

HB

543

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 9, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/18/96

The FINANCE Committee considered:

HB 543

HOUSE BILL NO. 543

STATE AIRPORT LAND LEASE PREFERENCE

"An Act establishing a preference when entering into state airport land leases."

recommends it be replaced with the following committee substitute CS HB 543 (FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) DOT, 4/9/96

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard Foster</i>	Foster	X			
<i>Mark Mulder</i>	Mulder	X			
<i>Frank Parrnell</i>	Parnell	X			
<i>Eric Kohner</i>	Kohner			X	
<i>Gene Theriault</i>	Theriault	X			
<i>Terry Martin</i>	Martin	X			
<i>Tom Brown</i>	Brown				X
<i>Mike Navarre</i>	NAVARRÉ				X

CHAIR'S SIGNATURE

Mark Mulder *Richard Foster*

9-LS1769R
Bannister
4/17/96

A doctd 4/18/96

CS FOR HOUSE BILL NO. 543()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state airports and air navigational facilities."

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

3 * Section 1. FINDINGS AND STATEMENT OF PURPOSE. (a) The legislature finds
4 that

5 (1) it often takes considerable commitment, time, and resources for a lessee
6 to establish a fully developed revenue-producing business or noncommercial enterprise on
7 leased land on an airport owned and operated by the state;

8 (2) a developed business or noncommercial enterprise by an airport lessee
9 produces a stable long-term flow of revenue to the local community and the state in the form
10 of income from jobs created and taxes paid;

11 (3) a developed business by an airport lessee usually has established a positive
12 reputation with its clientele that enhances future tourism and commerce in this state;

13 (4) a developed business by an airport lessee is better positioned to generate
14 more federal passenger entitlement money for the airport and the state;

15 (5) a developed business or noncommercial enterprise on an airport land lease

1 generally maximizes the use of the airport infrastructure, and this maximization makes the
2 airport's operation more economical; and

3 (6) providing a right and option to lessees of airport land to continue to lease
4 the land will encourage and enhance compliance with state law and airport leases, and this
5 compliance will benefit the overall operations of the state airport system.

6 (b) It is the purpose of the legislature to preserve and establish, for qualifying land
7 lessees who are in compliance with state law and airport leases, a right, consistent with sound
8 airport planning, to continue to lease the land in order to continue their businesses and
9 noncommercial enterprises and in order to promote a strong aviation industry in this state with
10 long-term benefits to local communities, the airports, and the state.

11 * Sec. 2. AS 02.15.090 is amended to read:

12 Sec. 02.15.090. OPERATION AND USE PRIVILEGES. (a) In operating an
13 airport or air navigation facility owned or controlled by the state, the department may
14 enter into contracts, leases, and other arrangements covering periods not exceeding 55
15 years with a person, municipality, or the United States, granting the privilege of using
16 or improving an airport or air navigation facility or a portion of it or space in it for
17 commercial, governmental, or other public purposes, including private aviation uses
18 [PLANE TIE DOWN]; or conferring the privilege of supplying goods, commodities,
19 services, or facilities at an airport or air navigation facility. The department may
20 establish the terms and conditions and fix the charges, rentals, and fees for the
21 privileges or services that are reasonable and uniform for the same class of privilege
22 or service. Charges, rentals, or fees authorized by this subsection may be fixed for the
23 international airports by order of the commissioner or by negotiated or competitively
24 offered contract. Notwithstanding AS 37.10.050(a), the fixing of charges, rentals, or
25 fees as permitted under this subsection is not subject to the adoption of regulation
26 provisions of AS 44.62 (Administrative Procedure Act). The terms, conditions,
27 charges, rentals, and fees shall be established with due regard to the property and
28 improvements used and the expense of operation to the state. However, use of state
29 land and buildings by the Alaska Wing, Civil Air Patrol and its squadrons shall be
30 permitted without rental charges. The department shall provide for public notice and
31 an opportunity to comment before a charge, rental, or fee is fixed by order of the

1 commissioner as permitted under this subsection. The public may not be deprived of
2 its rightful, equal, and uniform use of the airport, air navigation facility, or a portion
3 of them.

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

11 * Sec. 3. AS 02.15.090 is amended by adding new subsections to read:

12 (c) Notwithstanding the right of the public to rightful, equal, and uniform use
13 under (a) of this section, before the expiration of a land lease, including the
14 termination of a lease in holdover status, entered into under this section, the lessee may
15 apply for a new lease, or for an extended term under the existing lease, for the same
16 land. The commissioner shall approve the application for a new land lease or an
17 extended term under this section without offering the land to other persons for leasing
18 if

19 (1) the lessee is in compliance with the terms and conditions of the
20 existing or holdover lease; and

21 (2) the continued use of the leasehold is consistent with written airport
22 operation policies and is in the state's best interest.

23 (d) A land lessee owns title to the permanent improvements that the lessee
24 constructed or purchased during the term of the lease, unless the lease expressly
25 provides that the state is the owner of the permanent improvements.

26 (e) At the expiration, termination, or cancellation of a land lease entered into
27 under this section,

28 (1) a lessee who owns the improvements of this section shall
29 continue to own the permanent improvements that the lessee constructed or purchased
30 on a leasehold if the lessee is granted under (c) of this section a new lease or an
31 extended term for the same land;

1 (2) a lessee may sell the permanent improvements owned by the lessee
2 to a succeeding lessee of the same land;

3 (3) at the option of the lessee, the permanent improvements owned by
4 the lessee may be sold by the state at public auction with the proceeds from the sale
5 of the improvements going to the lessee, less administrative costs of the auction and
6 obligations owed under the lease to the state; the successful bidder has the same right
7 to enter into a new lease under (c) of this section without the department offering the
8 land to other persons for leasing;

9 (4) after notice by the department, the permanent improvements owned
10 by the lessee shall be removed at the lessee's sole expense if

11 (A) the permanent improvements do not comply with written
12 airport operational policies or are not in the state's best interest;

13 (B) the permanent improvements are not sold under (e)(2) or (3)
14 of this section; or

15 (C) the department makes written findings that the permanent
16 improvements are a hazard to the public health and safety;

17 (5) title to the permanent improvements vests in the department if the
18 state purchases or otherwise contracts for the ownership of the permanent
19 improvements, or if the lessee abandons the permanent improvements.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CS HB #543(TRA)

Revision Date: 4/4/96 Dept. Affected: DOT&PF
 Title: "An Act establishing a preference when entering
into state airport land leases." BRU: State Aviation, Leasing and Airport Admin
 Sponsor: House Transportation Component: Statewide Aviation
 Requester: House Transportation COMPONENT SERIAL NO. #1811

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ _____

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Loren Rasmussen, P.E., Acting Director Phone: 465-6948
 Division: Engineering and Operations Date: 4/4/96
 Approved by: Joseph L. Perkins Date: 4/4/96
 Agency: Department of Transportation and Public Facilities
 Joseph L. Perkins, Commissioner

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AMENDMENT

3

*Failed
2-4*

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: CSHB 543(), version "R" dated 4/17/96

- 1 Page 4, line 12, following "interest":
- 2 Insert ", and the lessee is compensated for the value of the improvements removed
- 3 and, if appropriate, for the value of the business, if any, operated by the lessee on the land"

W: Thrawn

9-LS1769\O.6
Bannister
4/13/96

AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE

Kelly

TO: CSHB 543(), version "O" dated 4/9/96

1 Page 3, lines 22 - 28:

2 Delete all material and insert:

3 "(d) The title to leasehold improvements made to land under a lease entered
4 into under this section shall be retained by the lessee who constructs or purchases
5 them, by any successor who purchases them, or by any lawful successor or assignee
6 of the lessee, except that the title to the improvements reverts to the department if the
7 lessee abandons the lease, or if the department, with the consent of the lessee,
8 finances or purchases the improvements, or obtains the reversionary interest after good
9 faith negotiation by the department.

10 (e) Unless expressly negotiated otherwise in the lease by the department in
11 good faith, the lessee of a lease entered into under this section may be required, after
12 notice by the department, to remove any remaining leasehold improvements at the
13 lessee's sole expense at the expiration, termination, or cancellation of the lease if a
14 new lease between the parties or an extension of the existing lease is not entered into,
15 and if the improvements

16 (1) do not comply with an applicable airport master plan; or

17 (2) are determined to be a hazard to the health or safety of the public."

"or property"

AMENDMENT

4 Failed

OFFERED IN THE HOUSE

TO: CSHB 543(), version "R" dated 4/17/96

1 Page 3, following line 22:

2 Insert a new subsection to read:

3 "(d) The term of a new lease or an extension entered into under (c) of this
4 section may not exceed a total of 55 years when combined with the term of the prior
5 lease if a new lease is entered into, or with the term of the existing lease, if an
6 extension is entered into."

7 Reletter the following subsections accordingly.

8 Page 3, line 28:

9 Delete "(d)"

10 Insert "(e)"

11 Page 4, line 13:

12 Delete "(e)(2) or (3)"

13 Insert "(f)(2) or (3)"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: CSHB 543(), version "O" dated 4/9/96

1 Page 3, line 25, following "lessee.", through line 28:

2 Delete all material.

3 Insert "However, the department may acquire ownership of the improvements, but
4 only by the following methods as clearly defined by regulation:

5 (1) financing the improvements;

6 (2) purchasing the fair market value of the business along with the
7 improvements;

8 (3) abandonment by the owner;

9 (4) a reversionary interest voluntarily given by the owner when the
10 lease is entered into and after good faith negotiation by the department;

11 (5) condemnation proceedings; or

12 (6) judicial proceedings."

Re amded

AMENDMENT I

OFFERED IN THE HOUSE

BY REPRESENTATIVE

Kelly

TO: CSHB 543(), version "O" dated 4/9/96

1 Page 3, line 15, following "land":

2 Insert ", or an extension of the existing lease,"

IA

passed 7-2

3 Page 3, line 16:

4 Delete "sound"

IB

no obj

5 Page 3, line 17, following "policies,":

6 Insert "an applicable airport master plan,"

7 Page 3, line 17:

8 Delete "public"

9 Insert "state"

Revised

9-LS1769\O -
Bannister
4/9/96

NO (03)

CS FOR HOUSE BILL NO. 543()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state airports and air navigational facilities."

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

3 * Section 1. FINDINGS AND STATEMENT OF PURPOSE. (a) The legislature finds
4 that

5 (1) it often takes considerable commitment, time, and resources for a lessee
6 to establish a fully developed revenue-producing business or noncommercial enterprise on
7 leased land on an airport owned and operated by the state;

8 (2) a developed business or noncommercial enterprise by an airport lessee
9 produces a stable long-term flow of revenue to the local community and the state in the form
10 of income from jobs created and taxes paid;

11 (3) a developed business by an airport lessee usually has established a positive
12 reputation with its clientele that enhances future tourism and commerce in this state;

13 (4) a developed business by an airport lessee is better positioned to generate
14 more federal passenger entitlement money for the airport and the state;

15 (5) a developed business or noncommercial enterprise on an airport land lease

1 generally maximizes the use of the airport infrastructure, and this maximization makes the
2 airport's operation more economical; and

3 (6) providing a right and option to lessees of airport land to continue to lease
4 the land will encourage and enhance compliance with state law and airport leases, and this
5 compliance will benefit the overall operations of the state airport system.

6 (b) It is the purpose of the legislature to preserve and establish, for qualifying land
7 lessees who are in compliance with state law and airport leases, a right, consistent with sound
8 airport planning, to continue to lease the land in order to continue their businesses and
9 noncommercial enterprises and in order to promote a strong aviation industry in this state with
10 long-term benefits to local communities, the airports, and the state.

11 * Sec. 2. AS 02.15.090 is amended to read:

12 Sec. 02.15.090. OPERATION AND USE PRIVILEGES. (a) In operating an
13 airport or air navigation facility owned or controlled by the state, the department may
14 enter into contracts, leases, and other arrangements covering periods not exceeding 55
15 years with a person, municipality, or the United States, granting the privilege of using
16 or improving an airport or air navigation facility or a portion of it or space in it for
17 commercial, governmental, or other public purposes, including private aviation uses
18 [PLANE TIE DOWN]; or conferring the privilege of supplying goods, commodities,
19 services, or facilities at an airport or air navigation facility. The department may
20 establish the terms and conditions and fix the charges, rentals, and fees for the
21 privileges or services that are reasonable and uniform for the same class of privilege
22 or service. Charges, rentals, or fees authorized by this subsection may be fixed for the
23 international airports by order of the commissioner or by negotiated or competitively
24 offered contract. Notwithstanding AS 37.10.050(a), the fixing of charges, rentals, or
25 fees as permitted under this subsection is not subject to the adoption of regulation
26 provisions of AS 44.62 (Administrative Procedure Act). The terms, conditions,
27 charges, rentals, and fees shall be established with due regard to the property and
28 improvements used and the expense of operation to the state. However, use of state
29 land and buildings by the Alaska Wing, Civil Air Patrol and its squadrons shall be
30 permitted without rental charges. The department shall provide for public notice and
31 an opportunity to comment before a charge, rental, or fee is fixed by order of the

1 commissioner as permitted under this subsection. The public may not be deprived of
2 its rightful, equal, and uniform use of the airport, air navigation facility, or a portion
3 of them.

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

11 * Sec. 3. AS 02.15.090 is amended by adding new subsections to read:

12 (c) Notwithstanding the right of the public to rightful, equal, and uniform use
13 under (a) of this section, the department shall offer the holder of an existing lease of
14 land entered into under this subsection or (a) of this section a new lease of the same
15 land if the lessee is in compliance with the terms and conditions of the expiring lease
16 and if the continued use of the land is consistent with state law, sound airport
17 operations and policies, and otherwise in the best interest of the public. The offer shall
18 be made for a reasonable period of time before the department offers or leases the
19 same land to another party or to the general public. The term of the new lease offered
20 under this subsection may not exceed 55 years. In this subsection, "existing lease"
21 includes a holdover lease.

22 (d) Ownership of leasehold improvements made under a lease entered into
23 under this section shall be retained by the lessee who constructed them, by any
24 successor who purchases them, or by any other lawful successor or assignee of the
25 lessee. However, in limited circumstances clearly defined by regulations, the
26 department may acquire ownership by financing the improvements, by purchasing the
27 improvements, by abandonment by the owner, by condemnation, or by judicial
28 proceedings.

Benefits of new lease provisions: (1) greater protection of the public and state property; (2) elimination of ambiguous language; and (3) inclusion of standard procedures that will eliminate inconsistent treatment of tenants.

1. Safety Issues

New leases require tenants to take prudent measures to prevent the gathering of birds.

New leases require tenants to park vehicles on the leasehold to avoid congestion on roadways and taxiways.

New leases require tenants to provide the airport with a list of hazardous substances kept on the premises and require proper training for handling.

New leases allow the airport to eliminate safety hazards in the absence of tenant action.

2. Environmental Issues

Old leases require the tenant to remediate the property to the airport's satisfaction. This could be inconsistently enforced depending upon airport management. This requirement is in addition to the requirements of environmental laws.

New leases provide an administrative procedure to address environmental issues. New leases provide that the airport won't require tenants to remediate property unless ordered by DEC; releases tenant from liability for contamination on the premises that they did not cause and requires the airport and 3rd parties to remediate that contamination.

3. Building Permits

New leases provide a standard for building permit review and timely approval that ensures consistent treatment.

4. Indemnification

Old leases require complete indemnification by tenant to state for all damage that occurs on the leasehold or by tenant's operation.

New leases do not hold tenant responsible for harm solely caused by the airport.

5. Rent

Old leases do not limit the amount of rent that can be charged.

New leases require rent increases based on fair market value.

4/18/96A
Attachment 1

**CS FOR HOUSE BILL NO. 543(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE TRANSPORTATION COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the procedures and conditions for lessees of state airport
2 and air navigational facility land, including holdover lessees, to receive a new
3 lease of the land; relating to the purposes for which a person, municipality, or
4 the federal government may use or improve state airport or air navigational
5 facilities under contract, lease, or other arrangement with the state; and relating
6 to the ownership of leasehold improvements made under an airport or air
7 navigational facility lease."

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

9 * Section 1. FINDINGS AND STATEMENT OF PURPOSE. (a) The legislature finds
10 that

11 (1) it often takes considerable commitment, time, and resources for a lessee
12 to establish a fully developed revenue-producing business or noncommercial enterprise on
13 leased land on an airport owned and operated by the state;

1 (2) a developed business by an airport lessee produces a stable long-term flow
2 of revenue to the local community and the state in the form of income from jobs created and
3 taxes paid;

4 (3) a developed business by an airport lessee usually has established a positive
5 reputation with its clientele that enhances future tourism and commerce in this state;

6 (4) a developed business by an airport lessee is better positioned to generate
7 more federal passenger entitlement money for the airport and the state;

8 (5) a developed business or noncommercial enterprise on an airport land lease
9 generally maximizes the use of the airport infrastructure, and this maximization makes the
10 airport's operation more economical; and

11 (6) providing a right and option to lessees of airport land to make the first
12 offer for a new lease of the land will encourage and enhance compliance with state law and
13 airport leases, and this compliance will benefit the overall operations of the state airport
14 system.

15 (b) It is the purpose of the legislature to create, for qualifying land lessees who are
16 in compliance with state law and airport leases, a right and option to make the first offer,
17 consistent with sound airport planning, to continue to lease the land in order to continue their
18 businesses and in order to promote a strong aviation industry in this state with long-term
19 benefits to local communities, the airports, and the state.

20 * Sec. 2. AS 02.15.090(a) is amended to read:

21 (a) In operating an airport or air navigation facility owned or controlled by the
22 state, the department may enter into contracts, leases, and other arrangements covering
23 periods not exceeding 55 years with a person, municipality, or the United States,
24 granting the privilege of using or improving an airport or air navigation facility or a
25 portion of it or space in it for commercial, governmental, or other public purposes,
26 including private aviation use [PLANE TIE DOWN]; or conferring the privilege of
27 supplying goods, commodities, services, or facilities at an airport or air navigation
28 facility. The department may establish the terms and conditions and fix the charges,
29 rentals, and fees for the privileges or services that are reasonable and uniform for the
30 same class of privilege or service. Charges, rentals, or fees authorized by this
31 subsection may be fixed for the international airports by order of the commissioner or

1 by negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the
2 fixing of charges, rentals, or fees as permitted under this subsection is not subject to
3 the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).
4 The terms, conditions, charges, rentals, and fees shall be established with due regard
5 to the property and improvements used and the expense of operation to the state.
6 However, use of state land and buildings by the Alaska Wing, Civil Air Patrol and its
7 squadrons shall be permitted without rental charges. The department shall provide for
8 public notice and an opportunity to comment before a charge, rental, or fee is fixed
9 by order of the commissioner as permitted under this subsection. Except as provided
10 in (c) of this section, the [THE] public may not be deprived of its rightful, equal, and
11 uniform use of the airport, air navigation facility, or a portion of them.

12 * Sec. 3. AS 02.15.090 is amended by adding new subsections to read:

13 (c) The department shall offer the holder of an existing lease, including a
14 holdover lease, the right and option to make the first offer on a new lease for an
15 extended term within a reasonable period of time for the same land if the department
16 determines that

17 (1) the lessee was in compliance with the terms and conditions of the
18 expiring lease; and

19 (2) the continued use of the land is consistent with state law, sound
20 airport operations and policies, and is otherwise in the state's best interest.

21 (d) Under (c) of this section, the department shall make the offer not less than
22 180 days before the expiration of the existing lease, and the holder of the existing
23 lease shall respond to the department's offer not less than 90 days before the expiration
24 of the existing lease. In this subsection, "lease" does not include a holdover lease.

25 (e) All leases must include a provision that provides for the disposition of any
26 improvements made to the land at the expiration, termination, or cancellation of the
27 lease.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 4, 1996

SUBJECT: Term of new lease under CSHB 543(TRA) (Work Order No. 9-LS1769\G)

TO: Representative Gary Davis
Attn: Julie

FROM: 
Theresa Bannister
Legislative Counsel

You have asked whether the bill described above needs to state that the 55-year provision in AS 02.15.090(a) applies to a new lease offered under proposed AS 02.15.090(c), if that is what is intended. It is my opinion that the new subsection would be interpreted to allow a new lease term up to 55 years, but I recommend that if this is what you want, you make it clear in the bill.

AS 02.15.090(c) states that the department may offer an existing lessee the right and option to make the first offer on a new lease for an extended term. I believe that this provision pulls in the 55-year maximum period contained in AS 02.15.090(a) because AS 02.15.090(a) governs the term of these leases generally and because the new subsection does not establish a different maximum period. When the two subsections are read together, I believe that the 55-year period of AS 02.15.090(a) would be interpreted as a maximum for the extended term.

Notwithstanding the above conclusion, I recommend that this point be clarified in the bill, if you want to be certain of this result.

If I may be of further assistance, please advise.

TLB:pl:glc
96-109.plm

Attachment
4/10/96 am

HB 543
DOT&PF COMMENTS TO SUGGESTED CHANGES

1. EXISTING TENANTS SHOULD BE GIVEN AN OPTION FOR A NEW LEASES AND NOT FOR AN EXTENSION TO AN OLD LEASE

OPTION FOR A NEW LEASE IS MORE DEFENSIBLE AGAINST EQUAL PROTECTION CHALLENGES:

A. GREATER PUBLIC PURPOSE SUPPORT FOR NEW LEASES WITH IMPROVED PROVISIONS BECAUSE OLD LEASES CONTAIN OUTDATED, AMBIGUOUS PROVISIONS THAT DO NOT ADEQUATELY PROTECT THE PUBLIC AND PROPERTY OR ENSURE CONSISTENT TREATMENT.

B. AVOIDS A POTENTIAL LEGAL CHALLENGE THAT THIS TYPE OF AN EXTENSION IS A MATERIAL AMENDMENT TO THE LEASE, AS ORIGINALLY NOTICED, AND RESULTS IN AN UNFAIR ADVANTAGE TO THE EXISTING TENANT OVER OTHERS WHO MIGHT HAVE LEASED THE PROPERTY.

2. PROCEDURE: BEST TO HAVE A WELL DEVELOPED AND JUDICIALLY RECOGNIZED PROCEDURE OR HAVE THE PROCESS SPECIFICALLY AND THOROUGHLY DESCRIBED IN THE BILL.

3. BILL SHOULD NOT INCLUDE DISPOSITION OF IMPROVEMENTS:

BEYOND SCOPE OF ORIGINAL PURPOSE TO PROVIDE EXISTING TENANTS WITH AN ABILITY TO HAVE A NEW LEASE WITHOUT COMPETITION.

UNREASONABLY RESTRICTS LAND USE DECISIONS THAT ARE NECESSARY FOR THE SAFE, EFFICIENT OPERATION OF AIRPORTS FOR THE PUBLIC, AND SOUND AIRPORT PLANNING.

DISPOSITION OF IMPROVEMENTS SHOULD BE MADE ON A CASE BY CASE BASIS GIVEN THE LOCATION AND TYPE OF STRUCTURE, THE AIRPORT MASTER PLAN (THAT GOES THROUGH A PUBLIC PROCESS) AND SOUND AIRPORT MANAGEMENT.

4. LIMIT OF 55 YEARS ABSOLUTELY NECESSARY TO AVOID A LEGAL CHALLENGE WHEN A PREFERENCE OF THIS NATURE IS GIVEN.

BENEFITS OF NEW LEASE PROVISIONS: (1) GREATER PROTECTION OF THE PUBLIC & STATE PROPERTY; (2) ELIMINATION OF AMBIGUOUS LANGUAGE; AND (3) INCLUSION OF STANDARD PROCEDURES THAT WILL ELIMINATE INCONSISTENT TREATMENT OF TENANTS.

1. SAFETY ISSUES

NEW LEASES REQUIRE TENANTS TO TAKE PRUDENT MEASURES TO PREVENT THE GATHERING OF BIRDS.

NEW LEASES REQUIRE TENANTS TO PARK VEHICLES ON THE LEASEHOLD TO AVOID CONGESTION ON ROADWAYS AND TAXIWAYS.

NEW LEASES REQUIRE TENANTS TO PROVIDE THE AIRPORT WITH A LIST OF HAZARDOUS SUBSTANCES KEPT ON THE PREMISES AND REQUIRE PROPER TRAINING FOR HANDLING.

NEW LEASES ALLOW THE AIRPORT TO ELIMINATE SAFETY HAZARDS IN THE ABSENCE OF TENANT ACTION.

2. ENVIRONMENTAL ISSUES

OLD LEASES REQUIRE THE TENANT TO REMEDIATE THE PROPERTY TO THE AIRPORT'S SATISFACTION. THIS COULD BE INCONSISTENTLY ENFORCED DEPENDING UPON AIRPORT MANAGEMENT. THIS REQUIREMENT IS IN ADDITION TO THE REQUIREMENTS ENVIRONMENTAL LAWS.

NEW LEASES PROVIDE AN ADMINISTRATIVE PROCEDURE TO ADDRESS ENVIRONMENTAL ISSUES. NEW LEASES PROVIDE THAT THE AIRPORT WON'T REQUIRE TENANTS TO REMEDIATE PROPERTY UNLESS ORDERED BY DEC; RELEASES TENANT FROM LIABILITY FOR CONTAMINATION ON THE PREMISES THAT THEY DID NOT CAUSE & REQUIRES THE AIRPORT AND 3RD PARTIES TO REMEDIATE THAT CONTAMINATION.

3. BUILDING PERMITS

NEW LEASES PROVIDE A STANDARD FOR BUILDING PERMIT REVIEW AND TIMELY APPROVAL THAT ENSURES CONSISTENT TREATMENT.

4. INDEMNIFICATION

OLD LEASES REQUIRE COMPLETE INDEMNIFICATION BY TENANT TO STATE FOR ALL DAMAGE THAT OCCURS ON THE LEASEHOLD OR BY TENANT'S OPERATION.

NEW LEASES DO NOT HOLD TENANT RESPONSIBLE FOR HARM SOLELY CAUSED BY THE AIRPORT.

5. RENT

OLD LEASES DO NOT LIMIT THE AMOUNT OF RENT THAT CAN BE CHARGED.

NEW LEASES REQUIRE RENT INCREASES BASED ON FAIR MARKET VALUE.

CS FOR HOUSE BILL NO. 543(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 4/2/96
Referred: Finance

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the procedures and conditions for leases of state airport
 2 and air navigational facility land, including holdover leases, to receive a new
 3 lease of the land; ~~relating to the purposes for which a person, municipality, or~~
 4 ~~the federal government may use or improve state airport or air navigational~~
 5 ~~facilities under contract, lease, or other arrangement with the state; and relating~~
 6 ~~to the ownership of leasehold improvements made under an airport or air~~
 7 ~~navigational facility lease."~~

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

9 * Section 1. FINDINGS AND STATEMENT OF PURPOSE. (a) The legislature finds
 10 that

11 (1) it often takes considerable commitment, time, and resources for a lease
 12 to establish a fully developed revenue-producing business or noncommercial enterprise on
 13 leased land on an airport owned and operated by the state;

HB05433b

-1-

CSHB 543(TRA)

FOR TEXT REVISIONS (DELIMITED TEXT BRACKETED)

- 1 (2) a developed business by an airport lessee produces a stable long-term flow
- 2 of revenue to the local community and the state in the form of income from jobs created and
- 3 taxes paid;
- 4 (3) a developed business by an airport lessee usually has established a positive
- 5 reputation with its clientele that enhances future tourism and commerce in this state;
- 6 (4) a developed business by an airport lessee is better positioned to generate
- 7 more federal passenger entitlement money for the airport and the state;
- 8 (5) a developed business or noncommercial enterprise on an airport land lease
- 9 generally maximizes the use of the airport infrastructure, and this maximization makes the
- 10 airport's operation more economical; and
- 11 (6) providing a right and option to lessees of airport land to make the first
- 12 offer for a new lease of the land will encourage and enhance compliance with state law and
- 13 airport leases, and this compliance will benefit the overall operations of the state airport
- 14 system.

15 (b) It is the purpose of the legislature to create, for qualifying land leases ^{and whose continued lease of the lands} who are
 16 in compliance with state law and airport leases, ~~a right and option to make the first offer,~~
 17 consistent with sound airport planning, ^{a right} to continue to lease the land, ^{without competition} in order to continue their
 18 businesses ^{and noncommercial enterprises} and in order to promote a strong aviation industry in this state with long-term
 19 benefits to local communities, the airports, and the state.

20 * Sec. 2. AS 02.15.090(a) is amended to read:

21 (a) In operating an airport or air navigation facility owned or controlled by the
 22 state, the department may enter into contracts, leases, and other arrangements covering
 23 periods not exceeding 55 years with a person, municipality, or the United States,
 24 granting the privilege of using or improving an airport or air navigation facility or a
 25 portion of it or space in it for commercial, governmental, or other public purposes,
 26 including private aviation use [PLANE TIE DOWN]; or conferring the privilege of
 27 supplying goods, commodities, services, or facilities at an airport or air navigation
 28 facility. The department may establish the terms and conditions and fix the charges,
 29 rentals, and fees for the privileges or services that are reasonable and uniform for the
 30 same class of privilege or service. Charges, rentals, or fees authorized by this
 31 subsection may be fixed for the international airports by order of the commissioner or

1 by negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the
 2 fixing of charges, rentals, or fees as permitted under this subsection is not subject to
 3 the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).
 4 The terms, conditions, charges, rentals, and fees shall be established with due regard
 5 to the property and improvements used and the expense of operation to the state.
 6 However, use of state land and buildings by the Alaska Wing, Civil Air Patrol and its
 7 squadrons shall be permitted without rental charges. The department shall provide for
 8 public notice and an opportunity to comment before a charge, rental, or fee is fixed
 9 by order of the commissioner as permitted under this subsection. Except as provided
 10 in (c) of this section, the [THB] public may not be deprived of its rightful, equal, and
 11 uniform use of the airport, air navigation facility, or a portion of them.

12 * Sec. 3. AS 02.15.090 is amended by adding new subsections to read:

13 ~~(c) The department shall offer the holder of an existing lease, including a~~
 14 ~~holdover lease, the right and option to make the first offer on a new lease for an~~
 15 ~~extended term within a reasonable period of time for the same land if the department~~
 16 ~~determines that~~

17 ~~(1) the lease was in compliance with the terms and conditions of the~~
 18 ~~expiring lease; and~~

19 ~~(2) the continued use of the land is consistent with state law, sound~~
 20 ~~airport operations and policies, and is otherwise in the state's best interest.~~

21 ~~(d) Under (c) of this section, the department shall make the offer not less than~~
 22 ~~180 days before the expiration of the existing lease, and the holder of the existing~~
 23 ~~lease shall respond to the department's offer not less than 90 days before the expiration~~
 24 ~~of the existing lease. In this subsection, "lease" does not include a holdover lease.~~

25 ~~(e) All leases must include a provision that provides for the disposition of any~~
 26 ~~improvements made to the land at the expiration, termination, or cancellation of the~~
 27 ~~lease.~~

*Refer to
Process*

See new (c) and (d)(e)(f)

(c) Before the expiration of a land lease, an existing lessee may apply for a new lease for the same land. The commissioner may approve the application for a new lease for the same land under this section without competition if the commissioner determines:

(1) the lessee was in compliance with the prior lease terms and conditions, and

(2) the continued use of the leasehold is consistent with ~~state~~ airport policy, the airport masterplan, and is in the state's best interest.

(d) any lease term offered under (c) of this section may not exceed a total of 55 years when combined with the prior lease term.

(e) Unless otherwise provided in a lease, a land lessee owns title to the permanent improvements that the lessee constructed or purchased during the term of the lease.

(f) All land leases must include a provision for the disposition of permanent improvements made to the land at the expiration, termination, or cancellation of the lease that

(1) allows a land lessee to continue ownership of permanent improvements that the lessee constructed or purchased on a leasehold if the lessee is granted a new lease for the same land;

(2) permits a land lessee to sell the permanent improvements to a succeeding lessee of the same land if the continued presence of the permanent improvements is consistent with law, airport operations and policies, and the airport masterplan;

(3) requires the lessee, after notice by the department, to remove the permanent improvements at the lessee's sole expense if the permanent improvements do not comply with the airport's present masterplan, were constructed without an approved building permit, are not in compliance with applicable building codes at the expiration, termination, or cancellation of the lease, or found to be a hazard to the public health or safety or property; and

(4) provides that title to the permanent improvements vests in the department if the state finances the permanent improvements, purchases or negotiates for the ownership of the permanent improvement, or if the lessee abandons the lease.

Alaska State House of Representatives House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
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Representative Ivan M. Ivan

SPONSOR STATEMENT - COMMITTEE SUBSTITUTE for HOUSE BILL 493 (JUD)

I introduced HB 493 as one of the solutions to assist with the public inebriate problem faced by many communities throughout the state.

Under current statute, AS 47.37.190, provisions allow for the involuntary commitment of alcoholics. These provisions allow for 30 day commitments with recommitment for 90 days. This current law has been found to be unwieldy, expensive and treatment options are not readily available. According to a community survey report by the City/Borough of Juneau, in March 1993, communities use the commitment policy sparingly, if they use it at all. This report also stated that the current commitment process simply is not working.

Under HB 493, the involuntary commitment process is similar to those found in the involuntary mental health commitments. Drug abusers were also not included in the definitions of incapacitation or intoxication. According to the Division of Alcoholism and Drug Abuse, many public inebriates are ingesting not only alcohol but drugs as well. The bill changes the definition of intoxicated persons to include drugs which are defined under the controlled substances statutes in Title 11.

It is not my intent to impose unlawful restrictions on an individual. However, by using the involuntary commitment process, I hope that lives may be saved. It is also my hope that the financial impacts on different agencies may be lessened if the revolving door process many inebriates find themselves when the protective custody statutes are applied.

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

February 21, 1996

SUBJECT: Airport and set-net leasing policies (Work Order 9-LS1596)

TO: Representative Beverly Masek
Attn: Dave

FROM: *TB*
Theresa Bannister
Legislative Counsel

This memo responds to several questions that you have asked regarding state airport land leases and set-net leases.

1. Do both the regulations and statutes governing airport leases require the Department of Transportation and Public Facilities to follow a policy of re-offering state airport land leases on an impartial basis? You have provided a copy of a June 21, 1995, memo from the Attorney General to the Commissioner of the Department of Transportation and Public Facilities ("DOT/PF") that discusses whether DOT/PF must re-offer airport leases on an impartial basis. I have reviewed the memo in light of your question. It is my understanding that you are concerned about whether DOT/PF can give a current lessee of state airport land a preference when offering the land for a lease at the end of the current lease.

A. Statutes. Although not stated as clearly as it could be on this specific point, the statutes that govern the leasing of state airport land appear to require DOT/PF to offer new leases on an impartial basis and without a preference for the current lessee. There are two main reasons for this conclusion. They are (1) there is no preference expressly provided by the governing statutes for the current lessee, and (2) the statutory leasing provisions contain general language that could be interpreted to require that the leases be offered on an impartial basis.

(1) No preference provided. To give a preference to the existing lessee, DOT/PF must have some form of authority to do so. The authority can be express or implied. The leasing of state airport land is governed by AS 02.14.090.¹ AS 02.15.090 does not contain any

¹The leasing of state airport land is generally not covered by the state procurement code (see AS 36.30.850(b)(8)) or by the state lands act (see AS 38.05.030(d)).

Representative Beverly Masek

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language expressly directing DOT/PF to give a preference to current lessees when offering the land for a new lease.

On the other hand, the department is given express authority under AS 02.15.090(a) to establish terms and conditions for the leases and under AS 02.15.020 to adopt regulations to implement its other powers. These authorizations could conceivably be interpreted to include reasonable preferences necessary to carry out the leasing. However, in this case, this possibility seems unlikely since AS 02.15.090(a) also contains general language that requires equal access and uniform treatment.

(2) General language requiring equal access and uniform treatment. AS 02.15.090(a) contains two expressions relating to equal and uniform treatment. The most significant reads

The public may not be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or a portion of them.

The interpretation of this sentence is not clear, and there is not much legislative history on it. If it were interpreted to require lessees to keep their leased premises and services open to the public, then the sentence would not act as a limitation on DOT/PF's authority on reoffering leases. However, the sentence can also be read to require that the actual leasing procedures must be on an equal and uniform basis. It is not clear which interpretation would prevail.

The second provision reads:

The department may establish the terms and conditions and fix the charges, rentals, and fees for the privileges or services that are reasonable and uniform for the same class of privilege or service.

Once again the interpretation is not clear and there is not much legislative history on it. It is not clear whether the clause "that are reasonable and uniform for the same class of privilege or service" only modifies "terms and conditions." If it does, then the authority to establish terms and conditions does not include the authority to give preferences. If it does not, then only the charges, rentals, and fees must be uniform within the same class, and there is more room in the terms and conditions to include reasonable preferences necessary for the leases. Notwithstanding this, the phrase does allow for some differences among the categories of leases offered. As with the other sentence, it is not clear which interpretation would prevail.

(3) Conclusion. Although the statutes are not explicit, it appears that without an express provision of preference, and in light of the language in AS 02.15.090(a) speaking to equality and uniformity, the better interpretation is that the statutes seem to require that airport land leases be offered on an impartial basis, at least within the same categories.

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B. Regulations. The regulations governing the granting of state airport land leases require impartial reoffering of leases in some cases, allow impartial offerings in others, and are somewhat contradictory in other cases. Except to the extent that they give priority to certain uses of the land, the regulations do not provide an express preference for current lessees to re-lease the land.

With regard to lease offerings, there is a general requirement of impartiality. 17 AAC 40.320(c) recites the requirement of impartiality found in AS 02.15.090(a) by stating: "Uniform and Equal Rights. Leases or privileges will be granted on a uniform and equal basis." However, this statement of policy is made subject to certain significant and somewhat confusing provisions.

The first significant provision is that leases for aviation functions and leases for auxiliary functions are to be granted on a "first come-first served" basis (17 AAC 40.320 (c)(1) - (2)) unless public auction or competitive proposals are (1) required by law or (2) DOT/PF determines them to be in the best interests of the public. Notwithstanding this, if the land is available and not needed for aviation use, public auction is to be used for leases for auxiliary functions. Finally, a public auction is required for nonaviation leases. (17 AAC 40.320(c)(3), (8)(C)).

It is not clear what is meant by the "first come-first served" requirement. It is possible that this provision could be interpreted to provide a preference for current lessees, since they would certainly qualify as arriving first. However, as discussed in section 1 of this memo, the governing statutes may not provide the authority to extend a preference to current lessees; if they do not, then they cannot authorize a regulation to do so, since under AS 44.62.020 a regulation must be within the scope of authority conferred and in accordance with the statutory standards. The renewal provision in 17 AAC 40.360(13) does not establish a preference for the current lessee, and pretty much leaves DOT/PF free to grant or reject the renewal request.² Unless "first come-first served" is interpreted to create a preference for current lessees, the regulations do not appear to provide for a lessee's preference.

²17 AAC 40.360(13) reads as follows:

(13) At the expiration of the term of the lease, if the lessee desires a renewal, he shall within 30 days before the expiration make application in writing for a renewal, stating the purpose for which he desires a renewal and such other information as the lessor may require. The lessee shall deposit with such application the sum equivalent to 100 percent of the next rental payment which will be due if the lease is renewed. Such application, when fully conforming to the requirements herein stated, will extend the lease until such time as the lessor gives written notice to the lessee that the

(A) request for renewal has been granted;

(B) request for renewal has been rejected, stating the reasons for such rejection; or

(C) lessor has determined it to be in the best public interest or is required by law or regulation to offer the lease at public auction.

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The only preference created by the regulations appears to be for the type of function. If there are two or more applications for the same land for different classes of use, aviation functions³ are given priority over auxiliary functions,⁴ and both aviation functions and auxiliary functions have preference over nonaviation functions.⁵ (17 AAC 40.320(c)(5)).

In addition to the above provisions, there is a requirement that a public auction is required when two or more persons apply for the lease. (17 AAC 40.320(c)(8)(C)). It is one of the provisions to which the uniform and equal rights provision referred to above is made subject. However, in light of the specific provisions in 17 AAC 40.320(c)(1) - (3), including the "first come-first served" provisions, it is not clear just when and how this provision is intended to be used. I cannot say whether this provision is as broad as it sounds.

Therefore, as you can see, although the regulations governing state airport land leases appear to generally approach leases in an impartial manner, there is an existing "first come-first served" provision that appears to contradict this approach and that is not clear as to its application. I do not believe, in light of the governing statutes, that this provision would be interpreted to provide a preference to existing lessees.

2. If the statutes and regulations governing state airport land leases require DOT/PF to follow a policy of reoffering state airport land leases on an impartial basis, why aren't shore-based commercial set net fishing site leases administered under the same impartial policy?

As stated above, the state airport land lease provisions do not seem to provide a preference to current lessees when offering the leases. Commercial shore-based set net fishing site leases do provide a preference to current lessees. The reason for this apparent inconsistency in the handling of state leases is that the granting of shore-based set net leases are governed by a different set of statutory provisions, and these provisions include an express preference for current lessees.

The preference for current lessees is authorized by AS 38.05.102. That section reads as follows:

Sec. 38.05.102. LESSEE PREFERENCE. If land within a leasehold created under AS 38.05.070 - 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow the holder in good standing of that leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease.

³"Aviation function" is defined at 17 AAC 40.320(b)(1).

⁴"Auxiliary" functions are defined at 17 AAC 40.320(b)(2).

⁵"Nonaviation" functions are defined at 17 AAC 40.320(b)(3).

As you can see, the preference is based on a finding by the director of the Division of Lands in the Department of Natural Resources that releasing to the current lessee is in the best interest of the state. The regulation that interprets this statutory preference reads as follows:

11 AAC 64.391. EXTENSION OF LEASE. 90 days before the expiration of a valid lease, the lessee may request an extension of the lease. The director will, in his or her discretion, extend the lease for a period of up to 10 years if no changes in site or tract location have occurred, the beach has remained stable, the lease is in good standing with the department, the lessee remains qualified under 11 AAC 64.230, and no protest of the extension is received. A nonrefundable filing fee, as established by the department's approved fee schedule, must accompany a request for an extension.

These provisions provide the necessary authority to provide the preference as long as they do not violate the federal equal protection requirements under the 14th amendment to the federal constitution) or the state's equal protection requirements (art. I, sec. 1, Constitution of the State of Alaska).

Since this would probably be considered economic legislation and since federal courts apply a minimal rational basis standard to such economic legislation, the provision will not present a federal equal protection problem if the classification is rationally related to a legitimate state interest. Since I am not familiar with the reasons behind this preference I cannot determine whether the preference is meeting this goal. However, the federal courts generally defer to the legislature's determinations as to the desirability of particular statutory discriminations. Since this does not appear to be a suspect classification or to affect fundamental personal rights, it is unlikely that the provision would be overturned under the federal equal protection provision. See Commercial Fisheries Entry Com'n. v. Apokedak, 606 P.2d 1255, 1263-1264 (Alaska 1980).

With regard to the state's equal protection provision, the preference would probably be subject to a low level of scrutiny, since this preference deals with legislation of economic and commercial interest. See Herrick's Aero-Auto-Aqua Repair v. State, Department of Transportation, 754 P.2d 1111, 1114 (Alaska 1988) and Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Although it is possible that the interest would be considered as more important and requiring a more stringent level of scrutiny by the court (see State v. Enserch Constr. Inc., 787 P.2d 624, 632 Alaska 1989)), Enserch directly involved actual employment, which is not the case here. Under a low level of scrutiny, the court would use the rational basis test. The rational basis test questions whether the classification is "reasonable, not arbitrary" and rests "upon some ground of difference having a fair and substantial relation to the object of the legislation." Isakson, 550 P.2d at 362. Essentially, there must be a rational basis for allowing a preference for the current lessee. I do not have enough information on the parameters and reasons for the preference that you are interested in to provide you with a conclusion whether the preference provision would meet this standard.

Representative Beverly Masek

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3. If the statutes and regulations allow the state to treat shore-based set net site leases differently, can DOT/PF change its regulations to do the same or must the legislature change the statutes? In my opinion, it would be advisable and probably necessary to amend the applicable statutes rather than the regulations. As indicated in question 1 above, although there is broad regulatory authority given to DOT/PF for establishing the terms and conditions of leases and other aspects of the airport land leases, there are two express statements in AS 02.15.090(a) that require uniformity and equality. These statements seem to prevent DOT/PF from providing a preference for current lessees in regulation. Therefore, I recommend that you amend the statutes.

4. What changes would be needed if they are required in statute? The changes needed to establish the preference are enactment of language that (1) establishes the preference that you want, and (2) clarifies that the references in AS 02.15.090(a) to uniformity and equality are subject to the new preference. You may want to use AS 38.05.102 as a jumping-off point for starting to design your section. In addition, the language (and reasons behind the preference) must satisfy, to the extent foreseeable and feasible, equal protection requirements.

I do not have enough information on the parameters and reasons for the preference that you are interested in to provide you with a conclusion whether the preference provision would meet the equal protection standard. If you can provide me with this information, I could review it for you.

5. Draft of changes. As indicated above, I do not have very much information on the parameters and reasons for the preference that you are interested in. If you can provide me with the necessary information, the language can be drafted for you.

If I may be of further assistance, please advise.

TLB:glc
96-106.glc

LEGAL SERVICES

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MEMORANDUM

March 11, 1996

SUBJECT: Draft bill establishing a state airport land lease preference (Work Order No. 9-LS1769A)

TO: Representative Gary Davis
Attn: Julie

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the above-described draft.

1. Constitutional considerations. As I indicated in my 2/22/96 memo, establishing this preference may require that the state demonstrate an important reason for the preference and carefully design the preference so that there is the least possible infringement on the open access values of art. VIII (the article of the state constitution that deals with natural resources). Your office has indicated that the reason for this preference is to encourage economic development in the state, especially in rural areas. With my limited knowledge of the situation I cannot determine whether or not this reason would be considered "important" enough to satisfy the requirement. "Important" would probably be considered more significant than just desirable or just a legitimate state goal. How "important" is this development to the state?

With regard to establishing the "least possible infringement," the criteria for the preference seem a bit broad to meet this requirement. Although I do not have very much information on the situation you are trying to address, the criteria do not seem very closely tailored to balancing economic development with the access rights of other citizens of the state to use or lease the land.

To maximize the success of this preference if it is ever challenged, I suggest that you consider and develop more fully the exact reason for the legislation and the criteria for extending the preference. You may want to start out with the draft and develop these points in committee.

2. With regard to the criteria in the present draft, it may be a good idea to flesh out "substantial" and "long term lease".

Representative Gary Davis

March 11, 1996

Page 2

3. With regard to the preference, you may want to consider the following:

(A) what if another person can offer a greater economic development for the land than the current lessee;

(B) is the next lease to be for the same rent and on the same terms;

(C) if the department (or the lessee) wants to change the terms (e.g. increase the rent), can it do so and, if so, what if the department and the current lessee cannot agree on the terms for the new lease;

(D) the bill makes the preference mandatory if the department determines to re-lease the land; would you prefer to make the releasing subject to the department determining that the preference is in the best interests of the state;

(E) do you want to identify what reasons the department can use to decide not to re-lease the land;

(F) do you want the new lease to be for the same length of time.

If I may be of further assistance, please advise.

TLB:glc
96-155.glc

Enclosure

ALASKA COALITION OF AIRPORT USERS

Resolution 95-1

RESOLUTION OPPOSING STATE OF ALASKA DOT/PF'S PROPOSED AIRPORTS REGULATIONS (17 AAC 45 and 17 AAC 40)

WHEREAS the purpose for State involvement in airport management is to promote, encourage, and develop aviation (Alaska Statute 02.15.010); and

WHEREAS airport leasing policy and practice in Alaska has fostered this development by means of the first come-first served leasing requirement (Title 17, AAC section 40.320 (c) (1)); and

WHEREAS the State's purpose is not profit-oriented, but service-oriented--service to aviation; and

WHEREAS the State under AS 002.15.010 should encourage private enterprise and private investment, so that aviation can develop and serve the needs of the community and the State; and

WHEREAS Alaskans rely on the aviation industry as their primary transportation source, for persons, mail, food, shelter, health care, and goods and services in general; and

WHEREAS in the past decade the Alaska aviation industry has made significant progress and investment in developing a system which better meets the transportation needs of our vast state; and

WHEREAS the proposed changes to Title 17 Leasing Regulations threaten to destroy the aviation infrastructure by discouraging private investment and airport and facilities development; and

WHEREAS recent policy changes by the Knowles Administration have led the State to abandon the first come, first-served leasing rule--such policy changes having been developed without benefit of fair and open debate; and

WHEREAS public testimony during the Governor's Special Commission on Airport Leasing and public response to the rural leasing proposal clearly demonstrates the public's opposition to the proposed regulations and recent policies based on the threats they pose to the aviation industry in Alaska; and

WHEREAS the Governor's Special Commission on Airport Leasing recommends the adoption of a leasing policy to include provisions as described in what is commonly referred to as the "Barton Policy"; and

WHEREAS the plight of the industry, nationwide as well as across Alaska, is well documented and nearly 120,000 U.S. airline employees have lost their jobs since 1990; and

WHEREAS a \$900,000 fiscal note is required for implementation of the proposed regulation changes; and

WHEREAS never before has the entire Alaska aviation community been so galvanized in its opposition to policy and regulation changes; and

THEREFORE BE IT RESOLVED the undersigned associations, groups, and individuals do hereby request the Knowles Administration to adhere to the purposes set forth in AS 02.15.010 and honor the policies established by previous administrations which support and foster aviation development by private industry, and be it

FURTHER RESOLVED the aforementioned parties oppose the adoption of the State of Alaska DOT/PF's Proposed Airports Regulations (17AAC 45 and 17 AAC 40) and any State regulation or policy which increases public control or ownership of existing private aviation businesses and facilities.

The undersigned oppose the adoption of the State of Alaska DOT/FF's proposed airports regulations 17 AAC 45 and 17 AAC 40:

Kimberly S Daniels
Kimberly S. Daniels
Alaska Air Carriers Assn.

Kimberly S. Daniels
Executive Director
ALASKA AIR CARRIERS ASSN.

Philip K Livingston
Philip K. Livingston, CCIM
Vice President
ALASKA AIRMEN'S ASSN.

Philip K. Livingston, CCIM
Vice President
ALASKA AIRMEN'S ASSN.

John W Spalding
John W. Spalding
President
ALASKA AIRMEN'S ASSN

John W. Spalding
President
ALASKA AIRMEN'S ASSN.

Gene Zerkal
Gene Zerkal
President
ALASKA AIRCRAFT SALES

Gene Zerkal
President
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907-462-8888

Dick Lochner
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*Richard Wien - Representing approx
Thirty Fairbanks International Airport Users
and Tenants.*

Richard Wien
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Users & Tenants

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Mervin E. Trimmer
Owner
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and related facilities
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Joe Griffith
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Chugiak, AK

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Stephen Bryan
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Ed Paquette
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Todd Rust
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David Klosterman
ALASKA BUSH CARRIER, INC.

David Klosterman
Lake Hood Leaseholders Assn.

David Klosterman
LAKE HOOD LEASEHOLDERS ASSN.

Donald J. Tulin
Donald J. Tulin
Airline Support Inc.
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Anchorage, AK 99501

Donald J. Tulin
AIRLINE SUPPORT INC.

Alaska State Legislature

REPRESENTATIVE
PETER KELLYMailing Address
119 N Cushman Suite 203
Fairbanks, Alaska 99701
(907) 456-8161State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District: 31

House Of Representatives

August 1, 1995

The Honorable Tony Knowles
Governor, State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

The Interior Delegation is writing to express our concern regarding the regulation package establishing new lease policies on Airport land in Alaska. You have inherited this package of regulations from the Hickel administration, and may not have reviewed the policy consequences of the Department of Transportation's substantial changes in 17 AAC 45.

We believe these changes will severely damage the long term development and maintenance of our Airports. The use of competitive bids to renew private individuals leases, potentially depriving them of their improvements, is particularly egregious. The specter of this policy is already having a traumatic impact on the natural growth and improvement of our existing airports. This Hickel-era proposal may appear to increase short term revenue by leasing to whomever is willing to bid exorbitant rates in order to pirate the improvements of the prior lessee. In practice, it involuntarily deprives individuals of their improvements and directly contravenes Alaska's land use policy under Article VIII, Sections 1 & 16 of the Alaska Constitution.

We also wish to clearly state our continued support for the pre-Statehood policy of first-come, first-served leasing as currently provided under 17 AAC 40.320(c)(1). Overriding this historical policy is simply unjustified.

Alaskans rely heavily upon air travel and airports. We believe these regulations create uncertainty among the service providers at our airports, and stand to severely harm the proper functioning of these facilities. Please review these regulations for consistency with your direction and vision for the State.


Sincerely Yours,


Representative Pete Kelly
Interior Delegation Chairman

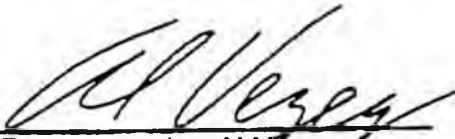
LETTERS OF CONCERN ADDRESSING

17 AAC 45

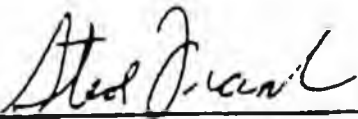
ADOT Regulations.
Page 2.



Senator Mike Miller
Chairman Senate Rules



Representative Al Vezey
House Majority Leader



Senator Steve Frank
Co-Chairman Senate Finance



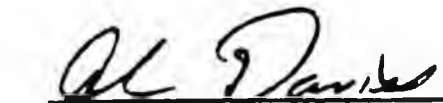
Representative Joannette James
Chairman House State Affairs



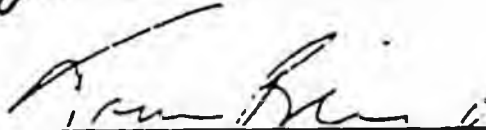
Senator Bert Sharp
Chairman Senate State Affairs



Representative Gene Theriault
Member, House Finance



Representative John Davies
Member Admin. Reg. Review



Representative Tom Brice
Member, House Transportation

cc: Senator Randy Phillips, Chairman Administrative Regulation Review Committee
Representative Norm Rokeberg, Vice-Chairman, Admin. Reg. Review

Alaska State Legislature



Official Business
Fax: (907) 465-3472

Speaker of the House of Representatives

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3720
(907) 465-2689

August 9, 1995

Dear Rural Airport User:

Recently, I became aware of proposed Department of Transportation and Public Facilities (DOT) regulations which may affect your operations as a rural airport user. The proposed regulations have been under consideration since last year; however, changes made following last year's public comment period have prompted the agency to reissue the proposed regulations for additional public review.

DOT is proposing to amend 17 AAC 40 so that it will apply only to the Anchorage and Fairbanks International Airports. At the same time, DOT is proposing to adopt a new chapter to the administrative code, 17 AAC 45, regarding operation and management of rural airports.

Some of the provisions in the proposed regulations for rural airports are similar to those in existing 17 AAC 40. However, significant new elements which require your careful review include provisions:

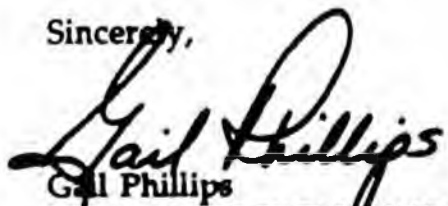
- imposing commercial passenger vehicle fees and requiring airport use permits;
- imposing aircraft parking fees and establishing rules for aircraft use of airport facilities;
- addressing environmental issues;
- revising airport land rental rates;
- establishing competitive lease award procedures;
- increasing filing fees for lease related applications; and
- expanding regulations for setting lease terms.

Copies of the proposed regulations were mailed by DOT to an extensive list of airport users early in July. If you did not receive a copy of the proposed regulations, one can be obtained by contacting Stephen Pavish, Statewide Leasing Coordinator for DOT, at (907)266-1666. I also have copies of the proposed regulations which I would be happy to provide for your review.

After you have had an opportunity to review DOT's proposed regulations, please let me know how they may affect your operations. Kyle Parker of my staff has been working with me on this issue. Kyle can be reached at (907)258-8164.

Please note that written comments on the proposed regulations must be submitted to DOT by 4:30 PM on August 25, 1995. I urge your prompt attention to this matter.

Sincerely,


Gail Phillips
SPEAKER OF THE HOUSE

cc Stephen Pavish



Era Aviation, Inc.

August 25, 1995

VIA TELECOPIER, No. 243-1512
(Hard copy via mail.)

Mr. Stephen L. Pavish
Statewide Leasing Coordinator
Department of Transportation and Public Facilities
Statewide Aviation
P.O. Box 196900
Anchorage, Alaska 99519-6900

Ref: Rural Airports Proposed Regulations (17 AAC 45); Notice Dated
July 7, 1995.

Dear Mr. Pavish,

Era is responding to the Department's Notice, dated July 7, 1995, "Rural Airports Proposed Regulations (17 AAC 45)" (the "Notice").

These Proposed Regulations should be scrapped in their entirety, and the State should start over again - this time from the perspective that the State holds airport lands in trust for the benefit of the citizens of Alaska.

The Department has solemn duties to foster and promote air transportation. These include responsible stewardship of airport lands owned by the State. The Proposed Regulations are everything but responsible. They are devoid of common sense or reasonable balance. They are onerous to the extreme for users, and terribly one-sided in favor of Department personnel. "At the discretion of" (the department, the commissioner, the airport manager) must appear well over a hundred times.

All parties should readily agree that safe, reliable air transportation is crucial for the health and welfare of Alaskans. All parties should also readily agree that sound, stable and commercially reasonable airport land use policies are essential for continued growth and development of air transportation in Alaska. We at Era commit to assisting in developing such policies.

Mr. Stephen L. Pavish
page 2 of 4

There are three "lifeblood" issues that are of particular concern to us in these Proposed Regulations: (i) Lease Renewals; (ii) Ownership of Leasehold Improvements; and (iii) Environmental Liabilities and Other Unreasonable Lease Terms and Conditions.

Some renewal preference must be given to existing leaseholders who have fully and faithfully performed their lease obligations. The current provisions of 17 AAC 40.320(c) are a good place to start. On the other hand, proposed 17 AAC 45.305(d) states that renewal would be discretionary; and proposed 45.305(h) provides that the Department may "in its discretion" reject a renewal application and offer the lease "at public auction, sealed bid, or competitive proposal." The idea of going to competitive bid is unwise, and would lead to all manner of mischief.

The State holds these lands in trust for the common welfare; it is entitled to recover only fair and reasonable rents, related to costs of state maintenance and state improvements. The State should not be allowed to profiteer in cases of competing applications. Nor should one competitor be allowed to drive out another at renewal time, or bid the other's land rents above those of his neighbors. We have heard the arguments from State personnel that the Alaska Constitution somehow prevents reasonable renewal policies - we remain unpersuaded.

We take little comfort in the "appeal rights" under proposed 45 AAC 45.910 for redress of State wrongs in cases of "denial or rejection of an application or the cancellation or termination of a lease ...". It states only that, "The regional director or his designated appeals person will, in that person's discretion, hold a hearing to consider the appeal" (Emphasis added.)

Reasonable provisions must be made for the leaseholder to retain ownership interests in leasehold improvements. Again, mischief would result were it otherwise: There would be no incentive to erect quality structures, or to maintain them - no incentive to create or maintain quality businesses, and jobs, at State airports. Again, the State should not be allowed to profiteer at the expense of leaseholders and other citizens by laying claim to these improvements.

The idea of set schedules for lease terms or renewal terms based on dollar values of new improvements is artificial and unworkable (proposed 45 AAC 45.310). Many factors other than new investment are important in

Mr. Stephen L. Pavish
page 3 of 4

determining appropriate lease terms. As just one example, costs to preserve and maintain improvements are as important as new investment.

Reasonable renewal rights and retention of ownership rights are related and vitally important in at least one other respect: Financing for new investments, refinancing, and the related creation and retention of jobs would not be possible without these rights.

Of course, reasonable renewal rights and ownership rights mean nothing if the leaseholder may be driven from the airport (or into bankruptcy) "at the discretion of the department" by unreasonable environmental liability regulations, imposed "in its discretion" (e.g., proposed 45 AAC 45.055 and 45.020). Under proposed 45 AAC 45.020, if some "other hazardous substance" is spilled, the Department may "in its discretion, respond to or perform the cleanup"; and "the person responsible for the spill is liable to the department for all associated costs, including clean up costs, legal fees, and interference with airport operations." (Emphasis added.) This could ruin a citizen, and his business, even if he were only slightly responsible, the State was more at fault, and the State was completely unreasonable in responding, conducting clean up, incurring legal fees, and failing to ameliorate interference with airport operations. There is no valid reason for the State to include overbearing environmental requirements in these regulations; the State's legitimate interests are sufficiently protected simply by relying upon the other environmental laws, as in effect from time to time.

Apart from environmental matters, the lease documents should contain commercially reasonable terms and conditions throughout. The State should not be allowed to abuse its monopoly powers over airport lands to inflict unreasonable terms on tenants. As examples, in the past we have seen provisions where a leaseholder is asked to hold the State harmless from the State's own wrongdoing, or forced to comply with unreasonable State requests by threats of selective enforcement. Sound public policy and common sense require that all lease terms and conditions be fair and reasonable - to landlord and tenant alike.

We turn to rates and fees. Most of these have been debated for years and years. The Department has heard the valid arguments time and time again. These proposed rates and fees are not at all well considered. We suggest the Department take a fresh look at all these rates and fees, and propose only those which can be credibly defended as "reasonable and uniform" (AS § 02.10.090).

Mr. Stephen L. Pavish
page 4 of 4

Our comments have been limited due to the press of time. The Notice contains over 100 pages. The Notice period has, once again, been scheduled during most Alaskans' busiest time of the year. We are all working long hard hours to meet the needs of our customers and the special challenges of providing air transportation in Alaska. We cannot comment in detail on these Proposed Rules in the short time allowed. We urge the Department to extend the comment period by at least 90 days.

Moreover, we suggest the Notice may be invalid under the Executive Order signed by Governor Knowles June 5, 1995. (Anchorage Daily News, June 6, 1995, page B4.) We do not see the requisite "clear and concise language" or "consideration of costs". We do not see any explanation for "what and how the rules are being changed as well as why".

As a closing matter: The Department, (as well as the Commissioner's Special Commission on Airport Leasing Policy, for ANC and FAJ), knows well of the considerable efforts from last year and before to address these same leasing policy issues. Countless days and hours of hearings and meetings have already been held. Much time has already been spent analyzing and debating legitimate concerns. The Department should make good use of the fruits of these previous labors, giving due consideration to facts already developed and evaluations already made. In particular, the Department should seek the counsel of the former State officials involved, and give special consideration to the Memorandum dated August 26, 1994, from the Deputy Commissioner to the Commissioner, on the subject of, Aviation Leasing Policy.

If you have any questions, please do not hesitate to call.

Sincerely,



Jack Birmingham
Vice President

FEB 13 1996



SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex
1515 East 13th Avenue Anchorage, Alaska 99501-4814

907, 272-1251 - 24 Hour Phone/Fax

COPY

FEBRUARY 6, 1996

REP RICHARD FOSTER
ALASKA STATE LEGISLATURE
State Capitol Room 410
JUNEAU AK 99801-1102

443 2162

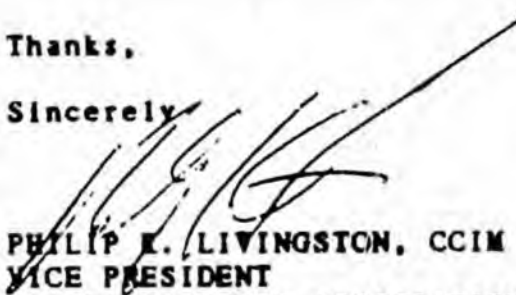
REF: ALASKA AIRMEN'S ASSOCIATION LETTER
TO REPRESENTATIVE GAIL PHILLIPS
2/6/1996 REQUESTING LEGISLATIVE ACTION
(17 ACC 40/45)

In the interest of eliminating further debate on the issue at the administrative level, The Alaska Airmen's Association requests that the legislature provide direction to DOT/PF by amending AS 02.15.090 to grant a lease renewal preference.

The Alaska Airmen's Association Inc. would appreciate your help.

Thanks,

Sincerely,



PHILIP E. LIVINGSTON, CCIM
VICE PRESIDENT
ALASKA AIRMEN'S ASSOCIATION INC.

cc: ltr Rep Gail Phillips 2/6/96



ALASKA AIRMEN'S ASSN., INC.

SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex

1515 East 15th Avenue Anchorage, Alaska 99501-4814

(907) 272-1251 — 24 Hour Phone/Fax

FEBRUARY 6, 1996

THE HONORABLE GAIL PHILLIPS
SPEAKER OF THE HOUSE
STATE CAPITOL, ROOM 208
JUNEAU, ALASKA 99801-1182

REF: LETTER OF 1/16/1996 FROM
COMMISSIONER JOSEPH L. PERKINS, P.E.
(17 ACC 40/45)

REPRESENTATIVE PHILIPS:

Contrary to Commissioner Perkins' assertions, the concerns of the aviation community are not based on "false assumptions".

Although the proposed rural airport regulations have been under consideration for over two years, DOT/PF has still not developed a sound leasing policy that will encourage investment and protect aviation businesses in Alaska.

The Commissioner does not address the real question: will adopting a policy granting leaseholders a renewal preference on their leases help maintain a stable business environment and thereby encourage long term investment in the aviation industry?

The answer to that question is obviously YES. This answer was reached by both former DOT/PF Commissioner Barton and the Special Commission on Airport Leasing.

Further, there has been no concern shown by the department for either:

1. The costs to the state associated with managing an increasing inventory of obsolete and poorly maintained forfeit leaseholder properties.

2. The ability of leaseholders to sell capital improvements or business interests deprived of their leasehold.

In the interest of eliminating further debate on the issue at the administrative level, The Alaska Airmen's Association requests that the legislature provide direction to DOT/PF by amending AS §2.15.090 to grant a lease renewal preference.



Page 2

Renewal preferences are granted under Title 38 in instances in which the state seeks to encourage investment in public lands.

Lease renewal preferences have been enacted in a number of statutes governing the leasing of lands by the Department of Natural Resources (DNR) under Title 38, including AS 38.05.102 (leasing of lands other than for the extraction of natural resources), AS 38.05.073 (g) (leasing of land for recreation facility development), AS 38.05.079 (d) (leasing of remote cabin sites) and AS 38.05.083 (a) (leasing of tidelands for aquatic farming and hatchery sites).

Shore fisheries leases for set gill nets are not awarded by competitive bid, but to the most qualified applicant, and may be extended. See AS 38.05.082 (b) and (d), AS 38.05.102, and 11 AAC 64.391.

Unless it is the conclusion of DOT/PF that the above leasing preferences are invalid, airport lessees who make improvements should be afforded the same kind of protection as other users of public lands.

Any concern on the part of DOT/PF or the Department of Law that a lease renewal preference would violate the equal protection provisions of the Alaska constitution is unfounded. The statutes governing renewal of DNR leases were approved by the Department of Law and have not been challenged on constitutional grounds.

The Department of Law has advised DOT/PF that no statute currently authorizes DOT/PF to give a preference right for lessees to renew their leases. This advice is based on the language of AS 02.15.090 (a), which provides in relevant part: "[i]n no case may the public be deprived of its rightful, equal and uniform use of the airport." The Department of Law interprets this language to mean that airport leases may not be renewed without being subject to competing applications. A further extension of that idea is that under equal protection requirements airports must treat "all similarly situated" persons equally.

We question whether the Department of Law's interpretation of AS 02.15.090 (a) is correct and suggest that an investor with substantial capital improvements or established business interests at risk is not "similarly situated" as a newcomer in a competitive bid.



Page 3

As stated above, The Alaska Airmen's Association requests that the legislature provide direction to DOT/PF by amending AS 02.15.090 to grant a lease renewal preference.

I have enclosed draft language that could be incorporated into a bill to confirm that lessees who have invested in improvements at rural airports shall be granted a renewal preference at the expiration of their leases, and that improvements constructed by lessees shall remain the property of the lessees.

Thank you for your support.

Sincerely

JOHN SPALDING
PRESIDENT
ALASKA AIRMEN'S ASSOCIATION

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 14, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/3/96

The TRANSPORTATION Committee considered:

HB 543

HOUSE BILL NO. 543

STATE AIRPORT LAND LEASE PREFERENCE

"An Act establishing a preference when entering into state airport land leases."

recommends it be replaced with the following committee substitute CS HB 543 (TRA) [X] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [] fiscal note(s) [] zero fiscal note(s) [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows contain signatures of W.F. Wilbur, A. ... , Ernest James, ... , and ... with checkmarks in DP, NR, and AM columns.

CHAIR'S SIGNATURE [Signature]



SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex
 1515 East 13th Avenue Anchorage, Alaska 99501-4814
 (907) 272-1251 - 24 Hour Phone/Fax

April 9, 1996

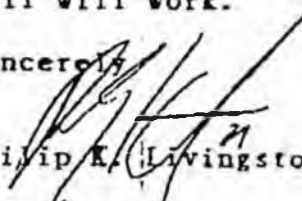
MARK HANLEY
 CO-CHAIR
 FINANCE COMMITTEE
 ALASKA LEGISLATURE

MARK:

I enclose changes to the Bill 543 which The Airmen's Association, The Air Carrier's Association, and the Fairbanks coalition submitted April 2, 1996 but were not included in the bill brought forward from the Transportation committee.

The current draft of the bill is unsatisfactory to all concerned. Please consider the enclosed changes so that this bill will work.

Sincerely,


 Philip K. Livingston, CCIM

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9-LS1769F
BARRISCH
4/3/96

CS FOR HOUSE BILL NO. 543(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

relating to state airport land leases."

1 ~~"An Act establishing the procedures and conditions for lessees of state airport~~
 2 ~~land, including holdover lessees, to receive a new lease of the land; relating to~~
 3 ~~the purposes for which a person, municipality, or the federal government may~~
 4 ~~use or improve state airport or navigation facilities under contract, lease, or~~
 5 ~~other arrangement with the state; and relating to the ownership of leasehold~~
 6 ~~improvements made under a state airport or navigational facility lease."~~

1

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

8 Section 1. FINDINGS AND STATEMENT OF PURPOSE. (a) The legislature finds
9 that

10 (1) it often takes considerable commitment, time, and resources for a lessee
11 to establish a fully developed revenue-producing business or noncommercial enterprise on
12 leased land on an airport owned and operated by the state;

13 (2) a developed business ^{or noncommercial enterprise} by an airport lessee produces a stable long-term flow

2

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1 of revenue to the local community and the state in the form of income from jobs created and
2 taxes paid;

3 (3) a developed business by an airport lessee usually has established a positive
4 reputation with its clientele that enhances future tourism and commerce in this state;

5 (4) a developed business by an airport lessee is better positioned to generate
6 more federal passenger entitlement money for the airport and the state;

7 (5) a developed business or noncommercial enterprise on an airport land lease
8 generally maximizes the use of the airport infrastructure, and this maximization makes the
9 airport's operation more economical; and

10 (6) providing a right and option to lessees of airport land to ^{continue to} ~~make the first~~
11 ~~offer for a new~~ lease of the land will encourage and enhance compliance with state law and
12 airport leases, and this compliance will benefit the overall operations of the state airport
13 system.

14 (b) It is the purpose of the legislature to ^{preserve and establish} ~~create~~, for qualifying land lessees who are
15 in compliance with state law and airport leases, a right ~~and option to make the first offer,~~
16 consistent with sound airport planning, to ~~continue to lease the land in order to continue their~~
17 ~~businesses~~ ^{and noncommercial enterprises} and in order to promote a strong aviation industry in this state with long-term
18 benefits to local communities, the airports, and the state.

19 * Sec. 2. AS 02.15.090(a) is amended to read:

20 (a) In operating an airport or air navigation facility owned or controlled by the
21 state, the department may enter into contracts, leases, and other arrangements covering
22 periods not exceeding 55 years with a person, municipality, or the United States,
23 granting the privilege of using or improving an airport or air navigation facility or a
24 portion of it or space in it for commercial, governmental, or other public purposes,
25 including private aviation use ^S [PLANE TIE DOWN]; or conferring the privilege of
26 supplying goods, commodities, services, or facilities at an airport or air navigation
27 facility. The department may establish the terms and conditions and ~~fix the charges,~~
28 rentals, and fees for the privileges or services that are reasonable and uniform for the
29 same class of privilege or service. ~~Charges,~~ rentals, or fees authorized by this
30 subsection may be fixed for the international airports by order of the commissioner or
31 by negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the

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1 fixing of charges, rentals, or fees as permitted under this subsection is not subject to
 2 the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).
 3 The terms, conditions, charges, rentals, and fees shall be established with due regard
 4 to the property and improvements used and the expense of operation to the state.
 5 However, use of state land and buildings by the Alaska Wing, Civil Air Patrol and its
 6 squadrons shall be permitted without rental charges. The department shall provide for
 7 public notice and an opportunity to comment before a charge, rental, or fee is fixed
 8 by order of the commissioner as permitted under this subsection. ~~Except as provided~~
 9 ~~in (c) of this section, the (FHE)~~ ^{The} public may not be deprived of its rightful, equal, and
 10 uniform use of the airport, air navigation facility, or a portion of them.

7

11 * Sec. 3. AS 02.15.090 is amended by adding new subsections to read:

12 (c) The department shall offer the holder of an existing lease, including a
 13 holdover lease, a new or extended lease of the land for a reasonable period
 14 of time, before offering or leasing the same land to any other party or the
 15 general public, if ~~determines that~~

8

16 (1) the lessee was in compliance with the terms and conditions of the
 17 expiring lease; and

18 (2) the continued use of the land is consistent with state law ~~and~~ ^{of the public}
 19 airport operations and policies, and is otherwise in the state's best interests.

9

20 ~~(d) Under (c) of this section, the department shall make the offer not less than~~
 21 ~~180 days before the expiration of the existing lease and the holder of the existing~~
 22 ~~lease shall respond to the department's offer not less than 90 days before the expiration~~
 23 ~~of the existing lease. In this subsection, "lease" does not include a holdover lease.~~

10

24 ~~(e) Ownership of leasehold improvements made under a lease entered into~~
 25 ~~under (a) of this section shall be retained by the leaseholder who constructed them, by~~
 26 ~~any successor who purchases them, or by any other lawful successor or assignee of the~~
 27 ~~lessee. However, in limited circumstances clearly defined by regulations, the~~
 28 ~~department may acquire ownership by financing the improvements, by purchasing the~~
 29 ~~improvements, by abandonment by the owner, by condemnation, or by judicial~~
 30 ~~proceedings.~~

11

AMC

~~REPLACED BY~~ Am. (1) [Keep lines 24 - 30 above as subsection (d).]

APR- 3-96 WED 13:19

DOTFF COMMISSIONER

FAX NO. 907588303
TO

DOT JIM PERKINS P.02

DOT PROPOSAL

holder of the expiring lease a right of first refusal on a new lease, of two years or longer, including new terms and conditions for the same land if the department determines that

- (1) the lessee was in compliance with the terms and conditions of the expiring lease; and
- (2) the continued use of the land through a new lease is consistent with state law, good airport policy, and the airport master plan, and is in the state's best interest.
- (d) Any lease term offered under (c) of this section may not exceed a total of 55 years when combined with the prior lease term

~~APR 03 2006~~
[Delete all.]

~~(e) All leases must include a provision that provides for the disposition of any improvements made to the land, at the expiration, termination or cancellation of the lease.~~

12

New Text Underlined [DELETED TEXT BRACKETED]

April 8, 1996

Alaska Air Carriers Association
and
Alaska Airmen's Association

REQUESTED CHANGES
For
CS FOR HOUSE BILL NO. 543(TRA)
(As Passed by the House Transportation Committee on April 3, 1996)

The Alaska Department of Transportation and Public Facilities has repeatedly testified that the administration supports a Bill that would provide for renewal rights for airport land lease tenants and avoid unwise competitive bid situations. The CS for HB 543 passed by the House Transportation Committee on April 3, 1996, does not accomplish this. With the changes we propose, the Bill would accomplish this.

Below we briefly set forth the reasons for our proposed changes. The numbers correspond to the circled numbers on the attached marked copy of the Bill.

1. Page 1, lines 1-6. Return to the 3/27 language. The new language adds nothing, except, perhaps new opportunities to debate the purposes and meaning of the new words.

2. Page 1, line 13. This addition makes clear the Bill would apply to private general aviation leaseholds as well as commercial ones.

3. Page 2, lines 10 and 11. The right "to make the *first* offer for a *new* lease" is uncertain. It could mean something entirely different from the plain vanilla renewal right. The *first* offer implies perhaps a second, and a third, offer from others - and a competitive bid. A *new* lease implies different terms - terms that could be so different and so onerous as to make the "renewal" right meaningless. For example, under the *new* lease, the DoTPF might insist upon quadruple rent, \$500,000 worth of new improvements, and DoTPF ownership of all new and existing improvements after two more years.

4. Page 2, line 14. Many existing leases already contemplate renewal rights.

5. Page 2, line 15. Same as paragraph 3, above.

6. Page 2, lines 17 and 25. Same as paragraph 2, above.

7. Page 3, lines 8 and 9. We would delete this amendment to the existing statute. It was proposed by the DoTPF, and yet it invites the very constitutional challenges the DoTPF has claimed to be so worried about throughout this process. DoTPF's proposed language as much as says that, by adopting the new subsection (c) below, we are depriving the public of some of its rightful, equal and uniform use

of the airports. The DoTPF's language is wholly unnecessary, and potentially dangerous.

8. Page 3, lines 13-15. These changes are necessary to provide for reasonable renewal rights, as discussed in paragraph 3, above.

9. Page 3, line 19. This change is necessary to insure that the DoTPF does not confuse the "state's best interest" with the best interest of the *department*, however shortsighted. The DoTPF must focus on the best interest of the public in these matters.

10. Page 3, lines 20-23. This language is unnecessary. It is also cumbersome, and generates more questions than it answers.

11. Page 3, lines 24-30. This language needs to be retained as subsection (d). The Lessee's continued ownership of his improvements is integral to the remedial purposes of this legislation. Until recently, the DoTPF would not have imagined to question this provision.

12. Page 4. The DoTPF's proposed subsection (e), adds nothing to the legislation; it is as meaningless as saying, "All leases must include commas and periods."

attachment
4/13/96

STATE OF ALASKA DEPARTMENT OF LAW
ATTORNEY GENERAL'S OFFICE
1031 WEST 4TH AVENUE SUITE 100
ANCHORAGE ALASKA 99501

PHONE: (907) 269-5100
FAX: (907) 279-5832

FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Rep. Hawley

LOCATION: _____

FAX NO: _____

NO. OF PAGES (including cover) 6

REMARKS: Marked up version of proposed
CS HB 543 agreed to last
night by state, C. Cole & Stuart
Bould. Cole has a ^{clean} copy of
the CS but hasn't called me
due to other business.

DATE: _____ TIME: _____

FROM: Hickerson - 269-5210
Transportation Section, Attorney General's Office, Anchorage

IF YOU DO NOT RECEIVE ALL THE PAGES OR HAVE ANY PROBLEMS WITH THE TRANSMITTAL, PLEASE CALL KATHY OR BETH AT 907/269-5163.

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This is state's marked up version

CS FOR HOUSE BILL NO. 543(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered: 4/9/96
Referred: Finance

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the procedures and conditions for lessees of state airport
2 and air navigational facility land, including holdover lessees, to receive a new
3 lease of the land; ~~relating to the purposes for which a person, municipality, or~~
4 the federal government may use or improve state airport or air navigational
5 facilities under contract, lease, or other arrangement with the state; and relating
6 to the ownership of leasehold improvements made under an airport or air
7 ~~navigational facility lease.~~

Leave in →

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

9 * Section 1. FINDINGS AND STATEMENT OF PURPOSE. (a) The legislature finds
10 that

11 (1) It often takes considerable commitment, time, and resources for a lessee
12 to establish a fully developed revenue-producing business or noncommercial enterprise on
13 leased land on an airport owned and operated by the state;

HB0543b

-1-

CSHB 543(TRA)

New Text Underlined (DELETED TEXT BRACKETED)

1 (2) a developed business by an airport lessee produces a stable long-term flow
2 of revenue to the local community and the state in the form of income from jobs created and
3 taxes paid;

4 (3) a developed business by an airport lessee usually has established a positive
5 reputation with its clientele that enhances future tourism and commerce in this state;

6 (4) a developed business by an airport lessee is better positioned to generate
7 more federal passenger entitlement money for the airport and the state;

8 (5) a developed business or noncommercial enterprise on an airport land lease
9 generally maximizes the use of the airport infrastructure, and this maximization makes the
10 airport's operation more economical; and

11 (6) providing ~~a right and option to~~ ^{a new lease for the same land w/o competition} leases of airport land ~~to make the flow~~
12 ~~offer for a new lease of the land~~ ^{lease} will encourage and enhance compliance with ~~the~~ law and
13 airport leases, and this compliance will benefit the overall operations of the state airport
14 system.

15 (b) It is the purpose of the legislature to create, for qualifying land lessees who are
16 in compliance with ~~the~~ ^{and whose continued lease of the land is} state law and airport leases, a right and option ~~to make the first offer,~~
17 consistent with ~~overall~~ ^{a right} airport planning, ~~to continue to~~ ^{and} lease the land in order to continue their
18 businesses ~~and~~ ^{and noncommercial enterprises} and in order to promote a strong aviation industry in this state with long-term
19 benefits to local communities, the airport, and the state.

20 * Sec. 2. AS 02.15.090(a) is amended to read:

21 (a) In operating an airport or air navigation facility owned or controlled by the
22 state, the department may enter into contracts, leases, and other arrangements covering
23 periods not exceeding 55 years with a person, municipality, or the United States,
24 granting the privilege of using or improving an airport or air navigation facility or a
25 portion of it or space in it for commercial, governmental, or other public purposes,
26 including private aviation use [PLANE TIE DOWN]; or conferring the privilege of
27 supplying goods, commodities, services, or facilities at an airport or air navigation
28 facility. The department may establish the terms and conditions and fix the charges,
29 rentals, and fees for the privileges or services that are reasonable and uniform for the
30 same class of privilege or service. Charges, rentals, or fees authorized by this
31 subsection may be fixed for the international airports by order of the commissioner or

CS/MS SA/TBA) 2 HB05436
~~NEW TEXT UNDERLINED (DELETED TEXT BRACKETED)~~

1 by negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the
 2 fixing of charges, rentals, or fees as permitted under this subsection is not subject to
 3 the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).
 4 The terms, conditions, charges, rentals, and fees shall be established with due regard
 5 to the property and improvements used and the expense of operation to the state.
 6 However, use of state land and buildings by the Alaska Wing, Civil Air Patrol and its
 7 squadrons shall be permitted without rental charges. The department shall provide for
 8 public notice and an opportunity to comment before a charge, rental, or fee is fixed
 9 by order of the commissioner as permitted under this subsection. Except as provided
 10 in (e) of this section, the [THE] public may not be deprived of its rightful, equal, and
 11 uniform use of the airport, air navigation facility, or a portion of them.

12 * Sec. 3. AS 02.15.090 is amended by adding new subsections to read:

13 (c) The department shall offer the holder of an existing lease, including a
 14 holdover lease, the right and option to make the first offer on a new lease for an
 15 extended term within a reasonable period of time for the same land if the department
 16 determines that

17 (1) the lessee was in compliance with the terms and conditions of the
 18 expiring lease; and

19 (2) the continued use of the land is consistent with state law, sound
 20 airport operations and policies, and is otherwise in the state's best interest.

21 (d) Under (c) of this section, the department shall make the offer not less than
 22 180 days before the expiration of the existing lease, and the holder of the existing
 23 lease shall respond to the department's offer not less than 90 days before the expiration
 24 of the existing lease. In this subsection, "lease" does not include a holdover lease.

25 (e) All leases must include a provision that provides for the disposition of any
 26 improvements made to the land at the expiration, termination, or cancellation of the
 27 lease.

Deletion Process

See new (c) and (d) (e) (f) (g)

(c) Before the expiration of a land lease, including leases in holdover, an existing lessee may apply for a new lease for the same land. The commissioner shall approve the application for a new lease for the same land under this section without an opportunity for competition if the commissioner finds:

(1) the lessee was in compliance with the prior lease terms and conditions, and

(2) the continued use of the leasehold is consistent with written airport operational policies, federally approved plans, standards and requirements, and is in the state's best interest.

(d) The commissioner may only approve one new lease for the same land without an opportunity for competition under (c) of this section.

(e) Any lease term offered under (c) of this section may not exceed a total of 55 years when combined with the prior lease term.

(f) A land lessee owns title to the permanent improvements that the lessee constructed or purchased during the term of the lease unless the lease expressly provides that the state is the owner of the permanent improvements.

(g) All land leases must include a provision for the disposition of permanent improvements made to the land at the expiration, termination, or cancellation of the lease that

(1) allows a land lessee to continue ownership of permanent improvements that the lessee constructed or purchased on a leasehold if the lessee is granted a new lease for the same land;

(2) provides, ^{the} at option of the existing lessee, an opportunity for the existing lessee to either

(i) sell the permanent improvements to a succeeding lessee of the same land if the continued presence of the permanent improvements is consistent with law, written airport operational policies, and federally approved plans, standards and requirements; or

(ii) require the state to offer the improvements at auction with the land lease, with proceeds from the sale of the improvements going to the existing lessee less administrative costs to the state, if the continued presence of the permanent improvements is consistent with law, written airport operational policies, and federally approved plans, standards and requirements

(3) requires the lessee, after notice by the department, to remove the permanent improvements at the lessee's sole expense if the permanent improvements do not comply with the airport's

existing masterplan, are not in reasonable compliance with applicable building codes at the expiration, termination, or cancellation of the lease, or are found to be a hazard to the public health or safety, or property; and

(4) provides that title to the permanent improvements vests in the department if the state purchases or otherwise contracts for the ownership of the permanent improvement, or if the lessee abandons the lease.

S

Alaska State Legislature

House of Representatives



Transportation Committee

Wan

SPONSOR STATEMENT

HB 543

"An Act establishing a preference when entering into State airport land leases."

In the past decade, the Alaskan aviation industry has made significant progress and investment in developing a system which better meets the transportation needs of our vast state. Alaska's aviation system is considerably different than other states.

Regulations have recently been proposed that could have a negative impact on Alaska's aviation industry. The changes suggested may threaten aviation infrastructure in Alaska by discouraging investment and development. Specifically, private aviators stand to lose any physical improvements added to airport structures at the conclusion of their lease. In some cases, the lessees have developed their leasehold to the tune of several thousands of dollars.

This potential loss could foster reluctance by the private sector to continue improving the infrastructure at aviation sites across the state. In addition, aviation operators would be left with no assurances that improvements and investments would be protected through continuing agreements with the state.

The purpose for state involvement in airport management should be to promote, encourage, and develop aviation in Alaska. It is important that airport leasing policy and practice in Alaska remain on a first come/first served basis.

House Bill 543 gives the current lessee preference if they are in compliance with the terms of the existing lease and have made substantial financial investments in developing the land.