

HB

476

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
REPRESENTATIVE BILL HUDSON
REPRESENTATIVE JOE RYAN
REPRESENTATIVE JERRY SANDERS
REPRESENTATIVE TOM BRICE
REPRESENTATIVE GENE KUBINA
COMMITTEE AIDE, SHIRLEY ARMSTRONG
COMMITTEE SECRETARY, CATHY WOOD
COMMITTEE HEARING ROOM 17 STATE CAPITOL



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee


MEMORANDUM

TO: Representative Bill Williams, Chairman
House Transportation Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor and Commerce

DATE: April 25, 1998

SUBJECT: Committee Packet For CSHB 476 () – Lease Of Airport Land

Handwritten signatures and initials, including what appears to be "Kathy" and "Rokeberg".

Attached is a committee packet for CSHB 476 (). The following items are included:

1. CS HB 476 ()
2. Sponsor Statement
3. LAA Legal Opinion
4. Steve Cooper letter dated
5. Alaska Statutes
6. HB 543 Bill History
7. Proposed regulations

If you have any questions please contact Shirley Armstrong at 465-4968.

Attachments: 3

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
REPRESENTATIVE BILL HUDSON
REPRESENTATIVE JOE RYAN
REPRESENTATIVE JERRY SANDERS
REPRESENTATIVE TOM BRICE
REPRESENTATIVE GENE KUBINA
COMMITTEE AIDE, SHIRLEY ARMSTRONG
COMMITTEE SECRETARY, CATHY WOOD
COMMITTEE HEARING ROOM 17 STATE CAPITOL



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

SPONSOR STATEMENT

CSHB 476 () – “An Act relating to leases of state-owned or state-controlled airport or air navigational facility land.”

The 19th Legislature passed CCHB 543(FIN) AM S to clarify state airport leasing policies by providing that existing leaseholders would have the right to extend the term (length) of an existing lease or enter into a new lease without offering the land to other persons for leasing, after meeting certain conditions.

Language in Alaska Statute 02.15.090 (a), states “the Department may enter into contracts, leases, or other arrangements covering periods not exceeding 55 years...” (italics added).

A problem occurred when the regulations were being drafted by DOT/PF as to the legislative intent regarding the length of the term available to an airport leaseholder. Moreover, LAA Legal has issued an opinion dated March 19, 1998, indicating that the governing provisions of AS 02.15.090 are very difficult to reconcile and recommends remedial legislation.

1. Was a tenant allowed to extend an existing lease and enter into a new lease prior to expiration of their existing lease if it was in the best interests of the State?
2. Was the lease for a term not exceeding 55 years, including extensions and periods of holdovers?

It is clear from the draft regulations 17 AAC 40.205, LEASE TERM LIMITATIONS AND EXCEPTIONS, that the department is seeking to override the legislature by promulgating the issue outlined in number 2 above when the legislature wants implementation of number 1 above.

Enactment of CSHB 476 () will make the statute very clear regarding the term length for leases.

I urge your support of this important piece of legislation.

(rev. 4/25/98)

0-LS1725VH
Bannister
4/22/98

CS FOR HOUSE BILL NO. 476()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to leases of state-owned or state-controlled airport or air
2 navigational facility land."

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

4 * Section 1. AS 02.15.090(c) is amended to read:

5 (c) Notwithstanding the right of the public to rightful, equal, and uniform use
6 under (a) of this section, before the expiration of a land lease, including the
7 termination of a lease in holdover status, entered into under this section, the lessee may
8 apply for a new lease, or for an extended term under the existing lease, for the same
9 land. The duration of a new lease under this subsection, including any extensions
10 of that lease, may not exceed 55 years. The duration of an extension under this
11 subsection, when added to the lease being extended and to any earlier extensions
12 of the lease being extended, may not exceed 55 years. The commissioner shall
13 approve the application for a new land lease or an extended term under this section
14 without offering the land to other persons for leasing and without regard to the

1
2
3
4
5

number of the lessee's prior leases or lease extensions for the same land if

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

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

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

March 19, 1998

SUBJECT: Renewals of airport land leases (Work Order 20-LS1689)

TO: Representative Norman Rokeberg
Attn: Janet

FROM: *TB*
Theresa Bannister
Legislative Counsel

You asked whether airport land leases that have been extended for 55 years or new airport land leases that have 55-year terms can be renewed indefinitely. It is my understanding that you are referring to new leases and extensions entered into under AS 02.15.090(c), which was enacted in 1996. I subsequently indicated to you that the statutes that govern this issue are very ambiguous on this point, and you asked me to explain the situation.

The governing provisions of AS 02.15.090 are very difficult to reconcile. While AS 02.15.090(a) establishes some sort of 55-year limitation related to these leases, AS 02.15.090(c) appears to give lessees the right to renew the leases indefinitely, provided they meet certain conditions. The relevant language of AS 02.15.090(a) states that when

operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases, and other arrangements covering periods not exceeding 55 years....

This language could be interpreted to establish a time limit for the total length that one lessor can lease airport land, or to establish a time limit for the length of each type of contractual arrangement made for the land. The regulations do not appear to help decide which is the case. 17 AAC 40.330(a) states that the initial term of a lease is to be for "any period allowed by law." 17 AAC 40.360, which deals with lease provisions, states at (13) what the lessee needs to do to renew, but does not establish how long the lease may be for or how many renewals are allowed.

At the same time, the right to a new lease or extension of the same land under AS 02.15.090(c) does not limit the number of times a renewal can be obtained or the length of the new lease or extension, and does not require that the existing lease be less than 55 years before it can be extended or a new lease issued. The conditions for each renewal are not directly connected to the length of the lease.

When AS 02.15.090(c) was enacted in 1996, the bill stated that it was

Representative Norman Rokeberg

March 19, 1998

Page 2

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

(sec. 1(b) ch 105 SLA 1996). This language seems to suggest that the legislature intended that a lessee be able to lease the same land indefinitely, as long as the lease continuation met certain conditions unrelated to the length of the lease. From this language it does not appear that the legislature intended to limit how many times or for how long the lessee could renew the lease. It is possible that the legislature was relying on the 55-year limitation to limit the total length of a lease and its renewals. However, there is no indication in the language of (c) of how the two subsections were to interact.

In order to harmonize the two provisions there are at least two possible readings. One reading is that the 55-year restriction limits the total number of years that a person can have a lease for the same land, including all renewals. However, this may not accommodate the needs of a lessor whose business can last more than 55 years. Under this reading, neither lease that you have asked about could be renewed, because each would have reached the maximum period for the lease. Under this reading it also does not appear that the extension of 55 years that you are asking about would be allowed, because then the total lease term would be more than 55 years.

The other reading is that the 55-year restriction does not limit the total number of years that a lessee can lease the same land, but limits the length of each contractual arrangement that is entered into by the state, including arguably treating an extension or a renewal as a contractual arrangement separate from the initial lease. This second reading has the virtue of allowing unlimited renewals as needed by the lessee to operate the lessee's business on the land, while giving the state at least every 55 years the ability to evaluate the leasing situation in light of the airport's operation policies and the best interests of the state. It also is more consistent with the legislative purpose stated for AS 02.15.090(c). Although I would tend to find that this reading is the better one, it does, however, require a somewhat strained reading of "contract, lease, or other arrangement" in AS 02.15.090(c) to treat a lease renewal or extension as an "other arrangement" separate from the lease. Under this reading, both leases you have asked about could be renewed indefinitely, as long as each renewal did not exceed 55 years and the other conditions were met.

In conclusion, AS 02.15.090(a) and (c) are very unclear on whether indefinite renewals are allowed, and produce different results depending on which reading is adopted. Although the second reading appears to me to be the better interpretation of these provisions, it is not clear how a court would resolve the ambiguity. Therefore, I recommend that AS 02.15.090(a) and (c) be amended to clarify the situation.

Representative Norman Rokeberg
March 19, 1998
Page 3

If I may be of further assistance, please advise.

TLB:pl
98-057.plm

April 16, 1998
From: Stephen Cooper
Fairbanks 907-456-0245

Subject: Senate CS for HB 210. Section 1.

1. This addresses only Section 1 of CSHB 210.
2. The new text prevents a misinterpretation of the present legislation relating to aviation lease renewals and extensions. The new text is consistent with the original legislative intent and with the aviation interests for which the existing statute was passed in 1996 as HB543.
3. In 1996 the state DOT proposed a 55 year limit on the availability of lease renewals. This concept was rejected at legislative hearings and at passage of the bill.
4. Thereafter, acting contrary to the newly passed law (HB 543), DOT inserted a 55 year limit into proposed regulations offered to implement that law. As a result of this, Rep. Pete Kelly wrote to DOT Commissioner Perkins on January 22, 1997:

As co-sponsor of HB 543, I intended it to be clear that an existing lessee could approach the Department for a new lease up to 55 years in duration, or could extend the existing lease up to 55 years in total. It is very important to be sure that the regulations provide an effective method to allow an individual who has completed a 55 year term to receive a preference for a new lease.

5. To uphold the purpose of the 1996 legislation and to promote aviation in Alaska, the existing law should be amended to provide that when a tenant obtains a new lease, that lease, including extensions, may equal but not exceed 55 years, and that an existing lease, including extensions, likewise may equal but not exceed 55 years. Further, it should be made clear that the 55 year limit applies to each lease, not to the lessee. A new lease or extension must be granted without regard to the number of that lessee's prior leases of the same land. To do otherwise would destroy the stability and growth which are essential to a healthy aviation industry capable of serving the interests and needs of the community. Section 1 of Senate CSHB 210 accomplishes these purposes.



DATE-LINE COPIES, INC.

3677 College Road, Suite 1 • Fairbanks, Alaska 99709
Phone (907) 479-3831 • Fax (907) 474-8056



TO: REP. NORMAN ROKEBERG

ATTENTION: JUNEAD

PHONE #: _____

FAX #: 907-465-2040

FROM: STEPHEN COOPER

PHONE #: 907-456-0245

DATE: 4/21 NO. PAGES: 2 (Including this sheet)

COMMENTS:

PLEASE EXCUSE MY DELAY IN
GETTING THIS TO YOU -
REGARDING AVIATION LEASING (CSHB210)
YOUR CALL + YOUR SUPPORT
ARE APPRECIATED.

- Section**
 102. Use of airports for utilities
 104. Relocation of utility facilities incident to airport projects
 106. Encroachment permits
 108. Relocation or removal of encroachment

- Section**
 110. Unauthorized encroachments
 112. Notice of removal of unauthorized encroachment
 114. Removal at owner's expense after noncompliance; removal expense

Collateral references. — 8 Am. Jur. 2d, Aviation, §§ 55-75.

Sec. 02.15.060. Establishment, operation and maintenance. The department may plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities within the state. (§ 5 A ch 123 SLA 1949; am § 2 ch 68 SLA 1955)

NOTES TO DECISIONS

Applied in *Clark v. State*, 738 P.2d 772 (Alaska Ct. App. 1987).

Collateral references. — 8 Am. Jur. 2d, Aviation, §§ 17-19, 55 et seq.
 2A C.J.S., Aeronautics and Aerospace, § 57 et seq.
 Airport operations or flight of aircraft as nuisance. 79 ALR3d 253.

Airport operations liability insurance. 92 ALR3d 1267.

Sec. 02.15.070. Acquisition and disposal of property. (a) For the purposes specified in AS 02.15.060 the department may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire real or personal property, or any interest in the property including easements in airport hazards or land outside the boundaries of an airport or airport site, necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards, or to prevent the establishment of airport hazards. The department may acquire existing airports and air navigation facilities in the same manner except it may not acquire or take over an airport or air navigation facility owned or controlled by a municipality or person without the consent of the municipality or person.

(b) The department may, by sale, lease, or otherwise, dispose of all, a portion of, or an interest in a property, airport, or air navigation facility described in (a) of this section. The proceeds of any disposition shall be used for the purposes set out in this chapter. (§ 5 A, B ch 123 SLA 1949; am § 2 ch 68 SLA 1955)

Collateral references. — 8 Am. Jur. 2d, Aviation, §§ 9-19, 62, 67.
 2A C.J.S., Aeronautics and Aerospace, §§ 61, 65-67.
 Plotting or planning in anticipation of improvement as taking or damaging of property affected. 37 ALR3d 127.

Zoning regulations limiting use of property near airport as taking of property. 18 ALR4th 542.

Operations or flight of aircraft as constituting taking or damaging of property. 22 ALR4th 863.

Sec. 02.15.080. Joint operations. The department may exercise the powers granted by AS 02.15.060 — 02.15.100 jointly with a person, municipality, or agency of the state, or with the United States. (§ 5 C ch 123 SLA 1949)

Sec. 02.15.090. Operation and use privileges. (a) In operating an airport or air

a person, municipality, or the United States, granting the privilege of using or improving an airport or air navigation facility or a portion of it or space in it for commercial, governmental, or other public purposes, including private plane tie down; or confer the privilege of supplying goods, commodities, services, or facilities at an airport navigation facility. The department may establish the terms and conditions and charges, rentals, and fees for the privileges or services that are reasonable and uniform for the same class of privilege or service. Charges, rentals, or fees authorized in this subsection may be fixed for the international airports by order of the commissioner negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the charges, rentals, or fees as permitted under this subsection is not subject to the conditions, charges, rentals, and fees shall be established with due regard to the public and improvements used and the expense of operation to the state. However, use of land and buildings by the Alaska Wing, Civil Air Patrol and its squadrons shall be permitted without rental charges. The department shall provide for public notice and opportunity to comment before a charge, rental, or fee is fixed by order of the commissioner as permitted under this subsection. The public may not be deprived of a rightful, equal, and uniform use of the airport, air navigation facility, or a portion of it.

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

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

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

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

(d) 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.

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

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

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

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

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

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

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

(5) title to the permanent improvements vests in the department if the state purchases or otherwise contracts for the ownership of the permanent improvements, or if the lessee abandons the permanent improvements. (§ 5 E ch 123 SLA 1949; am § 1 ch 117 SLA 1959; am § 3 ch 36 SLA 1990; am § 1 ch 33 SLA 1993; am §§ 2, 3 ch 105 SLA 1996)

Cross references. — For legislative findings and purpose concerning the enactment of subsections (c)-(e) in § 3, ch. 105, SLA 1996, see § 1, ch. 105, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment, effective May 12, 1990, in subsection (a), substituted "commercial, governmental, or other public purposes, including private plane tie down" for "commercial or governmental purposes" in the first sentence, added the fourth (now sixth) sentence and made grammatical changes.

The 1993 amendment, effective May 28, 1993, in subsection (a), added the present third, fourth, and seventh sentences and made a stylistic change in the last sentence.

The 1996 amendment, effective September 23, 1996, inserted a section reference near the end of subsection (b) and added subsections (c)-(e).

Editor's notes. — Section 3, ch. 33, SLA 1993 makes the 1993 amendment to (a) of this section retroactive to January 1, 1993.

NOTES TO DECISIONS

State cannot be indemnified for own negligence. — Administrative regulation requiring that all airport terminal leases contain an indemnity provision was invalid to the extent that it required airport lessees to indemnify the state for its own negligence in the operation, maintenance or design of the taxiways and runways of Anchorage International Airport. *State v. Korean Air Lines Co.*, 776 P.2d 315 (Alaska 1989).

Public duty exception to rule allowing indemnification of an indemnitee for its own negligence prevented the state from seeking indemnification from an airline

terminal lessee for the state's own negligence in the operation, maintenance or design of the taxiways and runways of Anchorage International Airport. *State v. Korean Air Lines Co.*, 776 P.2d 315 (Alaska 1989).

Legislative intent. — By enacting AS 02.15.120, 02.15.160, and this section, the legislature intended to insure that airport facilities would be made available, on a priority basis, to that segment of society for which those facilities are designed: Those persons operating aircraft or machinery used incidentally to the operation of aircraft. *Plancich v. State*, 693 P.2d 855 (Alaska 1985).

Collateral references. — Airport operations or flight of aircraft as nuisance. 79 ALR3d 253.

Sec. 02.15.091. Sale and delivery of in-bond merchandise at international airports. (a) Under (b) and (c) of this section, the department shall allow the sale and delivery of in-bond merchandise at an international airport only by an exclusive contract.

(b) While the exclusive contracts for the sale and delivery of in-bond merchandise at international airports that exist on June 15, 1982 are in effect, the department may not permit or confer a right on any other person to offer to sell, sell, or deliver in-bond merchandise at an international airport.

(c) After the exclusive contracts existing on June 15, 1982 are no longer in effect, the department shall enter into one exclusive contract and, on its expiration, additional successive exclusive contracts for the sale and delivery of in-bond merchandise at each international airport. Except under the existing and future exclusive contracts described in this section, the department may not permit or confer a right upon any person to offer to sell, sell, or deliver in-bond merchandise at an international airport.

(d) The department shall offer the exclusive contracts required by this section by competitive bid or by competitive proposals. If the department offers the exclusive contracts by competitive bid, the department shall award the contracts after considering the generation of maximum revenue for the International Airports Revenue Fund

that include depth of management, financial ability, demonstrated experience locations, quality of services and products, success in marketing programs, char improvements of proposed facilities, and the generation of optimum revenue for

(e) The department shall actively supervise the operations under each contract for the sale and delivery of in-bond merchandise in order to en effectiveness of the operations. To supervise contract operations under this set department shall develop and implement guidelines that provide for review reasonableness of price schedules, quality and assortment of merchandise, and service.

(f) Nothing in this section applies to deliveries of in-bond merchandise as airlines. (§ 2 ch 111 SLA 1982; am § 1 ch 21 SLA 1988)

Cross references. — For legislative findings, see § 1, ch. 111, SLA 1982, in the 1982 Temporary and Special Acts and Resolves.

Effect of amendments. — The 1988 amendment in subsection (d), added the last sentence and the first two sentences (formerly just one sentence).

Sec. 02.15.095. Courtesy cars. Notwithstanding the provisions of AS 02.15.095, the department may not exclude from the streets, roads, highways, parking facilities, or other portions of a state-operated airport designated for operation or parking of other transportation vehicles, nor may the department prohibit from picking up and dropping off passengers, those motor vehicles commonly known as "courtesy cars" or "limousines" operated by hotels, motels or other similar places of public accommodation for the transportation of their guests to and from the airport at the request of the guest for which service no charge is made to the guest. (§ 1 ch 9 SLA 1974)

Sec. 02.15.100. Liens. The department may enforce the payment of any charges for repairs, improvements, storage, or care of personal property made or furnished by the department or its agents, in connection with the operation of an airport or air navigation facility owned or operated by the state. The state has those lien rights generally by law to secure payment for those services. (§ 5 E ch 123 SLA 1949; added by § 1 SLA 1959)

Sec. 02.15.102. Use of airports for utilities. A utility facility may be constructed, placed, or maintained across, along, over, under, or within a state airport in accordance with regulations adopted or procedures prescribed by the department only if authorized by a written permit issued by the department. The department may charge a fee for a permit issued under this section. (§ 1 ch 142 SLA 1986; am § 1 SLA 1990)

Effect of amendments. — The 1990 amendment, effective May 12, 1990, added the second sentence.

Sec. 02.15.104. Relocation of utility facilities incident to airport projects. (a) If, incident to the construction of an airport project, the department determines that a utility facility located across, along, over, under, or within a state airport must be changed, relocated, or removed, the utility owning or maintaining the facility shall change, relocate, or remove it in accordance with the order, within a reasonable time set by the department in the order.

(b) If the utility facility is not changed, relocated, or removed in accordance with the order, any permit authorizing the facility issued by the department under AS 02.15.104 becomes invalid and the facility will be considered an unauthorized encroachment on the provisions of AS 02.15.114.

(c) The cost of change, relocation, or removal as defined in AS 02.15.104.

Register _____ 1998 TRANSP. AND PUBLIC FACILITIES

17 AAC 40.203. APPROVAL OR DENIAL OF AN APPLICATION FOR A LEASE, PERMIT, OR CONCESSION. (a) Subject to the public notice requirements of this chapter, the airport manager will approve an application for a lease, permit, concession, easement, right of way, license, or other interest if the airport manager decides that

- (1) the proposed use is compatible with written airport operation policies;
- (2) the applicant is not in violation of the terms of a contract with the state;
- (3) the applicant is not in arrears on a rental payment or other financial obligation due the state or otherwise in default of an obligation under a lease, permit, or concession; and
- (4) approval of the application is in the best interest of the state.

(b) After the airport manager has approved an application, the airport manager will give the public notice of the application under this chapter. Public notice is only valid for one year, and the airport manager may not execute a lease, permit, or concession later than one year after the deadline for submission of public comment. The notice must include

- (1) the applicant's name;
- (2) the general terms of the lease, permit, concession, or material amendment, including the rent, fees, term, property, and authorized uses;
- (3) the airport manager's mailing address for receiving competing applications or public comments; and
- (4) the date all public comments and competing applications must be received by the airport manager, that must be

(A) at least 30 days after the day the notice is first published or posted if the proposed lease, permit, concession, or material amendment term is greater than 120 days; or

(B) at least seven days after the day the notice is first posted if the proposed lease, permit, concession, or material amendment term is 120 days or less.

(5) The airport manager will not request competing applications if the application is from an existing land lessee who has applied for a new land lease or land lease term extension if the lessee qualifies under 17 AAC 40.204(b).

(c) After the public comment period, the airport manager will

(1) consider only the public comments and competing applications received by the airport manager during the public comment period; and

(2) execute the lease, permit, or concession unless the airport manager decides in writing that the application should be denied under this section.

(d) If the airport manager receives two or more applications for a lease, permit, concession, or material

Register _____ 1998 TRANSP. AND PUBLIC FACILITIES

amendment for use of the same property for different classes of use, and the applications are otherwise acceptable under this section, aviation use has priority over both auxiliary use and nonaviation use, and auxiliary use has priority over nonaviation use.

(e) The airport manager will, in the manager's discretion, mail or deliver a lease, permit, or concession for a combination of two or more classes of use.

(f) If the applicant does not sign and return a lease, permit, or concession within 30 days after the date the airport manager mails or delivers it to the applicant, the airport manager will withdraw the offer of the lease, permit, or concession and mail or deliver written notice of the withdrawal to the applicant. The airport manager will extend the response time granted under this subsection for good cause.

(g) The decision to deny an application must be in writing and state the reasons for the denial. An applicant may appeal the denial of an application. (Eff. ___/___/___, Register ___)

Authority: AS 02.15.020 AS 02.15.200
AS 02.15.060 AS 02.15.210
AS 02.15.090

17 AAC 40.204. COMPETITIVE OFFERING OF A LEASE, PERMIT, OR CONCESSION. (a) The airport manager will competitively offer a lease, permit, or concession to the public if

- (1) the airport manager receives more than one application that meets the requirements of this section for the same property and same class of use;
- (2) the airport manager decides that the applicant does not qualify for a new lease term or lease term extension without competition under subsection (b) of this section;
- (3) the airport manager decides that it is in the best interest of the state to offer the interest competitively;
- (4) the lease, permit, or concession includes a grant of an exclusive right; or
- (5) the interest must be offered competitively under law.


(b) An existing land lessee other than a government agency may apply for a new land lease or extension to an existing land lease without competition under this section if the applicant applies for the same land and same class of use as the existing lease, and submits the application to the airport manager before the expiration of the lease or before the airport manager terminates a lease in holdover. The airport manager will approve a new land lease or land lease term extension without competition if the airport manager decides that

- (1) the applicant's continued use of the land is consistent with written airport operation policies and the new land lease or extension is in the best interest of the state under 17 AAC 40.203; and

Register _____ 1998 TRANSP. AND PUBLIC FACILITIES

(2) the applicant is in compliance with the terms and conditions of the applicant's existing lease or holdover lease. (Eff. ___/___/___, Register ___)

Authority: AS 02.15.020 AS 02.15.090
AS 02.15.060 AS 02.15.200
AS 02.15.070 AS 02.15.210

 17 AAC 40.205. LEASE TERM LIMITATIONS AND EXCEPTIONS.

(a) A lease term, including extensions and periods of holdover, must not exceed 55 years.

(b) If the airport manager decides in writing that a premises will be needed for an aviation use or airport development in the future and the airport manager grants a lease for auxiliary or nonaviation use of the premises, the airport manager will not grant a lease or lease term extension beyond the time the airport manager decides that the premises will be needed for an aviation use or airport development.

(c) The airport manager will not grant a lease term or lease term extension that exceeds 35 years without the written approval of the commissioner. After considering the amount of the applicant's investment or fair market value appraisal, the commissioner will grant an exception to the lease term tables in this article for a lease, permit, concession, or extension of a term only if the commissioner finds in writing that the exception is in the best interest of the state; and only if the exception does not result in a lease term exceeding 55 years, including extensions and periods of holdover. The commissioner will not delegate the responsibility for granting a lease term exception under this section. (Eff. ___/___/___, Register ___)

Authority: AS 02.15.020 AS 02.15.090
AS 02.15.050 AS 02.15.210

17 AAC 40.206. LAND LEASE TERM OR TERM EXTENSION.

(a) This section does not apply to a land lease or land lease term extension if the lessee is a government agency.

(b) The airport manager will set the term for a land lease or land lease term extension after considering

- (1) the applicant's development and use of the premises;
- (2) the conformance of the proposed lease, permit, or concession with the master plan for the airport;
- (3) the conformance of the proposed lease, permit, or concession with the future development of the airport;
- (4) the covenants and restrictions in the state's title to airport property;
- (5) the amount of investment, purchase price, fair market value, useful life, or remaining useful life of permanent improvements documented in the application; and

Register _____ 1998 TRANSP. AND PUBLIC FACILITIES

(6) the method and terms of financing the applicant's investment.

(c) After considering the factors described in (b) of this section, the airport manager will grant a maximum term for a new lease or a term extension that is the greater of

(1) the number of years from the applicable table in this section that corresponds to the amount of the applicant's initial investment or additional investment in permanent improvements on the premises;

(2) the number of years from the applicable table in this section that corresponds to the appraised fair market value or purchase price of permanent improvements on the premises;

(3) the number of years of useful life of proposed permanent improvements on the premises; or

(4) the number of years of remaining useful life of existing permanent improvements on the premises.

(d) Except during the last year of the term of a lease, the airport manager will only grant a lease term extension if the applicant proposes to make an additional investment in the premises or has purchased permanent improvements on the premises as described in 17 AAC 40 202(c) (1) and (2).

(e) The term of any extension granted by the airport manager under this section must be added to the end of the existing term of the lease.

(f) General aviation zone. If the premises is located in a general aviation zone, the airport manager will use the following table to determine the lease term or lease term extension to be granted based on the applicant's investment, purchase price, or fair market value.

<u>Term</u>	<u>Fair Market Value, Purchase Price or Investment Amount</u>
5 years	\$ 0
6 years	\$ 7,500
7 years	\$ 15,000
8 years	\$ 22,500
9 years	\$ 30,000
10 years	\$ 37,500
11 years	\$ 45,000
12 years	\$ 52,500
13 years	\$ 60,000
14 years	\$ 67,500
15 years	\$ 75,000
16 years	\$ 82,500
17 years	\$ 90,000
18 years	\$ 97,500
19 years	\$ 105,000
20 years	\$ 112,500
21 years	\$ 120,000

Register _____ 1998 TRANSP. AND PUBLIC FACILITIES

22 years	.....	\$ 127,500
23 years	.....	\$ 135,000
24 years	.....	\$ 142,500
25 years	.....	\$ 150,000
26 years	.....	\$ 157,500
27 years	.....	\$ 165,000
28 years	.....	\$ 172,500
29 years	.....	\$ 180,000
30 years	.....	\$ 187,500
31 years	.....	\$ 195,000
32 years	.....	\$ 202,500
33 years	.....	\$ 210,000
34 years	.....	\$ 217,500
35 years	.....	\$ 225,000

(g) Nongeneral aviation zone. If the premises is located in a nongeneral aviation zone, the airport manager will use the following table to determine the lease term or lease term extension to be granted based on the applicant's investment, purchase price, or fair market value.

<u>Term</u>	<u>Fair Market Value, Purchase Price or Investment Amount</u>
5 years	..... \$ 0
6 years	..... \$ 25,000
7 years	..... \$ 50,000
8 years	..... \$ 75,000
9 years	..... \$ 100,000
10 years	..... \$ 125,000
11 years	..... \$ 150,000
12 years	..... \$ 175,000
13 years	..... \$ 200,000
14 years	..... \$ 225,000
15 years	..... \$ 250,000
16 years	..... \$ 275,000
17 years	..... \$ 300,000
18 years	..... \$ 325,000
19 years	..... \$ 350,000
20 years	..... \$ 375,000
21 years	..... \$ 400,000
22 years	..... \$ 425,000
23 years	..... \$ 450,000
24 years	..... \$ 475,000
25 years	..... \$ 500,000
26 years	..... \$ 525,000
27 years	..... \$ 550,000
28 years	..... \$ 575,000
29 years	..... \$ 600,000
30 years	..... \$ 625,000

Register _____ 1998 TRANSP. AND PUBLIC FACILITIES

31 years	.....	\$ 650,000
32 years	.....	\$ 675,000
33 years	.....	\$ 700,000
34 years	.....	\$ 725,000
35 years	.....	\$ 750,000

(Eff. ___/___/___, Register ___)

Authority: AS 02.15.020 AS 02.15.090
 AS 02.15.060 AS 02.15.210

Editor's Note: A map showing the general aviation zone of an airport is located in the airport manager's office of the respective airport at the address indicated in 17 AAC 40.001.

17 AAC 40.207. PERMIT, CONCESSION, BUILDING SPACE LEASE, OR GOVERNMENT AGENCY LAND LEASE TERM. The airport manager will set the term or term extension for a permit, concession, building space lease, or land lease for a government agency after considering

- (1) the applicant's development and use of the premises;
- (2) the conformance of the proposed lease, permit, or concession with the master plan for the airport;
- (3) the conformance of the proposed lease, permit, or concession with the future development of the airport;
- (4) the covenants and restrictions in the state's title to airport property;
- (5) the applicant's investment in permanent improvements and site development;
- (6) the needs of a government agency applicant; and
- (7) the best interest of the state. (Eff. ___/___/___, Register ___)

Authority: AS 02.15.020 AS 02.15.090
 AS 02.15.060 AS 02.15.210

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
REPRESENTATIVE BILL HUDSON
REPRESENTATIVE JOE RYAN
REPRESENTATIVE JERRY SANDERS
REPRESENTATIVE TOM BRICE
REPRESENTATIVE GENE KUBINA
COMMITTEE AIDE, SHIRLEY ARMSTRONG
COMMITTEE SECRETARY, CATHY WOOD
COMMITTEE HEARING ROOM 17 STATE CAPITOL



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

MEMORANDUM

TO: Representative Bill Williams, Chairman
House Transportation Committee

FROM: Representative Norman Rokeberg, Chairman *NRP*
House Labor and Commerce

DATE: April 18, 1998

SUBJECT: Hearing Request for HB 476 – Lease Of Airport Land

I respectfully request that HB 476 be scheduled for committee hearing. My office will provide a bill packet for use by the committee.

Thank you for your consideration in this matter. If you have any questions please contact Shirley Armstrong at 465-4968.

Attachments