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SC

FILE NO. 4

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1 an amount equal to any revenue that person earned as a result of violat-  
2 ing the stop order, whichever is greater. No fine may be collected if  
3 violations or alleged conditions upon which the stop order was issued  
4 are found by the commission or by a court not to apply.

5 (g) A respondent who is injured by the stop order or citation and  
6 is subsequently determined not to have been in violation of a regula-  
7 tion, order, or statute under the jurisdiction of the commission has a  
8 claim against the state. A claim under this subsection shall be filed  
9 in the superior court. It is not a defense to a claim under this sub-  
10 section that the stop order or citation constituted a discretionary act  
11 on the part of the commission or the enforcement officer.

12 (h) In this section, "respondent" means a person against whom a  
13 stop order or citation is directed.

14 \* Sec. 5. The Alaska Transportation Commission shall amend its rules of  
15 practice and procedure within 180 days of the effective date of this Act to  
16 insure that any person subject to a stop order issued under AS 42.07.181 has  
17 the opportunity to have the stop order rescinded because he has complied with  
18 its terms.

19 \* Sec. 6. AS 02.05.050(d)(1) is amended to read:

20 (1) may, in accordance with his certificate, the limitations  
21 established by this chapter and regulations of the commission, utilize  
22 in all areas of the state from which he is authorized to operate, air-  
23 craft which have a maximum payload capacity determined with reference  
24 to federal air regulations of not more than 7,500 pounds and a maximum  
25 passenger seating configuration, exclusive of any pilot's seat, of 30  
26 [HAVING A MAXIMUM CERTIFICATED TAKEOFF WEIGHT OF 12,500 POUNDS OR LESS]  
27 except as authorized on certificates in effect on September 26, 1972 or  
28 as otherwise authorized by the commission;

29 \* Sec. 7. AS 02.05.050(d)(3) is amended to read:

1  
2 (3) may charge individual passenger fares and per pound cargo  
3 rates [ON BUSH ROUTES OR POINTS SERVED BY HIM ON AN IRREGULAR BASIS;  
4 HOWEVER, NO INDIVIDUAL PASSENGER FARE AND PER POUND CARGO RATE MAY BE  
5 LESS THAN THAT CONTAINED IN THE PUBLISHED TARIFF OF A SCHEDULED CARRIER  
6 BETWEEN POINTS BEING SERVED BY THE CARRIER];  
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## Dividends from Deregulation

*A benefit, on balance, for travelers and traffic*

Almost exactly a year ago, Congress passed the Airline Deregulation Act, which in the name of free market economics all but stripped away the bureaucracy that had controlled and coddled the U.S. air travel industry for 40 years. Generally, the skies were opened to many new carriers, and operators were given unprecedented freedom to change routes, flight schedules and even their fares. Result after twelve months: a spurt of competition that has brought benefits for travelers as well as some headaches, but that may be cut short by new financial woes afflicting the industry.

On balance, deregulation has led to improved service. Scheduled carriers have added flights at more than 100 cities, and 35 carriers began serving 231 routes that had not previously been flown by lines that had permission to use them. In addition, 32 carriers have taken advantage of a rule that allows each line to begin flying one new route each year without having to get the Civil Aeronautics Board's assent. Insists United Airlines Chairman Richard Ferris: "About 98% of the traveling public has as much or more service available today than a year ago."

The big gainers have been hub cities such as Los Angeles, Houston, Chicago and New York and recreation meccas like Hawaii and Florida. But there have been losers too. Some 60 cities have been stripped of all scheduled airline service. In Chattanooga, which lost much of its service when United and Eastern pulled out this year, James Hunt, a Chamber of Commerce executive, says unhappily of deregulation: "Count us as one of the minuses."

The hope was that in places where service was curtailed or ended altogether, commuter airlines flying small planes and endowed with subsidies would fill the gap. Indeed, in the past twelve months more than 60 such lines have started up. But as a group they are plagued by a shortage of suitable aircraft and a poor safety record. So far in 1979, crashes involving commuter planes have killed 61 persons, vs. 42 in all of 1978.

The increased competition brought on by deregulation has cut average air travel costs. Traffic is up by 13.5% for the first nine months of this year, on top of a 17% increase in 1978, and about half of all air travelers now pay discount fares. The flood of flights has overstrained airports, creating booking, check-in and departure delays. Planes are packed, and even first-class seats can be difficult to

get because more and more passengers are paying the premium rates to avoid the crowding and hassle of cabin class. But despite this booming business and a 32% increase in basic fares, the airlines are encountering profit problems, chiefly as a result of higher fuel prices. Says Marvin Cohen, chairman of the CAB: "Fuel has been a real bitch."

Jet fuel, which cost 25¢ per gal. in 1970, is now 70¢ and rising fast; today fuel accounts for about 30% of an airline's operating costs, up from 16% only two years



Passengers board a New York-bound Air Florida flight in Miami. Some "gnats" are spreading wings, and making money too.

ago. Having earned more than \$1 billion in the first nine months of 1978, the industry cleared only \$580 million in the same period this year, and all carriers are scrambling to cut costs. TWA has laid off 2,500 employees; and United, which was grounded by a long strike last spring and is now being hurt by passengers cashing in and flying on half-fare coupons, has furloughed 195 pilots and 400 other employees. Braniff has pulled out of 23 of the 40 markets it entered a year ago. Pan Am, which last week got CAB approval for its plan to merge with National, has dropped some overseas routes.

Some airline executives argue that deregulation has helped the carriers cope with runaway costs. Insists John Zeeman, vice president of passenger marketing at United: "If we did not have deregulation

we would have been hurt worse. We have problems catching costs but we are now more flexible and can better respond to the market." The real test of that will come next year, when air travel is expected to drop as the recession begins to bite deeper. "The jury is still out," says Edwin Colodny, chairman of USAir (formerly Allegheny). "There will be no full answer on deregulation until the industry has gone through a full economic cycle, up and down."

For now, however, the carriers seem eager to exercise their new freedom to fight for business. At present, the hottest battleground is Florida, where National, Delta and Eastern are all facing new competition on routes in and out of the Sunshine State. Since deregulation,

American, Ozark and Republic have all launched runs between Florida and points in the Midwest and other areas, while Braniff has increased its service from Texas and Western states. TWA and United plan to invade Florida this winter.

One beneficiary of all this competition has been the traveling public. Sun seekers can now fly more nonstops to Florida than ever before, and for a multitude of discount fares. As a result, traffic is booming: in the year ending last July, the number of passengers passing through Miami airport was up 21%.

Another beneficiary has been Air Florida, one of the many smaller carriers across the country that have been able to spread their wings under deregulation. Two years ago, it was just another rickety one-state airline, linking six Florida cities with half a dozen planes. Today it is an aggressive regional carrier that serves 23 cities, including Washington, D.C., Philadelphia and New York, with a fleet of jets. This fiscal year it turned its first real profit: \$2.4 million. Says Chairman C. Edward Acker: "Without deregulation we'd still be tiny. It has given us the ability to move fast into markets."

When Air Florida expanded to New York and Washington, it undercut its bigger competitors by offering one-way fares of just over \$50 (since raised to \$70). In a kind of backhanded salute to its aggressiveness, Eastern and other carriers struck back with lower fares on in-state routes. They forced Air Florida to reduce sharply its Miami-Tampa flights and all but abandon the Miami-Orlando run, but the airline retaliated, charging Eastern with "predatory pricing" before the CAB. Eastern spokesmen denied the Air Florida challenge, saying, "They're a gnat. We didn't even know they were there." As a result of deregulation, that may change. ■



Official Business

# Alaska State Legislature

## Senate

### Committee on Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

MEMORANDUM TO: Senator Clem Tillion  
President, Alaska State Senate

FROM: Senator Brad Bradley  
Chairman, Senate Commerce Committee

SUBJECT: Senate Commerce Committee Reports of  
Action Tkaen on Performance Reviews of  
Alaska Transportation Commission and  
Occupational Licensing Division

DATE: March 7, 1979

In accordance with the Secretary of the Senate Memorandum dated January 23, 1979, the Alaska Senate Commerce Committee has completed its public hearings and reviews of the Alaska Transportation Commission (Enclosure #2) and the Occupational Licensing Division (Enclosure #3) and forwards herewith the committee's reports of action taken.

WEB:jp  
Encl (4)

1. Perf. Rev./ATC
2. Senate Commerce Comm. ATC Rept.
3. Perf. Rev./Occup. Lic. Div.
4. Senate Commerce Comm./Occup. Lic. Rept.

MEMORANDUM TO: Senator Clem Tillion  
President, Alaska State Senate

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WEB:jp  
Encl

SENATE COMMERCE COMMITTEE REPORT  
OF ACTION TAKEN ON PERFORMANCE REVIEW  
OF THE  
ALASKA TRANSPORTATION COMMISSION

STATEMENT OF PROBLEM

In accordance with the provisions of Alaska Statutes 44.66.010 and 44.66.050, the Senate Commerce Committee, as the delegated committee of reference, has conducted the required sunset review of the Alaska Transportation Commission. This report fulfills the legislative requirement for the committee of references' responsibility to make formal notification to the president of the Senate of its findings relative to the Alaska Transportation Commission.

BACKGROUND

The tenth legislature, acting in the interest of streamlining government and making it more efficient, decreed that certain bodies be reviewed and evaluated periodically to determine whether their continuation is in the best interest of the public. The Legislative Budget and Audit Committee has conducted their required performance review of the Alaska Transportation Commission and submitted it to the Legislature (attached as enclosure #1).

The Senate Commerce Committee was delegated as the committee of reference by the president of the Senate. The Senate Commerce Committee has held three public hearings during which testimony was received from all those who requested a chance to be heard. Among those who were heard were the Deputy Commissioner of the Department of Commerce and Economic Development representing the Commissioner of the Department of Commerce and Economic Development, and the Chairman of the Alaska Transportation Commission. The remainder of those who testified were from various sectors of the transportation industry, representing both the ground and air modes of transportation, and the public at large. Those individuals representing various organizations or those who themselves could not testify in person submitted written testimony.

#### DISCUSSION

The thrust of the testimony covered three general categories: (1) Administrative position, (2) Trucking Industry, and; (3) Air Industry. A summary of these positions follows.

(1) The general administrative position is to follow the recommendations embodied in the Performance Review (attached as enclosure #1). The administrative position as stated by the Department of Commerce and Economic Development included the following recommendations:

- a. That the Alaska Transportation Commission not be assigned a dedicated attorney.

- b. That the bulk commodity carriers (dump trucks) be de-regulated.
- c. That a study should be made determining the affects of de-regulation prior to the implementation of de-regulation. In other words, the administration does not know what the consequences would be if the Alaska Transportation Commission were terminated June 30, 1979.
- d. An additional recommendation made by the Chairman of the Alaska Transportation Commission was that an economist be assigned to the Commission in an advisory position.

(2) The consensus opinion presented by the trucking industry was that the Alaska Transportation Commission should be retained. It was the feeling of the industry representatives that regulation is necessary to insure a stable and responsive transportation system in the State of Alaska. One witness expressed a concern over the currently structured regulatory process. Another witness expressed a desire to de-regulate the entire commission with respect to the trucking and towing industry.

(3) The Alaska Air Carriers Association supports the findings of the Legislative Audit report and favors continuation of the Air Commerce Laws and Regulations. However, some individual air operators were for de-regulation of the air carrier portion of the Alaska Transportation Commission's

responsibilities. The central theme of their objections were concerned with limited entry provisions of the law, and a deep desire to let the public decide for themselves what they want and not be told what they can and cannot do.

### CONCLUSION

The Senate Commerce Committee, after hearing the testimony, has come to the following conclusions:

(1) The Alaska Transportation Commission should be continued subject to correction of the deficiencies <sup>noted</sup> and resolution of the recommendations made by the Legislative Budget and Audit Committee (enclosure #1).

(2) The economic review study of de-regulation which was recommended by the Legislative Budget and Audit Committee should be funded by the Legislature and should be conducted by a qualified independent research organization.

(3) At this time, it does not appear that there is an alternative method of achieving the stated purposes and objectives of the Alaska Transportation Commission; however, the Economic review study (referred to in sub-paragraph (2) of this paragraph) may result in recommended administrative and operational changes.

(4) On the basis of the testimony received, it does not appear that the Alaska Transportation Commission could be consolidated with any other board or commission within the state government.

RECOMMENDATIONS

The Senate Commerce Committee recommends that the following actions be taken by the eleventh legislature.

(1) The Performance Review of the Alaska Transportation Commission, conducted by the Division of Legislative Audit, be approved and adopted as the required report to the president of the Senate together with this report.

(2) The Legislature fund an economic review study of de-regulation as recommended by the Senate Commerce Committee and Legislative Budget and Audit Committee.

(3) That legislation be drafted to extend the life of the Alaska Transportation Commission until June 30, 1980, pending the recommended economic review study of de-regulation. (see sub-paragraph (2) of this paragraph).

(4) In the interim, the Senate Commerce Committee recommends that certain legislative actions be taken to correct the deficiencies of the Alaska Transportation Commission as noted in the Legislative Budget and Audit Review. These would include, but should not be limited to SSSB 60, SB 97 and SB 236 (attached), which are currently scheduled for consideration by the Senate Commerce Committee during the first session of the eleventh legislature.

## SENATE COMMERCE COMMITTEE

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SENATOR BRAD BRADLEY, CHAIRMAN

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SENATOR ARLISS STURGULEWSKI, V.C.

---

SENATOR TIM KELLY, MEMBER

---

SENATOR TERRY STIMSON, MEMBER

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SENATOR FRANK FERGUSON, MEMBER

SENATE COMMERCE COMMITTEE REPORT ON SUNSET REVIEW OF THE  
ALASKA TRANSPORTATION COMMISSION

STATEMENT OF PROBLEM

In accordance with the provisions of Alaska Statutes 44.66.010 and 44.66.050 the Senate Commerce Committee as the designated committee of reference has conducted the required sunset review of the Alaska Transportation Commission. This report fulfills the legislative requirement for the committee of references' responsibility to make formal notification to the president of the Senate of their findings relative to the Alaska Transportation Commission.

BACKGROUND

The tenth legislature, acting in the interest of streamlining government and make it more efficient, decreed that certain bodies be reviewed and evaluated periodically to determine whether their continuation is in the best interest of the public. The Legislative Budget and Audit Committee has conducted their required review of the Alaska Transportation Commission, and submitted their Performance Review to the legislature (attached as inclosure #1).

The Senate Commerce Committee was designated as the committee of reference by the President of the Senate. The Senate Commerce Committee has held three public hearings during which testimony was received from all those who requested a chance to be heard. Among those who were heard were the

deputy Commissioner of Commerce and Economic Development representing the Commission of Commerce and Economic Development, and the Chairman of the Alaska Transportation Commission. The remainder of those who testified were from various sectors of the industry and the public at large.

### DISCUSSION

In The thrust of testimony fell into three categories:

(1) Administrative position, (2) Trucking Industry, and (3) Air Carriers. A Summary of these positions follows.

(1) The general administrative position is to follow the recommendations embodied in the Performance Review (attached as enclosure #1). The administrative position as stated by the Department of Commerce and Economic Development included the following recommendations. (A) that the Alaska Transportation Commission not be assigned a dedicated attorney. (B) That the bulk commodity carriers (dump trucks) be de-regulated. (C) That a study should be made determining the affects of de-regulation prior to the implementation of de-regulation. In other words the administration does not know what the ~~affects~~-of consequences would be if the Alaska Transportation Commission were sunseted June 30 1979. (D) An additional recommendation made by the Chairman of the Alaska Transportation Commission was that an ~~economic~~ economist be assigned to the commission in an advisory position.

(2) The concenious opinion presented by the trucking industry was that the Alaska Transportation Commission should be ~~strenger~~ retained. It was the feeling of the industry representatives that regulation is an ~~abselute~~ absolute necessity to insure a stable responsive transportation system to the State of Alaska. One witness expressed a concern over the currently structured regulatory process. Another witness expressed a desire to de-regulate the entire commission with respect to the trucking and towing industry.

(3) The conseccious position presented by the Air Carriers was for de-regulation of the air portion of the Alaska Transportation Commission responsibilities. The central theam of their objections were concerened with limited entry provisions of the law, and a deep desire to let the public decide for themselves what they want and not betold. The Air Carriers Association is in favor of continuel regulation.

#### CONCLUSION

The Senate Commerce Committee after hearing the testimony has come to the following conclusions:

- (1) The Alaska Transportation Commission should be continued subject to resolution of the recomendations made by the Legislative Budgit and Audit Ckmmitee (enclouser #1).
- (2) That the economic review study recomendaded by the Legislative

Budget and Audit Committee Report, be funded by the legislature, provided the study be conducted by an independent research organization.

(3) It does not appear at this time that there is an alternative method of achieving the stated purposes and objectives of the Alaska Transportation Commission. The Economic review study (referred to in sub paragraph (2) of this paragraph) may ~~recommen~~ result in recommended changes.

(4) It does not appear, on the basis of testimony received, that the Alaska Transportation Commission could be consolidated with any other board or commission within the state government.

#### RECOMMENDATIONS

The Senate Commerce Committee recommends the following actions be taken by the eleventh legislature.

- (1) The Performance Review of the Alaska Transportation Commission, conducted by Legislative Audit, be approved and adopted as the required report to the president of the Senate together with this report.
- (2) The Legislature fund a review study as recommended by the Senate Commerce Committee and Legislative Budget and Audit Committee.
- (3) That legislation be drafted to extend the life of the Alaska Transportation Commission until June 30, 1980, pending the recommended economic study of de-regulation.  
(see paragraph (2) of this paragraph.

(4) In the intrum the Senate Commerce Committee recommends that certian ~~legislation~~ legislative actions be taken to correct the deficiencies of the Alaska Transportation Commsiion as noted in the Legislative Bugz Budget and Audit Review. These would include but not be limited to sponser substitute SB-60 and SB-97.

SENATE COMMERCE COMMITTEE REPORT  
ON SUNSET REVIEW OF THE  
DIVISION OF OCCUPATIONAL LICENSING,  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

STATEMENT OF PROBLEM

In accordance with the provisions of Alaska Statutes 44.66.010 and 44.66.050 the Senate Commerce Committee as the designated committee of reference has conducted the required Sunset Review of the Division of Occupational Licensing. This report fulfills the legislative requirements for the committee of references' responsibility to make formal notification to the President of the Senate of their findings relative to the Division of Occupational Licensing.

The Senate Commerce Committee is designated as the committee of reference by the President of the Senate. The Senate Commerce Committee has held one public hearing during which testimony was received from all those who requested a change to be heard. Among those who were heard were the Director representing the Division of Occupational Licensing and the Chief Investigator from Occupational Licensing. The remainder of those who testified were the Deputy Director of Commerce and Economic Development and a representative from the Alaska Health Coalition.

②

DISCUSSION

The thrust of testimony received fell into two categories:

(1) Administration position and, (2) the Health Care Industry.

(1) The administrative position is to follow the recommendations embodied in the Performance Review (attached as enclosure #1). The administrative position as stated by the Department of Commerce and Economic Development included the following recommendations:

a., That the Division of Occupational Licensing should display better management through an in-house organization program.

b. That the Division of Occupational Licensing whose primary goal is to ensure that Alaskans are adequately protected from unscrupulous or incompetent practitioners, streamline the investigation process.

(2) The concensus position presented by the Health Care Coalition was that money is the major problem plaguing the various boards, especially money for investigative services. Lack of division funds for investigative services has stymied every board being reviewed. The Coalition also believes that more complaints would be filed if people were better informed as to the procedures for doing so. A major concern of the coalition was the lack of communication between the Division of Occupational Licensing and the boards. Reference was made that introduction of legislation directly affecting the boards

be discussed with the boards prior to introduction. The following recommendations were submitted by the Health Coalition:

- a. That the Division of Occupational Licensing investigations be transferred to the Department of Public Safety.
- b. The Division of Occupational Licensing be required to submit to boards all proposed legislation having a direct or indirect affect on the boards.
- c. The Division of Occupational Licensing play a stronger role in settling disputes between boards and other agencies and departments.
- d. Require the Division of Occupational Licensing to actively solicit names for possible appointments from the public and private sectors and that the division periodically review and update it with current information.
- e. All the statutes in Chap. 08 by revised to limit the number of terms that any board member could serve to two.
- f. The division should review the licensing fee structure and seek appropriate revisions.

CONCLUSION

One Senate Commerce Committee after hearing all testimony provided in the hearing has come to the following conclusions:

(1) The Division of Occupational Licensing should be continued subject to resolution of the recommendations made by the Legislative Budget and Audit Committee (attached enclosure 1).

(2) Statutory amendments are needed to assure that appropriate action is taken on consumer complaints against licensed persons.

(3) It does not appear at this time that there is an alternative method of achieving the stated purposes and objectives of the Division of Occupational Licensing.

(4) It does not appear on the basis of testimony received that the Division of Occupational Licensing could be consolidated with any other board or commission within the state government

RECOMMENDATIONS

The Senate Commerce Committee recommends the following actions be taken by the eleventh legislature:

(1) The performance Review of the Division of Occupational Licensing conducted by the legislative audit be approved and adopted as the required report to the president of the Senate together with this report.

(2) That legislation be drafted to extend the life of the Division of Occupational Licensing until June 30, 1980.

(3) In the interim the Senate Commerce Committee recommends that certain legislative actions be taken to correct the deficiencies in the Division of Occupational Licensing as noted in the Legislative Budget and Audit Performance Review. These would include, but not be limited to, SB 73.



# Alaska State Legislature

Senate

Office of the Secretary

Official Business

January 23, 1979

Pouch V  
State Capitol  
Juneau, Alaska 99811

MEMORANDUM TO: Commerce Committee

From: Secretary of the Senate *RM*

Subject: Sunset Audits with Discussion of  
Legislative Oversight Responsibilities

The President has referred the following reports to the Commerce Committee for public hearings:

A Performance Review of the Alaska Transportation Commission, October 24, 1978

A Performance Review of the Division of Occupational Licensing Department of Commerce and Economic Development, October 30, 1978

Also enclosed is the memorandum of January 22 from the Legislative Budget and Audit Committee pointing out the requirements set out in AS 44.66.050 *(e) d*

President Tillion will expect to receive a report from your committee before the March 1st deadline.

Encls:

cc: President

Cross reference. — As to radiation protection, see AS 18.60.475.

**Chapter 66. Review of the Activities of Agencies, Boards and Commissions.**

<b>Section</b>	<b>Section</b>
10. Termination of state boards and commissions	30. Program identification
20. Agency programs	50. Legislative oversight
	60. Existing claims

Cross reference. — As to the termination, continuation and reestablishment of regulatory boards, see AS 08.03.010.

Editor's note. — Section 1, ch. 149, SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government,

and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

**Sec. 44.66.010. Termination of state boards and commissions.** (a) Boards and commissions listed in this subsection expire on the date set out after each:

- (1) Alcoholic Beverage Control Board (AS 04.05.010) — June 30, 1979;
- (2) Alaska Transportation Commission (AS 42.07.011) — June 30, 1979;
- (3) State Board of Parole (AS 33.15.010) — June 30, 1980;
- (4) Alaska Public Utilities Commission (AS 42.05.010) — June 30, 1980;
- (5) Alaska Pipeline Commission (AS 42.05.010) — June 30, 1981;
- (6) Alaska Council on Science and Technology (AS 44.19.181) — June 30, 1983;
- (7) Alaska Renewable Resources Corporation (AS 37.12.010) — June 30, 1982.

(b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.

(c) A commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 3 ch 149 SLA 1977; am § 3 ch 101 SLA 1978; am § 10 ch 1979 SLA 1978)

Effect of amendments. — The first 1978 amendment added paragraph (6) of subsection (a).

The second 1978 amendment added paragraph (7) of subsection (a).

Editor's note. — The reference in paragraph (5) to AS 42.05.010 should be to AS 42.06.010.

**Sec. 44.66.020.** Agency activities listed in this subsection provided in § 30 of this chapter during regular legislative session each:

- (1) programs in the budget protection, and administrative
- (2) programs in the budget of Alaska — January, 1982;
- (3) programs in the budget — January, 1982;
- (4) programs in the management, development

(b) An agency program shall be subject to termination convening four years after termination at any time Budget and Audit Committee if under § 30 of this chapter

**Sec. 44.66.030.** Program session preceding each Legislative Budget and March 1 of those years, category which shall be The recommendations shall be submitted to the of a bill which, if enacted programs and activities ch 149 SLA 1977)

**Sec. 44.66.050.** Legislative dissolution, continuation under AS 08.03.010 or under §§ 20 and 30 of house, which shall be as provided in the Uniform more hearings to receive of the department have board, commission, or or commission involved committee shall also commission, or agency 37.07.050(f), and the commission, or agency

agencies,

effective and the programs, boards and further finds system for public and the branches of boards and error and the need for the the agencies,

sions. (a) e date set

30, 1979; June 30,

June 30,

1981; (1) — June

(2) — June

tion shall or for the

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**Sec. 44.66.020. Agency programs.** (a) Agency programs and activities listed in this subsection which are specifically designated as provided in § 30 of this chapter are subject to termination during the regular legislative session convening in the month and year set out after each:

(1) programs in the budget categories of general government, public protection, and administration of justice — January, 1980;

(2) programs in the budget categories of education and the University of Alaska — January, 1981;

(3) programs in the budget categories of health and social services — January, 1982;

(4) programs in the budget categories of natural resources management, development and transportation — January, 1983.

(b) An agency program or activity designated in (a) of this section shall be subject to termination during the regular legislative session convening four years after the preceding review and may be subject to termination at any time upon the recommendation of the Legislative Budget and Audit Committee and the concurrence of the legislature as if under § 30 of this chapter. (§ 3 ch 149 SLA 1977)

**Sec. 44.66.030. Program identification.** During the legislative session preceding each of the years set out in § 20 of this chapter, the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category which shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill which, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year. (§ 3 ch 149 SLA 1977)

**Sec. 44.66.050. Legislative oversight.** (a) Before the termination, dissolution, continuation or reestablishment of a board or commission under AS 08.03.010 or § 10 of this chapter, or of an agency program under §§ 20 and 30 of this chapter, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board, commission, or agency program, and the members of the board or commission involved. The hearings may be joint hearings. The committee shall also consider the proposed budget of the board, commission, or agency program, prepared in accordance with AS 37.07.050(f), and the performance audit of the activities of the board, commission, or agency program, prepared by the legislative audit

division as prescribed in AS 24.20.271(1). The committee may consider any other report of the activities of the board, commission or program, including but not limited to annual reports, summaries prepared by the Legislative Affairs Agency, and any evaluation or general report of the manner of conduct of activities of the board, commission, or agency program prepared by the office of the ombudsman.

(b) During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest.

(c) A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors:

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

(d) As to each board, commission, or agency program assigned to it

*limited entry code marked*

for purposes of review the 60th day of the legislative session of the officer of the house. The report of the committee as to the program with the factors and a summary or recommendations shall be as follows:

(1) an identification of the program and activities of the program and the address;

(2) a statement, to the extent possible, of the anticipated accomplishments of the program;

(3) an identification of the program or duplicate objectives of the program;

(4) an assessment of the program;

(5) an assessment of the program, or of funding of the program, or of funds available for the program;

(6) a justification of the program, or of funding of the program, in which it avoids duplication of effort;

(7) any other information which would improve the program or its representation to the public.

(c) The committee shall recommend reorganization or elimination of the program. No more than one program shall be continued or reorganized by the commission, or agency program. (AS 3 ch 149 SLA 1987)

Sec. 44.66.060. E termination or dismissal of a board, commission or program which is subject to legislative review by the department to which the chapter was attached.

Pa  
Chap

Sec. 44.77.010.

Legislative history  
State v. ZIA, Inc., Su  
(File No. 2518), 556 P.

for purposes of review, the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of the house. The report shall contain a summary of the findings of the committee as to the compliance of the board, commission or program with the factors enumerated in (c) of this section, together with a summary or recommendations of the committee as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

~~(3) an identification of any other programs having similar, conflicting or duplicate objectives;~~

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

(e) The committee of reference may introduce a bill providing for the reorganization or continuation of the board, commission or agency program. No more than one board, commission, or agency program shall be continued or reestablished in any legislative bill, and the board, commission, or agency program shall be mentioned in the title of the bill. (§ 3 ch 149 SLA 1977)

Sec. 44.66.060. Existing claims. This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes. (§ 3 ch 149 SLA 1977)

## Part 8. Claims and Liability.

### Chapter 77. Claims Against the State.

#### Sec. 44.77.010. Presentation of claims.

Legislative history of section. -- See State v. ZIA, Inc., Sup. Ct. Op. No. 1337 (File No. 2518), 556 P.2d 1257 (1976)

This section is only applicable after the claimant has pursued an administrative remedy. State v. ZIA, Inc., Sup. Ct. Op. No.

**THE LEGISLATURE**

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION  
POUCH WF-STATE CAPITOL

JUNEAU, ALASKA 99811

January 22, 1979

To: Presiding Officer of Both Houses

From: Legislative Budget and Audit Committee  
George Hohman, Chairman *George Hohman*

Subject: Forwarding of Sunset Audits with Discussion of  
Legislative Oversight Responsibilities

Enclosed are Sunset Audit Reports of 13 boards and commissions that will terminate June 30, 1979. We are forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

According to AS 44.66.050 the standing committee of legislative jurisdiction, as provided in Rule 20 of the uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public and other parties that have associated responsibilities or interests. In addition the Committee shall consider Legislative Audit's report, the agencies proposed budget, the agencies program performance report and any other tools that might assist them in evaluating the conduct and activities of the agency being terminated.

It is important to note that the terminating agency shall have the burden of demonstrating a public need for its continued existence during the public hearings.

The determination of "public need" for continued existence shall take into consideration the following factors set out in AS 44.66.050(c):

(1) the extent to which the board, commission or program has operated in the public interest;

(2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters;

(3) the extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

(4) the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

(5) the extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

(6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved;

(7) the extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public;

(8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest; and

(9) the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The Legislative Audit reports have addressed these issues individually but only to the extent allowed by restricted audit scopes detailed within the reports.

The Law further states that the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of each house. The report is to include a summary of findings as to compliance with the "public need" factors enumerated above together with recommendations as to each of the following:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts; and

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The committee of reference may introduce a bill providing for the reorganization or continuation of the agency being terminated as stipulated in AS 44.66.050(e).

In addition, the Law requires the Legislative Budget and Audit Committee to designate, not later than March 1, 1979, programs or activities in the general government, public protection and administration of justice budget categories, which shall be subject to termination in the next fiscal year. It is anticipated that the Legislative Budget and Audit Committee will be recommending six to nine programs for termination which will be submitted to you in the form of bills by the required deadline.

cc: Members of the Legislature

# SENATE JOURNAL HOUSE JOURNAL ALASKA STATE LEGISLATURE

ELEVENTH LEGISLATURE - FIRST SESSION

JUNEAU, ALASKA

Monday

June 4, 1979

## JOINT FINAL SUPPLEMENT

### ENROLLMENT

The following was engrossed and enrolled, signed by the President and Secretary of the Senate, and Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 3:25 p.m., May 7, 1979:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 142	FCCS SB 142
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### MESSAGES FROM THE GOVERNOR

The following messages dated May 6, 1979 were received stating the Governor has signed the following bills and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 5 amended House (relating to agricultural loans under the Alaska Agricultural Loan Act; and providing for an effective date) Chapter 50, SLA 1979	HCS CSSB 5 am H
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SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 141 (establishing the Legislative Limited Entry Study Committee; and providing for an effective date) Chapter 51, SLA 1979	SCS CSSB 141
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HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 116 (relating to public employee benefits; and providing for an effective date) Chapter 52, SLA 1979	HCS SB 116
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SENATE COMMITTEE SUBSTITUTE FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 30 amended Senate (relating to the Commercial Fishing and Agriculture Bank) Chapter 53, SLA 1979	SCS SSHB 30 am S
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- SCS SENATE COMMITTEE SUBSTITUTE FOR  
CSHB COMMITTEE SUBSTITUTE FOR  
147 HOUSE BILL NO. 147 (Finance)  
(Fin) amended Senate  
am S (amending the motor vehicle code; and  
providing for an effective date)  
Chapter 54, SLA 1979
- CSHB COMMITTEE SUBSTITUTE FOR  
26 HOUSE BILL NO. 26  
(relating to insurance coverage for persons  
receiving benefits under the public employees'  
and teachers' retirement systems)  
Chapter 55, SLA 1979
- CSHB COMMITTEE SUBSTITUTE  
12 FOR HOUSE BILL NO. 12 (Finance)  
(Fin) amended Senate  
am S (relating to northern technology; and  
providing for an effective date)  
Chapter 56, SLA 1979

ENROLLMENT

- SR The following were engrossed and enrolled, signed by the  
6 President and Secretary of the Senate and transmitted  
to the Office of the Governor at 1:15 p.m., May 8, 1979:
- SR SENATE RESOLUTION NO. 6  
15  
am
- SR SENATE RESOLUTION NO. 15 amended  
17
- SCR The following were enrolled, signed by the President and  
3 Secretary of the Senate, and the Speaker and Chief Clerk  
am H of the House, and the enrolled and engrossed copies  
transmitted to the Office of the Governor at 1:15 p.m.,  
HCS May 8, 1979:
- SCR SENATE CONCURRENT RESOLUTION NO. 3  
13 amended House
- HCS HOUSE COMMITTEE SUBSTITUTE FOR SENATE  
CSSCR CONCURRENT RESOLUTION NO. 13  
33
- HCS HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE  
SJR SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION  
25 NO. 33  
(Fin)
- HCS HOUSE COMMITTEE SUBSTITUTE FOR SENATE  
SB JOINT RESOLUTION NO. 25 (Finance)  
4
- HOUSE COMMITTEE SUBSTITUTE FOR SENATE  
BILL NO. 4

June 4, 1979

SENATE JOURNAL  
HOUSE JOURNAL

ADW 3

HOUSE COMMITTEE SUBSTITUTE FOR SENATE  
BILL NO. 52 (Judiciary)

HCS  
SB  
52  
(Jud)

HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL  
NO. 63 (Finance) amended House

HCS  
SB  
63  
(Fin)  
am H

The following were enrolled, signed by the President and Secretary of the Senate, and the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 3:40 p.m., May 9, 1979:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE  
SUBSTITUTE FOR SENATE BILL NO. 12  
amended House

HCS  
CSSB  
12  
am H

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE  
SUBSTITUTE FOR SENATE BILL NO. 132 (Rules)

HCS  
CSSB  
132  
(Rs)

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE  
SUBSTITUTE FOR SENATE BILL NO. 137  
amended House

HCS  
CSSB  
137  
am H

The following were engrossed and enrolled, signed by the President and Secretary of the Senate, and Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 3:40 p.m., May 9, 1979:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 14

FCCS  
SB  
14

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 53

FCCS  
SB  
53

Following is a Memorandum from J. H. Hogan, Director of the Legislative Finance Division regarding the budget:

M E M O R A N D U M

DATE: May 6, 1979

TO: Russ Meekins, Chairman  
Free Conference Committee

John Sackett, Chairman  
Senate Finance Committee

FROM: J. H. Hogan, Director  
Legislative Finance Division

Following our discussion this morning, the five items listed below comprise the errata sheet for FCC for SSB 53:

FCCS  
SB  
531. Page 52, line 21

Change "Mountain Village" to read "Mountain View".

2. Page 56, line 16

The "Angoon Cultural Facility" should read "\$400,000" in both the appropriation item and general fund columns.

Page 60, line 8

The "Angoon Cultural Facility" item should be deleted.

3. Page 59, line 37

The "Eagle River Fire Station Completion" should read "\$210,000" under the appropriation item and general fund columns.

4. Page 61, between lines 22 and 23

A new item should be inserted: "Crawler-tractor Grant to Craig" and \$50,000 in the appropriation and general fund columns.

5. Page 63, between lines 4 and 5

There should be intent language reading: "This appropriation shall be paid as a grant to Anchorage."

The following was enrolled, signed by the President and Secretary of the Senate, and the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 4:10 p.m., May 9, 1979:

SB  
241

SENATE BILL NO. 241

The following were engrossed and enrolled, signed by the President and Secretary of the Senate, the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the office of the Governor at 4:10 p.m., May 9, 1979:

FCCS  
SB  
118  
FCCS  
SB  
130FREE CONFERENCE COMMITTEE SUBSTITUTE  
FOR SENATE BILL NO. 118FREE CONFERENCE COMMITTEE SUBSTITUTE  
FOR SENATE BILL NO. 130

The following bill was engrossed and enrolled, signed by the President and Secretary of the Senate, the Speaker and Chief Clerk of the House, and the enrolled and engrossed copies transmitted to the Office of the Governor at 4:30 p.m., May 10, 1979:

FCCS  
SB  
236

FREE CONFERENCE COMMITTEE SUBSTITUTE  
FOR SENATE BILL NO. 236  
(continuing the existence of the Alaska  
Transportation Commission and amending laws  
relating to the commission)

The following memorandums explain changes made in the engrossed bill as passed by the House and Senate when the bill was enrolled as recommended by the Co-Revisor of Statutes. Speaker Gardiner, Representative Brown, President Tillion and Senator Bradley concurred in the above as enrolled, when contacted on May 10, 1979:

M E M O R A N D U M

May 10, 1979

SUBJECT: FCCSSB 236

TO: Peggy Mulligan, Senate Secretary

FROM: Sally McIntire, Enrolling Secretary *SM*

At the request of the Revisor of Statutes I have made the following clerical corrections in this bill:

- (1) \*Sec. 12 of the bill has been deleted from the bill and the remaining sections renumbered accordingly.
- (2) On page 7, line 16 the reference to AS 42.15 has been removed from the repealer.

I have enclosed a copy of the revisor's memorandum requesting the corrections. The presiding officers should be advised of these corrections made under Rule 42 of the Uniform Rules.

June 4, 1979

FCCS  
SB  
236

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 10, 1979

SUBJECT: FCCSSB 236

TO: Sally McIntire, Legal Editor

FROM: David T. Walker  
Co-Revisor of Statutes *DW*

My investigation of conflicts within this bill causes me to conclude that the legislature did not intend for this bill to repeal AS 42.15 (Alaska Bus Act). I have spoken with the bill drafter, reviewed our bill file, and listened to the tape recorded explanations of the Free Conference Committee version of the bill given to the Senate by Senator Bradley and to the House by Representative Brown.

All the evidence indicates that it was the intention of the Free Conference Committee, and the House and Senate, to continue regulating carriers by bus in Alaska, and their belief that FCCSSB 236 did not violate that concept.

Rule 42 of the Uniform Rules requires me, in my role as revisor, to check the engrossed bill for legal content. I have marked on it in red pencil the corrections I believe should be made so they are readily identifiable.

I request that you include them as an authorized clerical correction and report the matter to the secretary under Rule 42, Uniform Rules, Alaska State Legislature.

The history back on the engrossed bill sent to the Governor reflects the action taken above and reflects the opinions of the Free Conference Committee members contacted.

The Governor's veto on the following bill was overridden in a joint session on May 4, 1979:

SCS  
13  
45

SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 45  
(relating to the Alaska Legislative Council and  
the Legislative Budget and Audit Committee; eff.  
date)

Chapter 57, SLA 1979


## LEGISLATIVE AFFAIRS AGENCY

FCCS  
SB  
53MEMORANDUM

May 16, 1979

SUBJECT: FCCSSB 53 (Budget)

TO: Peggy Mulligan  
Senate Secretary

FROM: Donna Spragg Pegues   
Co-Revisor of Statutes

I have discovered a clerical error in the enrolled copy of FCCSSB 53 (Budget). At page 6, line 26, after "sec. 45," the words "ch. 163," should be inserted.

We plan to correct the bill before it is duplicated for inclusion in the 1979 session laws.

The following messages dated May 18, 1979 were received stating the Governor has signed the following bills and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 25 amended House	HCS CSSB 25 am H
(relating to retirement and benefits for public employees including withdrawal from the federal Social Security System; and providing for an effective date)	
Chapter 58, SLA 1979	
FREE CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 359 (relating to salmon enhancement) Chapter 59, SLA 1979	FCCS HB 359
FREE CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 34 (relating to budgets, to appropriations, and to fiscal information; and providing for an effective date)	FCCS HB 34
Chapter 60, SLA 1979	
HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 234 (Finance) amended House (relating to materialmen's and mechanics' liens)	HCS SB 234 (Fin) am H
Chapter 61, SLA 1979	

SCS SENATE COMMITTEE SUBSTITUTE FOR  
HB HOUSE BILL NO. 185  
185 (authorizing state aid to municipalities for the  
construction and development of cultural facilities)  
Chapter 62, SLA 1979

FCCS FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
SB SENATE BILL NO. 142  
142 (transferring among fiscal year 1979 appropriations  
to the Department of Health and Social Services;  
making appropriations to the Department of Health  
and Social Services, the Department of Fish and  
Game, the Department of Community and Regional  
Affairs, the Office of the Governor, the Department  
of Law, the Department of Transportation and Public  
Facilities, the University of Alaska, and the legis-  
lative agencies; amending a condition on an appropri-  
ation made to the Department of Education in ch. 6, SLA  
1979; amending certain fiscal year 1971 and 1973  
capital project appropriations made to the Department  
of Fish and Game; continuing an appropriation made  
to the University of Alaska Geophysical Institute;  
and providing for an effective date)  
Chapter 63, SLA 1979

SCS SENATE COMMITTEE SUBSTITUTE FOR  
CSHB COMMITTEE SUBSTITUTE FOR  
290 HOUSE BILL NO. 290 (Rules)  
(Rls) (relating to limited entry; and providing  
for an effective date)  
Chapter 64, SLA 1979

HCS HOUSE COMMITTEE SUBSTITUTE FOR  
SB SENATE BILL NO. 192  
192 amended House  
am H (relating to the leasing and exploration of state  
land for oil and gas development; and providing  
for an effective date)  
Chapter 65, SLA 1979

CSSB COMMITTEE SUBSTITUTE FOR  
145 SENATE BILL NO. 145  
am H amended House  
(relating to implementation of the Alaska  
coastal management program)  
Chapter 66, SLA 1979

HCS HOUSE COMMITTEE SUBSTITUTE FOR  
CSSB COMMITTEE SUBSTITUTE FOR  
198 SENATE BILL NO. 198  
(relating to the hiring of nonpermanent employees  
in the state personnel system; and providing  
for an effective date)  
Chapter 67, SLA 1979

SENATE BILL NO. 203 SB  
203  
 (authorizing the issuance and sale of an additional  
 \$8,500,000 in revenue bonds for international air-  
 ports; and providing for an effective date)  
 Chapter 68, SLA 1979

SENATE BILL NO. 202 SB  
202  
 (making a special appropriation from the International  
 Airports Construction Fund for the Fairbanks Inter-  
 national Airport; and providing for an effective  
 date)  
 Chapter 69, SLA 1979

COMMITTEE SUBSTITUTE FOR CSHB  
394  
 HOUSE BILL NO. 394  
 (relating to state aid for community schools;  
 and providing for an effective date)  
 Chapter 70, SLA 1979

COMMITTEE SUBSTITUTE FOR CSHB  
19  
am S  
 HOUSE BILL NO. 19  
 amended Senate  
 (relating to agricultural and industrial fairs;  
 and providing for an effective date)  
 Chapter 71, SLA 1979

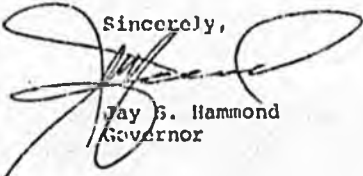
May 18, 1979

The Honorable Clem Tillion HCS  
SB  
86  
 President of the Senate  
 The Honorable Terry Gardiner  
 Speaker of the House  
 Alaska State Legislature  
 Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

Upon the advice of the Attorney General, I am vetoing  
 House Committee Substitute for Senate Bill 86, which  
 expands upon the sunset program and requires fiscal  
 notes for adopting administrative regulations. It  
 is the Attorney General's view that combining those  
 separate subjects in one bill and failing to express  
 the latter subject in the bill's title are fatal defects.

Rather than permit an almost certainly invalid law to  
 go on the books, I feel that the bill should be vetoed.  
 If the legislature still wishes to act on the two  
 subjects, two new bills can be enacted to achieve that  
 result.

Sincerely,  
  
 Jay S. Hammond  
 Governor

The following message dated May 18, 1979 was received stating the Governor has signed the following resolutions and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

CS  
HJR  
25  
am S

COMMITTEE SUBSTITUTE FOR  
HOUSE JOINT RESOLUTION NO. 25 am S  
(relating to the establishment and recognition of Children's Day in Alaska)  
Legislative Resolve No. 31

HCS  
SJR  
25  
(Fin)

HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE JOINT RESOLUTION NO. 25 (Finance)  
(urging the United States Government to release its interests in the improvements at the Aniak, Port Heiden, and Unalakleet White Alice sites and in property at the Unalakleet airport to the State of Alaska)  
Legislative Resolve No. 32

The following messages dated May 18, 1979 were received stating the Governor has read the following resolutions and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SR  
17

SENATE RESOLUTION NO. 17  
(relating to licensing or permit requirements for shelters for victims of domestic or sexual assault)  
Senate Resolve No. 8

SR  
6

SENATE RESOLUTION NO. 6  
(relating to an amendment to the Icy Cape No. 1 timber sale, contract number SC-182, permitting exportation of round logs)  
Senate Resolve No. 9

SR  
15  
am

SENATE RESOLUTION NO. 15 am  
(relating to the exploration and development of Beaufort Sea oil and gas)  
Senate Resolve No. 10

HR  
11

HOUSE RESOLUTION NO. 11  
(relating to licensing or permit requirements for shelters for victims of domestic or sexual assault)  
House Resolve No. 6

HR  
13

HOUSE RESOLUTION NO. 13  
(relating to amendments to the 1906 Antiquities Act and the Federal Land Policy and Management Act of 1976)  
House Resolve No. 7

HR  
14

HOUSE RESOLUTION NO. 14  
(relating to planning for the new capital city)  
House Resolve No. 8

SENATE CONCURRENT RESOLUTION NO. 29  
(urging the Governor to direct the commissioner of administration to negotiate no salary or benefit increases which do not meet specified criteria)  
Legislative Resolve No. 27

SCR  
29

HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE CONCURRENT RESOLUTION NO. 13  
(directing the Department of Transportation and Public Facilities to secure possession of buildings at the Aniak, Port Heiden, and Unalakleet White Alice sites for educational purposes)  
Legislative Resolve No. 28

HCS  
SCR  
13

SENATE CONCURRENT RESOLUTION NO. 3 am H  
(relating to utilization of "flex time" for state employees)  
Legislative Resolve No. 29

SCR  
3  
am H

HOUSE COMMITTEE SUBSTITUTE FOR  
COMMITTEE SUBSTITUTE FOR  
SENATE CONCURRENT RESOLUTION NO. 33  
(relating to a continued study of a direct investment by the state in the Alaska natural gas pipeline project)  
Legislative Resolve No. 30

HCS  
CS  
SCR  
33

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE CONCURRENT RESOLUTION NO. 3  
(relating to the designation of incompatible uses within the Chena River Recreational Area)  
Legislative Resolve No. 33

FCCS  
HCR  
3

The following messages dated May 31, 1979 were received stating the Governor has signed the following bills and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 20  
(relating to state loan programs and the loan programs of state agencies; and providing for an effective date)  
Chapter 72, SLA 1979

FCCS  
HB  
20

COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 229  
amended Senate  
(relating to fish and game licenses; and providing for an effective date)  
Chapter 73, SLA 1979

CSHB  
229  
am S

- SB 241 SENATE BILL NO. 241  
(continuing the existence of the Board  
of Nursing; and providing for an effective  
date)  
Chapter 74, SLA 1979
- FCCS SB 14 FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 14  
(relating to agricultural development; and  
providing for an effective date)  
Chapter 75, SLA 1979
- HCS SB 63 HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 63 (Finance)  
amended House  
am H (Fin) (making appropriations to the Office of  
the Governor, to the Alaska Power Authority  
for feasibility studies for the Susitna  
hydroelectric project, and to the Legis-  
lative Affairs Agency; and providing for  
an effective date)  
Chapter 76, SLA 1979
- HCS SB 4 HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 4  
(relating to worker's compensation; and  
providing for an effective date)  
Chapter 77, SLA 1979
- HCS SB 52 HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 52 (Judiciary)  
(Jud) (relating to float planes under the Fish  
and Game Code; and providing for an effec-  
tive date)  
Chapter 78, SLA 1979
- HCS CSSB 132 HOUSE COMMITTEE SUBSTITUTE FOR  
COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 132 (Rules)  
(Rls) (relating to fisheries taxes; and provid-  
ing for an effective date)  
Chapter 79, SLA 1979

FCCS SB 53 The following message dated June 1, 1979 regarding  
FREE CONFERENCE COMMITTEE SUBSTITUTE FOR SENATE BILL  
NO. 53 (appropriating for the operating and capital ex-  
penses of the state government, effective date) was re-  
ceived:

The Honorable Clem Tillion  
President of the Senate  
The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

RE: FCCS SB 53  
CHAPTER 80

Dear Mr. President and Mr. Speaker:

I am today signing Free Conference Committee Substitute for Senate Bill 53 into law. For the first time in four years the legislature has passed an appropriation bill beneath the ceiling I presented to them in my budget message. This is a most significant precedent and one which I encouraged by assuring the legislature that so long as administrative priorities were accommodated, I would not be forced to veto legislative programs falling beneath such ceiling. While I may not agree with some of the specific uses proposed for these funds, compared to those proposed in my budget, joint acceptance by the legislature and administration of a budget ceiling is a far greater consideration.

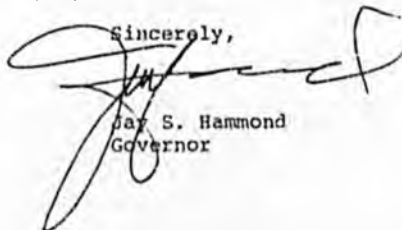
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I am, however, vetoing a portion of Section 15 of this bill, which would have amended Sections 1 and 2 of chapter 2, SLA 1978 by reducing the appropriation made last year to the Department of Transportation and Public Facilities for delineation of a utility corridor and right-of-way extension of the Alaskan Railroad to the Canadian border from \$865,000 to \$600,000. This section then appropriated \$265,000 to the Legislative Council for a similar purpose which I have allowed to stand. The Department of Transportation and Public Facilities had already obligated the majority of these funds when the Free Conference Committee on the budget was taking this action and, therefore, these funds are not available for lapse.

In addition to this veto, I feel I must notify you that there are other sections and "riders" that you placed in the bill which are not legally binding. Since these are not binding, I have -- with notable exception of the bill of attainder at page 18 -- not lined them out in the bill, but I am attaching the review of the bill performed by the Department of Law which outlines the legal responsibilities imposed by the various "riders." As you will note when you read this attachment, many of the "riders" that were placed in the bill have no legal force and in other cases are in direct violation of existing law. Of course, state agencies must follow existing law when there is a conflict between the "rider" and other statutes.

The bill in Section 20 contains language that would lead the public, and perhaps some legislators, to believe that there would be no reduction in services below the level provided in fiscal 1979. This is simply not the case. While the budget I submitted could have retained such service levels, because the legislature shifted funds from my proposed operational budget to capital projects there will be a decrease in certain services. State agencies will, of course, attempt to minimize the service reductions, but there needs to be an understanding that service and employment reductions will occur.

Sincerely,

Jay S. Hammond  
Governor

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53APPENDIXReview of Riders on FY 80 General  
Appropriations Bill  
May 17, 1979OPERATIONAL BUDGET.

1. Positions. After many of the entries indicating the purpose of an appropriation is a parenthetical indicating a number of positions, i.e., permanent personnel. Appropriation bills must be confined to appropriations. Alaska Const., art. II, § 13. Fixing the numbers of positions in various offices is not an appropriation. Accordingly, these parentheticals are treated as informational, reflecting a likely understanding, but not having the force of law.
2. Page 9, lines 16-19 \*/ (Capital '80): An appropriation bill must be confined to appropriations. Alaska Const., art. II, § 13. The Fiscal Procedures Act covers purchases of goods and services by all state agencies. AS 37.05.220-280, 320(2). The rider on lines 12-13 cannot be construed to amend the Fiscal Procedures Act.
3. Page 11, lines 25-28, 30-33 (University of Alaska): This rider would require a transfer of \$125,000 from the "UNIVERSITY PLANT FUND TO THIS APPROPRIATION AS PROGRAM RECEIPTS FROM EXCESS COLLECTIONS OF DEDICATED REVENUE BOND FEES." The university has title to all its personal property. Alaska Const., art. VII, § 2. Its property is to be managed and disposed of as provided by law. Id. There is nothing in AS 14.40.280--450 which provides for the university to match appropriations from the general fund with money from one or another of its funds or accounts. Because it must be confined to appropriations, it is unlikely that an appropriation bill can be used to achieve that effect. The appropriation probably can be made conditional on a match from the university's own money. Specifying the source, however, gets into managing the university's money directly, and probably goes too far to be valid as a condition.
4. Page 12, lines 5-13, 17-25 (University of Alaska): This

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\*/ Page references are to the print of the bill as it will appear as a session law. The print is longer (84 pages) than the bill (71 pages) due to printing style differences. Thus, for example, page 56 of the print is page 47 of the bill.

rider contains a conditional exception to the statutory prohibition against making transfers between appropriations. Generally, an appropriation cannot amend other, substantive law. There are two reasons why the provisions here are probably valid. One, the exception made by them is one recognized by case law at any event. Even without these provisions, a reorganization which combined the two units to which the money was appropriated would result in the money's being combined. Two, the subject of the substantive law is appropriations; therefore, the bill is acting only on appropriations and does not exceed the constitutional restriction.

5. Page 13, lines 7-10 (University of Alaska): This is the same as 3, above, i.e., probably over intrusive and invalid. A less intrusive condition requiring a match from the university probably would be valid.

6. Page 13, line 21 (Ketchikan Community College): This is an explanatory item within an allocation and has no real effect.

7. Page 15, lines 20-24 (U of A, Mineral Industry Research Laboratory): The provisions in this rider for lapsing money in the event of a shortfall in the receipt of matching monies appear to duplicate the provisions of section 3 of the bill.

8. Page 16, lines 23-30 (Child Support Enforcement): This rider conditions the expenditure of funds on their not being used to invade constitutionally protected rights. It is directly and substantially related to the appropriation, and therefore, is valid.

9. Page 17, lines 14-16. (Youth Services): The use of the appropriations bill for pass-through grants where a grants program has not been established by law creates both legal and administrative problems because of the absence of standards for determining recipients and amounts. For example, if there are entities similarly situated to the named grantees which are ready, willing, and able to perform the same services, how is one selected and the other not. Does that deny equal protection. Is the legislature by selecting out a single, identified entity to perform a service for a specific amount of money actually contracting for the state for it. Does that violate the separation of powers. The Fiscal Procedures Act. Grants to municipalities (or their agencies) are clearly permissible; they are the state's political subdivisions. But grants to others must be treated as appropriations for contractual services and the provisions of the Fiscal Procedures Act must be followed.

10. Page 17, lines 18-31 (Adult Supportive Services): These

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provisions create the same problems as 9, above. Of course, many of the named recipients provide a singular service, and it can be argued that, as a practical matter, each constitutes a single source. However, under ordinary and customary practice, the state agencies would make requests for proposals and by doing so could create additional sources. As a result, legislative identification of the grantee evades the requirements of the Fiscal Procedures Act. Because this bill cannot amend that Act, its provisions must be followed.

11. Page 18, lines 5-7 (Social Services, Southern Region): This appropriation bill cannot be used to impose a legal requirement that there be a night in-take program at Ketchikan. These provisions are valid as a statement of intent and are entitled to great weight. They also afford ample reason for the agency administrators to assume that the elimination of the program will be followed by a reduction in the appropriation by an amount equal to support two positions.

12. Page 18, lines 8-10 (Social Services, Southern Region): What is true for Ketchikan is also true for Wrangell. This appropriation bill cannot dictate the staffing of the Wrangell office.

13. Page 18, lines 13-16 (Social Services, Central Office): So too, no appropriation is made by a provision, such as in the rider here, relating to deleting a position. Moreover, since this rider applies to a clearly ascertainable person, and is clearly intended as a punishment, it is a bill of attainder prohibited by the constitution. United States v. Lovett, 328 U.S. 303, 315 (1946). Its invalidity is beyond reasonable dispute.

14. Page 18, lines 21-24 (Office on Aging): This is another grant where the selection of the grantee must follow the Fiscal Procedures Act as discussed in 9, above.

15. Page 18, lines 26-27 (Grants): Same problem.

16. Page 19, lines 9-12 (Internal Audit): The Legislative Auditor probably should be funded directly by program receipts rather than by a rider for these and similar audits.

17. Page 20, lines 17-20 (Social Services, CETA): This provision creates the grants problem discussed in 9, above.

18. Page 20, lines 21-37 (Adventure-Based Education Program): Notwithstanding the need for prompt action expressed by these provisions, the agency's administrators must comply with the applicable law covering contracts for goods and services. It is not the agency's fault that this appropriation came so late in the year. The directive to encumber

\$25,000 and transfer the money from other appropriations is of dubious validity. It does not effect a transfer by law as has been done in other bills this year.

19. Page 21, lines 28-29, 37-38 (Handicapped Children and Regional Labs): The direct grant raises the questions raised in 9, above.
20. Page 22, lines 7-13 (Public Health Administration): Same.
21. Page 23, lines 16-21 (Alcohol Abuse): The direct grants, because they are made to a municipality, are valid items.
22. Page 23, lines 30-34 (Mental Health): To the extent the grants are to municipalities, they are valid. To others, section 9, above, applies.
23. Page 24, lines 5-8 (Residential Care): Same.
24. Page 24, lines 10-15 (Family Support): Same.
25. Page 24, lines 20-21 (Mental Health): Same.
26. Page 25, lines 10-19 (Natural Resource Administration): Partial funding is patently inconsistent with the Executive Budget Act. This comment will not be repeated with respect to other agencies which are also partially funded.
27. Page 26, lines 35-38 (Commercial Fisheries): This appropriation bill cannot be used to set the staffing for Haines or Dillingham. This "condition" is invalid.
28. Page 27, lines 19-27 (Admin. and Support): The direct grants raise the questions discussed in 9, above. Contracts for performing the specific projects must be let under applicable law.
29. Page 27, lines 33-35 (Investigations and Research): Same as 27, above.
30. Page 30, lines 33-35 (Occupational Licensing): As this rider does, an appropriation bill can set the period for which an appropriation is made and it need not be the same as others in the same bill. Alaska Const., art. IX, § 13.
31. Page 31, lines 37-39 (Highway Safety): Same.
32. Page 32, lines 30-32 (Criminal Justice Planning): Same.
33. Page 35, lines 35-39 and page 36, lines 4-24 (Renewable Resources Board): While these provisions, being part of an

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appropriations bill, can have no lawful force or effect, they constitute a valid statement of the legislature's wishes and should be responded to accordingly.

34. Page 36, lines 36-39 and page 37, line 4 (Economic Enterprise): The problem with this provision is that the \$65,000 appropriation referred to is not one expressly contained in the bill. Nevertheless, Budget and Management should be able to see that the sums come out as intended by the legislature.

35. Page 37, lines 19-21 (Tourism): Again, the direct grants must be governed by law as discussed in 9, above.

36. Page 38, lines 10-13 (Community Planning): Same.

37. Page 39, lines 5-10 (DOT/PF Commissioner's Office): These provisions add nothing to the existing law and, being part of an appropriations bill, cannot impose a legal duty on the commissioner beyond that imposed by existing laws.

38. Page 39, lines 28-36 (M & O, Administration): These provisions cannot compel the department to contract with the railroad for the specified service. This is an invalid rider on an appropriations bill.

39. Page 40, lines 14-19 (Highways): Nor can a rider be attached to provide for road maintenance on an off-system road in violation of existing law. The money probably could be used to support ferry service.

40. Page 40, lines 31-34 (Airports): The rider for a direct grant for air-taxi mail delivery raises the problems discussed in 9, above.

41. Page 42, lines 5-23 (Executive Office): The rider requiring the Governor to report on the consolidation of certain functions has no legal force or effect. The Governor can, of course, honor the rider as a request.

42. Page 42, lines 28-34 (Budget & Management): This rider, being part of an appropriation bill, has no legal force or effect. Moreover, insofar as it would intrude the legislative branch into the exercise of a power over the budget vested exclusively by the constitution in the executive, it would probably be invalid even if enacted as a separate law.

43. Page 43, lines 6-9 (Internal Audit): A rider in an appropriations bill cannot be used to effect a transfer of an agency or function between the principal departments of the executive branch. Accordingly, this is an invalid condition. The function of the Internal Auditor is not, however, placed

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in the Department of Administration by law; and therefore, the Governor has authority to relocate it.

44. Page 43, lines 10-13 (Internal Audit): A rider on an appropriations bill cannot establish a legal duty. Nevertheless, duplication of functions by the executive and legislative auditors should be avoided.

45. Page 43, lines 16-20 (Bethel Office): The legislature may refuse to fund a given function, and when it does, that will generally be the end of it. The rider here, however, has no effect on the Governor's use of his contingency fund, which may be used to fund a trouble shooter at Bethel. Additionally, the legislature's power to refuse funding cannot be used to inflict a punishment, for to do so would make the rider an unconstitutional bill of attainder.

46. Page 43, lines 25-30 (WCF Services): This is merely an explanation of an accounting adjustment.

47. Page 43, lines 34-38 (U of A Audit): This rider has no legal force or effect.

48. Page 44, lines 6-18 (Salary Increases): This rider has no legal force or effect. Neither the executive nor legislative branches are bound by it. Nevertheless, it is a valid statement of the consensus of the 11th State Legislature and entitled to great deference and respect.

49. Page 44, lines 26-32 (Risk Management): It is highly unlikely that a \$13.6 million appropriation for insurance, half of which will be expended before the so-called condition can occur, will be held to be conditioned on a report concerning four positions. This rider merely illustrates how any requirement can be stated as a condition.

50. Page 44, lines 35-39 and page 45, line 4 (General Services): The rider requiring the Departments of Administration and of Transportation and Public Facilities to establish joint car rental policies can have no legal effect.

51. Page 45, lines 13-17 (Data Processing): This rider appears to make storage space a purpose of the FY 79 appropriation for data processing. In effect, it amends last year's appropriation bill. That is almost certainly permissible.

52. Page 45, lines 19-38 and page 46, lines 4-9 (Data Processing): This rider appears to both explain and reflect an adjustment by the legislature in the budget for data processing. It relates directly and solely to appropriations, and therefore, is valid.

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53. Page 46, lines 23-26 (FERC Proceedings): This language provides for a lapse of the appropriation when the tariff proceedings terminate. It is valid.
54. Page 46, lines 33-36 (Permanent Fund Management): This is a similar provision for a lapse.
55. Page 47, lines 23-31 (Procurement): This language specifies the period of a portion of the appropriation. That is valid.
56. Page 47, lines 32-35 (Tenakee Health Center): This rider has no legal force or effect.
57. Page 47, lines 36-39 and page 48, lines 4-5 (Combined Facilities): This rider has no legal force or effect.
58. Page 48, lines 17-19 (Communications): This rider has no legal effect, but it is a proper statement of legislative intent, as are similar riders mentioned above and below. Ordinarily, it is the kind of statement which is placed in a committee report, as are many of this bill's riders.
59. Page 48, lines 21-25 (Communications): This rider has no legal force or effect.
60. Page 48, lines 29-37 (Communications): The breakdown of the appropriation item contained in this rider does not impose a legal restriction on the use of the appropriated money.
61. Page 49, lines 4-19 (Television): These riders place no legal duty on anyone to do anything.
62. Page 49, lines 20-38 (Television): This rider appears to state that, notwithstanding the actual apparent appropriation of \$2,170,815 for television, the agency should spend \$2,553,000, the "full funding" for FY 80. Unfortunately, the language does not parallel that used by other riders which clearly state the legislature's intent to fund at a higher level than the amount appropriated in the bill. Accordingly, that intent probably cannot be inferred, and the expenditures cannot be made, absent some other evidence of it.
63. Page 50, lines 11-19 (Vehicle Repairs and Rentals): These riders have no legal force or effect.
64. Page 50, lines 24-27 (Audits): This rider has no legal force or effect.
65. Page 51, lines 5-35 (Legislative Council): This rider

is explanatory and has no legal effect. Again, it is the kind of material which ordinarily appears in a committee report.

CAPITAL BUDGET.

66. Page 55, lines 8 and 19 (Election District): The indication of election districts is informational only. An error in district designation has no effect on the appropriation or its expenditure.

67. Page 60, lines 18-27, 32, 36, etc. (Grants): The capital budget, like the operating budget, includes a large number of "grants" to nongovernmental entities for services or facilities or both. The same questions raised under 9, above, are raised by the "grants" in this portion of the bill. They will have to be handled as discussed in 9, above, i.e., under applicable statutes, most particularly the Fiscal Procedures Act and the Public Facilities Procurement Act.

68. Page 62, lines 29-30 (Sutton Community Building): There is no municipality of Sutton, and the "community of Sutton" is not a juridical entity with which the state can transact business. It appears, therefore, that the agency must, in this and similar situations, seek out a responsible group or association in the community to be responsible legally for the community building, and to contract with the state for the money.

69. Page 63, lines 20-22 (St. James Mission): There is a City of Tanana. Presumably, the grant is to it. The purpose of the grant, rehabilitation of a mission, raises establishment of religion problems. In order to expend public funds, it must be for a non-religious purpose.

70. Page 63, lines 23-26 (Gateway R.E.A.A.): Direct grants to the named villages raise public purpose questions. This appropriation appears to be to the Department of Natural Resources for Parks and Recreation (page 62, lines 4-5) for the Gateway REAA, to be divided among five communities. No purpose is stated. Presumably it relates to recreation. The agency and the intended recipients are, however, apparently left to devise a purpose. This is almost certainly an overly broad and unconstitutional delegation of the power of appropriation. It appears that the bill contains a large number of such items. Unless there is some legislative documentation of the purpose of these grants, they raise real questions of validity.

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71. Page 66, lines 9-12 (Commercial Fisheries and Agriculture Bank): The rider's explanatory material limits the appropriation. It is a valid limitation, relating solely and directly to the appropriation.

72. Page 66, lines 22-29 (AHFC Mobile Homes): This rider states an "intent" rather than a condition. "Legislative intention without more is not legislation." Train v. City of New York, 420 U.S. 35, 45 (1975). Had the legislature intended to make \$1 million solely available for a mortgage insurance for mortgage financing for mobile homes, it would have appropriated it that way. A statement of intent must be perceived as a lesser restriction.

73. Page 68, lines 8-13 (Farm Projects): These are more examples of the problems discussed above in 9 relating to legislatively prescribed, non-governmental grantees.

74. Page 68, lines 15, 17-35 (Grants): Same.

75. Page 70, lines 23-26 (Firehalls): Volunteer fire departments fall into a category which is quite close to municipalities. They probably constitute de facto service areas in the unorganized borough, and because of the statutorily prescribed governmental functions they perform, may well be de jure service areas. Grants to them should, therefore, be treated much the same as grants to municipalities.

76. Page 70, lines 30-33, 34-36, 37-39 (Grants): While these riders name entities within municipalities, it is best to infer that they are part of the object or purpose of the appropriation and that the grant is to the respective municipalities for those purposes, e.g., for recreational facilities in Spenard.

77. Page 71, lines 7-9 (Grant): The grant to the Thomas Bay Power Authority raises questions concerning its purpose. If there is no legislative documentation on the purpose, it may well be an invalid appropriation.

78. Page 71, lines 21-24 (Takotna Grant): Takotna does not appear to be a city. If not, the grant must be handled so as to ensure its expenditure is for a public purpose and not for private benefit.

79. Page 73, lines 13-15, 16-18 (Grants): Chalkyitsik and Cantwell were not incorporated cities as of 1978. Where a grantee does not exist, the grant probably fails. Legislative documentation (or lack of it) should be determinative.

80. Page 73, lines 22-24 (Grants): Healy Lake was not an

incorporated city in 1978.

81. Page 73, lines 31-35 (Grants): These grants may be too indefinite as to recipient and purpose to be valid constitutionally. It will depend upon the existence of legislative documentation identifying both more precisely.

82. Page 75, lines 7-9 (Traffic Signals): This rider merely further identifies the purpose of the appropriation.

83. Page 75, lines 11-12 (Street Repairs): As a general rule, a "community council" cannot be given power to supervise the expenditure of public funds. This rider, therefore, does not have the force of law.

84. Page 75, lines 21-24 (Road Improvements): Same.

85. Page 76, lines 11-13 (Paradise Haven Lodge): This rider is invalid. First, in order for a condition on an appropriation to be valid, it must have a direct and substantial connection to the appropriation. Second, the law-making power is not the power to pick and choose the buildings to be used for park facilities.

86. Page 77, lines 19-20 (Priorities): While a valid statement of concern and entitled to great weight, this rider can have no legal effect.

87. Page 79, lines 12-23 (Landscaping): This rider's statement of intent does not have the force of law required to remove these projects from the application of other laws which could frustrate the very intent stated by the rider.

88. Page 81, lines 19-22 (Fourth Floor): This rider -- vesting the Legislative Finance Division with control over the fourth floor in the capitol -- has no legal effect. First, so long as there is space on the fourth floor of the capitol occupied by another branch of the government, an agency of the legislature cannot -- under the separation of powers -- usurp that space or have supervening control over it. Second, under existing law, space occupied by the legislature and its agencies is under the control of the Legislative Affairs Agency. AS 24.20.060(5). A rider on an appropriations bill cannot amend that substantive law. Of course, the second consideration is solely a matter of internal concern to the legislature, and no law on the subject is required at all.

The following messages were received dated June 1, 1979 stating the Governor had signed the following and transmitted the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

CSHB  
29  
am S

COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 29  
amended Senate  
(relating to the public employees' and  
teachers' retirement systems; and provid-  
ing for an effective date)  
Chapter 81, SLA 1979

FCCS  
HB  
260

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 260  
(relating to retirement and benefits; and  
providing for an effective date)  
Chapter 82, SLA 1979

FCCS  
SB  
118

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 118  
(relating to financial institutions)  
Chapter 84, SLA 1979

HCS  
CSSB  
12  
am H

HOUSE COMMITTEE SUBSTITUTE FOR  
COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 12  
amended House  
(relating to adult and adventure-based  
education)  
Chapter 86, SLA 1979

FCCS  
SB  
130

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 130  
(establishing programs of financial and  
academic assistance to students in uni-  
versities and colleges; and providing  
for an effective date)  
Chapter 87, SLA 1979

HCS  
CSSB  
137  
am H

The following message dated June 1, 1979 regarding  
HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR  
SENATE BILL NO. 137 amended House (municipal code; effec-  
tive date) was received:

The Honorable Clem Tillion  
President of the Senate  
The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

RE: HCS CS SB 137 am H  
CHAPTER 83, SLA 1979

Dear Mr. President and Mr. Speaker:

I am allowing House Committee Substitute for Committee  
Substitute for Senate Bill 137 am H to become law with-

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AM H

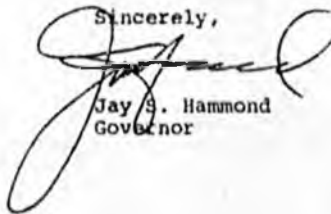
out signature. I know that a great deal of hard work has gone into the bill and that, in most respects, it is good legislation. Nevertheless, because it would create an impossible situation with respect to apportionment of borough assemblies and allow a multiplicity of zoning jurisdictions to exist within organized boroughs, I am compelled not to sign it. Because the House and Senate managers of the bill have promised that curative legislation will be brought to the floor during the next session, I am not vetoing the bill.

The first defect is that the provision which provides for the voters to choose the kind of apportionment a borough assembly should have creates a method by which two electorates within a borough could select two different kinds of apportionment. No means is provided for resolving the difference. If reapportionment were imminent, a veto would be necessary. But there is yet time to cure this defect, and it can be done at your next session.

The second problem concerns zoning. Since the inception of organized boroughs in Alaska shortly after statehood, it has been an accepted and indisputable fact that, at a minimum, three functions of local government were areawide by their very nature: education, planning and zoning, and tax assessment and collection. Nothing has occurred in the meantime to alter that conclusion. Indeed, if anything, the opposite is true, particularly with respect to land-use planning and zoning.

I am aware that the particular zoning needs of some cities presently appear to be very great, but they must and can be met in some other fashion than the giant step backward proposed by this bill. No greater disservice can be done to our citizens, particularly those who own homes and businesses, than to fragment our local planning and zoning. Another solution must, and will, be found, and the administration will work closely with you to find one.

Sincerely,



Jay S. Hammond  
Governor

FCCS

HB

66

June 1, 1979

The Honorable Clem Tillion  
President of the Senate  
The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

FREE CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 66

(relating to the management and disposal  
of public land; and providing for an  
effective date)

chapter 85, SLA 1979

Although I am signing Free Conference Committee Substitute for House Bill 66 into law because it makes important improvements by removing statutory impediments to transfer of state land to private ownership, I would like to note that the measure does pose some serious implementation problems. There are conflicting and contradictory provisions that will make it difficult to implement some portions of the bill within the various short deadlines contained in the bill. Nevertheless, I have directed the Department of Natural Resources to aggressively find solutions to accomplish true legislative intent. Specifically, I have instructed the department to dispose of 100,000 acres during FY 80 rather than FY 81 as the act requires. In addition, I have instructed that although municipalities may no longer disapprove of state subdivision plats, the department make every effort to plat in a way the boroughs would approve, had they a choice.

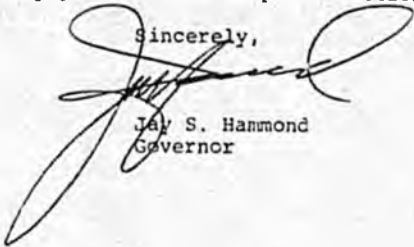
Two sections of the bill are especially troublesome. Counsel advises that Sections 2-5 and 45 which could be construed as restricting the state's right to refuse municipal selections that are clearly contrary to the state's interest (the surface estate at Prudhoe Bay, for example), is almost certainly unconstitutional. Nevertheless, due to present classification of these lands, it is unlikely that such conflicts will arise and the question is probably more academic than practical.

Even worse is Section 44, which rewards trespassers by granting them an interest in public lands without due notice and without providing a similar chance to law abiding citizens to secure the same interest. On the advice of the Attorney General, I have instructed the Department of Natural Resources to not implement that provision because of its unconstitutionality. Almost surely, the matter can then be decided in court.

All in all, however, I am most pleased to sign into law this important legislation and to pledge eager implementation of its very positive land disposal sections.

FCCS  
HB  
66

Sincerely,



Jay S. Hammond  
Governor

June 1, 1979

FCCS  
SB  
236

The Honorable Clem Tillion  
President of the Senate  
The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

I have vetoed Free Conference Committee Substitute for Senate Bill 236, an act continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; and providing for an effective date.

The Department of Law has pointed out serious defects in the language relating to the issuance of stop orders by the Alaska Transportation Commission; the effect of the language would be to dilute the power of the Alaska Transportation Commission's enforcement of its own orders.

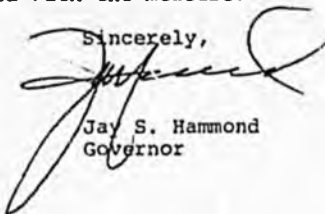
Section 12 of the enrolled bill (insurance on exempt carriers) has been previously discussed in regard to the "deregulation" of air service. However, it also should be noted that sec. 12 would require all currently exempt vehicles, including motor vehicles operated by federal, state, and municipal government, those operated by ranchers, farmers, and dairymen under 12,000 pounds gross vehicle weight, and those operated by construction contractors to file insurance coverage with the commission. Such regulation would in fact, increase the scope of regulatory control by the commission and could quite possibly necessitate an increase in commission personnel. Additionally, there is doubt that the language relating to insurance requirements for exempt carriers is clear enough that the provision is enforceable.

Existing law provides that the Alaska Transportation Commission would be terminated June 30, 1979 but would continue in existence until June 30, 1980. Therefore, I

FCCS believe that there is sufficient time for the legislature  
SB to address the issue in a timely manner. Additionally,  
236 it should be noted that the deregulation provisions  
relating to fixed wing aircraft would not take effect  
until July 1, 1980. Some operators of light aircraft  
that the legislature intended to exempt from regulation,  
i.e., guides, would continue to be regulated due to the  
proviso for providing 12 months of service.

The fiscal impact of the bill is significant, analysis  
indicates a cost of 97.7 thousand dollars annually, no  
funding was provided with the measure.

Sincerely,



Jay S. Hammond  
Governor

Index to vetoed and reduced bills received after adjournment:

VETOED BILLS

		Page
5/18/79	HCSSB 86 Legislative oversight and designating programs and activities for review and termination under AS 44.66; eff. date	9
6/1/79	FCCS SB 236 Continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; eff. date	27-28

REDUCED BILL


6/1/79	FCCS SB 53 Appropriating for the operating and capital expenses of the state government; eff. date	12-23
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June 4, 1979

SENATE JOURNAL  
HOUSE JOURNAL

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This joint final supplemental journal completes the record of legislation for the First Session of the Eleventh State Legislature.

  
Peggy Mulligan  
Secretary of the Senate

June 4, 1979



Irene Cashen  
Chief Clerk of the House

June 4, 1979



Alaska State Legislature  
House

JUNEAU, ALASKA

MESSAGE TO THE SENATE

DATE May 2, 1979

MR. PRESIDENT:

The House has passed SB 236 (continuing the existence of the Alaska Transportation Commission; eff. date) with the following amendment:

HCSSB 236amH (continuing the existence of the Alaska Transportation Commission and amending laws relating to the commission; eff. date)

and it is transmitted herewith for consideration.

Shirley Peterson  
Chief Clerk of the House

## Owner-Operators of Alaska,

Have you taken a good look at your earnings lately as opposed to your expenses? How many of you are aware of the proposal and amendment presently being considered for adoption by the Alaska Transportation Commission? If adopted, your earnings will, inevitably, be reduced further. You are the only work force in Alaska that has taken a reduction in earnings for four consecutive years!

It would appear that fourteen different Carriers have conspired against you by giving their Power of Attorney to one man, enabling him to represent their desires and he presented this proposal in Anchorage at the A.T.C. Not one Owner-Operator was present at that hearing. Did you see the notice of that hearing posted in your local newspaper? To date, I have not found anyone that did.

A hearing was not scheduled for Fairbanks until Joe Gilbertson filed a formal complaint with A.T.C. A hearing was then scheduled for January 24, 1980 in Fairbanks. As I understand it, a notice is to be published in at least three different publications. This was handled by a notice in the "Juneau Southeast Empire", "Nome Nugget", and the "Journal", a magazine subscribed to by the Carriers. In all fairness, I must add that the A.T.C. claims a notice went out to all the Newspapers. I haven't as yet found any hard evidence to support the claim. This action tells me, they didn't want any Owner-Operator representation. However, as a notice was hand carried to all the Carriers shortly before the hearing, Joe Gilbertson notified as many as possible. About a dozen Owner-Operators were present.

This proposal and amendment appear fairly innocent on the surface, but was cleverly devised to shift all the operational cost from the Carrier to the Owner-Operator while at the same time rendering your Union Contract "non-applicable". Indeed, the Carrier would become a "Broker" and the Owner-Operator would be a "Sub-Contractor".

Can the Owner-Operator afford more expense? Can you pay your own Secretary, all payroll taxes, including Workmans' Comp., cargo insurance, and the deductible on the trailer belonging to the Carrier? From whom do you collect if you sustain a permanent injury on the job? Do you sue yourself?

Furthermore, this puts the A.T.C. in the position your Union has held. Basically, they are negotiating your next contract. The "Brokers" won't need a Union. You'll be loading your own loads or paying a hostler out of your own pocket as some are already doing.

Some of you claim you are happy without the Union. How happy will you be in the absence of a Union and faced with possible deregulation on June 30th? When the next pipeline begins and there isn't any control over Alaska hire, every Independent in the lower forty-eight can come up here and take your jobs. They'll work for less, live in their trucks, and send their money outside. While you're all sitting home, who will pay your house payment, your truck payment, and feed the family? You're kidding yourselves if you don't think it can and will happen! That is exactly what this new proposal is all about.

In fact, the same person wielding the fourteen Powers of Attorney and this proposal at A.T.C., is the same person that devised the illegal lease which was presented to the Sager drivers, in anticipation of this proposal being adopted. They are all counting on the fact that truckers seldom stick together, even on basic issues. They steadily decrease your earnings, make you dependent on the next pay check, then zap it to you. You're right on the edge of that now as each of you have consistently robbed your savings to meet Carrier "back-charges" this past year.

At the time of the Statehood Act, Owner-Operators were not a consideration under the statutes adopted for Transportation, as they were non-existent. You've all been "manipulated" under provisions concerning lease equipment. Consequently, these regulations can, at will, by requests of the Carriers, be changed at their desire and for their benefit. While requesting changes to shift more operational expense to the Owner-Operator on one hand, with the other, they are filing reduced rates to further decrease your earnings. They want all of you to be so financially dependent on them for your next truck payment, you'll work for nothing. Up to this time, and over the last three years you've all sat back and watched it happen.

This time you had better all stand up and be counted. File your objections with the Transportation Commission and your Legislators. At the end of the last pipeline there were over four hundred Owner-Operators in the State. Each one puts a minimum of \$75,000 back into the economy annually. That adds up to a basic figure of \$30,000,000. On that figure alone, the Owner-Operator should have the right to request the attention of your Legislature.

You had all better insist on funding for the A.T.C. while at the same time asking for a statute to protect Owner-Operators. You need a statute depicting the minimum amount your truck will be paid, and how often it will be paid. Ask that the driver will be an employee of the Carrier so you don't get stuck with their overhead. You desperately need a statute the Carriers can't jack around!

There is a subtle conspiracy in this State to take down the Unions and reduce your wages. Consider the hardships endured and the loss of jobs when the City of Fairbanks refused to negotiate new Labor contracts this last year. Their problems are still going on. How many are aware that outside carpenters were brought in to build the new Pizza Hut in Fairbanks, while Alaska carpenters picketed. Sager Trucking in Delta Junction are bringing in outsiders while Alaskans picket. The oil companies brought in electricians, to Prudhoe Bay, a couple of weeks ago, claiming there were not enough qualified Alaskans. We have Alaskan Electricians out of work. How many non-residents were hired for pipeline security by Alyeska? I doubt most people are aware of the percentage of non-Alaskans working at Prudhoe Bay and all the Pump Stations along the way.

For once, all the Union Organizations had better stand together. All our jobs are at stake here, not just the Teamsters.

I'm asking all Owner-Operators, all Union people and all concerned Alaskans that agree with what I've said here, to cut out this letter, sign it, include your name and address, and send it to the Legislator of your choice.

For once let ALASKANS stand up for Alaskans, before we all find out we can be replaced for less!

*These are my feelings also  
as a 28 yr Alaskan I approve  
and ask your support.*

*Gene Cecil*

# ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 276-1149

June 7, 1979

The Honorable Jay Hammond  
Governor of Alaska  
Juneau, Alaska

Sir:

The Special Committee of the Alaska Trucking Association wishes to thank you for allowing us the opportunity of meeting with you on June 4, 1979. I think it was agreed among our group that a frank discussion took place and that there was a free exchange of opinions. At the close of that meeting, however, our committee left with rather frustrated feelings. We, of course had been seeking a strong expression of support from the Administration regarding the year round maintenance of the State road from Fairbanks to Deadhorse. It was our feeling that your Administration gave us only qualified support and that you were relying on Alyeska Pipeline Service Company to provide that maintenance which we feel is the State of Alaska's obligation.

At this time we would like to summarize the key reasons that we feel that the State of Alaska should maintain that highway on a year round basis.

## 1. Affect on Motor Carrier Industry

We as an industry are seriously concerned that a six month closure of the road will in fact result in the demise of a significant portion of the motor carrier industry. We have provided you statistics which indicate that at a minimum \$25.7 million dollars were earned in revenues by motor carriers from operations on the North Slope in 1978. Out of those revenues approximately \$9.5 million dollars in wages were paid directly to approximately 308 drivers. It is our feeling that the motor carriers and the various owner/operators who operate on the North Slope could not economically maintain facilities, equipment and employees on the basis of operating less than six months per year. Consequently if the road was only open for that period of time it could be presumed there would not be sufficient transportation to haul freight over the road.

## 2. The Economic Impact on Fairbanks

IF YOU'VE GOT IT, IT CAME BY TRUCK



June 7, 1979

Page Two

It is well recognized that Fairbanks already has an unemployment rate of 14% or greater. Many of the motor carriers operating to the North Slope have drivers and support facilities domiciled in Fairbanks. The resultant unemployment caused by the six month closure of the road would only add to the unemployment factor in that city. Using the ripple effect, that impact would be even greater. It has been stated by one airline company in this State that if the road were closed, unemployment in Fairbanks would actually diminish because of the resultant growth in the air freight industry. It is our feeling that the closure of the road will not mean significant diversions of freight to aircraft. All indications we receive from the oil industry are that the diversion of freight will rather take place to barges traveling from Seattle to Prudhoe Bay or up the McKenzie River to Prudhoe Bay. Consequently it is erroneous to assume that the air freight industry will grow to any extent in the Fairbanks area.

3. The Economic Affect on the State of Alaska

At least one oil company (Atlantic Richfield Company) has stated that they expend approximately \$78 million dollars per year for goods and services purchased from approximately 1,100 Alaskan vendors. They have indicated that if the road is closed significant portions of those expenditures would be made in the Lower 48 rather than Alaska. It is our understanding that the oil companies and Alyeska Pipeline Service Company are conducting studies at this time to provide similar statistics such as Atlantic Richfield's. We have been assured by those oil companies that when the final statistics are compiled the economic impact of a six month road closure on the State of Alaska will be staggering.

4. Future Development of Resources Within the State

Recent passage of the Udall-Anderson Bill by the U. S. House of Representatives was widely recognized as being a deterrent toward the economic development of the resources within the State of Alaska. It is particularly disconcerting at this time to see our own State government further weaken the economic development of the State and the oil industry in particular through closure of the road for six months.

It is widely known that the Atlantic Richfield Company has plans to develop the Kuparuk Oil Field. The reserves in that field are believed to be quite significant. It is obvious that if the road is closed the cost and time frame of developing that field will greatly increase. It should also

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be noted that we understand that Sohio-BP has a large number of leases in that oil field. Sohio-BP has publicly stated that there will not be any significant drilling programs undertaken until such time as the State's attitude toward the oil industry improves. Obviously any closure of the road would only be a further indication to Sohio-BP that the State does not have a positive attitude toward the oil industry. Consequently the road closure could cause Sohio-BP to delay any development of the Kuparuk Field.

5. Maintenance of the Alyeska Pipeline

During the course of the meeting on June 4 you expressed great concern regarding the difficulties in safely maintaining the pipeline during the six month period when the road was to be closed. It is obvious to all that any breakdown or major oil spill that would occur on the pipeline would have a disastrous affect both environmentally and economically on the State. For instance, it has been estimated that a closure of the pipeline for one day could cause a loss of revenue of approximately \$2.08 million dollars to the State. Any major breakdown of the pipeline during the winter months while the road was closed could potentially cost the State tens of millions of dollars in lost revenues. In addition, it could be visualized that the State would have some legal liability for any major oil spills due to the fact that they did not maintain adequate transportation corridors for the pipeline.

6. Alternate Mode of Transportation

During the course of the construction of the pipeline and of the development of the Prudhoe Bay oil field there were always available alternate methods of transporting goods. The most commonly used methods were either by motor truck, barge or air freight. The closure of the road for a six month period could drastically affect the alternatives of shipping goods. It should be remembered that a few years ago the sealift barge movement was prevented by ice formations from arriving at Prudhoe Bay. In that particular instance the majority of goods were diverted to motor truck. If such an occurrence should happen again only a limited amount of those goods could be diverted to air freight due to economic and size factors. It is also possible that because of weather conditions aircraft cannot serve the needs of the pipeline or the oil field for sustained periods of time. In such emergencies it would be disastrous if a maintained road was not open to serve the needs of the industries.

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Over the course of the past few weeks our committee has found that the sentiment of the business community within Alaska is overwhelmingly in favor of having the State maintain the road on a year round basis. It is our understanding that various communities and Chambers of Commerce have passed resolutions in favor of such year round maintenance and have forwarded those resolutions to you. As you also know, a poll was conducted by the Resource Development Council to ascertain the sentiment of the Alaska State Legislators toward year round maintenance. Of those legislators contacted, an overwhelming majority appear to favor year round maintenance. In fact, it is obvious to all that less than a handful of legislators are the only roadblock that prevents the year round maintenance from occurring. It is our belief that the economic well being of this State and of the motor carrier industry in particular is too significant to be thwarted by the wishes of a few individuals. We believe that the climate is right for your Administration and for the State legislators as a whole to take a strong stand and once and for all demonstrate that they are concerned about the economic well being of this State. Year round maintenance of the North Slope Road by the State would be a good demonstration of that support. We do not believe that Alyeska Pipeline Service Company should be expected to provide the funds needed for that maintenance. It is obvious that they and the oil companies in the Prudhoe Bay area are by far the largest contributors toward the revenues received by the State Treasury. It is our opinion that it is the moral and probably legal obligation of the State to provide for and fund the maintenance of the road which is vital in maintaining a healthy oil industry in this State.

Because of all of the above, the Alaska Trucking Association at their Board of Directors meeting on June 6, 1979 authorized the Special Committee to send a resolution to you. That resolution is as follows:

It is our understanding that Governor Hammond intends to call a Special Session of the State Legislature in the near future. It is our belief that when the Governor calls that Special Session, he can include the issue of year round maintenance of the State highway from Fairbanks to Deadhorse. We believe that the State has an obligation to maintain that road and

June 7, 1979



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that it is paramount to the economic well being of this State that such maintenance be performed. We therefore call upon the Governor to exercise his leadership and the authority of his office to include the issue of the State highway funding on the agenda for the Special Session of the legislature.

We would appreciate receiving a response regarding the above resolution as soon as possible.

Respectfully yours,

ALASKA TRUCKING ASSOCIATION  
SPECIAL COMMITTEE

A handwritten signature in cursive script, appearing to read "H. Russell Painter".

H. Russell Painter  
Chairman

HRP:lh

cc: Members of State House & Senate Members

## SUBCHAPTER I—GENERAL PROVISIONS

## § 1301. Definitions

As used in this chapter, unless the context otherwise requires—

- (1) "Administrator" means the Administrator of the Federal Aviation Administration.
- (2) "Aeronautics" means the science and art of flight.
- (3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this chapter to the extent and for such periods as may be in the public interest.
- (4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.
- (5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.
- (6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.
- (7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Secretary of Transportation may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.
- (8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.
- (9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.
- (10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

- (11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.
- (12) "Board" means the Civil Aeronautics Board.
- (13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.
- (14) "Civil aircraft" means any aircraft other than a public aircraft.
- (15) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.
- (16) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.
- (17) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.
- (18) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.
- (19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

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(14) "Civil aircraft" means any aircraft other than a public aircraft.

(15) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.

(16) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(17) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(18) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.

(19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(20) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(21) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(22) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.

(23) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbo-jet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

(24) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(25) "Mail" means United States mail and foreign-transit mail.

(26) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(27) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(28) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this chapter.

(29) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(30) "Propeller" includes all parts, appurtenances, and accessories thereof.

(31) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this chapter to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(32) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(33) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(34) The term "special aircraft jurisdiction of the United States" includes—

- (a) civil aircraft of the United States;
- (b) aircraft of the national defense forces of the United States;
- (c) any other aircraft within the United States;
- (d) any other aircraft outside the United States—

(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(35) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(36) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d)(3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d)(1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

(37) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(38) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United

States, including the territorial waters and the overlying airspace thereof.

Pub.L. 85-726, Title I, § 101, Aug. 23, 1958, 72 Stat. 737; Pub.L. 87-197, § 3, Sept. 5, 1961, 75 Stat. 467; Pub.L. 87-528, § 1, July 10, 1962, 76 Stat. 143; Pub.L. 90-514, § 1, Sept. 26, 1968, 82 Stat. 867; Pub.L. 91-449, § 1(1), (2), Oct. 14, 1970, 84 Stat. 921; Pub.L. 93-366, Title I, § 102, Title II, § 206, Aug. 5, 1974, 88 Stat. 409, 419.

#### Historical Note

**1974 Amendment.** Pars. (22) to (33). Pub.L. 93-300, § 206, added pars. (22) and (23). Former pars. (22) to (31) were redesignated (24) to (33), respectively.

**Par. (31).** Pub.L. 93-300, §§ 102, 206, redesignated former par. (32) as (31) and, as so redesignated, relettered former subpars. (c)(1) as (c) and (c)(11) as (d)(1), added subpars. (d)(11) and (e), and expanded time period when, for purpose of definition, aircraft is considered in flight.

**Pars. (35) to (38).** Pub.L. 93-300, § 206, redesignated former pars. (33) to (36) as (35) to (38), respectively.

**1970 Amendment.** Pars. (32) to (36). Pub.L. 91-410 added par. (32). Former pars. (32) to (35) were redesignated (33) to (36), respectively.

**1968 Amendment.** Par. (33). Pub.L. 90-514 expanded supplemental air transportation to include the conduct of inclusive tour charter trips but prohibited individually ticketed service by supplemental air carriers.

**1962 Amendment.** Pars. (32), (31). Pub.L. 87-528 added pars. (32) and (33). Former pars. (32) and (33) were redesignated (34) and (35), respectively.

**Pars. (34), (35).** Pub.L. 87-528 redesignated former pars. (32) and (33) as (34) and (35), respectively.

**1961 Amendment.** Par. (4). Pub.L. 87-197 substituted "operation or navigation of aircraft within" for "operation or navigation of aircraft within".

**Change of Name.** "Federal Aviation Administration" has been substituted for "Federal Aviation Agency" in par. (1) and "Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" in pars. (7) and (18) pursuant to Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation and a Federal Aviation Administration, headed by an Administrator, within such Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Admin-

istrator and other offices and officers thereof to the Secretary of Transportation, with specific function thus transferred to be exercised by the Administrator of the Federal Aviation Administration. See section 1655(c) of this title.

**Effective Date.** Section 1505 of Pub.L. 85-726, provided that:

"The provisions of this Act [see Short Title note under this section] shall become effective as follows:

"(1) Section 301, section 302(a), (b), (c), (f), (i), and (k), section 303(a), section 304, and section 1502 [section 1311, section 1312, section 1313(a), (d), (g), and (i), section 1314(a), section 1315, and note set out under section 1311 of this title] shall become effective on the date of enactment of this Act [August 23, 1958]; and

"(2) The remaining provisions shall become effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now Administrator of Federal Aviation Administration] first appointed under this Act [this chapter] qualifies and takes office."

The Administrator of the Federal Aviation Agency was appointed, qualified and took office on Oct. 31, 1958.

**Short Title of 1974 Amendment.** Section 101 of Pub.L. 93-300 provided that: "This title [which enacted sections 1511 and 1515 of this title and amended this section and sections 1471 to 1473 and 1487 of this title] may be cited as the 'Anti-Bumping Act of 1974'."

**Short Title.** Section 1 of Pub.L. 85-726, provided that Pub.L. 85-726, which enacted this chapter, amended sections 212, 485a, 485b, 1101, 1102, 1103, 1105, 1108, 1111, 1116, 1151, 1152, 1155, 1157 and 1160 of this title, sections 81, 82 and 90 of Title 14, Coast Guard, section 45 of Title 15, Commerce and Trade, section 7a of Title 16, Conservation, section 680 of Title 31, Money and Finance, section 474 of Title 40, Public Buildings, Property, and Works, sections 485, 485c and 485d of Title 48, Territories and Insular Possessions,

section 123 of Title 50, War and National Defense, and sections 1022 to 1022c of Appendix to Title 50, War and National Defense, repealed sections 171, 174 to 177, 179 to 184, 401 to 403, 421, 422, 423 to 427, 451 to 460, 481 to 485, 486 to 490, 521 to 524, 551 to 560, 581, 582, 601 to 603, 621 to 623, 641 to 649, 671 to 681, 701 to 705, 711 to 722, and 1211 to 1215 of this title, section 7 of 1940 Reorg. Plan No. 111, section 7 of 1940 Reorg. Plan No. 1V, and Reorg. Plan No. 10 of 1953, and enacted notes set out under this section and sections 480, 1321 and 1341 of this title, shall be popularly known as the "Federal Aviation Act of 1958".

**Separability of Provisions.** Section 1504 of Pub.L. 85-720, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, the remainder of the Act [this chapter] and the application of such provision to other persons or circumstances shall not be affected thereby."

**Savings Clause; Effect of Transfers, Repeals, and Amendments.** Section 1501 of Pub.L. 85-720, provided that:

"(a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, rates and privileges which have been issued, made, or granted, or allowed to become effective, by the President, the Department of Commerce, the Secretary of Commerce, the Administrator of Civil Aeronautics, the Civil Aeronautics Board, the Airways Modernization Board, the Secretary of the Treasury, the Secretary of Agriculture, or the Postmaster General, or any court of competent jurisdiction, under any provision of law repealed or amended by this Act [see Short Title note under this section], or in the exercise of duties, powers, or functions which, under this Act, are vested in the Administrator of the Federal Aviation Agency [now Federal Aviation Administration] or the Civil Aeronautics Board, and which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator or the Board, as the case may be, or by any court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before the Secretary of Commerce, the Administrator of Civil Aeronautics, the Civil Aeronautics Board, the Chairman of the Airways Modernization Board, the Secretary of the Treasury, or the Secretary of Agriculture; but any such proceedings shall

be continued before the successor agency, orders therein issued, appeals therefrom taken, and payments made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Administrator, the Civil Aeronautics Board, the Secretary of the Treasury, or the Secretary of Agriculture or by operation of law."

"(c) The provisions of this Act shall not affect suits commenced prior to the date on which this section takes effect; and all such suits shall be continued by the successor agency, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation of the discharge of official duties, shall abate by reason of any transfer of authority, power, or duties from such agency or officer to the Administrator or the Board under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Administrator or the Board."

**Repeal of Inconsistent Laws.** Section 1401(c) of Pub.L. 85-720, provided that: "All other Acts or parts of Acts inconsistent with any provision of this Act [this chapter] are hereby repealed."

**Transfer of Functions.** All functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof, and all functions, powers, and duties of the Civil Aeronautics Board and of the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter were transferred to and vested in the Secretary of Transportation by Pub.L. 80-070, Oct. 15, 1960, 80 Stat. 931, which created the Department of Transportation. See sections 1055(c), (d) and 1057(f), (g), of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 85-720, see 1958 U.S. Code Cong. and Adm. News, p. 3741. See, also, Pub.L. 87-107, 1961 U.S. Code Cong. and Adm. News, p. 2503; Pub.L. 87-528, 1962 U.S. Code Cong. and Adm. News, p. 1844; Pub.L. 90-514, 1968

U.S. Code Cong. and Adm. News, p. 3501; Adm. News, p. 3090; Pub.L. 93-300, 1974 Pub.L. 91-140, 1970 U.S. Code Cong. and U.S. Code Cong. and Adm. News, p. 3975.

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## 1. Purpose

Purpose of this section providing that any person who causes or authorizes operation of aircraft shall be deemed to be engaged in operation of aircraft within meaning of this chapter was to subject classes of persons named equally with pilots to the rules, regulations and penalties provided in this chapter. *Rogers v. Ray Gardner Flying Service, Inc.*, C.A. Tex. 1970, 435 F.2d 1389, certiorari denied 91 S.Ct. 1255, 401 U.S. 1010, 28 L.Ed.2d 510.

Purpose of Air Commerce Act of 1920, former section 301 et seq. of this title, was to promote safety in aircraft flight by eliminating pilot fatigue resulting from aircraft duties. *U. S. v. Ozark Air Lines, Inc.*, D.C. Mo. 1974, 371 F.Supp. 231, affirmed 506 F.2d 520.

This section is not intended to replace legal relationships created by state common law or statute with respect to tort liability and does not require that negligence of pilot-lessee of aircraft be imputed to lessor and sublessor. *Rosdill v. Western Aviation, Inc.*, D.C. Colo. 1960, 207 F.Supp. 691.

Policy behind the chapter is primarily to centralize power in the public interest so as to frame rules for the safe and efficient use of the nation's aeronautics facilities, as well as to provide an agency endowed with the authority to supervise airline rates and services. *Trans World Airlines, Inc. v. Hughes*, Del.Ch. 1974, 317 A.2d 114.

## 2. State or local regulation and control

This section providing that any person who causes or authorizes operation of aircraft shall be deemed to be engaged in operation of aircraft within this chapter did not preempt Oklahoma ballment law that negligence of nonagent operator-lessee of airplane may not be imputed to owner-lessor and, as to deaths of passengers killed in crash of private airplane in Oklahoma, owner-lessors were not vicariously liable for negligence of the lessee pilot. *Rogers v. Ray Gardner Flying Service, Inc.*, C.A. Tex. 1970, 435 F.2d 1389, certiorari denied 91 S.Ct. 1255, 401 U.S. 1010, 28 L.Ed.2d 510.

The Texas Aeronautics Act, Vernon's Ann.Civ.St. art. 46c-1(a, d), does not conflict with federal law, and did not preclude application of this section defining operations of aircraft to an intrastate flight. *Sosa v. Young Flying Service, D. C. Tex. 1967, 277 F.Supp. 551.*

This chapter preempted field of interstate air transportation in regard to routes and points to be served by interstate carriers to exclusion of conflicting regulation by state, and State Railway Commission lacked authority to compel carrier licensed by Civil Aeronautics Board to continue operations over intrastate segment of route which Board had authorized to be discontinued. Application of Frontier Airlines, Inc., 1963, 122 N.W.2d 476, 175 Neb. 601.

Federal government has not preempted field of economic regulation of air carriers and the states have power to act so long as there is no conflict with federal law. *Texas Aeronautics Commission v. Braniff Airways, Inc.*, Tex. 1970, 451 S.W.2d 190, certiorari denied 91 S.Ct. 244, 400 U.S. 913, 27 L.Ed.2d 217.

## 3. Air carrier

Absence of allegation that parties, who allegedly engaged in selling air transportation through bogus affinity group membership certificates, were acting in concert with air carriers did not preclude determination that they acted as indirect air carriers. *C. A. B. v. Carefree Travel, Inc.*, C.A. N.Y. 1975, 513 F.2d 375.

"Social club" whose real business was selling tours and air transportation on chartered aircraft, was an "indirect air carrier" within meaning of par. (3) of this section and thus was required to have in force a certificate issued by the Board. *Monarch Travel Services, Inc. v. Associated Cultural Clubs, Inc.*, C.A.Cal. 1972, 400 F.2d 552, certiorari denied 93 S.Ct. 1444, 410 U.S. 907, 35 L.Ed.2d 701.

"Indirect air carrier" is one who holds out to public that it will undertake to transport property by air and enters into contracts with shippers wherein it binds itself to discharge such undertaking with respect to particular shipments. *Railway Exp. Agency, Inc. v. C. A. B.*, 1965, 345 F.2d 445, 120 U.S.App.D.C. 228, certiorari denied 80 S.Ct. 102, 382 U.S. 870, 15 L.Ed.2d 120.

Firm which assembled and shipped air freight was an "air freight forwarder" or "indirect air carrier". *Airborne Freight Corp. v. Civil Aeronautics Bd.*, 1059, 257 F.2d 210, 103 U.S.App.D.C. 206.

Defendant who owned, operated through his employees, maintained and offered services of airplanes to others who leased airplanes for exclusive use for passengers or cargo was a "carrier" of persons and property for hire within regulation providing that no person may engage in carriage of persons or property for hire in air commerce without, or in violation of commercial operator operating certificate. *U. S. v. Bradley*, D.C.Tex.1968, 252 F.Supp. 804.

A city which operated and managed a public airport through its commissioners, and a corporation which operated a restaurant and other facilities at the airport, were "air carriers," within this chapter. *U. S. v. City of Montgomery*, D.C.Ala.1962, 201 F.Supp. 590.

Airline which operated entirely within state of California and which was not engaged in air transportation involving interstate, overseas, or foreign air commerce or transportation of mail by aircraft, was not "air carrier" within meaning of former section 401(2) of this title. *In re Airlines Transport Carriers*, D.C. Cal.1955, 129 F.Supp. 670.

Airline to which Board had issued letter of registration and air carrier's operator certificate, and which carried passengers in interstate commerce, was "air carrier" within meaning of former section 401 of this title. *Id.*

#### 4. Air commerce

The phrase "in the conduct or furtherance of a business or vocation" appearing

in definition of "air commerce" in safety regulation provisions of this chapter had no application in construction of "air transportation" subject to economic regulation under this chapter and that resort hotel did not furnish air carriage in conduct or furtherance of business or vocation could not relieve it from economic regulation. *Las Vegas Hacienda, Inc. v. C. A. B.*, C.A.D. 1962, 298 F.2d 430, certiorari denied 82 S.Ct. 1158, 360 U.S. 885, 8 L.Ed.2d 280.

That resort hotel operator was not primarily in transportation business and that furnishing of air transportation to and from city in another state was only incidental to promotion and operation of resort hotel and that it was assertedly not interested in profiting and did not profit directly from transportation did not require Board to hold that such carriage was outside of economic regulation coverage of this chapter. *Id.*

Under former section 401 of this title "air commerce" applied to operation of aircraft in foreign countries only where such operation involved commerce with United States, and United States licensed airplanes privately owned by defendant and flown by copilot in foreign country and having no contact with commerce moving between United States and that country were not subject to safety regulations. *Hansen v. Arabian Am. Oil Co.*, D.C.N.Y.1951, 100 F.Supp. 183, affirmed 195 F.2d 682, certiorari denied 73 S.Ct. 31, 341 U.S. 828, 97 L.Ed. 645.

#### 5. Air transportation

A flight between San Francisco, California, and Los Angeles, California, was not within definition of "air transportation," as limited to "interstate air transportation" within this chapter. *Dover v. United Air Lines, Inc.*, C.A.Cal.1961, 329 F.2d 981.

"Free" flights included in package tours sold by hotel operator to all who wished to purchase them were no less common carriage because available only to members of public interested in patronizing such hotel, and such flights constituted "air transportation" as defined in this section and prohibited thereunder in absence of authorization from Board. *M & R Inv. Co. v. C. A. B.*, C.A.D. 1962, 308 F.2d 40.

Board's conclusion that individuals engaged in physical operation of flights conducted by hotel operator without Board authorization were themselves engaged in "air transportation" within meaning of this chapter was not supported by the record. *Id.*

Under certificate authorizing air carrier to engage in air transportation with respect to property between points enumerated therein including Philadelphia and that the holder could regularly serve a point named therein through any airport convenient thereto, proposed service to Philadelphia by truck through the Newark airport was adequate air service within the meaning of the certificate. *City of Philadelphia v. C. A. B.*, 1961, 280 F.2d 770, 110 U.S.App.D.C. 104.

Where certificate authorized air carrier to engage in air transportation for property between enumerated points including Philadelphia, order granting carrier authority to move Philadelphia freight by truck to and from the Newark airport where the transcontinental air journey began or ended was not invalid as not constituting "air transportation". *Id.*

Flower shipping cooperative, which was incorporated for purpose of consolidating shipments of members so they would receive a reduced shipping rate, was engaged indirectly in air transportation and Board did not abuse its discretion in requiring the cooperative to submit itself to the special limited regulations the Board had set up for air freight forwarders. *Consolidated Flower Shipments-Bay Area v. Civil Aeronautics Bd.*, C.A.D. 1954, 213 F.2d 814.

This chapter brings within its regulatory scheme all those who compete in the commercial market in the business of offering air transportation to the public generally. *U. S. v. Caribbean Ventures, Ltd.*, D.C.N.J.1974, 387 F.Supp. 1250.

"Air transportation", as used in former section 481(a) of this title prohibiting such transportation without a certificate from Board, means the carriage by aircraft in commerce of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft. *Pacific Northern Airlines v. Alaska Airlines*, 1948, 80 F.Supp. 592, 12 Alaska 65.

Since Honolulu International Airport is not point of destination of residents of another island homeward bound from elsewhere, interisland airline carrying such passengers is engaged in "air transportation" within this chapter, whether such passengers are pre ticketed or not. *Application of Island Airlines, Inc.*, 1963, 381 F.2d 530, 17 Haw. 1, 87.

#### 6. Common carrier

Record supported Board's conclusion that resort hotel operator selling package tours from city in another state, including "free" airplane rides on its craft, was

a "common carrier for compensation or hire" within economic regulation provisions of this chapter. *Las Vegas Hacienda, Inc. v. C. A. B.*, C.A.D. 1962, 298 F.2d 430, certiorari denied 82 S.Ct. 1158, 360 U.S. 885, 8 L.Ed.2d 280.

Whether an air carrier is a common carrier is determined by the same principles applicable in the cases of carriers by other means. *Arrow Aviation, Inc. v. Moore*, C.A.Neb.1959, 200 F.2d 188, 73 A.L.R.2d 337.

A carrier is a "common carrier" if it holds itself out to the public as willing to carry all passengers for hire indiscriminately, and holding out may either be by advertising or by actually engaging in the business of carriage for hire. *Id.*

Air carrier which operated planes for carriage of persons and property between Alaska and the United States, seeking and advertising for the traffic and carrying all offered to the limit of its capacity, for compensation, was, as to such operations a "common carrier". *Pacific Northern Airlines v. Alaska Airlines*, 1948, 80 F.Supp. 592, 12 Alaska 65.

While transportation under contract from the United States to Alaska of explosives and other property not generally or ordinarily carried by air and transportation of fresh fish from Alaska to the United States under contract were such as might in themselves be chosen as special services which air carriers are permitted to tender without regard to certificate, when considered in connection with predominant body of Alaskan air carrier's common carrier operations, they must be classified as common carriage. *Id.*

Corporation, which by advertising and later by conduct held itself out to public generally as a carrier of freight and passengers by air for hire, was a "common carrier" within subs. (10) and (21) of former section 401 of this title and required to obtain a certificate of public convenience and necessity, though corporation soon discontinued advertising, did not operate planes on schedule but under charter, usually on hourly rate basis, retaining, however, control of plane, and due to limited facilities served only a portion of public. *Alaska Air Transport v. Alaska Airplane Charter Co.*, D.C.Alaska 1947, 72 F.Supp. 909.

Aircraft common carrier may at times and for certain purposes become a private carrier or bailee for hire, when as matter of accommodation or special engagement he undertakes to carry something which is not his business to carry. *Executive Aviation, Inc. v. National Ins.*

Underwriters, 1071, 01 Cal.Rptr. 347, 10 C.A.3d 709.

#### 7. Conveyance

Under former section 401(18) of this title defining "conveyance" as meaning a bill of sale, contract of conditional sale, mortgage, assignment of mortgage or other instrument affecting title to, or interest in, property, the phrase "or other instrument affecting title to, or interest in, property" referred to transactions similar in nature to those enumerated and an attachment was not tantamount to a conveyance. *Marrs v. Barbeau*, 1957, 140 N.E.2d 353, 336 Mass. 410.

#### 8. Foreign air transportation

The provision of former section 401(21) of this title that common carrier by airplane between places in and outside United States might be deemed engaged in foreign air transportation for purpose of former section 401 et seq. of this title did not constitute a corporation operating aircraft between United States and contiguous foreign country a common carrier, but its status as such had to be determined outside such provisions or by applying principles of common law, in absence of statute. *Pan Am. Airways, Inc. v. U. S.*, Cust.Ct.1957, 150 F.Supp. 509.

#### 9. Interstate air commerce

Scheduled flights carrying persons or property between islands of Hawaii were in "interstate air commerce" through airspace over places outside state of Hawaii, within this chapter. *C. A. B. v. Island Airlines, Inc.*, D.C.Hawaii 1961, 235 F. Supp. 990, affirmed 352 F.2d 735.

#### 10. Interstate air transportation

The general principle of supremacy of federal control over interstate and high sea flights must prevail over the economic importance of interisland air transportation to Hawaii. *Island Airlines, Inc. v. C. A. B.*, C.A.Hawaii 1963, 352 F.2d 735.

The high seas over which interisland flights flew while traveling among the various islands of Hawaii, were a "place" within this section defining jurisdiction of the Board over interstate air transportation which defines interstate commerce as transportation between points in the same state over a foreign country or high seas as well as over another state. *Id.*

Where certificate authorized air carrier to engage in air transportation between Pacific Coast terminal point, various intermediate points and Portland, Maine,

and Philadelphia was an intermediate point enumerated in the certificate, carrier was authorized to engage in interstate air transportation of freight including movements between Philadelphia and the Pacific Coast as well as between Philadelphia and intermediate points. *City of Philadelphia v. C. A. B.*, 1961, 289 F.2d 770, 110 U.S.App.D.C. 101.

Where certificate authorized air carrier to engage in air transportation with respect to property between points enumerated therein including Philadelphia and that the carrier could regularly serve a point named therein through any airport convenient thereto and the Board authorized service to Philadelphia by truck through the Newark airport if that airport was convenient to Philadelphia, requirement of the certificate was met. *Id.*

Under former section 401 et seq. of this title, air express and air freight are not different classes of traffic requiring separate authority for each class from the Board, but were both included within the "property" authorization of former section 401(21) of this title. *Delta Air Lines, Inc. v. Civil Aeronautics Bd.*, C.A. 5, 1957, 247 F.2d 327.

"Place", within par. (21) (a) of this section defining interstate air transportation as flight between a place in United States and place in any other state or through airspace over any place outside thereof, refers to definite locality or specific area within definite physical limits, and, with respect to interisland transportation, refers to place which itself has boundaries, not international waters outside boundaries of any place. Application of *Island Airlines, Inc.*, 1963, 381 P.2d 530, 47 Haw. 1, 87.

Par. (21)(a) of this section, extending federal jurisdiction to commerce between places in same territory was continued in force in Hawaii during the two-year transitional period which had not expired or been terminated. In re *Island Airlines, Inc.*, 1961, 301 P.2d 390, 41 Haw. 631, rehearing denied 301 P.2d 390, 41 Haw. 683.

"Through the airspace over any place outside thereof", within par. (21) (a) of this section defining interstate transportation as flights between places in same state through airspace over any place outside thereof, denotes passage through airspace over another state or country having jurisdiction of airspace, not merely passage through airspace outside state without encountering sovereignty of any other state or country. *Id.*

Jurisdiction of Board over air commerce between places in State of Hawaii

continued for two-year transitional period unless assumption of state responsibility was advanced by state enactment. *Id.*

#### 11. Operation of aircraft

Congress, in enacting provisions of this chapter including rental or leasing of airplanes within definition of "operation of aircraft" and making it illegal for any person to operate aircraft in careless or reckless manner so as to endanger life or property of another, merely intended to subject owners equally with pilot to rules, regulations, and penalties provided in this chapter, and not to make them civilly responsible for pilot lessee negligence. *Sanz v. Renton Aviation, Inc.*, C.A.Wash.1975, 511 F.2d 1027.

Even though lease provided that construction company-lessee would take over operation of helicopter, which was licensed in restricted category, rather than standard category, and was therefore not authorized under Federal Aviation Administration regulations to operate for "compensation or hire," in view of fact that pilot had been chief pilot of certified helicopter operating company, and in view of fact that that company's president controlled that company and helicopter leasing company, and, indirectly, had substantial control over the record owner of helicopter, the lessor "operated" the aircraft within meaning of par. (28) of this section. *Airerane, Inc. v. Butterfield*, D.C.Pa.1971, 300 F.Supp. 598.

This section providing that any person who authorizes operation of an aircraft in capacity of owner or otherwise shall be deemed to be engaged in operation of the aircraft was applicable to flight which resulted in death of lessee-pilot and his passengers, and constituted a basis for imputing negligence of pilot to owner, even though the fatal flight was entirely intrastate. *Soan v. Young Flying Service*, D.C.Tex.1967, 277 F.Supp. 551.

Provision of this section stating that any person authorized in the operation of aircraft is deemed to be engaged in operating it within meaning of this chapter did not create for widow of deceased passenger a civil remedy against owner of aircraft based upon imputed negligence of pilot operating plane with owner's consent. *Nachin v. De La Bretagne*, 1971, 95 Cal.Rptr. 227, 17 C.A.3d 637.

Intrastate operations of aircraft on a civil airway or which directly affect or endanger the safety of interstate, overseas, or foreign air commerce, are subject

to the provisions of this chapter. 1011, 10 Op.Atty.Gen. 95.

#### 12. Navigable airspace

Traversing airspace above another's land is not alone a trespass, and is lawful unless done under circumstances which cause injury. *Pueblo of Sandia ex rel. Chavez v. Smith*, C.A.N.M.1971, 497 F.2d 1013.

Airspace above land acquired by municipality in adjacent town at end of runway was within meaning of "clear zone" as defined in federal regulation and, as part of the navigable airspace, was subject to federal regulation and orders of state court purporting to regulate flight of aircraft in the clear zone infringing an federal regulation of navigable airspace. *U. S. v. City of New Haven*, C.A.Conn.1974, 490 F.2d 452, appeal dismissed, certiorari denied 95 S.Ct. 218, 410 U.S. 658, 12 L.Ed.2d 171.

Neither par. (20) of this section nor section 101 of this title would support action by passengers who were injured in airplane crash and who sought to impute negligence of lessee pilot to the owners- lessors of the airplane. *McCord v. Dixie Aviation Corp.*, C.A.Utah 1971, 450 F.2d 1129.

Land near airport in sparsely settled community in Mojave Desert was not in a congested area for purposes of regulation fixing navigable airspace as commencing at 500 feet over uncongested and 1,000 feet over congested areas. *Aaron v. U. S.*, Ct.Cl.1963, 311 F.2d 708, 100 Ct.Cl. 205.

Congress has declared a public freedom of transit through the navigable airspace, and has defined "navigable airspace" to include airspace needed to insure safety in takeoff and landing. *Aaron v. City of Los Angeles*, 1971, 115 Cal.Rptr. 162, 10 C.A.3d 471.

"Navigable airspace" means airspace above minimum altitudes of flight prescribed by applicable regulations, including airspace need to insure safety in takeoff and landing of aircraft. *Johnson v. Airport Authority of City of Omaha*, 1962, 115 N.W.2d 420, 173 Neb. 801.

Superadjacent airspace between 250 feet and 500 feet above property lying near to runway of aviation authority's airport was not within "navigable airspace" which Congress has placed in the public domain and owners of the property did not have to establish a private property right in such airspace to recover from authority compensation for damages sus-

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### Note 12

tained by owners because of landings and takeoffs of jet aircraft. *Hillsborough County Aviation Authority v. Benitez*, Fla.App.1967, 200 So.2d 194.

Provision of this section defining navigable airspace as menning airspace above minimum altitudes of flight prescribed by regulations and as including airspace needed to insure safety in takeoff and landing of aircraft did not give carte blanche authority to municipalities to appropriate whatever airspace they desired to insure safety in takeoff and landing. *Jackson Municipal Airport Authority v. Evans*, Miss.1966, 191 So.2d 126.

### 13. Public aircraft

Where defendant operated its specially developed aircraft pursuant to its contract with National Aeronautics and Space Administration and made three flights transporting spacecraft components, aircraft was a "public aircraft" within meaning of that term as used in par. (32) of this section and regulations issued under section 1421(c) of this title and exempting from regulatory control and from rules and regulations relating to civil aircraft any aircraft used exclusively in service of government, and defendant was not required to obtain a commercial operator's certificate, and was not subject to civil penalties for engaging in air commerce using aircraft of more than 12,500 pounds maximum certified takeoff weight. *U. S. v. Aero Spacelines, Inc.*, C.A.Cal.1966, 361 F.2d 916.

### 14. Supplemental air carrier

The Board rule authorizing supplemental air carriers to operate foreign origi-

nating travel group charters maintained substantial and vital differences between such service and conventional service available to individual traveler. *Pan Am. World Airways, Inc. v. C. A. B.*, C. A.2, 1974, 517 F.2d 734.

Board's decision that stockholders of parent corporation of supplemental air carrier were not eligible for charter service was not so clearly arbitrary as to warrant court's intervention. *Trans Intern. Airlines, Inc. v. C. A. B.*, 1970, 432 F.2d 607, 130 U.S.App.D.C. 174.

Board's determination that stockholders of parent corporation of supplemental air carrier were not eligible for charter service by carrier was within scope of power of agency to interpret regulations within framework of adjudicatory proceeding. 1d.

### 15. Supplemental air transportation

The authorization within this section of supplemental air transportation does not prohibit charters from being solicited, directly or indirectly, from general public. *Pan Am. World Airways, Inc. v. C. A. B.*, C.A.2, 1975, 517 F.2d 734.

### 16. Vessel

In view of provisions of former section 177 of this title, and former section 401 et seq. of this title, a "seaplane" is not a "vessel" within meaning of section 3 of Title 1, defining vessel as including water craft or other artificial contrivance used or capable of being used as a means of transportation on water. *U. S. v. Peoples*, D.C.Cal.1943, 50 F.Supp. 402.

## § 1302. Consideration of matters in public interest by Board

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the United States Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

# TITLE 49

## TRANSPORTATION

### CHAPTER 20—FEDERAL AVIATION PROGRAM

#### SUBCHAPTER III—ORGANIZATION OF ADMINISTRATION; POWERS AND DUTIES OF ADMINISTRATOR

- Sec. 1340a. Civil aviation information distribution program [New].
- 1350a. Security measures in foreign air transportation [New].
- (a) Compensation of air carriers.
- (b) Definitions applicable.
- (c) Authorization of appropriations.

Sec. 1358. Airport security in Alaska; exemptions from requirements [New].

#### SUBCHAPTER IV—AIR CARRIER ECONOMIC REGULATION

1388. Certificate for all-cargo air service [New].
- (a) Application.
- (b) Issuance and revocation of certificate.
- (c) Exemptions.
- (d) Air carrier status.

### SUBCHAPTER I—GENERAL PROVISIONS

#### § 1301. Definitions

As used in this chapter, unless the context otherwise requires—

*{See main volume for text of (1) to (10)}*

#### (11) "All-cargo air service" means—

(A) the carriage by aircraft of only (i) property as a common carrier for compensation or hire, or (ii) mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same territory or possession of the United States, or the District of Columbia;

(B) the carriage by aircraft of only (i) property as a common carrier for compensation or hire, or (ii) mail, or both, in commerce between a place in any State of the United States or the District of Columbia and any place in the Commonwealth of Puerto Rico or the Virgin Islands or between a place in the Commonwealth of Puerto Rico and a place in the Virgin Islands;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(12) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanism installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(13) "Board" means the Civil Aeronautics Board.

(14) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

Cite this Pocket Part by Title Number  
and Section Thus: — U.S.C.A. § —

(15) "Civil aircraft" means any aircraft other than a public aircraft.

(16) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.

(17) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(18) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(19) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.

(20) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(21) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(22) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the

United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(23) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.

(24) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbo-jet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

(25) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(26) "Mail" means United States mail and foreign-transit mail.

(27) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(28) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this chapter.

(30) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(31) "Propeller" includes all parts, appurtenances, and accessories thereof.

(32) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this chapter to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(33) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(34) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(35) The term "special aircraft jurisdiction of the United States" includes—

- (a) civil aircraft of the United States;
- (b) aircraft of the national defense forces of the United States;
- (c) any other aircraft within the United States;

(d) any other aircraft outside the United States—

(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States; while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(36) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(37) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d)(3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d)(1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

(38) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(39) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

As amended Pub.L. 95-163, § 17(b), Nov. 9, 1977, 91 Stat. 1286.

1977 Amendment, Par. (11), Pub.L. 95-163, § 17(b)(2), added par. (11). Former par. (11) was renumbered (12). Par. (12)-(30). Pub.L. 95-163, § 17(b)(1), renumbered former par. (11) to (38) as (12) to (30), respectively. Legislative History. For legislative history and purpose of Pub.L. 95-163, see 1977 U.S. Code Cong. and Adm. News, p. 5175.

### Supplementary Index to Notes

#### Aircraft in Charter 17

##### 1. Purpose

By enactment of this chapter, Congress intended to impose duty on Federal Aviation Administration to promote maximum safety in use of nation's air space. *Clemente v. U. S.*, D.C. Puerto Rico 1970, 422 F.Supp. 301, motion denied 426 F.Supp. 1.

2. State or local regulation and control  
To extent that state law conflicts with any part of this chapter it is preempted by this chapter under Congress' power to

regulate interstate commerce. *Fedman v. Philadelphia Nat. Bank*, D.C. Pa. 1970, 408 F.Supp. 24.

Where state's law, as reflected by Uniform Commercial Code, did not conflict with this chapter, it was applicable to transactions involving aircraft. *Id.*

Recording provisions of this section do not remove transactions involving aircraft entirely from effect of state law. *Id.*

Despite comprehensive effect of federal regulation on air commerce, states and localities retain power to regulate ground activities not directly involving actual aircraft operation. *Garden State Farms, Inc. v. Hay*, 1975, 343 A.2d 832, 130 N.J. Super. 1, reversed on other grounds 370 A.2d 37, 146 N.J. Super. 438.

##### 1a. Aircraft

Alleged failure of the Administrator of Federal Aviation Administration to determine that hang gliders were "aircraft" within meaning of this section was discretionary function so that suit thereon under Tort Claims Act, sections 1310(b) and 2671 et seq. of Title 28, was barred. *Pleider v. U. S.*, D.C. Cal. 1970, 423 F.Supp. 77.

8. Foreign air transportation  
States and municipalities are without authority to regulate any operation or

navigation of aircraft within limits of any federal airway or any operation or navigation of aircraft which directly affects interstate, overseas or foreign air commerce. *Garden State Farms, Inc. v. Hay*, 1975, 343 A.2d 832, 130 N.J. Super. 1, reversed on other grounds 370 A.2d 37, 146 N.J. Super. 438.

17. Charter  
Congress intended the word "charter" to be flexible term which Board is free to define in accordance with experience and changing circumstances so long as integrity of scheduled service traffic is not violated. *Trans World Airlines, Inc. v. C. A. B.*, C.A.2, 1978, 645 F.2d 771.

### § 1802. Consideration of matters in public interest by Board

#### General factors for consideration

(a) In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the United States Postal Service, and of the national defense;

(2) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(3) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(4) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the United States Postal Service, and of the national defense;

(5) The promotion of safety in air commerce; and

(6) The promotion, encouragement, and development of civil aeronautics.

#### Factors for all-cargo air service

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board, in the exercise and performance of its powers and duties under this chapter with respect to all-cargo air service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences or advantages, unfair or deceptive practices, or predatory pricing.

As amended Pub.L. 95-163, § 16(b), Nov. 9, 1977, 91 Stat. 1284.

1977 Amendment, Pub.L. 95-163 redesignated existing undesignated provisions as subsec. (a) and existing cls. (a) to (f) thereof as cls. (1) to (6), and added subsec. (b).

Legislative History. For legislative history and purpose of Pub.L. 95-163, see 1977 U.S. Code Cong. and Adm. News, p. 5175.

### Supplementary Index to Notes

#### Promotion of competition 13

##### 2. Purpose

Since central objective of this section is to promote regulated competition in air

1. Sovereignty of federal government  
Doctrine of federal preemption of aviation law does not generally extend to

REPRINT OF

Title 3

COMMERCE

Part 6. Alaska Transportation Commission  
Chapter 60. Practice and Procedure  
(3 AAC 60.010 – 3 AAC 60.630)

ALASKA ADMINISTRATIVE CODE

September, 1973

PART 6. ALASKA TRANSPORTATION  
COMMISSION

## Chapter

- 60. Practice and Procedure
- 64. Motor Freight Carriers
- 66. Carriers by Bus
- 68. Air Commerce
- 70. Carriers by Ferry  
(no regulations filed)
- 76. Uniform Systems of Accounts  
and Reports

CHAPTER 60. PRACTICE AND  
PROCEDURE

## Article

- 1. Practice Before the Commission
- 2. Pleadings
- 3. Hearings
- 4. Special Procedures of Commission
- 5. General Information

ARTICLE 1. PRACTICE BEFORE  
THE COMMISSION

## Section

- 10. Ethical conduct
- 20. Former employees
- 30. Joint hearings with federal  
regulatory agencies

**3 AAC 60.010. ETHICAL CONDUCT. (a)**  
These canons are in furtherance of the purpose of the commission's rules of practice which enjoin upon all persons appearing in proceedings before it to conform, as nearly as may be, to the standards of ethical conduct required of practitioners before the courts of the state of Alaska, and such standards are taken as the basis for these specifications, modified insofar as the nature of the practice before the commission requires.

(b) It is the duty of the practitioner to maintain towards the commission a respectful attitude, not for the sake of the temporary incumbent of the office, but for the maintenance of the importance of the functions he administers. In many respects the commission functions as a court, and practitioners should regard themselves as officers of that court and strive to uphold its honor and dignity. The commission, not being wholly free to defend

itself, is peculiarly entitled to receive the support of the practitioner against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a member or employee of the commission, it is the right and duty of the practitioner to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

(c) It is the duty of the practitioner not only to his client, but also to the commission and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

(d) It is unethical for a practitioner to attempt to sway the judgment of the commission by propaganda, or by enlisting the influence of intercession of members of the legislature or other public officers, or by threats of political or personal reprisal.

(e) Marked attention and unusual hospitality on the part of a practitioner to a commissioner, examiner, or other representative of the commission, uncalled for and unwarranted by the personal relations of the parties, subject both to misconstruction of motive and should be avoided. A self-respecting independence in the discharge of duty, without denial or diminution of the courtesy and respect due the official station is the only proper foundation for cordial personal and official relations between commission and practitioners.

(f) The selection of commissioners is a duty of the Governor with confirmation by the legislature. It is the duty of the practitioners insofar as they attempt to advise the appointing or confirming officers, to endeavor to prevent any consideration from outweighing fitness in the selection.

(g) No client, corporate or individual, however powerful, no cause, civil or political, however important, is entitled to receive, and no practitioner should render any service of advice involving disloyalty to the law or disrespect of its official ministers, or corruption of any person or persons exercising a public office or employment or private trust, or deception or betrayal of the public. In rendering any such

improper service or advice the practitioner invites and merits stern and just condemnation. Correspondingly, he advances the honor of his calling and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, although interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, he will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

(h) In the disposition of contested proceedings the commission exercises quasi-legislative powers, but it is nevertheless acting in a quasi-judicial capacity. It is required to administer the Act and to consider at all times the public interest beyond the mere interest of the particular litigants before it. To the extent that it acts in a quasi-judicial capacity, it is grossly improper for litigants, directly or through any counsel or representative, to communicate privately with a commissioner, examiner, or other representative of the commission about a pending cause, or to argue privately the merits thereof in the absence of their adversaries or without notice to them. Practitioners at all times should scrupulously refrain in their communications to and discussions with the commission and its staff from going beyond *ex parte* representations that are clearly proper in view of the administrative work of the commission.

(i) It is the duty of a practitioner at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in connection with the controversy, which might influence the client in the selection of the person to represent or assist him.

(j) It is unethical to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon a practitioner represents conflicting interest when, in behalf of one client, it is his duty to contend

for that which duty to another client requires him to oppose.

(k) The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

(l) A client's proffer of the assistance of additional practitioner should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A practitioner should decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come to the case.

(m) When practitioners jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

(n) Efforts, direct or indirect, in any way to encroach upon the business of another practitioner are unworthy of those who should be brethren, but, nevertheless, it is the right of any practitioner, without fear or favor, to give proper advice to those seeking relief against an unfaithful or neglectful practitioner, generally after communication with the practitioner of whom the complaint is made.

(o) A practitioner should not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party; much less should he undertake to negotiate or compromise the matter with him, but should deal only with the practitioner who represents the other party. It is incumbent upon the practitioner most particularly to avoid everything that may tend to mislead a party not represented by a

practitioner, and he should not undertake to advise him as to the law.

(p) A practitioner should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the practitioner's conscience in such matters. He has no right to demand that the practitioner representing him shall abuse the opposing party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

(q) Attempts to influence the action and attitude of the members and examiners of the commission through propaganda, or through colored or distorted articles, in the public press, are more apt to react against than in favor of the parties resorting to such measures. On the other hand, it is not against the public interest or unfair to the commission that the facts of pending litigation shall be made known to the public through the press in a fair and unbiased manner and in dispassionate terms. Practitioners should, themselves, avoid, and should counsel their clients against, giving to the public press any press notices or statements of a nature intended to inflame the public mind, to stir up possible hostility toward the commission, or to influence the commission's course and judgment as to pending or anticipated litigation. When the circumstances of a particular case appear to justify a statement to the public through the press, it is to make it anonymously.

(r) The practitioner must decline to conduct a cause or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. But otherwise it is his right, and having accepted retainer, it becomes his duty, to insist upon the judgment of the commission as to the merits of his client's claim. His appearance should be deemed equivalent to an assertion upon his honor that in his opinion his client's case is one proper for determination.

(s) When a practitioner discovers that some fraud or deception has been practiced, which has unjustly imposed upon the commission or a party, he should endeavor to rectify it; first by

advising his client to forego any advantage thus unjustly gained and, if his client refuses, by promptly informing the injured person or his counsel (practitioner), so that appropriate steps may be taken.

(t) If any such person does not conform to such standards, the commission may decline to permit such person to appear in a representative capacity in any proceeding. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.141

**3 AAC 60.020. FORMER EMPLOYEES.** (a) No former employee of the commission may at any time after severing his employment with the commission appear in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the commission unless written permission by the commission is granted therefor.

(b) No former employee of the commission shall at any time after severing his employment with the commission appear, except with the written permission of the commission, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.141

**3 AAC 60.030. JOINT HEARINGS WITH FEDERAL REGULATORY AGENCIES.** In any proceeding wherein the commission participates jointly with the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Maritime Commission, or other federal regulatory agency, the rules of practice and procedure of such federal agency shall govern. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.141

**ARTICLE 2. PLEADINGS**

**Section**

- 40. Pleadings enumerated
- 50. Applications - contents
- 60. Formal complaints - contents
- 70. Petitions - contents
- 80. Answers
- 90. Replies

- 100. Intervention
- 110. Motions
- 120. Time for pleadings
- 130. Amended pleadings
- 140. Form and size
- 150. Filing, copies required
- 160. Service of pleadings and motions

**3 AAC 60.040. PLEADINGS ENUMERATED.** (a) Pleadings shall consist of applications, formal complaints, petitions, answers, replies, and motions.

(b) All pleadings except applications shall conform to and comply with secs. 40-160 of this chapter and shall have at the top of the page, *State of Alaska, Alaska Transportation Commission*, title of the case, title of the pleading and docket number, if any, as follows:

**STATE OF ALASKA**

**ALASKA TRANSPORTATION  
COMMISSION**

In the Matter of the	)	
Application of	)	
	)	
John D. Doe, d/b/a Doe's	)	Docket No. _____
Flying Service, for an	)	
Air Commerce	)	<b>TITLE OF</b>
Certificate	)	<b>PLEADING</b>
_____	)	

(Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.050. APPLICATIONS - CONTENTS.** (a) An application is a pleading which applies or prays for any right, power, privilege, or other authority under a statute or regulation requiring the filing of an application.

(b) Applications may be made at any time on a form provided by the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.060. FORMAL COMPLAINTS - CONTENTS.** (a) Complaints shall set forth the full name and address of each party complainant and of each party defendant.

(b) Complaints shall fully and clearly set forth concisely the specific act complained of, or the alleged grievance, so as to advise the parties and the commission completely of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief requested.

(c) Complaints shall set forth a citation of the statutes or rules and regulations alleged to have been violated. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.070. PETITIONS – CONTENTS.** (a) A petition is any other pleading praying for affirmative relief other than complaints, answers, replies, applications, or motions and shall include requests for leave to intervene.

(b) A petition shall set forth all facts upon which the request for relief is based, with the dates of all occurrences which may be essential for the disposition of the matter, together with a citation of the statute and rules and regulations upon which the petition is based, and such other information as required by the commission's rules and regulations under which the specific type of petition is filed.

(c) In the case of petitions, the commission may require notice be given to interested parties and order a hearing. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.080. ANSWERS.** (a) Any party against whom a complaint is directed or who desires to contest or make any representations in connection with an application or petition shall file with the commission an answer thereto within the time required by sec. 120 of this chapter.

(b) Answers shall be so drawn as to advise fully and completely the nature of the defense, contention, or representation, and shall admit or deny specifically and in detail all material allegations of the complaint or a protest to a tariff change as provided in sec. 190 of this chapter.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered. Any defense which challenges the jurisdiction of the commission over the subject matter of the

proceeding shall be pleaded as an affirmative defense. Any defense based upon the existence of operating authority shall affirmatively allege such authority.

(d) In case a party fails to answer within the time specified in sec. 120 of this chapter, he shall be deemed in default, and all material allegations of the complaint, application, or petition may be deemed admitted and any further hearing waived. Thereafter, the proceeding may be disposed of without further notice to the defaulting party and without formal proceeding as to such party.

(e) The commission may, upon such terms as may be just, at any time after mailing of an order entered upon a default, relieve the party affected thereby where it appears the order was entered through mistake, inadvertence, surprise, or excusable neglect of such party. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.090. REPLIES.** A party desiring to reply to an answer shall file the same with the commission within the time set forth in sec. 120 of this chapter. Failure to file a reply within said time shall be deemed a general denial. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.100. INTERVENTION.** (a) Any person may petition the commission for permission to intervene in any proceeding in writing prior to the time of the hearing except as provided in (c) of this section. Any person can petition the hearing officer for permission to intervene orally or in writing at the time of the hearing. Such petition shall contain the following:

(1) the name and address of the party intervening and of his attorney, if any;

(2) the interest of such party in the proceeding; and

(3) the position of such party in the proceeding, including the name of the party in whose behalf such intervention is requested.

(b) Intervention shall not broaden the issues in the proceeding and may be allowed at the

discretion of the hearing officer at the hearing or the commission prior to the hearing.

(c) Intervention in any application proceeding shall be within the time specified in the notice of application as published in a newspaper of general circulation. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.110. MOTIONS.** Service of any motion, unless specified in these rules, shall be made on all other parties to the proceedings and the original and one copy shall be served on the commission and if the case has been given to the hearing officer, two copies thereof shall be given to the hearing officer. The commission or the hearing officer shall decide the motion with or without hearing. If the case is before the hearing officer, he will decide the motion and if the case is before the commission, the commission will decide the motion. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.120. TIME FOR PLEADINGS.** (a) A motion directed to a complaint must be filed before the answer is due; provided, however, a motion directed towards the legal sufficiency of a complaint to state a cause for relief may be made at any time.

(b) A motion directed to an answer must be filed before the reply is due; provided, however, that a motion directed to the legal sufficiency of any answer to state a cause of defense may be made at any time.

(c) A motion directed to a reply or to the legal sufficiency of a reply must be filed within 10 days after service of the reply.

(d) Answer, if made, must be filed within 20 days.

(e) Reply, if made, must be filed within 10 days after the service of the pleading against which it is directed.

(f) A motion directed to the legal sufficiency of an application or petition may be made at any time.

(g) Unless otherwise specified by these regulations, any reply to a motion shall be

served within 10 days of the date of serving of the original motion.

(h) The commission may shorten or extend the time required to file any pleading on its own motion or on the motion of a party stating the reasons for the requested extension. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.130. AMENDED PLEADINGS.** Amendments to pleadings may be allowed at any time and upon such terms as may be deemed proper in the discretion of the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.140. FORM AND SIZE** (a) Pleadings shall be fastened at the top, shall be typewritten on paper 8½ x 11 to 14 inches in size, and exhibits or appendices, annexed thereto, folded to that size. The impression shall be on one side of the paper only and shall be double spaced, except that footnotes or quotations shall be single spaced and indented.

(b) Reproduction of original document may be by any process, provided all copies are clear and permanently legible. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.150. FILING, COPIES REQUIRED.** (a) Upon the filing of an original complaint or amendment thereof, there must also be filed conformed copies equal in number to two more than the number of defendants named in the complaint.

(b) Published application and petition forms will be furnished upon request, and the original and one conformed copy shall be filed with the commission.

(c) Unless otherwise expressly provided in the rules and regulations governing a particular proceeding, an original and two conformed copies of all other pleadings shall be filed with the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.160. SERVICE OF PLEADINGS AND MOTIONS.** (a) Service by commission: all complaints and final orders will be served by the commission. Service may be made by registered

United States mail, postage prepaid, addressed to recipient as his address appears in the records of the commission, or his agent of process. Service shall be deemed complete when said document is so deposited in the United States mail or hand delivered by an agent of the commission.

(b) Service by parties.

(1) all other pleadings shall be served by the pleader upon each other party to the proceeding or his attorney of record;

(2) service of pleadings by parties shall be made by delivering one copy to each party in person or by first-class mail, properly addressed with postage prepaid;

(3) when a party has appeared by attorney, service upon such attorney of pleadings and all decisions and order of the commission in the proceeding, will be deemed valid service upon the party;

(4) how service is made: whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the commission; service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the commission; delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is not one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; service by mail is complete upon mailing; service, execution, and return based on a copy of any paper transmitted by telegraph or radio may be made by the person to whom directed with the same effect as if such copy were the original; in such case, the original shall be filed with the commission;

(5) service by mail: whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or

other paper upon him and the notice or paper is served upon him by mail, five days shall be added to the prescribed period except in time periods prescribed for tariff change proceedings; and

(6) there shall appear on the original of every pleading either an acknowledgement of service or certificate in substantially the following form:

I hereby certify that I have this day served a true copy of the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed with postage prepaid, to the following parties or attorneys of parties:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_,

19\_\_\_\_.

(Signature) \_\_\_\_\_

Of Counsel for \_\_\_\_\_

Where the method of service is other than by mail, there must be attached a certification by the person who made the service stating the method of service, upon whom service was made, the time, date, and place. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

ARTICLE 3. HEARINGS

Section

- 170. Hearings
- 180. Notice
- 190. Protests
- 200. Postponement of hearings
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- 220. Consolidation of proceedings
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- 340. Records in other proceedings
- 350. Form of decision
- 360. Briefs
- 370. Oral arguments
- 380. Effective date
- 390. Reconsideration
- 400. Petition for reduction of penalty

**3 AAC 60.170. HEARINGS.** (a) Hearings may be ordered by the commission for applications, clarification of authority, transfers, investigations, tariff suspension, or other just cause not herein specified.

(b) The commission shall order the place of hearing at a place most convenient to all parties.

(c) All hearings shall be conducted by a hearing officer appointed by the commission. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.180. NOTICE.** (a) The time and place of holding formal hearings will be set by the commission and notice served on all parties or their representative at least 30 days prior to the date of said hearing, by depositing said notice in the United States mail, postage prepaid, addressed to recipient as his address appears in the records of the commission. The commission may by order or in the notice of hearing require a hearing to be held on less than 30 days' notice.

(b) The commission shall compile a journal of all applications, petitions, complaints and other proceedings to be published regularly not less frequently than once a month. Notice to all carriers and the general public shall be accomplished by publication of the journal. Official notice is completed upon publication in the journal. Upon payment of the charge therefor, any person may subscribe to the journal which shall be mailed first class to his designated address. Copies of the journal shall be maintained for public inspection at the offices

of the commission in Anchorage, Fairbanks and Juneau. (Eff. Reg. 31; am 10/4/73, Reg. 47)

Authority: AS 42.07.141

**3 AAC 60.190. PROTESTS** (a) Any protests to an application shall state the specific grounds for the protest on one or more of the following grounds:

- (1) financial ability of the applicant;
- (2) deficiency in experience or inability of applicant to perform the service;
- (3) lack of necessity for proposed service; or
- (4) proposed service would be detrimental to the public interest.

(b) Anyone filing a protest shall indicate therein whether or not they will be present at the hearing by stating

"I hereby certify that I will/will not appear at the hearing and will/will not participate fully in any and all proceedings concerning this application."

(c) Any protest to a tariff change shall be filed at least 15 days prior to the effective date of the tariff change. Protests shall state the specific grounds for the protest and identify the specific tariff and portion thereof. Motions for the suspension of tariffs shall be filed in accordance with sec. 410 of this chapter. The commission shall file all protests with the originator of the tariff change. Answers to protests shall be filed with the commission at least five days prior to the effective date of the tariff change. The commission may order a formal hearing to consider the tariff change.

(d) Protests shall be postmarked not later than 15 days from the last day of publication. (Eff. 12/28/69, Reg. 31)

Authority: AS 42.07.150

**3 AAC 60.200. POSTPONEMENT OF HEARINGS.** (a) Any party who desires a postponement shall, immediately upon receipt of notice of the hearing or as soon thereafter as facts requiring such postponement come to his knowledge, notify the hearing officer in writing at least 10 days before the date of the hearing.