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Referred: Transportation,
Labor & Commerce and Finance

1 IN THE HOUSE

BY PIGNALBERI

2

HOUSE BILL NO. 650

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Alaska Transportation Commis-
7 sion; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 42 is amended by adding a new chapter to read:

10 CHAPTER 08. ALASKA TRANSPORTATION COMMISSION.

11 Sec. 42.08.010. CREATION AND COMPOSITION. (a) There is created
12 the Alaska Transportation Commission within the Department of Commerce
13 and Economic Development. The commission consists of three members
14 appointed by the governor to staggered terms and confirmed by the
15 legislature in joint session.

16 (b) The governor shall designate one member of the commission as
17 chairman of the commission. This member shall serve as chairman for a
18 term of two years, but may be appointed for successive terms.

19 Sec. 42.08.020. TERM OF OFFICE; VACANCY. (a) The term of
20 office of a commissioner is six years except as provided in AS 39.05.-
21 055. Upon the expiration of a commissioner's term, the commissioner
22 shall continue to hold office until a successor is appointed and
23 qualified. The term of a member begins on February 1.

24 (b) A vacancy arising in the office of commissioner shall be
25 filled by appointment by the governor and confirmed by the legislature
26 in joint session and an appointee selected to fill a vacancy shall
27 hold office for the balance of the unexpired term.

28 (c) A vacancy in the commission does not impair the authority of
29 a quorum of commissioners to exercise the powers and perform the

1 duties of the commission.

2 (d) The governor may remove a commissioner from office for cause
3 including incompetence, neglect of duty, or misconduct in office.
4 Before being removed for cause a commissioner shall be given a copy of
5 charges and afforded an opportunity to be publicly heard in person or
6 by counsel in defense of the charges upon not less than 10 days'
7 notice. If a commissioner is removed for cause, the governor shall
8 file with the lieutenant governor a complete statement of all charges
9 made against the commissioner and the governor's finding based on the
10 charges, together with a complete record of the proceedings.

11 Sec. 42.08.030. QUORUM. Two members of the commission consti-
12 tute a quorum for the transaction of business, for the performance of
13 a duty, or for the exercise of a power of the commission, except as
14 provided in AS 42.08.190(d).

15 Sec. 42.08.040. QUALIFICATIONS. (a) Each commissioner shall be
16 a citizen of the United States and a resident of the state.

17 (b) Each commissioner shall be appointed with regard to fitness
18 and ability to exercise the powers and duties of the commission, based
19 upon experience and familiarity with the principles of public utility
20 regulation or educational and experience background in the fields of
21 engineering, transportation, law or business administration, finance
22 and accounting.

23 (c) Members of the commission must be qualified as follows:

24 (1) one member must be a graduate of an accredited univer-
25 sity with a major or degree in economics and have experience in the
26 economics of public transportation;

27 (2) one member must have substantial experience in trans-
28 portation and

29 (A) be a graduate of an accredited university with a

1 major or a degree in financial management or business adminis-
2 tration; or

3 (B) have six years of experience in business or finan-
4 cial affairs;

5 (3) one member must have 10 years of management experience
6 in a field of transportation.

7 Sec. 42.08.050. OATH OF OFFICE. Each commissioner, before
8 entering upon the duties of office, shall take the oath prescribed for
9 principal officers of the state.

10 Sec. 42.08.060. RESTRICTIONS. A commissioner, employee, or
11 agent of the commission may not have an official or professional
12 relation or connection with, or hold stock or securities or have a
13 pecuniary interest in, any business or agency subject to regulation
14 under this chapter. Membership in a cooperative association is not a
15 "pecuniary interest" within the meaning of this section. If a commis-
16 sioner or employee becomes the owner of stocks or securities or
17 becomes pecuniarily interested in a business or agency subject to
18 regulation under this chapter other than voluntarily, the office or
19 employment shall become vacant unless within a reasonable time the
20 officer or employee divests the ownership or interest. A commissioner
21 may not, for two years after leaving the position as a commissioner,
22 act as a representative of a business or agency in a matter before the
23 commission.

24 Sec. 42.08.070. COMPENSATION. Members of the commission are in
25 the exempt service and are entitled to a monthly salary equal to Step
26 C, Range 26 of the salary schedule in AS 39.27.011(a) for Juneau,
27 Alaska.

28 Sec. 42.08.080. PRINCIPAL OFFICE AND SEAL. (a) The commission
29 shall establish a principal office. For the convenience of the public

1 or of parties to a proceeding, the commission may hold hearings or
2 other proceedings at another location.

3 (b) The commission shall have an official seal.

4 Sec. 42.08.090. LEGAL COUNSEL. (a) The attorney general is the
5 legal counsel for the commission. The attorney general shall advise
6 the commission in legal matters arising in the discharge of its duties
7 and represent the commission in suits to which it is a party. The
8 attorney general may represent the public interest in any proceeding
9 before the commission.

10 (b) The commission may employ temporary legal counsel in pro-
11 ceedings before the commission in which the attorney general is repre-
12 senting the public interest or a party before the commission.

13 Sec. 42.08.100. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The
14 commission may employ an executive director who must have at least
15 five years of experience in public transportation management or regu-
16 lation, law, accounting, or an allied field. A member of the commis-
17 sion may not act as executive director for longer than 90 days. The
18 commission may employ other agents and assistants it considers neces-
19 sary. The executive director, the director's deputy, staff legal
20 counsel, and hearing officers to the commission are in the partially
21 exempt service under AS 39.25.120. Other employees and agents of the
22 commission are in the classified service under AS 39.25.100.

23 (b) In addition to its staff of regular employees, the commis-
24 sion may contract for and engage the services of consultants and
25 experts the commission considers necessary.

26 Sec. 42.08.110. ANNUAL REPORT. The commission shall publish an
27 annual report reviewing its work and submit it to the legislature by
28 February 15 of each year. In addition, the report shall contain
29 information and data that bear a significant relationship to the

1 development, financial regulation, and safety of transportation in the
2 state.

3 Sec. 42.08.120. POWERS AND DUTIES. (a) The commission shall
4 supervise transportation in the state as provided in this chapter, and
5 may do all things that are necessary or convenient in the exercise of
6 this power and jurisdiction. The commission shall also

7 (1) require air carriers to file information necessary to
8 carry out this chapter and to procure and maintain appropriate bodily
9 injury and property damage liability insurance and cargo insurance as
10 provided under AS 42.08.130 and 42.08.140;

11 (2) supervise every carrier as to its safety of operation;

12 (3) collect information on current trends in passenger air
13 fares and air carrier service in comparison with past fares and ser-
14 vice;

15 (4) operate commercial motor vehicle weighing stations,
16 issue special written permits authorizing the operation of overweight
17 and oversize vehicles, establish fees for overweight and oversize
18 vehicle special permits, enforce the size, weight, and load limita-
19 tions adopted by the Department of Transportation and Public Facili-
20 ties under AS 19.10.060 and establish regulations relating to pilot
21 car services and the enforcement of the size, weight and load limita-
22 tions adopted under AS 19.10.060;

23 (5) investigate complaints concerning damage to cargo or
24 baggage, and failure to provide scheduled service.

25 (b) The commission may, upon its own initiative or upon com-
26 plaint by a passenger, carrier, or ticket agent, if it considers the
27 action to be in the public interest, investigate and determine whether
28 a carrier or ticket agent has been or is engaged in unfair or decep-
29 tive practices, misrepresentation, or unfair methods of competition in

1 commerce or sales. If the commission finds, after notice and oppor-
2 tunity for hearing, that the carrier or ticket agent is engaged in
3 unfair or deceptive practices, misrepresentation, or unfair methods
4 of competition, it shall order the carrier or ticket agent to cease
5 and desist from the practice, misrepresentation, or method of competi-
6 tion.

7 Sec. 42.08.130. AIR CARRIER FINANCIAL RESPONSIBILITY. (a) A
8 person who carries passengers or freight for commercial purposes
9 intrastate in an aircraft shall procure and maintain security in the
10 following minimum amounts:

11 (1) \$150,000 per seat for bodily injury or death in a
12 single occurrence; and

13 (2) \$100,000 for property damage in a single occurrence.

14 (b) Evidence of security required under (a) of this section
15 shall be filed with the commission and must be

16 (1) a policy or certificate of insurance issued by an
17 insurer acceptable to the commission;

18 (2) a bond of a surety company licensed to write surety
19 bonds in the state;

20 (3) evidence accepted by the commission, showing ability to
21 self-insure; or

22 (4) other security approved by the commission.

23 (c) A policy of insurance, surety bond, or other form of secur-
24 ity may not be cancelled on less than 30 days' written notice to the
25 commission. This requirement must be clearly stated in the policy or
26 endorsement for an insurance policy submitted as proof of financial
27 responsibility under AS 42.08.140(a)(1). The 30-day notice period is
28 measured from the date on which the commission receives notice.

29 (d) A person who violates (a) of this section is guilty of a

1 class B misdemeanor and is punishable by a fine of not less than \$500
2 or more than \$1,000.

3 Sec. 42.08.140. CERTIFICATION OF COMPLIANCE OF AIR CARRIERS.

4 (a) A person may not use an aircraft in air commerce before obtaining
5 an annual certificate of compliance for the aircraft from the commis-
6 sion. The commission shall issue or renew a certificate of compliance
7 upon application and presentation of

8 (1) proof of financial responsibility required under
9 AS 42.08.130;

10 (2) proof of compliance with Federal Aviation Adminis-
11 tration requirements, and, where applicable, federal certification for
12 scheduled airline service.

13 (b) The annual fee for a certificate of compliance is \$50. The
14 certificate is valid for a period of 12 months following the date of
15 certification. The certificate shall be displayed on the aircraft so
16 that it is visible to boarding passengers.

17 (c) Use of an aircraft in air commerce before obtaining a cer-
18 tificate of compliance required under (a) of this section may be cause
19 for denial of the certificate.

20 Sec. 42.08.150. ADMINISTRATIVE AUTHORITY, REGULATIONS, AND
21 HEARING PROCEDURES. (a) The commission may adopt regulations, not
22 inconsistent with the law, necessary or proper in the exercise of its
23 powers or for the performance of its duties under this chapter.

24 (b) The commission shall adopt regulations, consistent with due
25 process of law, that govern practice and procedure and the conduct of
26 all investigations, hearings, and proceedings that it holds.

27 (c) Common law and statutory rules of evidence apply to inves-
28 tigations, hearings, and proceedings before the commission, except
29 when the commission determines that their application is not required

1 in order to assure fair treatment of all parties and that the evidence
2 is relevant and of the sort on which responsible persons are accus-
3 tomed to rely in the conduct of serious matters.

4 (d) The commission, each commissioner, or an employee authorized
5 by the commission may administer oaths, certify to all official acts,
6 and issue subpoenas and other process to compel the attendance of
7 witnesses and the production of testimony, records, papers, accounts
8 and documents in an inquiry, investigation, hearing, or proceeding
9 before the commission in any part of the state. The commission may
10 petition a court of this state to enforce its subpoenas or other
11 process.

12 Sec. 42.08.160. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

13 (a) The administrative adjudication procedures of the Administrative
14 Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of
15 the commission except that final administrative determinations by the
16 commission are subject to judicial review as provided in AS 44.62.-
17 560 - 44.62.570.

18 (b) AS 44.62.010 - 44.62.320, 44.62.640 and 44.62.650 apply to
19 regulations adopted by the commission.

20 Sec. 42.08.170. INVESTIGATIONS AND HEARING. An investigation or
21 hearing that the commission has power to undertake or to hold may be
22 undertaken or held by or before any one or more commissioners, or
23 their agents, designated for the purpose by the commission. The
24 testimony and evidence in an investigation or hearing may be taken by
25 the commissioner, or an agent of the commissioner, to whom the inves-
26 tigation or hearing has been assigned. An investigation or hearing
27 before or by a commissioner or an agent is considered to be an inves-
28 tigation or hearing of the commission. A determination or order of a
29 commissioner upon an investigation or hearing is not effective until

1 approved and confirmed by the commission. Upon confirmation, the
2 determination or order is the determination or order of the commis-
3 sion.

4 Sec. 42.08.180. ENFORCEMENT AUTHORITY. An enforcement officer
5 authorized and designated by the commission or by the Department of
6 Public Safety has the authority set out in this section to enforce
7 regulations and orders of the commission and to enforce the statutes
8 that the commission administers. The commission may authorize the
9 enforcement officer to

10 (1) require the operator of a surface or air vehicle that
11 may be subject to the authority of the commission to present documents
12 of vehicle registration, ownership, or other documents required by
13 regulation to be in the possession of the operator;

14 (2) stop a surface or air vehicle that may be subject to
15 the authority of the commission and request the right to inspect cargo
16 within the vehicle to determine whether the operation of the vehicle
17 violates a regulation or order of the commission or a statute that the
18 commission administers; if the operator of that vehicle refuses to
19 permit inspection of the vehicle or its cargo, the enforcement officer
20 may, by placing a seal on or around the cargo, prohibit the discharge
21 of the cargo except at a point of destination and in the presence of
22 an authorized enforcement officer of the commission;

23 (3) detain or remove from service a surface or air vehicle
24 that may be subject to the authority of the commission when it rea-
25 sonably appears to an enforcement officer of the commission that the
26 continued operation of the vehicle would jeopardize the public safety;
27 if an enforcement officer discovers a safety violation that in the
28 officer's opinion will not cause an accident or breakdown, the officer
29 may order the vehicle to proceed to a designated repair area where the

1 violation shall be corrected before the vehicle departs the area;

2 (4) issue citations for a violation of a regulation, order,
3 or statute administered by the commission; and

4 (5) apply to a court for an appropriate order.

5 Sec. 42.08.190. STOP ORDERS. (a) The commission may, following
6 a hearing under its regulations, issue a stop order directed to a
7 person violating or aiding or abetting a violation of a regulation,
8 order, or statute administered by the commission.

9 (b) The commission may issue a stop order on its own motion
10 before a hearing if it finds that immediate and irreparable harm is
11 likely to occur to the public if the order is not issued. In addi-
12 tion, the commission may issue a stop order on its own motion if it
13 finds that the party to whom the order is directed

14 (1) has failed to file required evidence of insurance or
15 surety bonds;

16 (2) is no longer fit, willing and able to operate properly;
17 or

18 (3) is operating a surface or air vehicle in a manner that
19 will jeopardize the public safety if such an order is not issued.

20 (c) A stop order issued by the commission on its own motion and
21 without a hearing is effective for 10 days and the order must provide
22 the respondent a hearing within 10 days. If requested by the respon-
23 dent, the hearing shall be held in the judicial district in which the
24 principal place of business of the respondent is located. If a hear-
25 ing has been provided within 10 days, the commission may extend the
26 stop order an additional 10 days in order that the commission may
27 decide the matter.

28 (d) A single commissioner may issue a stop order without a
29 hearing if the commissioner finds that a person engaging in surface or

1 air transportation regulated under this chapter does so in a manner
2 that jeopardizes the public safety if a stop order is not issued. A
3 stop order issued by a single commissioner is effective for 48 hours
4 or until a stop order is issued by the commission under (c) of this
5 section.

6 (e) A respondent subject to a stop order shall be given the
7 opportunity to have the stop order rescinded because the respondent
8 has complied with its requirements.

9 (f) If, after a hearing, the commission finds that a respondent
10 violated the stop order, the commission may fine that person not more
11 than \$1,000 for each day the violation of the stop order continues and
12 an amount equal to revenue that person earned as a result of violating
13 the stop order.

14 (g) A person who refuses to allow an enforcement officer of the
15 commission to examine the person's vehicle or cargo within the vehicle
16 upon request under AS 42.08.180(2) and who is subsequently determined
17 to have been in violation of a regulation, order, or statute under the
18 jurisdiction of the commission may be fined \$1,000 a day for each day
19 of the violation and an amount equal to the gross revenue earned by
20 the violator in that particular operation.

21 (h) In this section, "respondent" means a person against whom a
22 stop order or citation is directed.

23 Sec. 42.08.900. DEFINITIONS. In this chapter

24 (1) "air carrier" means a person undertaking to engage in
25 air commerce, whether directly or indirectly, or by lease, contract,
26 or any other arrangement, and whether over regular or irregular
27 routes;

28 (2) "air commerce" means carriage by aircraft of persons or
29 freight for commercial purposes or hire in intrastate commerce,

1 including the carriage by aircraft of persons or freight that move
2 partly by aircraft and partly by other forms of transportation;

3 (3) "aircraft" means a propeller or jet-powered device used
4 or designed for flight in the air;

5 (4) "carrier" means a person engaged in transporting per-
6 sons or property for compensation, whether directly or indirectly,
7 over regular or irregular routes, on regular or irregular schedules,
8 by lease, contract or any other arrangement;

9 (5) "commercial purposes" means activities for which the
10 person receives direct monetary compensation and does not include
11 activities incidental to and done in furtherance of the person's
12 primary business;

13 (6) "commission" means the Alaska Transportation Commis-
14 sion;

15 (7) "freight" means commodities, articles, and cargo, of
16 whatever nature or value, excluding garbage and trash.

17 * Sec. 2. AS 39.50.200(b) is amended by adding a new paragraph to read:

18 (48) Alaska Transportation Commission (AS 42.08.010).

19 * Sec. 3. The following laws are repealed: AS 42.30.200, 42.30.225,
20 42.30.380; AS 44.33.020(25), 44.33.020(27); and AS 42.40.920(a).

21 * Sec. 4. A person who has obtained a certificate to use an aircraft in
22 air commerce from the Department of Commerce and Economic Development
23 before March 1, 1987, is not required to obtain a certificate of compliance
24 under AS 42.08.140(a) until the date the insurance policy for the aircraft
25 is renewed.

26 * Sec. 5. This Act takes effect March 1, 1987.