

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 0072

2626 SLC SB 184 (FILE 1) - (FILE 3)

2020

To burden the five APUC Commissioners with the additional work load that is generated by transportation could seriously impact their ability to perform. During calendar year 1982, the ATC had 667 dockets filed, issued 803 orders, and conducted oral hearings on 132 dockets. Merging the two Commissions will not alter the work load as it is generated by the regulated industries, the statutes and the procedures. In addition, the ATC Commissioners are active in the essential air service program currently before the Civil Aeronautics Board, the granting of federal authorities to air carriers wishing to operate in Alaska, and a major joint board hearing with the Interstate Commerce Commission. All of these activities require a great deal of time in reviewing written submissions, as well as making the "decisions."

There appears to be no real reason to combine the two Commissions other than the fact that most other States have a single regulatory Commission. The recommendation does not make an effort to compare the regulatory needs, functions, or circumstances of Alaska to other States. For example, the report fails to recognize that only six other States regulate air commerce and then generally only scheduled service. The Alaskan trucking industry's unique situation of not being able to compete in interstate commerce is ignored. The Alaskan truckers are severely limited from competing across State boundaries since the expense of crossing Canada makes a multi-state operation impractical.

The merger would accomplish very little to streamline the responsibilities of the agencies and the level of regulation would remain the same. Further, very little, if any, cost savings would be made. The individual regulatory staff personnel would continue to function as they currently do to carry out their respective responsibilities.

Historically, the functions of the ATC and APUC were once performed by a single agency, the Alaska Public Service Commission. The Legislature in 1966 divided the Alaska Public Service Commission and created the Alaska Transportation Commission to administer the motor and air acts. The primary reason for the division was that the single agency had not been able to adequately serve the regulated industries. There is no indication that the problem that confronted the single agency in the 1960's would not again develop in the 1980's and cause a similar problem.

ATTACHMENT B

PLANS TO REMEDY PROBLEMS DISCLOSED IN AUDIT

As indicated in the response to the Legislative Audit, the Commission does not agree with the stated audit conclusions, nor did it agree that the problems discussed in the recommendations were as serious as indicated.

The Commission admitted in its response and still admits that improvements can be made in its operations. As will be indicated, efforts have already been made to improve the level of service to both the public and the regulated industries. It is still our contention that none of the recommendations are serious enough to justify the conclusion that the agency is failing in its responsibilities.

The specific actions that either have been taken to improve our operation or our plans to remedy the problem areas are as follows:

Recommendation 1

The Alaska Transportation Commission should become a section with the Alaska Public Utilities Commission (APUC).

The response to this recommendation is presented in the first part of this report.

Recommendation 2

Temporary authority should be granted in accordance with statutes.

We do not agree that temporary authorities are being granted without considering the statutes.

While in the past some temporary authorities were granted in what appears to have been an expedited manner, this is no longer the case. Temporary authorities are still being granted, and in a few special cases have been granted before publication in the Journal. The use of the telegram has generally been discontinued and is now only used in special circumstances. In all cases now, an order is written before the temporary is granted.

As a general rule temporaries are not being granted until after the publishing period, and in many cases are not being granted at all. Further, the revised procedural regulations that were effective May 28, 1982, places more responsibility on the applicant to justify the request for a temporary exemption.

The Commission is still of the opinion that the statutes provide enough latitude to allow for the issuance of temporary exemptions. Quite frankly, to limit the issuance of temporary exemptions within the narrow parameters suggested in Recommendation 2 would be more of a disservice to both the industry and the public than the granting of such permissions. At no point in time does the issuance of a temporary exemption deny any party their right of due process before the Commission. On the other hand, the denial can cause hardship on the applicant and the public.

In fact, in retrospect it is our opinion that the audit has taken the narrowest possible view of the temporary exemption process and instead of analyzing why the temporary exemption was issued on a case by case basis, has simply lumped them all together to insinuate the Commission is failing in its responsibilities. The audit completely fails to recognize AS 42.07.121 which grants the Commission considerable latitude in administering both AS 02.05 and AS 42.10.

The procedures for handling all dockets have been changed somewhat since the period covered by the audit. There has been an effort to cut processing time, and issuance of permanent authorities for unprotested applicants in 1982 averaged three months. The procedures for handling temporary applications have also changed in that telegrams are seldom used, only rarely is a temporary considered at any time other than the weekly agenda meeting; a staff recommendation is normally solicited as to need, financial fitness, etc., and in all cases an order is prepared promptly after a Commission decision has been made. The actual statistics for calendar year 1982 indicate the following:

	Motor	Air
Temporary Applications Received	24	30
Temporary Exemptions Granted	9	8
Temporary Exemptions Denied	10	18
Temporary Exemptions Granted in less than five work days	3	3

Note the columns do not total as some applications were pending at year end.

### Recommendation 3

The economic regulatory procedures of ATC should include financial analysis of data submitted by carriers.

This recommendation is presented in three separate parts and we will indicate our plans in the same format. We generally agree that more financial analysis could be done. However, it should be noted that to do so is going to require more staff, higher support cost for such analytical necessities as computer time, programming, data entry, etc., and even more important is going to greatly impact the regulated industries. While there is a cost in reviewing data, the real cost is in the cost of preparing the data for submittal. Therefore, any attempt to improve the effort to analyze and judge the financial data submitted by applicants and carriers is going to directly impact the same people both in terms of cost of preparation, cost of verification and in time, as the more analysis you do the longer it takes to process the application.

Our response to this three-par' recommendation is being made with the realization that any improvements must take into consideration our available funding and what can reasonably be expected from the industry as a whole.

- A. Processing of applications should include financial analysis of carrier's financial statements and financial data.

Steps have been taken to improve the quality of the review of financial data issued. The review is done by either a tariff specialist or an accounting technician. A review sheet is included in all application dockets giving a general financial analysis of the application. Further, if additional information is needed or an item needs explanation, the applicant is contacted by letter and required to supply such additional data as needed. Failure on the part of the applicant to supply the information results in the application being rejected by staff.

The staff is considering a new application form that requires the applicant to submit additional financial data as well as confirmation of assets and liabilities. However, it appears that regulations will have to be published and approved as the confirmation requirement would be new as part of the application process.

B. ATC should require supporting documentation of tariff changes for review and analysis.

The tariff staff is now requiring that all tariff changes be supported with cost justification. The motor carriers have indicated some opposition to the concept that all rates have to be justified by all carriers. The carriers have indicated in recent hearings before the Commission that cost justification is expensive and time consuming and will adversely affect the carriers ability to be competitive. The staff has opened several tariff investigations and will continue to do so. The staff expects that the final question of how much cost data that will be required for tariff filings will have to be resolved through the promulgation of regulations.

C. Annual and quarterly financial reports should be analyzed.

The question of what is needed on annual and quarterly reports is most difficult to answer. The carriers generally resent having to file any reports, contending that reports are expensive to prepare and are open to public review. The staff is of the opinion that some information is needed and can only be supplied by the carriers. Additionally, many other agencies request information from the Commission concerning transportation in Alaska.

Therefore, the staff would prefer to continue to collect annual and quarterly reports and to continue to work on developing an adequate information system that will allow the retrieval of statistical data. It should be noted, that many jurisdictions are reducing reporting requirements as part of deregulation.

Recommendation 4

Complaints and accusations should be investigated and processed in a timely manner and accurate records of the complaint resolution process should be maintained.

Steps have been taken to improve the record keeping efforts in the enforcement section and some improvement is taking place. Part of the improvement is due to the assignment of agents to specific cases and if the case develops into a major case, two or more agents may be assigned specific duties so that the necessary information can be collected.

The effort to increase the productivity of enforcement is going to continue. However, there is no way to ensure that some cases are not going to extend over what appears to be an unusual length of time. The effort to collect adequate evidence of violations simply takes time, especially since the violators seldom cooperate. To further complicate the enforcement effort, there are many minor contacts by telephone that do not result in any formal actions, but are very time consuming and prevent the enforcement agent from concentrating his efforts on a particular case.

#### Recommendation 5

The number of field surveys performed each year should be increased and should include a limited financial/compliance audit of accounting record.

The number of motor carrier and air carrier surveys has increased. The enforcement staff and tariff staff are working together to conduct more in-depth surveys of motor carriers.

We are finding that a thorough motor survey may take as long as two weeks when problems are found and every record must be reviewed. If the survey results in an accusation, another several weeks can be involved in just getting the supporting documentation necessary to prove a violation.

It is the staff's opinion that surveys are a very important element in economic regulation. However, there is a direct conflict for time between promptly resolving all complaints and at the same time be doing more in-depth surveys. To do both would require more staff.

#### Recommendation 6

The Commissioners and Hearing Examiners should write all the formal written decisions (orders) on docketed matters before the ATC.

The Commissioners attend most of the hearings in Anchorage and a portion of the hearings outside of Anchorage. By attending the hearings, the Commissioners can render a decision without the interim step of a proposed order. This both shortens the time between hearing and final order and lessens the work load on staff.

For the Commissioners to attend all hearings does not appear cost effective since a quorum by law is two Commissioners. Therefore, it is more economical to send one Hearing Examiner to preside over a case and render a proposed decision. All parties have an opportunity to respond to the proposed order and the Commissioners make their decision from the written record.

Recommendation 7

ATC should establish procedures for the accountability and collection of civil penalties.

The procedures for collecting civil penalties has been improved. There are new procedures in effect to have all cases with unpaid civil penalties called up for action after the fine is due and payable. The first action is a demand/reminder letter giving a set time to pay. If that is ignored, then the case is referred to the Attorney General's office if over \$2,000 is involved. If less than \$2,000 is involved, legal action is started in small claims court. If the offender is a carrier, a show cause order is issued to revoke the certificate for failure to pay.

This system should result in a higher percentage of fines being collected.

Recommendation 8

Alaska Statutes should be amended to exempt dump truck operators from certification and economic regulation.

The Commission concurs that dump truck operations should be exempt from economic regulations and regulated only as to the safety of operation as commercial vehicles, and as to the acquisition of adequate insurance. If such legislation was passed, the time currently being spent supervising dump truck operations could be spent in other areas.

Recommendation 9

Regulations should be promulgated in a timely manner.

The staff will continue working on needed regulations. The regulations that are currently published in the Administrative Code are adequate for the operation of the agency. The primary need for new regulations is to revise or expand

current areas to clarify procedures or requirements placed on carriers or applicants. The current trend is to require that administrative agencies have every decision making process covered by a printed regulation. This trend is good in that it helps ensure that everyone is treated equally, but it does place an additional burden on agencies such as the ATC. The interesting point in this recommendation is had the ATC not been trying to develop revised regulations, there would have been nothing to criticize.

There is no question that revised regulations should not take two years, but in some cases it is better for the revisions to die under public criticism than to push them through and create unworkable situations.

Recommendation 10

ATC should seek regulation to increase fees.

The ATC still supports the concept of increasing fees and further would support statutory language that would allow for the assessment of costs to participants such as appears in AS 42.05.651.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

## BILL ANALYSIS

Department Commerce & Economic Development	Sponsor (Principal) Senator V. Fisher	Bill Number SB-35
Department Position: NO comments on fees except lines 9 and 13 of Section 9 are contrary to Federal law. Opposed to transfer of Transportation Section to Alaska Public Utilities Commission and reference to deletion of current positions.		
XXXXXXXXX, Chairman of ATC <i>Keith H. Miller</i>	Date 1/27/83	Commissioner's Signature Date

## GOVERNOR'S OFFICE USE

Comments:		
<input type="checkbox"/> Position Noted	By	Date

## SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill

3. Program Effects of Bill

The bill would increase the various fees charged by the regulatory body by 50% across the board.

The Bill would transfer the regulatory responsibility from the Alaska Transportation Commission to the Alaska Public Utilities Commission by essentially eliminating the three ATC Commissioners and Executive Director positions and making the current five APUC Commissioners responsible for the quasi-judicial actions necessary for administering economic regulation of motor and air commerce in Alaska. Continued.

4. Fiscal Impact:  None  Fiscal Note Attached

5. Amendments Proposed:

a) Elimination of all references to the transfer of the regulatory functions from the ATC to the APUC. Continued.

6. Comments:

The ATC believes it appropriate to comment on a section by section basis.

Section 1. AS 02.05.075(a) is amended to read:-The weight referred to in line 15 and 16 should read: "Applications including aircraft having a maximum payload capacity of not more than 7,500 pounds or a maximum seating configuration, exclusive of pilot's seat of not more than 30 passengers...\$100." Continued.

5. Amendments Proposed:

- b) Elimination of all references to the deletion of position currently in the ATC BRU.
- c) Necessary language to continue the ATC beyond its sunset limits by amending AS 44.66.010(7) to read June 30, 1986.
- d) Several other line by line amendments recommended in part 6.

6. Comments:

The line referred to in line 17 and 18 should be:—"Applications involving aircraft having a maximum payload capacity in excess of 7,500 pounds or a maximum seating configuration, exclusive of pilot's seat of more than 30 passengers...\$200."

These changes would bring the application fees in line with the regulatory division throughout the remainder of the Air Act between large and small aircraft operations. It would simplify the fee collection if application fees followed the same division as applicants normally fall into, either small operators or large.

Section 2. AS 02.05.090(f) is amended to read: No comment.

Section 3. AS 02.05.250(3) is amended to read: We would recommend AS 02.05.250(3) not be amended.

Section 4. AS 19.40.100(b)(3) is amended to read: We would recommend AS 19.40.100(b)(3) not be amended.

Section 5. AS 28.10.502(b) is amended to read:  
This particular section should not be amended to delete the Alaska Transportation Commission. However, the section should be amended to recognize the deregulation of tow trucks under 14,000 pounds. Therefore we would suggest the following:

- b. A lien under this section is limited to towing and storage charges assessed according to the tariff filed by the regulated carrier...

Section 6. AS 29.48.030(b) is amended to read:

We would recommend AS 29.48.030(b) not be amended except to point out that the forms of transportation that local government performs is deregulated since the ATC does not regulate buses.

Section 7. AS 39.25.120(c)(6) is amended to read: No comment except that it appears the section cited should be 39.120(c).

Section 8. AS 42.07.191 is amended to read: AS 42.07.191 should not be amended.

6. Comments.... Continued.

Section 9. AS 42.10.160 is amended to read: Line 4 referring to amendment of filing fee from \$50 to \$75. The Commission does not have a definite comment on this amendment. However, based on work that must be performed on any application, the fee separation between air and motor does not appear appropriate. In all fairness, the application fees for motor and small aircraft application should be the same. The \$150 figure would more closely approximate the cost of processing.

Line 9--referring to increase from \$25 to \$37.50 for initial interstate filings. This amendment is illegal as 49 CFR§ 1023.13 limits state filing fees to \$25 nationwide. Therefore this amendment should be stricken and filing fees left at \$25.

Line 13--referring to increase from \$10 to \$15 for annual renewal of interstate authorities. As mentioned above, 49 CFR§ 1023.13 limits the fees charged by a state. In the case of renewals, the allowable fee is \$10. Therefore, this amendment should be stricken and the fee left at \$10.

Section 10 AS 42.10.240(a)(1) is amended to read: No comment.

Section 11 AS 42.10.240(a)(2); is amended to read: No comment.

Section 12 AS 39.25.120(c)(7); AS 39.50.200(b)(30); AS 42.07.011 - 42.07.111; and AS 44.66.010(a)(2) are repealed.

The ATC would recommend that the statutes not be repealed as this essentially does away with the ATC.

If the Legislature elects to combine the regulatory functions into one agency, some steps should be taken to assure the qualification of the Commissioners in the area of transportation as is currently required in AS 42.07.

Section 13 Transition.

If the ATC's recommendations are taken to continue the agency, then a transition would not be necessary. If the bill is passed as written, the transition would appear workable except that an additional assistant Executive Director position should be created within the APUC to administer the transportation function. Normally in States with a single regulatory agency each major functional Staff area is separate from the other. While certain shared space and clerical functions are used by all sections, the technical staff maintains a functional identity.

Appendix D

Statutes Requiring Operator Reports.

The statutory basis for requiring motor and air carriers to file reports are:

AS 42.10.070(4) The Commission. . .

(4) may require every common carrier to file reports and other data;

AS 42.10.080(4) The Commission shall. . .

(4) require every contract carrier to file reports and other data and

AS 02.05.160 The Commission may require the filing with it of any tariffs, schedules and reports which an air carrier is required to file with the Civil Aeronautics Board or the United State or any other federal agency.

AS 02.05.170(a) The Commission may require annual reports from any air carrier covering any operation or business. The Commission may also require monthly, periodical, and special reports from an air carrier and may prescribe the manner and form in which these reports shall be made. . . .

Based on the statutes the Commission published 3 AAC 76 entitled Uniform Systems of Accounts and Reports covering the motor carriers effective January 1, 1982. Generally, 3 AAC 76 requires the carrier to either file an annual income statement accounts or file with the ATC a copy of the ICC reports made by the carrier. The State form is patterned after the form outlined in 3 AAC 76.070 and explained in 3 AAC 76.080. The form consists of the front side showing a dollar amount and th back side showing equipment inventory and controlling stock holders. Prior to the change in ICC reporting requirements, Class I and II carriers could file a copy of their ICC reports with the ATC, now they file either.

It does not appear that it will be necessary to change the motor statute as the language is not specific. The Commission may have to revise 3 AAC 76 to clarify references to the ICC once the Federal agency makes a final decision as to what reports they are going to require to be filed. Currently, the ICC's requirements for reports and accounting

system requirements are not clear as they are still in the rule making process. There is every indication that the ICC is going to simplify the reporting system, but it does not appear that all reports are going to be eliminated.

As in the motor act, the air act provides only general language that gives the Commission considerable latitude in what reports are required. These would not appear to be a necessity to change AS 02.05.170 as the language is permissive.

The subject of required reporting is possibly one of the hottest areas of debate outside the right of entry in the regulation versus economic deregulation question. Several jurisdictions including many federal regulatory agencies have taken steps to "reduce paperwork" which generally has meant doing away with required reports that were duplicating information received from other sources, streamlining or simplifying reports, and, possibly most important, asking only for information necessary to perform their regulatory job.

There is a definite need for some information so that the regulatory agency has some knowledge of what is happening in the industry. While the collections of statistical data can easily get out of control, the need for some statistics will always be present.

The ATC requirements on reports from both air and motor carriers is really minimal when compared to other agencies such as the Civil Aeronautics Board that requires separate quarterly reports and one monthly report. Possibly the ATC's biggest problem has not been in collection of reports, but in what is done with the information once it is collected. Unfortunately, there has not been adequate funds to process the data in a usable system where quick retrieval is possible. With the exception of the origin and destination information received from air carriers, most of the information must be hand sorted to generate the answer to the questions asked, which is both time consuming and somewhat unreliable as human error can taint the statistics.

The statistics are used by the ATC to determine carrier activity, equipment utilization, operating expenses, in gross terms the income both before and after operating expenses and in air, traffic patterns. This information is definitely important for determining new entry and evaluation of applicant's expectation as to the market segment that he plans to

capture. It must be realized that normally new entries are not going to generate new traffic, but only capture part of the traffic available to existing carriers. The decision that the regulatory commission must make is whether the split between old and new will be enough to support both carriers.

## APPENDIX E

### Changes Dictated By Federal Deregulation

To date the federal deregulation effort has not placed the State of Alaska in the position of having to change its laws to avoid statutory conflict. The federal deregulation has caused considerable philosophical conflict between the approach taken at the national level and the State level. This philosophical conflict is prevalent in the federal relationship with all the States except Arizona, Florida, and Wisconsin who have deregulated.

The first problem when discussing deregulation is the definition of the term. In a practical sense the term means the reduction of regulation; not the elimination of regulation. Therefore, the conflict between the States and the federal government is over how much latitude the regulated industries are to be allowed.

If the Legislature was to decide to follow the federal trend, both AS 42.10 and 02.05 would need major revision. Generally, if both acts are not amended, the impact of federal deregulation will be limited, given that the federal government does not attempt to preempt State jurisdiction in intrastate commerce. There will be a need to fill the void in such areas as commercial vehicle safety and transportation of hazardous materials as it appears the federal government will not be as active in enforcing as it was. If the State elects to maintain the protection of intrastate carriers from the influx of ICC carriers that attempt to siphon off intrastate freight, some additional enforcement will be needed. If the federal government ceases the essential air service subsidy program in 1988 as currently stated in the auditing legislation, the State of Alaska would be confronted with the issue of providing State funds to replace the discontinued federal subsidy. Since the EAS program is just getting under way, there is no way to predict the fiscal impact, but the federal payout on subsidized matters is expected to be about five to seven million in 1983/84. This number can change a lot either way as the program is very flexible and is primarily based on carrier losses versus earnings in the specific service area.

Bill Fact Sheet

Date Received 4/18/83

Bill Number SB/84 Title Extending ATC

Fiscal Note - Date Requested 3/18 Date Received \_\_\_\_\_

- Of Whom Katherine Wallen C+ED

Dept. Position Paper - Date Requested 3/18 Date Received \_\_\_\_\_

- Of Whom Katherine Wallen, C+ED

Resource People

Initial Hearing - Date 4/12/82  
People Contacted

- Clyde (Senate Trans) 4797- 4/8
- Jeff - (House L+C)
- Steve (Rep Cato) 4/11
- Jim Wilson - 4/11
- Keith Miller 4/11

Follow-up Hearing - Date \_\_\_\_\_

Final Action passed C-S Date 4/12  
letter of intent 4/14

Bill Fact Sheet

Date Received \_\_\_\_\_

Bill Number \_\_\_\_\_ Title Sunset Review

Fiscal Note - Date Requested \_\_\_\_\_ Date Received \_\_\_\_\_

- Of Whom \_\_\_\_\_

Dept. Position Paper - Date Requested \_\_\_\_\_ Date Received \_\_\_\_\_

- Of Whom \_\_\_\_\_

ATC Position - 3/7 of Keith Miller  
Resource People

Initial Hearing - Date ~~3/17/83~~ 3/15/83

People Contacted

Keith Miller - 561-4216 - 3/7 - 3/10

Russ Painter - 276-4800 - 3/7 (left message) 3/10

Katherine Wallen - DC+ED, 3/8 (left message) - 2504 3/10

Gordy Hwang - 747-8907 - 3/11 (left message)

Wally Kuble - 3/11

Jim Wihlborg - 3/11

Follow-up Hearing - Date \_\_\_\_\_

Final Action \_\_\_\_\_ Date \_\_\_\_\_

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#2

Effect of amendments. — Section 9 of ch. 115, SLA 1980 substituted the language beginning "commission determines under regulations" for "applicant, or a person having a substantial interest in the

proceeding, requests it within the time provided by regulation" in the second sentence of subsection (b). Section 10 of ch. 115 added subsection (d).

**Sec. 02.05.080. Issuance of certificates.** (a) Subject to the provisions of (d) of this section, the commission shall issue a certificate authorizing the applicant to engage in air commerce as a scheduled or contract carrier or air taxi operator, or authorizing the whole or any part of the operation covered by an application for a certificate,

(1) if the commission finds that

(A) the applicant is fit, willing and able to engage in air commerce properly and to comply with the provisions of AS 02.05.010 — 02.05.260 and the regulations of the commission, and

(B) the proposed service is not contrary to the public interest; and

(2) as to aircraft having a maximum payload capacity in excess of 7,500 pounds or a maximum seating configuration, exclusive of the pilot's seat, in excess of 30 passengers, if the commission also finds that air commerce and the performance of it by the applicant in the type of aircraft for which a certificate is requested under (e) of this section is required by the public convenience and necessity and is consistent with the declaration of policy contained in AS 02.05.010.

(b) This section applies to new service applications only, and not to persons qualifying under AS 02.05.050.

(c) If all of the findings required in (a) of this section are not made, then the application shall be denied.

(d) No certificate may be issued to a person to operate as an air carrier unless the applicant submits evidence, satisfactory to the commission, showing that it can and will comply with the provisions of the laws of the United States and the state, and the rules, regulations and orders respecting safety of operation.

(e) A certificate issued by the commission after May 1, 1966, shall specify whether the certificated air carrier may operate fixed-wing aircraft, rotary-wing aircraft, or both.

(f) A person is fit, willing, and able to engage in air commerce if the commission finds that

(1) the proposed service is economically feasible and the applicant has the financial capability to provide it;

(2) a physical base of operations and maintenance capabilities will be available for the proposed service;

(3) the applicant has financial management capabilities for the proposed service;

(4) the applicant has operational management capabilities for the proposed service; and

(5) the applicant has adequate equipment to provide and maintain the proposed service.

Senator Hafford's concern  
#6 of Letter of intent

(g) In a hearing on the issuance of a certificate under this section, the burden of showing that the proposed service is contrary to the public interest is on a person who opposes the issuance of the certificate on the grounds that the proposed service is contrary to the public interest. (§ 10 ch 161 SLA 1960; am §§ 2, 3 ch 147 SLA 1966; am § 7 ch 203 SLA 1968; am § 3 ch 146 SLA 1972; am §§ 11, 12 ch 115 SLA 1980)

**Effect of amendments.** — The 1980 amendment, in subsection (a), designated the former provisions of paragraph (1) as paragraph (1)(A), deleted "rules" preceding "regulations" and "and requirements" following "regulations" in present paragraph (1)(A), added present para-

graph (1)(B), and substituted the language beginning "as to aircraft" and ending "if the commission also" for "if the commission" at the beginning of paragraph (2). The amendment also added subsections (f) and (g).

**Sec. 02.05.100. Modification, suspension or revocation of certificates.** (a) Upon a petition or accusation filed by any person or the commission, and after notice and opportunity for hearing, the commission by order may alter, amend, or modify a certificate, in whole or in part, and may suspend or revoke a certificate, in whole or in part, for any of the following reasons:

(1) intentional misrepresentation of a material fact in obtaining the certificate;

(2) discontinuance of operations under circumstances that do not reasonably justify seasonal operations;

(3) intentional failure to comply with a provision of AS 02.05.010 — 02.05.260 or an order or regulation issued under AS 02.05.010 — 02.05.260;

(4) intentional failure to comply with a term, condition or limitation of the certificate.

(b) The commission may suspend the operating authority of an air carrier without prior notice or hearing upon failure of the carrier to comply with AS 02.05.130 — 02.05.13E (§ 12 ch 161 SLA 1960; am § 1 ch 195 SLA 1970; am § 3 ch 32 SLA 1971; am § 13 ch 115 SLA 1980)

**Effect of amendments.** — The 1980 amendment, in subsection (a), deleted "if the public convenience and necessity require it" following "whole or in part" in the introductory language, deleted "voluntary" from the beginning of paragraph (2),

added "under circumstances that do not reasonably justify seasonal operations" at the end of paragraph (2), and deleted "rule" preceding "or regulation" in paragraph (3).

**Sec. 02.05.110. Transfer or lease of certificates.** (a) A certificate may be transferred or leased subject to the approval of the commission, and under reasonable regulations as the commission may prescribe. Approval of a transfer or lease may be given only upon a finding by the commission, after notice and opportunity for a hearing as provided in AS 02.05.070(b) and (d), that the transferee or lessee is fit, willing, and

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SB 184

Labor and Commerce Committee report on SENATE BILL NO. 184 (extending the termination date of the Alaska Transportation Commission), page 682, submits the following:

"LETTER OF INTENT FOR CSSB 184 (L&C)

During the scheduled hearings in which the Alaska Transportation Commission (A.T.C.) was discussed and reviewed, many problem areas were identified. The Performance Review of the Alaska Transportation Commission conducted by the Division of Legislative Audit, April 1, 1982, concluded that the functions of A.T.C. could be better performed if A.T.C. were to merge with the Alaska Public Utilities Commission.

However, several questions were raised which remain unanswered:

- 1) Is State involvement in the Essential Air Service Program required?
- 2) Does the State want to deregulate surface and air transportation within Alaska?
- 3) What method does the State wish to employ to assure the public that air and motor carriers have sufficient insurance coverage to protect the public's interest?
- 4) What is the role of the Alaska Transportation Commission in regard to a commercial vehicle safety program?
- 5) Would a citizen's board be an appropriate mechanism to perform the oversight functions which are currently the responsibility of the Commissioners of the Alaska Transportation Commission?
- 6) Do the Alaska Transportation Commission's policies regarding light aircraft ensure that innovative competition which could be beneficial to the public is not eliminated?

With the passage of this legislation, it is the intent of the Senate Labor and Commerce Committee that the Office of Management and Budget conduct a thorough performance review of the functions of A.T.C. The review will include, but will not be limited to, the scope of areas previously outlined.

The Office of Management and Budget will report back to the Thirteenth Legislature within ten days after the second session convenes in 1984. The report shall outline the findings of the audit as well as specific actions to implement any changes recommended.

Respectfully submitted,

/s/ R. Eliason

Sen. Dick Eliason, Chair"

INTRODUCTION

SCR 17

SENATE CONCURRENT RESOLUTION

Relating to upgrading Anchorage,

was read the first Committee and the Fi

INTRODUCTI

SB 257

SENATE BILL NO. 257  
Special Committee on

"An Act re of legisla and establ Commission date."

was read the first Committee and the Ju

SB 258

SENATE BILL NO. 258 b

"An Act rel telephone d

was read the first ti Committee.

SB 259

SENATE BILL NO. 259 b

"An Act rel Board of FI

was read the first ti tee.

SB 184

The Labor and Commerce Committee considered SENATE BILL NO. 184 (extending the termination date of the Alaska Transportation Commission) and a majority of the committee recommended it be replaced with CS FOR SENATE BILL NO. 184 (L&C) and do pass. The report was signed by Senator Eliason, Chairman and concurred in by Senators Rodey and Mulcahy. The committee attached a zero fiscal note.

Letter of Intent will appear in the April 14 journal.

SENATE BILL NO. 184 was referred to the Rules Committee.

SB 201

The Transportation Committee considered SENATE BILL NO. 201 (special appropriation to the Department of Transportation and Public Facilities for medium intensity lighting at Tok Airport). Senator Moss, Chairman and Senator Fahrenkamp signed "do pass". Senators Gilman and Faiks signed "no recommendation".

SENATE BILL NO. 201 was referred to the Finance Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE BILLS

SB 136

SENATE BILL NO. 136 (operation of stationary fishing gear) was read the second time.

Senator Fahrenkamp moved and asked unanimous consent for the adoption of the Resources Committee Substitute offered on page 537. Without objection, CS FOR SENATE BILL NO. 136 (RES) was adopted.

CS FOR SENATE BILL NO. 136 (RES) was read the second time.

SB 136 cont'd

Senator Ray moved and SENATE BILL NO. 136 (RES) to third reading and pl. tion, it was so ordered.

CS FOR SENATE BILL NO.

Senator Gilman moved and SENATE BILL NO. 136 (RES) calendar. Without obje

SECOND

HB 108

HOUSE BILL NO. 108 (in licensed physicians em and developmental dis. Social Services) was r

Senator Ray moved and NO. 108 be advanced passage. Without obje

HOUSE BILL NO. 108 was

The question being: the state exempt serv the division of mental Department of Health. The roll was take wit

HB 108 3RD

Yeas: 16

Nays: 2

Absent: 2

and so, HOUSE BILL NO

*Amend. to Amendment.*

SENATE AMENDMENT

By *Sackett*

To: *letter of Intent.* SENATE BILL No. *SB 184*  
To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE:

LINE:

*Put period after "public" in next  
to last line. Eliminate ~~that~~ rest  
of sentence.*

SENATE AMENDMENT

BY Halford, Josephson, V. Fischer

To: Letter of Intent SENATE BILL No. C.S.S.B. 184

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE: 2

LINE: *add new paragraph at end to state*

*"In the interim it is the intent of the Senate that the Alaska Transportation Commission fulfill its statutory responsibility with concentration on protection of the public rather than economic regulation of the industry."*

Senator Eliason

Room 417

STATEMENT OF POSITION

offered by

ALASKA TRUCKING ASSOCIATION, INC.

SUPPORTING THE CONTINUATION OF THE  
ALASKA TRANSPORTATION COMMISSION

## STATEMENT OF POSITION

The Alaska Trucking Association, Inc. (Association) is a non-profit trade organization representing 325 trucking firms and allied industry firms throughout the State of Alaska. Our membership consists generally of two major groups, the For-Hire Carrier and the Private Carrier. The for-hire carrier group includes common carriers, contract carriers and exempt carriers as well as the water carriers. Our membership stretches from the northernmost tip of Alaska (Barrow) to the extreme south and west (Dutch Harbor and Ketchikan), to the Nome/Kotzebue area and to the Canadian border on the west. The largest concentration of membership is in the Southcentral, Southeast and Interior regions.

The Association's purpose is to foster and promote an economically sound transportation system in Alaska.

The regulated motor carrier industry is composed overwhelmingly of small firms with the vast majority grossing less than \$500,000 a year. At the other end of the spectrum are the large well-established carriers and included in the group are some of the industry's publicly held firms.

The importance of a regulated motor carriage system, and the trucking industry as a whole to our State's vital transportation system cannot be overstated. Our motto, "If you got it, it came by truck," is not an attempt to overrate our industry. It is simply a fact that goods, supplies and materials are shipped to Alaska by outside manufacturing markets and that shipment always begins and ends with truck movement.

There are approximately 13,281 commercial trucks registered with the State of Alaska and approximately 9,178 commercial trailers. Most of these trucks and trailers are involved with freight movement and these numbers give some indication of the number of jobs offered to Alaskans within the trucking industry. The trucking industry is one of the largest private industry employers in the state.

Recently, Senate Bill 35 was introduced. Senate Bill 35 is an act "relating to transportation merging the Alaska Transportation Commission with the Alaska Public Utilities Commission; and providing for an effective date." Inherent in this bill are some changes in the manner in which motor transportation is regulated in the State of Alaska.

Senate Bill 35 contains a number of items. First, it increases certain weight and application fees for aircraft and motor vehicles. While the state trucking association is cognizant of the need to keep fees in line with inflation, the Association is partially opposing a fee increase at this time because of the recent federal increase in taxes which, in part, are directed exclusively against the motor transportation industry. The association will provide a separate statement dealing with the increased fees portion of the bill.

I. Merger of the Alaska Transportation Commission (ATC) with the Alaska Public Utilities Commission. The Alaska Trucking Association has considered the findings and recommendations of the Division of Legislative Audit in this regard but believes that the merger of the two commissions is not warranted at this time. The Association's reasons for opposing the merger are as follows:

1. The Public Utilities Commission, at the present time, is still assimilating the Alaska Pipeline Commission. It already has an overcrowded docket and the assimilation of another 500 to 600 cases annually would, of necessity, dilute the time spent on transportation matters by the state regulatory commission. The Association believes that the Commission should be directed to refocus its attention on the proper administration of the state Transportation Act. The Association believes that this will best serve the public interest.

2. The saving in space and personnel would, at best, be illusory. Commissioner Miller, in his testimony before this committee, indicated that the Commission was underfunded by over \$100,000 in its last budget. The legislative audit report suggests that the change be a reorganization of policies, procedures and staffing. However, based on a review of the recommendations put forth by the report, it would appear that more staff and commission work is needed rather than less; hence, the Association does not believe any real cost savings will result from a merger.

3. Alaska's unique needs and isolation from the contiguous 48 states makes it totally dependent upon motor and air transportation. The previous Governor and the Legislature have already recognized the importance of transportation to the state in forming the Department of Transportation. The same recognition should be given to the regulatory phases of transportation. In fact, it might be noted that the federal government has two agencies dealing with motor and air transportation, to wit, the Interstate Commerce Commission and the Civil Aeronautics Board.

4. Regulatory policies that are necessary in dealing with transportation, i.e., a greater degree of competition in the marketplace, a greater number of carriers, a greater number of diverse needs to be met, are not consistent with the regulatory policies that might be applied for public utility regulation which deal with companies with high fixed assets and, generally, a monopoly or quasi-monopoly service area. This difference was one of the original justifications for splitting the Alaska Transportation Commission from the original Public Services Commission. This difference was true in 1967 when the split occurred and is even more true today in light of Alaska's diverse transportation needs.

II. The Legislature Should Direct the Commission to Undertake Regulatory Initiatives in Three Major Areas, (1) Certificates of Authority, (2) Tariffs, and (3) Safety Inspections.

1. Certificates of Authority. The Association recommends two initiatives in this area.

(A) The legislative audit report, in its Recommendation No. 2, advised the Legislature that temporary authority to motor and air carriers should be granted in accordance with statutes. Discussion of the Commission practices in this regard is already contained in the legislative audit report and will not be further discussed herein. The audit report also directed the Commission to strengthen its review of a carrier's financial fitness. Financial fitness is critical in determining the suitability of a given carrier to provide transportation. If a carrier is in financial trouble, often the first items to go are maintenance and safety procedures. If a carrier's financial capability is more closely examined to begin with, there will be greater assurance that the carrier will have sufficient assets to pay its expenses as they become due. While there is no guarantee in the transportation business that a company will make money, at least a closer financial analysis will insure a greater probability of a financially solvent carrier and will thus enable the carrier to operate properly and safely.

(B) The second aspect of authority certification that is of great concern to the association is dealing with carriers who operate either beyond their authority or who have no authority at all. The legislative audit committee, in its Recommendation No. 4, recommended that the Commission Staff take a stronger position and a stronger enforcement posture. Alaska Transportation Commission Chairman Miller, in testifying before the committee last week, noted that the Commission was aware of 50 unauthorized operations. The committee should realize that the failure to take an efficient enforcement posture ultimately costs every consumer who deals with an authorized carrier more in shipping charges. A carrier's revenue must come through its tariff charges. If the total pool of common carrier traffic is being diverted to non-authorized operations, the authorized carrier, in order to cover its costs, must, of necessity, raise rates. A strong enforcement posture will reduce this illegal siphoning off of carrier traffic revenue and will reduce the pressure to increase transportation charges.

2. Tariffs. Again, the Association recommends two initiatives in this area.

(A) First, the Commission must perform field surveys of regulated motor carriers. The legislative audit report noted that of 630 regulated carriers in 1981, 38 field surveys were performed, all on air carriers. None were performed on any motor carriers. Illegal operations can also include illegal applications of tariffs. Carriers provide services usually below their tariffs, again illegally siphoning off traffic and having the same financial effect on authorized carriers as illegal operations.

The Association would note that some of the smaller carriers may not have experienced tariff personnel. The ATC, in performing its field surveys, can assist the carriers' personnel in the proper application of the carriers' tariffs. The Association is not recommending that a Commission enforcement agent be placed in every trucking concern's office, but rather that the Commission use its best judgment in insuring tariff compliance. Obviously, if a carrier repeatedly violates its tariff or misuses its authority, it should be prosecuted to the full extent of the law.

(B) The second area in tariff regulation is the need by the Commission to propose appropriate cost and accounting regulations in order that it will be able to properly review tariff filings by carriers. Again, the legislative audit report, in its Recommendation 3(B) recommended that the Commission require the carriers to submit appropriate financial data for rate changes. To this, the Association has no objection, per se; however, the Commission must adopt suitable accounting and rate regulations and perform proper cost studies since the filing of raw financial data alone is not enough to review the appropriateness of tariff filings in motor transportation. The Association supports the need for such accounting and cost justification regulations, but the initiative must come from the Commission. Obviously, with 630 motor and air carriers and the recognition that not all of these companies are large companies, the type of information that the Commission will need must be tailored to the competitive needs of the industry and the geographical location. However, something must be done because already there is evidence of predatory pricing which will only further exacerbate the weak financial condition of the motor transportation industry in Alaska. Also, it might be noted that such regulations would give shippers and other members of the public an opportunity to have their input in the regulatory process. The Commission already has powers to prevent predatory pricing by using its minimum rate order powers.

3. Safety Inspections. The Association understands that as of March 11, 1983, money for the safety inspection function of the Commission has run out. It is unthinkable to the Association that Alaskans can think of multi-million dollar capital projects being funded while this important element of public safety is neglected. The Commission is urged to institute and the Legislature is urged to appropriate sufficient funds for safety inspections. Under Recommendation No. 5 of the legislative audit report, it was noted that field surveys should include safety inspections. The Association concurs with inspections because of the obvious benefit of inspections and surveys to both the public and to the motor carrier, i.e., less probability of accidents occurring. Also, such inspections have a more positive effect in that if the number of accidents occurring are reduced, presumably insurance rates would go down and the pressure to raise transportation rates would decrease. Again, the initiative must come from the Commission along with the assistance of both the Legislature and the Alaska transportation industry.

4. Other Matters. In regard to the de-regulation of dump truck operators, the Association believes that this should be a separate subject matter in separate legislation and not in the bill. The Dump Truck Industry has its own association. This Association does perform some services for them such as providing the casualty insurance trust; however, it is believed that the best interests of the public are served by severing this provision from the bill and dealing with it separately and allowing the affected industry to speak for itself.

### III. CONCLUSION

THE LEGISLATURE SHOULD EXTEND THE ALASKA TRANSPORTATION COMMISSION FOR FOUR (4) YEARS AND SUPPORT THE COMMISSION WITH ADEQUATE FUNDING.

The Alaska Trucking Association generally endorses the results of the legislative audit. However, it believes that a merger of the Alaska Transportation Commission with the Alaska Public Utilities Commission will only exacerbate the problems set forth in the legislative audit report rather than solve them. For example, the legislative audit Recommendation No. 6 suggests that commissioners and hearing examiners write all of the formal orders of the Commission. Obviously, the suggestion of transferring only one commissioner who has a background in transportation to the Public Utilities Commission if merger is approved and attempting to comply with this recommendation is inconsistent. What the Alaska Transportation Commission needs is more help and not less.

Generally, the suggestions made by the legislative audit and endorsed by the Alaska Trucking Association all require time to implement. Tariff regulations are needed on costs and accounting. The legislative auditors noted several areas in which the Commission must improve its internal procedures. The Association believes that what is needed is suitable financial support for the Commission and not merger of the Commission with the Public Utilities Commission.

It is, therefore, the recommendation of the Alaska Trucking Association that the Alaska Transportation Commission's term be extended under the Sunset Law for four (4) years. Coupled with that should be a legislative committee report urging the Commission to comply with the recommendations of the legislative audit. Legislative direction should be given with adequate and sufficient financial support, both from manpower and budgetary standpoints, to enable the Commission to effectively do its job. The Association does not think it is necessary to have a Commission enforcement agent threatening civil penalties to insure compliance with the Commission's regulations. For the most part, most air and motor operators try diligently to comply with the law. However, because transportation regulations, as in any other regulated field, are often complicated, Commission guidance is needed to assure that operators comply with the law. However, where appropriate, the full enforcement capability of the Commission should be brought to bear on those operators who refuse to comply with the law.

Good regulation should be continued in the public interest. It assists the public, which, after all, involves each of us as consumers; it assists shippers; and it assists those connected with the motor carrier industry.

Thank you for the opportunity to provide this statement of position.

ALASKA TRUCKING ASSOCIATION, INC.

By J. H. Hasker  
Its Managing Director

DURING SEVERAL HEARINGS AND A TELECONFERENCE, THE QUESTION OF WHETHER TO SUNSET THE ALASKA TRANSPORTATION COMMISSION WAS DISCUSSED IN THE SENATE LABOR AND COMMERCE COMMITTEE. THOSE INDIVIDUALS WHO PRESENTED TESTIMONY WERE DIVIDED ON THE VALUE OF THE ATC'S PRESENT STRUCTURE AND FUNCTION. MANY INDICATED THAT THE SERVICE PROVIDED BY THE COMMISSION WAS NECESSARY, BUT QUESTIONED WHAT DIRECTION THE STATE SHOULD TAKE IN REGARD TO REGULATION OF THE TRANSPORTATION INDUSTRY.

CS FOR SENATE BILL 184 EXTENDS THE EXISTENCE OF THE ALASKA TRANSPORTATION COMMISSION FOR TWO ADDITIONAL YEARS. IT IS RECOMMENDED BY THE LABOR AND COMMERCE COMMITTEE, THROUGH ITS LETTER OF INTENT, THAT A THOROUGH PERFORMANCE REVIEW OF THE OFFICE OF MANAGEMENT AND BUDGET. O.M.B. WILL REPORT BACK TO THE LEGISLATURE ITS FINDING AND RECOMMENDATIONS FOR SPECIFIC ACTION TO IMPLEMENT ANY SUGGESTED CHANGES.

THEN NEXT YEAR THE LEGISLATURE CAN CONSIDER ANY NECESSARY STATUTORY CHANGES TO THE COMMISSION. THIS BODY WILL BE ABLE TO DELIBERATE THE FAR-REACHING RAMIFICATIONS WITHOUT THE PRESSURE OF TIME CONSTRAINTS. THESE DECISIONS MUST NOT BE MADE IN HASTE.

FOR THESE REASONS I URGE YOU TO PASS CSSB 184 AND ITS ACCOMPANYING LETTER OF INTENT.

# Support for Letter of Intent

1) IS STATE INVOLVEMENT IN THE ESSENTIAL AIR SERVICE PROGRAM REQUIRED?

THE STATE CURRENTLY MONITORS THE ESSENTIAL AIR SERVICE PROGRAM WHICH IS ADMINISTERED BY THE CIVIL AERONAUTICS BOARD. THE PROGRAM WAS PROVIDED FOR IN THE FEDERAL AIR DEREGULATION ACT OF 1978. FEDERAL SUBSIDIES UNDER THIS PROGRAM WILL CEASE IN 1988. A DETERMINATION MUST BE MADE AS TO WHETHER THE STATE FINDS IT NECESSARY TO CONTINUE THE SUBSIDY OR WHETHER SUFFICIENT COMPETITION EXISTS WITHOUT THE SUBSIDY TO ADEQUATELY SERVE THE REMOTE AREAS.

2) DOES THE STATE WANT TO DEREGULATE SURFACE AND AIR TRANSPORTATION WITHIN ALASKA?

DEREGULATION OF SURFACE AND AIR TRANSPORTATION HAS TAKEN PLACE IN THE "Lower 48" STATES. IT DOES NOT APPEAR TO HAVE A NEGATIVE EFFECT ON THE VAST MAJORITY OF GOODS OR PEOPLE. HOWEVER, ALASKA IS UNIQUE IN THAT THE VAST MAJORITY OF THIS STATE IS NOT CONNECTED BY ROAD AND COVERS VAST AREAS. THE NOTION OF DRIVING FROM ONE LOCATION TO ANOTHER VERSUS FLYING DOES NOT EXIST. CONSIDERATION MUST BE GIVEN TO THE EFFECT OF CONTROLLING TRANSPORTATION BY COMPETITION ONLY.

3) WHAT METHOD DOES THE STATE WISH TO EMPLOY TO ASSURE THE PUBLIC THAT AIR AND MOTOR CARRIERS HAVE SUFFICIENT INSURANCE COVERAGE TO PROTECT THE PUBLIC INTEREST?

PROPERTY AND LIABILITY INSURANCE IS PRESENTLY REQUIRED OF ALL COMMON AIR AND MOTOR CARRIERS BEFORE THEY ARE ISSUED A PERMIT

TO OPERATE IN ALASKA. CONSIDERATION MUST BE GIVEN TO CONTINUE THIS REQUIREMENT IF A DECISION IS MADE TO SUNSET THE ALASKA TRANSPORTATION COMMISSION.

4) WHAT IS THE ROLF OF THE ALASKA TRANSPORTATION COMMISSION IN REGARD TO A COMMERCIAL VEHICLE SAFETY PROGRAM?

BOTH THE ATC AND THE DEPARTMENT OF PUBLIC SAFETY ARE STATUTORILY ASSIGNED THE RESPONSIBILITY FOR COMMERCIAL VEHICLE SAFETY INSPECTIONS. THE DIVISION OF MEASUREMENT STANDARDS DID TEMPORARILY TAKE OVER THE RESPONSIBILITY FROM THE DEPARTMENT OF PUBLIC SAFETY WHEN THE PERMIT AND SCALE HOUSE PROGRAM WAS TRANSFERRED IN FY '83 UNDER A FEDERALLY FUNDED PROGRAM WHICH ENDED MARCH 11, 1983. THIS AUTHORITY WAS DELEGATED BY LETTER FROM THE COMMISSION TO THE DIVISION OF MEASUREMENT STANDARDS. THE PROGRAM IS NOT PRESENTLY FUNDED IN THE DIVISION OF MEASUREMENT STANDARDS OR ATC IN FY '84.

5) WOULD A CITIZENS' BOARD BE AN APPROPRIATE MECHANISM TO PERFORM THE OVERSIGHT FUNCTIONS WHICH ARE CURRENTLY THE RESPONSIBILTY OF THE COMMISSIONERS OF THE ALASKA TRANSPORTATION COMMISSION?

CURRENTLY, ATC FUNCTIONS AS A QUASI-JUDICIAL BODY AND MAY CONDUCT FORMAL HEARINGS ON CONTESTED APPLICATIONS, COMPLAINT AND ACCUSATION MATTERS AND RATE MATTERS.

HOWEVER, IF THE DECISION WAS MADE TO DEREGULATE SURFACE AND AIR TRANSPORTATION IN ALASKA, A CITIZENS' BOARD MAY BE AN APPROPRIATE MECHANISM TO OVERSEE ANY REMAINING FUNCTIONS

ASSIGNED TO ATC.

6) DO THE ALASKA TRANSPORTATION COMMISSION'S POLICIES REGARDING LIGHT AIRCRAFT ENSURE THAT INNOVATIVE COMPETITION WHICH COULD BE BENEFICIAL TO THE PUBLIC IS NOT ELIMINATED?

TESTIMONY INDICATED THAT POSSIBLY DECISIONS TO ISSUE CERTIFICATES OF AIR COMMERCE WERE BASED ON PUBLIC CONVENIENCE AND NECESSITY AND NOT ON THE APPLICANT'S FINANCIAL ABILITY. THE ATC SHOULD CONSIDER ONLY THE APPLICANT'S FITNESS, WILLINGNESS AND ABILITY TO ENGAGE IN AIR COMMERCE PROPERLY.

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B

184

# 3

A PERFORMANCE REVIEW OF THE  
DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT  
ALASKA TRANSPORTATION COMMISSION

April 1, 1982

Audit Control Number

08-092-0069-R

Commissioner, Department of Commerce  
and Economic Development

Charles R. Webber

Deputy Commissioner, Department of  
Commerce and Economic Development

Edward Eboch

Members of the Alaska Transportation Commission

Chairman  
Commissioner  
Commissioner

Keith Miller  
Walter Kubley  
H.D. Scougal

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

JUNEAU, ALASKA 99811

April 1, 1982

Members of the  
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A PERFORMANCE REVIEW OF THE  
DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT  
ALASKA TRANSPORTATION COMMISSION

April 1, 1982



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE OF THE REVIEW

In accordance with the provisions of Title 24 of the Alaska Statutes and the "sunset" provisions of AS 44.66, we conducted a performance review of the Alaska Transportation Commission (ATC) to determine if the Commission should be allowed to terminate on June 30, 1983, or be continued in its existing form, or if alternatives exist to better accomplish its purpose. We reviewed the operations of ATC to determine if they were conducted in an effective, efficient, and economical manner.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Review can best be described as "audit by exception."

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

## REPORT CONCLUSION

### Policy Issues

This review contains policy issues raised as a result of our evaluation of various Commission practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of policy changes can be evaluated.

### Report Conclusions

In our opinion, the Alaska Transportation Commission should be allowed to terminate on June 30, 1983, and the regulation of transportation should be administered through a transportation section within the Alaska Public Utilities Commission. Based on our review, we have concluded that the existing policies and procedures of ATC for administering the regulatory process do not ensure the public interest is served in an effective, economical manner and in accordance with legislative intent (see Recommendation No. 1).

However, whether or not the Legislature deems that continuing ATC in its present form is in the public's best interest, several changes need to be implemented to effectively serve the public. Those areas in need of change are described below.

Temporary authority has been granted by ATC in violation of statutory requirements. Further, required findings of fact and conclusions of law are not written in accordance with State regulations and in light of a Superior Court order (see Recommendation No. 2).

Improvement is needed in the manner in which ATC approaches its economic regulation mandate and enforcement responsibilities. Economic regulation should include procedures to review and analyze financial data of individual carriers and classes of carriers. Rate changes filed by carriers should be supported with documentation which ATC should analyze to determine the reasonableness of the rate increase or decrease. After ATC has determined a carrier is fit, willing, and able to serve the Alaskan public and authority to operate is granted, ATC must enforce the provisions of the air and motor carrier transportation acts. Untimely processing of citations, complaints, and accusations undermines the enforcement efforts as does insufficient procedures to ensure the payment of assessed civil penalties (see Recommendations No. 3, No. 4, No. 5, and No. 7).

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Alaska Transportation Commission should become a section within the Alaska Public Utilities Commission (APUC).

Based on our performance review of ATC, we conclude the public interest would be better served if the Commission was eliminated and regulation of the transportation industry was administered through a transportation section within APUC. Our conclusion was derived, in part, from the following circumstances:

1. The existing policies and procedures of the Commission for administering the regulatory process of the transportation industry do not ensure that the public interest is served in an effective and economical manner and in accordance with legislative intent (see Recommendations No. 2 through No. 7).
2. As shown in Appendix B of our report, the workload of ATC has decreased from 1978. The combination of several factors has resulted in this decrease, i.e., deregulation of buses and tow trucks, compliance by carriers with reporting requirements, elimination of motor vehicle safety inspections at scale houses, and insufficient and ineffective enforcement activities as noted in Recommendations No. 4 and No. 5 of this report.
3. The present statutes and regulations need to be revised (see Recommendations No. 2, No. 8, No. 9, and No. 10).

In a prior Legislative Audit report entitled, "A Performance Review of the Alaska Pipeline Commission, July 11, 1980," we recommended the three Alaskan regulatory commissions, Alaska Public Utilities Commission, Alaska Pipeline Commission (APC), and ATC, be combined. Since that report, APC was merged into APUC.

We included in our previous report the results of a survey questionnaire to utility regulatory commissioners in other states which showed that:

- a) Twenty-six of the responding thirty-two states (81 percent) felt the advantages of a single regulatory agency outweigh those of maintaining two or three separate agencies. Some of the advantages noted were: centralization of expertise; cost savings due to economies of scale and elimination of unnecessary duplication; in general a more efficient use of resources.

**CORRECTION**

**CORRECTION**

## PURPOSE OF THE REVIEW

In accordance with the provisions of Title 24 of the Alaska Statutes and the "sunset" provisions of AS 44.66, we conducted a performance review of the Alaska Transportation Commission (ATC) to determine if the Commission should be allowed to terminate on June 30, 1983, or be continued in its existing form, or if alternatives exist to better accomplish its purpose. We reviewed the operations of ATC to determine if they were conducted in an effective, efficient, and economical manner.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Review can best be described as "audit by exception."

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

## ORGANIZATION AND FUNCTION

The Alaska Transportation Commission (ATC) was established by AS 42.07.011 in 1969 to supervise and regulate transportation in the State of Alaska. The Commission is authorized by AS 42.07.121 to administer the Air Commerce Act of 1960 and the Motor Freight Carrier Act. The Bus Transportation Act and the Ferry Transportation Act which were formerly administered by ATC were repealed by Chapter 115, SLA 1980. ATC is responsible for ensuring that all transportation activities under its jurisdiction provide safe, adequate service at reasonable rates and that sound economic conditions prevail in the industry.

The Commission consists of three members appointed by the Governor and confirmed by the Legislature. The Commissioners are appointed for staggered six-year terms with one member designated as chairman for a two-year period. In addition, ATC has a staff of twenty-seven including two hearing examiners, the executive director, the administrative support section, the tariff section, and the enforcement section. ATC also has an assistant attorney general assigned to it under a reimbursable services agreement with the Department of Law.

The Commission functions as a quasi-judicial body and may conduct formal hearings on contested applications, complaint and accusation matters, and rate matters. The Commission may delegate its authority to conduct hearings to a hearing examiner. The tariff section reviews rate changes. Significant changes are brought to the Commission's attention for formal action. The enforcement section investigates consumer and carrier complaints, participates in public hearings, conducts field surveys and safety inspections, and engages in other activities necessary to maintain satisfactory compliance by regulated carriers. If violations of statutes or regulations occur, civil penalties may be assessed.

## REPORT CONCLUSION

### Policy Issues

This review contains policy issues raised as a result of our evaluation of various Commission practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and recommendations presented in this report, so that the potential impact of policy changes can be evaluated.

### Report Conclusions

In our opinion, the Alaska Transportation Commission should be allowed to terminate on June 30, 1983, and the regulation of transportation should be administered through a transportation section within the Alaska Public Utilities Commission. Based on our review, we have concluded that the existing policies and procedures of ATC for administering the regulatory process do not ensure the public interest is served in an effective, economical manner and in accordance with legislative intent (see Recommendation No. 1).

However, whether or not the Legislature deems that continuing ATC in its present form is in the public's best interest, several changes need to be implemented to effectively serve the public. Those areas in need of change are described below.

Temporary authority has been granted by ATC in violation of statutory requirements. Further, required findings of fact and conclusions of law are not written in accordance with State regulations and in light of a Superior Court order (see Recommendation No. 2).

Improvement is needed in the manner in which ATC approaches its economic regulation mandate and enforcement responsibilities. Economic regulation should include procedures to review and analyze financial data of individual carriers and classes of carriers. Rate changes filed by carriers should be supported with documentation which ATC should analyze to determine the reasonableness of the rate increase or decrease. After ATC has determined a carrier is fit, willing, and able to serve the Alaskan public and authority to operate is granted, ATC must enforce the provisions of the air and motor carrier transportation acts. Untimely processing of citations, complaints, and accusations undermines the enforcement efforts as does insufficient procedures to ensure the payment of assessed civil penalties (see Recommendations No. 3, No. 4, No. 5, and No. 7).

In order to aid the staff in improving procedures in the areas of economic regulation and enforcement, the Commissioners should write orders for matters not heard by the hearing examiners (see Recommendation No. 6). Also, bulk-type commodity carriers (dump truck operators) should be exempted from economic regulation to eliminate the processing of unnecessary paperwork (see Recommendation No. 8). Regulations should be promulgated in a timely manner to clarify procedures for the staff and the public (see Recommendation No. 9).

The amount by which ATC's expenditures exceeded its revenues increased by 20 percent from Fiscal Year 1978 through Fiscal Year 1981. However, statutory fees have not increased for 10 to 14 years (see Recommendation No. 10).

In conclusion, we believe the time is right for ATC to be combined with the Alaska Public Utilities Commission, since the above changes in policies and procedures need to be made regardless of which commission administers the transportation regulation acts and a transition between agencies generally results in these types of changes.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Alaska Transportation Commission should become a section within the Alaska Public Utilities Commission (APUC).

Based on our performance review of ATC, we conclude the public interest would be better served if the Commission was eliminated and regulation of the transportation industry was administered through a transportation section within APUC. Our conclusion was derived, in part, from the following circumstances:

1. The existing policies and procedures of the Commission for administering the regulatory process of the transportation industry do not ensure that the public interest is served in an effective and economical manner and in accordance with legislative intent (see Recommendations No. 2 through No. 7).
2. As shown in Appendix B of our report, the workload of ATC has decreased from 1978. The combination of several factors has resulted in this decrease, i.e., deregulation of buses and tow trucks, compliance by carriers with reporting requirements, elimination of motor vehicle safety inspections at scale houses, and insufficient and ineffective enforcement activities as noted in Recommendations No. 4 and No. 5 of this report.
3. The present statutes and regulations need to be revised (see Recommendations No. 2, No. 8, No. 9, and No. 10).

In a prior Legislative Audit report entitled, "A Performance Review of the Alaska Pipeline Commission, July 11, 1980," we recommended the three Alaskan regulatory commissions, Alaska Public Utilities Commission, Alaska Pipeline Commission (APC), and ATC, be combined. Since that report, APC was merged into APUC.

We included in our previous report the results of a survey questionnaire to utility regulatory commissioners in other states which showed that:

- a) Twenty-six of the responding thirty-two states (81 percent) felt the advantages of a single regulatory agency outweigh those of maintaining two or three separate agencies. Some of the advantages noted were: centralization of expertise; cost savings due to economies of scale and elimination of unnecessary duplication; in general a more efficient use of resources.

- b) Twenty-eight of the responding states (87 percent) felt commissioners can realistically develop the expertise to render decisions in fixed, transportation and/or pipeline utility cases.

Also we compared in our prior report the regulatory scheme utilized by Alaska with the schemes utilized in the other forty-nine states. An update of that analysis is presented below:

Regulatory Scheme	States Used by		Commissioners			Employees Range		
	No.	%	No. on Comm.	No. of States	%	Hi	Lo	Avg.
One Regulatory Commission	40	80%	1 3 5 7	1 25 12 2	2.5% 62.5% 30.0% 5.0%	982	17	168
				40	100.0%			
Two Regulatory Commissions	8	16%	6 8* 9	6 1 1	75.0% 12.5% 12.5%	705	24	229
				8	100.0%			
Three Regulatory Commissions	2	4%	8 12	1 1	50.0% 50.0%	845	445	645
				2	100.0%			

\* Alaska

During a period of transition of management control there is usually a natural tendency for the new management to reshape and reorganize policies, procedures, and staffing. Since the present policies and procedures utilized for transportation regulation are in need of re-examination and change, we believe the time is right for ATC to be combined with the APUC.

Prior to carrying out the merger, a management study should be undertaken to determine correct staffing levels and organization for a combined commission. We believe the functions of the reorganized commission could be carried out by a five-member commission. The present qualifications as stated at AS 42.05.040 should be retained with one consumer position changed to specify qualifications which would bring to the commission the expertise needed for regulation of transportation, e.g., transportation economics.

Recommendation No. 2

Temporary authority should be granted in accordance with statutes.

Alaska statutes provide for issuance of temporary authority in the following circumstances:

1. Motor Carriers: (AS 42.10.210) when an emergency exists because existing transportation agencies cannot supply the necessary service. Temporary permits may not exceed a 90-day period.
2. Air Carriers: (AS 02.05.060) when an emergency requires, a carrier may be exempted from requirements of statutes and regulations if enforcement of such requirements would result in an undue burden on the carrier by reason of the emergency or unusual circumstances affecting the operation and if enforcement of the requirements is not in the public interest.

In tests of 32 applications for temporary authority we found 22 which did not meet the above criteria. ATC has defined "emergency" loosely enough to allow temporary authority to be granted even though no true emergency exists. Further, 4 temporary permits for motor carriers exceeded the 90-day statutory limitation.

Of the 22 cases mentioned above, 8 related to temporary transfers of authority. Because of the difficulties sometimes encountered in transfers of ownership of businesses, there may be some justification for treating transfers differently by allowing the granting of temporary authority. However, ATC should seek a statutory amendment to allow this procedure and, in the meantime, comply with the present statutes governing the granting of temporary authority.

Another procedure noted is that the Commission has granted temporary authority to applicants in the interim while the applicant awaits a decision for permanent authority. Although the Commission has decreased the processing time of applications since our last review, the present processing times still tend to encourage the use of temporary authority as a stop-gap measure. We determined the average processing time was approximately five months for permanent authority applications with 1981 orders which did not require a hearing. Fifteen percent of those tested took more than one year to process.

In addition, the ATC has a policy of allowing applicants who submit applications for both permanent and temporary authority at the same time to pay a single application fee instead of a separate fee for each application. This is also in violation of statutes and results in an unfair advantage to those who submit both applications simultaneously.

Review of applications for temporary authority also revealed the following:

1. Temporary authority to operate was granted via telegram without prior findings of fact and conclusions of law in 15 of 19 cases tested.
2. In 4 of 19 cases tested no order with the required findings and conclusions was subsequently prepared.
3. Telegraphed authority preceded publication in the ATC Journ. in 10 of 13 cases.
4. Two of 7 cases involving telegraphed authority could not be found on any Commission meeting agenda.

Although efforts to reduce "red tape" and accommodate applicants are commendable, we are in agreement with Superior Court Order No. 76-6441, Weaver Brothers and Copper Freight Lines vs. Alaska Transportation Commission, which held that telegraphed authority violates provisions of Alaska Statute 42.10 and Title 3, Chapters 60 and 64, of the Alaska Administrative Code and that grants of authority without findings, conclusions, or written orders are an abuse of discretion per se. While the Commission may exempt applicants from meeting the usual requirements in emergency situations, it may not exempt itself from statutes and regulations governing the conduct of its business which require written findings of fact and conclusions of law, and proper notice of proceedings and actions.

It appears that the Commission has allowed policies regarding granting of temporary authority to evolve independently from statutory constraints. Regulations governing policies and procedures which include specific practices for handling requests for temporary authority in compliance with statutes have been in the development stage since 1978. In February 1981 they were approved by the Commission and sent to the Department of Law for review (see Recommendation No. 9).

We recommend that the Commission grant temporary authority in accordance with statutes and regulations, in light of the Superior Court Order cited above.

#### Recommendation No. 3

The economic regulatory procedures of ATC should include financial analysis of data submitted by the carriers.

The purpose of the Motor Freight Act (AS 42.10) is to provide stabilized service and rate structure; to foster sound economic conditions among carriers; to promote adequate, economical, and efficient service, and reasonable, nondiscriminatory charges. The purpose of the Alaska Air Commerce Act of 1960 (AS 02.05) includes the responsibility to pro-

mote adequate, economical, and efficient air service, and reasonable, nondiscriminatory charges. Both acts give ATC the authority to suspend and investigate tariffs filed by carriers and to grant, deny, or modify those tariffs.

We determined that ATC is not adequately performing its duties to satisfy the above mandates for economic regulation. The following are areas in which ATC should improve its procedures in order to ensure sufficient economic regulation of carriers under its jurisdiction:

A. Processing of applications should include financial analysis of the carriers' financial statements and financial data.

Of 70 application files for permanent and temporary authority tested, 44 did not contain evidence that the staff had analyzed the carriers' financial statements or other financial data submitted. The remaining 26 files contained a form utilized by the staff in reviewing financial data which, in general, was incomplete. Further, these forms do not require pertinent ratios, such as the operating ratio (operating expense/operating revenues), which indicates reasonableness of the proposed rates, and the current ratio (current assets/current liabilities), which indicates the carrier's ability to meet short-term debts. According to the staff, the reason the form no longer shows ratios is that they assume the financial data received from the applicants may be inaccurate and, therefore,, ratios would be meaningless. Yet, ATC does not verify items reported on the financial statements.

In the orders granting authority to carriers, ATC includes statements in their findings and conclusions which refer to the carrier's fitness to provide service and to the economic feasibility of the proposed services. However, based on the above review there is either no analysis or insufficient analysis performed to support these statements.

ATC should establish procedures for verification of items on the financial statements, such as cash balances, accounts receivable, accounts payable, and ownership of equipment. The present form used for review of financial data should include ratios and the analyses should be performed on a consistent basis.

B. ATC should require supporting documentation or tariff changes for review and analysis.

Documentation supporting tariff changes is not required to be submitted by carriers or tariff agents. According to the staff, the two tariff specialists review the

tariff filed by the motor carriers and if anything questionable is noted, they discuss the problem. At times they meet with the tariff agent to discuss the tariff. A clerical employee reviews the tariff changes filed by the air carriers and compares the revised rates with the rates of other carriers with similar aircraft in the same geographical location. However, we found no written documentation of these reviews.

We also reviewed the docket files for calendar years 1980 and 1981 and found that only one rate investigation case had been initiated by the staff. However, no action was taken on this case. According to a staff memo in the file, the case was closed because they were "unable to obtain a quorum of commissioners to discuss" the case. During the same two-year period 1,358 tariff changes were filed with the Commission for review.

We recommend ATC require carriers to submit financial data which supports the rate change. The financial data, including pro forma costs and revenues, should be analyzed. The analysis should include, but not be limited to, the comparison of rates for similar commodities in the same geographical location and the calculation of the operating ratio as an indicator of the reasonableness of the proposed rates. The Federal motor carrier regulatory agency (the Interstate Commerce Commission) has determined an operating ratio of approximately 94 percent to be reasonable for motor carriers. Other state regulatory agencies, such as the Colorado Public Utilities Commission, also utilize this ratio as an indicator in determining the reasonableness of rates.

C. Annual and quarterly financial reports should be analyzed.

Requirements for submission of annual reports from motor carriers and quarterly reports from air carriers are being enforced. However, data collected on these reports is not being correlated or analyzed. One class of motor carriers is not required to submit their annual report up to a year after the close of the reporting period. It is inefficient to use resources to ensure compliance with reporting requirements when the information is not being used and is allowed to become stale.

ATC is in the process of entering data on the computer from air carriers' 1979 through 1981 quarterly reports. However, this financial data does not include the costs of operations for air taxi operators. In our 1978 audit report, we recommended the air taxi operator quarterly report form be revised to include costs of operations. Presently, ATC has only a pencil draft of a revised form.

ATC should revise its annual and quarterly report forms to include an income statement which includes operating costs as well as revenues, an abbreviated balance sheet, and other relevant data. These report forms should not contain excessive information but rather only data relevant to the needs of ATC.

Recommendation No. 4

Complaints and accusations should be investigated and processed in a timely manner and accurate records of the complaint resolution process should be maintained.

Tests of 36 complaints and accusations acted upon in 1981 revealed the following:

1. Processing of complaints and accusations involving hearings took an average of 9 months.
2. Processing of complaints and accusations which did not require a hearing took an average of 4 months.
3. The average age of complaints and accusations in process at December 31, 1981, was 8 months.
4. Seven had no record of the date initiated.
5. Four had dates out of logical processing sequence, e.g., date of order preceded date initiated.
6. Ten were not listed on any Commission meeting agenda.
7. Investigation files did not contain documentation of communications with those involved, i.e., memoranda, activity log, etc.

During 1981, 254 complaints were logged and four staff members in the enforcement section were assigned to investigate these complaints. This resulted in an average of 1.5 complaint cases per week per staff member. Based on this caseload, processing and documentation of investigations should be complete, accurate, and timely. While complaints involving hearings may require a longer processing time than those without hearings, processing time could be decreased if orders were completed as soon as possible after the hearing.

Recommendation No. 5

The number of field surveys performed each year should be increased and should include a limited financial/compliance audit of accounting records.

Of approximately 630 regulated carriers, 38 were surveyed in 1981. This is a decrease from 58 out of approximately 600 in 1978. All 38 surveys were performed on air carriers;

none were performed on motor carriers. Four enforcement personnel were assigned to conduct the 38 surveys in 1981, resulting in an average of 9.5 surveys per person per year. The average survey takes about one day to complete. These surveys emphasized review of tariffs and verification of employment status where leased aircraft and owner pilots were involved.

ATC should perform field surveys on motor carriers as well as air carriers, and such surveys should include equipment safety inspections and verification that prescribed standard accounting systems are in use. Both motor carrier and air carrier surveys should include comparison of rates charged and authorized tariffs and may also include verification of annual reports by tracing report data into accounting records.

Recommendation No. 6

The Commissioners and hearing examiners should write all the formal written decisions (orders) on docketed matters before ATC.

Based on a review of the paperflow, discussions with the Commissioners, and a test of 36 files, we determined that orders are written by either the hearing examiners or the staff. The hearing examiners write the orders relating to matters heard by them. Staff members write all other orders for the Commissioners.

Requiring the staff to write the orders for citation or other enforcement matters creates the potential for violation of ATC's ethical regulations. Those regulations [3AAC 60.10(a) & (h)] prohibit parties in a matter pending before ATC from communicating privately, directly or indirectly, with the Commissioners or hearing examiners about such matters or arguing the merits of those cases without their adversaries present or without notice to them. Violation of this rule occurs when the staff participates in a hearing and subsequently drafts the order for the Commissioners' decision.

In a review of citations issued between July 1, 1980, and December 31, 1981, we found this violation had occurred in six of the seven cases reviewed for which a hearing was held. These violations could be avoided if the Commissioners would write their orders. In addition, we determined it took an average of 53 days for an order to be written after a hearing was held for a citation.

During Fiscal Year 1981, there were 198 hours of hearing of which the Commissioners presided over only 27 hours while the hearing examiners presided over the remaining hours. ATC issued 588 orders in Fiscal Year 1981, which would have

resulted in a workload of approximately four orders per week per Commissioner. In addition, ATC has developed canned formats for certain types of orders. In view of the above and the need for the staff to improve their procedures in the areas of financial analysis (see Recommendation No. 3) and enforcement (see Recommendations No. 4 and No. 5), we believe the Commissioners should write the orders pertaining to matters not heard by the hearing examiners.

Recommendation No. 7

ATC should establish procedures for the accountability and collection of civil penalties.

ATC does not maintain accounting records of its civil penalties receivable. In a review of civil penalties assessed during the period July 1, 1980 through December 31, 1981, we determined \$41,075 had not been paid at the date of our review. This represents 45 percent of the total amount of civil penalties assessed and not suspended. In addition, we noted \$1,050 had not been paid on civil penalties assessed prior to July 1, 1980.

The State Administrative Manual (Section 7972) states control is a key factor in handling accounts receivable. Control of accounts receivable consists of determining amounts due from others, billing those persons responsible, recording the amounts due, and collecting those amounts.

The manual (Section 7956) also states it is the responsibility of each agency to maintain established collection periods. Agencies are to send notices 30, 60, and 90 days after the original payment date. After 120-180 days, depending on the amount due, ATC should request assistance from the Attorney General or permission to assign the account to a collection agency.

Recommendation No. 8

Alaska Statutes should be amended to exempt dump truck operators from certification and economic regulation.

Alaska Statutes 42.10.070 and 42.10.080 authorize the Commission to regulate common and contract motor freight carriers, which includes bulk-type commodity carriers (dump truck operators).

The Commissioners and staff believe the dump truck operators should be exempted from certification as to public convenience and necessity and only be regulated as to the safety of operations.

Applications for authority submitted by dump truck operators are routinely granted as we found in a 100 percent review of the applications for original and temporary authority with 1981 orders. In addition, some of these operators request voluntary suspension of authority due to the seasonal nature of their business, which is also routinely granted as shown by a 100 percent review of petitions with 1981 orders.

Currently, Senate Bill No. 862 is in committee in the Legislature, which would exempt dump truck operators from the requirements of showing public convenience and necessity. Considering the need for ATC to improve its procedures in economic and compliance regulation (see Recommendations No. 3 through No. 5) and that, through its own actions of routinely granting dump truck operators authority, the Commission has essentially exempted dump truck operators from economic regulation, we believe the public interest would best be served by allowing the Commission to cease certification of dump truck operators.

#### Recommendation No. 9

Regulations should be promulgated in a timely manner.

ATC presently has four sets of proposed regulations which need to be adopted into the Alaska Administrative Code. The proposed regulations are as follows:

1. Practice and Procedural Regulations--These regulations were being drafted at the time of our 1978 audit. They were approved by the Commission in February 1981, but have not been filed with the Lieutenant Governor and adopted into the Administrative Code. The hearing process would be improved by these regulatory procedures which also include specific procedures for requests for temporary authority (see Recommendation No. 2).
2. Regulations Governing the Construction and Filing of Tariffs Issued by Carriers--Public hearings for these regulations were held in June and August 1981. The docket page which lists actions taken on the regulations indicated no further action has occurred.
3. Insurance Regulations--After public hearings were held on these regulations in December 1980 and January 1981, the Commission approved them in September 1981. They have not yet been filed with the Lieutenant Governor to be adopted into the Administrative Code.
4. Freight Forwarder Regulations--Beginning in 1978 ATC received applications for authority from freight forwarders. Decisions on these applications were delayed, in part, because ATC did not have regulations governing freight forwarders. In July 1980, ATC promulgated limited regulations (3AAC 64.165 and 3AAC 64.340), but additional regulations were needed.

In an order (No. 81-39) dated February 11, 1981, ATC granted, denied, or dismissed the pending twenty applications. Subsequently, the effective date of the order was stayed until August 31, 1981, and public hearings were held on proposed regulations on August 5, 1981. The Commission approved the regulations on August 8, 1981. On August 28, 1981, another order was issued confirming the effective date of Order No. 81-39. In addition, the order stated, "all forwarders so authorized by Order No. 81-39, as amended, are governed by the regulations and additions thereto as may hereafter be made". Chapter 3AAC 69 technically does not exist as those regulations have not been adopted into the Alaska Administrative Code.

Both ATC and the Department of Law are partially responsible for these delays in adoption of regulations. ATC should review its procedures and make necessary changes to allow more timely adoption of regulations. In addition, ATC should take a more active stance in determining the status of regulations sent to the Department of Law for review to ensure those persons performing the review are aware of the need for timely promulgation.

Recommendation No. 10

ATC should seek legislation to increase fees.

The Alaska Statutes authorize ATC to collect application and registration fees from motor and air carriers as shown in Appendix A of this report. The fees for air carriers have not been increased since 1968. Application and registration fees for motor carriers were established in 1970 and 1972, respectively.

In addition, AS 42.10 240 authorizes the Department of Public Safety to collect the following weight fees for motor vehicles:

- A. Motor vehicles of private and exempt carriers weighing over 4,000 pounds \$25
- B. Motor vehicles of common and contract carriers and private carriers not included in (A) above weighing:
  - 1. 12,000 pounds or less \$35
  - 2. 12,001 pounds to 18,000 pounds 55
  - 3. Over 18,000 pounds 75

The above weight fees were last revised in 1970.

The amount by which ATC's expenditures exceeded its revenues increased by 20 percent during a four-year period, from Fiscal Year 1978 through Fiscal Year 1981. As noted above, the most recent increase in fees was made 10 years ago and the fees for air carriers have not been increased for 14 years. We recommend these fees be revised to diminish the effects of inflation on the operating costs of ATC.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analysis indicates both positive and negative attainments of the Alaska Transportation Commission and how its activities relate to the public need factors as defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent to which the board, commission, or program has operated in the public interest.

Based on our review we determined the existing policies and procedures of the Commission for administering the regulatory process of the transportation industry do not ensure the public interest is served in an effective, economical manner and in accordance with legislative intent (see Recommendation No. 1).

II. 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.

Slow promulgation of regulations has impeded the Commission's operations (see Recommendation No. 9). Continued regulation of dump truck operators has also hindered the Commission (see Recommendation No. 8). In addition, many of ATC's internal practices and procedures contribute to its inability to operate efficiently and effectively (see Report Conclusion, and Findings and Recommendations).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

Statutory changes have been made which have raised the amount of civil penalties, conferred cease and desist authority to stop illegal carriers, clarified definitions of certain air carrier classifications, and deregulated bus and ferry transportation. Legislation has been introduced to deregulate dump truck operators (see Recommendation No. 8).

- IV. 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.

The Commission receives feedback from interested persons through the public hearing process of resolving complaints in the course of regulatory proceedings.

- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

The Commission publishes a bi-weekly journal which contains information on applications, Commission orders, enforcement actions, tariff changes, scheduled hearings, and other pertinent information. The journal is distributed to subscribers, news media, and other interested parties. Public participation is also encouraged through the hearings process.

- VI. 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.

The Commission processes complaints and accusatory cases in an untimely manner (see Recommendation No. 4).

Between June of 1979 and December of 1980 the State Ombudsman's office received and closed 33 complaints regarding ATC. Eight of these cases were discontinued before completion due to lack of resources and the other 25 were referred to ATC or other agencies for further action, or additional information.

- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The Commission, prior to granting authority to a regulated carrier, must determine whether the carrier is fit, willing, and able to provide adequate, safe, and efficient service. In our opinion, the Commission's ability to present qualified applicants to serve the public is impeded by lack of analysis of information submitted (see Recommendation No. 3).

VIII. 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.

We found no evidence of lack of compliance with State personnel practices or affirmative action requirements.

IX. 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.

Please refer to the previous section, Findings and Recommendations.



APPENDIXES

APPENDIX A

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA TRANSPORTATION COMMISSION  
REVENUES COMPARED WITH EXPENDITURES  
For the Fiscal Year Ended June 30, 1981  
(UNAUDITED)  
Note 1

Revenue Collected (See Schedule 1)	\$ 126,521
Expenditures	<u>1,453,980</u>
Excess of Expenditures Over Revenues	<u>\$(1,327,459)</u>

Schedule 1  
Source of Revenue

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>	<u>Last Year Fee Increased</u>
Civil Penalties (AS 02.05.231 and AS 42.10.394)	Up to \$1,000 or an amount equal to revenue earned as a result of the violation, whichever is greater	When assessed by the Commission	1980
Misdemeanor (AS 02.05.230 and AS 42.10.393)	Up to \$500 for each offense	When assessed by the Commission	1970
Publication Fee	\$ 40	Upon any application	1975
<u>Motor Freight Carriers</u> (AS 42.10.160)			
Application Fee (for permanent, temporary, extension, or transfer)	\$ 50	Upon application	1970
Initial Registration Fee (for interstate and foreign commerce)	\$ 25	At issuance of permit	1972
Renewal Registration (for interstate and foreign commerce)	\$ 10	Annually on renewal date	1972
<u>Air Carriers</u>			
Application Fees (AS 02.05.075--for permanent, temporary, transfer, amendment, or lease) by Gross Take-Off Weight (GTOW):			1968
12,500 lbs. or less	\$100	Upon application	
12,501 lbs. or more	\$200	Upon application	
Registration Fee [AS 02.05.090(f)] by GTOW:			1968
4,000 lbs. or less	\$ 25	Annually	
4,001 lbs. but less than 7,900 lbs.	\$ 50	Annually	
7,900 lbs. but less than 12,500 lbs.	\$100	Annually	
12,500 lbs. but less than 27,000 lbs.	\$150	Annually	
27,000 lbs. but less than 50,000 lbs.	\$300	Annually	
50,000 lbs. but less than 75,000 lbs.	\$400	Annually	
75,000 lbs. or over	\$600	Annually	

Note 1: The records were not audited by us and accordingly, we do not express an opinion on the Commission Revenues Compared with Expenditures.

APPENDIX B

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA TRANSPORTATION COMMISSION  
PROGRAM ACTIVITY  
For Fiscal Years 1981 and 1978

<u>Activity</u>	<u>1981</u>	<u>1978</u>
New Dockets	372	527
Orders Issued	588	783
Hearings Held	53	125
Citations Issued	28	72
Field Surveys	38	58
Civil Penalties Assessed (Notes 1 & 2)	\$83,500	\$134,915

Note 1: The records were not audited by us and accordingly we do not express an opinion on Commission revenues.

Note 2: The amount of civil penalties was increased from up to \$150 per offense to up to \$1,000 per offense or an amount equal to revenue earned as a result of the violation, whichever is greater, on July 1, 1980.

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA TRANSPORTATION COMMISSION

JAY S. HAMMOND, GOVERNOR

1000 MACKAY BUILDING  
338 DENALI STREET  
ANCHORAGE, ALASKA 99501  
PHONE: 279-1451

July 30, 1982

RECEIVED  
AUG 01 1982

LEGISLATIVE  
AUDIT

Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
5th Floor, State Office Bldg.  
Pouch W  
Juneau, AK 99811

Dear Mr. Wilkerson:

Attached is our response to the Preliminary Audit Report:

A Performance Review of the Department of Commerce and  
Economic Development, Alaska Transportation Commission,  
April 1, 1982.

Our response follows the format of the report as sent to us. We have indicated for each recommendation a statement of agreement or disagreement; methods to be used to implement agreed to recommendations, and dates of expected implementation of recommendations.

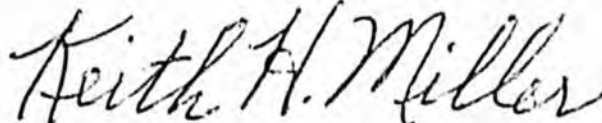
We have maintained the confidential nature of the report.

Copies of our responses have been distributed to the Governor, Commissioner Webber, the Department of Administration, and the State Internal Auditor for their review.

We have not commented on the nine items of "Analysis of Public Need," only those items included in the report.

Very truly yours,

ALASKA TRANSPORTATION COMMISSION



Keith H. Miller  
Chairman

KHM/rm

ALASKA TRANSPORTATION COMMISSION'S  
Response to:

A Performance Review Of The Department Of  
Commerce and Economic Development  
Alaska Transportation Commission  
April 1, 1982

Commissioner Charles R. Webber  
Department of Commerce and Economic Development

Deputy Commissioner Edward Eboch  
Department of Commerce and Economic Development

Members of the Alaska Transportation Commission  
Chairman Keith H. Miller  
Commissioner Walter L. Kubley  
Commissioner H. D. Scougal

### Report Conclusion

The Alaska Transportation Commission does not agree with the stated conclusion. The recommendations stated do not substantiate the conclusions that the agency as it existed should be terminated on June 30, 1983.

Recommendation 1 is simplistic in that the premise appears to be that since a majority of other states have only one Commission, so should Alaska. There is no effort to analyze the impact that combining the two commissions would have on the public, the regulated industries or the Commissions.

While we agree that there may be a need for improvement in the existing policies and procedures, the deficiencies are not serious enough to be considered a failure to ensure service to the public or the regulated carriers. As to the comparison of Fiscal 1978 versus 1981 work load by using dockets, orders issued, and hearings held, it should be noted that during fiscal year 1981 the question of sunset was still undecided and many carriers simply did not apply for authority until the legislature acted to continue the agency. A comparison of FY 82 to FY 81 and FY 78 indicates:

<u>ACTIVITY</u>	<u>1982</u>	<u>1981</u>	<u>1978</u>
New Dockets	655	372	527
Orders Issued	693	582	783
Hearings Held	94	53	125

The ATC disagrees that the issuance of temporary authority is as serious as indicated by the audit report. The use of the Superior Court Order as a precedent is unfounded as the case before the Court involved the requirement to notify protestants, not simply the issuance of temporary authorities without written findings.

The Commission has attempted to implement the recommendations of the 1980 Legislative Audit. Additional staff has been requested without success, and, in fact, the FY 82 operating budget was reduced by 5% across the board. There is a definite need for additional accounting positions, enforcement agents, and more legal support from the Department of Law. The merger of the ATC with the APUC is not going to meet the needs of the public.

## FINDINGS AND RECOMMENDATIONS

### RECOMMENDATION NO. 1

The Alaska Transportation Commission should become a section within the Alaska Public Utilities Commission (APUC).

The Alaska Transportation Commission does not agree with this recommendation. The audit recommendations do not support the conclusion that the public interest is not being served by this Commission, and further, there is no basis to conclude that the combination of the two regulatory agencies would result in the public interest being better served.

There is no doubt that the ATC might improve its existing policies and procedures and level of enforcement. However, this recommendation, based on the reasons given, reflects a lack of familiarity with the differences between the legislative policies, objectives and methodology in regulating utility services and the policies, objectives and methodology in regulating transportation services.

To predicate such basic melding of economic regulatory functions simply on the number of States which have one commission as compared with those which have two commissions is overly simplistic.

Nowhere in the recommendation is there any comparison of the regulatory scheme, functions and circumstances of transportation regulation in Alaska relative to other States. For example, the report fails to recognize that only six other States regulate air commerce and air carriers. The six States that regulate air commerce generally regulate only scheduled service and do not significantly regulate contract or air taxi operations. One basic reason for the monumental difference between Alaska and other states is that in the other states the public has the alternative of using other modes of transportation such as auto, bus or train as there exist adequate road and railroad systems while in Alaska the only alternative is the airplane. Alaska's trucking industry is also somewhat unique in that most of the freight is moved within Alaska and the interstate portion of the move is usually a sea leg. Thus, Alaskan trucking firms have limited ability to compete across state borders.

Any such recommendation should be predicated on a thorough review and analysis of the difference in regulatory functions of the two commissions. In overly simplified form, the economic regulations of utilities and utility services is founded on the creation of territorial and functional monopolies and thereafter regulation by the government the performance of the monopoly utility. The regulation of transportation carriers and services is vastly different. The establishment of semi-controlled competition is perhaps the single most important ingredient in transportation regulation.

A review by an independent qualified firm could indeed review the staffing levels organization, and productivity of each commission and evaluate the impact on each commission of their combination. Such a merger must be based on a well organized, properly funded plan or the result could be utter chaos and an inefficient, unmanageable commission.

#### RECOMMENDATION NO.2

Temporary authority should be granted in accordance with statutes.

The ATC agrees that temporary authorities must be granted in accordance with applicable statutes, but disagrees with the implication that the Commission is issuing temporary authorities without considering the statutory constraints.

The ATC has discontinued the practice of sending telegrams except in extraordinary cases based on the conditions generating the request or location of applicant. We will continue to send telegrams or contact applicants by telephone to indicate a denial of temporary authority.

The Commission has taken steps to put better controls on the request for temporary authorities. 3 AAC 60.430 as amended effective May 28, 1982 requires the applicant to provide a specific statement of the facts which would authorize the Commission to grant relief and an explanation of why it should be granted ex parte without due notice and a hearing if required. If the application does not include the necessary information, no action will be taken.

The Commission concurs that no temporary should be approved or disapproved without written order providing the findings of fact and conclusions. However, we do not agree

that the written order must be prepared before the petitioner is notified or that temporary authorities can be granted only after the publishing period.

The Commission does not agree that Sec. 02.05.060 is as restrictive as the audit recommendation indicates. The Section clearly indicates the ATC is to consider the undue burden on the air carrier caused by either the emergency or the unusual circumstances affecting the operations. Further, the section goes on to specifically state that an emergency as defined in AS 44.62.250 need not be found before issuing an order.

When tied to Sec. 02.05.080, the statute detailing the issuance of air certificates, the authority to grant a temporary appears quite broad. It should be noted that in no case is the applicant granted an exemption from abiding by the same safety or financial responsibilities required of all carriers. The exemption is granted to allow performance of a service pending final approval of an application. Typically, in air, the request is for temporary authority to transfer ownership, to add or delete schedules, to operate from different bases, to add supplemental bases, or to begin operation. It does not appear that approval of such requests carries the implied disservice to the public or the industry that the recommendation indicates. AS 02.05.080 does not require the applicant to prove public convenience and necessity before the issue of certain types of certificates, and, in fact, the statute requires the Protestant to show that the proposed service is contrary to the public interest.

The Commission takes exception to the use of Superior Court Opinion No. 766441, Weaver Bros., Inc., and Copper Freight Line, vs ATC as supporting the opinion that temporary grants cannot be made before written orders are completed. The order is an unpublished opinion concerning a preliminary injunction and would not be considered legal precedent. The Commission interprets the opinion to say that in granting temporary authority under the motor carrier act, after an application has been protested, the Commission must support its decision by written findings. The key issue in the case was not the fact a temporary had been issued, but the fact the Commission granted a temporary without providing the Protestants of record an opportunity to argue their position before the grant was made thus denying them due process. The current Commission definitely recognizes the requirement to guarantee all parties due process and the circumstance that resulted in the cited case would not occur with the current Commission.

The statement on page seven indicating the average processing time of applications for permanent authority that did not require hearing to be five months is, in our opinion, misleading. A review of the 1982 orders issued for application for permanent authority that did not require hearing indicates an average of approximately three months, not five months. It should be noted that the Commission is very much aware of the 120 day rule as required in AS 02.05.070 and has not run over that time limit to date. While there can be delays in processing applications and orders, generally a review of dockets open longer than 120 days will show that either the application was incomplete and required follow-up or that some form of protest was included. In quite a number of cases, the protests are withdrawn a few days before the hearing is actually held. While such dockets may appear to include grants without hearings, the delays caused by having to schedule a hearing, notify all parties, and, in some cases, reschedule the hearing delays the final order. Such delays are clearly beyond the control of the Commission.

In summation, the Commission does not argue that in the past some temporaries may have been granted in haste, but disagree that the consequences are as serious as indicated and does not feel the temporaries constitute a violation of the public interest. The combination of the new regulations that were implemented May 28, 1982, and closer review of the circumstances supporting the request for temporary authority has resulted in more denials of temporary requests and very often those granted are not done so until after the 10-day notice period.

The question of temporary exemption for both air and motor might very well be the subject of statutory revision especially as applied to transfer. One solution to this continuing problem is to broaden the statute to define the term "emergency" and thereby clarify whether it is to have the aura of dire circumstances or as in AS 02.05 provide for the consideration of the carrier/applicant faced with unusual circumstances.

#### RECOMMENDATION NO. 3.

The economic regulatory procedures of the ATC should include financial analysis of data submitted by the carriers.

The Commission agrees there is room for improvement in the area of staff review of financial data submitted by carrier and applicants. However, with current staffing it is not possible for the ATC to do a full rate review for every tariff filing. We concur with the recommendation concerning verification of financial statements during the application process.

Specific action that has been taken since the date of the audit are as follows:

A. Processing of applications....

All applications are now reviewed by an accounting technician during the initial processing. If necessary, the staff requests the applicant to provide additional information or explain in writing the financial data submitted.

The ATC staff is in the process of reviewing the financial information form included in the application package. The revised form will provide a better detailing of the entries relating to financial fitness. The revised form should be in use by October 1, 1982.

B. ATC should require supporting documentation of tariff....

In this area it seems that the biggest problem appears to have been a failure to document staff action. With only three tariff specialist, it would not be possible for the ATC to control and set the rates for 200 common motor carriers and 225 air carriers. However, the staff has rejected many tariff filings that do not meet filing requirements and that might be discriminatory toward selected shippers, thereby providing protection to the public. We promptly review any complaint filed by a shipper and exercise our authority to ensure correct charges are made by all parties.

To improve the documentation problem, all tariffs are reviewed and initialed by a tariff specialist. The review is to ensure that all of the tariff rules have been met and that the tariff is in the proper form. A check list has been developed for air carrier tariffs and one for motor tariffs is being designed and should be in use by August 15, 1982.

On July 21, 1982, a notice was sent to all air carriers requesting that financial support be provided when a tariff change is requested. A similar notice will be sent to the motor carriers. The staff will review the tariff changes against the indicated cost increases.

On August 2, 1982, an order opening a rate investigation will be sent to all dump truck carriers requesting information necessary to evaluate the current minimum rate.

C. Annual and quarterly financial reports should be analyzed.

All quarterly air carrier reports have been entered on the computer. This information is being used by another state agency, DOT/PF and several federal agencies to evaluate current airport and navigational needs. The origin and destination information is also used by our staff, carriers and applicants to determine economic feasibility for various routes.

The revised quarterly report form will be in use by the end of the year and will include some cost data. We have received some comment from carriers that they do not want to report too much financial information as our reports are public information and can be reviewed by competitors.

As a general comment, the ATC does not agree with the statement that it is not adequately performing its duties to satisfy its statutory mandates relating to economic regulation. The ATC has attempted repeatedly without success to add additional positions necessary to provide more economic analysis and review of the transportation industry. This recommendation, like Recommendation No. 1, fails to recognize the competition that exists between carriers. There appears to be the assumption that tariff filings are based on a sole source availability of carriers. In fact, there is intense competition between carriers and published tariffs reflect the competitive nature of the carriers.

The Commissioners of the ATC take strong exception to paragraph 2, Item "3" which quotes a staff memo in a file of one case which states that the case was closed because the staff was "unable to obtain a quorum of Commissioners to decide" the case. That memo, which is totally without foundation, was written on a Saturday between Commissioner Johnson's last day and Commissioner Scougal's first day. It

is outrageous that this memo, written by a former executive director was allowed to be included in the report. That executive director knew full well if he wanted that item or any other items decided by a quorum that all be had to do was put it on the weekly agenda.

RECOMMENDATION NO.4.

Complaints and accusations should be investigated and processed in a timely manner and accurate records of one complaint resolution process should be maintained.

The ATC concurs that the enforcement effort might be streamlined. However, the processing of accusations will always require considerable time from initiation to completion. The enforcement section must take care to insure that any accusation is based on fact and that there is reasonable assurance that a violation has occurred. Poorly based accusations result in unwarranted cost to the carrier, wasted staff time and a loss of confidence on the part of other carriers in the Commission's ability to enforce its regulations.

Steps have been taken to have the enforcement agents keep better records of the time spent on complaints, investigations and carrier contacts. An effort is being made to train all agents to prepare cases more expeditiously. However, every effort has to be made to ensure that the accused is guaranteed due process and that the staff functions under the same rules as any other party appearing before the Commissioners.

Definite improvement in processing documents necessary to keep cases active is expected. Before the end of the calendar year every agent will have a specific assigned case load and will be held accountable for each step of the processing from beginning to end.

RECOMMENDATIONS NO. 5.

The number of field surveys performed each year should be increased and should include a limited financial/compliance audit of accounting records.

The ATC agrees with this recommendation and expects to see improvement in the number and quality of carrier surveys.

A new motor survey format has been developed since this audit was conducted and is being used. Four motor surveys and eight air surveys have been conducted since May, 1982. The air surveys have always included a sample comparison of issued tickets to tariffs on file. The new motor survey procedures call for an examination of a sample of issued freight bills against tariffs, review of driver records to include owner operator leases and equipment records.

To go into a system of verifying annual reports against accounting records would require additional staff. The Commission is currently not staffed to perform in-depth financial audits of carriers. To perform this task would require at least three full time accountant/auditors.

RECOMMENDATION NO. 6.

The Commissioners and hearing examiners should write all the formal written decisions (orders) on docketed matters before ATC.

The ATC does not disagree with this recommendation. However, it is a very common practice in both court systems and regulatory agencies in virtually every state for the judges or commissioners to assign the prevailing party the task of drafting the order effecting the decision. In fact, in the case cited in Recommendation 2, plaintiff's attorney prepared the order Judge Singleton signed. The commissioner or hearing officer will indicate at the close of accusation or citation hearings that staff is assigned to draft the final order effecting the verbal decision.

As a point of information in May and June of 1982, Commissioner Scougal participated in a joint ICC-ATC hearing in Fairbanks for nine days. In June, Commissioner Miller and Scougal presided over 3 1/2 hours of hearings involving applications for dump truck authority.

RECOMMENDATIONS NO. 7.

ATC should establish procedures for the accountability and collection of civil penalties.

The Commission agrees that an accounts receivable system is needed for both the collection of civil penalties and other fees. It was expected that a system could be on line by the beginning of July 1982. However, due to workload, the system will not be operational until the end of August.

It should be noted that during the last six months there has been a greater effort in collecting the assessed penalties. Reminder letters are being sent to parties owing money. One major case involving \$7,000 in penalties has been referred to the Department of Law for civil action. The Commission refused to conduct a hearing for one carrier requesting an expanded authority until a delinquent penalty was paid. As an incentive for violators to pay penalties promptly, the Commission now provides in the final order for additional daily late fees if not paid promptly.

RECOMMENDATION NO. 8.

Alaska Statutes should be amended to exempt dump truck operators from certification and economic regulation.

The Commission agrees that dump truck operations should be exempt from economic regulation and has made an effort to get appropriate legislation passed to deregulate dump truck operations. Possibly with the support of a second legislative audit recommendation, the necessary revisions to AS 42.10 will be made.

The ATC does take exception to the comment that the Commission has "essentially exempted dump truck operators from economic regulation." The Commission has attempted to recognize the nature of the dump truck industry in Alaska, and effect its regulation with the least burden possible on applicants and permitted carriers.

Since the audit was performed, a combined dump truck hearing involving some 20 protested applications was held. After 31 1/2 hours of hearing time, the Commission granted four authorities, denied two, six were delayed at request of applicant, and eight were dismissed. Based on the testimony by protestants, it is clear that at least a portion of the dump trucking industry does not believe that it should be deregulated.

RECOMMENDATION NO. 9.

Regulations should be promulgated in a timely manner.

The Commission agrees in part with this recommendation in that regulations should be adopted as promptly as possible. However, it must be understood that the ATC cannot unilaterally issue regulations. Since all of our regulations have a direct impact on the carrier, the adoption process can be lengthy.

Specific action taken on the four sets of proposed regulations cited in the audit is as follows:

1. Practice and Procedural Regulations - These regulations are in effect and appear in Register 82, July 1982.
2. Regulations governing the construction and filing of tariffs issued by carriers. - The regulations are being redrafted and will be proposed by October 1, 1982. The major technical problem was that the proposed regulations attempted to combine motor and air carriers in one set of regs. This is not practical and the new draft will cover each mode separately with air being covered initially.
3. Insurance Regulations. - The proposed regulations are being reviewed and will probably have to be revised. Since the current insurance regulations are basically adequate, it is not expected that the revised regulations will be re-published for hearing until the first of the year.
4. Freight Forwarder Regulations. - The Order adopting the proposed regulations will be published by the end of August.

RECOMMENDATION NO. 10.

ATC should seek legislation to increase fees.

The Commission agrees with the increased fee schedule and would support legislation introduced to that effect. However, it should be noted that fees for motor vehicle licenses have not increased for some years, so possibly the entire fee structure for commercial vehicles should be reviewed.

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA TRANSPORTATION COMMISSION

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PHONE: 279-1451

August 2, 1982

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AUG 9 1982

LEGISLATIVE  
AUDIT

Gerald L. Wilkerson, CPA  
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Juneau, AK 99811

Ref: Errata Sheet #1, Recommendation #6, Pg. 9 of our Response to the Preliminary Audit Report: A Performance Review of the Department of Commerce and Economic Development, Alaska Transportation Commission, April 1, 1982.

Dear Mr. Wilkerson;

Please correct the 4th line, second paragraph to read "...Scougal presided over 3 1/2 hours of hearings involving applications for dump truck authority."

Very truly yours,

ALASKA TRANSPORTATION COMMISSION

*Keith H. Miller*  
Keith H. Miller  
Chairman

KHM/jv

Gerald L. Wilkerson, CPA  
Legislative Auditor

-2-

August 2, 1982

cc:

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A PERFORMANCE REVIEW  
OF THE  
ALASKA TRANSPORTATION COMMISSION

October 24, 1978

Commissioner of the Department  
of Commerce and Economic Development  
Deputy Commissioner of the Department  
of Commerce and Economic Development

H. Phillip Hubbard

Bertram L. Wagnon

Members of the  
Alaska Transportation Commission

Chairman  
Commissioner  
Commissioner

James Johnson  
Walter Kubley  
Keith Miller

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION  
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

October 24, 1978

Members of the  
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the  
Alaska Statutes, the attached report is submitted for  
your review.

### A PERFORMANCE REVIEW OF THE ALASKA TRANSPORTATION COMMISSION

October 24, 1978



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE AND SCOPE OF THE REVIEW

### Purpose

In accordance with the provisions of Alaska Statutes 24.20.271 (1), 44.66.010, and 44.66.050 (sunset legislation), a review of the Alaska Transportation Commission (ATC) was conducted to determine if the Commission has been operating in an effective and efficient manner.

AS 44.66 currently specifies that this Commission will terminate on June 30, 1979 but will continue until June 30 of the next succeeding year for purpose of concluding its affairs. This report shall be considered during the legislative oversight function in determining whether the Alaska Transportation Commission should be allowed to terminate, be reestablished in its present form, or in a modified form.

### Scope

The functions reviewed included the Commission's executive, administrative, enforcement, rates/tariff analysis, and records/docketing functions. Our review consisted of analyzing and evaluating the following:

- (1) Applicable statutes and regulations;
- (2) Interviews with Commission members and questionnaires sent to the Commissioners;
- (3) Interviews with staff members and questionnaires sent to the staff;
- (4) Questionnaires sent to regulated motor and air carriers;
- (5) Questionnaires sent to shippers utilizing ATC regulated carriers;
- (6) Questionnaires sent to attorneys who practice before the Commission;
- (7) Questionnaires sent to other states' transportation regulatory agencies;
- (8) Questionnaires and interviews sent to transportation associations;
- (9) Observations of Commission weekly meetings and several types of hearings held before the ATC;
- (10) Tests of ATC records and documents; and
- (11) Interviews with Attorney General's office.