

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

April 25, 2002

8:08 a.m.

MEMBERS PRESENT

Representative John Coghill, Chair
Representative Jeannette James
Representative Hugh Fate
Representative Gary Stevens
Representative Peggy Wilson
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 323

"An Act relating to emergency and disaster relief forces as state employees for purposes of workers' compensation benefits; relating to the Emergency Management Assistance Compact and the implementation of the compact; and providing for an effective date."

- MOVED HB 323 OUT OF COMMITTEE

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(STA) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 340(FIN)(efd fld)

"An Act relating to public notice of information relating to permanent fund dividends, and to treatment of permanent fund dividends for purposes of determining eligibility for certain benefits."

- HEARD AND HELD

HOUSE BILL NO. 327

"An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 497

"An Act giving notice of and approving the entry into, and the issuance of, certificates of participation for the upgrade, expansion, and replacement of certain correctional facilities and jails; giving notice of and approving the entry into, lease-financing agreements for certain of those projects; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 323

SHORT TITLE:EMERGENCY MANAGEMENT ASSISTANCE COMPACT

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/16/02	1970	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1970	(H)	MLV, STA, L&C
01/16/02	1970	(H)	FN1: ZERO(MVA)
01/16/02	1970	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/04/02		(H)	MLV AT 3:00 PM CAPITOL 124
04/04/02		(H)	Moved Out of Committee
04/04/02		(H)	MINUTE(MLV)
04/05/02	2814	(H)	MLV RPT 4DP 1NR
04/05/02	2814	(H)	DP: KOTT, MURKOWSKI, HAYES,
04/05/02	2814	(H)	CHENAULT; NR: GREEN
04/05/02	2814	(H)	FN1: ZERO(MVA)
04/25/02		(H)	STA AT 8:00 AM CAPITOL 102

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
04/16/02		(H)	Moved CSHB 326(MLV) Out of Committee
04/16/02		(H)	MINUTE(MLV)
04/18/02	3003	(H)	MLV RPT CS(MLV) NT 3DP 2NR
04/18/02	3003	(H)	DP: GREEN, HAYES, CISSNA;
04/18/02	3003	(H)	NR: KOTT, CHENAULT
04/18/02	3003	(H)	FN1: ZERO(DOT)
04/25/02		(H)	STA AT 8:00 AM CAPITOL 102

BILL: SB 340

SHORT TITLE:HOLD HARMLESS PROVISIONS OF PFD PROGRAM

SPONSOR(S): RLS

Jrn-Date	Jrn-Page		Action
02/22/02	2284	(S)	READ THE FIRST TIME - REFERRALS
02/22/02	2284	(S)	FIN
03/04/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/04/02		(S)	Heard & Held
03/04/02		(S)	MINUTE(FIN)
04/03/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/03/02		(S)	Moved CS(FIN) Out of Committee -- Recessed to 4:00
04/03/02		(S)	MINUTE(FIN)
04/03/02		(S)	MINUTE(FIN)
04/10/02	2708	(S)	FIN RPT CS 4DP 1DNP NEW TITLE
04/10/02	2708	(S)	DP: KELLY, GREEN, WILKEN, WARD;
04/10/02	2708	(S)	DNP: HOFFMAN
04/10/02	2708	(S)	FN1: ZERO(REV); FN2: (REV)
04/10/02	2708	(S)	FN3: (HSS); FN4: (HSS); FN5: (HSS)
04/10/02	2708	(S)	FN6: (HSS); FN7: (HSS); FN8: (HSS)
04/11/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/11/02		(S)	MINUTE(RLS)
04/15/02	2775	(S)	READ THE SECOND TIME
04/15/02	2775	(S)	FIN CS ADOPTED UNAN CONSENT
04/15/02	2775	(S)	ADVANCE TO 3RD READING FLD Y12 N5 E1 A2
04/15/02	2775	(S)	ADVANCED TO THIRD READING 4/16 CALENDAR
04/15/02	2774	(S)	RULES TO CALENDAR 1OR 4/15/02

04/16/02	2791	(S)	READ THE THIRD TIME CSSB 340(FIN)
04/16/02	2791	(S)	PASSED Y12 N7 E1
04/16/02	2792	(S)	EFFECTIVE DATE(S) FAILED Y13 N6 E1
04/16/02	2792	(S)	ELLIS NOTICE OF RECONSIDERATION
04/17/02	2814	(S)	RECONSIDERATION NOT TAKEN UP
04/17/02	2815	(S)	TRANSMITTED TO (H)
04/17/02	2815	(S)	VERSION: CSSB 340(FIN)(EFD FLD)
04/18/02	2997	(H)	READ THE FIRST TIME - REFERRALS
04/18/02	2997	(H)	STA, FIN
04/18/02	2997	(H)	REFERRED TO STATE AFFAIRS
04/25/02		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 327

SHORT TITLE: STATE EMPLOYEES CALLED TO MILITARY DUTY

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
01/16/02	1977	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1977	(H)	MLV, STA
01/16/02	1977	(H)	FN1: ZERO(ADM/ALL DEPTS)
01/16/02	1977	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/04/02		(H)	MLV AT 3:00 PM CAPITOL 124
04/04/02		(H)	Moved Out of Committee
04/04/02		(H)	MINUTE(MLV)
04/05/02	2814	(H)	MLV RPT 4DP 1AM
04/05/02	2814	(H)	DP: KOTT, GREEN, HAYES, CHENAULT;
04/05/02	2814	(H)	AM: MURKOWSKI
04/05/02	2815	(H)	FN1: ZERO(ADM/ALL DEPTS)
04/25/02		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

DAVE LIEBERSBACH, Director
 Division of Emergency Services
 Department of Military & Veterans Affairs
 PO Box 5750
 Fort Richardson, Alaska 99505-5750
 POSITION STATEMENT: Presented HB 323.

MICHAEL MITCHELL, Assistant Attorney General

Governmental Affairs Section
Civil Division (Anchorage)
Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Answered questions on HB 323.

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

DENNIS POSHARD, Legislative Liaison/Special Assistant
Office of the Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898
POSITION STATEMENT: Answered questions on HB 326.

FRANK RICHARDS, State Maintenance Engineer
Office of the Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898
POSITION STATEMENT: Answered questions on HB 326.

DICK BLOCK
Christian Science Committee on Publication
360 West Benson, Number 301
Anchorage, Alaska 99503
POSITION STATEMENT: Testified on HB 326.

ELLEN NORTHUP
PO Box 211231
Auke Bay, Alaska 99821
POSITION STATEMENT: Testified against SB 340.

DAVE STEWART, Personnel Manager
Division of Personnel
Department of Administration
PO Box 110201
Juneau, Alaska 99811-0201
POSITION STATEMENT: Presented HB 327.

ACTION NARRATIVE

TAPE 02-46, SIDE A
Number 0001

[The first 30 seconds of tape is blank; nothing is missing.]

CHAIR JOHN COGHILL called the House State Affairs Standing Committee meeting to order at 8:08 a.m. Representatives Coghill, Fate, Stevens, Wilson, and Crawford were present at the call to order. Representatives James and Hayes arrived as the meeting was in progress.

HB 323 - EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Number 0245

CHAIR COGHILL announced that the first order of business would be HOUSE BILL NO. 323, "An Act relating to emergency and disaster relief forces as state employees for purposes of workers' compensation benefits; relating to the Emergency Management Assistance Compact and the implementation of the compact; and providing for an effective date."

Number 0295

DAVE LIEBERSBACH, Director, Division of Emergency Services (DES), Department of Military & Veterans Affairs, testified via teleconference. He told the members that HB 323 joins Alaska in the Emergency Management Assistance Compact (EMAC), which allows for the rapid exchange of emergency resources between states. Alaska is one of about five states that are not in the compact. This compact has been sanctioned by the U.S. Congress and started in 1992 in the southern states. It has been expanded slowly and now allows all of the states to join. The one requirement of the compact is that it must be approved by each state's legislature. However, the state is not obligated to provide these resources. If the state is asked for the resources and it wants to make them available to a requesting state, then the compact can be used to do that rapidly. The compact lays out the framework for the exchange of resources in terms of payment, timeliness of the payment, the coverage of workers' compensation for the personnel, and those sorts of things.

Number 0545

MR. LIEBERSBACH indicated that Alaska has used the framework and the tenets of the compact to provide resources to other states. Alaska provided personnel and equipment to the state and city of New York in September and October 2001, even though it wasn't a member of the compact. Prior to providing those resources, because Alaska wasn't a member, it had to put agreements in place before the resources could go, and that delayed the response time.

MR. LIEBERSBACH noted that in the past, he requested personnel from Missouri and Iowa to help with working with the FEMA [Federal Emergency Management Agency] requirements and regulations on the avalanches. He used the tenets of the compact then, but Alaska wasn't a member. He noted that it would be a good thing for Alaska to be a member of this compact.

MR. LIEBERSBACH said that if there were a federally declared disaster and Alaska requested resources from another state, Alaska would pay the state for the resources but could recover those costs from FEMA.

Number 0777

REPRESENTATIVE FATE asked which states nearest to Alaska belong to this compact.

MR. LIEBERSBACH replied that Washington, Idaho, Oregon, Nevada, and Utah are all a part of the compact. California and Hawaii are not in it, but Hawaii has legislation moving through its legislature now.

REPRESENTATIVE FATE asked if there were any international agreements similar to the compact between Canada and Alaska.

MR. LIEBERSBACH answered that Alaska belongs to the Northwest Compact that is sanctioned by Congress to exchange resources and that includes Alaska, Washington, Oregon, Idaho, British Columbia, and the Yukon Territory.

Number 0886

CHAIR COGHILL asked Mr. Liebersbach who would manage or facilitate the compact.

MR. LIEBERSBACH answered that the compact falls under the National Emergency Management Association, which is the association of the 50 state directors and the 7 U.S.

territories' directors. The EMAC is in that association, so the management of EMAC falls to that working group.

CHAIR COGHILL asked Mr. Liebersbach if he'd talked to any of the other compact members to find out if there had been any glitches in the way it is written now.

MR. LIEBERSBACH answered that he has seen the compact in use for five years. In the early days, there were a number of things that had to be worked out, and the language now is a result of quite a bit of experience in using the compact. Since September 11, 2001, and the 2000-to-2001 wildfire season in Montana, it has worked very well as written. It has been reviewed by Alaska's Department of Law, and his department feels pretty comfortable with it.

CHAIR COGHILL asked if Alaska is still responsible for pay, workers' compensation, and insurance on its people who go to other states.

MR. LIEBERSBACH agreed that was correct. The receiving state will reimburse the State of Alaska for those costs, but Alaska's people stay under their current employment conditions when they go to another state.

Number 1111

REPRESENTATIVE STEVENS asked about the funding for events that are not declared disasters by the President.

MR. LIEBERSBACH answered that Alaska would fund it if it chose to ask another state for the resources. Generally, when it's a state-only type of disaster, those are relatively small, and unless there is some special expertise or equipment needed up here, Alaska might go for it, but he advised caution in that event due to the possible expense. There could be a situation in which it may be more convenient to go to another state. For example, Washington search and rescue might get to Southeast Alaska quicker than search and rescue from somewhere in Alaska, depending on weather and other conditions.

Number 1203

REPRESENTATIVE STEVENS asked if this compact would be used only if there were a disaster declaration by the President.

MR. LIEBERSBACH answered that was correct. The most likely use would be Alaska's providing resources to other states. Alaska's disasters aren't usually in heavily populated areas, as in the Lower 48. Providing Alaska's resources to others would help the nation, but it also would provide good experience for emergency management people to keep current their emergency management practices in light of the changing federal regulations.

Number 1298

REPRESENTATIVE JAMES asked if the emergency management team includes volunteers as well as people on the payroll.

MR. LIEBERSBACH answered that this compact could include anybody in Alaska, not just DES personnel. It could be personnel from any state agency, any local agency, or anywhere else there was the capability to help. For example, a DMAT, Disaster Medical Assistance Team, was sent to New York. He explained that that team was made up of medical personnel primarily from Anchorage, and most of them were not state employees.

REPRESENTATIVE JAMES asked if volunteers in emergency services and fire departments are asked to participate.

MR. LIEBERSBACH replied that the volunteer people are offered the opportunities to assist people if the requesting state wants them. It is up to the requesting state to decide whether it wants the resources. Many of the volunteers work through the Red Cross or Salvation Army, which have channels outside of this compact for providing people to disasters and emergencies outside of Alaska. Even FEMA has people that are hired out of Alaska that may go to Puerto Rico or elsewhere as disaster assistance folks.

REPRESENTATIVE JAMES asked how the payment of the cost of the services gets handled.

MR. LIEBERSBACH replied that the payment for those services would go back to the entity of the resources being used. The agreement calls for the state to bill the other states. If Anchorage agreed to let someone go, it would fall to the requesting state to ensure that Anchorage got reimbursed for that individual. The money would come through the state, and the state would pay back Anchorage for that money. Generally, FEMA pays the state having the disaster. For example, if people go to Georgia, FEMA will pay Georgia. Regardless of whether FEMA pays Georgia or not, Georgia is obligated to pay Alaska for

any resources sent to Georgia. It is up to Georgia to worry about getting reimbursement from FEMA. The State of Alaska will get reimbursed for all the resources, and then it would be the state's responsibility to ensure that local municipalities or governments that sent personnel were reimbursed for these costs.

REPRESENTATIVE JAMES asked about insurance and benefits in the event of injury to personnel.

MR. LIEBERSBACH noted that injury insurance and compensation will remain the same as they have on the job. If an individual is permanently disabled on an assignment, that disability payment is reimbursed to the state and back to whatever agency the person was with; the requesting state is liable for those costs.

Number 1674

REPRESENTATIVE WILSON asked how an injury would affect a volunteer not actually paid by a municipality or the state. She wondered how these people are covered under insurance and disability.

MR. LIEBERSBACH answered that he wasn't clear on that right now. There is some legislation that would provide for disability compensation and health compensation for volunteers that were working on emergencies and disasters. If that passes, these people would be covered under that. If the legislation is not passed, then he doesn't know of any current insurance and disability for volunteer emergency workers. He said he thinks some agencies like the Red Cross and Salvation Army have it, but as a general rule, it's not the case.

CHAIR COGHILL asked if the section on liability immunity has been tested in the courts.

MR. LIEBERSBACH answered that he doesn't believe it has been tested in courts.

Number 1830

MICHAEL MITCHELL, Assistant Attorney General, Governmental Affairs Section, Civil Division (Anchorage), Department of Law, testified via teleconference. He stated that he also didn't know of any cases where any of the provisions of the compact have been challenged or tested in court.

MR. MITCHELL referred to the question about benefits for volunteers engaged in response under the compact. He noted that Section 1 would tighten up the existing workers' compensation provisions for such volunteers. Currently, they are covered as if they were state employees. This provision would tighten it to require that those volunteers be listed on a roster maintained by the Division of Emergency Services to qualify for the workers' compensation benefits.

Number 1955

REPRESENTATIVE WILSON moved to report HB 323 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 323 was reported out of the House State Affairs Standing Committee.

HB 326 - SECURITY OF FACILITIES AND SYSTEMS

Number 1979

CHAIR COGHILL announced that the next 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." [CSHB 326(MLV) was before the committee.]

Number 1999

CAROL CARROLL, Director, Central Office, Administrative Services Division, Department of Military & Veterans Affairs, presented HB 326. She told the committee that HB 326 addresses three items that came to light during the disaster policy cabinet deliberations after September 11, 2001. The disaster policy cabinet identified areas in the statutes where there were gaps in the security of Alaska. Section 1 addresses the inability of the state at its international airports and certificated airports to have an efficient way to fine people for security violations. Section 1 gives the Department of Transportation & Public Facilities [DOTP&F] the ability to apply administrative procedure to individuals who violate security plans at the airports. The department would be required to go through the regulation process to set the amount of the fines for the violations.

MS. CARROLL explained that Section 2 deals with the state's very broad public record law. In Alaska, every document is a public record and can be obtained by members of the public, unless it

is specifically limited in statute. Section 2 gives the state an exemption in statute for security plans, if they can reach three standards. First, it has to be shown that release of that document would harm the public or an individual. Second, it has to be shown that release of that document would get confidential information in the hands of the public about guidelines for investigations or enforcement. Third, it has to be shown that release of that document would circumvent the security plan itself. She acknowledge that there are already appeal processes in existing law that people have if they disagree with an agency that denies them a public record. Usually, when a state agency considers denying a public record to a member of the public, it works with the Department of Law for a determination of whether that is really protected under statute.

MS. CARROLL explained that Section 3 deals with agencies that are subject to the Administrative Procedure Act. Section 3 provides that an agency may have a security plan by order, so it can notify the public that they are going to be required to do certain things under a security plan, but all the details would not have to be made public. She noted that the same three standards mentioned earlier would have to be met, and the public would have recourse to an appeals process if they disagreed with the agency.

Number 2278

REPRESENTATIVE JAMES asked what the qualifications of the people issuing the airport citations would be.

Number 2365

FRANK RICHARDS, State Maintenance Engineer, Office of the Commissioner, Department of Transportation & Public Facilities, testified via teleconference. He explained that in rural areas, the airport manager and his/her designee would most likely have this authority. Currently, there are federal regulations and state statutes that the airports must comply with. However, the manager don't have the authority, except for criminal violations, to be able to cite individuals. That makes it difficult for the rural airport managers who don't have police powers to enforce their prescribed job duties. The department hoped to get the criminal citation ability to the [managers or designees], so they can perform their jobs. This would be done with training programs, so they would know what their responsibilities are and how they would best administer the regulations and statutes.

Number 2490

REPRESENTATIVE JAMES asked about the appeal process and how the intent is addressed.

MR. RICHARDS answered that in the development of the regulations, processes would be developed for violations and possibly appeals, so that if there were a situation in which someone felt he/she was incorrectly cited, there would be an avenue to address that concern. The direction to the people in the field would be that this is truly the last resort. The department doesn't want to give this power to people and then have them use it without proper deference to the regulations.

Number 2531

REPRESENTATIVE JAMES wondered what would happen to employees if they were cited, and if it would cause them to lose their jobs.

MR. RICHARDS indicated that he has no legal ability in terms of the recordkeeping of the criminal citations and would not be the appropriate person to address that. In terms of the training aspect, he said that there would be a process similar to what happens currently for airport managers regarding the federal security regulations that they must administer. That is a fairly lengthy process.

MR. RICHARDS pointed out that the new Transportation Security Administration has just defined a security curriculum that each of the airport security coordinators must follow through to be duly designated and appropriately charged as the airport security coordinator. That guideline would be followed to define a certain curriculum and certain timeframes, and refresher training so they are aware of the requirements to perform their duties. This bill to give the power to the airport managers goes hand in hand with what the federal government is requiring of the airports where there are security programs.

REPRESENTATIVE JAMES said she wanted the employees to know and be responsible for what they need to do and not be a victim of something they haven't really been prepared for.

Number 2690

MS. CARROLL pointed out that the civil or administrative penalties asked for in this bill are not criminal.

REPRESENTATIVE JAMES acknowledged that she understood that, but administrative penalties go on employment records, and she expressed concern about the effects of that over time.

Number 2709

REPRESENTATIVE FATE commented that Section 2 didn't seem to allow for a person who needed to look at the plans of a structure for a valid reason. He wondered if pilots would be running afoul of this section because they need to have information on runways, taxiways, and airport facilities.

MS. CARROLL answered that if there is a legitimate need for people to have a document and the state is aware of that, they would get the plans.

Number 2860

MR. MITCHELL agreed with Ms. Carroll. He is not familiar with that specific information or the need for it, but he said he believes it would continue to be available under the balancing of risk versus need.

MR. RICHARDS explained that the Alaska supplement that every pilot must have to be able to fly into the airports provides information on common frequencies and facilities such as the runways and taxiways; that will not be denied to the pilots. He pointed out that the legislation refers to critical infrastructure-type blueprints. For example, if someone wanted to create havoc at an airport and knock out a lighting system or a local power plant providing power to that airport or knock out a critical structure, those are the types of things that people will be prevented from trying to gain access to.

MR. RICHARDS informed the committee that in meetings with other states on this issue, there has been reported an effort by some Middle Eastern countries to get access to critical structures, such as bridges and tunnels on the highway system. Other states are putting into place similar regulations restricting the flow of information on critical infrastructure to people who don't need that detailed information.

Number 2936

REPRESENTATIVE FATE said he didn't see where that description was in the bill. It says none of these things would be publicly available. He suggested some exemptions might make it clearer.

TAPE 02-46, SIDE B
Number 2968

MS. CARROLL pointed out that before records can be denied, the request will always be addressed on a case-by-case basis. In the analysis, it will be determined what is the need for the document. The protections are right there, but they are not specifically stated for each case, but that's how the public is protected against the state agencies' denying them something they shouldn't do.

REPRESENTATIVE JAMES commented that with the freedoms in this country, it will be difficult to make those decisions as to who has the right [to information]. She wondered what kinds of cautions can be taken to provide protection because of the vulnerability.

Number 2820

MS. CARROLL said the state is being much more careful. People have a heightened awareness of their [own] state of being nowadays. On every level of government there are training programs making people more aware, but there is nothing in this bill that requires that.

REPRESENTATIVE JAMES commented that there are people who don't want any of their freedoms abridged, even if it has anything to do with disasters or someone attacking the country. There is a fine line down this pathway. She agreed that this is certainly a step in the right direction.

Number 2778

REPRESENTATIVE CRAWFORD referred to Section 2 and said it seems to give such broad powers to deny information for almost any reason. He wondered if information can be denied now.

CHAIR COGHILL referred to AS 40.25.120(4), which says, "records required to be kept confidential by a federal law or regulation or by state law". He asked if there is a present state law that gives some protection. He wondered if this section is needed, and if there are already safeguards that would give the legal protection to forbid certain plans to be public documents.

Number 2670

MR. MITCHELL answered no, there are no such safeguards at this time. He said it is important to the Department of Law that the state have those protections. He told the members that when a public records request is received, the requestor has a right to any information in the agencies' files, unless there is a specific exception to that right. When the department gets the request, it looks through those lists of exceptions, and if it's not there, the agency is advised that it is public. Since September 11, there have been some requests for information that has caused some concern regarding specifics about infrastructure within the state. This [bill] would tighten that up and allow the agencies, when those statutory criteria are met, to say there is no public right to that particular information. The details of the specifics of what is covered and what isn't will have to be addressed on a case-by-case basis.

MR. MITCHELL explained that the Department of Law maintains binders of its decisions on past requests under the existing exceptions, and it goes back to those to maintain consistency and to develop guidelines to advise for agencies. He anticipated that that process would be continued. When there are categories of requests that come in, it may be appropriate for the agencies to develop regulations to address them or develop their own procedures manuals as some agencies have under the existing exceptions.

CHAIR COGHILL noted that the federal laws are going to be changing rapidly in this area. He asked if the state is going to have to come up with a whole security code to match the federal law.

MR. MITCHELL said where there is federal law that is applicable, then that applies, and that is an exception that is picked up under that subsection. At this point, there are a number of voids in federal law such that it can't be relied on to provide adequate protection.

Number 2505

REPRESENTATIVE FATE said he wasn't really talking about the aircraft information manual but rather the fliers which airports usually have that describe the runways, the taxiways, the hangars, and where to park a single-engine aircraft in front of a terminal. The fliers lay this information out so pilots know

their way around the airports. These fliers are very useful, but they're very descriptive. He fears that this could be used to influence general aviation, which has already been adversely influenced from the tragedy on September 11. He said he worries about the term "facilities" covering that. If those fliers were stopped in the name of security, there would be a decrease in general aviation.

Number 2351

DENNIS POSHARD, Legislative Liaison/Special Assistant, Office of the Commissioner, Department of Transportation & Public Facilities, replied that there are all kinds of notices put out to the aviation community with respect to the operation of the airports. In reading Section 2, subparagraph (10)(C) of the bill, an argument could be made that not providing the appropriate notices to the aviation community could be just as endangering to someone's life and safety. He doesn't have the same concerns that this bill will prevent providing the flyers [to the pilots]; that will continue to be done. It is very important for the safety and security purposes that those notices be provided to aviators on a regular basis. He understands the concern, but he doesn't see anything that would prevent that from being done.

MR. POSHARD said it could be argued that their safety is enhanced by providing them with the appropriate information. That has to be weighed against the possibility that that information could wind up in the hands of someone who wouldn't be interested in using it for proper purposes, but that's the balance that this bill tries to achieve. Adequate information will continue to be provided to the pilots.

REPRESENTATIVE FATE said that was reassuring to have on the record.

Number 2248

DICK BLOCK, Christian Science Committee on Publication, testified via teleconference. He said his interest in this bill focuses only on Section 3, which would add a new section in Title 44 and would deal with the operation of all state government. He told the committee that he had some difficulty in understanding what it is intended to do. As he listened to the discussion today, it seemed to center around information concerning security of airports that may have to be developed and yet withheld from the public. To the extent that that is

what this deals with, he has no problem with it. He commented that it is unfortunate that it has come to this, but it has, and it needs to be dealt with responsibly.

MR. BLOCK called attention to Section 3. He said he isn't concerned that the Department of Transportation & Public Facilities and airports will have the authority, but that every state agency in Alaska and every chief executive officer or principal executive officer of those state agencies will have the authority to enter an order implementing its statutory authority relating to adoption of a plan, program, procedure, and so forth. The difficulty he has with that is that he has not been able to find what those statutory authorities are or a definition of a plan, program, or procedure for establishing and maintaining the security of an operation within the state. His difficulty with that is that it seems to give every principal executive officer of every state agency the authority to call something a plan, program, or procedure and create implementation of that without following the Administrative Procedure Act, which calls for notice to the public and so forth.

Number 2093

MR. BLOCK told the committee that after a conversation with Ms. Carroll the other day, it seemed that what's looked for here is the ability of the DOT&PF or the regulatory agency that protects airports to have the broad authorities that are called for in Sections 1 and 2 and the ability to adopt regulations without having to go through the Administrative Procedure Act. If that's the case, he hoped that the committee would see the wisdom of putting some limitations in Section 3 of the bill so that it is limited to the intended purpose.

Number 2047

MR. BLOCK said he is concerned because it's available to any state agency, and there are those who may have certain protections in the law. For example, there are areas in the law where the legislature has recognized that those who rely on prayer for healing need not get vaccinations. Those laws should still be respected even if there was some sort of emergency that required some state agency to adopt some sort of vaccination program. None of this has been discussed or thought about in a bill that deals with protecting airports, but because of the broad language in Section 3, he is concerned about it. He said

he hoped language could be found to bring it back to what its intended purpose is.

CHAIR COGHILL agreed that the language should be retooled. He noted that there is also a House Judiciary Standing Committee referral for HB 326.

Number 1907

REPRESENTATIVE JAMES commented that there needs to be a lot of thinking done on how things are done and how people live their own lives to make them less vulnerable. She agreed with Mr. Block's concerns. She commented:

We can't just face our own personal freedoms and privacy issues on other folks, if what we do by doing that creates a vulnerability for other people. I think we have to be considerate about ourselves and what we have the rights to be doing, but we also have to measure that against the best interest of everybody. I think that is the Christian way, Mr. Chairman, that we are not just interested selfishly in our own issues, but we're also interested in other people and their own selfish interests that they might have as a whole when we do this.

REPRESENTATIVE JAMES didn't agree with taking this section out but wanted the same argument go to the House Judiciary Standing Committee. This committee is looking at the best interests of the whole state. She agreed that this is a good state issue, and it needs to be looked at. She urged everyone to balance these efforts of personal desires and responsibilities to others. She said she didn't think we have just civil rights in this nation; she thinks there are civil rights coupled with responsibility, and they are equal in power.

Number 1669

REPRESENTATIVE WILSON agreed with Representative James. This is so broad. She cautioned against inadvertently allowing somebody who is power-hungry to start doing some things that aren't necessarily needed. There is a fine line here to accomplish what is wanted but yet make sure it doesn't go any further than that.

Number 1608

MS. CARROLL told the committee that "boards and commissions" was taken out of Section 3 in the House Special Committee on Military and Veterans' Affairs meeting because it was broad. She reiterated that the state agencies have to meet the three criteria. She referred to Mr. Block's concerns and pointed out that any agency can only implement what its statutory authority already is. This does not make any new law. If an agency has that authority right now, it can implement it. If an agency does not have that authority right now, it cannot implement any of that.

CHAIR COGHILL suggested either the committee take that broad section out or he'll just hold it over for a legal opinion.

Number 1467

REPRESENTATIVE HAYES said he didn't understand why this bill needed to be held because the legal opinion will follow to the House Judiciary Standing Committee.

CHAIR COGHILL said that section is rather broad. He struggles with the issue that the legislative body is supposed to make the laws. He said that is being sidestepped. He would rather take the section out and reinsert it in some other fashion later, rather than for this committee to try to retool it. There isn't time. He reiterated that this is just way too broad and too problematic.

Number 1384

REPRESENTATIVE CRAWFORD agreed that the language is too broad. It's a reaction to September 11, and it might be reacting too strongly to problems that may not even exist here in Alaska. He urged the committee to move with caution.

REPRESENTATIVE JAMES said there is a change they could make to change the whole complexion of this issue. Right now commissioners can establish policy without going to the public for comment. Policy is that person's policy, and it absolutely has to comply with other statutory issues. It is something that doesn't reach the magnitude of a regulation. She said she doesn't believe that that is what's intended here. This just says "may issue an order to implement its statutory authority", which is just an order that that particular commissioner in his/her own little area of control is going to do. That is a policy because various agencies do have policies. If the committee wanted to change "order" to "policy", it would not be

doing anything different than what is done now, and it would certainly narrow it. Otherwise, "issue an order" makes it an administrative law, and policy is not administrative law.

Number 1233

REPRESENTATIVE JAMES expressed concern that there might be some need for a policy that is so severe or apparent at that particular time that it would take too long to write a regulation and put it out to public review. It could even say, "subject to a regulation policy to establish this, providing that it doesn't violate a security issue." She doesn't want the public to know a lot of the security things. By taking the section out and sending it forward, the committee is implementing a state policy that she doesn't necessarily think is how it wants to do it. She agreed that it needs to be fixed and would be willing to send a [letter of] intent along to the judiciary committee that this section need to be looked at. She said she thinks that just taking it out causes another state policy that concerns her.

CHAIR COGHILL asked Ms. Carroll if changing "order" to "policy" would be a problem.

MS. CARROLL answered that policy also has to go along with the statutory authority. She commented that making policy decisions outside of the statutory structure is not supposed to be done.

CHAIR COGHILL asked what would happen if this following were taken out: "is not subject to AS 44.62 (Administrative Procedure Act) and".

Number 0985

MR. BLOCK interjected that he has drafted a letter to the committee in which he proposes some language changes that he believes would make it acceptable to his concerns, that may solve some of the other problems and yet not do violence to what he thinks the DOT&PF seeks to do. He suggested two possible changes to Section 3. The first change would be to strike the language, "Notwithstanding any contrary provision of law," because that would leave in place all the public policy adopted in statute by the legislature and allow that to continue to govern, except to the extent that there is a specific statutory exception from that, and there are two that are in the bill. One that says "it's not subject to the Administrative Procedure Act, and that's something they feel they need to have in order

to adopt plans without fully disclosing them," and the other is the ability to withhold information under the Freedom of Information Act, which he thinks is attended to under Section 2. But it would mean, then, that all other guidelines, policies, or statements by the legislature protecting individuals' civil rights would still be paramount.

MR. BLOCK said the second change he would propose is on page 2, line 24, where it says, "An order issued under this section is not subject...." He would add the language, "An order not inconsistent with any duly adopted existing regulation issued under this section...." He explained that these plans would have to be subject to existing regulations that are duly adopted.

Number 0773

MR. POSHARD replied to a question regarding Section 1 of the bill, saying that there are different levels of airports. There are international airports in Anchorage and Fairbanks, there are 21 certificated rural airports, and there are around 240 non-certificated rural airports. He agreed that the non-certificated airports would not be included in the issue in the bill. There is not anyone at the non-certificated airports to enforce it anyway.

CHAIR COGHILL asked how this would work at the smaller airports that have only two or three employees.

Number 0602

MR. POSHARD said the department intends to train all of the airport managers and maybe one designee in the regulations that would be adopted, the violations that would be enforced, et cetera. In a certificated airport, there has to be a certain level of staffing, which includes fire and rescue capabilities and certain other things. Each of those airports does have usually at least an airport manager and one or two staff people. The reason Section 1, Administrative penalties, is needed is because most of the rural certificated airports have to rely on local law enforcement to provide any kind of security violation, because most of those violations are misdemeanors, and that's a criminal penalty. So, a law enforcement official in a rural community has to come out and issue a misdemeanor for someone who's illegally parked in a secure violation and won't move the car when asked. He noted that it's just not a good use of the officer's time. If the airport manager could issue a ticket

when the person refused to move the vehicle, it would provide a tool to deal with those kinds of violations.

Number 0389

REPRESENTATIVE FATE asked what penalties or actions could be taken against the executives who have this power and abuse it.

MR. POSHARD answered that he didn't know the answer but assumed it could be reported to the person's supervisor, and it could be handled like other personnel actions when there has been an abuse of authority or power.

MR. POSHARD noted that the concerns of the committee have certainly been heard. They will be taken into account when regulations are adopted and implemented. He added that training will be an important part of this process.

Number 0196

CHAIR COGHILL made a motion to adopt Amendment 1, to delete Section 3. There being no objection, Amendment 1 was adopted.

REPRESENTATIVE FATE moved to report CSHB 326(MLV), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 326(STA) was reported out of the House State Affairs Standing Committee.

SB 340 - HOLD HARMLESS PROVISIONS OF PFD PROGRAM

TAPE 02-47, SIDE A

Number 0001

CHAIR COGHILL briefly took up CS FOR SENATE BILL NO. 340(FIN)(efd fld), "An Act relating to public notice of information relating to permanent fund dividends, and to treatment of permanent fund dividends for purposes of determining eligibility for certain benefits."

Number 0113

ELLEN NORTHUP came forward to testify. She urged the committee not to pass SB 340. She explained that so many of the people who are very poor and who get some type of public assistance already have their permanent fund dividend [PFD] garnished by either the government or for unpaid bills. She told about a

woman who hasn't gotten a PFD for four years because she had to have some emergency surgery. She didn't ask for emergency medical aid, and the doctors are still taking her PFDs. She gets about \$200 for her PFD. She makes about \$8.50 per hour and only gets a housing subsidy. This bill would mean she wouldn't get the housing subsidy, but she still wouldn't get the PFD because of the medical bills. Some of the old folks who get a housing subsidy would have to use the PFD for housing instead, and that also creates a lot of paperwork for those doing subsidized housing.

Number 0408

MS. NORTHUP stated that this bill affects the poorest of the poor.

CHAIR COGHILL announced that SB 340 will be held.

HB 327 - STATE EMPLOYEES CALLED TO MILITARY DUTY

CHAIR COGHILL announced that the next order of business would be HOUSE BILL NO. 327, "An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

Number 0629

DAVE STEWART, Personnel Manager, Division of Personnel, Department of Administration, came forward to present HB 327. He explained that HB 327 contemplates emergency situations that are not covered under current law. The governor has the authority to activate the Alaska National Guard or the Alaska Naval Militia to active military service. State law provides for state employees who are activated to receive five days of paid leave, regardless of the duration of the service. If they're activated under federal guidelines by the President of the United States, there is federal legislation that lets them return to work, but doesn't protect their income or benefits. Based on whether the activation is state or federal, the individual activated to military service may be covered for health insurance, but the dependents might not be for extended periods of activation.

MR. STEWART explained that this legislation allows the executive to issue an administrative order declaring an emergency and defining the nature of that emergency; allows state employees

who are called to active service either by the governor or President to have their wages supplemented to the level of their state wage, if their military wage is less; allow them to have their health insurance contributions continued for purposes of both their own or dependent care; and under certain circumstances, to have their retirement contribution made during times of active service.

Number 0847

MR. STEWART noted that the zero fiscal note was changed to an indeterminate fiscal note because there is no way to predict who might be activated for the duration of occupation. It does show an FY [fiscal year] 02 cost based on 41 employees activated on September 11 [2001] for \$44,000.

MR. STEWART explained that there are 189 state employees in the air or army national guard and the naval militia. Since September 11, 41 of the 189 have been called to active duty, and only 8 of those 41 would have qualified under this legislation for wage supplementation. The average duration of activation is three months.

REPRESENTATIVE STEVENS asked if this includes employees of the University of Alaska, and if it doesn't, he stated that it should.

MR. STEWART pointed out that the fiscal note doesn't include university employees, but the bill contemplates all state employees.

REPRESENTATIVE FATE said there is an ongoing debate as to whether the employees of the University of Alaska are state employees, and that needs clarification. He is bothered that the health insurance benefit is continued even though those members that go into the armed forces usually have the same benefits, so benefits are being paid for them that are not needed. He said he thinks if an individual goes into the reserve and is not covered by benefits, then that person shall continue the coverage by the state, but if he/she has coverage, the state certainly doesn't need to provide that coverage until such time as that person gets out of the service and returns to his/her old job.

Number 0679

MR. STEWART said the nature of the activation is under either presidential order or executive order. Most employees were activated for less than 30 days. The people who have been activated since September 11 for security at the airports are running about 140 days. Under federal guidelines for activation, a state employee who has health insurance has to be activated for 180 days or more for that individual's military health to cover dependents. The activated individual would be covered but the dependents wouldn't.

REPRESENTATIVE FATE said he wasn't against this but would like more scrutiny on the fiscal impact.

Number 1169

CHAIR COGHILL announced that HB 327 would be held over.

ADJOURNMENT

Number 1229

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:58 a.m.