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DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

ALASKA TRANSPORTATION COMMISSION

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February 16, 1982

Honorable Ramona Barnes, Chairperson
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Barnes:

The Staff of the House Judiciary Committee requested that the Alaska Transportation Commission provide additional section-by-section review of CSRB 52(Trsp).

Section 1. AS 02.05.050(d) is amended by adding a new paragraph to read:

(7) May not change his base of operations without approval of the Commission.

DISCUSSION

This amendment was added last season by the Transportation Committee and clarifies the requirement for an air taxi operator to receive the approval of the Commission before moving his base of operation.

After AS 02.05.050(d)(5) was amended by Chapter 115 SLA 1980, certain air taxi operators interpreted the deletion of the wording "public convenience and necessity requires it and a change in the base or bases of operation may be made only upon approval of the Commission" to mean they could switch their base of operation by simply notifying the Commission and without any requirement to show fitness.

Since air taxi authorities are granted for a specific base of

operation only after such fitness requirements as economic feasibility of service; the financial capability of the applicant; and that a physical base of operation and maintenance capabilities exist, it appears appropriate that an operator should be required to meet the same fitness requirements when changing the base of its operation. To not require a showing that a transfer of the base of operation will continue to meet the fitness requirements considered at the time the authority was granted, seriously negates the value of the original finding.

Finally, only by requiring that an air taxi operator secure approval of the Commission to change its base can the protesters retain their right under AS 02.05.060(g) to show the proposed service from the new base is contrary to the public interest.

Section 2. AS 02.05.075 is amended to read:

Sec. 02.05.075. APPLICATION FEES...for temporary exemption:

(1) Applications involving aircraft weight of a maximum payload capacity of 7,500 pounds or a maximum seating configuration, exclusive of the pilot's seat of 30 passengers [12,500 pounds gross takeoff weight] or less...\$100.

(2) Applications involving aircraft weight of a maximum payload capacity in excess of 7,500 pounds or a maximum seating configuration, exclusive of the pilot's seat, in excess of 30 passengers [12,501 pounds gross takeoff weight or over]...\$200.

DISCUSSION

The effect of this amendment is to substitute the 7,500 pound payload and 30 passenger standard for fees to be consistent with AS 02.05.060 and 02.05.080. The revision made in chapter 115 SLA 1980 changed the previous 12,500 pound takeoff weight standard to 7,500 pounds payload, but no change was made to the fee structure. It should be noted that the weight substitution will have minimal impact as most air taxi operators operate aircraft under 7,500 pounds payload.

Section 3. AS 02.05.110(a) is amended to read:

(a) A certificate may be...or lessor and lessee. In determining the fitness of a transferee or lessee under this section, the economic feasibility of the service is not a factor for consideration if a certificate has been in continuous and active use.

DISCUSSION

This amendment is intended to clarify that if a certificate has been in continuous and active use, there is no need to go through a showing of economic feasibility. The Commission hopes this language will streamline the processing of transfers or leases. This language does not prevent the review of the fitness of the transferee or lessee to operate the certificate.

Section 4. AS 02.05.250(6)(B) is amended to read:

(B) As to fixed-wing aircraft with a payload capacity of 7,500 pounds or less or a seating configuration, exclusive of pilot's seat, of 30 passengers or less or with a payload capacity in excess of 7,500 pounds or a seating configuration exclusive of the pilot's seat, in excess of 30 passengers [IN EXCESS OF 12,500 POUNDS GROSS CERTIFICATED TAKEOFF WEIGHT], a specific make...its handling characteristics;

DISCUSSION

This amendment like Section 2 is intended to standardize the aircraft payload capacities throughout the chapter. Clearly, the intention in Chapter 115 SLA 1980 was to use 7,500 pounds payload and 30 seats instead of 12,500 pounds gross takeoff weight. This amendment in fact increases the size of aircraft since a plane with a payload capacity of 7,500 pounds payload and 30 seats is larger than a 12,500 gross takeoff weight aircraft.

Section 5. AS 42.10.420 is amended by adding a new paragraph to read:

(13) "GVW" means gross vehicle weight which is the maximum rating in pounds as established by the original manufacturer of the vehicle.

DISCUSSION

By Section 27 of Chapter 115 SLA 1980 the legislature made motor vehicles under 14,000 pounds GVW operated as tow trucks exempt from regulations. The exemption is that such vehicles must file proof of insurance with the Commission. This amendment simply adds a definition of the term GVW to the Definition Section of chapter 42.10. There has been some confusion as to what was intended when the limit was set at 14,000 pounds GVW. The definition provided by the amendment uses the original manufacturer's intended maximum weight for the vehicle when fully loaded or equipped.

Passage of the language will make it easier for all concerned to determine what weight a vehicle is since most vehicles have an inspection plate affixed to the vehicle at the time of manufacture indicating the GVW. Thus, the vehicle will not have to be weighed at the scales to determine whether it is a regulated vehicle or not. Under this definition most tow trucks will be exempt from regulation and only the larger recovery type wreckers will remain regulated.

The Governor at the request of the Alaska Transportation Commission has submitted an amendment adding the following:

Section 5. AS 42.07 is amended by adding a new section to read:

SEC. 42.07.143. EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, AS 02.05 or AS 42.10, the Commission may allocate the costs of the hearing or investigation among the parties, as is just under the circumstances. In allocating costs, the Commission may consider the results, ability to pay, evidence of good faith, and other relevant factors, including mitigating circumstances. The costs allocated may include the cost of: any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants, attorney fees incurred by any party; and the cost

of transcripts of the hearing. The costs allocated may also include any other out-of-pocket expenses incurred by the Commission in the particular proceeding. The Commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. Notwithstanding any other provision of this section, the Commission may collect charges in advance for transcripts of hearings. Before requiring advance payment of charges, the Commission shall confer with the parties in regard to the amount of hearing time expected and the equitable allocation of costs.

DISCUSSION

This amendment will give the Commission the necessary authority to allocate the costs of hearings and the cost of preparing transcripts of hearings. Currently, the Commission has no authority to assign hearing costs, and transcripts are normally prepared only when a finding is appealed to Superior Court.

The rationale for requesting this amendment to allow the Commission to assign hearing cost is that experience has shown that some protests are of a spurious nature. However, since the Commission is obligated to hear all parties, a hearing is conducted and the applicant is forced to incur the additional expenses of legal counsel through an unnecessarily lengthy hearing and post hearing petitions. The obvious benefit of such actions on the part of protestant is to place barriers in the path of both the applicant and the Commission which may result in restricting valid competition. While the Commission is not suggesting that such protests should be completely eliminated, we are suggesting that the cost should be borne by the spurious party.

On the other hand, the Commission has received applications that when assigned to hearing the applicant fails to show. Such non-appearances cause an undue burden on the protestants and the Commission. There is adequate time to withdraw an application before all parties have expended money to prepare their respective cases.

Generally, the Commission would not expect to assign costs of legal fees and hearings in more than a handful of cases each year. Normally, all concerned parties conduct themselves in a manner that results in a speedy, efficient hearing and

final decision. It is not suggested that all applicants or protestants will be required to pay costs. Before any party will be required to pay costs, it will be necessary to develop procedures to assure that all parties have benefit of due process prior to the assignments of costs.

The objective of securing statutory authority to assign costs for transcripts of hearings is to allow all parties to benefit from being able to review the proceedings. Currently, the hearings are taped and all parties can take advantage of listening to tapes, but this is often inconvenient for the parties and not efficient. The Commission is not budgeted to pay the expense involved in preparing the written transcripts, therefore, this proposal to assign costs to the parties involved. As in the case of assigning hearing costs, the Commission does not propose to prepare transcripts of every hearing. As currently conceived, the procedure would be to normally determine if a transcript is desired by the parties before the hearing process begins.

The Commission expects to use private reporting services to prepare the transcripts and not staff. The cost will be clearly documented for all parties to review and all parties will have the benefit of being able to review the proceedings and quote the record.

The combination of assigning hearing costs and preparation of transcripts should improve the hearing process and streamline the decision-making process.

If you need additional information, please let us know.

Very truly yours,

ALASKA TRANSPORTATION COMMISSION

Keith H. Miller
Keith H. Miller
Chairman

LWM/KHM/rm

cc: Keith Specking
Legislative Assistant
Governor's Office
Pouch A
Juneau, AK 99811

Charles webber
Commissioner
Commerce & Economic Development
pouch B
Juneau, AK 99811

MEMORANDUM

State of Alaska

TO: Keith Specking
Legislative Assistant
Governor's Office

DATE: November 18, 1981

FILE NO: J-77-054-82

TELEPHONE NO: 465-3600

FROM: Wilson L. Condon
Attorney General

SUBJECT: Attached amendment to
CSHB 52 (Trsp) - Alaska
Alaska Transportation
Commission

By: Arthur H. Peterson
Assistant Attorney General

My notes from the October 29, 1981 meeting with the governor on the Department of Commerce and Economic Development's bill requests indicate that you are to handle this amendment which was requested by the Alaska Transportation Commission. You will find attached an amendment sheet and a draft transmittal letter to Rep. Ramona Barnes, chairperson of the House Judiciary Committee where the bill now resides.

The transmittal letter is based on language submitted by the department with its bill request. The amendment itself is based on the corrected version which I received from the department November 6, 1981. The source of the new statute is AS 42.05.651, pertaining to the Alaska Public Utilities Commission; one difference between the two is that the new statute would authorize the ATC to allocate costs whereas AS 42.05.651 requires the APUC to do so.

If you should have any questions on this, please contact Chuck Schmidt, our assistant attorney general assigned to the ATC (279-1451 [ATC] or 276-3550 [AGO]).

WLC:AHP:eja

cc w/enc.: G. Charles Schmidt
Assistant Attorney General
Anchorage

Charles R. Webber
Commissioner
Department of Commerce & Economic Development

Keith Miller, Chairman
Alaska Transportation Commission
Anchorage

D R A F T

Hon. Ramona Barnes, Chairperson
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Attached amendment
to CSHB 52 (Trsp) --
Alaska Transportation
Commission

Dear Rep. Barnes:

The attached proposed amendment to CSHB 52 (Trsp) adds a new sec. 5 (enacting AS 42.07.142) to that bill. The added section gives the Alaska Transportation Commission the power to assess costs in cases before it. Of particular importance is the commission's ability to levy costs for transcripts. The commission has worked for years without transcripts of its hearings. The requirement of transcripts in lengthy cases and the power to assess costs will discourage drawn-out proceedings. In addition, the existence of transcripts will greatly aid the decision-making process. Transcripts will allow for direct citations of pertinent facts. This will allow parties to present a case clearly and will provide the commission with the necessary clarity of the record for efficient decision making.

The proposed language parallels the provisions of AS 42.-05.651 which confers similar powers on the Alaska Public Utilities Commission.

I urge your committee to give the bill a "do pass" recommendation and to include the attached provision in the bill.

Sincerely,

Jay S. Hammond
Governor

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 52 (Trsp)

Page 2, between lines 16 and 17:

Add the following:

* Sec. 5. AS 42.07 is amended by adding a new section to read:

Sec. 42.07(143). EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, AS 02.05, or AS 42.10, the commission may allocate the costs of the hearing or investigation among the parties, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, and other relevant factors, including mitigating circumstances. The costs allocated may include the cost of: any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants; attorneys fees incurred by any party; and the costs of transcripts of the hearing. The costs allocated may also include any other out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. Notwithstanding any other provision of this section, the commission may collect charges in advance for transcripts of hearings. Before requiring advance payment of charges, the commission shall confer with the parties in regard to the amount of hearing time expected and the equitable allocation of costs.

Page 2, line 17:

Change "Sec. 5" to read "Sec. 6."

HB 52 continuedLETTER OF INTENT
CSHB 52

It is the intent of the House Transportation Committee that the following language accompany Section 1, AS 02.05.050 (d) (7) to state that approval by the Commission is contingent upon a finding that the air taxi operator is fit, willing, and able to provide the additional service.

Bette Cato
Representative Bette Cato, Chairman
House Transportation Committee

HB 187

The Finance Committee has had HOUSE BILL NO. 187 (relating to the penalty on tax) under consideration and recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 187 (Judiciary)(same title)(page 598 of the journal) and that it do pass. Concurring: Cotten (Chairman), Freeman, Buchholdt, Adams, Carney, Haugen, Montgomery, Malone and Moss.

HB 187 was referred to the Rules Committee for placement on the calendar.

HB 313

The Finance Committee has had HOUSE BILL NO. 313 (relating to the Alaska Fisheries Center and to appropriations to that center) under consideration and recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 313 (Finance):

"An Act relating to the Alaska Fisheries Center and to appropriations to that center; and providing for an effective date."

and reports it back with individual recommendations. Freeman (Vice Chairman), Haugen and Malone recommend do pass. Rogers, Montgomery, Moss and Carney have no recommendation.

HB 313 was referred to the Rules Committee for placement on the calendar.