

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 15, 2021

1:47 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Attorney General - Department of Law

Tregg Taylor - Anchorage

- HEARD & HELD

HOUSE BILL NO. 3

"An Act relating to the definition of 'disaster.'"

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 3

SHORT TITLE: DEFINITION OF "DISASTER": CYBERSECURITY

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD
02/23/21	(H)	STA AT 3:00 PM GRUENBERG 120
02/23/21	(H)	Heard & Held
02/23/21	(H)	MINUTE(STA)
03/02/21	(H)	STA AT 3:00 PM GRUENBERG 120

03/02/21	(H)	Moved CSHB 3 (STA) Out of Committee
03/02/21	(H)	MINUTE (STA)
03/08/21	(H)	STA RPT CS (STA) 1DP 1NR 5AM
03/08/21	(H)	DP: KREISS-TOMKINS
03/08/21	(H)	NR: TARR
03/08/21	(H)	AM: CLAMAN, STORY, EASTMAN, VANCE, KAUFMAN
03/10/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/10/21	(H)	Heard & Held
03/10/21	(H)	MINUTE (JUD)
03/15/21	(H)	JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

TREGG TAYLOR, Appointee
 Attorney General
 Department of Law
 Anchorage, Alaska

POSITION STATEMENT: Testified as appointee for attorney general, Department of Law.

ERICK CODERO-GIORGANA, Staff
 Representative Mike Prax
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSHB 3 (STA).

ACTION NARRATIVE

[1:47:18 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:47 p.m. Representatives Eastman, Drummond, Kreiss-Tomkins, Snyder, and Claman were present at the call to order. Representatives Vance and Kurka arrived as the meeting was in progress.

CONFIRMATION HEARING(S)

Attorney General - Department of Law

[1:47:52 PM](#)

CHAIR CLAMAN announced that the first order of business would be the confirmation hearing for the governor's appointee to attorney general, Department of Law.

[1:48:09 PM](#)

CHAIR CLAMAN open public testimony on the confirmation hearing.

[1:48:24 PM](#)

TREGG TAYLOR, Appointee, Attorney General, Department of Law, gave his biographical, educational, and employment background [resume included in the committee packet] and emphasized his attraction to public service. He said he has worked in the attorney general's office for over two years now. He gave examples of his involvement in support of minority groups and bringing together groups with varied beliefs to communicate and listen.

[1:58:27 PM](#)

MR. TAYLOR said at the end of January 2021 Governor Mike Dunleavy asked him to serve as attorney general, and he said his first thought was of Alaska being the highest ranking state in occurrence of sex crimes. He showed a related slide and expressed his determination and commitment to address this difficult issue. He vowed to make Alaska a better place for every Alaskan.

[2:00:26 PM](#)

REPRESENTATIVE SNYDER mentioned Ed Sniffen's resignation and asked Mr. Taylor if he remembered a previous conversation during which he had expressed disappointment that "there were so many opportunities for adults who knew better that could stop it, but they didn't."

MR. TAYLOR confirmed he remembered that part of the conversation.

REPRESENTATIVE SNYDER then noted that former attorney general Kevin Clarkson's misconduct had occurred "months before it was brought to the public." She clarified she was referring to a series of inappropriate text messages, and she asked Mr. Taylor, "Were you aware of his behavior?"

MR. TAYLOR answered no. In response to a follow-up question, he said he became aware after Mr. Clarkson had already been placed on administrative leave.

[2:02:12 PM](#)

REPRESENTATIVE VANCE asked Mr. Taylor what he had learned in regard to "the accusations that have come from the previous attorney general" and how he would "change that for the future."

MR. TAYLOR, regarding sexual assault and domestic violence, said he has "three close family members that have experienced that." The common thread is that the perpetrators have not been brought to justice. He said this is a multi-faceted issue. He said within the Department of Law training is being given in sex assault prosecution, and he said he hopes that training can be extended to law enforcement. He said two prosecutors provided by the federal government are being utilized in rural areas. He spoke about traumatic experiences of Alaska Natives, and he expressed hope that in reaching out, the Department of Law will have a better idea of what it can do. In response to a question about transparency, he said he strives to follow his values but sometimes falls short, so he said he promises to keep learning. Further, he promised to hold employees of the department responsible "for any of the actions that they take that is contrary to that." He said it is not always possible to open personnel files to the public, but he promised to "take those issues very seriously," mentioning investigations and the outcomes of them.

[2:07:36 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he has been troubled with how the Office of the Governor failed to handle the issues with attorney general Clarkson. He inquired whether Mr. Taylor's assessment of response to attorney general Clarkson, which was known internally, is consistent with the zero tolerance policy Mr. Taylor outlined in his opening statement.

MR. TAYLOR replied the little he knows of the situation is that Human Resources looked at the evidence and decided "to put him on unpaid administrative leave until they figured out what else to do." He continued:

And so, ultimately, I think the right thing happened there, and I know Kevin very well, and he's a good friend of mine, and I know him to be an honorable man, and he himself would be the first to tell you that he is extremely embarrassed by what had occurred and what happened, and that it was inappropriate in the work place.

2:09:06 PM

REPRESENTATIVE KREISS-TOMKINS said he would not characterize attorney general Clarkson's behavior as honorable or respectful to his subordinate, nor would it seem the response by the Office of the Governor to complaints presented was decisive. He said he is looking for an evaluation from Mr. Taylor as to whether he thinks how that all unfolded was appropriate or there is room for improvement.

MR. TAYLOR responded that he a firm believer in holding people accountable. He added that he also believes that "good people do bad things." He said that does not mean they should not be held accountable, and "as a society we need to do that."

MR. TAYLOR, in response to a new question from Representative Kreiss-Tomkins about how he plans to address sex crimes compared to how his predecessors may have done, said he has been researching means by which to support victims and families, whether through state or local governments or nonprofit entities. He amended his use of the word "victim" to reflect that those he knows who have suffered [sexual abuse or domestic violence] prefer to be known as survivors. He posited that one of the problems is that survivors do not feel they can come forward, or they worry they will be mocked or disbelieved. He stated that he wants to assuage those worries and assure survivors that they will be heard and supported. In response to a follow-up question, he said he does not have concrete plans yet, since he is still in the phase of gathering information and talking with survivors. He said he would like to hold a summit where this issue can be discussed. He said he would welcome any suggestions from the committee.

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CHAIR CLAMAN noted that the most recent statistics provided by Mr. Skidmore show that approximately 50 percent of sex crimes are being declined for prosecution; that is about half of 620 in a year that were studied. In terms of survivors being unwilling to come forward, he expressed his understanding that it is worse in rural villages. He advised that the unlikelihood of a case being prosecuted "builds the culture of not coming forward." He asked Mr. Taylor if he has any suggestions on how to improve that statistic.

MR. TAYLOR responded those are sobering statistics. Further he stated that only 70 percent of the cases that are tried result

in convictions. He restated the importance of training prosecutors and law enforcement. He said these are difficult cases to prosecute because [sex] acts typically are consensual and occur in private. He mentioned rape kits left unprocessed. He said that the "nuance between what's consensual and what's not consensual" is what makes the cases hard to prosecute. In addition to training, he said the department is making "a large step" in requesting 10 additional prosecutors and 9 additional support staff, which he said he thinks "will go a long way in reducing the caseload of those primarily engaged in prosecution of sex crimes." He said currently there are 67 cases; a more normal caseload would be about 40. He said moving cases forward faster would benefit the [survivors], as well.

[2:18:03 PM](#)

REPRESENTATIVE EASTMAN recalled hearing from the department that the conviction rate is 70-80 percent. He then recalled a conversation with a former Municipality of Anchorage prosecutor. He offered his understanding that the prosecutor had said that a prosecutor with a conviction rate higher than 70 percent is not doing his/her job, because that means the prosecutor is not taking the hard cases he/she needs to be taking. He asked for Mr. Taylor's opinion.

[2:18:43 PM](#)

MR. TAYLOR replied that that is an interesting perspective he had not heard. He said it is possible that when gathering the information regarding rates of prosecution, the department may lower the threshold for which it is willing to start a prosecution. He added that he is not certain that would be the outcome, but said that is certainly an issue that would be considered.

[2:19:26 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked for Mr. Taylor's thoughts on how to reduce recidivism.

[2:19:47 PM](#)

MR. TAYLOR responded that he does not know the answer at this time.

[2:20:15 PM](#)

REPRESENTATIVE SNYDER brought up the topic of Ben Stevens, Governor Dunleavy's former chief of staff, who has been hired at ConocoPhillips Alaska, Inc. as vice president of external affairs and transportation. She cited AS 39.52.180, which spells out restrictions on employment after leaving state service. She specified [subsection] (c), which read:

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval.

REPRESENTATIVE SNYDER, regarding the waiver, offered her understanding that "that's not happened or been signed off on." She asked Mr. Taylor to speak to the issue.

[2:21:19 PM](#)

MR. TAYLOR answered that the department determined that there was no need for a conflict waiver, because there was no conflict. He indicated that the department's statement on the issue ended by outlining that in the event that [a conflict] does arise, it would be addressed at that time. He continued:

Over the course of the next couple years ... you'll probably see a series of these conflict waivers either being addressed ... or put into effect to allow Ben Stevens to work in his job duties if it is a benefit to the state. ... My guess is we're going to see some in the near future.

MR. TAYLOR responded to follow-up questions from Representative Snyder. He said he could not address the waivers for Bruce Tangeman, Ed Fogle, or Daniel Smith because he had not participated in them. Notwithstanding that, he said any time an individual works substantially on any given issue while in service to the state and then "does that in the private sector" within a two-year period of leaving the state job, that individual will need a waiver. He added, "If there is even a question on whether a waiver is needed, my advice to the governor will be ... to ... [issue] the waiver." He said the duty lies with the individual who leaves state work to take on that work within the private sector to notify the department. Failing to do so, the individual is subject to the Ethics Act and is liable for his/her actions.

[2:26:18 PM](#)

CHAIR CLAMAN commented that presumably Mr. Stevens is working in his office with ConocoPhillips Alaska, Inc. He asked whether it is Mr. Taylor's perspective that if Mr. Stevens were to lobby legislators on behalf of the perspective of ConocoPhillips Alaska, Inc. on legislation related to oil taxes, then he would need to acquire a waiver before doing so.

MR. TAYLOR emphasized that it would depend on the materiality of Mr. Stevens' involvement when he worked in the Office of the Governor.

[2:27:49 PM](#)

MR. TAYLOR, in response to Representative Snyder, said the state wants to attract the best people, and that is possible only if those people "have the ability to work" [in the private sector] afterwards. He said the [Ethics] Act is clear that only under certain circumstances would the need arise for a conflict waiver, and it is the discretion of the governor and attorney general whether to grant the waiver. He opined that issuing a broad waiver does not protect the state "in certain aspects that might be confidential."

[2:29:56 PM](#)

CHAIR CLAMAN questioned the onus of asking for a waiver being placed with the former state employees rather than with the state, which he suggested should decide whether the person was involved in discussions that should preclude his/her involvement in a matter.

MR. TAYLOR confirmed there are certain circumstances wherein the state has knowledge of a person's material involvement and would step in with a letter to cease and desist until obtaining a conflict waiver. He clarified that the Ethics Act does not put the liability on the state; it puts it on the individual. In response to follow-up questions, he confirmed his perspective is to take these things on a case-by-case basis rather than issuing a blanket waiver, and he reiterated his statement about the former state employee determining the need to request a waiver based on the extent of material involvement in an issue that would require one.

CHAIR CLAMAN offered his perspective that in the last two-plus years Governor Dunleavy had opposed all proposed oil tax legislation; therefore, there may have been no analysis whatsoever that Mr. Stevens had had knowledge of that topic and nothing problematic "depending on what or what was not discussed."

[2:33:12 PM](#)

REPRESENTATIVE EASTMAN asked for an example of when a waiver might be denied.

MR. TAYLOR answered that the individual may be privy to the viability of a state project and the money spent by the state to determine that viability.

[2:34:48 PM](#)

CHAIR CLAMAN brought up the topic of power cost equalization (PCE) and whether PCE funds are "sweepable" into the general fund (GF). He stated his understanding that a former attorney general, Craig Richards, had taken the position that PCE funds were not subject to sweep. He asked Mr. Taylor for his opinion.

MR. TAYLOR responded that he had not studied the issue to form an opinion but knew enough about it to say there are good arguments on both sides. He said the subject would be considered by the department. In response to a follow-up question, he said he is not sure the court has addressed the issue directly, although the court has made decisions regarding the Alaska permanent fund and earnings reserve fund, which could give some indication as to how the court might rule regarding the PCE. In further response, he allowed it is a distinct possibility that under his leadership the department may take a different position on "sweepability" than past attorneys general have taken. There may be recent court action made that is different from past court action.

[2:36:52 PM](#)

CHAIR CLAMAN listed examples of "a long series of cases" the department has lost, which he advised means either the governor is getting bad advice or is getting advice that the cases are unlikely to succeed and going forward with them anyway. Both scenarios he characterized as poor decisions on the part of the governor. Chair Claman said this troubles him, and he asked Mr. Taylor how he expects to change that, since he opined the single

most important job of the attorney general is "to convince this governor to stop taking poor cases."

MR. TAYLOR responded that he would look closely at probable outcomes. That said, he expressed his disagreement with some of Chair Claman's words. He said the governor does not make the decision; the attorney general has the discretion to determine what is in the public's best interest. He said he takes that responsibility seriously and will "be hands-on on those decisions." He spoke of the department's many clients, the law, and probable outcomes as considerations. He expressed hope that under his leadership there will not be a string of losing cases.

[2:40:29 PM](#)

REPRESENTATIVE KREISS-TOMKINS remarked that it's a mind-boggling list of lawsuits. He said he thinks the interbranch conflict over the last few years is unprecedented, and he said he thinks this trend has receded in the last six months. He said he appreciated Mr. Taylor's comments.

[2:42:19 PM](#)

MR. TAYLOR clarified that he in no way meant to denigrate the good work being done by the attorneys in the department. He said the list is long, and there was a good legal argument to support the stances in those cases. A completely different matter, he said, is whether he would have advised that litigation. He said the recent litigation between the executive and legislative branch has been unfortunate. He said he would take every opportunity "to reach across with Legislative Legal [Services] on these issues" to try to come to an agreement at least on the major issues. He promised to think and talk before filing, and hopefully "resolve some of these issues outside of a courtroom."

[2:44:00 PM](#)

CHAIR CLAMAN noted the number of questions still to be asked and asked Mr. Taylor if he would be available to return before the committee another day.

[2:44:30 PM](#)

The committee took an at-ease from 2:44 p.m. to 2:46 p.m.

[2:46:00 PM](#)

CHAIR CLAMAN confirmed his choice to continue the confirmation hearing at a future date.

[2:47:07 PM](#)

CHAIR CLAMAN closed public testimony on the confirmation hearing for Tregg Taylor, Appointee, Attorney General, Department of Law.

HB 3-DEFINITION OF "DISASTER": CYBERSECURITY

[2:47:33 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL 3, "An Act relating to the definition of 'disaster.'" [Before the committee was CSHB 3(STA).]

[2:47:52 PM](#)

CHAIR CLAMAN opened public testimony on CSHB 3(STA). After ascertaining there was no one who wished to testify, he closed public testimony.

CHAIR CLAMAN invited committee questions.

REPRESENTATIVE EASTMAN noted that a switch had been made from natural disasters to manmade disasters. He asked, "Is the intent of the sponsor to draw distinction between accidents versus the kinds of attacks and intentionality that we were talking about?"

[2:49:26 PM](#)

ERICK CODERO-GIORGANA, Staff, Representative Mike Prax, Alaska State Legislature, answered that the intent is "to cover all of that."

[2:50:10 PM](#)

REPRESENTATIVE KREISS-TOMKINS asked Mr. Codero-Giorgana to confirm he is staff for Representative Mike Prax.

MR. CODERO-GIORGANA answered yes. He added, "I'm allowed to help today - Representative Johnson - for the bill, because I was helping her carry that bill."

[2:50:33 PM](#)

CHAIR CLAMAN explained a recent switch of staff between the offices of Representatives Johnson and Prax to explain Mr. Codero-Giorgana's involvement.

[2:52:03 PM](#)

MR. CODERO-GIORGANA, in response to a follow-up question from Representative Eastman as to whether the bill would cover both cyber attacks and cyber security attacks, answered, "The sponsor's intention is to cover all of it."

[2:53:10 PM](#)

REPRESENTATIVE DRUMMOND indicated she had, at a previous hearing on CSHB 3(STA), asked about political subdivisions. She then noted that Mr. Wyatt, the information technology (IT) director of the Matanuska-Susitna (Mat-Su) Borough, had testified about a cyberattack in 2019. She asked whether the state would be assisting boroughs in protecting themselves and whether the definition of "disaster" in CSHB 3(STA) should be amended.

MR. CODERO-GIORGANA answered that it will depend on the circumstances of each disaster. He explained that each district can seek assistance and would do so depending on whether the disaster was or was not contained. He stated that when that cyberattack occurred, the Mat-Su Borough tried to get additional assistance from the state by having the state declare the situation a disaster. He said because this was not clarified in statute, it did not happen. The district still received assistance, but "it wasn't as easy to get as if this had been in statute." He then referred to questions Representative Drummond had asked previously and noted one had not been answered at that time, which was that the Alaska Railroad is an instrumentality of the state "and therefore would be covered under the statute."

REPRESENTATIVE DRUMMOND indicated she had just received from her staff a list of political subdivisions of the state, which she said addressed her questions.

[2:56:01 PM](#)

REPRESENTATIVE EASTMAN, considering the broadness of the language in CSHB 3(STA), asked whether there was a good reason not to allow the governor to declare a disaster if there is a potential for federal aid, for example. He indicated that

currently statute limits the governor's ability to declare a disaster.

MR. CODERO-GIORGANA responded that under CSHB 3(STA), certain criteria must be met to declare a disaster, and whether or not the governor should or should not have the authority to call more disasters or fewer disasters is a policy call not being address under the proposed legislation.

[2:57:28 PM](#)

CHAIR CLAMAN announced that CSHB 3(STA) was held over.

[2:58:06 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:58 p.m.