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SENATE TRANSPORTATION COMMITTEECOMMITTEE REPORT - SB 824

The Transportation Committee has considered 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 any legal questions once and for all with regard to all existing and future exclusive in bond contracts. In particular, 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 other person to offer to sell, sell or deliver in bond merchandise at any international airport. In addition, the bill requires the issuance of exclusive in bond contracts in the future, and requires that the Department actively supervise the operations under each exclusive in bond contract. SB 824 is also specifically intended to, and does, provide an express immunity and exemption from the operation of Alaska's antitrust laws A.S. 45.50.562 et. seq., and any other applicable state laws, with regard to the subject matter of the bill. See e.g., Section 1(e) of the bill. By providing these

immunities and exemptions, 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 benefits described above.

The Committee also intends that the exclusive rights mandated under Section 2 of this bill do not apply to deliveries of in bond merchandise as cargo to airlines. 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 and 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 include these two 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. To qualify as cargo, all of these criteria must be satisfied.

Dated March _____, 1982.

Senator Ray
Chairman

Senator

Senator

Senator

Senator

STATEMENT OF BERTRAM L. WAGNON
BEFORE SENATE TRANSPORTATION COMMITTEE
ON SENATE BILL NO. 824

My name is Bertram L. Wagon. 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.

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February 26, 1982

Patrick P. Ryan
Deputy Commissioner
Maintenance and Operations
State of Alaska, Department
of Transportation & Public Facilities
Pouch 6900
Anchorage, Alaska 99502

Dear Mr. Ryan:

We represent Liz Duty Free, Ltd. My client is interested in bidding on the duty free space in the new International Terminal which is to be advertised for bid in 1983. We request that our client be placed on the bidders' list and that we be provided with the specifications and blue-prints, if available.

At our client's request we respectfully suggest that the State of Alaska consider having two duty free concessionaires at the airport. If the State selects only one duty free concessionaire it is possible that it may be violating anti-trust laws. The advantage of two concessionaires is that there would be competition between them, the State might achieve higher revenue because of the ability to have more sales and the international traveler would have a choice of duty free shops. I would assume that the space available to each concessionaire would be approximately the same.

I would prefer the opportunity to discuss this with you at your earliest convenience. Thank you very much for your cooperation.

Sincerely,

GROH, EGGERS, ROBINSON,
PRICE & JOHNSON

:hf

Clifford J. Groh

Free Hand OK'd in Duty-Free Permits

By Russ Lynch
Star-Bulletin Writer

Decisions on whether competition should be allowed in the airport duty-free sales business should be made by the state Department of Transportation, a legislative committee decided yesterday.

Rather than vote out a bill that would have continued the present allowance for a maximum of two duty-free concessions at Honolulu Airport with no off-airport competition, the Senate Transportation Committee opted to leave it up to the department.

Sen. Alary George, R-3rd Dist. (Windward Oahu), chairman of the Transportation Committee, told the Star-Bulletin the committee wanted to give the department the flexibility to make quick responses to events such as last year's decision of Host International to drop out after only eight months of trying to compete with long-time airport concessionaire Duty Free Shoppers Ltd.

The department should be able to react on its own to court antitrust decisions, the fragility of the tourism business, decisions by foreign governments, such as changes in the allowance for personal imports, and other circumstances, she said.

The Legislature must enact a new law this session because the old one, which allowed a maximum of two airport duty-free concessions and no off-airport duty-free permits, has a "drop dead" clause that after June 30 would leave the state with no control over the duty-free business.

THE COMMITTEE version now goes to the Senate Ways and Means Committee and a similar bill is being processed in a House committee.

Legislators in both houses are grappling with the sensitive issue of what to do about a business that, though it amounts to a protected monopoly, produces more than 40 percent of the revenues of the entire state airport system and the George committee report is only one of the options to be considered.

It would allow the Transportation Department to issue permits for bonded warehouses away from the airports that could sell duty-free goods and deliver them to departing foreign-bound passengers.

However, certain guidelines would have to be met first. For example, the department would have to consider its own revenue requirements, whether the return from fees paid by licensees is the maximum available, and whether the duty-free business and the tourist and airline businesses are being enhanced by its decision.

By leaving it to the department to decide what form duty-free sales should take, George's committee did not answer the key argument in the Legislature between proponents of the current airport-only and maximum-of-two-concessions system and those who want to run off-airport operations.

DUTY-FREE SHOPPERS, which had sales of more than \$150 million in Honolulu in 1980, the year before the Legislature allowed Host to come in and compete, has argued vigorously that off-airport competition would invest little in Hawaii, employ very few people and take the cream of the sales — the liquor, tobacco and perfume business which is the basis of duty-free sales everywhere.

The report, said Duty Free Shoppers, would be a reduction in revenues to the state, a drop that would have to be made up by the others who pay for rights to use the airport, the airlines.

Even if the other operators paid the same 20 percent fee to the state as Duty Free Shoppers, that company says, state revenues would still drop because the other operators do not



DUTY-FREE BROWSING—After showing plane tickets at the door, foreign-bound travelers, mostly Japanese, check merchandise in Duty Free Shoppers' bonded store in Waikiki. —Star-Bulletin Photo by Terry Luke.

have the same skill in handling sales with each individual customer.

Two companies seeking to operate off-airport bonded warehouses and deliver duty-free goods to foreign-bound travelers at the airport argued just as vigorously that the more people there are selling, the greater the sales will be and the greater, therefore, the revenues to the state.

In the background, the Legislature, as it did last year, has to battle with charges of fostering a monopoly by protecting Duty Free Shoppers, but at the same time faces the highly sensitive choice of possibly damaging a business the state has lived with comfortably for 15 years.

AND THE LEGISLATURE also must weigh the revenue question seriously because Duty Free Shoppers by itself pays in more than 40 percent of the fees coming into the total statewide airport system.

In 1980, for example, Duty Free Shoppers paid the state more than \$30 million for the right to operate the airport since and its own off-airport duty-free shop on Royal Hawai-

ian Avenue in Waikiki.

The company guarantees the state a minimum of \$20 million a year and pays the state 20 percent of its gross revenues.

One of the would-be competitors, Liz Duty Free, headquartered in France, has said it would pay only what it thought state services were worth and it probably would not amount to 20 percent.

But another challenger, a Honolulu firm called Maison Canon, has said it is more than willing to pay 20 percent of the top.

The bill as redrafted by George's committee would require anyone going into the duty-free business to pay the same 20 percent fee as Duty Free Shoppers does.

Honolulu businessman George Corniotis, president of Maison Canon, pushed for opening the business up to competition.

The original draft of the bill, he told George's committee last week, was "clearly intended to keep us out of the duty-free business" by continuing to rule out off-airport permits.

Star-Bulletin

The THURSDAY REPORT

A weekly business feature section

Honolulu
March 4, 1982

THE TRANSPORTATION Committee's own study, Corniotis said, described the duty-free business as expanding and he said permits would increase revenues to the state.

An attorney for Liz Duty Free had testified that the state actually could not stop his client from setting up a bonded warehouse since all it needs is U.S. Customs approval to do that.

And the state would risk running afoul of laws against interference in international commerce if it stopped someone delivering goods to a departing aircraft, he said.

In a recent interview, Robert Futoran, board chairman and chief executive officer of Duty Free Shoppers, repeated the case he made to the Legislature and added some points in favor of the status quo — a maximum of two operators.

He said that since Customs has made it clear that under new federal cutbacks it will not have enough staff to supervise another airport operation, the state is effectively kept to one duty-free concession, he said.

But he said antitrust cases have shown that the state can do that if it chooses.

Futoran said the off-airport operators would go for the "LTP" — liquor, tobacco and perfume — sales and do most of the selling to travelers, especially the Japanese, through catalogs.

His ORGANIZATION through experience has built up a specialized sales staff able to generate greater sales from each customer and since the state gets 20 percent of everything that comes into the cash register, the state would lose if sales decline.

Anyway, Futoran said, Duty Free Shoppers already has competition. Waikiki these days is full of stores selling the foreign-made specialty items that make up the bulk of Duty Free Shoppers' non-LTP business, such as Gucci handbags and Cartier watches.

And these stores are competing by offering discounts. Duty Free Shoppers sometimes has to adjust its own prices downward to match a retail discount price in a store nearby, he said.

Some of these people are "very terrific competitors," he said.

But most of all, Duty Free Shoppers is arguing that it deserves to be protected because it has served the state well since getting into the business here in 1967. The company employs 1,400 people in Hawaii, pays taxes like any other business and participates in community activities.

"What's under attack is a company that has been a good citizen of Hawaii for years," Futoran said.

FTE

HSTA says bombing, threats mishandled

The Hawaii State Teachers Association is objecting to the way Castle High School administrators responded when a small explosive device went off at the school Monday morning and when bomb threats were phoned in last week.

The room was empty when the explosion occurred minutes before special education students were scheduled to use the room. Kaneohe police were called and reported \$5 in damages.

The teachers' union, which referred to the incident as "life-threatening," said the blast blew apart a half-inch-thick plywood board and threw large wooden splinters around the room.

At a press conference yesterday, union officials said the administration did not order an evacuation or search and the teacher and students remained in the classroom after the explosion. HSTA President Jim Williams said the union has asked Schools Superintendent Donnis Thompson to investigate the incident and take disciplinary action if necessary.

Williams also said the union may file a grievance in the matter.

Castle Principal Richard Hadama said he could not discuss the matter because of the possible grievance, but said "under the circumstances, what we did was prudent."

He said there was no need to evacuate because of the bomb threats since school was out and students were already leaving or gone.

Committee recommends change in duty-free setup

By Sandra Oshiro
Advertiser Capitol Bureau

The state Transportation Department should have the "flexibility" to allow as many duty-free operations at Honolulu Airport as it sees fit, a key legislative committee is recommending.

The Senate Transportation Committee also indicated this week that it doesn't think the state should continue to limit the number of duty-free operators to two, as is done now.

In a report on its recommendation, the committee concludes that because of various factors in setting up duty-free operations, keeping the present situation would, in effect, give one operator a monopoly.

The committee concludes that a monopoly would result because only Duty Free Shoppers continues to operate under a contract to the state and there aren't enough federal customs officials to take care of a second concessionaire.

Host Duty Free had operated

under state contracts as well, but pulled out of the arrangement because it wasn't making enough money.

Lawmakers agreed last year to keep the "duopoly" for one year until studies could be conducted on whether the state would be hurt if more operators were allowed access to the airport.

The controversy over the number of duty-free operators is important to the state because the contract with Duty Free Shoppers brings in roughly \$35 million in guaranteed fees each year.

The money goes into an airport improvement fund and frees the state and airlines from paying out huge sums for runway terminals and other building projects.

Transportation officials worry that too many duty-free operations might deplete the amount of revenues paid to the state, and they are asking lawmakers to continue to limit the number of duty-free operations to two.

SD story

TO
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AND

spokesman George Herman said nothing was issued based on information from Barbers Point Elementary school principal William Cupit. Cupit said yesterday he understood from talking to the mother that it was a case of poisoning, although doctors could not confirm that the drug had come from the school.

questionable stickers are reported to be the shape of blue stars or Walt Disney characters and the forms can be referred to the skin or tongue.

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STANDING COMMITTEE REPORT NO. 208-82

Honolulu, Hawaii
MAY. 3, 1982

Honorable Richard S. H. Wong
President of the Senate
Eleventh State Legislature
Regular Session of 1982
State of Hawaii

Sir:

RE: S.B. No. 2261-82

Your Committee on Transportation to which was referred
S.B. No. 2261-82 entitled:

"A BILL FOR AN ACT RELATING TO TRANSPORTATION",

begs leave to report as follows:

The purpose of this bill is to amend Section 261-7(a) of the Hawaii Revised Statutes, which provides that until June 30, 1982, the department of transportation may not enter into contracts for the sale and delivery of in-bond merchandise at Honolulu International Airport with more than two concessionaires.

Your Committee heard testimony from the department of transportation, Duty Free Shoppers, Ltd., the Chamber of Commerce of Hawaii, and the Honolulu Airlines Committee supporting the bill and emphasizing the importance of duty-free revenues to the health of the Airport Special Fund. Representatives from Maison Canon, Ltd., spoke against the bill, pointing out that the study done by Coopers & Lybrand for the department suggested that the present duopoly is not the best way to maximize airport revenues and that the history of the duty-free business indicates it is dynamic and expanding.

The primary concern of your Committee is the enhancement of duty-free revenues to the State. These revenues are affected by the vagaries of local, national, and international economic fluctuations. Further, the duty-free business is an unpredictable one, depending on such factors as foreign government customs regulations and the traditions and buying habits of foreign travelers. Rather than tie the hands of

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the department by specifying a particular system for the operation of duty-free contracts, your Committee feels that the department should be given the flexibility to change the system at the airport in response to changing conditions and circumstances. Your Committee was particularly persuaded of this need for flexibility by a letter received last year from the Federal Trade Commission which stated:

We suggest that ... legislation that permits DOT to determine the number of airport stores and permittees upon consideration of foreign tourism, airport conditions, store operations, and revenue needs might satisfy the purposes of the proposed legislation and yet retain for the state the flexibility to meet future changes in conditions. If, for example, the airport were expanded to allow additional stores or if prices charged were found to be excessive, additional concessions permits could be granted. Additional concessions could be granted upon expiration of the then current concessions in order to avoid diminishing the value of the concessions already operating. Only administrative action by DOT would then stand in the way of potential competitors for duty-free sales. The state itself would be freer to respond to changing conditions of tourism, airport use, store operations and revenue needs.

In providing the department with this flexibility, your Committee feels that guidelines should be given to the department so that in awarding contracts for the sale and/or delivery of in-bond merchandise at HIA, consideration will be given to revenue requirements, maximization of revenues, the protection and enhancement of the duty-free business and the tourist industry in the State, the health of the airline industry, the availability and capacity of airport facilities, the ability of the applicant to comply with the State rules and regulations concerning sale and/or delivery of in-bond merchandise, and the reputation, experience and financial capability of the applicant.

To further protect the State's duty-free revenues, your Committee believes that the department should not enter into any contracts for sale and/or delivery of in-bond merchandise unless the applicant agrees to pay twenty per cent of gross receipts, the same percentage the present concessionaire is paying. This restriction should apply at least until June 30, 1988, at which time the present concessionaire's contract will expire.

Presently, the department is required to supervise the operations of duty-free contractors because of the restriction on the number of contracts into which the department can enter. Your Committee feels that while this supervision must continue if the department elects to have only one contractor, in the event that there is more than one contractor, then the forces of competition in the marketplace should be allowed to regulate the industry and no departmental supervision should be required.

Your Committee has heard testimony to the effect that there is not sufficient customs personnel presently available to allow a second concessionaire at the airport. Thus, if we continue to operate under the current statute which allows a duopoly, it will almost certainly mean continuation of the present monopoly for the foreseeable future. The Coopers & Lybrand study indicates that of the various options that may be available to the department, a monopoly is a poor choice for maximizing revenues.

Your Committee has amended the bill to add a findings and purpose section, to provide the department with guidelines for granting contracts to duty-free operators, to require that all duty-free operators pay twenty per cent of gross receipts through June 30, 1988, and to relieve the department of supervision of duty-free operations should it elect to have more than one contractor.

Your Committee on Transportation is in accord with the intent and purpose of S.B. No. 2261-82, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2261-82, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted,

Mary George

MARY GEORGE, Chairman

excused

DUKE T. KAWASAKI, Vice Chairman

Steve Cobb

STEVE COBB, Member

Ann Kobayashi

ANN KOBAYASHI, Member

excused

JOSEPH T. KURODA, Member

W. Buddy Soares

W. BUDDY SOARES, Member

excused

GEORGE H. TOYOFUKU, Member

(To be made one and twelve copies)

THE SENATE B-12..

.....ELEVENTH..... LEGISLATURE, 19⁸².....

STATE OF HAWAII

S.B. NO.

2261-82
S.D. 1

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Findings and purpose. The legislature finds
2 that the State of Hawaii receives substantial revenues from
3 the sale and delivery of in-bond merchandise to foreign-bound
4 travelers departing from Honolulu International Airport. These
5 revenues are expended by the department of transportation to
6 provide for the orderly administration of the airport, which in
7 turn benefits the airline industry, and ultimately supports
8 and bolsters tourism in the State. Thus, the necessity and
9 importance of maintaining a substantial and stable flow of
10 in-bond merchandise revenue cannot be underestimated.

11 Rapid economic fluctuations locally, nationally, and
12 internationally have affected and will continue to affect
13 airport operations. It is the purpose of this Act to provide
14 the department with the flexibility to meet future changes in
15 the economic sphere and to respond to such changes effectively,
16 efficiently, and in a timely fashion in order to minimize any
17 adverse impact on the flow of in-bound merchandise revenue which
18

1 is vital to the administration of the airport.

2 SECTION 2. Section 261-7, Hawaii Revised Statutes,
3 is amended by amending subsection (a) to read:

4 "(a) Under department operation. In operating an
5 airport or air navigation facility owned or controlled by
6 the department of transportation, or in which it has a
7 right or interest, the department may enter into contracts,
8 leases, licenses, and other arrangements with any person:

- 9 (1) Granting the privilege of using or improving
10 the airport or air navigation facility or any
11 portion or facility thereof or space therein
12 for commercial purposes;
- 13 (2) Conferring the privilege of supplying goods,
14 commodities, things, services, or facilities
15 at the airport or air navigation facility;
- 16 (3) Making available services, facilities, goods,
17 commodities, or other things to be furnished
18 by the department or its agents at the airport
19 or air navigation facility; or
- 20 (4) Granting the use and occupancy on a temporary
21 basis by license or otherwise any portion of
22 the land under its jurisdiction which for the
23 time being may not be required by the department
24 so that it may put the area to economic use and
25 thereby derive revenue therefrom.

1 All the arrangements shall contain a clause that the
2 land may be repossessed by the department when needed
3 for aeronautics purposes upon giving the tenant tempo-
4 rarily occupying the same not less than thirty days'
5 notice in writing of intention to repossess.

6 Except as otherwise provided in this section, in
7 each case mentioned in paragraphs (1), (2), (3) and (4),
8 the department may establish the terms and conditions
9 of the contract, lease, license, or other arrangement,
10 and may fix the charges, rentals, or fees for the
11 privileges, services, or things granted, conferred, or
12 made available, for the purpose of meeting the expen-
13 ditures of the statewide system of airports set forth
14 in section 261-5(a), which includes expenditures for
15 capital improvement projects approved by the legislature.
16 Such charges shall be reasonable and uniform for the
17 same class of privilege, service, or thing.

18 [The department shall enter into separate contracts
19 with no more than two persons ("contractors") for the
20 sale and delivery of in-bond merchandise at Honolulu
21 International Airport, in the manner provided by law.
22 Each such contract shall confer the right to operate
23 and maintain commercial facilities within the airport
24 for the sale of in-bond merchandise and the right to
25 deliver to the airport in-bond merchandise for sale to

1 departing foreign-bound passengers.

2 The department shall grant such contracts pursuant
3 to the laws of this State and may take into consideration:

4 (1) The payment to be made on in-bond merchandise
5 sold at Honolulu International Airport and on
6 in-bond merchandise displayed or sold elsewhere
7 in the State and delivered to the airport;

8 (2) The ability of the applicant to comply with
9 all federal and state rules and regulations
10 concerning the sale and delivery of in-bond
11 merchandise; and

12 (3) The reputation, experience, and financial
13 capability of the applicant.]

14 The department may enter into contracts, leases,
15 licenses, and other arrangements with any person ("contractor")
16 for the sale and/or delivery of in-bond merchandise at
17 Honolulu International Airport, in the manner provided
18 by law. In granting such contracts, leases, licenses, and
19 other arrangements, the department shall take into consideration:

20 (1) The revenue requirements of the department;

21 (2) The number of contractors, lessees and/or

22 licensees necessary to insure that the

23 department receive the maximum revenue available

24 from the sale and/or delivery of in-bond merchandise;

25

- 1 (3) The protection and enhancement of the duty
- 2 free business in the State of Hawaii;
- 3 (4) The protection and enhancement of the tourist
- 4 and airlines industries in the State of Hawaii;
- 5 (5) The availability and capacity of airport facilities;
- 6 (6) The ability of the applicant to comply with all
- 7 state rules and regulations concerning the sale
- 8 and/or delivery of in-bond merchandise; and
- 9 (7) The reputation, experience, and financial
- 10 capability of the applicant..

11 During the period January 1, 1981, through June 30, 1988,
12 the department shall confer no right upon any person to sell
13 or deliver in-bond merchandise at Honolulu International
14 Airport unless such person agrees to pay a percentage fee
15 equal to twenty per cent of the person's monthly gross receipts
16 derived from selling and/or delivering in-bond merchandise
17 to the airport.

18 In the event that the department elects to have a single
19 contractor, [The department] it shall actively supervise the
20 operation of [the] such contractor[s] to insure its effectiveness.
21 The department shall develop and implement such guidelines as
22 it may find necessary and proper 'o actively supervise the
23 operations of such contractor[s], and shall include guidelines
24 relating to the department's review of the reasonableness
25 of the [contractors'] contractor's price schedules, quality

1 of merchandise, merchandise assortment, operations, and
2 service to customers.

3 In the event that the department elects to have more
4 than one contractor, then the forces of competition in the
5 marketplace will be allowed to regulate the industry and no
6 departmental supervision shall be required.

7 Apart from the contracts, leases, licenses, and other
8 arrangements described above, [during the period ending
9 June 30, 1982,] the department shall confer no right upon
10 any person to offer to sell, sell, or deliver in-bond
11 merchandise at Honolulu International Airport[.]; provided
12 that nothing in this subsection shall be construed so as to
13 impede the flow of duty-free items consigned as cargo to
14 foreign destinations."

15 SECTION 3. Section 5, Act 243, Session Laws of Hawaii
16 1981, which provides for the expiration of said Act 243 on
17 June 30, 1982, is repealed.

18 SECTION 4. Statutory material to be repealed is bracketed.
19 New material is underscored.

20 SECTION 5. This Act shall take effect upon its approval.

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**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 2, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the sale and delivery of in-bond or duty-free merchandise at state international airports.

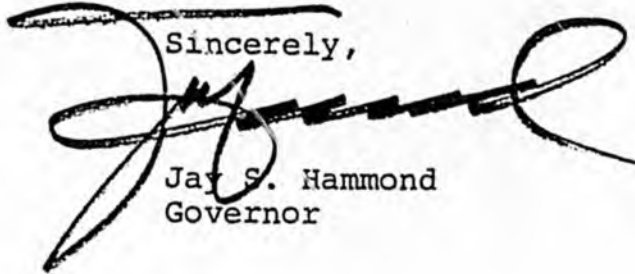
As you may know, for years the state has entered into exclusive contracts which grant the privilege of using commercial space at state-owned and -operated international airports for the sale and delivery of duty-free merchandise to foreign-bound passengers. Under these contracts, the state receives substantial revenues for the International Airport Revenue Fund. Last year, for example, the fund received approximately \$5,300,000 from these contract payments. If this source of revenue is diminished, the lost revenues will have to be made up from other sources, such as increased landing fees and fuel flowage fees which would be passed on by the airlines to passengers in the form of higher fares. The obvious detrimental effects of these increases on Alaska's tourism industry could be serious.

Recently, legal questions have been raised concerning the granting of these exclusive contracts. Decisions from the United States Supreme Court and from other courts indicate 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, and (2) provides a level of oversight by the state on the activity performed under the exclusive contracts.

This bill includes legislative findings that clearly express the important state benefits that are fostered through exclusive contracts for the sale and delivery of duty-free merchandise. Additionally, the bill directs that the Department of Transportation and Public Facilities shall grant exclusive contracts for the sale and delivery of duty-free merchandise at state international airports. The bill also provides guidelines for the department's oversight of the contractors' activities.

Since I am in favor of fostering competition, in this particular instance I am convinced that exclusive contracting is clearly in the best interests of the state only after competitive bidding. This bill will resolve once and for all any legal questions surrounding the state's granting of exclusive contracts for in-bond merchandise at airports.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Jay S. Hammond', is written over the typed name below.

Jay S. Hammond
Governor

02274 NL ANCHORAGE AK 994 03-25 0641P AST
PMS SEN BILL RAY
JUNEAU AK

ON MARCH 2, 1982 THE SIX (6) LOBBYISTS EMPLOYED BY DUTY FREE SHOPPERS LTD (A CORPORATION REGISTERED IN THE NETHERLANDS ANTILLES AND HEADQUARTERED IN HONGKONG THUS AVOIDING US CORPORATE TAXATION) PREVAILED ON THE ADMINISTRATION OF THE STATE OF ALASKA TO REQUEST INTRODUCTION OF SB 824 QUOTE AN ACT RELATING TO THE SALE AND DELIVERY OF IN BOND MERCHANDISE AT INTERNATIONAL AIRPORTS...UNQUOTE INTO THE ALASKA STATE SENATE.

THE BILL PROVIDES THAT ONLY AN AUTHORIZED CONCESSIONAIRE SHOULD BE ALLOWED TO SELL AND DELIVER IN BOND MERCHANDISE AT INTERNATIONAL AIRPORTS; THAT SUCH CONCESSIONAIRE SHOULD BE GRANTED AN EXCLUSIVE CONTRACT BY THE STATE; AND THAT THE EXCLUSIVE CONTRACT WHICH CURRENTLY EXISTS SHOULD BE CONTINUED IN THE FUTURE.

THE BILL FAILS TO PROVIDE FOR COMPETITIVE BIDDING ON THIS EXCLUSIVE CONTRACT.

THE BILL ERRONEOUSLY ASSUMES THAT SUCH COMPETITION WOULD DIMINISH THE LEVEL OF REVENUES PRESENTLY DERIVED BY THE STATE.

THE BILL WOULD RIVE THE ONLY CORPORATION CAPABLE OF PROVIDING SUCH COMPETITION OUT OF BUSINESS.

THE BILL WOULD INCREASE THE STATE OPERATING BUDGET OF THE DEPT OF TRANSPORTATION.

THE BILL WOULD RESULT IN DUPLICATION OF CONSUMER PROTECTION ENFORCEMENT AUTHORITY AND INCREASE THE NUMBER OF STATE EMPLOYEES REQUIRED FOR SUCH ENFORCEMENT.

THE BILL IS IN VIOLATION OF THE PROVISIONS OF THE SHERMAN ANTI TRUST LAW 15 USC SECTION 1 AND 2.

THE BILL WOULD RESULT IN THE LOSS OF JOBS FOR ALASKANS.

THE BILL WOULD ESTABLISH A MONOPOLY.

SB 824 PROPONENTS ARGUE THAT UNLESS THE STATE CONTINUES ITS PRESENT RELATIONSHIP OF EXCLUSIVITY WITH THE CURRENT HOLDER OF THE DUTY FREE FRANCHISE AT FAIRBANKS AND ANCHORAGE INTL AIRPORT REVENUES DERIVED BY THE STATE FROM THIS SOURCE WOULD DIMINISH RESULTING IN INCREASED OPERATING COSTS WHICH WOULD HAVE TO BE BORNE BY THE AIRCARRIERS SERVING THOSE FACILITIES FURTHER RESULTING IN THOSE COSTS BEING PASSED ON TO THE PASSENGERS ALL OF WHICH WOULD RESULT IN DIMINISHED NUMBERS OF VISITORS TO ALASKA.

NOTHING COULD BE FARTHER FROM THE TRUTH.

THE CURRENT HOLDER OF THE EXCLUSIVE CONTRACT WITH THE STATE FOR DUTY FREE OPERATIONS AT INTL AIRPORTS PAYS THE STATE 13.75 PERCENT OF GROSS SALES ON DUTY FREE MERCHANDISE WHICH RESULTED IN DLRS5.4 MILLION IN REVENUES PAID TO THE STATE LAST YEAR. THIS PERCENTAGE OF GROSS REVENUES IS GROSSLY UNDER COMPETITIVE MARKET RATES. IN HONOLULU FOR EXAMPLE THE FRANCHISEE PAYS 20 PERCENT OF THE GROSS TO THE STATE OF HAWAII. THUS IN FACT THE STATE OF ALASKA IS PRESENTLY LOSING MILLIONS OF DOLLARS A YEAR UNDER THE CURRENT NON COMPETITIVE SITUATION. LAST YEAR HAD THE STATE RECEIVED A 20 PERCENT RETURN AS DID HAWAII AN ADDITIONAL DLRS2.4 MILLION WOULD HAVE GONE INTO THE STATE TREASURY. SMALL WONDER THAT THE PRESENT FRANCHISEE CAN AFFORD TO HIRE 6 LOBBYISTS TO ATTEMPT TO MAINTAIN THEIR EXCLUSIVE SWEETHEART ARRANGEMENT.

TWO AUTHORIZED VENDORS OF DUTY FREE MERCHANDISE IN ALASKA

WOULD ACTUALLY INCREASE REVENUES DERIVED BY THE STATE BY FIRST CAUSING THE PERCENTAGE OF GROSS SALES TO MORE ACCURATELY REFLECT TRUE MARKET RATES. SECONDLY POINTS OF SALE AT THE INTL AIRPORT TERMINALS WOULD BE INCREASED EXPOSING THE CONSUMER TO MORE OPPORTUNITIES TO BUY. THIRDLY LIZ DUTY FREE HAS ALREADY NEGOTIATED THREE ADDITIONAL SHOWROOMS IN DOWNTOWN ANCHORAGE AND PLANS TO EXPAND THESE OPERATIONS IN OTHER MAJOR TOURIST CITIES THROUGHOUT THE STATE FURTHER INCREASING EXPOSURE OPPORTUNITITES. FOURTH THE JOBS CREATED BY THIS NEW OPERATION WILL NUMBER 50 ON MAY 1, 1982 AND IF ALLOWED TO COMPETE AT THE NEW INTERNATIONAL TERMINAL WILL EXCEED 150 BEFORE THE END OF THE YEAR ALL OF WHICH WILL GO TO ALASKANS. FINALLY THE SALES MOTIVATION AND EFFORTS WILL INCREASE IF THE PRESENT MONOPOLY IS ELIMINATED - A FACT READILY ATTESTED TO BY PRESENT SUCCESSFUL SALESPERSONS IN ANY COMPETITIVE LINE.

THE BILL IF ENACTED, WOULD NOT ONLY BE A GROSS INFRINGEMENT ON THE LEGAL RIGHTS OF LIZ DUTY FREE LTD, IT WOULD EFFECTIVELY DRIVE THIS CORPORATION OUT OF BUSINESS IN ALASKA LEAVING THE STATE AT THE MERCY OF A SINGLE CONCESSIONAIRE. INDEED LIZ DUTY FREE IS THE ONLY POTENTIAL COMPETITOR TO THE PRESENT CONCESSIONAIRE IN ALASKA AND ACCORDING TO THE STATE DEPT OF TRANSPORTATION WOULD BE THE ONLY FIRM WITH THE REQUIRED THREE YEARS OF EXPERIENCE IN DUTY FREE OPERATIONS WHICH COULD COMPETE FOR THE STATE CONTRACT -- COULD COMPETE THAT IS ONLY IF THE BILL ALLOWED SUCH COMPETITION WHICH IT PRESENTLY DOES NOT.

WE BELIEVE THE BILL, AS PROPOSED IS A PATENT VIOLATION OF FEDERAL ANTI TRUST STATUTES. PRIOR TO ANY FURTHER CONSIDERATION OF THE BILL, IT BEHOOVES THE LEGISLATIVE LEADERSHIP TO SEEK LEGAL OPINIONS FROM BOTH THE US DEPT OF JUSTICE AND THE STATE ATTORNEY GENERAL.

UNDER PRESENT STATE LAW, CONSUMERS ARE PROTECTED FROM FAULTY MERCHANDISE SALES, MISLEADING ADVERTISING AND FRAUD. THESE PROTECTIONS ARE ENFORCED BY THE CONSUMER PROTECTION AGENCY OF THE STATE ATTORNEY GENERALS OFFICE AND THE FRAUD UNIT OF THE ALASKA STATE TROOPERS. THE BILL IF ENACTED WOULD IMPOSE AN ADDITIONAL LAYER OF BUREAUCRACY ACTIVE IN ENFORCEING CONSUMER PROTECTION IN THE DEPT OF TRANSPORTATION AND PUBLIC FACILITIES. NOT ONLY IS THIS AN ABSURD EXPANSION WHICH WILL RESULT IN MORE STATE EMPLOYEES, IT WILL ALSO RESULT IN AN INCREASE IN THE STATES OPERATING BUDGET AND AGGREGATE DUPLICATION ALREADY INHERENT IN STATE PROGRAMS.

WHAT ALASKAN WANTS TO BE TOLD TO BUY HIS OR HER HOUSE FROM THE STATE APPROVED REAL ESTATE AGENT? SUPPOSE WE COULD ONLY BUY OUR BLUE JEANS FROM THE STORE WHICH HAD AN EXCLUSIVE CONTRACT WITH THE STATE BECAUSE SOMEONE CONVINCED THE STATE THAT THATS THE A WAY IT SHOUD BE IF STATE REVENUES ARE TO BE MAINTAINED? HOW ABOUT GETTING OUR TEETH PULLED AT THE STATE APPROVED DENTAL CLINIC? THE STATE MIGHT EVEN LIKE TO GET INTO THE BUSINESS OF GOING EXCLUSIVE WITH THE RESTUARANTS IF THEY COULD BE CONVINCED THAT THROUGH THAT APPROACH MORE REVENUES COULD FLOW INTO STATE COFFERS.

WE RESPECTFULLY REQUEST YOU, AS A MEMBER OF THE ALASKA STATE LEGISLATURE WHICH REPRESENTS THE INTERESTS OF THE PEOPLE OF ALASKA, TO OPPOSE SB 824 AND ANY BILL WHICH SEEKS TO ESTABLISH A MONOPOLY AS IT DOES.

MR EJ MILLER VICE PRESIDENT