

**SB**

**304**

# ALASKA STATE LEGISLATURE

## SENATE TRANSPORTATION COMMITTEE

### Committee Members

Senator Huggins, Chairman  
Senator Cowdery, Vice-Chair  
Senator Therriault  
Senator Kookesh  
Senator French



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### Sponsor Statement

#### Senate Bill 304

**"An Act relating to the privileges of airport parking shuttles and to fees or charges imposed on a person who is not a lessee or holder of a privilege to use the property or a facility of an airport."**

Under Alaska law, commercial vehicles that deliver people to the airport fall into one of four general categories: courtesy vehicles, taxis, limos, shuttles, buses, or tour passenger vehicles. Depending upon the vehicle's classification, a fee is charged for what is essentially use of the airport's curb and roadway. The authority for the setting of these specific rates can be found in AS 02.15.090 which requires the fees charged to be "reasonable and uniform for the same class of privileges and services... and [to be established] with due regard to the property and improvements used and the expense of operation by the state."

At present, the rates charged by the Department of Transportation for these different vehicles to utilize the airport curb at the Anchorage International Airport varies from \$50.00 per year for a courtesy vehicle, taxi, or limo, to \$100 per year for a tour passenger vehicle, up to a maximum of \$1000.00 per year for a regularly scheduled bus.

In early 2005, the Department of Transportation proposed regulations, which would charge "off-airport valet parking services" a tax equal to 8% of their gross revenues. This change would constitute a drastic shift from the statutory language, which requires that the fees charged be "reasonable and uniform for the same class of privileges and services." While other courtesy services such as free hotel shuttles are charged a \$50 per vehicle fee, the proposal would charge free parking shuttles 8% of gross sales or \$250 annual minimum (whichever is greater). The two services are essentially the same class because both are "a free courtesy"; both offer an airport patron an off-site service and both require the same amount of accommodations on part of the Airport.

The purpose of SB304 is to clarify the law with regard to the charging of off-airport businesses who simply drop patrons at the curb or pick them up upon return and reflects the sentiment that the Department should set rates, which are based on use and not as a percentage of gross revenues. SB304 simply and specifically directs the Department that charges for usage must be consistent with other services that receive similar privileges and accommodations, may not be on a gross revenue basis and shall not have the effect of singling out one type of accommodations because it may currently or in the future compete with the airport.

**Ted Stevens Anchorage International Airport  
Rental Car Concessions**

Anchorage Airport Concession	FY02	FY03	FY04	FY05
On-Airport RAC* Gross Revenues	\$ 35,759,984	\$ 35,338,712	\$ 38,416,289	\$ 39,268,002
Off-Airport RAC Gross Revenues**	\$ 1,079,382	\$ 968,124	\$ 129,815	\$ 253,275
Total	\$ 36,839,366	\$ 36,306,836	\$ 38,546,104	\$ 39,522,077

\*RAC = Rent-A-Car

\*\*Includes only gross revenues for Airport related business.

On-Airport RAC Concession Fees (10%)	\$ 3,897,364	\$ 4,303,847	\$ 4,440,204	\$ 3,936,130
Off-Airport RAC Concession Fees (8%)	\$ 100,669	\$ 85,367	\$ 9,593	\$ 16,338
Total	\$ 3,998,033	\$ 4,389,214	\$ 4,449,797	\$ 3,952,468

1. In FY03 (December 2002) Thrifty Rental moved from off-airport to an on-airport rental car concessionaire.
2. In FY05 (May 2005) Enterprise became eighth on-airport rental car concessionaire.

Comments: Overall concession revenues may fall below or above the 10 or 8 percent respective fees because of cash basis accounting principles and end-of-the-year adjustments for each concession agreement.

Although off-airport rental car revenues appear low recently, the numbers could rise dramatically depending upon incentives, such as a lower concession fee.

## TED STEVENS ANCHORAGE INTERNATIONAL AIRPORT PARKING REVENUES

### FY03

Gross	\$4,817,000	Concession Agreement <sup>1</sup>
Net	\$2,204,000	Concessionaire's check to the Airport

### FY04

Gross	\$4,456,000	Concession Agreement <sup>1</sup>
Net	\$2,009,000	Concessionaire's check to the Airport

### FY05

Gross	\$4,686,000	Concession Agreement <sup>1</sup>
Net	\$2,462,000	Concessionaire's check to the Airport <sup>2</sup>

### \*FY06

**\*Note: July and August were under the concession agreement, i.e., all expenses were paid by the concessionaire. Beginning September 1, 2005, the concession agreement was replaced with a management agreement. Under the management agreement, the Airport pays all operating expenses and a management fee but retains all parking revenues.**

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<sup>1</sup> Garage and Shuttle Expenses paid by Concessionaire out of gross revenues.

<sup>2</sup> Concessionaire percentage rent increased during this year from 46% to 55%.

Dated: 4/3/06

# Ted Stevens Anchorage International Airport Concessions

Anchorage Airport Concessions	Percentage Rent
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\*Most concessionaires pay the greater of a minimum annual guarantee or a percentage of gross sales

### Food & Beverage (HMSHost)

Food	10.00%
Alcohol	15.00%
Vending/Starbucks Merchandise	15.00%
Employee Cafeteria	5.00%

### News & Gifts (Hudson News)

Books, Magazines, Newspapers	14.00%
Health & Beauty Aides/Sundries/Food	18.00%
Gifts/Retail	24.00%

### Specialty Retail (Sourdough Mercantile)

Books	11.00%
Gifts/Retail	17.00%
Alaska Made Products	13.00%
Seasonal Kiosks	10.00%

### DVD Rental/Sales (InMotion)

DVD Rentals	13.00%
Retail	10.00%

### Public Pay Phones (GCI)

Pay Phones & Long Distance	15.00%
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### Luggage Carts (FSS)

10.00%

### Duty Free/ North Terminal News & Gifts

General Merchandise	12.50%
Books/Magazines	13.00%

### On-Airport Rental Car Permit

10.00%

### Off-Airport Rental Car Permit

8.00%

### Relaxation Center (The Right Touch)

5.00%

### Display Advertising (Interspace)

40.00%

### Alaska Railroad Consideration & Rent

Constructed \$2 million tunnel for Airport  
 Land Rent (\$.08/sf/yr \* 27,350 sf = \$2,188/yr for first 24yrs)  
 Passenger Access Fees\* After first 5 years

**Deborah Grundmann**

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**From:** Mark Pfeffer [mpfeffer@kpb-alaska.com]  
**Sent:** Tuesday, March 28, 2006 12:04 PM  
**To:** Deborah Grundmann  
**Subject:** Testimony re off airport fee

Dear Representative \_\_\_\_\_

This is in reference to House Bill 304.

This bill as currently written includes an exemption of the existing "percentage of gross" fee that is charged by the airport system for those rental car companies operating off airport.

We are opposed to this revision for the following reasons;

- The fee is part of a balance of revenue and expense crafted by the airport and a majority in interest of the rental car industry operating on airport. Removal of this fee for off airport rental car companies will provide an unfair competitive advantage, allowing these companies to receive all of the benefits of access and marketing to airport passengers without a commensurate charge to do so
- The 8% fee currently charged off-airport rental customers is less than the 10% fee charged to on airport customers to reflect the inconvenience of utilizing a shuttle versus direct access.
- The reduced income from off airport rental car fees would be absorbed by the airlines landing at the airport as increased landing fees necessary to balance the airports revenue and expenses. This could result in higher rate structures for airline passengers, spreading the cost advantage enjoyed by off airport rental car customers to the balance of the public traveling by air.
- The competitive advantage afforded off airport companies could be enough of an advantage to cause some airport rental car business to move off airport impacting revenue projections for on airport facilities in the future.
- The shuttles for off airport rental car customers differs from shuttles for other functions in the following ways;
  - **Lodging:** there currently are no hotels operating on airport. All passengers needing lodging are free to make a marketplace choice for lodging based on cost and convenience. For those passengers utilizing a shuttle to their accommodation, the cost of that convenience is factored into the proprietors cost structure for that customer. For those off airport hotels without a shuttle service, passengers may achieve less cost for less convenience, finding their own means to transit to the hotel. All places of lodging have equal access to the customer base presented by the airport and are free to determine their own competitive strategy for marketing to that base, a per trip fee or annual fee for shuttle access to the customer base or no fee for no shuttle access. Additionally, more access to that customer base may be achieved by lodging proprietors with or without shuttle by paying for advertising rights at the airport. Again, a fair and balanced business choice for each private sector business to make with regard to access to the airport customer base.
  - **Off airport parking:** currently any private sector off airport parking is in competition only with the public sector parking provided by the airport. Again, the public is free to choose based on convenience and cost. There is no private sector on airport parking competing with any private sector off airport parking. Therefore there is no private sector business being granted a competitive advantage to the airport customer base, by special fee structures. The fee charged for off airport shuttles for private sector parking should be weighed as a fee charged to encourage or discourage competition with the public sector facility. a key question should be does the public sector have the right to protect its competitive advantage by charging a higher fee? Does the higher fee charged benefit the public at large? (Yes). Does the higher fee dampen competition with the public sector and therefore deny the public alternative choices? (Yes). Is this appropriate?
  - **Rental Cars:** there is no public sector rental car business only private sector. Each private sector

rental car business is free to make its own competitive choices regarding access to the customer base at the airport. If you access that customer base you should pay a fee, if you do not access that base then you should not. The amount of the fee, which is determined by the public sector, should not provide a disproportionate competitive advantage to one class of private sector companies over another. Therefore the fee currently imposed by the airport to off airport rental car customers utilizing an on airport shuttle is set at 8% to reflect the less convenient access, but high enough to reflect the access granted to the market base. This fee should not be waived to the mere fraction reflected by a "charge per trip" or "nominal annual fee" rate structure since the point of the fee is not a charge for operations on airport but a charge for access granted to the customer base. An important corollary point is that fees for actually operating on airport (versus just accessing the airport by shuttle) are in addition to the 8% or 10% fee charged for granting access to the market base. As with hotels that choose to advertise at the airport, private sector rental car companies are free to choose if the competitive advantage of actually operating on airport justifies the expense charged for the right to do so. The separate fee structure of 8% versus 10% is purely for the right to access the customer base and the difference of 2% is an appropriate amount given the difference in service.

- Currently, passengers may on their own reconnaissance, seek out and utilize off airport rental cars without paying the 8% fee. This is the case so long as the customer finds his own way or makes his own arrangements to gain access to a rental car off airport. The right to operate a shuttle at the airport for its customers is what the off airport rental Car Company chose to purchase in order to gain access to the customer base. Additionally, the fee is charged only for those customers utilizing the convenience.
- If the percentage of gross fee structure is removed from off airport rental car companies, they then have been granted a competitive advantage, and they could use this advantage to gain market share of the airport customer base. Therefore the public sector (airport) has diminished the amount of market base that it sold to on airport rental car companies for the cost of the 10% fee (and those additional charges for operating on airport).

## **GROUND TRANSPORTATION FEES**

### **17 AAC 42.095**

<b>COURTESY VEHICLE, TAXI CAB</b>	<b>\$50 PER VEHICLE PER YEAR</b>
<b>LIMOUSINE</b>	<b>\$500 FOR THE FIRST VEHICLE AND \$50 FOR EACH THEREAFTER PER YEAR</b>
<b>TOUR BUS</b>	<b>\$100 PER VEHICLE PER YEAR OR \$50 PER VEHICLE PER YEAR IF LESS THAN 10 TRIPS</b>
<b>SCHEDULED BUS SERVICE</b>	<b>\$1,000 PER VEHICLE PER YR.</b>
<b>OFF AIRPORT SHUTTLE</b>	<b>\$500 FOR THE FIRST VEHICLE AND \$50 FOR EACH VEHICLE THEREAFTER PER YEAR</b>
<b>OFF AIRPORT CAR RENTAL</b>	<b>GREATER OF 8% OF GROSS SALES OR \$250 ANNUAL MINIMUM</b>

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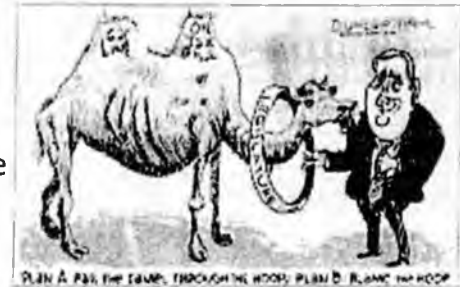
From the Office of  
Senator John Cowdery

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**Parking problem****Anchorage airport fee proposal takes aim at low-cost competition***(Published: March 16, 2006)*

If you're looking to save money on parking during your next flight out of town, be forewarned. A proposed change in shuttle van access charges at Anchorage International Airport could push up off-site parking rates.

*(Peter Dunlap-Shohl)*

The airport lost \$1 million of parking business when a cheaper private parking lot opened down the road. The state Department of Transportation has responded by trying to jack up the rates private parking services have to pay for permission to shuttle passengers in and out of state-owned airport terminals.

If a business tried to pull a trick like that against a competitor, it would get a visit from the anti-trust police.

Airport officials say they aren't trying to pad their own agency's budget, they're just trying to save money for airlines. If parking and other concession revenues fall short of paying the airport's operating expenses and bonds, airlines have to make up the difference with higher landing fees. The airport is just the middleman that collects whatever money is needed.

Middleman the airport may be, but it's a middleman with monopoly power that can be abused. It controls access to a lucrative business environment. It can pick winners and losers by the rules it sets.

If the airport's going to play this kind of anti-competitive game, it could get really creative. It could take aim at all kinds of people who shop off-airport to avoid the high prices charged in the airport's captive market.

Hey buddy, you got a sandwich in your bag there? You're cutting into Burger King's revenues inside the terminal. It'll cost you an extra buck when you check in for your flight.

Ma'am, is that a book in your carry-on bag? Sorry, you'll have to pay the airport's new "Reading Material Importation Fee." It's only fair. Otherwise, you're depriving airport bookstores and magazine stands of their rightful business.

Silly isn't it? But no more so than jacking up the access fee for off-airport discount parking services.

The clumsy way the airport has structured the huge proposed fee increase -- 8 percent of gross sales, instead of the current flat fee for each shuttle van -- makes it doubly bad. There appears to be some question whether hotels would have to pay a huge portion of their gross sales just for the privilege of sending courtesy vans to and from the airport.

Fortunately, the airport's anti-competitive gambit has caught legislators' attention. A pending bill would allow a higher flat fee for parking lot shuttle buses, but it would block the exorbitant percent-of-the-gross fee proposed by the airport. If the airport won't straighten up and fly right, the legislature will have to keep this idea locked safely in a hangar.

**BOTTOM LINE:** That off-site airport parking lot has a big, ugly sign, but it shouldn't have to pay exorbitant fees to access Anchorage International Airport.

### **Right call**

#### *Video gaming initiative is 0 for 4*

Lt. Gov. Loren Lemman made the right call earlier this week when he refused to certify a ballot initiative from backers of a casino for video gaming and other activities.

The sponsors, represented by Anchorage attorney Ken Jacobus, lost again because they continue to sponsor a statewide initiative to confer special advantages to a potential owner of property in South Anchorage, Victoria Scott, who would be allowed to open a gaming establishment while other potential operators would need voter approval.

The Alaska Constitution doesn't allow special-interest initiatives. There's a place for special-interest proposals: the Alaska Legislature. Seriously, lobbyist jokes aside, lawmakers have the legal ability to pass special-interest legislation. But the Constitution bars such law-making by citizens initiative.

Heeding the Constitution, the Department of Law recommended -- for the fourth time -- that Lt. Gov. Lemman reject the casino initiative. Mr. Jacobus had argued that a competitive advantage -- restricting other casinos in the market -- is fair for the petition backers to recoup their investment in the initiative. What?

No. No. No. No.

If initiative backers want a shot at gambling establishments in Alaska, let them put a fair initiative on the ballot. This deck was stacked in one person's favor. No straight table would tolerate it. Nor does the Alaska Constitution.

Wonder if these folks play poker like they do initiatives.

**BOTTOM LINE:** Video gaming initiative goes down again. Please, nobody help it up.

### **Jeff King**

#### *Iditarod champ at 50*

With a great lead dog, his best team and a lifetime of hard-earned mushing expertise, Denali's Jeff King won his fourth Iditarod Trail Sled Dog Race early Wednesday.

He needed all of the above plus a little luck in the blowing snow between Kaltag and Unalakleet to stay ahead of Doug Swingley. He joined Mr. Swingley, Susan Butcher and Martin Buser as four-time winners. Rick Swenson has won five.

Yes, Mr. King may have invented a sled you can sit on, but it's clear the 50-year-old musher still has the legs to ride the runners.

improvements of proposed facilities, and the generation of optimum revenue for the fund.

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

(f) Nothing in this section applies to deliveries of in-bond merchandise as cargo to 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.

**Sec. 02.15.095. Courtesy cars.** Notwithstanding the provisions of AS 02.15.090(a), 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 ground transportation vehicles, nor may the department prohibit from picking up and discharging passengers, those motor vehicles commonly known as "courtesy cars" owned or 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 and 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 allowed by law to secure payment for those services. (§ 5 E ch 123 SLA 1949; added by § 1 ch 117 SLA 1959)

### Article 3. Utilities and Encroachments at State Airports.

Section	Section
102. Use of airports for utilities	110. Unauthorized encroachments
104. Relocation of utility facilities incident to airport projects	112. Notice of removal of unauthorized encroachment
106. Encroachment permits	114. Removal at owner's expense after noncompliance; removal expense
108. Relocation or removal of encroachment	

**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 only in accordance with regulations adopted or procedures prescribed by the department and 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 § 4 ch 36 SLA 1990)

**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 and orders 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

**PROPOSED CHANGES TO  
17 ALASKA ADMINISTRATIVE CODE  
CHAPTER 42**

17 AAC 42.105(a)(5) is amended to read:

(5) a valet parking service or airport parking service:

(Eff. 1/14/2001, Register 157; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority:	AS 02.15.020	AS 02.15.220	<u>AS 37.15.500</u>
	AS 02.15.060	AS 02.15.230	AS 37.15.540
	AS 02.15.090	[AS 37.15.470]	

17 AAC 42.105 is amended by adding a new subsection to read:

(o) for purposes of this section, an activity is conducted on an airport if the activity, including any transportation offered or arranged by the operator of the activity,

(1) is conducted all or in part within the airport boundary; or

(2) derives business from an airport and offers or arranges for transportation between an off-airport location and a location on the airport.

(Eff. 1/14/2001, Register 157; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority:	AS 02.15.020	AS 02.15.220	<u>AS 37.15.500</u>
	AS 02.15.060	AS 02.15.230	AS 37.15.540
	AS 02.15.090	[AS 37.15.470]	

17 AAC 42.990(24)(B)(iii) is amended to read:

(iii) a valet parking service or airport parking service:

(Eff. 1/14/2001, Register 157; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 02.15.020 AS 02.15.090 AS 37.15.500  
AS 02.15.060 AS 02.15.200

17 AAC 42.990 is amended by adding two new subsections to read:

(78) "airport parking service" means the activity of providing vehicle parking for airport users or visitors; however, "airport parking service" does not include the incidental provision of vehicle parking by a business or activity for users of or visitors to only that business or activity;

(79) "valet parking service" means the activity of providing or offering to provide vehicle parking for airport users or visitors and in which

(A) the parking service parks or otherwise drives or offers to drive a customer's vehicle; or

(B) the parking service offers or arranges for transportation of an airport user or visitor between the parking location and a location on the airport.

(Eff. 1/14/2001, Register 157; am \_\_\_ / \_\_\_ / \_\_\_\_, Register \_\_\_\_\_)

Authority: AS 02.15.020 AS 02.15.090 AS 37.15.500  
AS 02.15.060 AS 02.15.200

## GROUND TRANSPORTATION FEES 17 AAC 42.095

COURTESY VEHICLE, TAXI CAB	\$50 PER VEHICLE PER YEAR
LIMOUSINE	\$500 FOR THE FIRST VEHICLE AND \$50 FOR EACH THEREAFTER PER YEAR
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OFF AIRPORT CAR RENTAL	GREATER OF 8% OF GROSS SALES OR \$250 ANNUAL MINIMUM

*when* ✓

*R*

*Week parking*

*Diamond 1,200 Cars*

*500,000 payroll*

*25 people*

*Ramp pass - 500 Ea*

*20 Fee?*

*Transponder:*

# AK Statutes

## Sec. 02.15.090. Operation and use privileges.

(a) In 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 with 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 conferring the privilege of supplying goods, commodities, services, or facilities at an airport or air navigation facility. 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. Charges, rentals, or fees authorized by this subsection may be fixed for the international airports by order of the commissioner or by negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the fixing of charges, rentals, or fees as permitted under this subsection is not subject to the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act). The terms, conditions, charges, rentals, and fees shall be established with due regard to the property and improvements used and the expense of operation to the state. However, use of state land and buildings by the Alaska Wing, Civil Air Patrol and its squadrons shall be permitted without rental charges. If the department permits space in state-owned or state-controlled airports to be used as lounges for members of the United States armed forces, the Alaska National Guard, the Alaska Naval Militia, or the Alaska State Defense Force, and if the lounges are operated by persons exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code), rent may not be charged for the use of the space. The department shall provide for public notice and an 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 its rightful, equal, and uniform use of the airport, air navigation facility, or a portion of them.

(b) The department may by contract or other arrangement, upon a consideration fixed 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 a contract, lease, or other arrangement in connection with the operation that the department may not have undertaken under (a) or (c) - (e) of this section.

(c) Notwithstanding the right of the public to rightful, equal, and uniform use under (a) of this section, 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. 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 operation 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 succeeding lessee of the same land;

(3) at the option of the lessee, the permanent improvements owned by the lessee may 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;

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

(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 (2) or (3) of this subsection; 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.

(f) The department shall require as a term of all aviation-related contracts, leases, and other arrangements for use or occupancy of an airport operated by the department, including the international airports, that the parties to the contract, lease, or other arrangement, including the department, shall be required to reimburse each other according to the principles of comparative fault for amounts paid others for personal injury and property damage. The apportionment of liability among the parties to an agreement under this subsection may not affect the rights of persons who are not parties to the agreement.

(g) If the department determines that it is in the best interests of the state to require that persons holding aviation-related leases, permits, or concession contracts for use or occupancy of an airport operated by the department, including international airports, provide insurance coverage, the department shall develop and adopt by regulation guidelines for the types and limits of insurance coverage required for aviation-related leases, permits, or concession contracts. The department may authorize a variation from the coverage required by the regulation if the department finds in writing that the variation is necessary considering the best interests of the state and the unique circumstances underlying a specific aviation-related lease, permit, or concession contract.

(h) For the privilege of occupying or using a state-owned facility on an airport, which facility is or will be acquired, constructed, equipped, installed, or improved with the proceeds of indebtedness, the payment of which, with approval of the commissioner, is or will be secured solely by proceeds from customer facility charges, the department may require all persons under contract to occupy or use all or a portion of the planned facility, and shall require occupants or users of all or a portion of the facility, to collect from their customers a uniform customer facility charge and remit the proceeds to (1) the department if the state on behalf of the department incurred the indebtedness; or (2) a trustee or another third party bound to use the proceeds for the principal, interest, reserves, and any other applicable requirements of the indebtedness

documentation if the state on behalf of the department did not incur the indebtedness. The commissioner shall set the customer facility charge at an amount projected to generate proceeds sufficient to satisfy all requirements established by the indebtedness documentation, including payment of principal and interest on the indebtedness, maintenance of any reserves, and satisfaction of any other requirement of the indebtedness documentation. The commissioner shall periodically adjust the amount of the customer facility charge to reflect changes in the amounts necessary to pay the principal of and interest on the indebtedness, to maintain any required reserves, and to satisfy all other requirements established by the indebtedness documentation and to reflect changes in the number of occupants, users, or customers of the facility. The proceeds of the customer facility charge are not revenue of the state securing any other indebtedness. The commissioner may impose charges authorized by this subsection for the international airports by order or by negotiated or competitively offered contract. The department shall provide for public notice and an opportunity to comment before a charge is set by order of the commissioner under this subsection. Notwithstanding AS 37.10.050(a), the setting of charges under this subsection is not subject to the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).

(i) In addition to requiring collection of a customer facility charge to be applied as described in (h) of this section, the department may require occupants or users of, or persons under contract to occupy or use, all or a portion of a state-owned facility on an airport, which facility is or will be acquired, constructed, equipped, installed, or improved with the proceeds of indebtedness, the payment of which is secured solely by proceeds of a customer facility charge, to collect from their customers a uniform customer facility maintenance charge and to remit the proceeds to (1) the department if the state on behalf of the department incurred the indebtedness; or (2) a trustee or another third party if the state on behalf of the department did not incur the indebtedness. The commissioner shall set the customer facility maintenance charge at an amount projected to generate proceeds sufficient to pay some or all, as determined by the commissioner, of the costs, fees, and expenses required to operate and maintain the facility, including costs of insurance and maintenance of reserves for the facility. The commissioner shall periodically adjust the amount of the customer facility maintenance charge to reflect changes in costs, fees, and expenses to operate and maintain the facility, including costs of insurance and maintenance of reserves for the facility and to reflect changes in the number of occupants, users, or customers of the facility. If the proceeds of the customer facility maintenance charge are remitted to a trustee or another third party as set out in this subsection, the proceeds of the customer facility maintenance charge are not, unless otherwise contractually required, revenue of the state securing any indebtedness. The commissioner may impose charges authorized by this subsection for the international airports by order or by negotiated or competitively offered contract. The department shall provide for public notice and an opportunity to comment before a charge is set by order of the commissioner under this subsection. Notwithstanding AS 37.10.050(a), the setting of charges under this subsection is not subject to the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).

History -

(Sec. 5 E ch 123 SLA 1949; am Sec. 1 ch 117 SLA 1959; am Sec. 3 ch 36 SLA 1990; am Sec. 1 ch 33 SLA 1993; am Sec. 2, 3 ch 105 SLA 1996; am Sec. 1 ch 18 SLA 1998; am Sec. 1 ch 25 SLA 2000; am Sec. 1 ch 70 SLA 2000; am Sec. 3 ch 56 SLA 2001; am Sec. 1 ch 99 SLA 2001; am Sec. 1, 2 ch 5 SLA 2005)

Revisors Notes -

In 2003, in subparagraph (e)(4)(B), "(2) or (3) of this subsection" was substituted for "(e)(2) or (3) of this section to conform to the style of the Alaska Statutes.

#### Cross References -

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

#### Amendment Notes -

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

The 1998 amendment, effective July 29, 1998, added the third sentence from the end of subsection (a).

The first 2000 amendment, effective August 2, 2000, substituted "Defense Force" for "Militia" in the third sentence from the end of subsection (a) and made a stylistic change.

The second 2000 amendment, effective May 23, 2000, made the same substitution as the first 2000 amendment.

The first 2001 amendment, effective September 27, 2001, added subsections (f) and (g).

The second 2001 amendment, effective July 11, 2001, added the fourth sentence in subsection (a).

The 2005 amendment, effective April 2, 2005, in subsection (a) deleted the former fourth sentence, relating to a uniform customer facility charge; and added subsections (h) and (i).

#### Editors Notes -

Section 15(a), ch. 56, SLA 2001, provides that the provisions of (f) and (g) of this section "apply to aviation-related contracts, concession contracts, leases, permits," and other arrangements for use or occupancy of a state-operated airport entered into on or after September 27, 2001. See Sec. 15(a), ch. 56, SLA 2001, in the 2001 Temporary and Special Acts.

Section 15(b), ch. 56, SLA 2001, provides that the provisions of (f) and (g) of this section "apply to aviation-related contracts, concession contracts, leases, permits," and other arrangements for use or occupancy of a state-operated airport in effect on September 27, 2001, if the parties agree to modify the agreement to conform to provisions of (f) and (g) and regulations adopted under those subsections or if unilateral modification of the agreement by the Department of Transportation and Public Facilities is consistent with the state constitution.

#### 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).

Competitive bid procedure for leases. - Where, under its "bonus bid" system, the state Department of Transportation offered a property lease to the bidder making the largest bonus payment regardless of the lease term sought, each bidder was free to choose a lease length on which to bid and to make a bonus offer, and this fact, coupled with the fact that the annual rental

was set at the same rate as that for similarly situated property, supported a finding that the department's competitive bid procedure fell well within its statutory authority. *Romann v. State, Dep't of Transp. & Pub. Facilities*, 991 P.2d 186 (Alaska 1999).

Collateral Refs -

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 established by AS 37.15.430. If the department offers the exclusive contracts by competitive proposals, the department shall award the contracts after considering factors that include depth of management, financial ability, demonstrated experience at other locations, quality of services and products, success in marketing programs, character and improvements of proposed facilities, and the generation of optimum revenue for the fund.

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

(f) Nothing in this section applies to deliveries of in-bond merchandise as cargo to airlines.

History -

(Sec. 2 ch 111 SLA 1982; am Sec. 1 ch 21 SLA 1988)

Cross References -

For legislative findings, see Sec. 1, ch. 111, SLA 1982, in the 1982 Temporary and Special Acts and Resolves.