



pennsylvania

DEPARTMENT OF MILITARY
AND VETERANS AFFAIRS

**STATEMENT
of
Major General Stephen M. Sischo
Pennsylvania Air National Guard
Deputy Adjutant General for Air
before the
House Transportation Committee
May 28, 2009
Horsham Township**

Thank you Mr. Chairman. I appreciate the opportunity to appear before you today and present the views of the Pennsylvania Department of Military and Veterans Affairs with respect to House Bill 111 and Senate Bill 48. I bring you greetings from our Adjutant General, Major General Jessica Wright, who had a schedule conflict today. I am joined today by DMVA's Chief Counsel, Dennis Guise, who will assist in addressing any questions in the legal area.

Both these pieces of legislation, which are very similar in content, would place significant additional restrictions on the Horsham Joint Interagency Installation beyond those required by federal authority. While we understand and appreciate the desire of the sponsors of these bills to address issues raised by their constituents, the Department of Military and Veterans Affairs has serious concerns about the content of these bills, the considerable restrictions they would impose and the negative impacts on the viability of the installation.

I want to start by reviewing briefly how we got to where we are today and why it is important for all levels of government to work together to make the new joint interagency installation a success. It was just over four years ago, on Friday, May 13, 2005, when the Department of Defense announced that it was recommending to the BRAC Commission that the Navy

portion of NASJRB Willow Grove be closed and that the 111th Fighter Wing of the Pennsylvania Air National Guard be deactivated. Those recommendations ignited months of efforts to “Save the Base” and reverse the DoD recommendations. Some of these efforts were successful. Both the federal district court and the BRAC Commission rejected the DoD recommendation to deactivate the 111th Fighter Wing. But even though the BRAC Commission ruled that a military enclave would remain at Willow Grove, it approved action to close the bulk of the Navy base here.

Efforts to “Save the Base” then turned to Congress and the President. In separate enactments in 2007 and 2008, Congress decided that NASJRB Willow Grove would be converted to a joint interagency installation for use by the Pennsylvania National Guard, other military components, federal, state and local government agencies and non-government associated users. The Congress also placed limits on the use of the Pitcairn-Willow Grove field at the new installation and directed the transfer of federal property to the Commonwealth subject to various conditions and restrictions.

For all practical purposes, Congress has provided clear guidance on the future use of this property as a joint interagency installation to serve the Nation, our state and the local region. Congress literally saved the base, and they did so in a manner that addressed local concerns by limiting future use of the airfield at the new installation.

Just about a year ago, Governor Rendell and members of his senior staff met with Senator Greenleaf, Representative Taylor, and local officials to address each and every area of concern they raised about the new installation. Subsequent to that meeting, Congress enacted the laws that govern the transfer of the property to the Commonwealth and the use of the airfield. As a result of these actions, we now know with certainty that there will be no commercial cargo or commercial passenger operations at the airfield at the installation except in those rare circumstances where the operations support installation missions. We now know with certainty that the airfield will not be used as a reliever airport. We now know with

certainty that the state cannot transfer this property for uses not related to the missions of the installation, and that any such transfer would result in reversion of the land to the U.S. Government. As a result of what we learned, it is also clear that there will be fewer air operations at the airfield than the number in the recent past.

House Bill 111 and Senate Bill 48 are not needed to control air operations at the installation. The Horsham community has hosted a large military installation since the 1940's, and, until the Navy began to plan to leave, base operations were at a fairly consistent level. In 2004 there were nearly 43,000 air operations at NASJRB Willow Grove. In 2007, there were fewer than 20,000 such operations. I note that in both years between 30% and 40% of the air operations were over-flights in the vicinity of the base. These involved no takeoffs or landings. About half of the operations in the most recent years involved aircraft assigned to the Pennsylvania Air National Guard. When the Joint Interagency Installation is in full operation and if the 111th Fighter Wing retains a flying mission, as we hope it does, I would fully expect the number of flight operations at or near the base to be significantly less than they were in 2007.

We believe it is clear that the Joint Interagency Installation will have no negative impacts on the quality of life in Horsham Township or the surrounding communities. In fact, we believe that "saving the base" and bringing a new kind of joint installation to this area will be positive not just from a homeland security and emergency preparedness perspective, but also in terms of the economy and quality life in the community.

There certainly remain some open issues that it would be desirable to address in state legislation, but I must tell you that it appears to me that the two bills before you today need substantial revisions. If enacted in their present form, this legislation would "kill the base" or at least cripple its prospects for success.

For those of us in the armed forces, the missions matter most. It's amazing to me that, with so much being said about the installation, so little has been said about the missions. So let me speak to this point.

The joint interagency base is an innovative approach to accomplishing national defense, homeland security and emergency preparedness missions. Does anyone doubt that these missions are vital and that this installation is uniquely positioned to accomplish them? When legislation currently pending in Congress talks about national emergency centers to be used to respond to emergencies, the list of tasks to be undertaken on these installations sounds like it was written with the Horsham base in mind. From its key strategic location to its 8,000 foot runway to its hangars, billeting and storage facilities, to its ramps and infrastructure, Horsham is the ideal place for a new joint approach to accomplish the most important missions confronting our armed forces and our emergency management agencies today.

The joint interagency installation concept requires the federal government, the military departments, the state and local governments to put aside the "stovepipe" thinking of the past and think globally and jointly to accomplish these missions. This installation must necessarily be a partnership involving all levels of government. This approach is consistent with National Security directives that mandate integration of functions and interoperability of a wide variety of government agencies. It carries forward a critical finding of the BRAC Commission of the need for more, not fewer, joint installations and joint operations. The joint interagency installation will be good for our Nation, our Commonwealth and this region because it provides a place to support the crucial missions that the Congress has assigned to it.

If the missions matter most – and they do – this means that government users will predominate on the joint interagency installation of the future. It's particularly worrisome that some of the provisions in these bills could be read as attempting to impose limits on use of the installation that go beyond what the federal government has imposed. Like so much in these bills, this will simply result in disputes that can only distract from mission

accomplishment. It certainly can, and will, be argued that many provisions in these bills are preempted by federal law.

I won't take the time here for a line-by-line critique of the bill, but I do want to point out some of the problems we find in this text.

Let's look first at the definitions. These bills contain definitions of key terms that differ substantially from the definitions of the same terms in federal legislation on the same subject. For example, these bills contain a definition of "exigent circumstances" that differs significantly from that in the federal law on the same subject. When we have an emergency – and I'm sure we will – can you imagine someone debating which definition applies and whether a particular operational activity is performing or supporting the missions?

In the federal law that was enacted last year, the term "exigent circumstances" means "unusual conditions, including adverse or unusual weather conditions, alerts, and actual or threatened emergencies that are determined by the installation to require limited-duration use of the installation." The bills you are reviewing today use a much different definition that limits "exigent circumstances" to limited-duration adverse or unusual weather conditions, alerts and "actual or threatened emergencies that are a danger to human health and safety." Under applicable federal and state laws, emergencies may involve conditions where a response is needed to save lives, protect property, public health and safety or avert or lessen catastrophic conditions. By straying from established federal law definitions of the same terms, these bills invite confusion and debate about installation operations.

In addition, the definitions of "associated user," "commercial cargo operations," and "commercial passenger operations" contain differences that will surely invite disputes and will be an obvious distraction from mission accomplishment. Simply put, if these bills were enacted without amendment it would virtually guarantee that someone will want to argue the finer points of law at a time when we in the military will need to be thinking about saving

lives and accomplishing our missions. I don't believe that Senator Greenleaf or Representative Taylor intended such a result but that could be the effect of this legislation.

It should be clear that, particularly when dealing with military operations and emergency management, it's vital for the applicable laws to take consistent approaches. Our suggestion with respect to definitions is simple: Any state legislation should incorporate the definitions in applicable federal law by reference rather than using different words and imposing different results.

Senate Bill 48 and House Bill 111 would impose restrictions not just on use of the airfield but on the entire joint interagency installation. And these bills imply that the only activities allowed on the joint interagency installations are those that actually "perform" the installation missions rather than those that support such missions or relate to them. The problem with this wording is that, if it were interpreted literally, many of the day-to-day activities that occur on every military installation in the country and around the world, including training, would not be permitted on the Horsham Joint Interagency Installation. I'm sure that's not the sponsors' intent, but it is important that the law be clear on these points.

The legislation before you today targets issues related to "associated users" of the installation. The "associated user" concept is not new and it should not be threatening to anyone in the community. It is modeled on the Department of Defense enhanced use leasing program, which is in effect at scores of military installations across America. It recognizes that, on a government installation of this sort, non-government uses can play a significant, but still secondary, role in supporting mission accomplishment. And the concept recognizes that rent and other fees paid by associated users can and will offset some of the operating costs of the installation.

Let me make it clear that we do not expect the rent and fees paid by non-government associated users to cover all the operating costs of the joint interagency installation. The Commonwealth's goal is that after a start-up period of several years, the installation should be

sustained by its users rather than general fund appropriations. This means that we would expect all users of the joint interagency installation, including federal, state and local governments, as well as associated users, to pay their fair share to sustain the installation. We recognize that government users might contribute directly to installation operating costs rather than paying “rent” to the Commonwealth, but the bottom line would come out the same.

Let me take just a minute to talk about one particular potential associated user, Teva Pharmaceuticals. We had the public meeting on the Kimball feasibility study right here in this very room. At that meeting, we heard complaints about the concept of multiple associated users with multiple facilities filling the largely undeveloped area of the base that is southwest of the runway. It was not long thereafter that Teva expressed an interest in relocating its North American warehouse and distribution operations to the joint installation.

Teva’s concept for use of this property addressed a great many concerns. They plan an attractive business campus type approach with a single responsible tenant replacing multiple users. And Teva fits clearly within the concept of an appropriate associated user. Not only do they provide critical pharmaceutical supplies to the Department of Defense and other government entities, but they also would be well positioned to help respond to a health emergency. Teva’s facility here would clearly support emergency preparedness and response efforts and would assist in developing and, if necessary, implementing emergency response efforts involving distribution of pharmaceuticals. This is exactly the kind of public/private partnership that is the foundation of the associated user concept.

This is not the time or place to draft an amendment to these bills, but I want you to know that we are ready, willing and able to undertake a cooperative effort to work with the committee and your staff, as well as the sponsors of these bills. We recognize that state legislation can and should cover areas that were not appropriate for inclusion in the federal laws, such as taxes, planning, zoning and land use, and the like.

We also recognize that this legislation needs to include an appropriate mechanism to allow the community interests to seek review of government decisions on use of the installation.

Unfortunately, the mechanism contained in these bills creates something akin to restrictive covenants that run with the land. This approach is completely unacceptable. This wording could constitute an inappropriate waiver of the Commonwealth's sovereign immunity and it is wholly inconsistent with the fact that the U.S. Government maintains a reversionary interest in the property under the controlling federal law. What's worse, such wording could foreclose or at least discourage our success in attracting government uses, such as the proposed national emergency center to the base.

Governor Rendell, the Congress and the Commonwealth had the foresight to support an installation that would maintain an operational airport that would support a future flying mission for the 111th Fighter Wing and other National Guard and military units. We have not yet succeeded in convincing the Department of Defense to assign a flying mission here, but by taking steps to save the airfield, we have kept alive the proud flying heritage of this installation and given the 111th a well-deserved chance to keep a military flying mission there.

In conclusion let me reiterate that the Joint Interagency Installation was conceived to provide joint interoperability with the adjacent military enclave in a seamless, secure government installation. As I said at the outset, the missions matter the most, and there are no missions more important than those assigned to this installation. To succeed, we must create here in Horsham a robust partnership involving all levels of government and the private sector. I know that many in the community support this concept but they want better answers as to the future shape of the installation. To address these concerns, we are preparing to develop an installation master plan in the next year, and we will, as always, seek and incorporate local input as part of this effort.

Mr. Chairman, we at the Department of Military and Veterans Affairs are prepared to work with the General Assembly to fashion state legislation that will increase, rather than decrease, the prospects for success of this important installation. We urge you to undertake an amendment to House Bill 111 and Senate Bill 48 along the lines we discussed here today before sending legislation forward for consideration.

Thank you for the opportunity to testify. We will be happy to answer any questions you may have for us.