

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3032

Amendment #6

adopted

CONCEPTUAL AMENDMENT

Page 78, Following line 22, insert

“Subject to AS 39.35.450, an employee who was first hired as a legislative employee on or after July 1, 2005, and is otherwise eligible under this subsection must have at least 100 days of credited service during each of five legislative sessions to receive benefits under this subsection.”

Item #28

Amendment #7
adopted

The amendment the University needs to be able to open the Optional Retirement Program to employees who may have turned it down the first time offered is to add an amendment:

Insert new Section following existing Sec. 42 in HCS CSSB 141(FIN) am H

**Sec. XX AS 14.40 671 is amended by adding a new subsection to read:

(h) notwithstanding (b) of this section, the university may offer an employee who made an election not to participate in an optional university retirement program at the time the employee was eligible to participate in the program an option to enroll in a different university retirement program first established by the university after the effective date of this subsection.

Item #30

State of Alaska
 Division of Retirement & Benefits
 Normal Cost Rate and Actuarial Computed Rate from FY 1983 through FY 2006

Valuation report date June 30	Fiscal year of rate	Normal Cost rate PERS	Actuarial Computed Rate PERS	Normal Cost rate TRS	Actuarial Computed Rate TRS
1980	1983	11.46%	13.78%	11.95%	16.84%
1981	1984	12.03%	13.68%	13.51%	17.42%
1982	1985	11.36%	13.62%	13.64%	17.96%
1983	1986	11.82%	13.59%	13.13%	17.36%
1984	1987	12.31%	13.84%	13.91%	13.28%
1985	1988	11.13%	9.55%	11.62%	13.28%
1986	1989	10.20%	9.38%	9.36%	11.16%
1987	1990	9.23%	9.30%	9.14%	8.19%
1988	1991	10.37%	12.00%	11.86%	12.27%
1989	1992	12.00%	14.20%	13.26%	15.16%
1990	1993	12.83%	13.58%	14.07%	19.65%
1991	1994	10.18%	13.72%	9.05%	15.59%
1992	1995	10.90%	13.70%	8.57%	13.36%
1993	1996	11.29%	12.82%	9.06%	12.48%
1994	1997	10.36%	12.14%	9.70%	14.96%
1995	1998	10.61%	11.90%	10.10%	14.94%
1996	1999	9.85%	7.74%	8.97%	10.52%
1997	2000	9.89%	7.36%	9.21%	13.00%
1998	2001	8.67%	7.03%	8.99%	10.55%
1999	2002	8.07%	6.56%	8.88%	7.09%
2000	2003	10.07%	6.12%	9.40%	8.29%
2001	2004	9.53%	6.77%	10.36%	14.44%
2002	2005	13.31%	24.91%	14.76%	35.57%
2003	2006	13.24%	25.63%	14.28%	38.85%

Normal Cost Rate: present value of benefits, which are expected to be credited with respect to service during the year beginning on the valuation date.

Actuarial Computed Rate: after comparing plan assets and liabilities, an actuarial rate is computed that would fully fund the retirement systems over 25 years. There are two components: the normal cost rate and the past service rate necessary to pay any unfunded liability. Both rates account for differences between actual experience versus anticipated results, changes in actuarial assumptions and / or methods, changes in statutory provisions, and the difference between the rate actually adopted by the Boards for a particular year versus the computed rate.

5 year average PERS 10.84%
 5 year average TRS 11.54%
 24 year average PERS 10.86%
 24 year average TRS 11.11%

Amendment #8
adopted

Conferee
~~SENATE FINANCE COMMITTEE~~

Conceptual AMENDMENT No. _____

By Rep. Seaton

To: HCS CSSB 141 (FN) amtt SENATE BILL No. _____

To: _____ SENATE BILL No. _____

Page 86, line 29: section (d) is replaced with the following and new section (e) is added.

(d) An employer shall make annual contributions to the group health and life benefits fund to fund occupational disability and occupational death benefits under AS 39.35.890 and 39.35.892 as follows:

- (1) ~~Police~~ Peace officers and firefighters 0.40%
- (2) All others 0.30%

(e) Beginning July 1st, 2006 the board shall annually ^{automatically} determine if the contribution rate defined in section (d)(1) and (2) above is sufficient to fully fund the cost of these benefits and set the ^{new} contribution rate accordingly.

AMENDMENT to replace conference sections 37 and 38 if adopted

(a) The legislature shall adopt measures related to the short and long term funding of the TERS and PERS systems based upon a report required by Sec. 140 of this Act. The solutions to the unfunded liability issue may include implementing debt or equity restructuring, increases in employer contributions, pension bonds, refined actuarial analyses, and contributions from other state sources or appropriations.

(b) If the legislature has not adopted legislative measures that address the long term unfunded liability of the teachers' retirement system and public employees' retirement system on or before July 1, 2007, the retirement Plan Choice options set forth in Sec. 14.25.315 and Sec. 39.35.705 shall be enacted.

(c) If section (b) takes effect, employees hired between the effective date of this Act and the effective date of section (b) may exercise the same option contained in (b).

a. The unfunded liability of the PERS and TERS systems endangers the security of current and retired employees in those systems and the long-term viability of the systems. If the legislature has not adopted legislative measures that address the long term unfunded liability of the teachers' retirement system and public employees' retirement system on or before July 1, 2007, the retirement Plan Choice options set forth in Sec. 14.25.315 and Sec. 39.35.705 shall be enacted.

b. The legislature shall adopt measures related to the short and long term funding of the TERS and PERS systems based upon a report required by this Act and submitted to the legislature by the Board, on or before April 1, 2006. The solutions to the unfunded liability issue may include implementing debt or equity restructuring, increases in employer contributions, pension bonds, refined actuarial analyses, and contributions from other state sources or appropriations.

Amendment to
Amendment

AMENDMENT

(c)

If section (a) takes effect, employees hired between the effective date of this act and the effective date of section (a) may exercise the same option contained in (a).

applies to the employees

CONFERENCE

SENATE RULES COMMITTEE - ROLL CALL VOTE SB141

DATE: 5/9/05

BILL: MOTION: #2

MEMBER	YEA	NAY	ABSEN
REPRESENTATIVE SEATON			
SENATOR SEEKINS <i>Moved + objected</i>			
REPRESENTATIVE CRAWFORD			
SENATOR OLSON			
REPRESENTATIVE WEYHRAUCH			
SENATOR GREEN			

BILL: SB141 MOTION: #9

MEMBER	YEA	NAY	ABSENT
SENATOR OLSON		✓	
REPRESENTATIVE WEYHRAUCH		✓	
SENATOR SEEKINS		✓	
REPRESENTATIVE CRAWFORD		✓	
REPRESENTATIVE SEATON	✓		
SENATOR GREEN		✓	

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
SENATOR SEEKINS			
REPRESENTATIVE SEATON			
SENATOR OLSON			
REPRESENTATIVE WEYHRAUCH			
REPRESENTATIVE CRAWFORD			
SENATOR GREEN			

BILL: MOTION:

MEMBER	YEA	NAY	ABSENT
REPRESENTATIVE WEYHRAUCH			
SENATOR OLSON			
REPRESENTATIVE CRAWFORD			
SENATOR SEEKINS			
REPRESENTATIVE SEATON			
SENATOR GREEN			

\$ 500,000

Number	2727
Average Age	40.72
Average Credited Service	9.7
Average Annual Earnings	\$ 58,945
Number Vested	1739
Percent Vested	63.8%

	Retiree	Survivor	Disablitant
Average Age at Commencement	51.72	56.54	49.86
Average Monthly Benefit	\$ 2,835	\$ 1,265	\$ 1,945
Average Annual Benefit	\$ 34,020	\$ 15,180	\$ 23,340

Est Current Occ Death Benefit (50% Salary) or; \$ 29,473
 Est Current Occ Death Benefit (75% Retirement) \$ 25,515

Survivor Age at Member Death	Life Expectancy Female	Estimated Annuity		
		6.0%	7.0%	8.0%
25	55.4	\$31,238	\$35,844	\$40,571
26	54.5	\$31,308	\$35,899	\$40,612
27	53.5	\$31,390	\$35,963	\$40,662
28	52.5	\$31,477	\$36,033	\$40,716
29	51.6	\$31,561	\$36,100	\$40,769
30	50.6	\$31,660	\$36,179	\$40,831
31	49.6	\$31,765	\$36,265	\$40,899
32	48.7	\$31,866	\$36,347	\$40,965
33	47.7	\$31,985	\$36,446	\$41,045
34	46.7	\$32,113	\$36,551	\$41,131
35	45.8	\$32,235	\$36,653	\$41,214
36	44.8	\$32,380	\$36,775	\$41,314
37	43.9	\$32,519	\$36,892	\$41,412
38	42.9	\$32,684	\$37,032	\$41,529
39	42.0	\$32,842	\$37,168	\$41,643
40	41.0	\$33,029	\$37,330	\$41,781
41	40.1	\$33,210	\$37,486	\$41,915
42	39.1	\$33,425	\$37,674	\$42,076
43	38.2	\$33,631	\$37,855	\$42,233
44	37.3	\$33,852	\$38,050	\$42,403
45	36.3	\$34,115	\$38,284	\$42,607
46	35.4	\$34,369	\$38,511	\$42,807
47	34.5	\$34,640	\$38,755	\$43,024
48	33.6	\$34,931	\$39,018	\$43,259
49	32.7	\$35,243	\$39,301	\$43,513
50	31.8	\$35,578	\$39,606	\$43,789
51	30.9	\$35,937	\$39,936	\$44,088
52	30.0	\$36,324	\$40,293	\$44,414
53	29.1	\$36,741	\$40,679	\$44,768
54	28.2	\$37,191	\$41,098	\$45,154
55	27.4	\$37,622	\$41,500	\$45,527
56	26.5	\$38,144	\$41,990	\$45,982
57	25.6	\$38,709	\$42,523	\$46,481

A M E N D M E N T 8

OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REP _____

TO: HCS CSSB 141 (STA)
24-LS0637\X

Page 93 following Line 28, insert new section to read:

Sec 39.35.875. Death Benefit for Peace Officers and Fire Fighters. (a) A peace officer or fire fighter killed in the line of duty is entitled to a death benefit as outlined in this section. To be eligible for this benefit, the member's death must have occurred under the following conditions:

- (1) while the member is an active member of the retirement plan established under AS 39.35.700 – 39.35.990; and
- (2) the proximate cause of death is a bodily injury sustained while in the performance and within the course and scope of the employee's duties, and
- (3) neither the injury nor death were the proximate result of willful negligence of the employee or by the employee's own hand

(b) If the death is caused by an act of assault, assassination, or terrorism directly related to the person's status as an employee, whether the act occurs on or off the employee's job site, the death shall be considered to have occurred in the performance of the employee's duties for purposes of (a)(3) of this section.

(c) The death benefit shall be \$500,000 paid to the surviving spouse. If there is no surviving spouse, the death benefit shall be paid in equal parts to the dependant children of the employee. The benefit shall be paid as a lump sum unless the member had selected an annuity option in accordance with regulations established by the administrator.

(d) If no surviving spouse or dependent children exist at the time of the death or if the employee designates a beneficiary other than the surviving spouse or dependent children under AS 39.35.850, the employee's designated beneficiary is entitled to receive a lump sum death benefit of \$250,000.

(e) The death benefit shall be paid from the group health and life benefits fund established under AS 39.30.095.

(f) For purposes of this section, "peace officer" and "fire fighter" have the meaning given in AS 39.35.680.



Alaska State Legislature

MAY 08 2005

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

The Honorable Ben Stevens
President of the Senate

The Honorable John Harris
Speaker of the House of Representatives

Mr. President and Mr. Speaker:

The Conference Committee considering CS for Senate Bill 141 (FIN) and HCS for CS for Senate Bill 141 (FIN) am H met on May 7, 2005.

The Senate members failed to concur with the changes in HCS for CS for Senate Bill 141(FIN) am H. The House members failed to recede from the House amendments to CS for SB Senate Bill 141 (FIN).

The Conference Committee considered the attached sections and did not come to agreement.

The Conference Committee respectfully requests limited powers of free conference.

Handwritten signature of Lyda Green in cursive.

Senator Lyda Green, Chair

Handwritten signature of Paul Seaton in cursive.

Representative Paul Seaton

Handwritten signature of Ralph Seekins in cursive.

Senator Ralph Seekins

Handwritten signature of Bruce Weyhrauch in cursive.

Representative Bruce Weyhrauch

Handwritten signature of Donald Olson in cursive.

Senator Donald Olson

Handwritten signature of Harry Crawford in cursive.

Representative Harry Crawford

Conference Committee on SB 141
Report to Senate and House
May 7, 2005
Page Two

The Conference Committee could not agree on the following statutory cites contained in CS for Senate Bill 141(FIN) and/or HCS for CS for Senate Bill 141 (FIN) am H:

AS 14.25.070(b), AS 39.35.270(b); AS 14.25.350(b), AS 39.35.750(b); AS 39.30.370; AS 14.25.470(a), AS 39.35.870(a); AS 14.25.480(i)-(j), AS 39.35.880 (j)-(k); AS 14.25.870(d)-(f), AS 39.35.870(d)-(f); AS 39.30.370; AS 39.30.380; AS 37.10.210(b)-(c); AS 37.10.220(a)(9); AS 39.35.385(f); AS 14.40.661-14.40.799; AS 14.25.220(42)(D), AS 14.25.590(27)(C); AS 14.25.485, AS 39.35.885; AS 39.35.890; AS 39.35.892; AS 14.25.315, AS 39.35.705; Sec. 132, Sec. 133, and Sec. 141 of HCSCSSB141(FIN)amH.

The attached reported contains page and line numbers for each bill.

Attachment

SB

142

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 142(L&C)
(S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
Title An act relating to ownership of land, buildings, RDU ESS
and other structures by regional school boards; and providing Component School Finance & Facilities
Sponsor Labor and Commerce
Requester Labor and Commerce Component No. 2736

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no financial impact related to this legislation with the Department of Education & Early Development. Rather this legislation clarifies other structures in transfer of title. And remove the ability to transfer land, buildings, and other structures, located within the boundaries of state airport.

Prepared by: Eddy Jeans, Director Phone 465-8679
Division School Finance Date/Time 3/18/05 12:44 PM
Approved by: _____ Date 03/18/2005
Agency Education & Early Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 142(L&C)
(S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: Regional School Board Land/ RDU: Administration & Support
Building Ownership Component: Commissioner's Office
Sponsor: Senate Labor and Commerce
Requester: Senate Labor and Commerce Component No.: 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Nona Wilson Phone 465-3904
Division: Legislative Liaison, DOT&PF Date/Time 4/4/05 6:17 PM
Approved by: Mike Barton Date 4/4/2005
Agency: Commissioner, DOT&PF



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

SB 142 SPONSOR STATEMENT

Lands & Buildings used by Regional School Boards (updated 4/25/05)

“An Act relating to ownership of land by regional school boards; and providing for an effective date.”

Currently there exist conflicting statutes regarding ownership of land for state airports. AS 02.15.020 requires that the Department of Transportation and Public Facilities (DOT&PF) conforms to federal requirements if the state wishes to participate in federal grants. A newer statute, AS 14.08.151(b) gives a regional school board the opportunity to receive title to land used in relation to regional educational attendance area schools.

While the Alaska Legislature clearly intended to allow regional school boards the option of greater control of their facilities through acquisition of title, there is no record that the Legislature intended to do so at the cost of federal liability, significant loss of federal funding, and a degraded state airport system.

Several regional schools are located on state airport properties, some in very close proximity to active runways and airport infrastructure. At various times, regional school boards have requested that DOT&PF convey full title of the airport land to the schools. This has caused confusion, staff time in both the Departments of Education and DOT&PF, as well as attorney costs, to defend DOT&PF's title to its airport property.

DOT&PF, acting as a sponsor under federal law, makes extensive use of federal grant funding for airport construction and improvements. The Federal Aviation Administration imposes enforceable grant conditions on the recipients of federal funds. As a condition of acceptance, DOT&PF is required to expend federal grant funds in strict accordance with those federal conditions. FAA requires DOT&PF to certify assurances that it has "satisfactory property interest" in the airport to obtain these necessary federal grants. Under AS 14.08.151(b), a mandatory title transfer of airport property that is subject to FAA grant assurances would violate AS 02.15.020(c) and would breach federal grant agreements. This is because DOT&PF would be required to transfer title to property that the department has assured to the FAA that it would retain in state ownership *for airport purposes*, including the fiscal support of the airport.

There being no indication of legislative intent to compel the State of Alaska to breach FAA grant agreements in violation of AS 02.15.020(c), the best interpretation of AS 14.08.151 limits its applicability to non-airport lands.

This bill will benefit the public, the regional school boards, the Department of Education and DOT&PF by clarifying the intent of the conveyance language to exclude airport properties.

Fact Sheet: SB 142

Sponsor: Senate Labor & Commerce Committee

Contact: Jane Alberts, 465-4843

Summary:

- Excludes airport properties from AS 14.08.151(b), which directs the state to convey title to lands used in relation to regional educational attendance area schools when requested to do so by the regional school board.

Benefits:

- Resolves a conflict between AS 02.15.020, which requires the Department of Transportation & Public Facilities to retain "satisfactory property interest" in airport facilities in order to participate in federal grant programs, and AS 14.08.151, which gives regional school boards the opportunity to obtain title to land/structures for regional educational attendance area (REAA) schools.
- Saves the departments of Transportation and Education time, effort and money needed to settle conflicting claims.
- Ensures that DOT&PF will be able to meet Federal Aviation Administration requirements and obtain federal funding for airport projects in REAAs.
- Conforms statute to legislative intent.

Background:

- AS 02.15.020 requires DOT&PF to conform to federal requirements in order for the State to participate in federal grants. The Federal Aviation Administration requires DOT&PF to certify assurances that it has "satisfactory property interest" in the airport to obtain these necessary federal grants. A newer statute, AS 14.08.151(b) gives a regional school board the opportunity to receive title to land used in relation to REAAs. Several regional schools are located on state airport properties, some in close proximity to active runways and airport infrastructure. At various times, regional school boards have requested that DOT&PF convey full title of the airport land to the schools. A mandatory title transfer of this type would violate AS 02.15.020 and breach federal grant agreements. While the Alaska Legislature clearly intended to allow regional school boards the option of greater control over facilities through acquisition of title, no record exists that the Legislature intended to do so at the cost of federal liability, significant loss of federal funding and a degraded state airport system.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 142(L&C)
(S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
Title An act relating to ownership of land, buildings, RDU ESS
and other structures by regional school boards; and providing Component School Finance & Facilities
Sponsor Labor and Commerce
Requester Labor and Commerce Component No. 2736

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no financial impact related to this legislation with the Department of Education & Early Development. Rather this legislation clarifies other structures in transfer of title. And remove the ability to transfer land, buildings, and other structures, located within the boundaries of state airport.

Prepared by: Eddy Jeans, Director
Division: School Finance
Approved by: _____
Agency: Education & Early Development

Phone: 465-8679
Date/Time: 3/18/05 12:44 PM
Date: 03/18/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 142(L&C)
(S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title: Regional School Board Land/ RDU: Administration & Support
Building Ownership Component: Commissioner's Office
Sponsor: Senate Labor and Commerce
Requester: Senate Labor and Commerce Component No. 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Nona Wilson Phone 465-3904
Division: Legislative Liaison, DOT&PF Date/Time 4/4/05 6:17 PM
Approved by: Mike Barton Date 4/4/2005
Agency: Commissioner, DOT&PF

AMENDMENT NUMBER
BY REPRESENTATIVE REGGIE JOULE
CSSB142

1

Page 2, line 31, insert the following:

(c) If the regional school board disputes the claim of the State of Alaska regarding the priority determination of land being necessary for operations of the state airport, they may appeal the state's determination pursuant to A.S. 44.64.

Page 3, line 1

Add:

Sec.44.64.030. Jurisdiction of the Office is amended as follows:

insert the following:

(11) A.S.14.08.151

Renumber accordingly

REAs where Airport/DOT needs may overlap:

- **In Northern Region** there are schools or school-owned buildings on the following airports:
Anvik, Bettles, Galena, Noatak, Pilot Station and Unalakleet

- **In Central Region** schools or school outbuildings may be on the following airports:
Aniak, Cold Bay, Iliamna, Lime Village and Willow

Data provided by:
Pamela A. Lewis, SR/WA
Statewide Chief, Aviation Leasing and Airport Land Development
Alaska DOT&PF

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

March 24, 2005

The Honorable Con Bunde
Chair, Senate Labor & Commerce
Alaska State Legislature
State Capitol, Room 506
Juneau, Alaska 99801-1182

Dear Senator Bunde:

Senate Bill 142, as proposed, will clarify the intent of existing statute regarding land title conveyance in order to prevent airport properties from being transferred to regional school boards. By rectifying this disparity, SB 142 would exclude airport properties and in-boundary airport perimeters from being transferred to regional school districts applying for title conveyance.

AS 14.08.151(b) reads as follows: *A regional school board may, by resolution, request, and the commissioner of the department having responsibility shall convey, title to land and buildings used in relation to regional educational attendance area schools. If the state holds less than fee title to the land, the commissioner of the department having responsibility shall convey the entire interest of the state in the land to the regional school board.*

An example of the confusion caused by current statute can be cited as when the Yukon-Koyukuk Regional School Board made an administrative claim for school property on the Bettles Airport in 2001. The school in Bettles, constructed in the 1970's, is very close to the active runway, and is, in fact, partially in front of the building restriction line (BRL). A BRL limits construction of improvements near a runway for safety purposes. The school is actually located in an area identified by DOT&PF and the FAA as being needed for future aviation purposes.

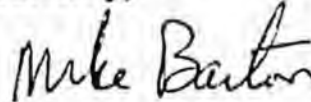
DOT&PF obtained an Attorney General's Opinion, copy enclosed, when it received the claim for title from the Y-K Regional School Board. Said opinion, dated 12/11/01, concluded that there was no indication of legislative intent to compel the State of Alaska to breach FAA grant agreements in violation of AS 02.15.020(c). The opinion further stated: "...AS 14.08.151(b) should not be interpreted to require conveyance to an RSB of the State's interest in a State airport." Our estimate of staff time devoted to this task, as well as to the AG's involvement, is approximately 250 hours. The costs for staff time and the AG's opinion is approximately \$17,500.

The difficulty encountered in 2001 is not exclusive. In 1986 the Aleutian Region School District requested conveyance of the existing school site at the Cold Bay Airport. Eight years later, in 1994, the Lake and Peninsula School District requested conveyance of the school site at Iliamna Airport. In both cases, DOT&PF required the assistance of the Attorney General's Office to deny the RSBs' requests for title.

DOT&PF has been working with the legislature to resolve the conflict between these statutes since 1987. Passage of this legislation would solidify the ability of the department to protect the integrity and safety of the State's 258 rural airport properties as well as maintain, operate, expand and manage airports according to FAA guidelines and federal grant requirements.

I urge your prompt and favorable action on this measure.

Sincerely,



Mike Barton
Commissioner

Enclosure

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

STATEWIDE AVIATION

FRANK MURKOWSKI, GOVERNOR

4111 AVIATION AVENUE
P.O. BOX 196900
ANCHORAGE, ALASKA 99519-6900
(907) 269-0730 Fax (907) 269-0489

May 2, 2005

The Honorable Mark Neuman
Alaska House of Representatives
State Capitol, Room 400
Juneau, AK 99801

Dear Representative Neuman:

Thank you for your questions on SB 142 - ownership of land by regional school boards.

The intent of the Department of Transportation and Public Facilities (DoT/PF) in requesting this legislation is to eliminate a conflict between AS 14.08.151 and our assurances made to the FAA in order to receive Airport Improvement Program (AIP) funding.

AS 14.08.151 has been cited by regional educational attendance area (REAA) schools and school boards as justification for requesting airport land title. Because this request conflicts with our assurance to the FAA to retain "satisfactory property interest," DoT/PF has had to obtain Attorney General's opinions in order to show that there was no legislative intent to compel the State to breach FAA grant agreements.

DoT/PF has leases or letters of non-objection with school entities at the following airports:

Aniak
Anvik
Cold Bay
Betties
Galena
Kaltag

Lime Village
Noatak
Pilot Station
Unalakleet
Willow

These facilities, ranging from fuel line rights of way to hangars to schools, can be divided into two categories - those which pose some risk to aviation operations, and those posing no risk.

School buildings at Aniak, Bettles and Noatak have been identified as encroaching on aviation operation areas outlined in FAA advisory circulars. DoT/PF has made verbal and written commitments to the FAA to work with REAAs, school boards and the Department of Education to mitigate and/or remove these encroachments when reasonably possible.

All other school facilities are located on land outside of those areas required specifically for aviation operations per FAA advisory circulars, or have been approved by FAA to remain in place in aviation operations areas. At all of the communities listed above, DoT/PF has a contractual relationship with the school entity and has regulatory limitations in causing the facility to be removed from airport property. Additionally, the DoT/PF has no policy, and expects no change that policy, requiring the removal of school facilities from airport land.

While DoT/PF does have a policy restricting new schools or additions to be built in areas encroaching on aviation operating areas, it does allow school entities to lease airport land outside of aviation operation areas if necessary.

We expect the primary benefit of SB 142 will be an end to the bureaucratic entanglements that stem from conflicting statutes. Thank you for your time on this issue.

Sincerely,



Kip Knudson
Deputy Commissioner for Aviation

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

MEMORANDUM

State of Alaska

Department of Law

TO: Joseph L. Perkins, P.E., Commissioner
Department of Transportation and
Public Facilities

DATE: December 11, 2001

FILE NO: 665-99-0090

SUBJECT: Rural Schools and Airport
Land Title

FROM: Leone Hatch **LH.**
Assistant Attorney General
Transportation - Fairbanks

You have asked whether a regional school board¹ (hereinafter "RSB") which operates on airport property may require the Department of Transportation and Public Facilities (hereinafter "the Department") to transfer title to the land and buildings which it occupies to the RSB pursuant to AS 14.08.151(b) (Lexis 2000). While there is some uncertainty, the better answer to your question is no. Title may not be transferred on demand. We have reached this conclusion because the Alaska Legislature could not have intended to create a conflict with federal funding requirements, risk federal enforcement, and place federal participation in the State's airport system at risk.²

A mandatory title transfer of airport property (which is subject to FAA grant assurances) to an RSB pursuant to AS 14.08.151(b) would violate AS 2.15.020(c)

¹ The Alaska Supreme Court has noted that RSB's "are independent entities which have been given broad powers." *Northwest Arctic Reg'l Educ. Attendance Area v. Alaska Public Service Employees Local 71*, 591 P.2d 1292, 1298 (Alaska 1979), overruled on other grounds, *Alaska Commercial Fishing & Agric. Bank v. D/S Alaska Coast*, 715 P.2d 707, 709 n.5 (Alaska 1986); see also, *U.S. ex rel. Norton Sound Health v. Bering Strait School Dist.*, 138 F.3d 1281 (9th Cir. 1998). A title transfer to an RSB is not a mere administrative change of title between sister state agencies.

² It is also possible that AS 14.08.151(b) could be held to be federally preempted insofar as it applies to airports subject to federal grants. In general, when the federal government legislates in an area in which it is constitutionally entitled, directly conflicting local legislation is preempted through the operation of the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2. *E.g.*, *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 98 (1992). However, there are issues with this approach that make the outcome in this situation uncertain.

Legal Opinion

Joseph L. Perkins, P.E., Commissioner
Department of Transportation and Public Facilities
Subject: Rural Schools and Airport Land Title

December 11, 2001

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(Lexis 2000) and would breach federal grant agreements. This is so because the Department would be required to transfer title to property which the Department, acting as sponsor for federal funding, has assured to the FAA that it would retain in State ownership for airport purposes, including the fiscal support of the airport. Automatic transfer of airport land to an RSB could subject the State to federal liability and enforcement as well as endanger future federal funding. If the Department cannot in good faith make title assurances to the FAA, there may be no future grant funding for airports vulnerable to RSB defeasance.

Background

Various RSB's operate facilities situated on airport property. In 1978, the Legislature granted RSB's the option of acquiring title to state property being used by a school.³ The Department has informed me that many, if not most, of these school facilities were constructed on airport property prior to the 1978 legislation. These schools are occupied under lease, use permit, or are in holdover status. AS 02.15.090 (Lexis 2000); AS 14.08.151(a) (Lexis 2000). The Yukon-Koyukuk RSB has made an administrative claim for Bettles airport property. That claim is under consideration pending the issuance of this opinion.

Statutory Authority

Two state statutes essentially frame the potential conflict: AS 02.15.020(c) and AS 14.08.151(b). The older statute, AS 02.15.020,⁴ essentially authorizes (and compels) the State to conform to federal requirements if the State wishes to participate in federal grants:

(c) The department may accept federal money and money from other public and private sources to accomplish in whole or in part any of the purposes of this chapter. All federal money accepted under this chapter shall be

³ § 2 ch 124 SLA 1975; am §§2, 3 ch 147 SLA 1978; am § 46 ch 6 SLA 1984 (codified at AS 14.08.151 (Lexis 2000)). The relevant language was adopted into subsection (b) in 1978.

⁴ § 4A - C ch 123 SLA 1949; am § 1 ch 14 SLA 1968 (codified at AS 02.15.020 (Lexis 2000)). The relevant language was adopted into subsection (c) in 1949, with slight revisions in 1968 recognizing that the Territorial Commission had become a department of the State.

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accepted and expended by the department upon the terms and conditions prescribed by the United States.⁵

The more recently enacted is AS 14.08.151.⁶ In Subsection (b) of this statute, the legislature authorized RSB's a means by which to obtain title to some state property. Subsection (b) provides as follows:

(b) A regional school board may, by resolution, request, and the commissioner of the department having responsibility shall convey, title to land and buildings used in relation to regional educational attendance area schools. If the state holds less than fee title to the land, the commissioner of the department having responsibility shall convey the entire interest of the state in the land to the regional school board.

Statutory Construction

"Interpretation of a statute begins with an examination of its language construed in light of its purpose." Even if a statute appears clear on its face, it is interpreted in the context of the legislature's purpose. The Alaska Supreme Court recently repeated its holding that, "[i]n ascertaining the legislature's intent, we are obliged to avoid construing a statute in a way that leads to a glaringly absurd result."⁷

Alaska statutes in apparent conflict must be read together in the context of legislative intent. If possible, the statutes should be harmonized. If the statutes cannot be reasonably harmonized in light of statutory intent, the earlier statute may be held to have been repealed by implication.⁸ However in this case, if the earlier statute is impliedly repealed, there will be direct and adverse consequences to the State's ability to maintain federally funded rural airports.

While the Alaska Legislature clearly intended to generally allow RSB's the option of greater autonomy and control of their facilities through the acquisition of title,

⁵ See, footnote 4.

⁶ See, footnote 3.

⁷ *Beck v. State of Alaska*, 837 P.2d 105, 116-17 (Alaska 1992).

⁸ *Sherbahn v. Kerkove*, 987 P.2d 195, 201 (Alaska 1999) (quoting *Underwater Constr., Inc. v. Shirley*, 884 P.2d 150, 155 n.21 (Alaska 1994) (quoting *Sherman v. Holiday Constr. Co.* 435 P.2d 16, 19 (Alaska 1967))).

⁹ E.g., *Progressive Insurance Co. v. Simmons*, 953 P.2d 510, 516 (Alaska 1998).

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there is no indication or record that the legislature intended to do so at the cost of federal liability, significant loss of federal funding, and a degraded airport system.

In this case, the earlier statute, AS 02.15.020(c), enables the Department of Transportation to apply for, accept, and utilize FAA grants for state airport facilities. AS 14.08.151(b) cannot be read to apply to airport land without implying that the Legislature intended to at least partially repeal AS 02.15.020(c)'s mandate that the state accept federal funds and be bound by the conditions thereon. It is unlikely that the Legislature intended to repeal this statute and subject the State to federal enforcement. Nor is it likely that the Legislature intended to endanger either current or future grant funding. The partial repeal necessary of AS 02.15.020(c) in favor of AS 14.08.151(b) to allow RSB's the right to claim title to airport property (discussed below) is an illogical and absurd result, unlikely to have been intended by the Legislature. To avoid the illogical and unintended result, AS 14.08.151(b) should not be read to apply to airport land.¹⁰

The Alaska Supreme Court, in its only interpretation of AS 14.08.151(b), has suggested a method of construing this statute which will allow it to be harmonized with AS 02.15.020(c) and the state's need to control public airports, maintain federal funding eligibility and honor its federal commitments. *State v. Bering Strait Regional Attendance Area*, 658 P.2d 784 (Alaska 1983). In *Bering* the court held that AS 14.08.151(b) is inapplicable to property which the RSB shared with another user. This opinion rests on the court's reluctance to create a shared title interest without specific legislative directive.

In *Bering*, the Nome City School District occupied a State-owned building which it primarily used for the Nome High School. It sublet an unused portion of the facility to the Bering Strait Regional Educational Attendance Area School District (hereinafter "Bering"). Both entities requested title under AS 14.08.151(b). The State chose to transfer title to the Nome City School District. Bering appealed and the matter eventually rose to the Alaska Supreme Court. The court was troubled by the shared use of the same property and was reluctant to either read AS 14.08.151(b) to require a partial conveyance, or to impose a novel and complex condominium-type relationship upon Nome City School District and Bering in the absence of specific statutory authority. The court held:

In effect, this will result in the creation of a condominium public facility.

¹⁰ The bulk of the controversy with its attendant potential for litigation could be resolved if the Alaska Legislature would revisit the issue and clarify its intentions.

Joseph L. Perkins, P.E., Commissioner
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There are two problems with this interpretation.

First, it is a departure from the literal language of the statute. The statute refers to buildings, not portions of buildings

Second, a condominium public facility would be an innovation in this state. Creation of a condominium is legally complex, requiring detailed legal documents specifying, among other things, the responsibilities of the various owners. We believe that if condominium ownership had been intended by the legislature in enacting AS 14.08.151(b) the statute would have expressly so provided and would have furnished some guidance as to the division of responsibilities among the owners.

We thus hold that that the superior court erred in interpreting AS 14.08.151(b) to require a partial conveyance of the complex to Bering Strait.

Bering, 658 P.2d at 786 (footnotes omitted).¹¹

Specifically, the *Bering* court refused to create a condominium interest when two parties shared a building. If applied to airport land, AS 14.08.151(b) would bifurcate airport land title by effectively subdividing the airport and subjecting it to potentially conflicting uses and hostile management objectives. This result is not consistent with the holding in *Bering*. It is likely that the Alaska Supreme Court would extend *Bering* to include airport land if given the opportunity.

Airport land must by its nature be committed primarily to aviation purposes and uses. The Department, as sponsor, must maintain an indefeasible fee in land to which the FAA requires a fee interest. *Ijra* at 7.

While secondary non-aviation uses can be supported in some circumstances, they are necessarily subordinate to the primary purpose of aviation. In the case of an RSB usage on airport land, there is a double occupancy even more complex than that which the *Bering* court refused to split. In the framework of *Bering*, AS

¹¹ The Alaska Legislature has not moved to alter the statute in response to the Alaska Supreme Court's 1983 interpretation. *Talancon v. State*, 721 P.2d 764, 768 (Nev. 1986) (failure of legislature to amend statute after judicial interpretation of legislative intent inferred ratification of judicial action) cited in *Todd v. State*, 884 P.2d 668, 680 (Alaska App. 1994).

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14.08.151(b) should not be interpreted to allow the bifurcation of title to an active airport, thus creating a condominium-like interest.

Pragmatically, AS 14.08.151(b) can be harmonized with AS 02.15.020(c) in the context of *Bering*. *Bering* suggests that before an RSB may obtain title pursuant to AS 14.08.151(b), the RSB usage must be exclusive to avoid a bifurcated title. Because the airport land is subject first to the requirements of transportation and safe aviation usage, the RSB's occupation of airport land is not exclusive, and thus under *Bering*, not subject to fee title transfer pursuant to AS 14.08.151(b).

Federal Grant Requirements

The FAA¹² maintains an interest in aviation safety, efficient and non-discriminatory airport management in support of the national transportation system, and the fiscal responsibility and self-sufficiency of grant-supported airports. It furthers these interests through both direct regulation and grant conditions.¹³ The FAA is specifically authorized by federal statute to attached conditions to FAA grants.¹⁴

The State of Alaska, acting as a sponsor under federal law, makes extensive use of federal grant funding for airport construction and improvement. Pursuant to the Spending Clause of the federal constitution¹⁵ (hereinafter "Spending Clause"), the federal government can and does impose enforceable grant conditions on the recipients of federal

¹² "The FAA is responsible for the administration and management of the Federal Airport grant-in-aid program under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. §§ 1701 et seq. (superseded by the Airport and Airway Improvement Act of 1982, 49 U.S.C. §§ 2201 et seq.)." *U.S. v. County of Westchester*, 571 F. Supp. 786, 789 (S.D.N.Y. 1983) (citations omitted). The 1970 Act was further amended in 1994 and 1996.

¹³ A recent Tenth Circuit Court of Appeals decision noted, "indeed, it is 'difficult to visualize a more comprehensive scheme of combined regulation, subsidization, and operational participation than that which congress has provided in the field of aviation.'" *Arapahoe County Public Airport Auth. v. F.A.A.*, 242 F.3d 1213, 1220 (10th Cir. 2001) (quoting *New England Legal Found. v. Massachusetts Port Auth.*, 883 F.2d 157, 172-73 (1st Cir. 1989)).

¹⁴ 49 U.S.C. § 47108(a) (West 1997).

¹⁵ U.S. Const. art. I, sec. 8, cl. 1.

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funds.¹⁶ The adoption of what is now AS 2.15.020 in 1949 allowed the Territory and later the State to bind itself to federal funding requirements, and therefore enjoy the benefit of federal grants.

As a condition of acceptance, the State is required both by this statute and federal case law to expend federal grant funds only in strict accordance with federal terms and conditions. The FAA has a number of title requirements for airports receiving grants.

Conflicts with Specific Federal Title Requirements

The primary transportation function of the airport is degraded if airport property is not subject to direct airport management and control. The FAA requires the Department to issue and certify¹⁷ assurances that as the sponsoring agency it has a "satisfactory property interest" in the airport to obtain these necessary federal grants.¹⁸ Grant assurances are incorporated into the grant contract. The Seventh Circuit Court of Appeals has noted that discretion to determine what constitutes a "satisfactory property

¹⁶ *E.g., South Dakota v. Dole*, 483 U.S. 203 (1987); *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981); *U.S. v. Miami University*, 91 F. Supp. 2d 1132, 1142 (S.D. Ohio 2000). The *Miami* court observed:

Federal grants authorized by Congress create binding contracts between the United States and the recipient, and the United States has the authority to fix the terms and conditions upon which federal funds will be disbursed. Accordingly, acceptance of a federal grant to which conditions are attached "creates an obligation to perform the conditions on the part of the recipient."

Miami University, 91 F. Supp. 2d at 1142 (quoting in part *U.S. v. Frazer*, 297 F. Supp. 319, 322 (M.D. Ala 1968)) (footnotes and citations omitted).

¹⁷ A person who knowingly and with intent to defraud makes a false statement on a certification required to obtain a federal airport development grant is subject to criminal penalties including fines and imprisonment of up to five years. 49 U.S.C. § 47126(3) (West 1997).

¹⁸ 49 U.S.C. § 47107(c) (West 1997); 14 C.F.R. § 152.103(a)(4)(ii) (2001); 14 C.F.R. § 152.3 (2001) ("Satisfactory property interest" and "Sponsor" defined); 14 C.F.R. § 151.26(d) (2001) ("land" defined in the context of the sponsor's application, which must identify property as either currently or anticipated to be subject to a satisfactory property interest).

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interest" rests with the FAA." Federal regulations specifically provide that land identified in the sponsor's application which is (or is to be) held in fee must be:

free and clear of any . . . other encumbrance that, in the opinion of the [FAA] would create an undue risk that it might deprive the sponsor of possession or control, interfere with its use for public airport purposes, or make it impossible for the sponsor to carry out the agreements and covenants in the application²⁰

A title interest that is essentially a statutorily defeasible²¹ fee created by AS 14.08.151(b) can certainly "deprive the sponsor of possession." The significance of the

²⁰ *Aircraft Owners and Pilots Ass'n v. Hinson*, 102 F.3d 1421, 1424, 1426 n.2 & n.3 (7th Cir. 1996). The *Hinson* court considered claims that FAA grant assurances were violated when a sponsor, the City of Chicago, lost its lease on land underlying an airport when the lessor, a park district, declined to renew the lease after its expiration. The State of Illinois, as an intervenor, argued that the federal grant requirements required the City to obtain the airport (through condemnation or otherwise) to protect the grant-funded improvements and to continue to operate the airport. The court held that the grant provisions for this particular airport included a specific requirement for reimbursement in the event the lease was lost. The FAA had contemplated the possibility of lost title in this individual case and provided a contractual option other than specific performance. Therefore, the court reasoned, the FAA had acted reasonably and within its discretion in choosing not to seek to force the city to acquire and maintain the airport. While the court recognized the FAA's power to enforce title assurances, it refused to second guess the FAA's enforcement discretion. The *Hinson* court specifically noted that had the FAA wanted to force the sponsor defendant to maintain its title interest, it could well have done so by originally imposing the grant provisions it had employed at nearby Midway Field. *Id.*

²⁰ 14 C.F.R. § 151.25(c)(1) (2001).

²¹ "Defeasible" is defined as:

Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or by a conditional limitation. An estate which is not absolute, i.e., one which is determinable or subject to an executory limitation or condition subsequent. Usually spoken of estates and interests in land. For instance, a mortgagee's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption.

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defeasance will vary with the location of the RSB's facilities on the airport and the FAA's corresponding willingness, or unwillingness, to declare the property to be excess.²² However, the FAA's requirement for stable, predictable title is manifestly incompatible with a statutorily created defeasible fee which is not under the sponsor's control.

Excess property initially purchased or developed with an FAA grant may be sold (after approval) at fair market value and the FAA reimbursed proportionately.²³ The FAA may demand reimbursement of its proportion of full fair market value if title is transferred below market, as would be the case with a transfer to an RSB which occupies land which the FAA agrees is excess.²⁴ Likewise, any alterations to a grant-aided airport's layout plan must be approved by the FAA.²⁵ An unapproved alteration may cause the FAA to require the Department, at state expense, to restore the airport to its prior utility, even if this requires moving the airport facilities.²⁶ An "airport layout plan" includes the identification of the airport's boundaries, location of aviation and non-aviation uses, and delineation of the sponsor's title.²⁷

Black's Law Dictionary *available in Westlaw* (2001).

²² In *Bettles*, for instance, the facility in question is over the "building restriction line." Defeasance in that case will be a serious matter, potentially implicating airport safety issues as well as more general management and fiscal control.

²³ 49 U.S.C. § 47107(c) (West 1997).

²⁴ *Id.*

²⁵ 49 U.S.C. § 47107(a)(16) (West 1997).

²⁶ *Id.*

²⁷ 14 C.F.R. § 151.5(a) (2001) reads:

(a) Airport layout plan. As used in this part, "airport layout plan" means the basic plan for the layout of an eligible airport that shows, as a minimum—

(1) The present boundaries of the airport and of the offsite areas that the sponsor owns or controls for airport purposes, and of their proposed additions;

(2) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modifications and extensions; and

(3) The location of existing and proposed non-aviation areas, and of their existing improvements.

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A loss of title to airport property which is subject to grant assurances without compensation and without FAA concurrence, may breach title assurances. Such a breach could cause the FAA, at its discretion, to demand reimbursement, to demand that the alteration or loss be ameliorated at the sponsor's expense, to refuse further funding, and to take direct legal action against a state in federal court.²⁷

CONCLUSION

There being no indication of legislative intent to compel the State of Alaska to breach FAA grant agreements; in violation of AS 2.15.020(c), the best interpretation of AS 14.08.151 limits its application to non-airport lands. The Legislature could not have reasonably intended to repeal AS 2.15.020(c) by implication and thus endanger federal funding of airports, potentially subject the State to significant federal enforcement, and actually discourage the Department from allowing RSBs access to appropriate property when it is otherwise in the best interest of the State and the airport to do so. Therefore it is our opinion that AS 14.08.151 (b) should not be interpreted to require conveyance to an RSB of the State's interest in a State airport.

²⁷ 49 U.S.C. § 47111(f) (West 1997). The Inspector General of the FAA has investigated other FAA Regions and criticized them harshly for failure to insure strict compliance with grant conditions. The FAA has successfully sued sponsors for specific performance and withheld grant funding when confronted with breached grant conditions. For instance, when a New York airport attempted (by statute) to close at night in violation of a grant requirement, the FAA obtained an injunction to force the airport to remain open in the evening. *U.S. v. Westchester County*, 571 F. Supp. 786 (S.D.N.Y. 1983). The FAA also lawfully refused to re-certify the same airport for commercial aircraft until the breach was corrected. *New York v. FAA*, 712 F.2d 806, 809 (2nd Cir. 1983). When the San Francisco Airport violated its grant assurances with respect to non-discrimination, the FAA lawfully rejected its grant applications during the years of non-compliance. *City and County of San Francisco v. FAA*, 942 F.2d 1391 (9th Cir. 1991), cert. Denied, 503 U.S. 983 (1992). A Colorado airport recently had a similar experience. *Arapahoe*, 242 F.3d at 1220.

SB

142

SENATE FINANCE COMMITTEE REPORT

DATE: 4/6/05

FURTHER:

REPORTED OUT

APR 19 2005

SENATE FINANCE
COMMITTEE

DATE TURNED IN TO OFFICE: 4/19/05

Finance Committee considered

SENATE BILL NO. 142

SB 142 REGIONAL SCHOOL BD LAND/BLDG OWNERSHIP

"An Act relating to ownership of land, buildings, and other structures by regional school boards; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB 142 (L+C)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
EED	3/18/05			✓	1
DOT	4/4/05			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

REPORTED OUT

APR 9 2005

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 142(L&C)
 (S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title: Regional School Board Land/ RDU: Administration & Support
Building Ownership Component: Commissioner's Office
 Sponsor: Senate Labor and Commerce
 Requester: Senate Labor and Commerce Component No. 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Nona Wilson Phone: 465-3904
 Division: Legislative Liaison, DOT&PF Date/Time: 4/4/05 6:17 PM
 Approved by: Mike Barton Date: 4/4/2005
 Agency: Commissioner, DOT&PF

APR 9 2005

SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 142(L&C)
(S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Education & Early Development
Title: An act relating to ownership of land, buildings, RDU: ESS
and other structures by regional school boards; and providing Component: School Finance & Facilities
Sponsor: Labor and Commerce
Requester: Labor and Commerce Component No.: 2736

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no financial impact related to this legislation with the Department of Education & Early Development. Rather this legislation clarifies other structures in transfer of title. And remove the ability to transfer land, buildings, and other structures, located within the boundaries of state airport.

Prepared by: Eddy Jeans, Director
Division: School Finance
Approved by: _____
Agency: Education & Early Development

Phone: 465-8679
Date/Time: 3/18/05 12:44 PM
Date: 03/18/2005



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

SB 142 SPONSOR STATEMENT

Lands & Buildings used by Regional School Boards

"An Act relating to ownership of land, buildings, and other structures by regional school boards; and providing for an effective date."

Currently there exist conflicting statutes regarding ownership of land for state airports. AS 02.15.020 requires that the Department of Transportation and Public Facilities (DOT&PF) conforms to federal requirements if the state wishes to participate in federal grants. A newer statute, AS 14.08.151(b) gives a regional school board the opportunity to receive title to land and buildings used in relation to regional educational attendance area schools.

While the Alaska Legislature clearly intended to allow regional school boards the option of greater control of their facilities through acquisition of title, there is no record that the Legislature intended to do so at the cost of federal liability, significant loss of federal funding, and a degraded state airport system.

Several regional schools are located on state airport properties, some in very close proximity to active runways and airport infrastructure. At various times, regional school boards have requested that DOT&PF convey full title of the airport land to the schools. This has caused confusion, staff time in both the Departments of Education and DOT&PF, as well as attorney costs, to defend DOT&PF's title to its airport property.

DOT&PF, acting as a sponsor under federal law, makes extensive use of federal grant funding for airport construction and improvements. The Federal Aviation Administration imposes enforceable grant conditions on the recipients of federal funds. As a condition of acceptance, DOT&PF is required to expend federal grant funds in strict accordance with those federal conditions. FAA requires DOT&PF to certify assurances that it has "satisfactory property interest" in the airport to obtain these necessary federal grants. Under AS 14.08.151(b), a mandatory title transfer of airport property that is subject to FAA grant assurances would violate AS 02.15.020(c) and would breach federal grant agreements. This is because DOT&PF would be required to transfer title to property that the department has assured to the FAA that it would retain in state ownership *for airport purposes*, including the fiscal support of the airport.

There being no indication of legislative intent to compel the State of Alaska to breach FAA grant agreements in violation of AS 02.15.020(c), the best interpretation of AS 14.08.151 limits its applicability to non-airport lands.

This bill will benefit the public, the regional school boards, the Department of Education and DOT&PF by clarifying the intent of the conveyance language to exclude airport properties.

Fact Sheet: SB 142

Sponsor: Senate Labor & Commerce Committee

Contact: Jane Alberts, 465-4843

Summary:

- Excludes airport properties from AS 14.08.151(b), which directs the state to convey title to land and buildings used in relation to regional educational attendance area schools when requested to do so by the regional school board.

Benefits:

- Resolves a conflict between AS 02.15.020, which requires the Department of Transportation & Public Facilities to retain "satisfactory property interest" in airport facilities in order to participate in federal grant programs, and AS 14.08.151, which gives regional school boards the opportunity to obtain title to land/structures for regional educational attendance area (REAA) schools.
- Saves the departments of Transportation and Education time, effort and money needed to settle conflicting claims.
- Ensures that DOT&PF will be able to meet Federal Aviation Administration requirements and obtain federal funding for airport projects in REAAs.
- Conforms statute to legislative intent.

Background:

- AS 02.15.020 requires DOT&PF to conform to federal requirements in order for the State to participate in federal grants. The Federal Aviation Administration requires DOT&PF to certify assurances that it has "satisfactory property interest" in the airport to obtain these necessary federal grants. A newer statute, AS 14.08.151(b) gives a regional school board the opportunity to receive title to land and buildings used in relation to REAAs. Several regional schools are located on state airport properties, some in close proximity to active runways and airport infrastructure. At various times, regional school boards have requested that DOT&PF convey full title of the airport land to the schools. A mandatory title transfer of this type would violate AS 02.15.020 and breach federal grant agreements. While the Alaska Legislature clearly intended to allow regional school boards the option of greater control over facilities through acquisition of title, no record exists that the Legislature intended to do so at the cost of federal liability, significant loss of federal funding and a degraded state airport system.

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MEMORANDUM

State of Alaska

Department of Law

TO: Joseph L. Perkins, P.E., Commissioner
Department of Transportation and
Public Facilities

DATE: December 11, 2001

FILE NO: 665-99-0090

SUBJECT: Rural Schools and Airport
Land Title

FROM: Leone Hatch **LH.**
Assistant Attorney General
Transportation - Fairbanks

You have asked whether a regional school board¹ (hereinafter "RSB") which operates on airport property may require the Department of Transportation and Public Facilities (hereinafter "the Department") to transfer title to the land and buildings which it occupies to the RSB pursuant to AS 14.08.151(b) (Lexis 2000). While there is some uncertainty, the better answer to your question is no. Title may not be transferred on demand. We have reached this conclusion because the Alaska Legislature could not have intended to create a conflict with federal funding requirements, risk federal enforcement, and place federal participation in the State's airport system at risk.²

A mandatory title transfer of airport property (which is subject to FAA grant assurances) to an RSB pursuant to AS 14.08.151(b) would violate AS 2.15.020(c)

¹ The Alaska Supreme Court has noted that RSB's "are independent entities which have been given broad powers." *Northwest Arctic Reg'l Educ. Attendance Area v. Alaska Public Service Employees Local 71*, 591 P.2d 1292, 1298 (Alaska 1979), overruled on other grounds, *Alaska Commercial Fishing & Agric. Bank v. D/S Alaska Coast*, 715 P.2d 707, 709 n.5 (Alaska 1986); see also, *U.S. ex rel. Norton Sound Health v. Bering Strait School Dist.*, 138 F.3d 1281 (9th Cir. 1998). A title transfer to an RSB is not a mere administrative change of title between sister state agencies.

² It is also possible that AS 14.08.151(b) could be held to be federally preempted insofar as it applies to airports subject to federal grants. In general, when the federal government legislates in an area in which it is constitutionally entitled, directly conflicting local legislation is preempted through the operation of the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2. E.g., *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 98 (1992). However, there are issues with this approach that make the outcome in this situation uncertain.

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Department of Transportation and Public Facilities
Subject: Rural Schools and Airport Land Title

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(Lexis 2000) and would breach federal grant agreements. This is so because the Department would be required to transfer title to property which the Department, acting as sponsor for federal funding, has assured to the FAA that it would retain in State ownership for airport purposes, including the fiscal support of the airport. Automatic transfer of airport land to an RSB could subject the State to federal liability and enforcement as well as endanger future federal funding. If the Department cannot in good faith make title assurances to the FAA, there may be no future grant funding for airports vulnerable to RSB defeasance.

Background

Various RSB's operate facilities situated on airport property. In 1978, the Legislature granted RSB's the option of acquiring title to state property being used by a school.³ The Department has informed me that many, if not most, of these school facilities were constructed on airport property prior to the 1978 legislation. These schools are occupied under lease, use permit, or are in holdover status. AS 02.15.090 (Lexis 2000); AS 14.08.151(a) (Lexis 2000). The Yukon-Koyukuk RSB has made an administrative claim for Bettles airport property. That claim is under consideration pending the issuance of this opinion.

Statutory Authority

Two state statutes essentially frame the potential conflict: AS 02.15.020(c) and AS 14.08.151(b). The older statute, AS 02.15.020,⁴ essentially authorizes (and compels) the State to conform to federal requirements if the State wishes to participate in federal grants:

(c) The department may accept federal money and money from other public and private sources to accomplish in whole or in part any of the purposes of this chapter. All federal money accepted under this chapter shall be

³ § 2 ch 124 SLA 1975; am §§2, 3 ch 147 SLA 1978; am § 6 ch 6 SLA 1984 (codified at AS 14.08.151 (Lexis 2000)). The relevant language was adopted into subsection (b) in 1978.

⁴ § 4A - C ch 123 SLA 1949; am § 1 ch 14 SLA 1968 (codified at AS 02.15.020 (Lexis 2000)). The relevant language was adopted into subsection (c) in 1949, with slight revisions in 1968 recognizing that the Territorial Commission had become a department of the State.

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accepted and expended by the department upon the terms and conditions prescribed by the United States.⁵

The more recently enacted is AS 14.08.151.⁶ In Subsection (b) of this statute, the legislature authorized RSB's a means by which to obtain title to some state property. Subsection (b) provides as follows:

(b) A regional school board may, by resolution, request, and the commissioner of the department having responsibility shall convey, title to land and buildings used in relation to regional educational attendance area schools. If the state holds less than fee title to the land, the commissioner of the department having responsibility shall convey the entire interest of the state in the land to the regional school board.

Statutory Construction

"Interpretation of a statute begins with an examination of its language construed in light of its purpose." Even if a statute appears clear on its face, it is interpreted in the context of the legislature's purpose. The Alaska Supreme Court recently repeated its holding that, "[i]n ascertaining the legislature's intent, we are obliged to avoid construing a statute in a way that leads to a glaringly absurd result."⁷

Alaska statutes in apparent conflict must be read together in the context of legislative intent. If possible, the statutes should be harmonized. If the statutes cannot be reasonably harmonized in light of statutory intent, the earlier statute may be held to have been repealed by implication.⁸ However in this case, if the earlier statute is impliedly repealed, there will be direct and adverse consequences to the State's ability to maintain federally funded rural airports.

While the Alaska Legislature clearly intended to generally allow RSB's the option of greater autonomy and control of their facilities through the acquisition of title,

⁵ See, footnote 4.

⁶ See, footnote 3.

⁷ *Beck v. State of Alaska*, 837 P.2d 105, 116-17 (Alaska 1992).

⁸ *Sherbahn v. Kerkove*, 987 P.2d 195, 201 (Alaska 1999) (quoting *Underwater Constr., Inc. v. Shirley*, 884 P.2d 150, 155 n.21 (Alaska 1994) (quoting *Sherman v. Holiday Constr. Co.* 435 P.2d 16, 19 (Alaska 1967))).

⁹ E.g., *Progressive Insurance Co. v. Simmons*, 953 P.2d 510, 516 (Alaska 1998).

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there is no indication or record that the legislature intended to do so at the cost of federal liability, significant loss of federal funding, and a degraded airport system.

In this case, the earlier statute, AS 02.15.020(c), enables the Department of Transportation to apply for, accept, and utilize FAA grants for state airport facilities. AS 14.08.151(b) cannot be read to apply to airport land without implying that the Legislature intended to at least partially repeal AS 2.15.020(c)'s mandate that the state accept federal funds and be bound by the conditions thereon. It is unlikely that the Legislature intended to repeal this statute and subject the State to federal enforcement. Nor is it likely that the Legislature intended to endanger either current or future grant funding. The partial repeal necessary of AS 02.15.020(c) in favor of AS 14.08.151(b) to allow RSB's the right to claim title to airport property (discussed below) is an illogical and absurd result, unlikely to have been intended by the Legislature. To avoid the illogical and unintended result, AS 14.08.151(b) should not be read to apply to airport land.¹⁰

The Alaska Supreme Court, in its only interpretation of AS 14.08.151(b), has suggested a method of construing this statute which will allow it to be harmonized with AS 02.15.020(c) and the state's need to control public airports, maintain federal funding eligibility and honor its federal commitments. *State v. Bering Strait Regional Attendance Area*, 658 P.2d 784 (Alaska 1983). In *Bering* the court held that AS 14.08.151(b) is inapplicable to property which the RSB shared with another user. This opinion rests on the court's reluctance to create a shared title interest without specific legislative directive.

In *Bering*, the Nome City School District occupied a State-owned building which it primarily used for the Nome High School. It sublet an unused portion of the facility to the Bering Strait Regional Educational Attendance Area School District (hereinafter "Bering"). Both entities requested title under AS 14.08.151(b). The State chose to transfer title to the Nome City School District. Bering appealed and the matter eventually rose to the Alaska Supreme Court. The court was troubled by the shared use of the same property and was reluctant to either read AS 14.08.151(b) to require a partial conveyance, or to impose a novel and complex condominium-type relationship upon Nome City School District and Bering in the absence of specific statutory authority. The court held:

In effect, this will result in the creation of a condominium public facility.

¹⁰ The bulk of the controversy with its attendant potential for litigation could be resolved if the Alaska Legislature would revisit the issue and clarify its intentions.

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There are two problems with this interpretation.

First, it is a departure from the literal language of the statute. The statute refers to buildings, not portions of buildings

Second, a condominium public facility would be an innovation in this state. Creation of a condominium is legally complex, requiring detailed legal documents specifying, among other things, the responsibilities of the various owners. We believe that if condominium ownership had been intended by the legislature in enacting AS 14.08.151(b) the statute would have expressly so provided and would have furnished some guidance as to the division of responsibilities among the owners.

We thus hold that that the superior court erred in interpreting AS 14.08.151(b) to require a partial conveyance of the complex to Bering Strait.

Bering, 658 P.2d at 786 (footnotes omitted).¹¹

Specifically, the *Bering* court refused to create a condominium interest when two parties shared a building. If applied to airport land, AS 14.08.151(b) would bifurcate airport land title by effectively subdividing the airport and subjecting it to potentially conflicting uses and hostile management objectives. This result is not consistent with the holding in *Bering*. It is likely that the Alaska Supreme Court would extend *Bering* to include airport land if given the opportunity.

Airport land must by its nature be committed primarily to aviation purposes and uses. The Department, as sponsor, must maintain an indefeasible fee in land to which the FAA requires a fee interest. *Infra* at 7.

While secondary non-aviation uses can be supported in some circumstances, they are necessarily subordinate to the primary purpose of aviation. In the case of an RSB usage on airport land, there is a double occupancy even more complex than that which the *Bering* court refused to split. In the framework of *Bering*, AS

¹¹ The Alaska Legislature has not moved to alter the statute in response to the Alaska Supreme Court's 1983 interpretation. *Talancon v. State*, 721 P.2d 764, 768 (Nev. 1986) (failure of legislature to amend statute after judicial interpretation of legislative intent inferred ratification of judicial action) cited in *Todd v. State*, 884 P.2d 668, 680 (Alaska App. 1994).

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14.08.151(b) should not be interpreted to allow the bifurcation of title to an active airport, thus creating a condominium-like interest.

Pragmatically, AS 14.08.151(b) can be harmonized with AS 02.15.020(c) in the context of *Bering*. *Bering* suggests that before an RSB may obtain title pursuant to AS 14.08.151(b), the RSB usage must be exclusive to avoid a bifurcated title. Because the airport land is subject first to the requirements of transportation and safe aviation usage, the RSB's occupation of airport land is not exclusive, and thus under *Bering*, not subject to fee title transfer pursuant to AS 14.08.151(b).

Federal Grant Requirements

The FAA¹² maintains an interest in aviation safety, efficient and non-discriminatory airport management in support of the national transportation system, and the fiscal responsibility and self-sufficiency of grant-supported airports. It furthers these interests through both direct regulation and grant conditions.¹³ The FAA is specifically authorized by federal statute to attached conditions to FAA grants.¹⁴

The State of Alaska, acting as a sponsor under federal law, makes extensive use of federal grant funding for airport construction and improvement. Pursuant to the Spending Clause of the federal constitution¹⁵ (hereinafter "Spending Clause"), the federal government can and does impose enforceable grant conditions on the recipients of federal

¹² "The FAA is responsible for the administration and management of the Federal Airport grant-in-aid program under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. §§ 1701 et seq. (superseded by the Airport and Airway Improvement Act of 1982, 49 U.S.C. §§ 2201 et seq.)." *U.S. v. County of Westchester*, 571 F. Supp. 786, 789 (S.D.N.Y. 1983) (citations omitted). The 1970 Act was further amended in 1994 and 1996.

¹³ A recent Tenth Circuit Court of Appeals decision noted, "indeed, it is 'difficult to visualize a more comprehensive scheme of combined regulation, subsidization, and operational participation than that which congress has provided in the field of aviation.'" *Arapahoe County Public Airport Auth. v. FAA*, 242 F.3d 1213, 1220 (10th Cir. 2001) (quoting *New England Legal Found. v. Massachusetts Port Auth.*, 883 F.2d 157, 172-73 (1st Cir. 1989)).

¹⁴ 49 U.S.C. § 47108(a) (West 1997).

¹⁵ U.S. Const. art. I, sec. 8, cl. 1.

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funds.¹⁶ The adoption of what is now AS 2.15.020 in 1949 allowed the Territory and later the State to bind itself to federal funding requirements, and therefore enjoy the benefit of federal grants.

As a condition of acceptance, the State is required both by this statute and federal case law to expend federal grant funds only in strict accordance with federal terms and conditions. The FAA has a number of title requirements for airports receiving grants.

Conflicts with Specific Federal Title Requirements

The primary transportation function of the airport is degraded if airport property is not subject to direct airport management and control. The FAA requires the Department to issue and certify¹⁷ assurances that as the sponsoring agency it has a "satisfactory property interest" in the airport to obtain these necessary federal grants.¹⁸ Grant assurances are incorporated into the grant contract. The Seventh Circuit Court of Appeals has noted that discretion to determine what constitutes a "satisfactory property

¹⁶ *E.g.*, *South Dakota v. Dole*, 483 U.S. 203 (1987); *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981); *U.S. v. Miami University*, 91 F. Supp. 2d 1132, 1142 (S.D. Ohio 2000). The *Miami* court observed:

Federal grants authorized by Congress create binding contracts between the United States and the recipient, and the United States has the authority to fix the terms and conditions upon which federal funds will be disbursed. Accordingly, acceptance of a federal grant to which conditions are attached "creates an obligation to perform the conditions on the part of the recipient."

Miami University, 91 F. Supp.2d at 1142 (quoting in part *U.S. v. Frazer*, 297 F. Supp. 319, 322 (M.D. Ala 1968)) (footnotes and citations omitted).

¹⁷ A person who knowingly and with intent to defraud makes a false statement on a certification required to obtain a federal airport development grant is subject to criminal penalties including fines and imprisonment of up to five years. 49 U.S.C. § 47126(3) (West 1997).

¹⁸ 49 U.S.C. § 47107(c) (West 1997); 14 C.F.R. § 152.103(a)(4)(ii) (2001); 14 C.F.R. § 152.3 (2001) ("Satisfactory property interest" and "Sponsor" defined); 14 C.F.R. § 151.26(d) (2001) ("land" defined in the context of the sponsor's application, which must identify property as either currently or anticipated to be subject to a satisfactory property interest).

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interest" rests with the FAA.¹⁹ Federal regulations specifically provide that land identified in the sponsor's application which is (or is to be) held in fee must be:

free and clear of any . . . other encumbrance that, in the opinion of the [FAA] would create an undue risk that it might deprive the sponsor of possession or control, interfere with its use for public airport purposes, or make it impossible for the sponsor to carry out the agreements and covenants in the application²⁰

A title interest that is essentially a statutorily defeasible²¹ fee created by AS 14.08.151(b) can certainly "deprive the sponsor of possession." The significance of the

¹⁹ *Aircraft Owners and Pilots Ass'n v. Hinson*, 102 F.3d 1421, 1424, 1426 n.2 & n.3 (7th Cir. 1996). The *Hinson* court considered claims that FAA grant assurances were violated when a sponsor, the City of Chicago, lost its lease on land underlying an airport when the lessor, a park district, declined to renew the lease after its expiration. The State of Illinois, as an intervenor, argued that the federal grant requirements required the City to obtain the airport (through condemnation or otherwise) to protect the grant-funded improvements and to continue to operate the airport. The court held that the grant provisions for this particular airport included a specific requirement for reimbursement in the event the lease was lost. The FAA had contemplated the possibility of lost title in this individual case and provided a contractual option other than specific performance. Therefore, the court reasoned, the FAA had acted reasonably and within its discretion in choosing not to seek to force the city to acquire and maintain the airport. While the court recognized the FAA's power to enforce title assurances, it refused to second guess the FAA's enforcement discretion. The *Hinson* court specifically noted that had the FAA wanted to force the sponsor defendant to maintain its title interest, it could well have done so by originally imposing the grant provisions it had employed at nearby Midway Field. *Id.*

²⁰ 14 C.F.R. § 151.25(c)(1) (2001).

²¹ "Defeasible" is defined as:

Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or by a conditional limitation. An estate which is not absolute, i.e., one which is determinable or subject to an executory limitation or condition subsequent. Usually spoken of estates and interests in land. For instance, a mortgagee's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption.

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defeasance will vary with the location of the RSB's facilities on the airport and the FAA's corresponding willingness, or unwillingness, to declare the property to be excess.²² However, the FAA's requirement for stable, predictable title is manifestly incompatible with a statutorily created defeasible fee which is not under the sponsor's control.

Excess property initially purchased or developed with an FAA grant may be sold (after approval) at fair market value and the FAA reimbursed proportionately.²³ The FAA may demand reimbursement of its proportion of full fair market value if title is transferred below market, as would be the case with a transfer to an RSB which occupies land which the FAA agrees is excess.²⁴ Likewise, any alterations to a grant-aided airport's layout plan must be approved by the FAA.²⁵ An unapproved alteration may cause the FAA to require the Department, at state expense, to restore the airport to its prior utility, even if this requires moving the airport facilities.²⁶ An "airport layout plan" includes the identification of the airport's boundaries, location of aviation and non-aviation uses, and delineation of the sponsor's title.²⁷

Black's Law Dictionary *available in Westlaw* (2001).

²² In Bettles, for instance, the facility in question is over the "building restriction line." Defeasance in that case will be a serious matter, potentially implicating airport safety issues as well as more general management and fiscal control.

²³ 49 U.S.C. § 47107(c) (West 1997).

²⁴ *Id.*

²⁵ 49 U.S.C. § 47107(a)(16) (West 1997).

²⁶ *Id.*

²⁷ 14 C.F.R. § 151.5(a) (2001) reads:

(a) Airport layout plan. As used in this part, "airport layout plan" means the basic plan for the layout of an eligible airport that shows, as a minimum--

(1) The present boundaries of the airport and of the offsite areas that the sponsor owns or controls for airport purposes, and of their proposed additions;

(2) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modifications and extensions; and

(3) The location of existing and proposed non-aviation areas, and of their existing improvements.

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A loss of title to airport property which is subject to grant assurances without compensation and without FAA concurrence, may breach title assurances. Such a breach could cause the FAA, at its discretion, to demand reimbursement, to demand that the alteration or loss be ameliorated at the sponsor's expense, to refuse further funding, and to take direct legal action against a state in federal court.²⁹

CONCLUSION

There being no indication of legislative intent to compel the State of Alaska to breach FAA grant agreements in violation of AS 2.15.020(c), the best interpretation of AS 14.08.151 limits its application to non-airport lands. The Legislature could not have reasonably intended to repeal AS 2.15.020(c) by implication and thus endanger federal funding of airports, potentially subject the State to significant federal enforcement, and actually discourage the Department from allowing RSBs access to appropriate property when it is otherwise in the best interest of the State and the airport to do so. Therefore it is our opinion that AS 14.08.151(b) should not be interpreted to require conveyance to an RSB of the State's interest in a State airport.

²⁹ 49 U.S.C. § 47111(f) (West 1997). The Inspector General of the FAA has investigated other FAA Regions and criticized them harshly for failure to insure strict compliance with grant conditions. The FAA has successfully sued sponsors for specific performance and withheld grant funding when confronted with breached grant conditions. For instance, when a New York airport attempted (by statute) to close at night in violation of a grant requirement, the FAA obtained an injunction to force the airport to remain open in the evening. *U.S. v. Westchester County*, 571 F. Supp. 786 (S.D.N.Y. 1983). The FAA also lawfully refused to re-certify the same airport for commercial aircraft until the breach was corrected. *New York v. FAA*, 712 F.2d 806, 809 (2nd Cir. 1983). When the San Francisco Airport violated its grant assurances with respect to non-discrimination, the FAA lawfully rejected its grant applications during the years of non-compliance. *City and County of San Francisco v. FAA*, 942 F.2d 1391 (9th Cir. 1991), cert. Denied, 503 U.S. 983 (1992). A Colorado airport recently had a similar experience. *Arapahoe*, 242 F.3d at 1220.

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES



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TO FAX #: 586-8365

TO: Nona Wilson

SUBJECT: SB 142

FROM: Pamela A. Lewis, SRWA
Statewide Chief

PHONE: 451-5266

MESSAGE: Here's the AGO opinion dated 12/11/01. Please look at the footnote on page 4 about resolving the conflict!

Number of pages sent: 11 (including transmittal page)

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

March 24, 2005

The Honorable Con Bunde
Chair, Senate Labor & Commerce
Alaska State Legislature
State Capitol, Room 506
Juneau, Alaska 99801-1182

Dear Senator Bunde:

Senate Bill 142, as proposed, will clarify the intent of existing statute regarding land title conveyance in order to prevent airport properties from being transferred to regional school boards. By rectifying this disparity, SB 142 would exclude airport properties and in-boundary airport perimeters from being transferred to regional school districts applying for title conveyance.

AS 14.08.151(b) reads as follows: *A regional school board may, by resolution, request, and the commissioner of the department having responsibility shall convey, title to land and buildings used in relation to regional educational attendance area schools. If the state holds less than fee title to the land, the commissioner of the department having responsibility shall convey the entire interest of the state in the land to the regional school board.*

An example of the confusion caused by current statute can be cited as when the Yukon-Koyukuk Regional School Board made an administrative claim for school property on the Bettles Airport in 2001. The school in Bettles, constructed in the 1970's, is very close to the active runway, and is, in fact, partially in front of the building restriction line (BRL). A BRL limits construction of improvements near a runway for safety purposes. The school is actually located in an area identified by DOT&PF and the FAA as being needed for future aviation purposes.

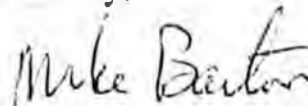
DOT&PF obtained an Attorney General's Opinion, copy enclosed, when it received the claim for title from the Y-K Regional School Board. Said opinion, dated 12/11/01, concluded that there was no indication of legislative intent to compel the State of Alaska to breach FAA grant agreements in violation of AS 02.15.020(e). The opinion further stated: "...AS 14.08.151(b) should not be interpreted to require conveyance to an RSB of the State's interest in a State airport." Our estimate of staff time devoted to this task, as well as to the AG's involvement, is approximately 250 hours. The costs for staff time and the AG's opinion is approximately \$17,500.

The difficulty encountered in 2001 is not exclusive. In 1986 the Aleutian Region School District requested conveyance of the existing school site at the Cold Bay Airport. Eight years later, in 1994, the Lake and Peninsula School District requested conveyance of the school site at Iliamna Airport. In both cases, DOT&PF required the assistance of the Attorney General's Office to deny the RSBs' requests for title.

DOT&PF has been working with the legislature to resolve the conflict between these statutes since 1987. Passage of this legislation would solidify the ability of the department to protect the integrity and safety of the State's 258 rural airport properties as well as maintain, operate, expand and manage airports according to FAA guidelines and federal grant requirements.

I urge your prompt and favorable action on this measure.

Sincerely,



Mike Barton
Commissioner

Enclosure

REAs where Airport/DOT needs may overlap:

- **In Northern Region** there are schools or school-owned buildings on the following airports:
Anvik, Bettles, Galena, Noatak, Pilot Station and Unalakleet

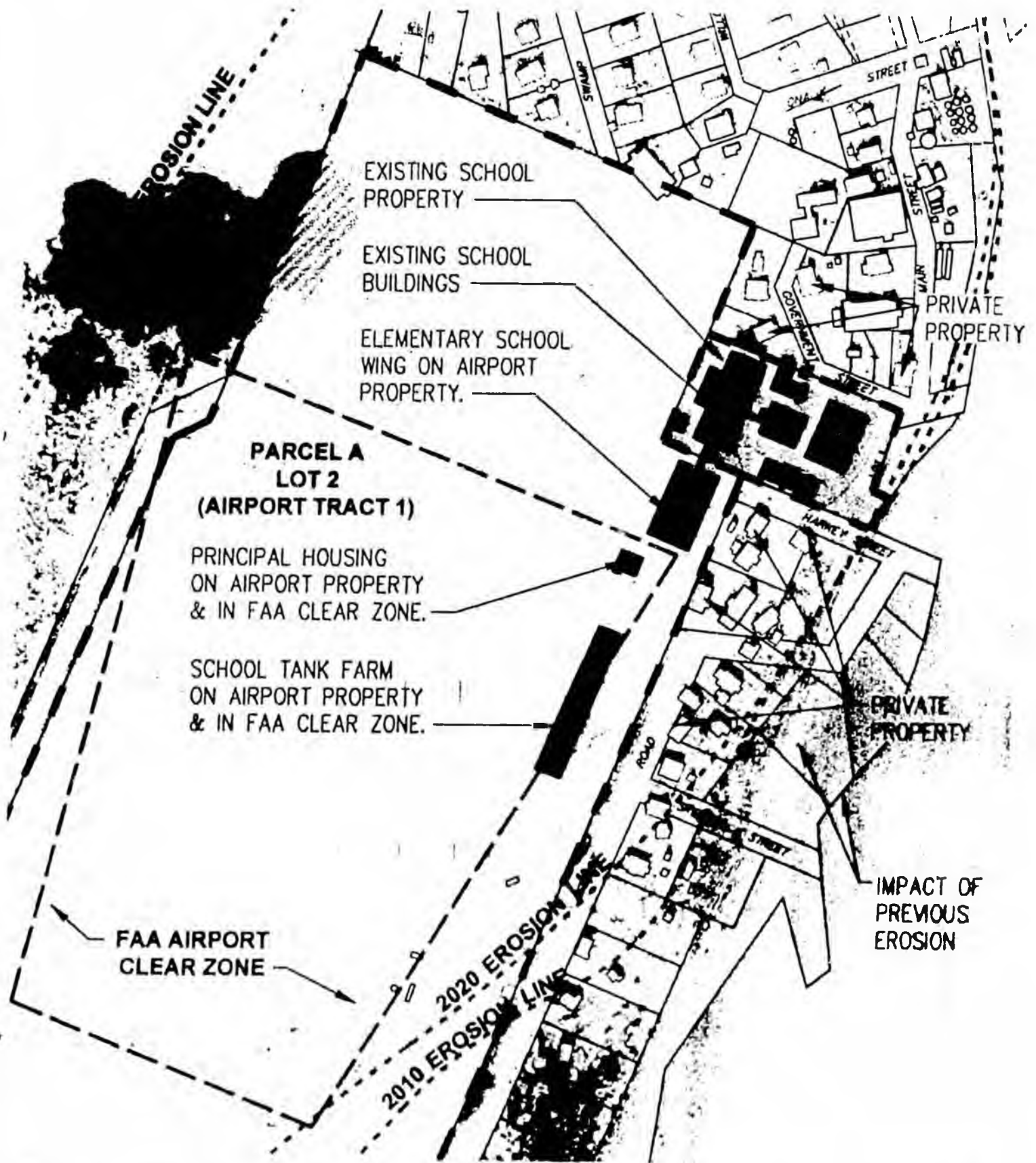
- **In Central Region** schools or school outbuildings may be on the following airports:
Aniak, Cold Bay, Iliamna, Lime Village and Willow

Data provided by:

Pamela A. Lewis, SR/WA

Statewide Chief, Aviation Leasing and Airport Land Development

Alaska DOT&PF



1"=200'

EXISTING SITE BOUNDARY, EXPANSION, AND RIVER EROSION CONSTRAINTS

NAPAAQTUGMIUT SCHOOL NOATAK, ALASKA

NORTHWEST ARCTIC BOROUGH SCHOOL DISTRICT

Provided by Sen Olson 4/19/05

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/16/05

FURTHER: Finance

Date of 5-Day Notice: 3/24/05
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 4/6/05

Labor and Commerce Committee considered SENATE BILL NO. 142

SB 142 REGIONAL SCHOOL BD LAND/BLDG OWNERSHIP

"An Act relating to ownership of land, buildings, and other structures by regional school boards; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 142 (L&C)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
EED	3/18/05			✓	1
DOT	4/4/05			✓	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Davis	<i>Betsy Davis</i>	✓			
Ellis	<i>John Ellis</i>			✓	
Seekins	<i>John Seekins</i>	✓			
B. Steens	<i>Ben Steens</i>	✓			
Bunde	CHAIR: <i>O Bunde</i>	✓			

SB

144

HFIN

FILE

ALASKA STATE LEGISLATURE



Official Business

SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Gretchen Guess

Sponsor Statement

SB 144 - EMISSION CONTROL PROGRAM PERMITS/REGS

As part of Governor Murkowski's permit reform initiative, the 23rd Alaska Legislature passed CSHB 160 (Fin) in 2003. This law streamlined Alaska's air permitting by making the State's air permit rules mirror federal requirements.

However, in adopting the regulations to implement the new statute, the Department of Environmental Conservation (DEC) found several places where the statute did not meet federal requirements. If unaddressed, these deficiencies would prevent federal approval of Alaska's permit programs, and could jeopardize State primacy for these programs.

This bill makes technical changes to address certain specific deficiencies and to ensure continued State primacy in air permitting. It adopts federal definitions to ensure the State's program is consistent with federal law, and repeals definitions not needed in statute. For needed terms that are not defined in statute, the bill directs the department to define them in regulation consistent with federal law.

One change proposed by the bill is needed to ensure a solvent program. The air permit program is funded entirely by user fees. This bill would allow DEC to revoke a permit when the fees are not paid.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 144(RES)
(S) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title Emission Control Program Permits/Regs RDU _____ Air Quality
Component _____ Air Quality
Sponsor Senate Resources
Requester Senate Resources Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will not have a financial impact on the Air Permits Program. The cost to administer the program remains unchanged.

Prepared by: John Kuterbach, Air Permits Program Manager Phone (907) 465-5103
Division: Air Quality Date/Time 3/18/05 11:00 AM
Approved by: Kurt Fredriksson, Acting Commissioner Date 3/18/2005
Agency: Environmental Conservation

ALASKA STATE LEGISLATURE



Official Business

SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Gretchen Guess

Sectional Analysis

SB 144 - EMISSION CONTROL PROGRAM PERMITS/REGS

Sectional Analysis of SB 144 (relating to regulations, definitions, and permits under the emission control permit program)

SB 144 makes technical changes to the state air permits program needed for consistency with federal requirements. The bill also expands the department's authority to ensure payment of program fees.

Sec. 1. The first section of the bill better defines who needs a Clean Air Act Title V operating permit by using federal terminology. In AS 46.14.130(b)(1)&(2), the federal term "major source" is added and use of the term "stationary source" changed to more closely track the terminology used by CAA Title V to describe categories needing permits. Together with adoption of the federal definition of "major source" in section 2, these changes ensure that the state program will meet the minimum federal requirements needed for program approval by EPA. The current state program omits certain groups of stationary sources required to have a Title V permit under federal law.

Sec. 2. The second section adopts the federal definition of "major source" contained in CAA section 501 for purposes of AS 46.14.130. This change ensures that the state's operating permit program applies to all categories of sources enumerated under Title V of the CAA.

Sec. 3. Section three adds a new subsection AS 46.14.140(a)(15) directing DEC to use applicable definitions of the CAA or EPA implementing regulations when adopting air emission permit program regulations. This is a continuation of the department's effort to have our state air permit programs mirror their federal counterparts.

Sec. 4. Section four authorizes DEC to revoke a permit if necessary to secure payment of program fees or penalties awarded by the court for violations of state law. Currently AS 46.14.255(b) gives DEC leverage to stop work on permit applications or to refuse to issue a permit or permit change. However under the new minor permit program some permits will be continuous and, unless the permittee needs a permit modification, the statute as currently written cannot be used to compel payment after the permit is issued. Similarly, with the standard operating permit term of five years, there may be significant periods of time during which the department is not working on a permit renewal or other permit change for a given permittee. The addition of permit revocation authority will enhance the department's ability to obtain payment in those circumstances.

Sec. 5. Section five corrects the phrase "major stationary source" to read "major source" in AS 46.14.255(a) and makes other stylistic changes.

Sec. 6. Section six amends the definition of "emissions unit" to enable the department to use either of two federal definitions of the term as the context requires. The federal construction and operating permit programs use different definitions of the term for these respective permit programs. This amendment enables the state permit programs to more closely mirror the federal counterparts.

Sec. 7. Section seven substitutes a CAA definition for the term "stationary source" in lieu of EPA's regulatory definition for the Title I permit program. The CAA and EPA's implementing regulations use different definitions of the term "stationary source" depending upon the CAA program.

Sec. 8. Section eight repeals the statutory definition of the term "modification." The term "modification" has various definitions in the CAA and EPA implementing regulations. Adopting the applicable definition by regulation is less cumbersome and better enables the department to promulgate regulations mirroring the federal programs.

Sec. 9. Provides for an effective date of July 1, 2005.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF AIR QUALITY
DIRECTOR'S OFFICE

555 Cordova Street
Anchorage, AK 99501-2617
PHONE: (907) 269-7634
FAX: (907) 269-3098
TDD/TTY: (907) 269-7511
<http://www.state.ak.us/dec/>

February 1, 2005

Roscoe G. Bicknell
Bicknell Inc
AEDCO All Mix Asphalt Plant
PO Box 33517
Juneau, AK 99803-3517

Re: Proposed Legislation That May Interest You

Dear Mr. Bicknell:

As you know, the Department of Environmental Conservation recently revised its air quality permitting rules. Some facilities that previously required a Title V operating permit will now require only a minor source permit. Unlike the Title V permits which terminate and are subject to renewal every five years, many of these minor source permits do not require renewal. Department records indicate that one or more of your facilities may fall into this category.

The department is seeking a change in law to create a fee collection tool applicable to minor source operators. The purpose of this letter is to make you aware of our legislative proposal and to explain the logic and need for it. The new permits will continue to be fee-based and the department will continue to issue billings for applicable permit fees, send reminders for late fees, and review fee appeals as it has in the past. These collection efforts have been successful for the great majority of fee payers. While rare, the department has had to refuse to work on permit renewals for a few permittees in order to encourage payment of past due fees. Since the new minor permits do not need renewal, the department believes it needs a means to encourage payment of any long overdue fee billings.

We are seeking to have legislation introduced this session to allow the department to revoke a minor permit for non-payment of fees. The legislation will provide protections for the permittee. Revoking a minor permit would only occur when all other efforts to collect undisputed fees or work out a payment schedule have failed. For fees subject to dispute, if a fee appeal has been submitted, the permit could not be revoked until the dispute is resolved.

We believe this added authority benefits the vast majority of permittees by helping to ensure that all permittees pay their allocated share. Because the air permit functions are almost exclusively funded through user fees, any accumulated bad debt will eventually result in all other permittees paying a higher fee. We believe it's in everyone's best interest to avoid this situation.

If you have any questions about this legislation or believe this legislative proposal has serious problems, please call me (907) 269-7634 or John Kuterbach, the air permits program manager, at (907) 465-5103.

Sincerely,


Tom Chapple
Director

"Clean Air"

MINOR GENERAL PERMITS

Project ID	Facility Name/Location	Responsible Party	Address	City	State	Zip
1130P301	Wasilla Asphalt Plant	AAA Valley Gravel	PO Box 876418	Wasilla	AK	99687-2453
7320P301	Sitka Asphalt Plant	Aggregate Construction Inc	401 Granite Creek Rd	Sitka	AK	99835
021AC008	Alaska Complete Tank SRU	Alaska Complete Tank	2700 Huffman Rd	Anchorage	AK	99516
3910P301	AEDCO Asphalt Plant	Alaska Roadbuilders	44482 Frontier Ave	Soldotna	AK	99669
3920P301	GP9 Crusher	Alaska Roadbuilders	44482 Frontier Ave	Soldotna	AK	99669
3930P301	Adm Drum Mix Asphalt Plant	Alaska Roadbuilders	44482 Frontier Ave	Soldotna	AK	99669
3410P302	AEDCO All Mix Asphalt Plant	Bicknell Inc	PO Box 33517	Juneau	AK	99803-3517
6260P301	AEDCO All Mix Asphalt Plant	Bicknell Inc	PO Box 33517	Juneau	AK	99803-3517
7830P301	SE Paving Wylie 3140	Bicknell Inc	PO Box 33517	Juneau	AK	99803-3517
3320P302	AESCO Madsen DM7228 Drum	Brechan Enterprises Inc	2705 Mill Bay Rd	Kodiak	AK	99615
7940P901	Near Island Crusher	Brechan Enterprises Inc	2705 Mill Bay Rd	Kodiak	AK	99615
7950P901	Bella Flata Crusher	Brechan Enterprises Inc	2705 Mill Bay Rd	Kodiak	AK	99615
4790P301	Asphalt Plant	Brice Incorporated	PO Box 70668	Fairbanks	AK	99707-0668
7750P902	Brice Crusher	Brice Incorporated	PO Box 70668	Fairbanks	AK	99707-0668
4000P302	Builders Asphalt Plant	Builders Services Inc	PO Box 809	Homer	AK	99603
2120P301	Asphalt Plant	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
2460P301	AEDCO 60" Drum Plant	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
2470P301	Astec Super Six Pack	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
2480P301	CMI Plant A245	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
4230P301	AEDCO 42" Drum Plant	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
4240P301	CMI 2500 Plant	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
4980P301	Cedar Rapids Asphalt Plant	COLASKA Inc	240 W 68th Ave	Anchorage	AK	99518
3470P301	Eagle River Asphalt Plant	Emulsion Products	20130 New England Dr	Eagle River	AK	99577
0970P301	Sealand Pit Asphalt Plant	Exclusive Landscaping & Paving Inc	PO Box 58136	Fairbanks	AK	99711-0136
3120P301	Stansteel Asphalt Plant	H & H Contractors	PO Box 60610	Fairbanks	AK	99706
8480P901	Hamilton OP9 Crusher	Hamilton Construction LLC	465 Pease Rd	Rurlington	WA	98233
2190P301	Drum Mix Asphalt Plant	Harris Sand & Gravel Inc	PO Box 6	Valdez	AK	99686
5970P301	Pioneer Drum Mix Asphalt Plant	Harris Sand & Gravel Inc	PO Box 6	Valdez	AK	99686
8000P901	Valdez Crusher	Harris Sand & Gravel Inc	PO Box 6	Valdez	AK	99686
4120P301	CMI UVM-250	Herndon & Thompson LLC	PO Box 1548	Seward	AK	99664
8320P901	Wrangle Airport Quarry Crusher	Kiewit Pacific Company	PO Box 1769	Vancouver	WA	98668-1769
3380P301	Knik Asphalt Plant	Knik Construction	PO Box 3757	Seattle	WA	98124
6110P902	Seward Crusher	Metro Inc	2701 Seward Hwy	Seward	AK	99664
1760P301	X551 CMI Hot Plant	North Star Paving & Construction	265 Wilson Lane	Soldotna	AK	99669
7760P301	NuVuk Asphalt Plant	NuVuk Construction LLC	5300 A St	Anchorage	AK	99518
3660P301	Fairbanks Asphalt Plant	Paving Products Inc	PO Box 80430	Fairbanks	AK	99708
5960P301	AESCO MADSEN DM Asphalt Plant	Pruhs Corporation	2193 Viking Dr	Anchorage	AK	99501
6160P301	CMI Asphalt Plant	Pruhs Corporation	2193 Viking Dr	Anchorage	AK	99501
7970P901	QS&G Crusher Palmer	Pruhs Corporation	2193 Viking Dr	Anchorage	AK	99501
8010P301	ASTECC Drum Mix Asphalt Plant	Pruhs Corporation	2193 Viking Dr	Anchorage	AK	99501
3460P301	AEDCO Asphalt Plant	Seccon Inc	PO Box 32159	Juneau	AK	99803-2159
3570P301	Stansteel 3000 Asphalt Batch Plant	Seccon Inc	PO Box 32159	Juneau	AK	99803-2159
3580P301	Stansteel TM50	Seccon Inc	PO Box 32159	Juneau	AK	99803-2159
7880P902	Seccon Crusher Ketchikan	Seccon Inc	PO Box 32159	Juneau	AK	99803-2159
6150P301	Boring Asphalt Plant Anchorage	SKW Eskimos Inc	PO Box 92479	Anchorage	AK	99509-2479
2040P301	Soil Remediation Unit	Soil Processing Inc	207 E Northern Lights Blvd Ste 103A	Anchorage	AK	99503
4010P301	Movable Facility	Tagish Construction	PO Box 1306	Haines	AK	99827
X150	Tesoro Asphalt Plant	Tesoro Alaska Petroleum	PO Box 3369	Kenai	AK	99611-3369
7920P301	TPI Technologies SRU Cold Bay	TPI Technologies Inc	7400 E McDonalds Dr Site 3-123	Scottsdale	AZ	85250
1750P301	Central Paving Products Hot Plant	Wilder Construction	11301 Lang St	Anchorage	AK	99515

177GP301
178GP301
192GP301
441Q1901
442Q1901

X700 Barber Green Hot Plant
X400 Cedar Rapids Hot Plant
Pioneer Batch Plant
X800 Portable Crusher
X900 Portable Crusher

Wilder Construction
Wilder Construction
Wilder Construction
Wilder Construction
Wilder Construction

11301 Lang St
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SB

144

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
APR 08 2005
SENATE FINANCE
COMMITTEE

DATE: 3/22/05

FURTHER:

DATE TURNED IN TO OFFICE: 8 April 2005

Finance Committee considered

SENATE BILL NO. 144

SB 144 EMISSION CONTROL PROGRAM PERMITS/REGS

"An Act relating to regulations, definitions, and permits under the emission control permit program; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB 144 (RES)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
DEC	3/18/05			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>C. Brendo</i>			✓	
<i>Don Hill</i>			✓	
<i>James Collins</i>			✓	
<i>Bob Johnson</i>			✓	
COCHAIR: <i>Gary Miller</i>	✓			
COCHAIR: <i>Lyle Green</i>	✓			

APR 08 2005

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 144(RES)
(S) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title Emission Control Program Permits/Regs RDU Air Quality
Component Air Quality
Sponsor Senate Resources
Requester Senate Resources Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will not have a financial impact on the Air Permits Program. The cost to administer the program remains unchanged.

Prepared by: John Kuterbach, Air Permits Program Manager Phone (907) 465-5103
Division Air Quality Date/Time 3/18/05 11:00 AM
Approved by: Kurt Fredriksson, Acting Commissioner Date 3/18/2005
Agency Environmental Conservation

ALASKA STATE LEGISLATURE



Official Business

SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

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Senator Bert Stedman

Senator Gretchen Guess

Sponsor Statement

SB 144 - EMISSION CONTROL PROGRAM PERMITS/REGS

As part of Governor Murkowski's permit reform initiative, the 23rd Alaska Legislature passed CSHB 160 (Fin) in 2003. This law streamlined Alaska's air permitting by making the State's air permit rules mirror federal requirements.

However, in adopting the regulations to implement the new statute, the Department of Environmental Conservation (DEC) found several places where the statute did not meet federal requirements. If unaddressed, these deficiencies would prevent federal approval of Alaska's permit programs, and could jeopardize State primacy for these programs.

This bill makes technical changes to address certain specific deficiencies and to ensure continued State primacy in air permitting. It adopts federal definitions to ensure the State's program is consistent with federal law, and repeals definitions not needed in statute. For needed terms that are not defined in statute, the bill directs the department to define them in regulation consistent with federal law.

One change proposed by the bill is needed to ensure a solvent program. The air permit program is funded entirely by user fees. This bill would allow DEC to revoke a permit when the fees are not paid.

ALASKA STATE LEGISLATURE



Official Business

SENATE RESOURCES COMMITTEE

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State Capitol, Room 427

Juneau, AK 99801-1182

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Sectional Analysis

SB 144 EMISSION CONTROL PROGRAM PERMITS/REGS

SB 144 makes technical changes to the state air permits program needed for consistency with federal requirements. The bill also expands the department's authority to ensure payment of program fees.

Sec. 1. The first section of the bill better defines who needs a Clean Air Act Title V operating permit by using federal terminology. In AS 46.14.130(b)(1)&(2), the federal term "major source" is added and use of the term "stationary source" changed to more closely track the terminology used by CAA Title V to describe categories needing permits. Together with adoption of the federal definition of "major source" in section 2, these changes ensure that the state program will meet the minimum federal requirements needed for program approval by EPA. The current state program omits certain groups of stationary sources required to have a Title V permit under federal law.

Sec. 2. The second section adopts the federal definition of "major source" contained in CAA section 501 for purposes of AS 46.14.130. This change ensures that the state's operating permit program applies to all categories of sources enumerated under Title V of the CAA.

Sec. 3. Section three adds a new subsection AS 46.14.140(a)(15) directing DEC to use applicable definitions of the CAA or EPA implementing regulations when adopting air emission permit program regulations. This is a continuation of the department's effort to have our state air permit programs mirror their federal counterparts.

Sec. 4. Section four authorizes DEC to revoke a permit if necessary to secure payment of program fees or penalties awarded by the court for violations of state law. Currently AS 46.14.255(b) gives DEC leverage to stop work on permit applications or to refuse to issue a permit or permit change. However under the new minor permit program some permits will be continuous and, unless the permittee needs a permit modification, the statute as currently written cannot be used to compel payment after the permit is issued. Similarly, with the standard operating permit term of five years, there may be significant periods of time during which the department is not working on a permit renewal or other permit change for a given permittee. The addition of permit revocation authority will enhance the department's ability to obtain payment in those circumstances.

Sec. 5. Section five corrects the phrase "major stationary source" to read "major source" in AS 46.14.255(a) and makes other stylistic changes.

Sec. 6. Section six amends the definition of "emissions unit" to enable the department to use either of two federal definitions of the term as the context requires. The federal construction and operating permit programs use different definitions of the term for these respective permit programs. This amendment enables the state permit programs to more closely mirror the federal counterparts.

Sec. 7. Section seven substitutes a CAA definition for the term "stationary source" in lieu of EPA's regulatory definition for the Title I permit program. The CAA and EPA's implementing regulations use different definitions of the term "stationary source" depending upon the CAA program.

Sec. 8. Section eight repeals the statutory definition of the term "modification." The term "modification" has various definitions in the CAA and EPA implementing regulations. Adopting the applicable definition by regulation is less cumbersome and better enables the department to promulgate regulations mirroring the federal programs.

Sec. 9. Provides for an effective date of July 1, 2005.

**Testimony of John Kuterbach on SB 144
Senate Resources Committee Hearing, March 21, 2005**

My name is John Kuterbach, and I am the manager of the air permits program in the Department of Environmental Conservation.

Mr. Chairman, two years ago Governor Murkowski began an effort to reform Alaska's air permit programs to better meet the needs of our state. The reforms were intended to make Alaska's air permit programs more consistent with the underlying federal requirements. Consistency with federal law would allow Alaska to take advantage of the flexibility afforded by changes in the federal law, and to follow the guidance and interpretations used elsewhere in the nation. We have completed the necessary regulations, and are ready to submit them for federal approval. However, we found several places where the statute did not quite meet federal requirements.

We need to require operating permits for groups of stationary sources. We need the definitions of "emissions unit" and "stationary source" to include both the federal construction permit and the federal operating permit definitions. And we need to ensure that all permittees pay their assessed fees.

This bill makes these technical corrections and allows the department to revoke a minor permit when a permittee refuses to pay their fees. The sectional analysis explains these corrections in detail, and I can answer any questions you may have. Thank you

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/16/05

FURTHER: Finance

Date of 5-Day Notice: 3-17-05
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3-22-05

Resources Committee considered SENATE BILL NO. 144

SB 144 EMISSION CONTROL PROGRAM PERMITS/REGS

"An Act relating to regulations, definitions, and permits under the emission control permit program; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 144 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<u>DEC</u>	<u>3/18</u>			<input checked="" type="checkbox"/>	<u>1</u>

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		Do PASS	Do NOT PASS	No REC	AMEND
Dyson		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Stevens		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stedman		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Seekins		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guess		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wagoner	CHAIR:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>