

HB

556

HOUSE COMMITTEE REPORT

File

(11)

Date Referred: March 15, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/11/90

The FINANCE Committee considered:

HB 556

HOUSE BILL NO. 556

DISASTER PREPAREDNESS

"An Act relating to disaster relief and preparedness."

RECOMMENDATIONS:

- be replaced with CS HB 556 (FIN) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note Education zero fiscal note(s) 3/15/90/ Military & VET. AFFAIR
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Ronald J. Carson CARSON
Charles Swackhammer SWACKHAMMER
John Brown BROWN
Walter Koponen KOPONEN
Barbara Barnes BARNES
Dick Shultz SHULTZ
Roll E. Phillips PHILLIPS
John W. Ulmer ULMER
John A. Rieger RIEGER

	Do Not Pass	No Rec	Amend

Ronald J. Carson CARSON
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Disaster Relief and preparedness
 Sponsor: Gruenbera
 Requestor: Gruenbera

Agency Affected: Education
 BRU: Education Finance & Support Services
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mary Hakala
 Division: Commissioner's Office

Phone: 465-2800
 Date: 3/9/90

Approved by Commissioner: William G. Demmert
 Agency: Education

Date: 3/9/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Disaster relief and preparedness
Sponsor: Rep. Gruenberg
Requestor: House HESS

Agency Affected: DMVA
BRU: Disaster Planning and Control
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill will have no fiscal impact on DMVA

Prepared by: Jeff Morrison, Director Phone: 465-4600
Division: Administrative and Support Services Date: 3/13/90
Approved by Commissioner John W. Schaeffer Date: 3/13/90
Agency: Military and Veterans Affairs

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Adopted

Original sponsor(s): REP. GRUENBERG, Larson, Foster, Finkelstein

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 556 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to disaster emergencies and disaster and emergency relief and preparedness."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 26.23.020(c) is repealed and reenacted to read:

(c) If the governor finds that a disaster has occurred or that a disaster is imminent or threatened, the governor shall, by proclamation, declare a condition of disaster emergency. The disaster emergency remains in effect until the governor finds that the danger has passed or the disaster has been dealt with so that the emergency no longer exists. The governor may terminate the disaster emergency by proclamation. A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution. The proclamation must indicate the nature of the disaster, the area threatened or affected, and the conditions that have brought it about or that make possible the termination of the disaster emergency.

* Sec. 2. AS 26.23 is amended by adding a new section to read:

Sec. 26.23.025. THE LEGISLATURE AND DISASTER EMERGENCIES. (a) The provisions of this section apply when the governor declares a condition of disaster emergency under AS 26.23.020(c) and in response to the disaster the governor proposes to expend

(1) more than \$1,000,000 of the assets of the disaster relief fund under AS 26.23.300(b);

(2) more than \$500,000 of the assets of the disaster relief

fund under AS 26.23.300(c); or

(3) an amount from the disaster relief fund that exceeds the unallocated balance of the fund.

(b) When the governor declares a condition of disaster emergency while the legislature is in session, concurrently with the issuance of the proclamation the governor shall prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(1) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

(2) a supplemental appropriation to provide money necessary to cope with the disaster.

(c) When the governor declares a condition of disaster emergency while the legislature is not in session, concurrently with the issuance of the disaster emergency proclamation the governor shall

(1) convene a special session of the legislature under this subsection within five days unless the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing; and

(2) prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(A) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

(B) a supplemental appropriation to provide money necessary to cope with the disaster.

(d) If the declaration of a disaster emergency occurs while the

legislature is in session, or if a special session is held, actions taken by the governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

(e) If the legislature does not convene in special session under (c)(1) of this section, the governor may act under this chapter in a manner that is consistent with the financing plan submitted.

(f) The legislature, by concurrent resolution, may terminate a disaster emergency at any time.

* Sec. 3. AS 26.23.040(a) is amended to read:

(a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for

(A) zoning, building, and other land use controls;

(B) [,] safety measures for securing mobile homes or other nonpermanent or semi-permanent structures; [,] and

(C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) [PREPARATION AND DISTRIBUTION TO THE APPROPRIATE STATE AND LOCAL OFFICIALS OF CATALOGS OR EXTRACTS LISTING FEDERAL, STATE, AND PRIVATE ASSISTANCE PROGRAMS;

(9)] organization of manpower and chains of command;

(9) [(10)] coordination of federal, state, and local disaster activities;

(10) [(11)] coordination of the state emergency plan with the disaster plans of the federal government; and

(11) [(12)] other matters necessary to carry out the purposes of this chapter.

* Sec. 4. AS 26.23.040(e) is amended to read:

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of a disaster emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) [PROVIDE FOR MOBILE SUPPORT UNITS;

(6)] establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training [AND PUBLIC INFORMATION] programs;

(6) [(7)] MAKE SURVEYS OF INDUSTRIES, RESOURCES, AND FACILITIES IN THE STATE, BOTH PUBLIC AND PRIVATE, AS ARE NECESSARY TO CARRY OUT THE PURPOSES OF THIS CHAPTER;

(8)] plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;

(7) [(9)] establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(8) [(10)] ESTABLISH A REGISTER OF MOBILE AND CONSTRUCTION EQUIPMENT AND TEMPORARY HOUSING AVAILABLE FOR USE IN A DISASTER EMERGENCY;

(11)] prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(9) [(12)] cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;

(10) [(13)] develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and funding approval, and processing of appeals;

(11) [(14)] do other things necessary or proper for the implementation of this chapter.

* Sec. 5. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money [FUNDS] regularly appropriated to state and local agencies. The second recourse

shall be to money [FUNDS] available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations [ANY LIMITATION] imposed by AS 37.07.080(e),

(1) transfer and spend money appropriated for other purposes; or

(2) [, IN SITUATIONS INVOLVING NATURAL DISASTERS,] borrow money [FROM THE UNITED STATES GOVERNMENT OR OTHER PUBLIC OR PRIVATE SOURCES] for a term not to exceed two years.

* Sec. 6. AS 26.23.050(a) is amended to read:

(a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. A [AN INCORPORATED] municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

* Sec. 7. AS 26.23.060(c) is amended to read:

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that political subdivision [CITY] in the work of disaster prevention, preparedness, response, and recovery.

* Sec. 8. AS 26.23.080 is amended to read:

Sec. 26.23.080. [COMMUNITY] DISASTER LOANS. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a political

subdivision [LOCAL GOVERNMENT] of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the political subdivision [LOCAL GOVERNMENT], for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant political subdivision [LOCAL GOVERNMENT];

(2) determine the amount needed by any applicant political subdivision [LOCAL GOVERNMENT] to restore or resume its governmental functions, and to certify the amount to the federal government; [HOWEVER, AN APPLICATION AMOUNT MAY NOT EXCEED 25 PER CENT OF THE ANNUAL OPERATING BUDGET OF THE APPLICANT FOR THE FISCAL YEAR IN WHICH THE MAJOR DISASTER OCCURRED;]

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the political subdivision [LOCAL GOVERNMENT] is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

* Sec. 9. AS 26.23.090(b) is amended to read:

(b) The governor is authorized to make financial grants, the total of federal and state shares not to exceed the maximum amount authorized by 42 U.S.C. 5178(f) for grants payable to individuals and families [\$5,000], to an individual or family in any single major disaster declared by the President, to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot otherwise adequately be met from other means of assistance.

* Sec. 10. AS 26.23.110(a) is amended to read:

(a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to a political subdivision [ANY LOCAL GOVERNMENT] for the purpose of removing debris or wreckage from publicly or privately owned land or water.

* Sec. 11. AS 26.23.110(b) is amended to read:

(b) Authority under (a)(1) of this section may not be exercised unless the affected political subdivision [LOCAL GOVERNMENT], corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal.

* Sec. 12. AS 26.23.210 is amended to read:

Sec. 26.23.210. RELATIONSHIP TO CIVIL DEFENSE LAWS [STATUTE].

(a) AS 26.20 (civil defense) [THE ALASKA CIVIL DEFENSE STATUTE (AS 26.20),] applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action.

(b) The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and [NONMILITARY] manmade disasters other than disasters listed in (a) of this section.

* Sec. 13. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a [ANY] natural or [NONMILITARY] man-made cause including, [BUT NOT LIMITED TO,] fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance if the release requires [REQUIRING] prompt action to avert environmental danger or damage;

* Sec. 14. AS 26.23.230(3) is amended to read:

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief and Emergency Act [OF 1974]);

* Sec. 15. AS 26.23.230(5) is amended to read:

(5) "political subdivision" means

(A) a [HOME RULE OR GENERAL LAW BOROUGH OR CITY INCLUDING A UNIFIED] municipality;

(B) [,] an unincorporated village; [,] or

(C) another [OTHER] unit of local government;

* Sec. 16. AS 26.23.230(6) is amended to read:

(6) "temporary housing" has the meaning given in the federal Disaster Relief and Emergency Act [OF 1974 (P.L. 93-288, 88 STAT. 143)];

* Sec. 17. AS 26.23 is amended by adding new sections to read:

ARTICLE 2. DISASTER RELIEF FUND.

Sec. 26.23.300. DISASTER RELIEF FUND. (a) There is in the Office of the Governor a disaster relief fund. The Department of Revenue is custodian of the fund.

(b) Subject to the restrictions of (d) of this section, the

governor may, without additional legislative authorization, expend not more than \$1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster;

(2) to alleviate the effects of a disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

(c) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend during a fiscal year not more than \$500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event that occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.

(d) The governor shall present to the legislature an annual accounting of money expended from the disaster relief fund.

(e) The governor shall adopt regulations to carry out the provisions of this section.

ARTICLE 3. FUEL EMERGENCY.

Sec. 26.23.400. FUEL EMERGENCY FUND. There is established in the Office of the Governor the fuel emergency fund. When the governor determines that a shortage of fuel is sufficiently severe to justify state assistance, the governor may make a grant from the fuel emergency fund to a political subdivision to purchase emergency supplies of fuel.

* Sec. 18. AS 26.23.090(c), AS 44.19.048, 44.19.049, 44.19.050, and 44.19.052 are repealed.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 9, 1990

SUBJECT: Draft CSHE 556()
TO: Representative Max F. Gruenberg, Jr.
FROM: Jack Chenoweth
Legislative Counsel

The draft requested is enclosed.

Please note that nothing in the draft is dispositive of the legislature's role in ratifying the governor's proposed financing plan if the disaster occurs while the legislature is in session. To cover that, you might revise proposed AS 26.23.025(d) to read:

(d) If the declaration of a disaster emergency occurs while the legislature is in session, or if a special session is held, actions taken by the governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

JBC:pl
WKP4/038

*House Finance members:
Please consider the above language
as an amendment in place of the language
on p 229 - p 323 in the 4/9 proposed C/S.
Thanks.
MGP
Am#2
Adpt.
4/10/90*

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1990

#2
Adpt.

SUBJECT: Constitutional questions and drafting
concerns re draft CSHB 556

TO: Representative Max F. Gruenberg, Jr.

FROM: Jack Chenoweth
Legislative Counsel

In the attached draft, proposed AS 26.23.025(g) is offered by way of a response to Representative Martin's request for inclusion of this kind of provision. I have to caution that I think the inclusion is of questionable constitutionality.

This office recently examined the issue of a legislator's physical presence in chambers as a condition for participation in the proceedings. This office concluded:

. . . I cannot say with certainty that the Alaska Supreme Court would reject an effort by the legislature to provide for participation by teleconference for a member under its authority to adopt uniform rules of procedure. However, such a ruling would be a tremendous extension of the current state of the law on the subject and I believe that it is very unlikely that the court would be willing to go that far. The rule that a member must be physically present to vote in a legislative body is a strong tradition of parliamentary law supported by policy considerations I expect a court would still find to be valid, including public verification of the identity of the person voting, verification that the person is not under the influence of another, and observation of the person's apparent competency.

Additionally, when the legislature authorized teleconferencing for state boards and commissions, it explicitly required that those participating have access to all materials that will be considered at the meeting. AS 44.62.310(a). These provisions, then, are the basis of the language appearing in

Representative Max F. Gruenberg, Jr.
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subsection (g). Nevertheless, despite the circumscriptions and the cautions, it is by no means certain--for the reasons noted in the quotation above--that a legislator's participation in a special session convened to consider a disaster emergency by means of a teleconference connection would receive judicial sanction. This is a grey area.

* * *

I'm concerned about the "fit" between the new "loan regulation" provision, AS 26.23.320 in this draft, and existing AS 44.19.048(b)(2)--AS 26.23.300(b)(2) of this draft. Under sec. 300(b)(2), the governor enjoys the right to set "terms . . . [considered] appropriate" for grants and loans from the disaster relief fund. Along comes proposed AS 26.23.320 giving the adjutant general, a subordinate officer, loan management authority through adoption of regulations. May I suggest that there is an inconsistency in this that deserves further attention.

JBC:mi
wkmi6/070

Enclosure

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y. STATE CAPITOL
UNEAU ALASKA 99511
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1990

SUBJECT: Calling a special session
TO: Representative Max F. Gruenberg, Jr.
FROM: Tamara Brandt Cook
Director
Division of Legal Services *TBC*

The governor is authorized to call the legislature into special session under article II, section 9 which provides

SECTION 9. SPECIAL SESSIONS. Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

The state constitution also provides in article III, section 17:

SECTION 17. CONVENING LEGISLATURE. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session.

You have asked whether the authority granted to the governor under article III, section 17 is entirely independent from the authority granted under article II, section 9 with respect to the calling of a special session. While the precise question has not been addressed by the court, it seems to me that the two sections must be read in conjunction. Article II, section 9 contains details regarding the special session that are not contained in the other provision, including restrictions on subjects that may be considered and

Representative Max F. Gruenberg, Jr.

Page 2

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a 30-day special session limit. From the discussion contained in the minutes of the Alaska Constitutional Convention, it seems clear that the members of the convention expected the requirements set out in article II, section 9 to apply to all special sessions. (Alaska Constitutional Convention Proceedings, Part 3, Pages 1685-1698)

Under article III, section 17 the authority of the governor to convene the legislature is reaffirmed, but this provision sets out the general scope of this authority to convene the legislature, one house, or both houses in joint session. Although it may also be cited as authority to convene a special session, clearly it comes into play in situations other than the convening of a special session. (Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985)) When a special session is convened, however, both the constitutional provisions can be read in harmony and each can be given effect. To read article III, section 17 as providing completely separate authority for the governor to call a special session would be to render the restrictions (that the subjects to be considered are limited to those designated by the governor and to vetoes; that the session is limited to 30 days) contained in article II, section 9 ineffective. This is a result not likely to be acceptable to the court. Note also that the question of a conflict between the provisions was considered during the constitutional convention and dismissed. (Alaska Constitutional Convention Proceedings, Part 3, page 2120, attached)

TBC:pl
WKP4/015

Enclosure