

**SENATE BILL NO. 206**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR GREEN

Introduced: 5/11/97

Referred: Resources, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act establishing terms and conditions for access to and use of, and otherwise  
2 relating to, state owned or controlled airports and air navigation facilities;  
3 amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective  
4 date."

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

6 \* **Section 1.** AS 02.15.090 is repealed and reenacted to read:

7           **Sec. 02.15.090. Operation and use privileges.** (a) In operating an airport or  
8 air navigation facility owned or controlled by the state, the department may enter into  
9 contracts, leases, and other arrangements covering periods not exceeding 55 years at  
10 a time with a person, municipality, or the United States, granting the privilege of using  
11 or improving an airport or air navigation facility or a portion of it or space in it for  
12 commercial, governmental, or other public purposes, including private plane tie down,  
13 or conferring the privilege of supplying goods, commodities, services, or facilities at  
14 an airport or air navigation facility. The public may not be deprived of its rightful,

1 equal, and uniform use of the airport, air navigation facility, or a portion of them.

2 (b) The department may by contract or other arrangement, upon a  
3 consideration fixed by it, grant to a qualified municipality or person for a reasonable  
4 period of time the privilege of operating, as agent of the state or otherwise, an airport  
5 owned or controlled by the state. A municipality or person granted that privilege may  
6 not operate the airport other than as a public airport or enter into any contract, lease,  
7 or other arrangement in connection with the operation that the department may not  
8 have undertaken under this section.

9 (c) The department may establish the terms and conditions and fix the charges,  
10 rentals, and fees for the privileges or services that are reasonable and uniform for the  
11 same class of privilege or service, and the terms, conditions, charges, rentals, and fees  
12 under this section shall be established with due regard to the property and  
13 improvements used and the expense of operation to the state.

14 (d) Notwithstanding (c) of this section, the department may not fix a charge,  
15 rental, or fee for the use of state owned or controlled airport or air navigation facility  
16 land, not including space in a building, by lease, permit, contract, or other  
17 arrangement, unless the charge, rental, or fee does not exceed the lesser of the fair  
18 market value of the land or the cost to the department of the department's services to  
19 the land, except that the department may recover the costs the department incurs under  
20 the lease, permit, contract, or other arrangement for constructing or financing  
21 improvements to the land.

22 (e) Except for leases, permits, contracts, or other arrangements for state owned  
23 or controlled airport or air navigation facility land, not including space in a building,  
24 the charges, rentals, or fees authorized under this section may be fixed for the  
25 international airports in the state by order of the commissioner to the extent required  
26 by negotiated airline operating agreements, and, notwithstanding AS 37.10.050(a), the  
27 fixing of charges, rentals, or fees as permitted under this subsection is not subject to  
28 the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).  
29 However, the department shall provide for public notice and an opportunity to  
30 comment, consistent with the notice and comment provisions of AS 44.62, before a  
31 charge, rental, or fee is fixed by order of the commissioner under this subsection.

1 (f) Notwithstanding the other provisions of this section, use of state land and  
2 buildings by the Alaska Wing, Civil Air Patrol and its squadrons shall be permitted  
3 without rental charges.

4 (g) To the extent renewals or extensions are consistent with the lessee's past  
5 performance of the lease obligations, and to the extent the lessee's current and  
6 proposed uses of the land are compatible with sound airport or air navigation facility  
7 operations and planning, a person who leases state owned or controlled airport or air  
8 navigation facility land, not including space in a building, is entitled to reasonable  
9 lease renewals and extensions that are consistent with the value of the lessee's  
10 improvements and customary lenders' requirements.

11 (h) Improvements on state owned or controlled airport and air navigation  
12 facility land that is leased under this section are owned by and remain owned by the  
13 lessee who constructed them, a subsequent lessee who purchases them from the lessee,  
14 or another person to whom the lessee or the subsequent lessee transfers them, except  
15 that, in limited circumstances clearly defined by regulations, the department may  
16 acquire the improvements by financing the construction of the improvements, by  
17 purchasing the improvements, by the owner's abandoning the improvements, by  
18 condemnation, or by judicial proceedings.

19 (i) A lease, permit, or other arrangement for an aviation activity on a state  
20 owned or controlled airport or air navigation facility shall be granted on a first-come-  
21 first-served basis. The department may by regulation define classes of use, including  
22 aviation uses, nonaviation uses, and auxiliary uses, and establish reasonable preferences  
23 among the classes established.

24 (j) The provisions of state owned or controlled airport or air navigation facility  
25 regulations and leases, permits, contracts, and other arrangements adopted under or  
26 entered into under this section must be fair, impartial, and consistent with prevailing  
27 commercially reasonable standards, and the department shall deal fairly and in good  
28 faith with persons affected by the regulations, leases, permits, contracts, and other  
29 arrangements.

30 (k) If the department breaches the department's obligations to a person under  
31 a regulation, lease, permit, contract, or other arrangement under this section, or

1 breaches the department's obligations with respect to any other right or privilege of  
 2 the person under this section, the person has a claim against the department and may  
 3 bring an action on the claim in court against the department.

4 (l) If a person bringing an action under (k) of this section is the prevailing  
 5 party in the action, the court may award the person up to the full amount of the  
 6 person's reasonable actual attorney fees. If the department is the prevailing party, the  
 7 court may not award the department attorney fees.

8 \* **Sec. 2.** AS 02.15.091 is amended by adding a new subsection to read:

9 (g) In this section, "international airport" means an international airport owned  
 10 and operated by the state.

11 \* **Sec. 3.** AS 02.15.095 is amended to read:

12 **Sec. 02.15.095. Courtesy cars.** Notwithstanding the provisions of  
 13 AS 02.15.090 [AS 02.15.090(a)], the department may not exclude from the streets,  
 14 roads, highways, parking facilities, or other portions of a state-operated airport  
 15 designated for operation or parking of ground transportation vehicles, nor may the  
 16 department prohibit from picking up and discharging passengers, those motor vehicles  
 17 commonly known as "courtesy cars" owned or operated by hotels, motels, or other  
 18 similar places of public accommodation for the transportation of their guests to and  
 19 from the airport at the request of the guest and for which service no charge is made  
 20 to the guest.

21 \* **Sec. 4.** AS 37.15.500 is amended to read:

22 **Sec. 37.15.500. Airport charges.** As provided in AS 02.15.090  
 23 [AS 02.15.090(a)], the commissioner of transportation and public facilities shall fix and  
 24 collect the fees, charges, and rentals derived by the state from the ownership, lease,  
 25 use, and operation of the airports and all of the facilities and improvements that will  
 26 provide revenue sufficient to comply with all of the covenants of the bond resolution.

27 \* **Sec. 5.** AS 02.15.260(13) is repealed.

28 \* **Sec. 6.** COURT RULES. AS 02.15.090(l), added by sec. 1 of this Act, changes Rule 82,  
 29 Alaska Rules of Civil Procedure, by establishing a different standard for awarding attorney  
 30 fees to a prevailing party in an action brought under AS 02.15.090(k), added by sec. 1 of this  
 31 Act.

1     \* **Sec. 7.** AS 02.15.090(l), added by sec. 1 of this Act, takes effect only if sec. 6 of this  
2 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,  
3 Constitution of the State of Alaska.

4     \* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).