SB

824

TODAY

June

Bert Wo
266-1443

COMPLETED

1. SB 824
Chuck Becker ☐

2. 277-3789 ☐

Hawaii
killed last year

3. ☐

lobbying
DFS

6. Lew Dinchner [illegible]

4. Former State AG
former [illegible] to ☐

State took no position [illegible]

5. ☐

[illegible] of revenue [illegible]

Ward - no position
- AG [illegible]
relief

intended to [illegible]; stopped them from [illegible]

6. ☐

7. ☐

8. ☐

Bert Wagnon (Rep Cato)

Why do you think exclusive contract?

original move
LIZ

no revenue to state
undersell vendor

U.S. Sup. Ct. - OK monopoly + restrict access State to have
however leg. body must act law.
actually supervise monopoly

LIZ duty free => run goods across airport
firm that services airplanes
undersell ...
no fee to state

two-h goal

2 basic reasons
① Legal imp. => diff of opinion among atty's some consensus
having 1 - stronger bill to anti trust
- withstand court test -
(*) ② 1 operator - economical

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former top aide to

State took no position carriers
5. erosion of revenue source
Word - no position - A G's office manner of relief
intended to halt SIZ; stopped them prior to
6.
7.
8.

Bert Wagnon (Rep Cato)

Why do you think exclusive contract?

original movi
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U.S. Sup Ct. - OK monopoly + restrict access State to have
however leg. body must est law.
actively supervise monopoly

LIZ duty free → mix goods access airport
firm that services airplanes

undersell com.
no fee to state

[illegible]

2 basic reasons
(1.) Local [illegible] → diff of opinion among [illegible]; some concern
- having 1 - stronger bill to [illegible]
- with [illegible] [illegible]

(*) (2) 1 operator - economical

HOUSE TRANSPORTATION COMMITTEE

COMMITTEE REPORT - CS SB 824

The Transportation Committee has considered CS SB 824, relating to the establishment and operation of in bond merchandise businesses at state owned and operated international airports. The purpose of this report is to express the Committee's understanding of the purposes of the bill and to make clear the Committee's intent with regard to certain aspects of the bill.

In bond merchandise, which includes merchandise of foreign origin (not manufactured in the United States) and United States alcoholic beverages and tobacco products handled in bond, is sold to foreign-bound passengers. For a number of years, the state has entered into exclusive contracts authorizing the establishment and operation of an in bond merchandise business at each of the state's international airports. These exclusive contracts have been extremely beneficial to the state by providing substantial revenue to the state, increasing employment in the state, and aiding the tourism industry, while at the same time facilitating the orderly administration of the state's international airports. For the reasons stated in Section 1 of the bill and elaborated upon by the official of the Department of Transportation and Public Facilities who testified before the Committee in support of the bill, the Committee believes that conferring exclusive rights for the establishment and operation of an in bond merchandise business at each international airport is good state policy.

Recently, legal questions have been raised concerning the granting of exclusive in bond contracts. This bill is designed to resolve all legal questions once and for all with regard to all existing and future exclusive in bond contracts. In particular, CS SB 824 is designed to ensure that "state action" immunity from the operation of the federal antitrust laws [see, California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97 (1980)] exists with regard to the establishment and operation of in bond merchandise businesses at international airports in the State of Alaska, including the conferral of exclusive rights in this field. Thus, the bill clearly and affirmatively states that it is the policy of the State of Alaska that only an exclusive contractor be allowed to offer to sell, sell and deliver in bond merchandise at each international airport, and that the Department of Transportation and Public Facilities may not permit, nor confer any right upon, any person other than the exclusive contractor to offer to sell, sell or deliver in bond merchandise at an international airport. In addition, the bill requires the issuance of exclusive in bond contractors in the future, and requires that the Department actively supervise the operations under each exclusive in bond contract. CS SB 824 is also specifically intended to, and does, provide an express immunity and exemption for the activities required under this bill from the operation of Alaska's antitrust laws, AS 45.50.562 et. seq., and any other applicable state laws that would otherwise affect the validity of those activities. See e.g., Section 1(e) of the bill. By providing these immunities, CS SB 824 will enable in bond merchandise sales in Alaska to continue to be maximized, thereby maximizing the state's revenue from this source and providing the other substantial benefits described above.

The Committee also intends that the exclusivity mandated under Section 2 of this bill encompasses, with one limited exception, every aspect of the establishment and operation of an in bond merchandise business at an international airport. That limited exception is for the delivery of in bond merchandise as cargo to airlines. For purposes of this bill, cargo has been specifically defined. As defined in Section 4 of the bill, cargo is intended to have four characteristics. First, cargo is carried by an airline in return for payments made by the shipper to the airline, which payments are computed by reference to a specific cargo tariff; in contrast, the carriage of baggage is included in the price of a passenger ticket (with any additional charges computed on the basis of the excess number of pieces of baggage, or the excess weight of baggage, to be carried, according to an excess baggage schedule). Second, cargo is carried under an airway bill, rather than under a passenger ticket. The portion of the definition of cargo that refers to goods carried "under an agreement between the shipper and the airline other than a passenger ticket" is intended to require both of these characteristics. Third, cargo is accepted, carried and handled at facilities, and under procedures, different from those used for baggage. Finally, cargo is delivered by the airline at the destination airport to a facility (e.g., an air cargo terminal) separate from that which receives baggage to be delivered to deplaning passengers, and is not brought to a baggage claim area, but must be picked up by the consignee at the facility described above. For a delivery to qualify as cargo, it must satisfy all of these criteria.

Dated April ____, 1982

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Representative Cato
Chairman

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Representative

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Representative

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Representative

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Representative

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Representative

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Representative

266-1443

STATEMENT OF BERTRAM L. WAGNON

BEFORE SENATE TRANSPORTATION COMMITTEE

ON SENATE BILL NO. 824

My name is Bertram L. Wagnon. I am Assistant Deputy Commissioner with the Department of Transportation and Public Facilities. I present this statement on behalf of the Administration in support of Senate Bill No. 824, which was introduced in the Senate on March 2, 1982.

Senate Bill No. 824 concerns the in bond merchandise business in Alaska. In bond merchandise includes a wide variety of merchandise handled in bond, including:

1. Merchandise of foreign origin which because of its in bond nature, such merchandise is not subject to United States Customs duties; and

2. United States alcoholic beverages and tobacco products. Because of its in bond nature, such merchandise is not subject to United States Internal Revenue excise taxes.

In bond merchandise is sold only to foreign-bound travelers.

Since 1969, under contracts executed by the department, an in bond merchandise concession has been operated at Anchorage International Airport. In addition, since 1971 successive contracts have covered an in bond merchandise concession at Fairbanks International Airport. These contracts have accorded exclusive rights upon the persons contracting with the department.

In the view of the department, the results under these exclusive contracts have been successful for the state, in that they have provided substantial revenue airport operations. Recently, however, legal questions have been raised concerning the granting of these exclusive contracts. It is the purpose of Senate Bill No. 824 to resolve once and for all any such legal questions, and thereby to ensure that the state is able to continue to enjoy the substantial benefits resulting from exclusive in bond contracts.

The Supreme Court of the United States has held that, under the "state action" doctrine, conduct that is (1) clearly articulated and affirmatively expressed as state policy, and (2) actively supervised by the state, is immune from the operation of the federal antitrust laws. Senate Bill No. 824 is designed to ensure that such immunity exists with regard to the establishment and operation of in bond merchandise businesses at international airports in the State of Alaska, including the long-standing policy of exclusive rights and contracts in this field. Thus, the bill clearly and affirmatively expresses that it is the policy of the State of Alaska that solicitations of sale, sales and deliveries of in bond merchandise at the state's international airports be made only pursuant to exclusive contract; the bill specifically provides that only a single contractor shall be allowed to offer to sell, sell and deliver in bond merchandise at each international airport, and that the department shall not permit, nor confer any right upon, any other person to offer to sell, sell or deliver in bond merchandise at any international airport.

Accordingly, this bill is designed to ensure that the in bond merchandise business is protected by the "state action" immunity. Moreover, Senate Bill No. 824 is specifically intended to, and does, provide an express immunity and exemption from the operation of Alaska's antitrust laws.

In short, this bill will allow the present and future exclusive in bond concessions to operate without fear of such legal attacks.

Payments for the right to sell and deliver in bond merchandise to foreign-bound passengers at international airports go to the International Airports Revenue Fund. These payments comprise a substantial portion of the monies directed to the Fund, and therefore are a major factor in defraying international airport operating expenses, supporting international airport improvement programs and securing international airport revenue bonds. Absent the conferral of exclusive rights upon the in bond contractor at each international airport, this flow of revenue would be substantially reduced. The in bond concession payments are largely dependent upon the amount of in bond merchandise business done at the state's international airports. And, it is our view that maximization of such business is contingent upon the granting of exclusive rights to the contractor at each international airport; allowing any other person to offer to sell, sell or deliver in bond merchandise at any international airport would substantially impair the in bond business in Alaska and accordingly, reduce the state's revenues.

Analysis of SB 824 - "An Act relating to sale and delivery of an in bond merchandise at international airports; and providing for an effective date."

Introduced by Senate Rules Committee by request of the Governor.

This bill specifically provides for the granting of exclusive contracts for in bond concessions at the international airports. Recently legal question were raised concerning the granting of these exclusive contracts. However, the US Supreme Court and other courts have indicated that these legal questions can be resolved through state legislation that:

1. makes it clear that the granting of exclusive contracts furthers an important state policy.
2. provides that the state have active supervision and oversight on contractor's activities.

SB 824 specifically does provide an expressed immunity from antitrust laws.

Section 1. Legislative Findings. This section expresses the state benefits for having exclusive contracts for in bond merchandise concessions in the international airports. Primarily, it is an important source of revenue. (approx. $5.3 million) The findings specifically list its relationship to Alaska's tourism industry. This section also points out that Alaska is presently under exclusive contract and this would make that practice "legal".

Section 2. Amends AS 02.15 by adding the new section that allows the DOTPF to enter into exclusive contract and may not permit any other persons to sell in bond merchandise at international airports. It provides for successive contracting and for offering of contracts by competitive bidding based on considering the (1) safe and effecient operations, (2) whatever generates maximum revenues for state, (3) maintenance of quality merchandise and services. It also requires the department to supervise these operations by developing and implementing guidelines for review.

Section 3 AS 02.15.210.This section presently does not allow for exclusive rights in the airport. The selling of in bond merchanidise would be excluded from this section i.e. exclusive contracts would be allowed.

Section 4 Criteria is listed for what can be considered cargo.

General comments on SB 824---

I spoke with Bert Wagnon of DOTPF in Anchorage. In response to my questions of why revenues would be maximized if have only one concession as opposed to two, he said that it was necessary to consider the physical layout of the airport. He felt that it worked better. Passengers only have an hour or so to shop and if there were two concessions this would "confuse" the people who might want to shop for the best deal and consequently buy less goods thus reducing gross receipts and thus reduce state revenues.

I still don't see how granting one concession maximizes your revenues. My economic background tells me that having two concessions enhances your sales and certainly would not decrease sales. As a matter of fact, I think two concessions would give more people a chance to buy; be more accessible; less waiting for service.

Mr. Wagnon indicated that the "market is different". It has to be developed. He felt one operator can do a better job of convincing patrons that his prices are as good or better than those in Europe. He felt it was important to have a cohesive market.

He also felt that if there is an exclusive contract there would be a higher quality of merchandise; again he said two vendors would confuse people.

Later Mr. Wagnon added that he felt LIZ operated in semi-legal manner..tricks. He also thought they were "skunks". He added that it is easier for the department to oversee one concession. He commented that he has not had pleasant dealings with LIZ and that they have caused the department problems.

I asked why Hawaii had 20% payment on receipt and Alaska 13 3/4%. He said Hawaii has a different market. People are there longer periods of time. (To me this would mean they would buy more merchandise and the % would be less because the total would be more..) He also said that Hawaii's contract was recent whereas Alaska's is older. He does expect it to be higher when new contract. I wonder why that portion of contract was not renegotiated.

Personally this all sounds too cozy for me. This is mega bucks involved. I really fail to see how revenues would be reduced it there is competition and free enterprize. You have a captive audience already and they are going to buy. Also this exclusive contract had been the practice and in violation of antitrust laws and so this bill basically covers their (only) practice. Duty Free has a big business here.

TRANSPORTATION COMMITTEE HEARINGS

DATE: J 4/14/82
LOCATION: 112
SUBJECT: SB 824 - duty fre
SB 846 anti fra

NAME	REPRESENTING	ADDRESS	PHONE	HERE TO TESTIFY	HERE TO OBSERVE
Bob WARD	DOT/PF			824	
Susan Sullivan	Gov.'s Comm. / Empl. of the Hcpd.			SB 846	
Earl Fullinglim	"			SB 846	
Robert P. Greenwald	Health + Social Services	Pouch H04B	3370	~~[illegible]~~	84
Jean-Baptiste Maas	Protection + Advocacy for Developmentally Disabled	419 ⊗ 6th Rm 316	586-9865	846	
Martin A. Farrell	DFS	Anch	279-8591	SB 824	
Helen Beirne	Com. DHSS		465-3030		