

ALASKA STATE LEGISLATURE  
**SENATE STATE AFFAIRS COMMITTEE**

January 24, 2002  
3:34 p.m.

**MEMBERS PRESENT**

Senator Gene Therriault, Chair  
Senator Randy Phillips, Vice Chair  
Senator Ben Stevens  
Senator Bettye Davis

**MEMBERS ABSENT**

Senator Rick Halford

**COMMITTEE CALENDAR**

SENATE BILL NO. 235

"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."

HEARD AND HELD

SENATE BILL NO. 237

"An Act relating to civil defense and disasters; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 238

"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."

HEARD AND HELD

SENATE BILL NO. 239

"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

SENATE BILL NO. 240

"An Act relating to the crimes of damaging an oil or gas pipeline or supporting facility, criminal mischief, and terroristic threatening; making conforming amendments; and providing for an

effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

No previous action to record.

**WITNESS REGISTER**

Wayne Rush  
Department of Military and Veterans Affairs  
P.O. Box 5750  
Ft. Richardson, AK 99505

**POSITION STATEMENT:** Introduced SB 235 and SB 237.

Mike Mitchell  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Answered questions on SB 235, SB 237 and SB 238

Karen Pearson  
Director of Public Health  
P.O. Box 11610  
Juneau, AK 99811-0610

**POSITION STATEMENT:** Testified on SB 237

Kristen Bomengen  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Testified on SB 237

Al Rothfuss  
Glennallen, AK

**POSITION STATEMENT:** Testified against SB 237

Gary Hayden  
Department of Transportation &  
Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898

**POSITION STATEMENT:** Testified on SB 238

Jim Duncan  
Commissioner, Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Introduced SB 240

Annie Carpeneti  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Introduced SB 239

**ACTION NARRATIVE**

**TAPE 02-2, SIDE A**

**CHAIRMAN GENE THERRIAULT** called the Senate State Affairs Committee meeting to order at 3:34 p.m. Present were Senators Davis, Stevens, Phillips and Chairman Therriault. The first order of business to come before the committee was SB 235.

#SB235

**SB 235-EMERGENCY MANAGEMENT ASSISTANCE COMPACT**

WAYNE RUSH from the division of emergency services in the Department of Military Affairs informed the committee he is the homeland security coordinator for the department.

CHAIRMAN THERRIAULT asked Mr. Rush if he was going to address the bill in general and highlight the amendments afterwards.

MR. RUSH replied he would prefer to address the bill in general then allow Mr. Mike Mitchell with the Department of Law to address the specifics.

He explained SB 235 appeals the outdated interstate civil defense and disaster compact, which is currently contained in AS 26.23.120 and replaces it with the Emergency Management Assistance Compact (EMAC). This is a more current and universally accepted agreement that facilitates disaster assistance among member states.

Additionally, SB 235 updates AS 23.30.244 to provide worker compensation to disaster volunteers who perform duties in another state under EMAC and those who perform duties in Alaska under the division of emergency services.

EMAC allows states to assist one another during times of emergency by sending personnel and equipment for disaster relief. It establishes a legal foundation for EMAC requests to be legally binding so that a state that asks for help is responsible for reimbursing all out of state costs and is liable for out of state personnel. Those states that send aid are protected against

incurring any associated financial burden or obligation. It is also made clear that EMAC member states are not required to send assistance if their resources and circumstances don't allow them to do so.

The Federal Emergency Management Agency (FEMA), National Governor's Association, Western Governor's Association, the National Guard and a number of other organizations endorse the Congressionally approved EMAC and 41 states are members.

Although Alaska is capable of handling many emergencies, there are times when disasters exceed local and state resources and outside assistance is required. Typically this assistance comes from federal agencies through FEMA but disasters that don't qualify for a presidential disaster declaration are not eligible. In those instances, EMAC would step in and provide a means to receive interstate assistance. Even when federal assistance is merited, EMAC assistance may be more readily available and cost effective or it may be supplemental to federal assistance.

SENATOR PHILLIPS asked for the history of EMAC.

MR. RUSH replied it began as an association of southern states in 1996.

SENATOR PHILLIPS then asked why Alaska hasn't already joined EMAC.

MR. RUSH said the process was begun some time ago but wasn't high priority until after the September 11 attack occurred. Also, Alaska has been a member to the mutual aid agreement called the Pacific Northwest Emergency Management Arrangement since 1994 and that has provided some measure of security. In addition to Alaska, Oregon, Washington, Idaho, British Columbia and the Yukon are members. However, in light of the terrorist attack on September 11, the scope of protection should be expanded.

CHAIRMAN THERRIAULT observed the majority of the text in the bill deals with EMAC while section 5 deals with repeal of existing sections of AS 26. He then asked if there were any other questions.

SENATOR STEVENS asked for an explanation of the reimbursement mechanism between states specifically when federal disaster aid is not merited.

MR. RUSH responded that the state that requests assistance would reimburse the state that provides assistance, "so by signing the

agreement ahead of time, this then becomes a legal document and the mechanisms for that don't have to be worked out during the throes of a disaster."

SENATOR STEVENS asked if payment comes after the assistance is provided.

MR. RUSH said that is correct.

CHAIRMAN THERRIAULT clarified that a member state governor who requests assistance would know that payment is obligatory and that negotiations would not be necessary.

SENATOR STEVENS asked if the agreement is open ended.

MR. RUSH responded there would be no cost incurred unless a disaster occurs and assistance is requested from another state or if another state requests assistance from Alaska.

SENATOR STEVENS asked if it is entirely at the discretion of the governor to provide the requested assistance.

MR. RUSH said, "If available, the governor could agree to provide the assistance that's requested."

CHAIRMAN THERRIAULT then asked for an explanation of the worker compensation section.

MR. RUSH explained that AS 23.30.244 currently says an Alaskan resident that is temporarily engaged in a civil defense or disaster relief function in another state or country is considered an employee of the State of Alaska under the current interstate civil defense compact, 26.23.130. This is both vague and general and the change makes the law more explicit. It says that residents of Alaska who are volunteers serving in another state or country and suffer injury or death may receive compensation if they are members of a state certified defense force that is registered with the division of emergency services. In addition, they must be providing services under the provisions of EMAC and not otherwise covered. Those volunteers that are residents of Alaska and serving in the state who suffer death or injury must be registered, not otherwise covered, serving under a state disaster declaration and not be an employee of state federal or local government.

The proposed legislation better protects both the individual and the state by clearly defining the conditions of eligibility for injury and death benefits for disaster volunteers that are serving either in or out of state.

CHAIRMAN THERRIAULT commented the control mechanism comes from linking a state resident that is serving out of state to the EMAC. Also, anyone volunteering to help on a disaster must be part of a state-certified emergency force whose services were requested.

He asked whether the wording on page 2, line 9 that says, "(1) the volunteer is an active roster civilian volunteer member of an emergency service organization..." is tight enough so all will know they must be performing duties under the auspice of that organization. He gave an example of a registered Red Cross volunteer moving on to lend aid in an area for which they aren't specifically assigned or authorized. If injured, would this person be covered because they are on the active duty membership list?

MR. MITCHELL, Department of Law, responded via teleconference and said the question is valid; it is unclear whether it is services at the direction of the division of emergency services or simply services in the course of the disaster emergency.

CHAIRMAN THERRIAULT thought it should be clear that individuals would be covered when they are working under the auspices of a bona fide emergency services organization and they are performing duties they have been tasked to do. Duties an individual may decide to do on their own are not covered. He thought (1) and (2) could be reworded to make that more clear.

MR. MITCHELL agreed they could work together to modify the language.

SENATOR PHILLIPS asked whether the Pacific Northwest Management Arrangement member states of Washington, Oregon and Idaho are members of EMAC.

MR. RUSH said Washington and Idaho are members and Oregon is not.

SENATOR PHILLIPS asked how that fit with EMAC plans.

MR. RUSH replied one of the provisions of EMAC is there may be supplementary agreements that EMAC neither negates nor prohibits.

SENATOR PHILLIPS asked whether Oregon is in the process of joining.

MR. RUSH didn't have an answer.

SENATOR PHILLIPS asked how membership with British Columbia and Yukon would affect EMAC.

MR. RUSH said the relationship would not be affected. Under the existing agreement, Alaska would be able to provide assistance to British Columbia and the Yukon.

CHAIRMAN THERRIAULT observed the fiscal note indicates no new expense associated with the new compact and, due to clarification, he thought there might be the potential for fewer worker compensation claims. He asked whether the state is self insured for such claims under the current system or does it pay into the current worker compensation system.

MR. RUSH said he wasn't qualified to answer that question.

CHAIRMAN THERRIAULT said he could get clarification on that before the next hearing.

He asked Mr. Mitchell to address the technical amendments.

MR. MITCHELL said the first technical amendment refers to page 2, line 13. Following "under" insert "AS 26.20.040 or." There are two separate emergency response chapters in the statutes. AS 26.20 provides for civil defense response and AS 26.23 provides for disaster response.

The second amendment refers to page 9, line 30. Following "chapter" delete ", other than AS 26.23.136 [AS 26.23.130]," and insert "[, OTHER THAN AS 26.23.130]," The old compact would be repealed by this bill but the new EMAC would apply in case of civil defense emergencies.

CHAIRMAN THERRIAULT asked for clarification on the second amendment. He thought the current wording put in the new section AS 26.23.136, which is the new language referring to the compact and drops the old statutory reference, which is the section that is deleted by Section 5.

MR. MITCHELL said that is how the bill is written and the result of that would be that EMAC would not apply in disasters under AS 26.23 and this is directly contrary to what they are trying to accomplish. They want it to apply in disasters, which is why they need the technical amendment.

CHAIRMAN THERRIAULT announced they would be working with the department to incorporate the amendments into a proposed CS on the bill.

SENATOR PHILLIPS asked if the other 41 states are using this same model for their agreement.

MR. RUSH said other states have adopted the model but he would need to find out what small changes they have made.

SENATOR PHILLIPS wanted to make sure that Alaska's unique geographic needs and conditions are met.

MR. RUSH said he would address the question.

SENATOR STEVENS asked how many states have signed since September 11.

MR. RUSH didn't know the exact number, but New York State has since signed.

MR. MITCHELL added that according to the web site, there are 44 states that have signed with New Jersey, New York and Michigan signing after September 11. He also pointed out that the site [www.nemaweb.org](http://www.nemaweb.org) offers some background information on the EMAC.

There were no further questions or individuals to testify.

CHAIRMAN THERRIAULT held SB 235 in committee.

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4:00 p.m.

#SB 237

#### **SB 237-TERRORISM, CIVIL DEFENSE, AND DISASTERS**

CHAIRMAN THERRIAULT asked Mr. Rush to explain the technical amendment for the bill.

MR. RUSH explained the bill amends AS 26.20 civil defense to authorize the governor to declare a state of emergency and exercise emergency civil defense powers in the event of a terrorist attack or a credible threat of an attack. It also amends AS 26.23, the Alaska Disaster Act, to add terrorist or enemy attack, outbreak of disease or credible threat of such events to the definition of disaster. It also amends AS 26.23 to give the governor the power to allocate or redistribute pharmaceuticals and other medicines or supplies as well as the power to access and inspect medical records as necessary to protect public health and safety.

He said these changes are necessary because the current world situation indicates that the governor of Alaska needs greater flexibility to respond to and or prepare for a terrorist attack quickly. AS 26.20, the Civil Defense Act, currently allows the governor to declare a civil defense emergency only in the event of an actual enemy attack. SB 237 changes AS 26.20 to allow the governor to declare a state of emergency in the event of an enemy or terrorist attack or credible threat of such an attack against

Alaska. This change is necessary for the state to make adequate preparations for a threatened enemy or terrorist attack and be able to respond just as quickly to an actual terrorist attack as it would to an enemy attack from another country.

AS 26.23 currently allows the governor to declare a disaster emergency for a variety of events but not specifically for actual enemy or terrorist attacks or outbreaks of disease or the credible threat of the same. The same reasoning for changing AS 26.20 applies for changing AS 26.23. Because bioterrorism is a potential threat even if the state is not the actual target, the outbreak or threatened outbreak of disease needs to be added to the list of specific disaster emergencies.

SB 237 will allow the state to more quickly prepare for threatened enemy and terrorist attacks, to include bioterrorism attacks in statute and to more effectively respond if an attack occurs.

CHAIRMAN THERRIAULT asked who determines what constitutes a credible threat of attack and what would go into that determination.

MR. RUSH replied a recommendation would probably go to the governor from the Disaster Policy Cabinet.

CHAIRMAN THERRIAULT asked what the governor's options would be once the cabinet made its recommendation.

MR. RUSH said the governor would first decide whether the threat is credible and then a determination of action would be made.

CHAIRMAN THERRIAULT said it takes a specific event to trigger these powers but it's a huge difference between authorizing those powers when something has happened and authorizing them for times when something might happen. Although the people want to empower the governor to act when it's appropriate, there is a question of when it is or is not appropriate. He asked if consideration was given to include wording to spell out the criteria for determining a credible threat. Legislators have a responsibility to be careful and selective in giving the governor such extraordinary powers over individuals and their property. He then asked for the considerations made when the decision was made to add this to the statutes.

MR. RUSH said the determination of a credible threat is largely in the hands of the state's intelligence apparatus and then the emergency management apparatus that includes the Disaster Policy Cabinet. That information then goes to the governor. If the governor were to determine there is a credible threat it does not mean he could embrace all the powers, just the ones deemed

necessary to prepare for that particular threat.

He used the [Korean] airliner that was inbound to Anchorage on September 11 as an example of the difficulty associated with making determinations in a short period of time. For eleven minutes it was not known whether the plane was under enemy control or not. This event offered little time for a determination to be made and in this type of circumstance, the emergency organization is heavily relied upon to determine whether it is or is not a credible threat.

CHAIRMAN THERRIAULT asked if there was anyone present to answer questions on access and inspection of health care and medical records.

MR. RUSH replied they did have someone present and there are two parts to the bill. One deals with including allocation of pharmaceuticals and medicines and the other with access to health care records.

CHAIRMAN THERRIAULT said he is less concerned with the distribution of medicines and more concerned or suspicious of access to citizens' health records. He asked whether the medical association was part of the discussion in developing the legislation.

KAREN PEARSON, Director of the Division of Public Health (DPH), Department of Health and Social Services (DHSS), agreed; the privacy of medical records is a significant concern. She said Kristen Bomengen from the Department of Law was part of the deliberations on incorporation and was available for questions.

There are situations in which people may need a drug or prophylactic administered and they aren't in a situation to sign a release to give to their provider. This bill addresses this type of situation and would provide for the protection of the individual in danger and public health.

CHAIRMAN THERRIAULT responded this says nothing about an individual being incapacitated or unable to give their release.

MS. PEARSON said time is of the essence if you need to get a prophylactic drug or immunization to thousands of people and there isn't time to get the signed agreement to medical records and the records back.

SENATOR PHILLIPS asked if there is someone on central command at Fort Richardson from Public Health and do they have a direct say in proceedings or do they have to call Juneau for information and authorization to act in case of emergency.

MS. PEARSON said the anthrax incident serves as a good example. She commended the legislators for recognizing the need for a 24 hour per day 7 day per week (24/7) command prior to September 11 because this proved to be invaluable during the incident. The epidemiologists for Public Health are located in Anchorage and whenever a call come through about a suspicious powder or package, the call is routed to the coordinating center that contacts Public Health physicians for direction.

SENATOR PHILLIPS asked if the individual on duty at the time makes the decision.

MS. PEARSON said the individual on duty has the authority to make decisions but there is also an established communication system so advice and additional resources are instantly accessible from the Center for Disease Control and Prevention (CDC) in Atlanta.

SENATOR PHILLIPS asked whether the phones ever fail.

MS. PEARSON replied it was a solid system prior to September 11 but CDC has since built in additional redundancy. Public Health in Alaska is also looking for support to build more capacity and quicker communication capacity and more redundancy in their system to guard against failures.

CHAIRMAN THERRIAULT questioned whether the language, "on an as needed basis" is all Public Health needs for record access and what kind of information they might be able to obtain from his own chart at his family doctor. Would the language restrict when access is available or the type of information in his chart?

MS. PEARSON said from the public health standpoint, "as needed" means access is authorized to just that information that is needed to deal with the situation at hand. It does not open the entire medical file.

CHAIRMAN THERRIAULT referred to "access, inspect, and... on an as needed basis..." and said the event would trigger access to his chart but the wording doesn't speak to what could be looked at inside his chart.

KRISTEN BOMENGEN from the Department of Law responded it is her understanding there is a general disclosure of information that is exchanged between doctors when they call one another regarding a patient. The entire chart isn't discussed, just the "front of the chart." She then said she isn't fully qualified to address what information that would involve. The wording intends to mean just information that physicians are generally accustomed to disclosing. She then pointed out that the Division of Public Health already has reasonable access to medical records

throughout the state. This legislation places the option of triggering expedited access to the information in the hands of the governor if the circumstances of the particular disaster call for that in order to get individual information.

**TAPE 02-2, SIDE B**

CHAIRMAN THERRIault asked if anyone from the medical community had reviewed that portion of the proposed legislation.

MS. BOMENGEN said she had no knowledge of that.

SENATOR PHILLIPS said he is most interested in the mechanics of meeting the challenge of a terrorist attack and he wanted to know whether the DPH is confident they can meet these challenges as they may arise. He questioned whether systems are currently in place to handle an anthrax threat and how such a threat would be managed.

MS. PEARSON replied they cannot guarantee they are able to handle any threat that arises now or next week. They are making great strides in that direction, but there are problem areas in the system. They are concerned about having adequate personnel in their laboratories to run tests and enough physicians and nurse epidemiologists for handling incoming calls and directing field activity. Public Health also has the responsibility of supporting the local Emergency Medical Service (EMS) by making sure they are adequately trained and have the equipment they need.

Public Health has conducted assessments with the Department of Military and Veterans Affairs as well as other departments and they have response plans for current capacity but are aware they need additional capacity.

SENATOR PHILLIPS asked for current response specifics.

MS. PEARSON said one example is the recent response to the potential cutaneous anthrax case. A physician provider who has seen anthrax called the coordinating center to report a potential case. The epidemiologist, physician, and head of the laboratory all examined the patient and took specimens for analysis. They put the patient on prophylactic antibiotics that evening because there was enough positive evidence they could not rule out anthrax. At that time, "All the major players for the department and executive branch were on the phone." The post office was alerted and everyone knew that if there was a positive in the morning everyone on the team needed to know his or her course of action. They ran through the list of responsibilities and discussed whether they had the capacity to trace the pathway back. The good news was that the confirmation tests began to indicate this was not anthrax. They sent samples to the CDC for

confirmation and it took a week and one half before they could positively rule out anthrax.

SENATOR PHILLIPS asked why they couldn't confirm locally rather than send specimens to Atlanta.

MS. PEARSON replied more sophisticated tests are available in Atlanta.

SENATOR PHILLIPS commented CDC "sounds like a centralization system versus a de-centralization system" and he can see situations where CDC could be overwhelmed.

MS. PEARSON said the Anchorage laboratory is certified at the highest level next to the reference laboratories like the CDC which will always be there as a higher level backup than any state could ever maintain.

CHAIRMAN THERRIAULT called for a discussion of the proposed amendment.

MR. MIKE MITCHELL, Department of Law, said this amends AS 26.23.210 in the disaster chapter and draws a distinction between natural disaster covered under AS 26.23 and disaster caused by attack which is covered under the little used, 1950's civil defense statute AS 26.20. All disaster response in the last several decades has been authorized under AS 26.23 and in the event of a terrorist attack or credible attack they want AS 26.23 to apply.

CHAIRMAN THERRIAULT asked for questions or further testimony.

AL ROTHFUSS testified via teleconference against the bill. In his opinion, this law infringes on individual rights, freedoms and privileges. He said, "It is not Alaska's responsibility to defend me in all cases. It is up to me to defend me. All Alaska has to do is give me the information."

SENATOR PHILLIPS asked for an example of how SB 237 infringes on individual rights.

MR. ROTHFUSS replied the governor should not have the right to move him wherever he wants to move him and he should not have the right to confiscate properties. "If we give this governor all these powers what are you guys going to do? What do we need you for? We don't. That's what you're down there for is to do these things."

SENATOR PHILLIPS asked for a page and line upon which to focus.

MR. ROTHFUSS cited from the bottom of page 2 on to the top of

page 3.

CHAIRMAN THERRIAULT advised Mr. Rothfuss the text on the bill that is not underlined and bolded is current law. Changes on page one give the governor the power to act both after an attack and in the face of a credible attack rather than just afterwards.

MR. ROTHFUSS asked whose definition would be used to identify a credible threat.

CHAIRMAN THERRIAULT said it is a legitimate question and one he raised himself. He thanked him for his testimony.

There being no further questions, the bill was held in committee.  
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#SB 238

**SB 238-SECURITY OF FACILITIES AND SYSTEMS**

MR. MIKE MITCHELL, bill drafter from the Department of Law, explained section 1 would authorize the Department of Transportation and Public Facilities (DOTPF) to impose administrative penalties for violations of an airport's security program. These penalties would track what the Federal Aviation Administration (FAA) can impose on the state. Currently the state can only pass penalties along to those with state contracts instead of directly penalizing the security violators.

Section 2 amends the exceptions to the public records statute, AS 40.25.120, to exclude security plans, programs or procedures and records pertinent to the same from publicly accessible records. Certain criteria would have to be met to provide some limits on what can be withheld from public disclosure. The drafters tried to balance the public's right to know with the need to protect sensitive security information.

Section 3 amends AS 44.17 to provide for the adoption of security plans or procedure by order rather than regulation and would not be subject to the Administrative Procedure Act (APA) that requires a public notice, review, and comment process. For this section to apply, the executive officer must certify that compliance to APA could: (A) be expected to interfere with implementing or enforcing a security plan; (B) would disclose confidential guidelines for investigations or enforcement and disclosure could risk circumvention of the law; or (C) could be expected to endanger the life or physical safety of an individual.

CHAIRMAN THERRIAULT pointed out the word "or" means one of the three criteria must be met, not all three.

MR. MITCHELL agreed.

CHAIRMAN THERRIAULT asked whether section 2 is patterned after current law that says, "When we build a new prison we don't have to disclose the public documentation of the electronic security system."

MR. MITCHELL said he isn't aware that it is patterned after that law, but it would cover that scenario as well as other security plans or procedures.

CHAIRMAN THERRIAULT called for questions.

SENATOR STEVENS asked if the recommendations came out of the Terrorist Disaster Policy Cabinet.

MR. MITCHELL said they did and are included in the November 12<sup>th</sup> report to the governor.

SENATOR STEVENS then asked if they were working from a template from the Homeland Defense Cabinet and how they decided what portions of statute should be changed.

MR. MITCHELL replied these were the recommendations that came out of the various subcommittees of the Disaster Policy Cabinet. The subcommittees met separately then submitted their suggestions to the cabinet as a whole.

GARY HAYDEN, Department of Transportation and Public Facilities (DOT/PF), interjected clarification of section 1 because it pertains to DOT/PF in particular. As the owner and operator of airports, the State of Alaska must comply with certain security procedures. They are also responsible for ensuring that everyone on airport property complies with the security process and compliance requirements set out in section 107 of the Code of Federal Register. Since September 11, the FAA has issued many emergency orders and directives, but some of the airport leaseholders and some individuals who work at the airports have not been willing to change the way they conduct their business or where they park their cars. In cases of non-compliance, the FAA finds the state in violation of security directives and the state is fined. The state's only recourse has been to pay the penalty then try to get reimbursement by applying pressure to the tenant and/or contractor under applicable contracts. Section 1 would allow DOT/PF to pass the penalty directly to the violator.

SENATOR STEVENS said causing an airport to be out of compliance with FAA directives is very serious. He then asked if this gives the state the authority to charge the tenants so they can go back and meet the requirements.

MR. HAYDEN said that isn't the case. He then cited a parking violation example in which a lessee continued to park in an area that is not restricted due to the increased security requirements. Law enforcement officials were unwilling to take action to enforce the parking restriction and the only recourse DOT had was to talk tough and try to coerce compliance. If FAA had been in town that day they could have fined DOT/PF up to \$1,000.00 for the infraction.

Each airport has its own individual security plan drawn from the security measures coming from the FAA and any airport found in violation of their security plan will be fined. Section 1 allows DOT/PF to pass the fine on to the violator.

SENATOR PHILLIPS expressed dismay that the state doesn't have enforcement authority of FAA directives at airports.

MR. HAYDEN said the process of invoking compliance of FAA directives through the lease agreement is a long and unsatisfactory process.

SENATOR STEVENS asked if it is correct that each airport has its own security plan and not a statewide plan for implementation at all airports.

MR. HAYDEN explained section 107 of the Federal Register sets out a skeleton national security plan for certified airports. Alaska has 19 certified airports that fall into various categories with different requirements for each category. FAA issues emergency orders and directives to flesh out the skeletal plan. One of the parts of 107 is that every airport has an individually designed security plan. This identifies such things as where fences are placed, which areas are secure, patrol schedules and parking configuration. All these individual plans meet the national standards so the local DOT/PF employee knows what to do at the airport he or she is charged with managing and operating.

SENATOR STEVENS asked if section 1 simply gives authority to pass through the fine of the authority to implement the fine.

MR. HAYDEN said it is his understanding that DOT/PF would pass the fine through to the violator; they would not initiate the fine.

MR. MITCHELL advised he does not read it as restricted to a pass through. It could authorize an independent levy of a fine.

SENATOR STEVENS remarked that is his concern.

CHAIRMAN THERRIault advised there is no current authority to

independently levy a fine.

MR. HAYDEN agreed.

CHAIRMAN THERRIAULT pointed out that the introductory letter speaks of the ability to pass fines on. However, if it actually creates an independent authority for DOT/PF to levy fines independent of the FAA, the committee needs to know that.

MR. HAYDEN agreed that point needs clarification.

SENATOR PHILLIPS continued to express dismay that some vendors aren't willing to cooperate and work together during a time of national emergency. He thought DOT/PF should be asking for enforcement tools.

MR. HAYDEN agreed, but said not everyone has chosen to voluntarily comply with post September 11 FAA directives.

SENATOR PHILLIPS didn't think DOT/PF should have to pay for the violations in the first place.

SENATOR STEVENS said there are two issues. One is enforcement and the other is the ability to levy the fine. He agreed with passing the fine along to the violator but he is concerned about giving new authority to a regional administrator to levy a fine independently.

MR. HAYDEN responded being able to tell a violator they would be required to pay the fine that FAA levies against the state would be leverage they don't have now.

CHAIRMAN THERRIAULT established there is general agreement they don't want to give DOT/PF the authority to issue fines absent any FAA interaction. He added the justification for section 3 is unclear and he's unsure he could support it because it circumvents the public regulatory process and this would apply to each state agency, board, or commission with regulation adoption authority.

MR. HAYDEN said they are currently rewriting security plans for all airports and there are certain lessee requirements that will be written into those plans. They don't go through a public process or notice period to adopt those security plans. He asked Mr. Mitchell to speak to the issue of security plans for other agencies.

CHAIRMAN THERRIAULT asked Mr. Mitchell for justification.

MR. MITCHELL replied he didn't draft this provision but believes the limiting language comes from the narrow topic that is related

to the adoption of a plan, program or procedure for establishing maintaining or restoring security. Additional limitations come from the certification of consequences if the procedures were not followed.

CHAIRMAN THERRIAULT replied that an example would be the medical board could adopt by order a requirement that the doctors act in response to a potential bioterror attack and neither those doctors nor the general public would be able to have input in that decision. He stated a need to have a better understanding of the scope of authority requested and the limiting factors.

MR. MITCHELL replied he would do further inquiry but his understanding is that scenario would not fall within section 3, rather it is directed at facilities plans.

CHAIRMAN THERRIAULT asked for clarification before the next meeting.

The bill was held in committee.

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#SB239

**SB 239-STATE EMPLOYEES CALLED TO MILITARY DUTY**

JIM DUNCAN, Commissioner of Administration, explained the bill is a result of the September 11 attack and it gives the governor administrative order authority to ensure that state employees who are members of the reserve and auxiliary military units will not be financially penalized when called to active duty. The authority is discretionary, could cover both pay and benefits and would probably be used infrequently.

Once an order is issued, the Division of Personnel would issue emergency regulations to implement the provisions of the administrative order. The governor would choose whether salary, health or retirement benefits would be affected.

CHAIRMAN THERRIAULT asked whether discretionary applied from emergency to emergency, to category of employee or to individual employees.

COMMISSIONER DUNCAN said the real discretion is for emergency to emergency but it could apply to a certain category of employee such as the Alaska National Guard. He added other states have given their governors the authority to make such decisions.

**5:00 p.m.**

CHAIRMAN THERRIAULT remarked short-term call outs probably don't need the adjustment and individuals in the guard should anticipate some level of callout.

He noted the fiscal note indicated costs are covered by additional vacancy factors or use of appropriated funds. However, once payments are made for a period of six months, a temporary employee would probably need to be hired which raises questions about the financial implications.

COMMISSIONER DUNCAN said some of the positions could be filled on a temporary basis but the assumption is that the agencies impacted could absorb the increased cost through vacancy factor or other means. For a call out that lasts six months or longer, it might require a request for supplemental appropriation for an agency or department.

CHAIRMAN THERRIAULT asked how a National Guardsman employed in the private sector is treated.

COMMISSIONER DUNCAN said other states have handled the situation a variety of ways and those comparisons are available. Although they haven't surveyed the private sector, they do have some information on Costco's policy.

CHAIRMAN THERRIAULT asked for private sector information.

There being no additional questions or testimony, SB 239 was held in committee.

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#SB240

#### **SB 240-TERRORISTIC THREATENING/PIPELINE DAMAGE**

ANNIE CARPENETI with the Criminal Division of the Department of Law informed members of the meeting district attorneys throughout the state held to discuss Title 11 and associated issues. The meeting resulted in the following suggestions for amending Title 11.

- Increase the crime for intentionally damaging an oil or gas pipeline or supporting facility from a class B felony to a class A felony.
- Tampering with an oil or gas pipeline or supporting facility would be raised from a class C felony to a class B felony. It also adds the offense of making a false threat to damage an oil or gas pipeline or supporting facility to terroristic threatening in the second degree, which would be a class C felony.
- Tampering with water, including a public or private water

supply would be the same class B felony as tampering with food, drugs, cosmetics or a container for the same.

- It would be a Class B felony to send, deliver or attempt to solicit the sending or delivery of an imitation chemical or biological substance with intent to frighten or cause specific harm or inconvenience such as evacuation of a building or means of public transportation.
- Making a false threat to send an imitation biological or chemical substance that is harmful to humans to terroristic threatening in the second degree, which is a class C felony.

She went on to explain the conforming amendments.

Section 1 adds terroristic threatening in the first degree, which prohibits making or sending imitation chemical or biological substance with the intent to cause fear or physical injury to one of the predicate crimes that raises stalking in the second degree to stalking in the first degree. Terroristic threatening is already included in that bill and this is a conforming amendment.

CHAIRMAN THERRIAULT asked if the wording: "or an airplane or helicopter, with reckless disregard for the risk of harm to or loss of the property;" found on page 3, lines 1 and 2 is there because that section is being rewritten.

MS. CARPENETI responded it is raised from criminal mischief in the second degree to criminal mischief in the first degree and includes tampering with an airplane or helicopter.

CHAIRMAN THERRIAULT observed it is repealed by section 12.

MS. CARPENETI replied what is presently in current law is repealed because it is brought up to a higher-level offense.

SENATOR PHILLIPS referred to the addition of food and water on the top of page 3 and asked if air was discussed with particular reference to crop dusters.

MS. CARPENETI said she didn't participate in the discussions of Title 11 and didn't know whether that was discussed.

SENATOR PHILLIPS then asked about ventilation systems.

MS. CARPENETI agreed they were good ideas and she would be happy to give them some thought.

SENATOR PHILLIPS thought air was important.

CHAIRMAN THERRIAULT asked for other questions or additional

testimony.

He ordered SB 240 held in committee.

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CHAIRMAN THERRIAULT adjourned the meeting at 5:15 p.m.