

HB

326

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***Christian Science
Committee on Publication
for the State of Alaska***

Richard L. Block

April 24, 2002

Representative John Coghill Jr., Chair
House State Affairs Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: HB 326, State Security Plans

Dear Representative Coghill,

HB 326, and its Senate counterpart, SB 238, are moving through the legislative process very quickly and without much attention, it appears, to the long term consequences of such a measure being on the books.

We ask that you consider the implications of this measure and not allow it to pass unless some important language has been added to the bill.

Background

We believe that these measures are part of a package of bills advocated by the Governor in response to the terrorism of last September. They, in total deal with many facets of providing security and protecting our state and state resources from acts of terrorism. In this regard, the measures are all something deserving of our favorable consideration.

HB 326/SB 238, deal, in part with granting authority to state officials to adopt plans and procedures for security reasons and to do so without compliance with the Administrative Procedures Act and without public notice either before or after adoption.

Need for this Legislation

In discussions with the legislative liaison from the Department of Military and Veterans Affairs, we have learned that it is believed necessary for state agencies to adopt orders and procedures regarding airport safety and the security of other state or natural resource assets and to do so without having to publicly disclose what those security measures are.

Our Concern

We have no problem with what the Department of Military and Veterans Affairs wishes to do. Unfortunately, these measures may be necessary.

What we do find objectionable is accomplishing that with language that could be interpreted to give all of the Commissioners of the State plenary power to impose martial law and require obedience to procedures that do not comply with existing statute or duly adopted regulations.

Your attention is directed to the first words of proposed AS 44.17.032, which states "Notwithstanding any contrary provision of law...."

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For the State of Alaska*

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Our concern is that, over the last several years, the Legislature has recognized the propriety of granting those who rely on prayer for healing an accommodation with respect to certain medical requirements, particularly vaccinations.

We would want any Commissioner seeking to invoke this provision to adopt any order or procedure in a manner consistent with current public policy in this regard. The current language of the bill allows the Commissioner to adopt a plan without regard to the state's existing policy of allowing accommodation for those who choose prayer over allopathic medicine as their means of healing.

Requested Action

We ask that the Committee amend the bill in two respects:

1. Section 3
AS 44.17.032

Be amended by deleting the words, NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW.

What we believe the drafters wish to accomplish is to exempt these orders from the Administrative Procedures Act and perhaps any Freedom of Information provisions. The existing language of the bill specifically exempts these orders from the APA and additional language could exempt them from the Freedom of Information Act. That would then require the Commissioners' orders to comply with all other substantive provisions of state law.

2. Section 3
AS 44.17.032

Be amended by adding language as follows:

"An order, not inconsistent with any duly adopted existing regulation, issued under this section is not subject to AS 44.62...."

This would enable the Commissioner to act so long as existing principles in regulation are not abrogated.

Conclusion

We believe that such amendments will provide continuing recognition of accommodations already in place protecting many different interests but also give State officials the ability to adopt means of protecting the people of the state and state resources without divulging important information that may compromise their objective.

Thank you for considering our concern.

Your cordially

Richard L. Block

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF MILITARY & VETERANS AFFAIRS
OFFICE OF THE COMMISSIONER**

P.O. BOX 5800

FT. RICHARDSON, AK 99505-5800

PH: (907) 428-6003

April 17, 2002

The Honorable John Coghill, Chair
House State Affairs Committee
Alaska State Capitol, Room 102
Juneau, AK 99801

Dear Representative Coghill:

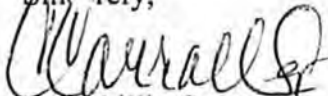
The Department of Military and Veterans' Affairs respectfully requests a hearing on CSHB326(MV) "An Act relating to state plans and programs for the safety and security of facilities and systems in the state; and providing for an effective date."

The bill accomplishes three objectives: 1) it allows the Department of Transportation the ability to apply civil fines of up to \$1,100 to persons that violate security at international and certificated airports; 2) gives state agencies the ability to deny requests for public records that describe security plans or detail security systems; and 3) allows a principle officer of a state agency to adopt security plans by order instead of by regulation.

The intent of the bill is to provide protection to the state's residents and visitors by careful consideration of the security of state and municipal facilities. However, the ability to deny public records is limited to circumstances where harm to the public can be shown if the document was released.

I look forward to discussing this bill with you and your committee. If I can provide further information please call Carol Carroll at 465-4730.

Sincerely,



MG Phillip Oates
Commissioner
Military and Veterans Affairs

Bill History/Action Display



BILL: HB 326
 BILL VERSION:
 SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR
 CURRENT STATUS: (H) STA
 THEN JUD
 HEARING: (H) STA Apr 25 8:00 AM CAPITOL 102 TELECONFERENCE

SHORT TITLE: SECURITY OF FACILITIES AND SYSTEMS

STATUS DATE: 04/18/02

TITLE: "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."

[Full Text](#)

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Committee Action with Bill History

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
04/18/02	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)
04/18/02	3004	(H) REFERRED TO STATE AFFAIRS

- Similar Subject Match or Exact Subject Match
- [AIRPORTS](#)
 - [CRIMES](#)
 - [LAW ENFORCEMENT](#)
 - [PLANNING](#)
 - [PUBLIC SAFETY](#)
 - [TERRORISM](#)

Bill Root: [Display Bill Root](#)



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STATE OF ALASKA

DEPARTMENT OF MILITARY & VETERANS AFFAIRS
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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SECTIONAL ANALYSIS OF HB 326

Section 1 adds a new section to the Alaska Aeronautics Act (AS 02.15) to allow the Department of Transportation and Public Facilities (DOT/PF) to impose civil administrative penalties of up to \$1100 per incident for violations of an airport security program. Currently, under federal law the Federal Aviation Administration (FAA) may assess a civil penalty of up to this amount for violation of the airport security programs (which are FAA approved). However, the penalty is levied against the state even though nearly all violations are the result of the conduct of airport tenants and contractors. Presently DOT/PF can only pass these fines through to the tenants and contractors under applicable contracts. This amendment will allow DOT/PF to directly fine the responsible parties. This should encourage quicker resolution of airport security violations.

Section 2 amends the exceptions to the public records statute (AS 40.25.120) to provide that records or information pertaining to a security plan, program, or procedures or to a detailed description or evaluation of systems, facilities, or infrastructure in the state are not publicly accessible, to the extent one of the following factors exists. These records or information will be excluded from disclosure to the extent that dissemination: (A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures; (B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or (C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare.

Section 3 amends AS 44.17 (organization and administration of departments) to add a new section providing that the principal executive officer of each state agency with regulation adoption authority, may adopt a security plan, program, or procedure within its statutory authority by order. The order adopting the security plan, program, or procedure is not subject to the Administrative Procedure Act (APA, AS 44.62), therefore a public notice, review, and comment process is not required. For this section to apply, the principal executive officer must certify that compliance with the APA either: (A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures; (B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or (C) could reasonably be expected to endanger the life or physical safety of an individual.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 326
 (H) Publish Date: 1/16/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title An act relating to plans and programs BRU _____
for the safety and security of facilities... Component _____
 Sponsor Rules by Request of Governor _____
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill allows the department to issue civil fines to airport tenants who violate FAA security policies. These funds will be passed through to the FAA to cover airport fines.

Prepared by: Dennis R. Poshard, Assistant to Commissioner Phone 465-3904
 Division: Commissioner's Office Date/Time 1/11/02 10:07 AM
 Approved by: Joseph L. Perkins, Commissioner Date 01/11/2002
 Agency: AK DOT&PF