

SCOMM

127:14

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 16, 2002

FURTHER REFERRALS: State Affairs
Judiciary

Date of Committee Action: 4-16-02

The HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS Committee considered:
HB 326

HOUSE BILL NO. 326

SECURITY OF FACILITIES AND SYSTEMS

"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."

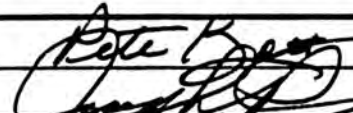
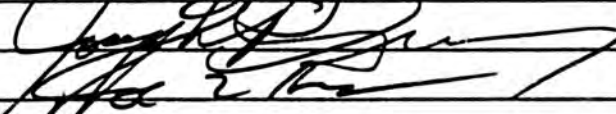
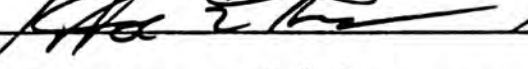
Recommends it be replaced with CS HB 326 (MLV) [] Same Title [X] New Title
For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

- [] attach amendments
[] add new referral to _____ Committee
[] Letter of Intent _____ Committee

List of
Abbrev.
for
Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOT				✓

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
		KOTT			✓	
		Green	✓			
		Huger	✓			
		CISSNA	✓			
Chair: 		Chennault			✓	
Chair:						

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January 14, 2002

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

This bill I transmit today contains recommendations of the Administration's Terrorism Disaster Policy Cabinet convened in response to the attacks of September 11th. It is one of six bills I am forwarding for the Legislature's consideration to ensure Alaska is fully prepared in terrorism prevention and emergency response. This bill relates to plans and programs for the security of state facilities and systems.

This bill would assist the Department of Transportation and Public Facilities (DOT&PF) and its Alaska International Airports System and rural airport network in responding to the need for increased security since the tragic events of September 11. It would also enable all state agencies, including the DOT&PF, to maintain the confidentiality of their sensitive security plans.

Specifically, the bill would allow the DOT&PF to impose civil administrative penalties of up to \$1,100 per incident for violations of an airport security program. Currently, the Federal Aviation Administration (FAA) may assess a civil penalty of up to \$1,100 against the DOT&PF for violating any of the department's FAA-approved airport security programs. Although the FAA considers the DOT&PF to be the violator for federal regulatory purposes, nearly all violations are the result of conduct of employees of airport tenants and contractors. Usually, the DOT&PF passes these fines on to its tenants and contractors. This situation, however, is an unsatisfactory way to get airport tenants and contractors to correct security problems because it requires the DOT&PF to invite the FAA to punish that department in order to charge the penalty to the violator.

The Honorable Brian Porter

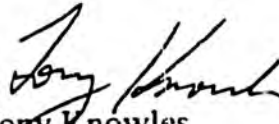
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The DOT&PF should be able to directly assess civil penalties against its contractors, lessees, and licensees, and their agents and employees, for violating a security program. This will make those responsible for security more vigilant and responsive to the increased needs. It is anticipated the DOT&PF would adopt regulations that would set out the procedures for the assessment of penalties and would establish an appeals process to meet the constitutional requirements of due process.

The bill also would add an exclusion to the list of state records that are available for public inspection and copying to allow for confidentiality of certain security and safety documents and information. Similarly, the bill allows a new exemption from the public notice provisions and procedures for adopting regulations so that regulations regarding certain security plans, programs and procedures may be protected information. Specific exemptions from these requirements of the Administrative Procedure Act already exist, such as prison security plans for the Department of Corrections.

Thank you for your prompt consideration of this bill.

Sincerely,


Tony Knowles
Governor

SECTIONAL ANALYSIS OF HB 326

(Re state plans and programs for safety and security of facilities and systems)

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, or board or commission 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.