ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS
April 16, 2002
3:42 p.m.

MEMBERS PRESENT

Representative Mike Chenault, Chair
Representative Lisa Murkowski
Representative Joe Green
Representative Pete Kott
Representative Sharon Cissna
Representative Joe Hayes

MEMBERS ABSENT

Representative Beverly Masek

COMMITTEE CALENDAR

HOUSE BILL NO. 325
"An Act relating to civil defense and disasters; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 326
"An Act relating to state plans and programs for the safety and security of facilities and systems in the state; and providing for an effective date."

- MOVED CSHB 326(MLV) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 325
SHORT TITLE:TERRORISM, CIVIL DEFENSE, AND DISASTERS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/16/02	1974	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1974	(H)	MLV, STA, HES
01/16/02	1974	(H)	FN1: ZERO(HSS)
01/16/02	1974	(H)	FN2: ZERO(MVA)
01/16/02	1974	(H)	GOVERNOR'S TRANSMITTAL LETTER

04/16/02 (H) MLV AT 3:00 PM CAPITOL 124

BILL: HB 326
SHORT TITLE:SECURITY OF FACILITIES AND SYSTEMS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/16/02	1975	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1975	(H)	MLV, STA, JUD
01/16/02	1975	(H)	FN1: ZERO(DOT)
01/16/02	1975	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/16/02		(H)	MLV AT 3:00 PM CAPITOL 124

WITNESS REGISTER

WAYNE RUSH, Homeland Security Coordinator
Division of Emergency Services
Department of Military and Veterans' Affairs (DMVA)
P.O. Box 5750
Fort Richardson, Alaska 99505-5750
POSITION STATEMENT: Presented HB 325 to the committee and answered questions.

MICHAEL MITCHELL, Assistant Attorney General
Governmental Affairs Section
Civil Division (Anchorage)
Department of Law
1031 West 4th Avenue, Suite 100
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Answered questions on HB 325.

KAREN E. PEARSON, Director
Division of Public Health
Department of Health and Social Services
P.O. Box 110610
Juneau, Alaska 99811-0610
POSITION STATEMENT: Answered questions on HB 325.

STEPHEN CONN
P.O. Box 101093
Anchorage, Alaska 99510
POSITION STATEMENT: Testified on his own behalf during hearing on HB 325; expressed concern about some of the wording and offered suggestions.

CAROL CARROLL, Director

Administrative Services Division
Department of Military & Veterans' Affairs
400 Willoughby Avenue, Suite 500
Juneau, Alaska 99811
POSITION STATEMENT: Presented HB 326 and answered questions.

DEBORAH BEHR, Assistant Attorney General
Legislation & Regulations Section
Civil Division (Juneau)
Department of Law
400 Willoughby Avenue, Suite 500
Juneau, Alaska 99811
POSITION STATEMENT: Assisted in presentation of HB 326 and answered questions.

DENNIS POSHARD, Legislative Liaison/Special Assistant
Office of the Commissioner
Department of Transportation & Public Facilities
Juneau, Alaska
POSITION STATEMENT: During hearing on HB 326, urged support for Section 1 as a tool to use at airports; answered questions.

ACTION NARRATIVE

TAPE 02-20, SIDE A
Number 0001

CHAIR MIKE CHENAULT called the House Special Committee on Military and Veterans' Affairs meeting to order at 3:42 p.m. Representatives Chenault, Murkowski, Green, and Hayes were present at the call to order. Representatives Kott and Cissna arrived as the meeting was in progress.

HB 325-TERRORISM, CIVIL DEFENSE, AND DISASTERS

[Contains discussion of SB 237, the companion bill in the Senate, as well as HB 350]

Number 0089

CHAIR CHENAULT announced that the first order of business would be HOUSE BILL NO. 325, "An Act relating to civil defense and disasters; and providing for an effective date." [HB 325 was sponsored by the House Rules Standing Committee by request of the governor.]

Number 0137

WAYNE RUSH, Homeland Security Coordinator, Division of Emergency Services, Department of Military and Veterans' Affairs (DMVA), presented HB 325. He explained that Section 1 adds to AS 26.20, the old civil defense Act, the concept of a terrorist attack or credible threat of such an attack. Sections 2 and 3 amend AS 26.23, the Alaska disaster Act of 1977. Subsection (g)(10) adds pharmaceuticals and other medicines, as well as supplies, to the existing list of food, water, fuel, or clothing; this is in response to the increased threat of bioterrorist attack. And subsection (g)(12) is a new paragraph to allow the governor to access, inspect, and share health care and medical records on an as-needed basis to facilitate a response to protect public health and safety. Mr. Rush emphasized that this is on an as-needed basis so epidemiological aspects, in particular, can be [reviewed] during an outbreak or potential outbreak in order to detect anything unusual, find out what it is, and perhaps find out who might be infected.

MR. RUSH noted that [Section 3], under the definition of "disaster", adds two subparagraphs - (D) and (E) - similar to what was proposed for AS 26.20. This is to clarify that a terrorist attack or threat of such attack, or an outbreak of disease or credible threat of such an outbreak, would be included in this definition of disaster.

Number 0480

REPRESENTATIVE MURKOWSKI related concern about the definition of "credible" threat, since the governor's statutory powers normally kick in when something has actually happened.

MR. RUSH replied that [AS] 26.23.900 already has a precedent and mentions imminent threat. He reported that the Senate State Affairs Standing Committee [during hearings on SB 237, the companion bill in the Senate] had discussed the question of what constitutes a credible threat, and that Mr. Mitchell and others from the Department of Law had crafted a proposed change that says a credible threat of an enemy or terrorist attack would be deemed by the commissioner of the Department of Military & Veterans' Affairs (DMVA) [who also is the adjutant general]; similarly, an outbreak of disease or credible threat of such an outbreak would be as determined by the commissioner of the Department of Health and Social Services. He deferred to Mr. Mitchell for elaboration.

Number 0726

MICHAEL MITCHELL, Assistant Attorney General, Governmental Affairs Section, Civil Division (Anchorage), Department of Law, began discussion of Amendment 1. Drafted for SB 237 and not yet provided to committee members, it read [original punctuation provided, but proper line numbers added in brackets for HB 325]:

Page 1, line 5:
Following "credible threat of such an attack" insert:
"under the standards specified in AS 26.23.900(2)(D)"

Page 4, lines 2-5 [lines 3-6 of HB 325]:
Delete all material and insert:
"(D) a terrorist or enemy attack, or an imminent threat of such an attack that the adjutant general or a designee of the adjutant general certifies is credible based on specific information received from a local, state, federal, or international agency or other source that the adjutant general determines is reliable; or
(E) an outbreak of disease, or an imminent threat of an outbreak of disease that the commissioner of health and social services or a designee of the commissioner certifies is credible based on specific information received from a local, state, federal, or international agency or other source that the commissioner determines is reliable."

MR. MITCHELL indicated "department" in subparagraph (E) refers to the Department of Health and Social Services. He went on to say the required certification would be based on specific information that the "officer" determines is reliable.

REPRESENTATIVE MURKOWSKI concurred with specifying which person could certify whether a threat is credible. She requested a copy of the written amendment from Mr. Mitchell, who was testifying via teleconference. [The amendment was received via fax later during the hearing.]

Number 0844

REPRESENTATIVE MURKOWSKI recalled numerous cases of hepatitis in rural communities a few years ago. She asked at what point something is an "outbreak" of disease, rather than just a high incidence.

Number 0947

KAREN E. PEARSON, Director, Division of Public Health, Department of Health and Social Services, indicated such hepatitis cases would constitute an outbreak; if the numbers were higher, it would be a larger outbreak. However, this bill would kick in if the department received a call from the Centers for Disease Control and Prevention (CDC), for example, or "some entity that we know and respect" with information that someone with smallpox had arrived at Anchorage's airport two hours before; this would require mobilization because smallpox is such a highly infectious agent and has such a high death rate. Those are the kinds of things for which the department would say there was a credible threat; this wouldn't be invoked for "naturally occurring outbreaks of disease," she added.

REPRESENTATIVE MURKOWSKI expressed concern about the broadness of the definition of "disaster" with regard to an outbreak of disease or credible threat of such an outbreak. She noted that a disaster [defined in AS 26.23.900(2) and amended by Section 3 of the bill] is usually an overwhelming event such as a tsunami, earthquake, fire, flood, and so forth. She expressed concern about whether one special event should kick in these special and specific powers of the governor with regard to disaster-related funds. She recalled that the definition of "disaster" was hotly debated when it was included three or four years ago, with a lot of discussion about the need to be very specific with regard to how it is defined; this related to the fisheries disaster in Western Alaska.

Number 1231

REPRESENTATIVE GREEN observed that page 3, paragraph (10) [Section 2], adds "**pharmaceuticals and other medicines, supplies,**" and that there is another list on page 2, subparagraph (C) [Section 1]; one is for allocation, the other for seizure. Speaking in general against tabulating items [in statute], he asked whether the two lists should be the same in order to eliminate confusion.

MR. RUSH answered that eventually the two [lists] probably should be consolidated. He said the civil defense Act, AS 26.20, is probably outdated in many ways, but that the idea was this: rather than doing a major overhaul, the bill would include discrete items needed in the short term to better prepare the state for a terrorist attack - in this case, a

biological attack. Pharmaceuticals were added [to one list] because they weren't specifically mentioned [in existing statute], and [the department] thought they probably should be mentioned.

REPRESENTATIVE GREEN remarked that if pharmaceuticals are necessary for allocation, they're probably necessary for confiscation as well. He suggested [the governor] should have the power to do the same [under both AS 26.23.020 and AS 26.20.040].

Number 1464

MS. PEARSON responded:

> I think the reason that we didn't go ahead and add it to the first section is that medicines were already covered there, and on the other; they could seize them in that first section, but you couldn't allocate or redistribute them without the addition to the second section. And so that's when the addition was made. But I would agree that "pharmaceuticals" added to the first section, then, would do the consistency. But it was because medicines were already in that section, we felt that that would cover us.

REPRESENTATIVE GREEN reiterated his preference for having them be the same.

MS. PEARSON agreed.

Number 1536

STEPHEN CONN, speaking on his own behalf, expressed concern about some of the language. Referring to Representative Murkowski's discussion, he said replacing the word "credible" with "imminent" goes a long way, throughout the bill, to help. He said it appears the words "attack" and "disaster" might be defined the same way, looking at how a disaster is defined as an imminent threat of widespread or severe damage, loss of life, and so forth, because it includes an all-encompassing, societal danger, rather than being a narrowly defined issue that might emerge from a criminal act.

MR. CONN, noting that it depends on what these matters trigger, pointed out that "terrorist" isn't defined; whereas "enemy" is defined in the context of international law with regard to war,

"terrorist" is an emerging phenomenon, he suggested. He proposed that the word "terrorist" may not be necessary in the legislation, since a terrorist is a kind of enemy and is treated much the same way. He offered his view that President Bush perceives the [terrorist attacks of September 11, 2001, on the East Coast] as acts of war, and said nobody seemed to question that in Congress, which holds the constitutional powers to ultimately define what a war is.

Number 1625

MR. CONN addressed a second issue. He compared this bill with HB 350, which discusses and defines "terroristic threatening". In that bill, he said, if one took out the word "false", it defines a terroristic act or threat as a report that places a person in physical fear of physical injury to any person or, in the alternative, a false report that disrupts the schedule of an entity providing transportation services for persons or property; in other words, conceivably a false report of an avalanche or pending avalanche would be perceived under HB 350 as "terrorist threat."

MR. CONN suggested, therefore, that the word "terrorist" slides somewhat between acts of an enemy bent on making war - which most assuredly should invoke the powers of the governor - and acts that are somewhat closer to criminal acts; he said [HB 350] moves in that direction, to punish such acts not as attacks on society, but as criminal acts. Given the lack of definition of "terrorist" and its evolving nature, he reiterated his suggestion to omit "terrorist" [from HB 325] and simply use the word "enemy" to encompass terrorists and terroristic acts.

Number 1804

REPRESENTATIVE GREEN asked Mr. Conn how he would handle a situation involving a neo-Nazi group, for example, that is composed of [U.S.] citizens who begin to do terroristic acts. He asked whether that would be covered if the word "terrorist" weren't in [HB 325].

MR. CONN answered that he thinks so. Saying this is evocative of early debates on Communism as both an external threat and an internal threat, he noted the difficulty then of coming up with Acts of Congress that met those two elements. He mentioned having two triggering events: first, a "disaster" or "attack" - which he suggested could be a synonym for a disaster; and, second, something that is specified as the result, including a

result from a tsunami, earthquake, release of oil, equipment failure, and so forth. Calling these definitions worrisome, he explained:

> Whereas we could look to the federal government and its response and its denomination of "enemies" for guidance, "terrorist" begins to fudge the issue, as a word. ... It's an evolving concept without a clear basis. And so, in those olden days, when we were dealing with Communism as our enemy, in fact, there were components of that that had to do with external security and domestic security. But they were tough. And ... the threats of those definitions to civil liberties led to endless amounts of hearings ... and court cases and so forth.
>
> And so less is more, to my way of thinking, when you are talking about triggering the emergency powers of the governor. And I'm comfortable with the word "enemy," however it's used, because there is a long history of using that word.

Number 1988

REPRESENTATIVE GREEN referred to kamikaze pilots in World War II that weren't considered terrorists; they attacked military objectives, not civilians. He asked, if the word "enemy" were used, whether people might think of a country - military against military, rather than people against civilians. He suggested leaving it as is.

Number 2072

REPRESENTATIVE MURKOWSKI referred to "outbreak of disease" and the statutory definition of "disaster" [in AS 26.23.900(2)], noting that it already means the occurrence or imminent threat of an epidemic. She asked what the difference is between an epidemic and an outbreak of disease.

MS. PEARSON replied that the threat of the epidemic would fit the description she herself had talked about. However, with a "biological release," there would be fewer numbers, but it would be fatal. For example, inhalation anthrax [sent through the U.S. mail in 2001] would fit within that; there'd be no epidemic, which involves large numbers of people.

CHAIR CHENAULT noted that the faxed amendment [text provided previously] had been received and distributed to members.

Number 2183

REPRESENTATIVE CISSNA surmised that a threat or fear of an epidemic would be the same, even if just a few people actually were infected.

MS. PEARSON disagreed, saying smallpox would create an epidemic because it is so contagious and spreads to so many and so quickly. Anthrax, on the other hand, can be lethal to those who encounter it and will require mounting a big campaign to find out the source, for example.

REPRESENTATIVE CISSNA related her understanding that there must be contagion, then.

Number 2225

CHAIR CHENAULT asked when the last smallpox epidemic was.

MS. PEARSON noted that the U.S. quit immunizing for smallpox in the early 1970s and that the last known cases in the world were in the 1990s; however, vials were kept for research purposes.

Number 2261

CHAIR CHENAULT referred to paragraph (12) [page 3], which read "**access, inspect, and share health care and medical records on an as-needed basis to facilitate a response to protect public health and safety**." He asked what is being sought, what power it gives, and to whom.

MS. PEARSON answered that it can be used in a number of situations and that the critical part, as Mr. Rush had mentioned, is the "as-needed basis". If there were a need to obtain records for a large number of people in Anchorage, for example, there wouldn't be time for a medical caregiver to call each patient to obtain a medical release to give [the Division of Public Health]. She noted that during the incidents on the East Coast, people came to centers to obtain Cipro to counteract anthrax exposure; she pointed out the need to have people's medical records waiting there for them in order to speed up the process, but said she didn't know whether individual releases were obtained in that case.

MS. PEARSON pointed out that at the time smallpox immunizations ceased in the U.S., few people survived cancer or had tissue transplants; if those survivors received a smallpox immunization today, it would be lethal. She emphasized that there are important reasons to have people's medical histories before giving them a medication. She said this [provision of the bill] would allow providers to share records with the state health department and back and forth with each other, from one hospital to another, without obtaining a release of information [from the patients].

Number 2395

REPRESENTATIVE MURKOWSKI recalled lengthy discussions about privacy and confidentiality of insurance records, specifically in relation to health care. She said she understands that this [bill applies] in an unusual situation in which a disaster has been declared, but asked how confidentiality of those medical records should be dealt with in a provision like this, and whether the goal is to say that because there is a desire to protect public health and safety, there is no confidentiality.

MS. PEARSON responded:

> No, we're not going that far. First of all, they will only share the information ... needed to deal with whatever the situation is. It will still only be released to health care providers, public health officials, those kinds of things, who have professional responsibility for confidentiality. So they will only be able to use that ... within the extent of what their health-delivery system is. ...
>
> They're still bound by all the professional responsibilities they have to protect confidentiality, which means they can't, then, ... share it with anyone else, except on an as-needed basis, to either protect the public's health ... or deliver care to that individual. So ... it's opening it up within the system to share information back and forth, which you cannot do ... on a routine basis. Your records can only be shared with another provider if you give a release to do that. In this very extenuating circumstance, it could be shared among providers without getting permission from the person involved. But it still has to be handled within the confines of professional conduct of health information.

Number 2518

REPRESENTATIVE MURKOWSKI expressed concern, saying the bill doesn't define with whom that information would be shared under paragraph (12).

MS. PEARSON said that's where the "as-needed basis" [applies], since it's as needed to protect public health and safety; there is no reason an insurance company would need to know that, and thus it couldn't be released. She added that one reason a list wasn't included was that in an emergency, somebody else may need to step in; for example, firefighters may need to step in if all the EMTs [emergency medical technicians] are busy.

REPRESENTATIVE MURKOWSKI said she still was troubled by it, though the argument made sense.

MR. PEARSON conveyed willingness to try to tighten the language. She informed members that the Alaska State Medical Association had been asked its opinion on this, and that its board of trustees had seen the importance and voted in support of it.

Number 2678

REPRESENTATIVE CISSNA referred to an unspecified bill in the House that adds another professional to the statutory list of people who are given confidential medical and psychological information. She asked whether including something like that here would be too limiting.

MS. PEARSON said that's exactly it: in an emergency, it isn't known who will be needed or in what function.

REPRESENTATIVE CISSNA remarked that it would be important to know if someone was allergic to something, or was diabetic.

Number 2701

MR. RUSH asked Chair Chenault:

> Would you like us to take a shot at redrafting portions of this, specifically, adding the 'pharmaceuticals' part to [AS] 26.20 and then trying to rework, perhaps, [paragraph] (12) that we were just discussing, as well as the [subparagraph] (E) that we

had suggested to add to the definition of "disaster", which talks about outbreak of disease?

CHAIR CHENAULT expressed appreciation for that offer, relating his belief that tightening paragraph (12) is important and that "pharmaceuticals" can be [added] to Section 1 in order to provide some uniformity. He noted that the outbreak-of-disease portion on page 4 hadn't been discussed yet, and asked members to look at the proposed amendment [text provided previously].

Number 2786

REPRESENTATIVE MURKOWSKI reminded members that she'd asked to tighten the definition of "credible threat" as well. Looking at the amendment, she said it seems to work, and addresses the concern she had.

MR. MITCHELL, in response to Chair Chenault, said [SB 237] is still in the Senate State Affairs Standing Committee and hasn't been heard since the proposed amendment was provided to that committee.

Number 2838

CHAIR CHENAULT asked whether anyone else wished to testify and then closed public testimony.

Number 2870

REPRESENTATIVE GREEN moved to adopt Amendment 1 [text provided previously].

TAPE 02-20, SIDE B
Number 2934

CHAIR CHENAULT asked whether there was any objection to the adoption of Amendment 1. There being no objection, it was so ordered.

CHAIR CHENAULT asked Mr. Rush and Mr. Mitchell to work on tightening [paragraph] (12); to address the "pharmaceutical" issue in Section 1, line 3; and to provide a proposed committee substitute (CS).

REPRESENTATIVE MURKOWSKI, in response to a question from Representative Kott relating to page 1, line 5, explained that there will be a change to "a credible threat as identified under

the standards that we've just set out," and that it will be defined to be an imminent threat. [HB 325 was held over.]

The committee took an at-ease from 4:35 p.m. to 4:40 p.m.

HB 326-SECURITY OF FACILITIES AND SYSTEMS

[Contains discussion of SB 238, the companion bill in the Senate]

CHAIR CHENAULT announced that the final order of business would be HOUSE BILL NO. 326, "An Act relating to state plans and programs for the safety and security of facilities and systems in the state; and providing for an effective date." [The bill was sponsored by the House Rules Standing Committee by request of the governor.]

Number 2770

CAROL CARROLL, Director, Administrative Services Division, Department of Military & Veterans' Affairs, came forward accompanied by Deborah Behr of the Department of Law to present HB 326. She noted that Dennis Poshard of the Department of Transportation & Public Facilities (DOT&PF) could answer questions as well.

MS. CARROLL explained that Section 1 deals with the ability of DOT&PF to have citation authority for violations of security plans or actions; this applies to international and rural airports. If the Federal Aviation Administration (FAA) determines there is a security violation at an international airport, [the FAA] can charge the international airport - the DOT&PF. Currently, DOT&PF can apply the fine to a lessee or a person who has violated airport security, either by pulling the lessee's lease - which she said seems to be overkill - or by having the police arrest an individual on a criminal charge. Thus the bill allows [the department] to set in regulation a fine of up to $1,100 for a violation, for example, if somebody forgetting to close a security door; that could be applied to the person who actually violated that stipulation.

Number 2664

MS. CARROLL reported that Section 2 allows the state an exemption from the public records law for certain narrowly defined security plans, procedures, systems, facilities, or infrastructure; currently, someone may ask for those documents

and the state has no specific instance when it can refuse to allow a person to have those security plans. She suggested that Ms. Behr, who has had to apply the current, broad public records law, could address that further.

Number 2623

MS. CARROLL turned to Section 3, noting that if the state adopted by regulation a security plan and it were put before the public, some harm could come to the public if that information got out. Thus Section 3 allows the state to have the adoption be done by an agency head through an order; hence the public could be told what they couldn't do, and yet the details of the security plan wouldn't have to be provided. This would be most visible in an airport security plan. She asked Ms. Behr to elaborate on the bill.

Number 2574

DEBORAH BEHR, Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law, informed the committee that she frequently provides advice on public records issues. She noted that this bill stemmed from the Terrorism Disaster Policy [Cabinet] headed by Major General Oates to address issues arising from [the terrorist attacks of September 11, 2001, on the East Coast]; those events caused the state to look closely at all the [appropriate] statutes to see how they could be clarified in order to respond better in a crisis.

MS. BEHR explained that Alaska has one of the broadest public records Acts in the nation. "A record is public unless I can point to an exception," she said. She reported that [the department] had found no clear exemption in the Act for security plans, programs, procedures, and infrastructure. She noted that a security plan could be a plan to protect a public facility in Alaska, for example; a security program could be a risk assessment done by any state agency looking to see where risk lies; security procedures could involve getting into any state building; and evaluations of systems are plans that might be around and that might be of interest. She explained:

> What we had to do was go through and decide a way to do it that was fair, and in recognition of our strong heritage toward public records' being available to the public. And so we decided on a very tailored amendment that basically says that it's got to be one

> of these special things - security plans. But even if it is a security plan, it's got to, with the disclosure of it, result in some kind of public harm.

MS. BEHR noted that on page 2, lines 10-17, [the bill] therefore sets up the situations when a department official, even for a security plan, still must meet these standards. For example, disclosure of a security plan might include what color of badge is required to enter a state building on a certain date. Another consideration is the endangerment of the life, health, or safety of state employees or the public. She reiterated that the exception is narrowly tailored.

Number 2459

MS. BEHR, addressing protection of the public, said:

> If the public believes that an agency person may be misinterpreting this, there are existing provisions in law for administrative appeals and for appeals to the court. This kind of exception is not unusual. The federal law has a national defense exemption in it; we don't have that in the state law. And also - the tailoring - I took the language of it very much from the prosecutors' investigatory privilege when the prosecutor has an ongoing investigation, that somebody can't come in and say, ... "What streets are you going out and doing surveillance of," for drugs or something like that. So that's what Section 2 is designed to do.

Number 2427

MS. BEHR turned attention to Section 3, explaining that it deals with an unusual situation when a state agency is subject to the Administrative [Procedure] Act. In order to have a regulation, [an agency] first must put out a draft regulation for the public to look at and comment on, "and then we change it as appropriate." For a state security plan, however, [providing public notification of] details of staffing and so forth basically defeats the plan. Thus [Section 3] allows the department to implement the plan by issuing an order; the public wouldn't get in trouble for not following it until there was adequate announcement of what was expected; for example, if certain areas were to be restricted at an airport, signs would be posted. However, this wouldn't apply to all security plans. It would have to be shown that the disclosure would cause some

public harm; the standards are on the bottom of page 2, continuing to page 3.

Number 2353

REPRESENTATIVE MURKOWSKI observed that page 3, paragraph (3) [Section 3], doesn't mirror Section 2, subparagraph (C). She asked why the risk to public health and welfare wasn't included in the former.

MS. BEHR answered:

> The reason why we did it was, the infrastructure is up ... in Section 2, in public records; we're bringing in evaluations of plans, infrastructures, where we can't point to an individual person being hurt. And so that's why we brought in the "real and substantial risk to the public health and safety" - in other words, a broad class ... of damage to society as a whole. In the second order, we're more limited to the risk to the life or physical health of an individual, although, I can tell you, I would have no objection to ... them being parallel.

Number 2286

REPRESENTATIVE MURKOWSKI offered her understanding that Section 2 allows an exemption for plans or programs that relate to security or evaluations of systems, facilities, or infrastructures, provided that the information which is sought to be exempt relates to the security plan. Thus there would be two things happening: the security plan, for which the standards must still be met; and the evaluation, for instance, of a facility. An individual could be requesting this information, and if it related to a security component of that facility or infrastructure, then the exemption may be requested.

MS. BEHR responded, "Decline to release the document."

REPRESENTATIVE MURKOWSKI surmised, then, that because Section 2 includes references to facilities and infrastructure, that is where there is additional language about presenting a "real and substantial risk to the public health and welfare."

MS. BEHR said that's the intent of it.

Number 2220

REPRESENTATIVE GREEN asked why the amount is "$1,100 per incident" on page 1, line 12.

MS. BEHR said it comes from the FAA; to her understanding, it's the cap that the FAA can assess. "We didn't want to go and look like we were trying to get more power than the FAA," she added.

Number 2166

DENNIS POSHARD, Legislative Liaison/Special Assistant, Office of the Commissioner, Department of Transportation & Public Facilities, informed members that he couldn't necessarily add anything to previous testimony, other than to state support for Section 1 of the bill as a needed tool to use at some of the airports. He urged the committee's support.

CHAIR CHENAULT asked whether currently the department is unable to assess a fine.

MS. POSHARD affirmed that understanding and explained:

> The FAA fines us, the airport owners, for violations that occur. ... At least at some airports where there is an arrangement with a leaseholder, some of the contract language allows us to pass along those fines to leaseholders. But for private individuals or maybe a private airplane owner or somebody like that, we don't have any way of passing along those violations to those individuals.

Number 2103

REPRESENTATIVE GREEN asked whether this applies regardless of whether it is intentional, due to negligence, or because of a simple mistake.

MR. POSHARD surmised that if someone unintentionally violated a law, [DOT&PF] wouldn't issue a civil penalty. He noted that beginning at the end of line 13 [page 1] it says a person or entity is subject to a penalty if that person or entity, at the time of the violation, had [actual or constructive] knowledge of the violated law or program adopted under law.

Number 2055

REPRESENTATIVE GREEN posed a situation in which someone knows the law and doesn't intend to violate it [but does so].

MS. BEHR replied:

> "Intentional" is a mental state dealing primarily with criminal sanctions. This is an administrative penalty. [DOT&PF] is not creating new ... crimes. In order for [DOT&PF] to assess this fine, there'd already have to be a violation of state law or state regulations. In the state law that somebody would be violating, there would be a mens rea - a mental state - in there, and it could vary.

Number 2007

CHAIR CHENAULT asked whether this violation pertains to state or federal laws.

MR. POSHARD noted that Section 1, subsection (b), says [the department] shall adopt regulations [under AS 44.62, the Administrative Procedure Act] to carry out the purposes of this section. Therefore, DOT&PF would adopt regulations that clearly state what the violations and attached fines are.

Number 1956

REPRESENTATIVE MURKOWSKI observed that page 1 says "any ... state or federal law, pertaining to security of a state airport". She suggested DOT&PF would be the entity that could assess a penalty for violation of a state or federal law.

MR. POSHARD said that's correct, to his understanding. He added that he also understood that in order to be able to assess a fine, [the department] would have to have adopted that in regulation.

MS. BEHR added that this [proposed statute] is barebones; due process for notice, hearing, and opportunity for comments, as well as the appropriate fine, will be done through regulations.

Number 1844

CHAIR CHENAULT asked how many facilities [this bill would affect] statewide.

MR. POSHARD answered that the intention is to implement it at the state's 21 "certificated airports." Most of the other airports don't have a full-time staff person to enforce these regulations. He explained that "certificated airport" is a term used by the FAA; it includes airports such as those at Nome, Bethel, Barrow, Wrangell, and Petersburg, where commercial passenger airplanes have been approved to land. In response to Representative Green, he suggested that some local law-enforcement official such as a VPSO [village public safety officer] could have jurisdiction in other locations.

Number 1730

REPRESENTATIVE MURKOWSKI referred to AS 02.15.240 and asked what criminal or other penalties would be imposed in addition to this administrative penalty of not more than $1,100 per incident.

MS. BEHR said she would have to pull the statutes, but recalled that it would be a misdemeanor. She added that it's old language and is quite broad.

Number 1666

REPRESENTATIVE MURKOWSKI began discussion of Conceptual Amendment 1. She referred to page 3, subsection (b), and asked Ms. Behr to put on record the concerns that had been expressed.

MS. BEHR explained that there is a parallel bill in the Senate [SB 238]. One concern raised by the Senate State Affairs Standing Committee relate to the ability of the medical board to issue an order for access to medical records; hence that committee decided to delete "boards or commissions" [from SB 238]. She offered her belief that it is an acceptable change because [it doesn't affect the intent of the bill].

Number 1590

CHAIR CHENAULT indicated [Conceptual Amendment 1] should have been in members' packets. Drafted for SB 238, it read [original punctuation provided]:

Page 2, line 21:
Delete "each"
Insert "a"

Delete ", or a board or commission with regulation adoption authority,"

Page 2, line 23:
Following "security"
Insert "for a facility, system, or operation"

Page 2, line 28:
Delete "or board or commission"

Page 3, line 7:
Delete ", board's, or commission's"

Number 1564

CHAIR CHENAULT asked whether anyone else wished to testify and then closed public testimony.

Number 1475

REPRESENTATIVE GREEN moved to adopt Conceptual Amendment 1 [text provided previously]. There being no objection, it was so ordered.

Number 1315

REPRESENTATIVE HAYES moved to report HB 326, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 326(MLV) was reported from the House Special Committee on Military and Veterans' Affairs.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 5:08 p.m.