

HB

262

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Gardner
2/17/12

CS FOR HOUSE BILL NO. 262()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE CISSNA

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the offense of interference with access to transportation facilities,**
2 **when a person conditions access to a transportation facility on consent to certain**
3 **physical contact or to an electronic process that produces an image that exposes or**
4 **reveals certain physical characteristics of the person."**

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

6 *** Section 1.** AS 11.76 is amended by adding a new section to read:

7 **Sec. 11.76.118. Interference with access to transportation facilities.** (a) A
8 person commits the offense of interference with access to transportation facilities if
9 the person, as a condition for access to a transportation facility, requires another
10 person to consent or otherwise submit to

11 (1) physical contact by any person touching directly or through
12 clothing the genitals, buttocks, or female breast of the person seeking access; or

13 (2) any electronic process that produces an electronic image of the
14 person seeking access that exposes or reveals a physical characteristic that is normally

1 hidden by clothing and is not normally visible to the public.

2 (b) The defense of justification provided in AS 11.81.420 is not available in a
3 prosecution under this section.

4 (c) Interference with access to transportation facilities is a class A
5 misdemeanor.

*This is language contained in
HB 321 that is currently
in House Transportation. This
amendment essentially pulls that bill from
House Trans.*

AMENDMENT
OFFERED IN THE HOUSE BY REPRESENTATIVE CISSNA
TO: CSHB 262(), Draft Version "I"

1 Page 1, line 4, following "person":

2 Insert "; requiring certain airports in the state to apply for the federal security
3 screening opt-out program; providing reimbursement to a municipality that applies for
4 the federal security screening opt-out program; and providing for an effective date"

6 Page 2, following line 5:

7 Insert new bill sections to read:

8 "* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 APPLICATION FOR FEDERAL SECURITY SCREENING OPT-OUT PROGRAM.

11 (a) The Department of Transportation and Public Facilities shall, by December 31, 2013,
12 apply for the federal security screening opt-out program under 49 U.S.C. 44920 for those
13 airports under the control of the Department of Transportation and Public Facilities that are
14 subject to federal security screening requirements.

15 (b) A municipality that operates an airport in the state that is subject to federal
16 security screening requirements shall, by December 31, 2013, apply for the federal security
17 screening opt-out program under 49 U.S.C. 44920.

18 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 REIMBURSEMENT. Subject to appropriation, the Department of Transportation and
21 Public Facilities shall reimburse a municipality that is required to submit an application under
22 sec. 2(b) of this Act for the reasonable costs, as determined by the Department of
23 Transportation and Public Facilities, of applying for the federal security screening opt-out

1 program under 49 U.S.C. 44920. If appropriations are not sufficient fully to fund
2 reimbursements under this section, the amount available shall be distributed pro rata among
3 eligible municipalities.

4 * **Sec. 4.** Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c)."

State Privatization of Airport Security Screening

Choice to 'Opt-Out' of TSA Administered Program

In early December of 2012 the U.S. Department of Homeland Security installed and opened the additions of X-Ray scanners to four Alaskan Airports. Concern has been building throughout the United States during the year and a half since the initial installations of invasive scanning machinery and physical examination of passengers by equipment that may give dangerous radiation and physical touch and inspection by medically untrained employees.

During the many months since those airport procedures began, first in the lower United States, and for several months in Alaska -- constituents continue communication to Legislators about personal losses of carry-on items, and inappropriate touch and treatment by personnel.

Alaskans fly eight times more often than the national average. While the TSA has published some data regarding the physical effects of scanners on airline passengers, many questions remain unanswered. We have supplied research written by the Alaskan Legislative Research, for Congress, other reports and articles.

Opt out option: This amendment adds a new section to Alaska's unmodified law to requiring all Alaska airports covered by TSA invasive screening to complete the attached form by December 31, 2013. That gives the Department over a year to complete preparation to complete the form attached. That form requires:

- 1) Basic Airport information (address, owner, airport authority, alternate contact
- 2) Indicate if requesting airport or managing authority seeks to be the qualified vender
- 3) Need clear and substantial advantage for TSA to allow this (these) a clear and substantial advantage to do so. "New and innovative ideas and opportunities to manage TSA's operations more efficiently, while maintaining our high standards and meeting the treats of today and the future. Please explain how private screening at your airport would provide a clear and substantial advantage to TSA's security operations (attach all supporting documentation)."
- 4) Does the airport have any scheduled activities planned within the next 2 years, such as, major construction, etc? Please elaborate.
- 5) Does the airport authority have other airports under its jurisdiction or in its region submitting applications for privatized screening?
- 6) Please provide any additional information to be considered during the evaluation of this application.
- 7) Authorized representative Signature

Also attached are the airports that would fall within the group of airports in Alaska under the jurisdiction of the TSA oversight of the security process.

HB Opt-Out also requires those the Department of Transportation and Public Facilities apply for the Federal Security Screening opt-out program by December 31, 2013. (b) Requires any airport operated by a municipality in the state that requires TSA coverage apply for the opt-out program by December 31, 2013.

Section 2 of the bill requires the Department of Transportation and Public Facilities to reimburse a municipality the reasonable costs of applying for the opt-out program.

Alaska Certificated Airports with TSA Screeners*, February 2012

The airport owner is responsible for maintaining and operating the airport. TSA is responsible for screening passengers.

Airport	Address
State of Alaska Owned, Maintained, & Operated Certificated Airports	
1 Adak	PO Box 1952, Adak AK 99546
2 Anchorage Int'l	PO Box 190649, Anchorage AK 99519
3 Barrow	PO Box 367, Barrow AK 99723
4 Bethel	PO Box 505, Bethel AK 99559
5 Cordova	PO Box 598, Cordova AK 99574
6 Deadhorse	Pouch 340002, Prudhoe Bay AK 99634
7 Dillingham	PO Box 250, Dillingham AK 99576
8 Fairbanks Int'l	6450 Airport Way, Ste 1, Fairbanks AK 99709
9 Gustavus	PO Box 239, Gustavus AK 99826
10 King Salmon	PO Box 65, King Salmon AK 99613
11 Kodiak	1500 Anton Larson Rd, Kodiak AK 99615
12 Kotzebue	PO Box 55, Kotzebue AK 99725
13 Nome	PO Box 1048, Nome AK 99762
14 Petersburg	PO Box 1108, Petersburg AK 99833
15 Sitka	605 Airport Road, Sitka AK 99835
16 Wrangell	PO Box 1351, Wrangell AK 99929
17 Yakutat	PO Box 186, Yakutat AK 99689
State Owned, but Leased and Operated by the Borough Certificated Airports	
18 Ketchikan Int'l	1000 Airport Terminal Way, Ketchikan AK 99901
Municipally Owned, Maintained, & Operated Certificated Airports	
19 Juneau Int'l	1873 Shell Simmons Dr, Juneau AK 99801
Privately Owned, Maintained, and Operated Certificated Airports	
20 Red Dog	Red Dog airport uses TSA certified Tech Cominco employees as screeners with Alaska Airlines' ground security observers.

* These airports receive jet passenger service.

Source: DOT&PF, Division of Statewide Aviation

TRANSPORTATION SECURITY ADMINISTRATION
Application to Participate in the Screening Partnership Program



This application notifies the Transportation Security Administration (TSA) of an airport's intent to participate in the Screening Partnership Program (SPP). Airport operators may submit this application at any time.

The SPP was created in part to spur new and innovative ideas and opportunities to manage TSA operations more efficiently. Given the level of participation in the current program, and in order to maximize TSA's effectiveness as a Federal counterterrorism security agency, TSA is not inclined at this time to expand the Screening Partnership Program unless there are clear and substantial advantages to do so. Therefore, your application must explain how private screening at your airport will provide those clear and substantial advantages, while maintaining our high standards and meeting the threats of today and the future.

Acceptance of this application does not guarantee the requesting airport that a contract for private security screening will be awarded. In accordance with the Aviation and Transportation Security Act (ATSA), the decision to award a private security screening contract is at the discretion of the TSA Administrator.

If a requesting airport is seeking to become its own provider of private security screening services, please indicate this on "Question1" of the application. Note, however, that airports interested in providing their own private security screening services must qualify and compete according to criteria determined by the TSA Office of Acquisition.

TSA intends to select private security screening companies through an impartial competitive process. Airports granted privatization must transition to the private security screening company selected.

GENERAL INSTRUCTIONS:

- A separate application must be submitted for each individual airport location.
- An authorized representative of the airport or the airport owner must execute the application.
- The application requisite documentation must be completed in full to be considered for acceptance by TSA. Incomplete applications will delay the process.
- The application must be received at TSA Screening Partnership Program (SPP). (see Application Process Information)
- Please provide a copy of your application to the Federal Security Director for your airport.
- If your application includes Sensitive Security Information or confidential business information, please indicate in writing so that the information will be protected from public disclosure as appropriate. Further information regarding TSA policies and procedures for safeguarding and control of SSI is available at at www.tsa.gov or <http://www.tsa.gov>.

TRANSPORTATION SECURITY ADMINISTRATION
Application to Participate in the Screening Partnership Program



APPLICATION PROCESS INFORMATION

The application can be submitted at any time, it is open enrollment. To download a copy of the **Screening Partnership Program Application** from the TSA website, please visit the following link: <http://www.tsa.gov>.

If completing the application electronically, be sure to save this data file locally with a unique name before e-mailing the application. The application can be submitted by several different methods, all shown below.

- **Paper submissions:** Send the original signed copy of the application to this address:

Transportation Security Administration
Attention: TSA-29, Screening Partnership Program, Room E9-205S
601 South 12th Street
Arlington, Virginia, 20598

- **Electronic submissions (electronic mail / e-mail):**

Submit the application to: opt-out@tsa.dhs.gov

- **Facsimile submission:**

Submit application to the following e-fax number (571) 227-1941

- **Application assistance:**

To obtain telephone assistance regarding the application contact (571) 227-1861



TRANSPORTATION SECURITY ADMINISTRATION
Application to Participate in the Screening Partnership Program

Application date: _____

Application pages submitted: _____

AIRPORT APPLICATION INFORMATION (please review instructions before completing)
Attach all supporting documentation to the application; use a separate sheet if more detail is needed.

If completing the application electronically, (all questions are fillable) be sure to save this data file locally with a unique name before e-mailing the application.

Basic Airport Information

Airport name _____
FAA Airport code (three (3) letter identifier) _____
Airport address _____
Airport owner _____
Airport authority / operator _____

Primary contact (Airport authority / operator authorized to submit application)

Name _____
Contact position _____
Contact telephone number & cellular number _____
Contact mailing address _____
Contact facsimile number _____
Contact electronic mail (e-mail) address _____

Alternate contact

Name _____
Contact position _____
Contact telephone number & cellular number _____
Contact mailing address _____
Contact facsimile number _____
Contact electronic mail (e-mail) address _____

TRANSPORTATION SECURITY ADMINISTRATION
Application to Participate in the Screening Partnership Program



1. **Indicate if the requesting airport or managing authority seeks to be the qualified vendor providing private security screening services. (Mark X or highlight YES or NO)**
 - a. **if YES, the airport will need to apply under the methodology and criteria published by TSA to become a qualified vendor.**
 - b. **If NO, the requesting airport does not seek to be the provider of private security screening services.**
2. **TSA has determined that the best way to maximize its effectiveness as a Federal counterterrorism security agency is to expand the Screening Partnership Program only where there would be a clear and substantial advantages to do so. However, the Agency is open to new and innovative ideas and opportunities to manage TSA's operations more efficiently, while maintaining our high standards and meeting the threats of today and the future. Please explain how private screening at your airport would provide a clear and substantial advantage to TSA's security operations (attach all supporting documentation).**

3. **Does the airport have any scheduled activities planned within the next 2 years, such as, major construction, planned area conferences, etc? If yes, please elaborate.**
4. **Does the airport authority have other airports under its jurisdiction, or in its region, that will be submitting applications for privatized screening? If so, please list the other airports. (If yes, an application will need to be submitted separately for each airport).**

5. **Please provide any additional information you would like TSA to consider during the evaluation of this application.**

TRANSPORTATION SECURITY ADMINISTRATION
Application to Participate in the Screening Partnership Program



Upon execution of this application, the authorized representative, (specified as the primary contact in this document), for the operator of the airport, (specified under basic airport information in this document) hereby requests the TSA Administrator to accept this application to have the screening of passengers and property at the airport, as cited under section 44901 of the Aviation and Transportation Security Act, to be carried out by the screening personnel of a qualified private screening company under a contract entered into with the TSA Administrator.

Print / Signature

Date of execution



What impacts?



Transportation
Security
Administration

in Alaska

Installation of TSA full-body scanners is imminent at Alaska's key airports.

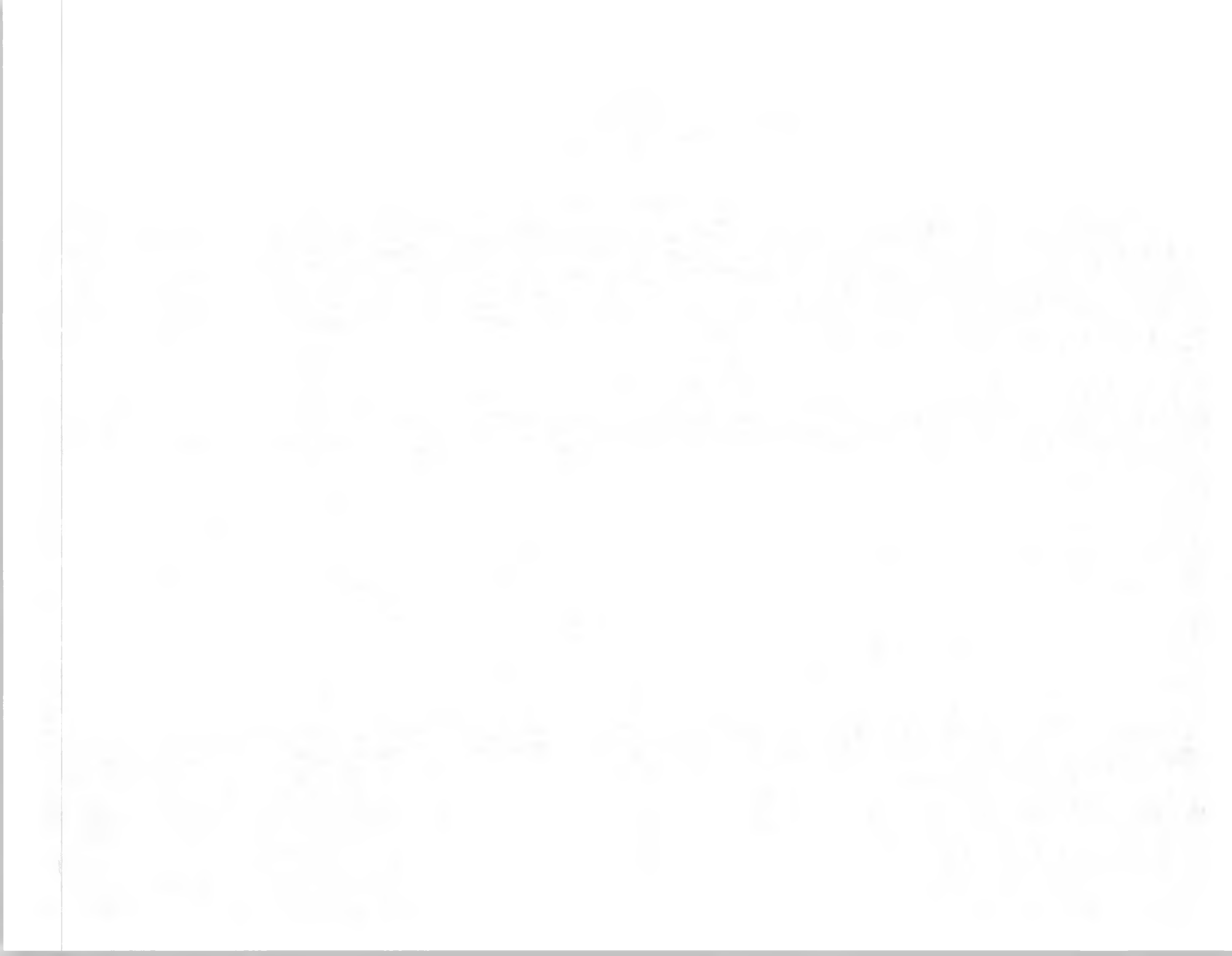
- Alaskans fly eight times more than the national average;
- TSA screening procedures created in D.C. do not consider the unique Alaskan lifestyles and travel situations;

- Potential dangers from scanners and pat-down searches may occur with new equipment and procedures. Alaska must investigate any risk that occurs for the safety of the traveling public. You, the airline passenger, are invited to give three minutes testimony with your experience, concerns and questions needed to safeguard your constitutional rights.

**Wednesday,
November 16, 2011
11 a.m. to 1:30 p.m.**

Anchorage Legislative Information Office, 716 West 4th Ave., Room 220; Statewide LIO offices, check for their schedules. Call 907-269-0190 or 800-922-3875 for additional information and for toll-free teleconference phone number if calling in with your 3 minute testimony.

Legislative
Health & Caucus



Legislative Health Caucus

November 16, 2011

Senator Donny Olson and Representative Sharon Cissna, co-Chairs of the Legislative Health Caucus, opened the meeting with a description of the TSA issue and why it impacts Alaskans to a greater extent than the other 48 states, with Hawaii being in a similar situation as Alaska. 'We are different due to the vastness of our state, how very remote parts of the state are, and our separation from the continental United States. These are some of the reasons Alaskans travel an average of eight times more than citizens in other states. We would like to look at the changes that are coming to our airports and what we can and cannot do within the law.'

Anmei Goldsmith, Assistant AG with the Alaska Department of Law, introduced a handout she had prepared (see attachment) and briefly reviewed it for the audience.

- "Procedures" are whatever procedures the TSA decides are necessary. The regulations don't actually specify the procedures. The TSA issues "Standard Operating Procedures" that will apply when you go to the airport. SOPs are not public documents. You only know what the procedure is going to be when you get to the airport and you are subjected to it. These procedures are considered sensitive security information therefore the TSA has made the details of the procedures secret.
- "Enforcement" says you can be fined up to \$10,000 for violation of a regulation, but TSA officers don't actually have authority to arrest you for crimes. That's why local police officers are there at the security check points.
- "Challenging" the TSA orders or procedures: There is a review statute that allows a person to apply for review by going to the U.S. Court of Appeals. Many people have filed lawsuits, but all that Ms. Goldsmith has seen have been filed in U.S. Federal District Court and so far they

have been thrown out on jurisdictional grounds because the statute says you have to file in the Court of Appeals. One is up on appeal to the 11th Circuit Court of Appeals. That's the case to watch to see if it will be accepted. So far no plaintiff has tried filing with the U.S. Court of Appeals.

Rep. Cissna commented that law abiding citizens run into problems at the airport because the TSA does not make the procedures known. Travelers, therefore, unknowingly, break the rules. 'Couldn't there be signs at the airport?' Ms. Goldsmith explained that, per the TSA's regulations, making the procedures known weakens security.

Rep. Cissna reminded that 'Alaska's constitution says the state has an obligation to provide for the health and welfare of the state. It's very specific about that protection. [Article 7.4. Public Health – The legislature shall provide for the promotion and protection of public health. Article 7.5. Public Welfare – The legislature shall provide for public welfare.] If the state does not like the TSA regulations, what choices do we have?'

Ms. Goldsmith said that the federal government has pre-empted the field of airline travel security. 'They have taken over control of that field of law. If a state were to try to enact a law in that same area, a court would probably strike it down. In the case of Texas, their bill would have made it illegal for anyone (including the TSA) to touch another person in certain ways. The U.S. Attorney in Texas wrote the legislators a letter that said that the TSA would shut down all flights into and out of Texas if they passed the bill before them. That's where the bill ended in Texas. The federal government is very powerful. They have control over airline travel. There is probably not a legal answer the state can do. There may be a political answer.'

Rep. Cissna said, 'part of the legal answer would be the court.' Ms. Goldsmith responded that 'part of the review statute would allow a person who has been injured, or harmed in some way, by an order of the TSA, to sue in court.' Rep. Cissna asked, "Could the state sue?" Ms. Goldsmith said, 'that is a really good question.' "I think it is within the realm of possibilities, but without anyone having done it before, Alaska would be forging new ground."

Ms. Goldsmith suggested, "The political answer is, change the law. We elected the people who enacted this law and we, theoretically we have the power to convenience those people to change it or try to elect different people who we think would do it differently."

Thomas Brown, co-director of Alaskans' Freedom to Travel, asked what would prevent the TSA from coming into Alaska and putting agents in ferry terminals, small airports and our weigh stations on the highways? Ms. Goldsmith answered that 'she doesn't think there is anything to prevent them because they do have authority to oversee security in other modes of transportation so, theoretically, they could come to a ferry terminal. Possibly if the terminal only served intrastate routes, they may not have authority.'

Ms. Goldsmith explained that she paraphrased the law in the handout, but while 'in the text it does focus on air travel, it also provides authority for the TSA to oversee other modes of transportation. They would probably have to adopt regulations and develop other procedures to do so.'

Rep. Cissna said Congress adopts regulations and develops procedures. 'Does the TSA have the right to, independent of any kind of oversight, actually change all regulations?' Ms. Goldsmith said, 'the agency adopts the regulations so congress gives them

the authority, by statute, and then the agency adopts regulations within certain parameters. The regulation process is public as required by law, but the TSA has a special ability to adopt secret procedures. They are not regulations and they are not subject to public comment and notice periods. That's because of security. The people who enacted the legislation that allowed the TSA to have that type of power believed it was important, to keep people safe.'

Patricia Anderson, co-director of Alaskans' Freedom to Travel, suggested that, 'basically, the TSA was given carte blanche on any form of transportation as long as they change their SOPs?'

Ms. Goldsmith said, 'the SOPs can be quite broad, but they have to be within the parameters of the regulation. Which is quite broad. This one that I quote says, "No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter." But, what are the procedures that control access? It's whatever the TSA adopts pursuant to the regulation that allows them to keep their procedures secret.'

Cheryl Hummey of Barrow, AK, is speaking for herself though she works in a domestic violence and sexual assault shelter. She is a frequent flier. 'One, you only fly in and out of Barrow.' She also flies more than anyone else she works with. She's very concerned about both the scanners and pat-downs. 'I'm speaking more about scanners today. The procedures are invasive. Are the images saved? I find that to be very suspect. These procedures draw out from a person thoughts, fears, past experiences, trauma that we have no idea of. I question whether the safety that we're supposedly going to get from this, and I say supposedly going to get because I think it's a very fake sense of security, I don't know that that outweighs the damage to my body that is going to happen. I'm also uncomfortable with the notion

of “how far can we go”, “what can we get away with”? I don’t think that is a way we want to live our lives. This goes against protecting the health and welfare of our citizens. It’s a false sense of we’re going to get more health or welfare, when really we’re losing it. I commend the state for standing up to TSA. When more states do so, we’ll change the federal government and stop this.’

Virginia Walsh of Barrow, AK, works for Arctic Women in Crisis, a domestic violence shelter, but she is here speaking for herself. ‘I feel the pat-downs are implemented poorly and without proper training for their agents. If the pat-downs are not done properly they can be humiliating, uncomfortable and certainly traumatizing, especially for children and adults who have been victims of trauma in the past. For the most part they seem unnecessary when you look at who’s receiving a good portion of these hand searches. I’m also very concerned about the possibility of full body scanners which appear to be imminent in Alaska. Little research on the risk of cancer has been conducted in the United States. Studies in Europe have concluded that wide spread use of even low level radiation poses an unacceptable health risk. Especially in Alaska where we fly eight times more than the national average, I’m very concerned about the health risks of the scanners.’

David Levy is with the Alaska Mobility Coalition. ‘Moving people in Alaska is a major challenge.

We are very unique. People utilize ferries, buses, vans, snow machines, dogsleds and everything in between to get where they need to go. We also use air carriers. A couple of years ago Gov. Palin signed an administrative order to form a task force on coordinating transportation in the state. The task force came out with their initial report in the spring of 2010 with some recommendations. A new administrative order was signed and they will have follow up recommendations as well. One of the things they discovered is that it is a particular challenge for people coming from remote

communities into centers, hub communities, for medical care. Sometimes when they have to travel by small plane and arrive in Anchorage for medical care, there may not be anyone to meet them or they may have a language barrier.’

Rep. Cissna brought up the problems that people have had in being medivaced Outside for emergency medical care, returning on regular airline flights as passengers after critical treatments and having to endure pat-downs of bandages and incisions, removal of bandages, medical equipment taken apart for inspection and returned without being properly reassembled. Mr. Levy said, ‘from the prospective of AMC, the TSA is a consequence of a broader issue in our state which is a lack of transportation. If there were more transportation options in our state, if there were more coordinated transportation options in our state, people would have the choice to use air service or ferries or other forms of transportation. I think that is something for this committee to look at as part of an overall plan in dealing with the TSA.’

Rich Sewell is with the Department of Transportation, Division of Statewide Aviation, where he is an aviation policy planner. ‘One of my favorite statistics is 82% of our communities in Alaska are off of the road system. When you start thinking about that, it’s a staggering number. Their only access is through aviation, for medical services, for dental services, for pretty much all of the urban needs that they have. We have a total of, I think, nineteen rural hub airports such as King Salmon and Bethel that are owned by the state of Alaska and get jet traffic. Of course Fairbanks, Anchorage and Juneau are international airports and then there are a variety of city owned airports such as Kenai and Soldotna. The North Slope Borough may own 5 or 6 airports up there. Overall we have something in the ballpark of 400 public airports in Alaska. DOT owns 253 airports now. So the scope of the

Mr. Brown had a question for the DOT representative. 'The AFTT group has concluded that in order to affect change within the TSA this will be a political or judicial process. As such we need to make people aware of these issues, make people aware that there is a process they can go through to change things. That means we have to raise awareness within the public. What are the limits to private citizens going into the airport to hand out pamphlets or things like that?' Rich Sewell said he does not know, but he would do some research to bring to the AFTT meeting.

Rep. Cissna asked Ms. Goldsmith if she recalled how many times the State of Alaska has filed lawsuits against the federal government. Ms. Goldsmith named a few. She said 'it has done so many times. There are stringent restrictions on when, where and how another entity can sue them.'

Thomas Brown commented on the TSA's blog admission that 'neither the AIT machines nor the pat-downs would have caught the 9-11 hijackers, the shoe bomber or the underwear bomber. Considering that the procedures are not effective against the threats for which they were created, would that be a legal challenge to get them to stop what they are doing, or at least get a court order for an internal or independent review of what they're doing?'

Ms. Goldsmith said, "Yes, but to date no court has been willing to do that. Theoretically, the review statute says you would have to file with the U.S. Court of Appeals." 'That doesn't mean that there isn't a creative lawyer who could make the argument that that statute doesn't apply.'

"But, I think you're right, if the search procedures that are in place wouldn't actually have caught any of the known threats to airline security that we've actually experienced, then how

can these be an effective means of screening passengers?" 'No court has actually asked and answered that question yet. No court has addressed that question since 2001, since the new procedures have been in place. No court has sat down and looked at the question of whether these new procedures actually screen the bad guys.'

Roberta Leavitt, member and chairman of the North Slope Borough Health Board spoke of her personal experience with the TSA procedures. 'This is hard to talk about, but I'm going to talk about it anyway. Being a victim of sexual abuse and having the TSA people say that you need a pat-down, it triggers the memories, the memories come back for up to four days after the TSA incident happens. They say it's only a pat-down, but it isn't. Having somebody touch you when you're a nine year old child and then you still have these memories when you're a forty year old adult and have the TSA people bring these memories back to life makes you not want to fly, makes you not want to travel. I've been on basketball trips, volleyball trips, gymnastic trips, my children have been on band trips and you know, their parents aren't going to be there when something like this is happening. I was nine years old when I was a victim and it comes back after being patted down. The parents aren't going to be there with that chaperone and it's going to trigger that person. I don't have kids in school any more, but I sure do know how it feels to hide that from an adult and have to go through that in school, during a school trip. It's a scary thing. Even the scanner. I had to go through a scanner in Denver. Putting my hands up and having that thing go through. People can see. They saw my whole body, that x-ray thing. That didn't feel right to me. You know, when you go to the hospital and have a x-ray, nobody can see those, but when you're out at the airport, that line, I stood in that line for almost two hours and I could see. I could see those x-

aviation system for Alaska is a quantum leap bigger than any in the Lower 48. We are, by far, the largest owner of airports. I think the closest is Idaho with maybe 35. We're kind of like the 800 lb. gorilla. It was alluded to that the TSA has control of access to the national air space, called NAS and if Fairbanks or Anchorage were not to have the TSA screening they could exclude airplanes from flying into the national air space. It's a very important function, but the DOT is more like a landlord to the TSA. We provide space for the TSA to do the security screening, but the DOT, ourselves, provides law enforcement officers for general security. Those people at Fairbanks and Anchorage are not local police, they are state legal enforcement officers. So the state or DOT is really an observer of this rather than providing any kind of enforcement. It's a complicated issue. The state has intrastate travel. There is no security provided for those flights. They are planes that carry up to 30 passengers.'

Rep. Cissna believes that because of the larger planes that fly intrastate such as Anchorage to Fairbanks passengers will have to go through screening with the new procedures.

Thomas Brown, co-director of Alaskans' Freedom to Travel, presented some questions, the first returning to the possibility of the TSA putting agents in ferry terminals and small airports. Ms. Goldsmith replied that it is possible they might go into areas that service interstate transportation such as some of the ferry terminals and small hub airports. The TSA wouldn't have authority at a rural airport unless there was a flight that originated there and went on to Seattle or outside of the state.

Rich Sewell said that 'the TSA is screening already at most of the hub airports that have jet traffic. The island of Adak has a certificated airport that gets two flights a week and so Alaska Airlines flies out there. They pick up passengers. The TSA officers fly out there on the flight, get off, set up their equipment, screen the

passengers, get back on the plane and they fly back to Anchorage.' Ms. Goldsmith commented, 'And we pay for it.' Mr. Sewell added that the agents are paid for their time from the time they leave Anchorage until they return.

Rep. Cissna added that it's also hard to come up with the true cost. She has asked the Commissioner of DOT for the true accounting. 'I want to know what the cost is at the airports that are state property and what is the cost to keep that space out of commercial use and have it used by the TSA. The state flies those agents to Adak. What is the cost? There's more in terms of cost that we're shouldering here. What of the person who is harmed? So many times the state is required to give help to that person who cannot afford it. What are the financial costs and the social costs?'

Mr. Brown's next question had to do with the prohibited items on the TSA list. One is replicas of weapons such as a jeweled belt buckle that looks like a half of a grenade that was confiscated from a woman. He asked when we might 'expect transparency and accountability in the training procedures? The training is secret.' Ms. Goldsmith said 'since none of the SOPs are public, it is really hard to tell.'

Thomas Brown also asked about a recent court decision that stated the TSA did not comply with a public comment period. Ms. Goldsmith responded that 'the court agreed that the SOPs should have gone through the public comment period, but they could have an out because even if the law didn't say that they could be kept confidential, there is another provisional law that would allow them to adopt procedures without going through the comment period. The court didn't offer an opinion as to whether the TSA could use that other legal provision so the court's opinion was a step in the right direction, but it didn't go far enough.'

rays of other people. Even at the airport in Anchorage. There's no private place for a pat-down. They just pat you down in front of everybody and as a victim, that's like, holy cow, that's not good, that's not right. There needs to be more privacy. Another issue, privacy, as a victim you don't want to be put into a room with another man. Even with a lady. A lady can trigger that same touch as the perpetrator and you still have that. You still have that, oh that yuk, for how many days later. Hm. I thank you for hearing other people's cries about this and glad that Linda got ahold of me to come on. It's hard to talk about, because I am a victim of this and I don't, I try to be strong and to be on the health board and try and make things better, but I see these things happening and I don't want to see these things happening to young kids, or to any other victim, to tell you the truth. I'm sorry. I don't mean to cry. This is something true to my heart.'

Senator Olson: "Co-chair Cissna, you can tell by the passion and certainly the upheaval that's going on within, that it's a very hard situation . . . and we're subject to that because it's the only way we can get in and out of Barrow is by going through a TSA screening."

Rep. Cissna said 'that is one of the hopes that, we have a constitution and that constitution says, in both the state and federal, that freedom is something we have a right to. I was thirteen when a tough experience happened to me and my husband knows how it affected me. So don't apologize. This is happening across the country. It's not any one community, it's nationwide that we're dealing with this. Our state is different in the difficulties we go through and there are so many of us who have to travel a great deal. We don't have a choice. This is a huge problem and it's one you personally are carrying as are many in your community and you're working with those people. What Sen. Olson and I have to do, as elected officials, is, we have to

listen to you and we have to do everything in our power to make this right. It's going on across the country and there are enough of us that I think that if we use the laws that exist we can make a difference. That's what I believe. You're giving us working orders. Thank you.'

Roberta Leavitt said, 'It hurts to have to admit it again, but the nightmares have to stop for victims from what they're doing. There's got to be a different way to do it [Security Screening] and it can't be fixed until somebody speaks out. I thank you guys for doing this.'

Sen. Olson said, 'Thanks to people like Roberta, we're starting to see the ill effects of what's happening and we, as legislators, need to take this message to the people we influence and see if we can have it changed. Otherwise there's this whole upheaval that people go through and, as she says, it stays with her for days. This does not do her wellbeing any good.'

Patrick Reinhart, Anchorage, is here to speak from his personal experience with the TSA. He is missing a foot. He does a lot of traveling and has gone through the entire screening process. When they changed the rules, he got tired of it and it just got a little too personal so he now takes his prosthesis, shoe and all, off, puts it on the conveyor belt and walks through on his stump. Once the prosthesis and metal is off his body, he doesn't have to have the additional screening process.

Thomas Brown asked to make a final statement. Mr. Brown said he lived most of his life around terrorist activity abroad. He said he was embarrassed when he went back to Germany this summer. 'You could tell who the Americans were at the airports. They were the ones automatically taking their shoes off and spread eagling so someone could put their hands on them. That's just embarrassing. We're Americans. We should stand for more than that.'

Roberta Leavitt said she had spoken out of personal experience today, they are seeing funding cuts that will take away from the mental health side so they won't be able to address the issues as well as they should. On the personal side, you do have to include the nightmares that come with the touches of those TSA people.'

Rep. Cissna closed the meeting with assurances that this issue will be kept in the forefront.

Attached is the report given from L. Anmei Goldsmith, Assistant AG, Alaska Department of Law, Presenter at the November 16th Legislative Health Caucus.

Legal Underpinnings of the TSA's Search Authority

Statutes

- The Aviation and Transportation Security Act (ATSA) created the Transportation Security Administration (TSA). *Public Law No. 107-71*, enacted Nov. 19, 2001 (*became 49 USC § 114 et. seq.*)
- TSA provides screening of all passengers and property including checked baggage carried aboard passenger aircraft operated by an air carrier or foreign air carrier. *49 USC § 44901.*

Regulations

- "No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter." *49 C.F.R. Part 1540.107(a).*

"The Procedures Being Applied to Control Access to That Area or Aircraft Under This Subchapter" (Screening)

- Standard Operating Procedures (SOPs) set forth the procedures and standards that must be followed in TSA's security operations.
- Primary Screening:
 - Walking through metal detector or Advanced Imaging Technology (AIT)
 - Placing carry-on baggage through x-ray
- Secondary Screening:
 - Pat-down
 - Wanding with a handheld metal detector
 - Opening and searching carry-on baggage

Sensitive Security Information (SSI)

- SSI is information *obtained or developed in the conduct of security activities*, the disclosure of which *TSA determines* would:
 - constitute an unwarranted invasion of privacy
 - reveal trade secrets or privileged confidential information
 - *be detrimental to the security of transportation.* *49 CFR § 1520.5.*
- SSI includes:
 - *Security programs*
 - *Security directives*
 - *Security measures*

- “Covered persons” must disclose SSI only to covered persons who have a *need to know*, unless otherwise authorized in writing by TSA. 49 CFR § 1520.9.

Enforcement

- A person may be liable for a monetary civil penalty arising from a violation of TSA statutes and/or regulations. 49 USC § 46301.
 - \$10,000 per violation against individuals.
 - No civil penalty may exceed \$50,000 in a single action against an individual
- TSA may order presence of local law enforcement personnel at any secure area of the airport as necessary. 49 USC § 44903(h).

Lawsuits Over AIT and Pat-Downs

Blitz v. Napolitano, M.D. of North Carolina

- Humiliating “grope search”
- Dismissed for lack of jurisdiction

Durso v. Napolitano, District of Columbia

- Aggressive pat-down of breast cancer survivor
- Aggressive pat-down of male passenger with genital injury
- 12-year-old girl forced through AIT scanner without parental consent
- Dismissed for lack of jurisdiction

Ventura v. Napolitano, District of Minnesota

- Pat-downs due to hip replacement
- Need to travel frequently for work
- Dismissed for lack of jurisdiction

Roberts v. Napolitano, District of Columbia

- AIT scans and pat-downs of pilots
- Dismissed for lack of jurisdiction

Fiedler v. Napolitano, District of Colorado

- Fiedler and family declined AIT scanner but were required to undergo pat-down
- Dismissed on plaintiff’s request

Redfern v. Napolitano, District of Massachusetts

- Plaintiffs refused AIT scanner but were required to undergo pat-downs
- Dismissed for lack of jurisdiction

Corbett v. US, S.D. of Florida

- AIT scanners and pat-downs
- Dismissed for lack of jurisdiction
- Appealed to 11th Circuit Court of Appeals
- <http://tsaoutofourpants.wordpress.com/2011/11/10/appeal-fully-briefed/>

“[A] person disclosing a substantial interest in an order issued by the Secretary of Transportation [pursuant to ATSA] may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides...”
49 U.S.C. § 46110(a)

The Court of Appeals has “exclusive jurisdiction to affirm, amend, modify or set aside any part of [such an] order.” 49 U.S.C. § 46110(c)

received
2/29/2012
PS

Jim Hanlen
2633 E. 17th Ave
Anchorage, AK 99508
907 277 0969
28 February 2012

House Judiciary Committee
Attn: Chairman C. Gatto
State Capitol Building
Room 120
Juneau AK 99801

Dear Sir:

Please endorse the bills that Sharon Cissna has proposed to limit TSA. Allow them to be voted on.

Please consider and introduce on your own, hiring a more professional TSA staff for Alaska.

There are alternatives to scanners. What about explosive sniffing dogs? What about training to profile?

Sincerely,



Jim Hanlen

cc. Rep Sharon Cissna

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-800-922-3875 (toll free)
1-907-465-4588 (fax)



Interim Address
716 West Fourth Avenue
(phone) 1-907-269-0190
(fax) 1-907-269-0193

Representative Sharon Cissna
District 22

Memorandum

DATE: February 2, 2012
TO: House Judiciary Chair and Committee Members
FROM: Representative Sharon Cissna
RE: Hearing Request for House Bill 262

As the Sponsor of House Bill 262, I would like to respectfully request a hearing in the Judiciary Committee. HB 262 makes it a class A misdemeanor for any person, including a Transportation Security Agent, to condition access to a public building or transportation facility on requiring a person to submit to a physical examination or an electronic process that produces an electronic image of the person that shows body irregularities not normally visible to the public.

In addition to requesting a hearing date for HB 262, I would also request from the Committee a teleconference site and video conferencing equipment in the LIO office in Anchorage. It is anticipated that there will be several representatives from the Alaskans Freedom to Travel, USA group who will be testifying on the many benefits of HB 262.

Thank you for your consideration of this request.

Attached:

Current Version of the Bill
Sponsor Statement
Sectional Analysis

Requested:

Fiscal Notes
Research
Support & Opposition Letters

Melanie Lesh

From: Rep. Carl Gatto
Sent: Monday, February 13, 2012 3:51 PM
To: Melanie Lesh
Subject: FW: Support for HB 262 - Passenger Security: Transport Facility

From: Diane Schenker [<mailto:diane.schenker@gmail.com>]
Sent: Monday, February 13, 2012 3:11 PM
To: Rep. Carl Gatto
Cc: Diane Schenker
Subject: Support for HB 262 - Passenger Security: Transport Facility

Dear Representative Gatto,

Thank you for scheduling a House Judiciary Committee hearing for HB 262 (Passenger Security: Transport Facility, sponsored by Rep. Sharon Cissna). I strongly support this bill and urge you not only to hear it and pass it to the next committee, but also to co-sponsor it and do whatever you can to ensure it passes during this session.

Please protect Alaskans from being forced to submit to full body scanners that the TSA has refused to have independently tested to document effects on health. Please protect us from being "randomly" or otherwise subjected to a "pat down" that meets the definition of sexual assault under Alaska law, but for the fact that the victim supposedly "consents" to the assault as a condition of boarding a plane. The only way we can protect ourselves from the risks and assaults presented by the TSA is to avoid air travel altogether. This is unrealistic in Alaska where many of us must fly as a condition of our employment, or to get essential medical care, or even to visit our own Legislature. We need you to protect our rights and our bodies from being violated by the TSA by passing HB 262.

Sincerely,

Diane Schenker
9700 Basher Drive
Anchorage, AK 99507
diane.schenker@gmail.com