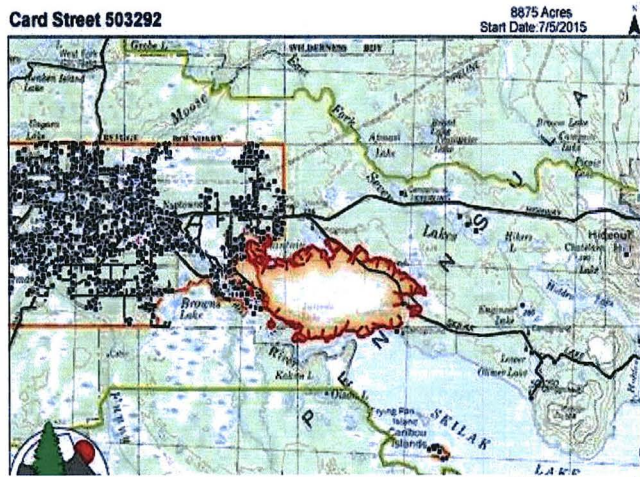
These needed compliance tools, beginning with education, will increase the effectiveness of the DOF Fire Prevention Program in reducing the number of human-caused wildland fires. Working together we can certainly make a difference in protecting our homes and valuable forested lands in Alaska.

Examples of Significant Wildland/Urban Interface Fires from Previous Fire Seasons

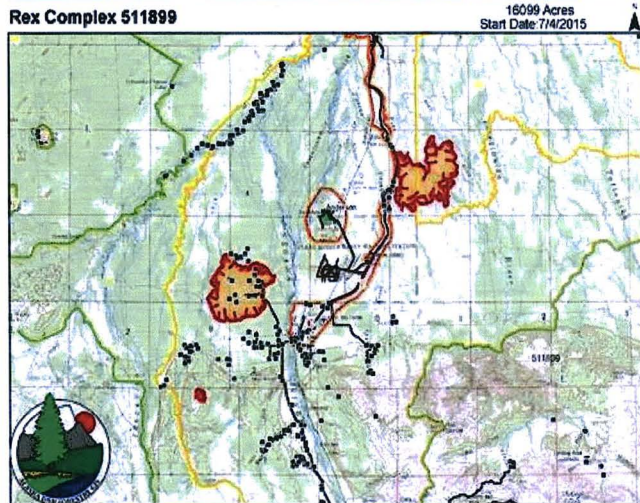
The **Sockeye Fire** near the community of Willow and started with human caused careless open burning. The result was a loss of 55 residences, 44 damaged, and numerous outbuildings lost. The Anchorage-Mat



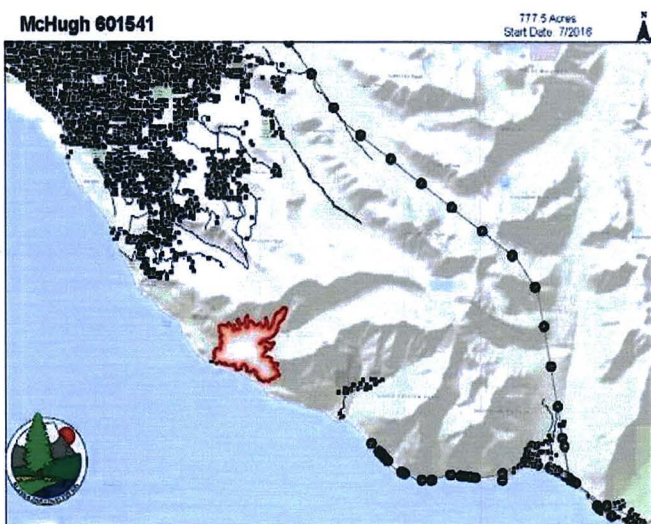
Su Valley has the largest amount of human caused wildland fires averaging nearly 87 fires per year. The need for improved education and enforcement can be illustrated by a fire such as Millers Reach where 300 structures were lost. Nearly 80% of all wildland fires in state protection are human caused.



The **Card Street Fire** occurred in close proximity to the Funny River Fire from the previous year. Both fires were human caused in areas of dense population and in high values at risk. The Kenai area has had a gradual change in fuel type as beetle-killed spruce has given way to a more grass dominate fuel that is particularly vulnerable in the spring when burning conditions promote rapid fire growth. Suspending burning when conditions warrant is a tool the Division utilizes to reduce escaped fires, however, enforcement remains problematic.



The **Rex Bridge Fire** occurred in the Fairbanks Area near Clear. While this fire was lightning caused, the overall area is particularly vulnerable to wildfire, extreme fire behavior, and long duration fires. It is also reflective of the interior as it has vulnerable fuels/weather, delayed detection, and increasing population. Careless burning has led to numerous and costly escaped fires. The Interior of Alaska has fire prone forests, an extensive wildland urban interface, and an average of 75% human caused fires in state protected areas. All averages are 10 year based and trending upward.



The **McHugh Fire** from 2017 was started by a campfire left behind by a hiker in Chugach State Park. The fire was in steep terrain and pushed by strong winds off Cook Inlet. The fire was stopped short of moving into densely populated area of south Anchorage with high values at risk only by a significant change in the weather. The “Anchorage Hillside” area has long been an area of concern for wildland fire with potential for substantial property loss. As the most densely populated area in Alaska, it also has a high occurrence of human caused fires.



ALASKA FIRE CHIEF'S ASSOCIATION

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(907) 586-1325 Fax (907) 463-5480

www.alaskafirechiefs.org

February 27, 2018

Representative David Guttenberg
State Capitol Room 501
Juneau, Alaska 99801

Rep. Guttenberg,

I am writing on behalf of the Alaska Fire Chiefs Association in support of House Bill 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."

Each summer Alaskans face the danger of wildfires in their local communities. Each year the fire season is starting earlier, making the fire season longer, allowing wildfires to burn longer and potentially consume additional wildland, personal and retail properties, transportation corridors, human life, and increased cost of suppression. The only hazard in not just the fire, but the smoke created by fire is creating it difficult for some to breath. In 2015 there were 69 air quality alerts issued in the State of Alaska.


HB355 looks Improve compliance with safe burning and updating outdated prevention and enforcement statutes. DOF Fire Prevention personnel would receive valuable new compliance and enforcement tools. These new tools would allow DOF personnel to:

- Provide education opportunities to improve safe open burning practices,
- Match the level of penalty to the seriousness of the offense, and in any given case, allow DOF to increase fairness to offenders by enabling a three-tiered penalty system.
- Describe appropriate violations of safe burning practices in regulation with the intent of placing minor violations on a bail forfeiture schedule to make them appropriate for disposition without a court appearance.

Consequences of a human caused fire are often started in populated areas with high value properties at risk. While we cannot prevent all wildfires, HB355 looks to reduce human caused wildfires with education and penalties to match the seriousness of the offense.

HB355 has the ability to help reduce these human caused fires and protecting lives and valuable property at risk, with no additional cost to the State or the citizens of Alaska. The Alaska Fire Chief's Association support HB 355 and request the support of all legislators.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Jeff Tucker', with a long horizontal flourish extending to the right.

**Jeff Tucker, President
Alaska Fire Chiefs Association**



THE STATE
of ALASKA

GOVERNOR BILL WALKER

Department of Natural Resources

DIVISION OF FORESTRY/FIRE & AVIATION

3700 Airport Way
Fairbanks, AK 99709
Main: 907.451.2675
Fax: 907.451.2690

March 14, 2018

Chairman Matt Claman, Vice Chair Jonathan Kreiss-Tomkins and members of the House Judiciary Committee:

The Division of Forestry supports CSHB 355 (RES), "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." This bill is directed to state statutes in Title 41. Public Resources, Chapter 15 Forests, Article 1. Protection of forested land, originally authored in 1961. These statutes are directed at regulation, prevention, and suppression of activities to reduce the threats of wildland fire while still allowing activities such as cooking, warming, or debris clearing.

Since these statutes inception, Alaska has seen a significant increase in population and related growth in the wildland urban interface. This is where Alaskans enjoy both desirable homesites and direct access to recreation. It is also where we have seen a steady increase in human caused wildfires that are expensive and catastrophic.

The Division of Forestry works cooperatively with federal and local governments to protect citizens from wildland fire on land that is owned privately, by the state, or by a municipality, per AS 41.15.010. Our suppression responsibilities are primarily the southern half of the state with the populated and developed communities. The Division's protection areas see wildland fire starts that are around 79% human and 21% natural caused. These fires can be expensive and catastrophic, for example, cost wise:

- Hastings Fire (Fairbanks) - \$20 million,
- Funny River Fire (Kenai) - \$13 million,
- Parks Highway Fire (Nenana) \$10 million,
- McHugh Fire (Anchorage) \$6 million.

Wildland fires with extensive loss of improvements, businesses, and homes:

- Miller's Reach (Wasilla, 1996) – 344 structures, estimated \$15 million loss,
- Caribou Hills (Kenai, 2007) – 88 structures, estimated \$8.2 million loss,
- Sockeye (Willow, 2015) – 60 structures, \$10 million lost.

These human caused fires are all started by a single ignition point and have resulted in the loss of cabins, homes, and businesses. In many parts of Alaska, affordable insurance is not practical and structures are often not insured. Replacement becomes the responsibility of the homeowner. Preventing even one destructive, expensive, long duration fire would be well worth the collective effort of the citizens, the legislature, and the Division of Forestry. We support the intent of CSHB 355 (RES) to coalesce this effort.

Thank you,

A handwritten signature in blue ink, appearing to read "Tom Kurth".

Tom Kurth,

Chief, Fire & Aviation

Alaska Division of Forestry

(907) 451-2675 (office)/590-3184 (cell)

<http://forestry.alaska.gov>

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	CSHB 355(RES)
Fiscal Note Number:	1
(H) Publish Date:	3/12/2018

Identifier: HB355-LAW-CRIM-02-24-18
 Title: FIRE;FOREST LAND; CRIMES;FIRE PREVENTION
 Sponsor: GUTTENBERG
 Requester: House Resources

Department: Department of Law
 Appropriation: Criminal Division
 Allocation: Criminal Justice Litigation
 OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By:	Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division:	Administrative Services Division	Date: 02/23/2018
Approved By:	Jahna Lindemuth, Attorney General	Date: 02/24/18
Agency:	Department of Law	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION**Analysis**

This legislation makes a number of changes to crimes related to the burning of forested land which align the language in these offenses with the language commonly used in the criminal code. It also allows the misdemeanor offenses found in AS 41.15.040 – 41.15.130 to be prosecuted as a misdemeanor if the person acts “knowingly” or as a violation if the person acts with no culpable mental state.

The legislation also adds a new class C felony offense: criminal burning of forested land in the second degree. A person commits criminal burning of forested land in the second degree if the person knowingly sets a fire and with criminal negligence allows the fire to spread beyond the person’s control or fails to prevent the fire from spreading and the fire burns forested land or other flammable material that is located on land not owned or controlled by the person.

The Department of Law does not anticipate a fiscal impact from this legislation.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	CSHB 355(RES)
Fiscal Note Number:	2
(H) Publish Date:	3/12/2018

Identifier: HB355-DNR-FSP-02-23-18
 Title: FIRE;FOREST LAND; CRIMES;FIRE PREVENTION
 Sponsor: GUTTENBERG
 Requester: Governor

Department: Department of Natural Resources
 Appropriation: Fire Suppression, Land & Water Resources
 Allocation: Fire Suppression Preparedness
 OMB Component Number: 2705

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
 If yes, by what date are the regulations to be adopted, amended or repealed? 06/30/19

Why this fiscal note differs from previous version/comments:

Initial Version

Prepared By:	Tom Kurth, Chief of Fire	Phone:	(907)451-2675
Division:	Division of Forestry	Date:	02/23/2018 01:00 PM
Approved By:	Andrew T. Mack, Commissioner	Date:	02/28/18
Agency:	Department of Natural Resources		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This legislation will update the wildland fire statutes to use current terminology and definitions, provide a tighter linkage to the criminal code statutes associated with violations and establish an updated, scalable range of offenses and associated fines from misdemeanor to felony.

Department of Natural Resources does not anticipate any direct fiscal impact. Updating regulations and some training for fire prevention staff will be absorbed by the department. While the bill addresses fines for offenses, the changes made to existing statutes are not expected to generate a meaningful amount of additional revenue.

Lizzie Kubitz

From: Rep. Matt Claman
Sent: Monday, March 19, 2018 8:25 AM
To: House Judiciary
Subject: FW: Additional Written Testimony HB355 Please place in the record
Attachments: red flag.jpg

-----Original Message-----

From: Rainbow Chaser [mailto:svrainbowchaser@yahoo.com]
Sent: Sunday, March 18, 2018 10:43 AM
To: Rep. Matt Claman <Rep.Matt.Claman@akleg.gov>; Rep. Louise Stutes <Rep.Louise.Stutes@akleg.gov>; Rep. Jonathan Kreiss-Tomkins <Rep.Jonathan.Kreiss-Tomkins@akleg.gov>; Rep. Gabrielle LeDoux <Rep.Gabrielle.LeDoux@akleg.gov>; Rep. David Eastman <Rep.David.Eastman@akleg.gov>; Rep. Chuck Kopp <Rep.Chuck.Kopp@akleg.gov>; Rep. Lora Reinbold <Rep.Lora.Reinbold@akleg.gov>
Cc: Rep. George Rauscher <Rep.George.Rauscher@akleg.gov>
Subject: Additional Written Testimony HB355 Please place in the record

PLEASE PLACE (Text and photo) IN THE WRITTEN RECORD - HB355

Below is ADDITIONAL UPDATED written testimony to be placed on the record for HB355. Since my oral testimony was cut short by Chairman Claman please be sure and carefully read researched points towards the end of my testimony that were not allowed to be included regarding changes to AS. 41.15.060 - Permits, changes to AS. 41.15.070 - Disposal of burning materials , and grave considerations regarding AS. 41.15.090(b) - Building or Leaving Fires, in which sourdough Alaskan moose hunters, operating safely as they have for decades, could be considered as criminals...

HOUSE JUDICIARY
PUBLIC TESTIMONY
HB 355

For the record my Name is James Squyres. I live in Rural Deltana, I am appreciative of the amendment process that took place in the last committee but feel that there is still work to be done on HB355 as currently stated. These comments are updated to reflect it's current status subsequent to my previous testimony, amendments and testimony by others. I have been concerned for some time with the 42.15 series of Alaska Statute. I hope as Legislators you will use this opportunity to make additional amendments to this Bill to bring this statute in line with constitutional elements that you swore to uphold under Article 12, Section 5 of the Alaska Constitution.

In particular, Section 3 of the Bill referring to AS 41.15.040. "Right of entry to control and suppress fires" needs to be realigned with Article 1, Section 14 of the Alaska Constitution and the 4th Amendment of the United States Constitution against "unreasonable searches" when it comes to private property. Now every Alaskan wants Forestry to charge in to control and suppress wildfire even if it is on private property, that is not the question here. Now..., as we know, Alaska is a huge state. There is not that much private property. Even less when you back out urban from rural privately owned forested land. What IS in question is current "prevention" terminology in statute that can be easily abused by virtually any employee in Forestry to enter private property when there is no probable cause that a crime is being committed.

Currently, a Forestry employee is considered a "Peace Officer" under AS 41.15.950 and may climb over a locked and posted gate and walk down your driveway where you have clearly expressed your "expectation of privacy" WITHOUT probable cause that a crime is being committed to "prevent" not just a wildfire, but ANY fire. Many Alaskans like myself

have smoke going out the top of their chimneys right now as I present this testimony. None of us have a problem if there IS probable cause yet we know that Article I, Section 22 indicates that The right of the people to privacy is recognized and shall not be infringed.

SO..., AS 41.15.040 could be cleaned up more by a simple amendment on Page 2, line 14 adding the word "wildland" between the words "suspected" and "fire" and on Page 2, line 16 removing the word "preventing". You could also modernize the title of this section by changing it to "Sec. 41.15.040. Authority of entry to control and suppress wildland fires."

Another situation which is quite messy is the terminology of Peace Officers used in AS 41.15.950 being applied to employees of Forestry who are not trained as Peace Officers. AS 11.61.220. involves Misconduct Involving Weapons in the Fifth Degree, whereby an Alaskan who is carrying a concealed firearm, even on his own private property, has a duty to immediately notify a PEACE OFFICER that they are carrying a concealed firearm and that the Peace Officer has the right to secure the deadly weapon. This is clearly a procedure that someone on a fire crew is not trained in performing and opens a Pandora's box of possibilities with undesirable outcomes. In revising this Statute it is time for this issue to be addressed as well.

In addition to the above concerns on an Alaskan's private land, there are several things in this bill and in this 42.15 series of statute that you should find alarming and quite ridiculous and hope you will do some leg work to clean up.

AS. 41.15.060. Permits – a permit is now required for "uses of land" that increase fire danger? Does this mean Forestry is supposed to get involved with every detail of private property land management like cutting firewood or clearing that may produce slash piles that may be lit off later with 3 feet of snow on the ground?

AS. 41.15.070. Disposal of burning materials – This bill changes this from the fire season to year around so if someone throws a cigarette onto the ground covered in 3 feet of snow they ARE in violation of this statute. I believe there is already a statute out there with a 1,000 fine for littering. Please.

AS. 41.15.090(b) Building or Leaving Fires. - How many Alaskan Moose hunters are criminals when they have been safely burning for years or decades? Think about a warming campfire prepared in a properly cleared area and banked for the night before bedding down. Getting up before dawn for the morning hunt and returning "frozen out" to get the fire going again. If there was any warm ash in that safely burned down and banked fire while they were out on the morning hunt they ARE criminals.

Of course the concern is that there is room for abuse left open by statute in the situations laid out above. We ALL want Forestry to continue their valuable mission. It is your job to cast a statutory net that does not catch every sourdough moose hunter or violate private property rights.

My name is James Squyres and that concludes my testimony.

Lizzie Kubitz

From: Francesca A <frescachez@gmail.com>
Sent: Monday, March 19, 2018 9:54 AM
To: House Judiciary
Subject: Public testimony HB 355

Dear House Judiciary,

I am against HB 355.

You took a sworn oath to protect and uphold the Constitution.

This bill is in direct violation of the Constitution. It is an unlawful invasion of privacy. You need a warrant to enter private property. You do not have the right of entry for preventative or investigation purposes on private property. It is unlawful searches and seizures.

This is a bad bill and against our constitutional rights.

Again, I am against HB 355 because it violates the Constitution.

Regards ,
Francesca Allegranza

Sent from my iPhone



Office of the Borough Mayor

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2150 • (907) 714-2377

Charlie Pierce
Mayor

March 14, 2018 @ 13:00
Alaska Judiciary Standing Committee
HB 355: Human Caused Wildfire Reduction Act
Public Testimony - *Documented*

On behalf of Mayor Pierce, the borough administration supports enactment of HB355. As the population continues to grow on the peninsula so too does the expectation that wildland fires must be reduced using combined strategies. Too often we quickly lose the sense of awareness or fail to practice prevention after the response to wildfires and costly rehabilitation measures have been completed for the season.

This bill creates an updated framework that addresses fire prevention and enforcement actions aimed at reducing risk, educating the public through outreach and recognizing the movement toward establishing fire adapted communities. Let's face it: we live in the trees - the wildland urban interface - or WUI, and fuels reduction projects on private and public land holdings should complement fire as a natural occurrence on the landscape. What shouldn't be acceptable is that approximately 98 percent of all fire starts on the peninsula are human-caused ... 98 percent.

As the WUI continues to intermingle with forested lands, as we continue to live in the trees, let us recognize that minimizing wildfire risk is a shared responsibility among all landowners.

Testifier:
Brenda Ahlberg, Community & Fiscal Projects Manager / Public Information
Officer for the Kenai Peninsula Borough

bahlberg@kpb.us
907-714-2153

AMENDMENT

#1 Adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE KOPP

TO: CSHB 355(RES)

- 1 Page 2, line 14, following "suspected":
- 2 Insert "wildland"

AMENDMENT

#2 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

1 Page 6, following line 16:

2 Insert a new bill section to read:

3 **** Sec. 21.** AS 41.15.950 is amended by adding a new subsection to read:

4 (c) Nothing in this section requires a person to disclose a deadly weapon under
5 AS 11.61.220(a)(1)(A) to a peace officer described under (a)(1) of this section."
6

7 Renumber the following bill sections accordingly.
8

9 Page 7, line 2:

10 Delete "sec. 21"

11 Insert "sec. 22"
12

13 Page 7, line 3:

14 Delete "sec. 21" in both places

15 Insert "sec. 22" in both places
16

17 Page 7, line 4:

18 Delete "Sections 23 and 24"

19 Insert "Sections 24 and 25"
20

21 Page 7, line 5:

22 Delete "sec. 25"

23 Insert "sec. 26"

AMENDMENT #3 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

- 1 Page 2, lines 14 - 15:
- 2 Delete "or administering the provisions of this chapter"

AMENDMENT #4 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

- 1 Page 3, lines 7 - 9:
- 2 Delete all material and insert:
- 3 "(b) A person may not set fires or use burning devices without a permit as
- 4 prescribed by the commissioner in regulation."

AMENDMENT #5 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

- 1 Page 4, line 1:
- 2 Delete "knows of a fire or"
- 3 Insert "[KNOWS OF A FIRE OR]"

30-LS1382\J.7
Bruce/Radford
3/16/18

AMENDMENT

#6 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

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

AMENDMENT #7 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

1 Page 3, line 16:

2 Delete "A"

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

4

5 Page 4, lines 22 - 27:

6 Delete all material and insert:

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

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

10 **(1) backfires and burnouts and other burning or clearing of land**

11 [A BACKFIRE] under the direction of an officer or employee of the United States or
12 the state who is authorized to prevent or suppress fires; or

13 **(2) a backfire by a person on land owned by the person.**"

AMENDMENT

#8 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

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

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

4

5 Page 6, line 14, following "chapter":

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

AMENDMENT

#9 Ruled out
of order

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

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

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

4

5 Page 2, lines 14 - 15:

6 Delete "or administering the provisions of this chapter"

7

8 Page 3, lines 7 - 9:

9 Delete all material and insert:

10 "(b) A person may not set fires or use burning devices without a permit as
11 prescribed by the commissioner in regulation."

12

13 Page 3, line 16:

14 Delete "A"

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

16

17 Page 4, line 1:

18 Delete "knows of a fire or"

19 Insert "[KNOWS OF A FIRE OR]"

20

21 Page 4, lines 16 - 17:

22 Delete ", investigate,"

23

1 Page 4, lines 22 - 27:

2 Delete all material and insert:

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

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

6 **(1) backfires and burnouts and other burning or clearing of land**

7 [A BACKFIRE] under the direction of an officer or employee of the United States or
8 the state who is authorized to prevent or suppress fires; or

9 **(2) a backfire by a person on land owned by the person.**"

10

11 Page 6, line 14, following "chapter":

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

13

14 Page 6, following line 16:

15 Insert a new bill section to read:

16 **** Sec. 21.** AS 41.15.950 is amended by adding a new subsection to read:

17 (c) Nothing in this section requires a person to disclose a deadly weapon under
18 AS 11.61.220(a)(1)(A) to a peace officer described under (a)(1) of this section."

19

20 Renumber the following bill sections accordingly.

21

22 Page 7, line 2:

23 Delete "sec. 21"

24 Insert "sec. 22"

25

26 Page 7, line 3:

27 Delete "sec. 21" in both places

28 Insert "sec. 22" in both places

29

30 Page 7, line 4:

31 Delete "Sections 23 and 24"

AMENDMENT #10 Failed

OFFERED IN THE HOUSE
TO: CSHB 355(RES)

BY REPRESENTATIVE EASTMAN

- 1 Page 1, line 2:
2 Delete "**forested**"
3 Following "**land**":
4 Insert "**with inflammable material**"
5
6 Page 1, line 3:
7 Delete "**forested**"
8 Following "**land**":
9 Insert "**with inflammable material**"
10
11 Page 2, line 6:
12 Delete "**forested**"
13 Following "**land**":
14 Insert "**with inflammable material**"
15
16 Page 2, line 26:
17 Delete "forested"
18 Insert "[FORESTED]"
19 Following "**land**":
20 Insert "**with inflammable material**"
21
22 Page 3, line 13:
23 Delete "forested"

1 Insert "[FORESTED]"

2 Following "land":

3 Insert "with inflammable material"

4

5 Page 3, line 17:

6 Delete "forested"

7 Following "land":

8 Insert "with inflammable material"

9

10 Page 3, line 22:

11 Delete "forested"

12 Following "land":

13 Insert "with inflammable material"

14

15 Page 3, line 26:

16 Delete "forested land [TIMBER, BRUSH, GRASS,] or other"

17 Insert "[TIMBER, BRUSH, GRASS, OR OTHER]"

18

19 Page 4, line 1:

20 Delete "forested"

21 Insert "[FORESTED]"

22 Following "land":

23 Insert "with inflammable material"

24

25 Page 4, line 7:

26 Delete "forested"

27 Insert "[FORESTED]"

28 Following "land":

29 Insert "with inflammable material"

30

31 Page 5, line 5:

1 Delete "**forested**"
2 Following "**land**":
3 Insert "**with inflammable material**"
4

5 Page 5, line 6:
6 Delete "forested"
7 Following "land":
8 Insert "with inflammable material"
9

10 Page 5, line 10:
11 Delete "forested"
12 Following "land":
13 Insert "with inflammable material"
14

15 Page 5, line 13:
16 Delete "**forested**"
17 Following "**land**":
18 Insert "**with inflammable material**"
19

20 Page 5, line 14:
21 Delete "forested"
22 Following "land":
23 Insert "with inflammable material"
24

25 Page 5, lines 19 - 20:
26 Delete "forested land or other flammable"
27 Insert "land with inflammable"
28

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

1

2 Page 5, line 23:

3 Delete "forested"

4 Following "land":

5 Insert "with inflammable material"

6

7 Page 6, following line 5:

8 Insert a new paragraph to read:

9 "(6) "inflammable material" means material that is combustible and

10 easily set on fire."

11

12 Renumber the following paragraph accordingly.

1 Insert "Sections 24 and 25"

2

3 Page 7, line 5:

4 Delete "sec. 25"

5 Insert "sec. 26"