

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2666 SLC SB 546 - SCR 18

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546

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

cc

Revision Date: _____

<p>REQUEST <u>SB 546</u> Bill/Resolution No.: <u>CSHB 704 (L&C)</u> Title: <u>Automobile clubs</u> Sponsor: <u>Labor & Commerce</u> Requestor: <u>Labor & Commerce</u> Date of Request: <u>4/9/84</u></p>	<p>FISCAL DETAIL Agency Affected: <u>Commerce & Economic Dev.</u> Program Category Affected: <u>Public Protection</u> BRU, Program or Subprogram(s) Affected: <u>Division of Insurance</u></p>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
 Division: Insurance Date: 4/9/84

Approved by Commissioner: Richard A. Lvon Date: 4/9/84
 Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note 12/1/83

CSSB 546 (L & C)

CSSB 546 (L & C) IS INTENDED TO PERMIT AUTOMOBILE CLUBS, SUCH AS A.A.A., TO FORM AND OPERATE IN ALASKA. AS AUTO CLUBS DO PROVIDE LIMITED FORMS OF INSURANCE, UNDER THE PRESENT STATUTES THE CLUBS ARE REQUIRED TO FORM AS AN INSURER UNDER TITLE 21. THE DIVISION OF INSURANCE RECOGNIZED THAT THE REQUIREMENTS FOR AUTOMOBILE CORPORATIONS DO NOT NEED TO BE AS STRINGENT AS FOR A NORMAL INSURER. THEREFORE, THE DIVISION WAS INSTRUMENTAL IN DRAFTING THIS LEGISLATION AND STRONGLY SUPPORTS THE CONCEPT ENCOMPASSED IN CSSB 546.

THIS COMMITTEE SUBSTITUTE WILL ENABLE AUTOMOBILE CLUBS TO OFFER THEIR SERVICES TO ALASKANS THIS SUMMER. I RECOMMEND PASSAGE OF CSSB 546 (L & C).

ADDITIONAL INFORMATION

1) ON APRIL 23, 1984, THE HOUSE PASSED VIRTUALLY IDENTICAL LEGISLATION, HB 704, 36 - 0. THE "EFFECTIVE DATE CLAUSE" WAS NOT ON THE HOUSE VERSION AND STEVE SILVER, REPRESENTATIVE FROM A.A.A., FELT THIS CLAUSE WAS NECESSARY.

2) Alaska is the only state which does not currently allow AAA to operate.



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

MEMORANDUM

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason

DATE: May 8, 1984

RE: SB 546 - "An Act relating to automobile service corporations"

CSSB 546 (L & C) is intended to permit automobile service corporations (auto clubs) to form and operate in Alaska. The Division of Insurance was instrumental in drafting this legislation and strongly supports the concept encompassed in CSSB 546.

A virtually identical bill, HB 704, is currently in Senate Rules having passed the House 36 - 0 on April 23. An immediate effective date clause included in the Senate version is the only difference between these two bills. At the request of Steve Silver, a representative of the American Automobile Association, the Labor and Commerce Committee passed a committee substitute which would enable auto clubs to organize in the state as soon as this legislation is passed. Unfortunately, the immediate effective date clause could not have been added to HB 704 as it would have required a change in title.

SB 546 TITLE & SPONSOR SUMMARY 16:48 6/04/84 PAGE 1 OF 3

RENDED TITLE: CS58 546(L&C)
AN ACT RELATING TO AUTOMOBILE SERVICE CORPORATIONS, AND
PROVIDING FOR AN EFFECTIVE DATE
PRIME SPONSOR: SENATE LABOR&COHN COMMITTEE.
CO-SPONSORS:

CURRENT STATUS: 5/31/84 PASSED(H)-RECON.NTCE

SB 546 SENATE ACTION 16:49 6/04/84 PAGE 2 OF 3
DATE SEQ PAGE LEGISLATIVE ACTION

04/09/84 01 2889 FIRST READING -- COMMITTEE REPORTS
05/04/84 02 2927 L&C -- CS03
05/04/84 03 2927 L&C F/NOTE EQUALS ZERO
05/12/84 04 3030 JUD -- L&C CS05
05/22/84 05 3197 RLS -- L&C CS05, OTHER05
TAKEN UP IMMEDIATELY
05/22/84 06 3198 SECOND READING
05/22/84 07 3198 L&C CS ADOPTED BY UNAN CONSENT
05/22/84 08 3198 ADVANCED TO 3RD READING BY UNAN CONSENT
05/22/84 09 3199 THIRD READING
05/22/84 10 3199 PASSED BY DIV 40-00-02
05/22/84 11 3199 EFFECTIVE DATE NOTE SAME AS PASSAGE
XXXX XX XX XXX XXX XXX

SB 546 HOUSE ACTION 16:49 6/04/84 PAGE 3 OF 3
DATE SEQ PAGE LEGISLATIVE ACTION

05/23/84 12 4000 FIRST READING -- COMMITTEE REPORTS
05/25/84 13 4031 L&C -- DP05, NR04
05/31/84 14 4237 SECOND READING
05/31/84 15 4238 ADVANCED TO 3RD READING BY UNAN CONSENT
05/31/84 16 4238 THIRD READING
05/31/84 17 4238 PASSED BY DIV 40-00-00
05/31/84 18 4238 EFFECTIVE DATE NOTE SAME AS PASSAGE
05/31/84 19 4239 NOTICE OF RECONSIDERATION GIVEN
XXXX XX XX XXX XXX XXX

COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY

3/9/68

Date 5/2/79

Mr. President

The Committee on LABOR & COMMERCE considered HOUSE

Memorandum Service Report.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for (201)
- new title
- same title and recommends
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

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Chairman (Handwritten signature)

Chairman recommendation (Handwritten signature)

This proposal is intended to permit automobile service corporations (auto clubs) to form and operate in Alaska. Since automobile service corporations do provide very limited forms of insurance, they are currently required to form as an insurer under Title 21. This is effectively a barrier since those requirements are aimed at a different kind of entity. The division recognizes that the requirements for an automobile service corporation do not need to be as stringent as for a normal insurer and support the concept encompassed in SB 546. This bill is very similar to CSHB 704(L&C).

Sec. 21.59.010. Page 1, lines 10-18.

This section requires that an automobile service corporation is subject to the provisions of the new chapter. It excludes insurers with a certificate of authority issued under AS 21.09. It also provides that only provisions referred to or contained in AS 21.53 apply to an automobile service corporation.

Sec. 21.59.020. Page 1, lines 19-29 and page 2, lines 1-7.

This section requires that the automobile service corporation be a nonprofit corporation and hold a certificate of authority issued by the director. It also establishes some procedural requirements about order of filing certain documents if the automobile service corporation is a domestic.

Sec. 21.59.030. Page 2, lines 8-22.

This section establishes qualifications for a certificate of authority. The automobile service corporation must be financially sound and it must post a bond assuring that it will meet its contractual obligations.

Sec. 21.59.040. Page 2, lines 23-29 and page 3, lines 1-21.

This section lists the documents needed to obtain a certificate of authority. (4) provides an option of two ways to provide some evidence of financial soundness. The rest is almost boilerplate requirements for issuance of a certificate of authority. On page 3, line 10, the first of three differences between the Senate and House versions of this bill appear. SB 546 uses "four fiscal years" while CSHB 704(L&C) uses "three fiscal years". The division has no preference on this item.

Sec. 21.59.050. Page 3, lines 22-29 and page 4, lines 1-14.

Subsections (a) and (b) provide the reserves needed if the bond filed under Sec. 21.59.030(2) is for \$50,000. Subsection (c) makes no special reserve requirements if the bond filed under Sec. 21.59.030(2) is for \$250,000. Since the amounts for which the automobile service corporation will be at risk are very low for each subscriber, the bond is a good substitute.

Sec. 21.59.050. Page 4, lines 15-21.

This section requires that records be kept on a generally accepted accounting principles basis rather than that used by an insurer, a statutory basis.

Sec. 21.59.070. Page 4, lines 22-29 and all of page 5.

Since this is an exclusive statute, one to which provisions outside of the chapter do not apply, this section is needed to bring other appropriate sections of the insurance code to bear on automobile service corporations. The second difference between the Senate and House versions of this bill appears on page 4, line 28. The Senate version considers automobile service corporations "mutual insurers", while the House version considers them "stock insurers". The division prefers "stock insurers" since there are impediments in the Title for this kind of corporation when considered a "mutual insurer". The third difference between the Senate and House versions of this bill appears on page 5, line 3. In the Senate version AS 21.09.100 - 21.09.260 apply to automobile service corporations, while in the House version AS 21.09.100, and AS 21.09.120 - 21.09.210. The division prefers the latter since AS 21.09.110 and AS 21.09.220 - 21.09.260 are not appropriately applied to an automobile service corporation.

AS 21.03. This chapter deals with the scope of the insurance code.

AS 21.05. This chapter establishes the authority and powers of the director of insurance.

AS 21.09.050. This section bars misleading or duplication of insurer names.

AS 21.09.100. This section deals with management and affiliations of insurers.

AS 21.09.110. This section deals with application for a certificate of authority. It should be removed since Sec. 21.59.040 adequately deals with the subject.

AS 21.09.120-170. These sections deal with the certificate of authority. Issuance, refusal to issue, ownership, continuance, expiration, reinstatement, amendment, revocation, suspension, and duration of suspension of a certificate of authority.

AS 21.09.180-190. These sections deal with service of process.

AS 21.09.200. This section deals with an annual statement.

AS 21.09.210. This section deals with taxation.

AS 21.09.220-260. These sections deal with the countersignature law and acts connected with a business conducted through an agency system. Since this is not the way that automobile service corporations ordinarily conduct business, the sections should be removed.

AS 21.12. This chapter defines the kinds of insurance.

AS 21.36. This chapter deals with unfair trade practices and frauds.

AS 21.69. This chapter deals with organization and corporate procedure for domestic corporations.

AS 21.78. This chapter deals with rehabilitation and liquidation of impaired or insolvent insurers.

AS 21.90. This chapter contains the general penalty section and general definitions for the insurance code.

Sec 21.59.900.

Definition section.

SUGGESTED AMMENDMENTS TO SB 546.

On page 4, line 28, change the word "mutual" to read "stock"

On page 5, line 4, change "AS 21.09.100 - 21.09.260" to read "AS 21.09.100 and AS 21.09.120 - 21.09.210".

Proposed Amendments

Automobile
Service
Corporations

SENATE BILL NO. 546, by the Labor and Commerce Committee.
Sets out statutory requirements for automobile service corporations under Article 21 (Insurance):

--Would require a person providing or intending to provide automobile service corporation services to be incorporated as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the Director of the Division of Insurance. Articles of incorporation to be submitted to the Director before they are filed with the Commissioner of Commerce and Economic Development, and the Commissioner is not allowed to file the articles or amendments unless the Director's approval is endorsed.

--The Director is not allowed to issue a certificate of authority and is required to revoke an existing certificate unless the corporation, if newly formed, possesses sufficient available working funds to pay all reasonably anticipated costs of acquisition of new business and operating expenses, other than losses, for a period of not less than six months following the date of issuance of the certificate of authority. The auto service corporation must post a bond in the amount of \$50,000 with the Director and must fulfill all other applicable statutory requirements.

page 755

--Outlines procedures for applying for a certificate of authority through the Division of Insurance. Applicants are required to file articles of incorporation, a copy of the bylaws, copies of proposed subscribers' contracts, financial statements, the required bond, and a copy of any other relevant document reasonably requested by the Director of the Division of Insurance.

--Requires an automobile service corporation to establish and maintain unimpaired reserves as follows: "... (1) a reserve in an amount not less than all legal obligations of the corporation, other than claims originating under subscriber's contracts, due but unpaid; (2) a reserve equal to but not less than the amount necessary by reasonable estimate to pay all claims incurred under subscriber's contracts but currently unpaid, and including a reasonable additional amount to cover claims incurred but not reported to the corporation at the time of determination of the corporation's financial condition; and (3) a reserve equal to 50 percent of all sums charged and received by the corporation during the calendar period covered by the financial statement, on account of indemnity benefits provided in subscriber's contracts for terms for which premium was last paid and unexpired at the date of the financial statement." The reserves constitute a liability of the corporation in a determination of its financial condition. Instead of the reserves required, and the bond required, the auto service corporation may file a bond in the amount of \$250,000.

--Requires the corporation to establish and maintain complete and accurate records and accounts, and lists other provisions of insurance statutes that apply to automobile service corporations. Defines terms used.

Does not provide for an effective date (becomes law 90 days following Governor's signature).

Introduced April 9 and referred to Labor & Commerce and Judiciary.

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548

Introduced: 4/12/84
Referred: Labor and Commerce
and Transportation

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE

2 SENATE BILL NO. 548

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to commercial air carriers, estab-
7 lishing the Aviation Safety Commission; and providing
8 for an effective date."

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

10 * Section 1. AS 02 is amended by adding a new chapter to read:

11 CHAPTER 06. COMMERCIAL AIR CARRIERS.

12 ARTICLE 1. AVIATION SAFETY COMMISSION.

13 Sec. 02.06.010. AVIATION SAFETY COMMISSION ESTABLISHED. (a)

14 There is established in the Department of Transportation and Public
15 Facilities the Aviation Safety Commission consisting of seven commis-
16 sioners. Members of the commission shall be appointed by the governor
17 and confirmed by the legislature in joint session.

18 (b) Members of the commission shall be state residents and no
19 more than two members may be from the same judicial district. One
20 member shall have at least 10 year aviation management experience in
21 the state, one member shall have aviation safety inspection and en-
22 forcement experience, and one member shall be a public member with no
23 direct financial interest in aviation except as a consumer.

24 (c) Members of the commission serve staggered terms of three
25 years.

26 Sec. 02.06.020. QUORUM. Four members of the commission consti-
27 tute a quorum for the transaction of business. At least four affirma-
28 tive votes are required for commission action.

29 Sec. 02.06.030. COMPENSATION. Members of the commission serve

1 without compensation but are entitled to per diem and travel expenses
2 authorized by law for state boards and commissions.

3 Sec. 02.06.040. VACANCIES. (a) A vacancy on the commission is
4 filled by appointment by the governor, and the appointment must be
5 confirmed by the legislature in joint session. A member appointed to
6 fill a vacancy holds office for the balance of the term for which the
7 member's predecessor was appointed.

8 (b) A vacancy on the commission does not impair the authority of
9 a quorum of members to exercise the powers and perform the duties of
10 the commission.

11 (c) A member of the board whose term has expired shall serve
12 until a successor has been appointed and confirmed.

13 Sec. 02.06.050. OFFICERS. The commission shall elect from its
14 membership a chairman. The commission may elect additional officers.

15 Sec. 02.06.060. MEETINGS. (a) The chairman shall call meetings
16 of the commission at least twice each year and may call other meetings
17 as necessary. The chairman shall preside at meetings.

18 (b) The commission shall keep minutes of each meeting.

19 Sec. 02.06.070. REGULATIONS. The commission shall adopt regu-
20 lations in accordance with the Administrative Procedure Act (AS 44.62)

21 (1) establishing ^{minimum fitness} safety requirements applicable to air
22 carriers certified under this chapter;

23 (2) ensuring that air carriers certified under this chapter
24 obtain and maintain in force adequate levels of liability insurance to
25 protect persons using air carrier services;

26 (3) to carry out the provisions of this chapter.

27 ARTICLE 2. CERTIFICATION.

28 Sec. 02.06.100. LIMITED AIR TAXI CERTIFICATE. (a) An air
29 carrier operating air transportation services in conjunction with and

1 support of other activities of its business shall obtain a limited air
2 taxi certificate. A limited air taxi may offer air transportation on
3 demand service only from bases of operation named on the certificate
4 and may only engage in air transportation on demand service for a
5 number of air hours each year that is equal to or less than 50 percent
6 of the number of air hours performed in support of other activities of
7 its business.

deleted

8 (b) To obtain a limited air taxi certificate an air carrier must
9 apply on forms approved by the commission and supply the following
10 information:

kept in

11 (1) the name, address, and telephone number of the air
12 carrier and the form of the air carrier's business organization;

13 (2) the address and telephone number of each proposed base
14 of operations for the air carrier;

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15 (3) the names, titles, citizenship, and addresses of each
16 person managing the air carrier and of the chief pilots of the air
17 carrier;

18 (4) the names and addresses of each person with 10 percent
19 or more ownership interest in the air carrier;

20 (5) a copy of the air carrier's currently valid Federal
21 Aviation Administration Air Carrier Operating Certificate (F.A.R. 135
22 or 121);

23 (6) a description of each aircraft to be used in the air
24 carrier's operations;

25 (7) a copy of the air carrier's current liability insurance
26 coverage that satisfied requirements established by regulations of the
27 commission;

28 (8) the name and description of the other activities of its
29 business that the air carrier will support;

1 (9) an estimate of the annual air hours performed in sup-
2 port of the other activities of its business and the annual air hours
3 performed on air transportation on demand service.

4 Sec. 02.06.110. AIR TAXI CERTIFICATE. (a) An air carrier
5 providing only air transportation on demand service shall obtain an
6 air taxi certificate. An air taxi may provide services anywhere in
7 the state.

8 (b) To obtain an air taxi certificate an air carrier must apply
9 on forms approved by the commission and supply the following informa-
10 tion:

11 (1) information required under AS 02.06.100(b)(1) - (7);

12 (2) information required by the commission to determine
13 whether the air carrier is fit to provide public air transportation on
14 demand service;

15 (3) a list of all aviation accidents, incidents, or vio-
16 lations involving the air carrier or persons managing the air carrier
17 or chief pilots of the air carrier that occurred within the previous
18 five years, together with the outcome of each and a description of
19 corrective actions taken;

20 (4) a list of each criminal or civil action brought against
21 the air carrier or a person managing the air carrier or a chief pilot
22 of the air carrier, together with the outcome of each action;

23 (5) a list of each judgment against the air carrier of
24 \$2,500 or more;

25 (6) a list of all consumer complaints filed against the air
26 carrier with an agency of the state or federal government,

27 (7) a list of every action taken against the air carrier or
28 a person managing the air carrier or a chief pilot of the air carrier
29 by the Civil Aeronautics Board, the United States Department of

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1 Transportation, the Alaska Transportation Commission, or the Aviation
2 Safety Commission during the previous five years;

3 (8) any financial records of the air carrier for the pre-
4 vious fiscal year required by the commission;

5 (9) a description of the business organization of the air
6 carrier including job descriptions of management personnel responsible
7 for aspects of the operation relating to safety;

8 (10) a description of all aircraft and facilities to be used
9 in the proposed air taxi operation and, if the facilities are not
10 already owned or lease' by the air carrier, a description of how they
11 will be acquired and financed; an air carrier certified as a limited
12 air taxi may submit proof of actual operation under its limited air
13 carrier certificate in lieu of this requirement.

14 Sec. 02.06.12. SCHEDULED AIR CARRIER CERTIFICATE. (a) An air
15 carrier providing scheduled air transportation service shall obtain a
16 scheduled air carrier certificate. A scheduled air carrier may also
17 provide air transportation on demand service.

18 (b) To obtain a scheduled air carrier certificate an air carrier
19 must apply on forms approved by the commission and supply the follow-
20 ing information:

21 (1) information required under AS 02.06.110(b)(1) - (9);

22 (2) the proposed initial schedule of air transportation
23 service offered and fares;

24 (3) the proposed contract of carriage to be used in the air
25 carrier's scheduled air transportation operations;

26 (4) a description of all aircraft and facilities to be used
27 in the proposed scheduled air transportation operation and, if the
28 facilities are not already owned or leased by the air carrier, a
29 description of how they will be acquired and financed; an air carrier

1 certified as an air taxi may submit proof of actual operation under
2 its air taxi certificate in lieu of this requirement.

3 Sec. 02.06.130. CONDITIONAL CERTIFICATION. If an air carrier
4 provides all information required for certification under this chapter
5 except a copy of its currently valid Federal Aviation Administration
6 Air Carrier Operating Certificate or ^{documentation} a copy of its current liability
7 insurance coverage that satisfies requirements established by regu-
8 lations of the commission, the commission may issue a certificate with
9 operations under the certificate conditioned on filing the omitted
10 information with the commission.

11 Sec. 02.06.140. GRANTING OR DENYING A CERTIFICATE. (a) The
12 commission shall publish public notice of the receipt of an applica-
13 tion for an air carrier certificate. The notice shall include a
14 statement that objections to the application must be received by the
15 commission no later than 45 days after the notice is published.

16 (b) If the commission determines that the application is com-
17 plete and accurate and the applicant qualifies for certification, and
18 if the commission receives no objections to the application, the
19 commission shall issue an air carrier certificate 45 days after the
20 notice under (a) of this section is published.

21 (c) If the commission determines that the application is incom-
22 plete or incorrect or the applicant does not qualify for certifica-
23 tion, or if an objection to the application is filed, the commission
24 shall notify the applicant and give the applicant an opportunity to
25 respond. Within 30 days after the applicant responds, the commission
26 shall determine whether the application is complete and accurate and
27 the applicant qualifies for certification. If the application is
28 complete and accurate and the applicant qualifies for certification,
29 the commission shall issue the certificate. If the application is not

1 complete and accurate or the applicant does not qualify for certifica-
2 tion, the commission shall deny the application and notify the appli-
3 cant of reasons for the denial.

4 (d) An applicant whose air carrier certificate is denied may
5 apply for another certificate.

6 Sec. 02.06.150. AIRCRAFT CERTIFICATION. (a) An aircraft used
7 by an air carrier certified under this chapter must be certified by
8 the commission. Upon ~~receipt of a copy~~ ^{receiving documentation} of a current liability insur-
9 ance policy that meets requirements established by regulations of the
10 commission and covers the aircraft, the commission shall issue a
11 certificate indicating

- 12 (1) the name of the air carrier using the aircraft;
13 (2) the aircraft registration number;
14 (3) the expiration date of liability insurance covering the
15 aircraft.

16 (b) An air carrier shall display on the aircraft the certificate
17 issued under this section so that it is visible to boarding passen-
18 gers. The air carrier shall immediately remove the certificate and
19 cease using the aircraft in its air transportation operation if the
20 insurance specified on the certificate ceases to be in effect.

21 Sec. 02.06.160. ANNUAL REPORT. By January 31 of each year an
22 air carrier certified under this chapter shall file a report with the
23 commission. The report shall include

- 24 (1) an updated list of the names, titles, citizenship, and
25 addresses of each person managing the air carrier and of the chief
26 pilots of the air carrier;
27 (2) an updated list of the names and addresses of each
28 person with 10 percent or more ownership interest in the air carrier;
29 (3) a list of all aircraft used in operations of the air

1 carrier during the previous calendar year;

2 (4) If the air carrier is a limited air taxi, the annual
3 air hours performed during the previous calendar year in support of
4 the other activities of its business and the annual air hours per-
5 formed on air transportation on demand service;

6 (5) if the air carrier is an air taxi or scheduled air
7 carrier, the number of air hours of air transportation service per-
8 formed during the previous calendar year.

9 Sec. 02.06.175. AUTOMATIC SUSPENSION OR LAPSE OF AIR CARRIER
10 CERTIFICATES. (a) An air carrier certified under this chapter may
11 give the commission notice of voluntary suspension of air transporta-
12 tion services. Upon receipt of the notice, the commission shall
13 automatically suspend the air carrier certificate for the period of
14 time indicated in the notice, which may not exceed 12 months.

15 (b) An air carrier certificate shall automatically lapse if

16 (1) an air taxi or scheduled air carrier does not provide
17 air transportation services for compensation for 12 consecutive
18 months; or

19 (2) a limited air taxi does not provide air transportation
20 services for compensation for 21 consecutive months. *deleted*

21 ARTICLE 3. ENFORCEMENT.

22 Sec. 02.06.200. COMPLAINTS. (a) A complaint against an air
23 carrier operating in the state may be filed with the commission within
24 ~~90~~ 30 days after an alleged violation of state or federal law or regula-
25 tion. If the information is available to the complainant, the com-
26 plaint shall include

27 (1) the name of the air carrier;

28 (2) the specific violation of state or federal law or
29 regulation alleged to have occurred;

- 1 (3) the date and place of the alleged violation;
- 2 (4) the names and titles of the persons involved in the
- 3 violation who are employed by or were acting on behalf of the air
- 4 carrier;
- 5 (5) a description of the circumstances and actions in-
- 6 volved;
- 7 (6) the name of the complainant.

8 (b) The commission shall review each complaint received to *He comm. shall deliver copy to air carriers + ask request*

9 determine whether a violation of state or federal law or regulation

10 may have occurred. If the commission determines that a violation may

11 have occurred, it shall request investigation of the complaint by the

12 Department of Public Safety. If the commission determines that a

13 violation did not occur, it shall dismiss the complaint and notify the

14 complainant.

15 Sec. 02.06.210. INVESTIGATION OF COMPLAINTS. (a) Upon receipt

16 of a request by the commission to investigate a complaint, the Depart-

17 ment of Public Safety shall conduct the investigation and attempt to

18 verify the facts alleged in the complaint.

19 (b) After conducting an investigation, the Department of Public

20 Safety shall provide a report of its findings to the commission with a

21 description of supporting evidence for the findings.

22 Sec. 02.06.220. COMMISSION ACTION. Upon receipt of a report on

23 an investigation by the Department of Public Safety, the commission

24 may refer the complaint and the report to the Department of Law or the

25 commission may conduct a disciplinary hearing under AS 02.06.230.

26 Sec. 02.06.230. DISCIPLINARY HEARINGS. (a) The commission may

27 censure an air carrier or revoke or suspend the certificate issued

28 under this chapter if the board finds after a hearing that the air

29 carrier violated this chapter or a regulation adopted under this

1 chapter or a federal law or regulation dealing with aviation safety.

2 (b) The commission shall immediately suspend the certificate of
3 an air carrier if it finds after a hearing that the air carrier does
4 not have in force liability insurance that meets requirements estab-
5 lished by regulations of the commission, the air carrier's Federal
6 Aviation Administration Air Carrier Operating Certificate is sus-
7 pended, or the air carrier has failed to file the annual report under
8 AS 02.06.160. A suspension under this subsection shall last until the
9 deficiency has been remedied by the air carrier.

10 (c) The commission shall permanently revoke the certificate of
11 an air carrier if it finds after a hearing that the air carrier has
12 not obtained liability insurance that meets requirements established
13 by regulations of the commission within 60 days after its insurance
14 lapses, the air carrier's Federal Aviation Administration Air Carrier
15 Operating Certificate is revoked or terminated, or the air carrier has
16 failed to file the annual report under AS 02.06.160 within 60 days
17 after it was due and has not obtained permission from the commission
18 to file the report late.

19 (d) Hearings shall be held under the Administrative Procedure
20 Act (AS 44.62).

21 Sec. 02.06.240. CERTIFICATION REQUIRED. (a) A person may not
22 provide or offer to provide air transportation services for compen-
23 sation unless the person is certified as an air carrier under this
24 chapter.

25 (b) Violation of this section is a class A misdemeanor.

26 Sec. 02.06.250. INJUNCTION. The commission may seek an injunc-
27 tion to stop or prevent a person from violating this chapter.

28 ARTICLE 4. GENERAL PROVISIONS.

29 Sec. 02.06.500. DEFINITION. In this chapter "commission" means

1 the Aviation Safety Commission.
2 * Sec. 2. ~~Within 30 days~~ ^{By 12/1/84} after the effective date of this Act the
3 governor shall appoint initial members to the Aviation Safety Commission
4 and submit their names to the legislature for confirmation. Notwithstand-
5 ing AS 02.06.010(c) as enacted in sec. 1 of this Act, two initial members
6 shall serve one-year terms, two initial members shall serve two-year terms,
7 and three initial members shall serve three-year terms.

8 * Sec. 3. (a) Notwithstanding AS 02.06.100 as enacted in sec. 1 of
9 this Act, an air carrier may apply for and receive a limited air taxi
10 certificate if the air carrier holds on the effective date of this Act a
11 valid air taxi operator or contract carrier certificate issued by the
12 Alaska Transportation Commission that is limited to authorize the provision
13 of air transportation services only in support of other activities of the
14 air carrier's business.

15 (b) Notwithstanding AS 02.06.110 as enacted in sec. 1 of this Act, an
16 air carrier may apply for and receive an air taxi certificate if the air
17 carrier holds on the effective date of this Act a valid air taxi operator
18 or contract carrier certificate issued by the Alaska Transportation Commis-
19 sion that is not limited to authorize the provision of air transportation
20 services only in support of other activities of the air carrier's business.

21 (c) Notwithstanding AS 02.06.120 as enacted in sec. 1 of this Act, an
22 air carrier may apply for and receive a scheduled air carrier certificate
23 if the air carrier holds on the effective date of this Act a valid
24 scheduled air carrier certificate issued by the Alaska Transportation
25 Commission or the Civil Aeronautics Board.

26 * Sec. 4. AS 02.05 is repealed.

27 * Sec. 5. This Act takes effect July 1, 1984.

Upon appointment, adopt regulations
By 12/1/84 DOT will propose regulations

STATE OF ALASKA

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

ALASKA TRANSPORTATION COMMISSION

BILL SHEFFIELD, GOVERNOR

**SUITE 778, FRONTIER BUILDING
3601 C STREET
ANCHORAGE, ALASKA 99503**

PHONE: 561-4216

April 18, 1984

The Honorable Richard L. Eliason
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Eliason:

The Alaska Transportation Commission has reviewed SB 548 and is of the opinion that it will not provide a workable system that will adequately protect the public or encourage an active, competitive air commerce industry.

While recognizing that comments made by this Commission are suspect, we still wish to state that SB 548 is not a practical alternative to the current statutory system.

Of particular concern should be the elimination of the guarantee of due process to the various parties. It appears that the Commission may take actions without granting the applicant the right of hearing. There is no provision for a staff or legal assistance from the Department of Law. Obviously a staff would be needed to deal with the applicants, the public, the insurance filings, complaints, etc.

The Enforcement Section of SB 548 indicates the necessity for the Commission to become involved in the complaint proceedings before the investigation stage. If the Commission finds some basis for the complaint, then it must be passed over to another department of investigation. After that investigation, the Department of Public Safety will report back to the Commission for final action. This appears to be a very cumbersome method of investigating complaints and appears to require a duplication of effort. First there would have to be an investigation to determine if the complaint has sufficient basis to be passed on to Public Safety; then Public Safety must investigate the complaint, issue a final report to be referred either back to the Commission or to the Department of Law.

The Honorable
Richard L. Eliason

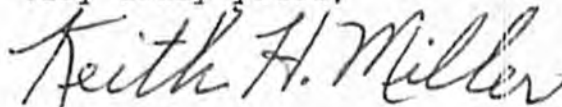
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April 18, 1984

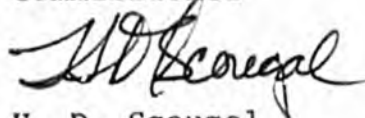
The standards provided for certification of carriers are not going to determine fitness as is currently provided for in AS 02.05.080. Coupled with the fact that SB 548 does not indicate a statement of policy, it will be very difficult for the new Commission to set standards for issuing or denying a certificate.

There are several other sections in SB 548 that appear cumbersome and could lead to long delays in final decisions on an application.

Very truly yours,



Keith H. Miller
Commissioner



H. D. Scougal
Commissioner

KHM/HDS/jv

cc: Commissioner Lyon
Ben Harding

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 548
 Title: Establishing the Aviation Safety Commission
 Sponsor: Transportation Committee
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: DOT&PF
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		*	*	*	*	*
200 TRAVEL		28.0	28.0	28.0	28.0	28.0
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		28.0	28.0	28.0	28.0	28.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		28.0	28.0	28.0	28.0	28.0
FEDERAL FUNDS						
OTHER						
TOTAL		28.0	28.0	28.0	28.0	28.0

POSITIONS:

FULL-TIME						
PART-TIME (Appointed Comm's)		7	7	7	7	7
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by bill sponsor.

ANALYSIS: Attach a separate page for any Analysis

Prepared By: William R. Snell, Director Phone: 266-1462
 Division: Central Region Planning Date: 4/19/84
 Approved by Commissioner: R. J. Knapp Date: _____
 Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

*See number 3 on attached analysis

ANALYSIS OF SB 548

1. Analysis of fiscal impact on existing program within the Department.

None. The Department has no similar program.

2. Analysis of fiscal impact on new programs.

The seven (7) Commissioners are to receive no salary, but travel and per diem are to be covered. A rough estimate is based on the fact that the bill states that "no more than two members may be from the same judicial district". With seven commissioners and no location for their meetings established, the assumption was made that each commissioner would make four trips per year, and that each meeting would last one week. The airfare and per diem per commissioner per trip is estimated at \$1,000.

Four trips per year x Seven commissioners x \$1,000 = \$28,000.

Language in the bill does not provide for any staff support. Because of the substantial paperwork required by the bill, it is reasonable to expect that non-paid commissioners would not be able to handle these clerical tasks. If the commission was to be assigned staff, the estimate provided in the fiscal note would fall short of reasonable costs. If no staff was hired (as appears to be the case in this bill) no cost would be involved though the purpose of the bill would also not be achieved.



Dept. of Transportation & Public Facilities

Position Paper

BILL NO:

SB 548

APPROVED:R. J. Knapp
Commissioner**TITLE:**An Act establishing the Aviation
Safety Commission**DATE:**

April 19, 1984

The Department of Transportation and Public Facilities (DOT&PF) does not support this bill because it would establish a new commission that would duplicate many services and responsibilities currently existing within other government agencies. In addition, many of the new responsibilities vested in the Aviation Safety Commission are currently handled administratively for other transportation and occupational licensing categories within the Department of Commerce, and not with an appointed commission.

The State of Alaska currently has over 400 boards and commissions. To create an additional commission in light of the fact that existing agencies can handle the proposed responsibilities would lead to increased complexity of state government and duplication of services provided. Moreover, in the general atmosphere of reducing governmental regulations, which is shown by the efforts to eliminate the Alaska Transportation Commission (ATC), setting up a new commission to handle many of the same tasks currently performed by the ATC does not seem to be prudent. If this commission was established and the ATC is not abolished, there would be definite conflicts in responsibility and authority.

The bulk of SB 548 relates to the "certification" of air carriers and requires that applicants provide extensive financial data with their initial application, updates of information on an annual basis, etc. There is no requirement under state or federal statutes that require the State of Alaska to certify air carriers. While the bill does provide that substantial amount of information be supplied to the Commission, there are no provisions for any staff support to receive the data and sort through it in preparation for review by non-paid commission members. This is a major flaw in the bill.

There are sections of the bill giving the commission wide-spread authority concerning air carrier insurance requirements. The Division of Occupational Licensing in the Department of Commerce and Economic Development is the proper agency to perform this task. They are currently handling insurance matters, and to task the Commission with this effort is a duplication of services.

Despite its prominence in the name of the "Aviation Safety Commission", safety is barely mentioned in the bill. It should be realized that the Federal Aviation Administration (FAA) is responsible for air safety. Vesting these responsibilities in a Commission would be another duplication of existing authority and responsibility held by another government agency.

In summary, the DOT&PF does not support SB 548 because:

1. In the atmosphere of reducing government regulation, especially with the potential abolition of the ATC, it does not seem prudent to establish another entity with responsibilities similar to the ATC.
2. The proposed Commission would duplicate services already provided by existing government agencies.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE



P.O. BOX 143
SITKA, ALASKA 99835
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

May 15, 1984

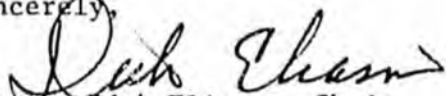
Robert Sundberg, Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99811

Dear Commissioner Sundberg:

As you are well aware, an initiative to terminate the Alaska Transportation Commission is presently scheduled for the November 1984 ballot. As another aviation regulatory body, the Civil Aeronautics Board, will also sunset in December of this year, the Alaska Air Carriers Association has expressed concern about the prospects of a virtually unregulated industry. The Association's concerns center on the potential hazard to public safety that might result from the entrance of new carriers who would not be obliged to demonstrate any ability to operate safely under Alaskan conditions.

In light of these developments, I am most interested in any back-up plans formulated by your department. In the event that ATC is terminated, exactly what role will the Department of Public Safety take? I would appreciate hearing from you as soon as possible.

Sincerely,


Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE



P.O. BOX 143
SITKA, ALASKA 99835
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

May 14, 1984

Richard Lyon, Commissioner
Department of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Commissioner Lyon:

As you are well aware, an initiative to terminate the Alaska Transportation Commission is presently scheduled for the November 1984 ballot. As another aviation regulatory body, the Civil Aeronautics Board, will also sunset in December of this year, the Alaska Air Carriers Association has expressed concern about the prospects of a virtually unregulated industry. The Association's concerns center on the potential hazard to public safety that might result from the entrance of new carriers who would not be obliged to demonstrate any ability to operate safely under Alaskan conditions.

In light of these developments, I am most interested in any back-up plans formulated by your department. In the event that ATC is terminated, exactly what role will the Department of Commerce and Economic Development take? I would appreciate hearing from you as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Dick Eliason".

Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

May 18, 1984

Honorable Dick Eliason
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

This is in response to your letter of May 14, requesting that I provide you with the plans of the Department of Commerce and Economic Development for regulation of air transportation should the Alaska Transportation Commission be terminated in November. As you are aware, the Departments of Commerce and Economic Development, Transportation and Public Facilities and Public Safety have been working together to determine what insurance or safety requirements would be provided by the State should the voters elect to abolish the ATC. Proposals being considered include the following:

1. Registration by the Division of Occupational Licensing in the Department of Commerce and Economic Development similar to the current construction contractor registration. Included in this registration process would be a requirement for insurance coverage. A proposal now before the U.S. Congress transfers insurance coverage responsibilities currently administered by the Civil Aeronautics Board to the Federal Aviation Administration. The outcome of that federal legislation won't be known for several months.
2. Assumption by the Department of Transportation and Public Facilities of the State's oversight role in the essential air service program, with the federal program being within the U.S. Department of Transportation.
3. Safety inspection and compliance remaining with the FAA. CAB officials reported to us, at a recent meeting, that the State does not have legal responsibility for safety compliance at any level. Current federal safety regulations would be maintained by the FAA even though the CAB is terminated on December 31, 1984.

May 18, 1984

We have also been informed by the Air Carrier Association that the Legislature plans to appoint an interim committee to address the effects of deregulation of air transportation. The department would be happy to work with that committee to draft legislation required to continue essential programs if economic deregulation occurs.

Sincerely,



Richard A. Lyon
Commissioner

RAL/shC/22
51784a

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE:

April 16, 1984

465-4322

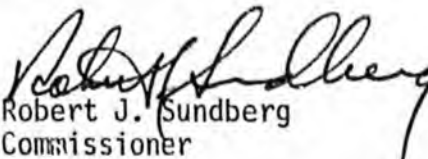
Sheila Peterson
Administrative Assistant
Senate Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Ms. Peterson:

RE: SB 548

If enacted, SB 548 would require the Department of Public Safety to investigate all complaints submitted to it by the Aviation Safety Commission regarding aircraft operations. The Department feels that this requirement would be a duplication of authority since the Federal Administrations Flight Standard; Division currently investigates all complaints against aircraft operations. Therefore, the Department of Public Safety recommends that sections 02.06.210 and 02.06.220 of the bill be deleted.

Sincerely,


Robert J. Sundberg
Commissioner

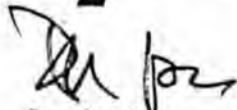


Dept. of Transportation & Public Facilities

Position Paper

BILL NO:

SB 548

TITLE:An Act establishing the Aviation
Safety Commission**APPROVED:**
R. J. Krapp
Commissioner**DATE:**

April 20, 1984

The Department of Transportation and Public Facilities (DOT&PF) does not support this bill because it would establish a new commission that would duplicate many services and responsibilities currently existing within other government agencies. In addition, many of the new responsibility vested in the Aviation Safety Commission are currently handled administratively for other transportation and occupational licensing categories within the Department of Commerce, and not with an appointed commission.

The State of Alaska currently has over 400 boards and commissions. To create an additional commission in light of the fact that existing agencies can handle the proposed responsibilities would lead to increased complexity of state government and duplication of like services provided. Moreover, in the general atmosphere of reducing governmental regulations, which is shown by the efforts to eliminate the Alaska Transportation Commission (ATC), setting up a new commission to handle many of the same tasks currently performed by the ATC does not seem to be prudent. If this commission was established and the ATC is not abolished, there would be definite conflicts in responsibility and authority.

The bulk of SB 548 relates to the "certification" of air carriers and requires that applicants provide extensive financial data with their initial application, updates of information on an annual basis, etc. There is no requirement under state or federal statutes that require the State of Alaska to certify air carriers. While the bill does provide that substantial amount of information be supplied to the Commission, there are no provisions for any staff support to receive the data and sort through it in preparation for review by non-paid commission members. This is a major flaw in the bill.

There are sections of the bill giving the commission wide-spread authority concerning air carrier insurance requirements. The Division of Occupational Licensing in the Department of Commerce and Economic Development is the proper agency to perform this task. They are currently handling insurance matters, and to task the Commission with this effort is a duplication of like services.

Despite its prominence in the name of the "Aviation Safety Commission", safety is barely mentioned in the bill. It should be realized that the Federal Aviation Administration (FAA) is responsible for air safety. Vesting these responsibilities in a Commission would be another duplication of existing authority and responsibility held by another government agency.

In summary, the DOT&PF does not support SB 548 because:

1. In the atmosphere of reducing government regulation, especially with the potential abolition of the ATC, it does not seem prudent to establish another entity with responsibilities similar to the ATC.
2. The proposed Commission would duplicate like services already provided by existing government agencies.

SB 548 TITLE & SPONSOR SUMMARY

14:38 5/22/84 PAGE 1 OF 2

AMENDED TITLE:

AN ACT RELATING TO COMMERCIAL AIR CARRIERS, ESTABLISHING
THE AVIATION SAFETY COMMISSION;
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE TRANSPORTATION COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 4/12/84 IN (S) LABOR & COM REFERRAL: TRANSPORTATION

SB 548 SENATE ACTION 14:38 5/22/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/12/84	01	2710	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE TRANSPORTATION RULES
***	**	**	*** *** ***

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 2600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 16, 1984

SUBJECT: Commercial Air Carriers
(SB 548)

TO: Senator Richard Eliason

FROM: Tamara Brandt Cook
Deputy Director ^{ABU}
Division of Legal Services

Here is the section by section analysis of SB 548 that you requested.

Section 02.06.010 The Aviation Safety Commission is established. The seven members are appointed by the governor and confirmed by the legislature in joint session. They are state residents and no more than two may be from the same judicial district. One member must have at least 10 years aviation management experience in the state, one must have aviation safety inspection and enforcement experience, and one member shall be a public member. Members serve staggered terms of three years.

Section 02.06.020 Four members of the commission constitute a quorum and four affirmative votes are required for action.

Section 02.06.030 Members of the commission serve without compensation but receive per diem and travel expenses.

Section 02.06.040 A vacancy is filled by appointment by the governor and the appointment must be confirmed by the legislature. A vacancy does not impair the authority of a quorum of members to act.

Section 02.06.050 The commission shall elect a chairman and may elect other officers.

Section 02.06.060 The chairman shall call meetings at least twice each year.

Section 02.06.070 The commission must adopt regulations in accordance with the Administrative Procedure Act establishing safety requirements applicable to air carriers and ensuring that air carriers obtain and maintain adequate levels of liability insurance to protect persons using their services.

Section 02.06.100 An air carrier operating air transportation services in support of other business activities must obtain a limited air taxi certificate. Air transportation on demand service may be offered only from bases of operation named on the certificate and the carrier may engage in on demand service for a number of air hours each year that is equal to or less than 50 percent of the number of air hours performed in support of other activities. To obtain a limited air taxi certificate certain itemized information must be supplied to the commission.

Section 02.06.110 An air carrier providing only air transportation on demand service must obtain an air taxi certificate. The carrier may provide services anywhere in the state. To obtain an air taxi certificate certain itemized information must be supplied to the commission.

Section 02.06.120 An air carrier providing scheduled air transportation service must obtain a scheduled air carrier certificate. The carrier may also provide on demand service. To obtain a scheduled air carrier certificate certain itemized information must be supplied to the commission.

Section 02.06.130 The commission may issue a certificate with operations conditioned on filing omitted information if an air carrier provides all information required except a copy of its Federal Aviation Administration Air Carrier Operating Certificate or a copy of its liability insurance.

Section 02.06.140 The commission shall publish public notice of the receipt of an application for an air carrier certificate. If the commission determines that the application is complete and accurate and the applicant qualifies for certification, and if no objections are made to the application, the certificate is issued 45 days after the public notice of the application. If the commission determines that the application is incomplete or incorrect or the applicant does not qualify for certification, or if an objection to the application is filed, the commission must give the applicant an opportunity to respond. Within 30

days after the response the commission shall issue or deny the certificate. An applicant whose air carrier certificate is denied may apply for another one.

Section 02.06.150 An aircraft used by an air carrier must be certified. Upon receipt of a copy of a current liability insurance policy covering the aircraft, the commission shall issue a certificate. The certificate must be displayed so that it is visible to boarding passengers.

Section 02.06.160 By January 31 of each year an air carrier certified under this chapter must file a report with the commission updating certain information supplied on the original application and providing information concerning the number of air hours of service provided during the previous year.

Section 02.06.170 An air carrier may give the commission notice of voluntary suspension of air transportation services and the commission shall automatically suspend the certificate for the period of time indicated in the notice, which may not exceed 12 months. An air carrier certificate automatically lapses if an air taxi or scheduled air carrier does not provide services for compensation for 12 consecutive months or if a limited air taxi does not provide services for compensation for 21 consecutive months.

Section 02.06.200 A complaint against an air carrier may be filed with the commission within 90 days after an alleged violation of state or federal law or regulation. The complainant shall supply certain information. The commission reviews each complaint and if the commission determines that a violation may have occurred, it shall request investigation of the complaint by the Department of Public Safety.

Section 02.06.210 After conducting an investigation on a complaint the Department of Public Safety shall provide a report of its finds to the commission.

Section 02.06.220 Upon receipt of the report on a complaint, the commission may refer the complaint to the Department of Law or conduct a disciplinary hearing itself.

Section 02.06.230 The commission may censure an air carrier or revoke or suspend the certificate if the board finds that the air carrier violated this chapter or a regulation

adopted under it or a federal law or regulation dealing with aviation safety. The commission must immediately suspend the certificate of an air carrier if the air carrier does not have in force liability insurance, the air carrier's Federal Aviation Administration Air Carrier Operating Certificate is suspended, or the air carrier has failed to file its annual report. The commission must permanently revoke a certificate if the air carrier has not obtained liability insurance within 60 days after its insurance lapses, the air carrier's Federal Aviation Administration Air Carrier Operating Certificate is revoked or terminated, or the air carrier has failed to file its annual report within 60 days after it was due. Hearings are held under the Administrative Procedure Act.

Section 02.06.240 A person may not provide air transportation services for compensation unless the person is certified, and violation is a class A misdemeanor.

Section 02.06.250 The commission may seek an injunction to stop or prevent a person from violating this chapter.

Section 02.06.500 "Commission" is defined to mean the Aviation Safety Commission.

* Section 2 Within 30 days after the effective date of this Act the governor is required to submit names of initial members of the commission to the legislature. Some initial members serve short terms so that terms will be staggered.

* Section 3 An air carrier with a limited air operator or contract carrier certificate on the effective date of this Act issued by the ATC may apply for a limited air taxi certificate under this chapter. An air carrier with an air taxi operator or contract carrier certificate on the effective date of this Act issued by the ATC that is not limited may apply for an air taxi certificate under this chapter. An air carrier with a scheduled air carrier certificate on the effective date of this Act issued by the ATC or the Civil Aeronautics Board may apply for a scheduled air carrier certificate under this chapter.

* Section 4 The chapter dealing with certification by the ATC is repealed.

* Section 5 The Act takes effect at the beginning of the next fiscal year.

AN INITIATIVE

For an Act entitled: "An Act terminating the Alaska Transportation Commission and repealing transportation laws administered by the commission; requiring persons who carry passengers or freight for hire to hold insurance or other security; and requiring the governor to lobby Congress for the repeal of the federal Jones Act."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

* Section 1. STATEMENT OF PURPOSE. The people of Alaska recognize that

(1) because of Alaska's great size and distance from markets, Alaskans must have access to efficient low-cost transportation in order for people and goods to move safely inside and outside the state;

(2) a little-known but powerful state regulatory agency, the Alaska Transportation Commission (ATC), creates motor and air carrier monopolies by legalized price fixing and tariffs, which artificially raises shipping rates and makes consumer goods more expensive for all Alaskans;

(3) the primary purpose of the ATC is to fix rates, not promote safety, and other government agencies can insure safety standards while allowing persons to contract freely for services;

(4) abolishing the ATC and its anti-competitive practices will subject air carriers and trucking companies to free market competition, thereby reducing freight rates, improving service, and saving Alaskan consumers millions of dollars each year;

(5) a federal law, known as the Jones Act, requires that ships bound for Alaska from other American ports must be built and registered in the United States and staffed with American crews, thereby granting such ships an unfair monopoly and protecting them from free market competition, which costs Alaskan consumers millions of dollars each year;

(6) the Jones Act should be repealed, and the governor should use all appropriate means to persuade Congress to do so.

* Sec. 2. AS 29.48 is amended by adding a new section to read:

Sec. 29.48.036. REGULATION OF TRANSPORTATION CARRIERS. Notwithstanding AS 29.48.035(a), a municipality may not regulate an act regarding transportation of passengers or freight for hire if the regulation conflicts with the regulation of that activity by the Alaska Transportation Commission as the regulation existed on April 1, 1983 under former AS 02.05, AS 42.07, or AS 42.10.

* Sec. 3. AS 42.30 is amended by adding a new section to read:

ARTICLE 5. RESPONSIBILITIES OF MOTOR AND AIR CARRIERS.

Sec. 42.30.200. FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for hire intrastate shall procure and maintain security in an amount determined by the Department of Public Safety as necessary for the reasonable protection of the public against damages or injury caused by the person.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize enforcement officers to enforce this section.

* Sec. 4. AS 44.19 is amended by adding a new section to article 1 to read:

Sec. 44.19.035. JONES ACT REPEAL. The governor shall use best efforts and all appropriate means to persuade the United States Congress to repeal 46 U.S.C. secs. 861, et seq., known as the Jones Act. Until that Act is repealed, the governor shall publish an annual report documenting the harmful effects of the Act on Alaska commerce, and progress made towards its repeal. The report shall be submitted to the legislature no later than its convening each year.

* Sec. 5. If any provision of this Act is held invalid, the remaining provisions of this Act are severable and remain in effect.

* Sec. 6. AS 02.05.; AS 28.10.411(b); AS 39.25.120(c)(7); AS 39.50.200(b)(30); AS 42.07; AS 42.10; and AS 44.66.010(a)(2) are repealed.

STOOPS ASSOCIATES

Reed R. Stoops

Suite 219 Merchants Wharf

Lee M. Stoops

*No. 2 Marine Way**Consulting, Government**Juneau, Alaska 99801**Relations, Management**907-586-3561**Services*

TO: SENATE LABOR & COMMERCE COMMITTEE MEMBERS

FROM: Lee Stoops, for the Alaska Air Carriers Association

DATE: April 26, 1984

SUBJECT: SS for SB 548

An initiative to sunset the Alaska Transportation Commission is presently scheduled for the November 1984 ballot. Another aviation regulatory body, the Civil Aeronautics Board, will sunset in December of this year. The Alaska Air Carriers Association is extremely concerned about the prospects of a virtually unregulated commercial air carrier industry that would result in the sunset of both bodies. That concern centers on the hazard to public safety that would likely result from the entrance of new carriers into the industry that would not be obliged to demonstrate any ability to operate safely under Alaskan conditions.

This legislation would provide a mechanism for assuring at least minimal safety fitness of new carriers should ATC be sunset by the voters. That mechanism would be in the form of an unpaid five member commission responsible for the development and implementation of standards for air safety certification in Alaska.

Because the outcome of the initiative will not be known until the November election, the Air Safety Commission would not be established until after that date. However, DOT/PF would be directed to establish model regulations between now and December 1, 1984 from which the commission could begin its work.

The uniqueness of Alaskan flying conditions is presently recognized by the federal government in that Alaska is the only state with the authority to regulate its own air industry. The Alaska Air Carriers Association, with a membership of working air carriers throughout the entire state, believes that a thoughtful screening of potential air service providers is a crucial responsibility of the State of Alaska in order to minimize the hazards of flying to its population.

AIR NORTH



May 3, 1984

The Honorable Richard Eliason
State Senate
Pouch V
Juneau Alaska 99811

Dear Senator:

Senate Bill No. 548 is seriously flawed. We urge you to table it or vote No. The FAA is capable of handling the safety of commercial aviation. The market place will determine the most effective air transportation system.

Most Sincerely,
AIR NORTH

Thomas E. Olson

Thomas E. Olson
President

TELEGRAM

ALASCOM, INC.

PHONE: 586-5006

150 EAU. AK 99802

02007 NL TDA KAKTOVAK ALASKA 77 04-21 1727 AST

PMS THE STATE OF ALASKA SENATE LABOR AND COMMERCE COMMITTEE

POUCH U

2168

JUNEAU AK 99811

AUDI AIR ENCOURAGES THE IMMEDIATE ESTABLISHMENT OF AN AVIATION
SAFETY COMMITTEE. WE FEEL AN UNREGULATED AIR INDUSTRY THAT
WOULD RESULT FROM SUNSET OF THE ATC AND CAD WOULD CREATE A
SAFETY HAZARD TO THE TRAVELING PUBLIC AND INCREASE INSURANCE
RATES FOR THE INDUSTRY. THIS OF COURSE WOULD MEAN INCREASED
COSTS TO THE PUBLIC AND A BAD NAME FOR THE INDUSTRY AS A
WHOLE. THANK YOU FOR YOUR CONSIDERATION ON THIS MATTER.

WALT AUDI, PRESIDENT AUDI AIR INC.

BOX 40

KAKTOVAK AK 99747

TELEGRAM

ALASCOM, INC.
PHONE: 586-5006
JUNEAU, AK 99802

1984 APR 21 PM 10 48

02002 NL TDA BARRON AK 125 04-21 0858 AST

PMS SENATE LABOR AND COMMERCE COMMITTEE

POUCH V

JUNEAU AK

I UNDERSTAND THAT YOU ARE TO HEAR THE BILL REGARDING AN ENACTMENT OF AN AVIATION SAFETY COMMISSION. OUR WISH IS THAT SUCH AN ACT IS IMMEDIATELY ESTABLISHED. IF THE A.T.C. IS ABOLISHED AND THE C.A.B. IS SUNSETTED IN 1985, THERE WILL BE NO REGULATORY BODY TO SET THE CRITERIA FOR FITNESS. IF THIS HAPPENS, WE FEEL THAT THE SAFETY STANDARDS WILL DROP DUE TO THE FACT THAT THERE WILL BE NO ONE TO ENFORCE ANY REGULATIONS REQUIRING AN OPERATOR TO MAINTAIN HIS FITNESS STANDARDS. IF STANDARDS DROP ANY, THERE WILL BE MORE ACCIDENTS AND INSURANCE RATES WILL CONTINUE TO RISE CAUSING THE PRICES OF COMMODITIES TO RISE. END RESULTS ARE INCREASED COSTS TO CONSUMER AND A LESS SAFE INDUSTRY THAN WE HAVE NOW.

RESPECTFULLY YOURS,

GRANT B THOMPSON

CAPE SMYTHE AIR

MSG 84-00042674 PRTY 1 05/07/84 11:26:34 ORIG: 460\$ IN= 0003 OUT= 0049
FROM: DOROTHY/PETERSBURG TO: JUNEAU INFO.
TARGET: LJHK SUBJ: POM 5

TO: SENATORS ROBERT ZIEGLER, DICK ELIASON
REPRESENTATIVES RON UERDTE, JOHN SUND

FROM: LLOYD AND DAHE ROUNDTREE
ALASKA ISLAND AIR
BOX 508 PHONE 772 3130
PETERSBURG, ALASKA 99833

RE: SB 548 AVIATION SAFETY COMMISSION

ALASKA ISLAND AIR, PETERSBURG, ALASKA SUPPORTS SB 548.

*****SITKA LEO, 4/19, 3712244*****

TO REGULATE AVIATION IN ALASKA,
INDUSTRY OF ALASKA, AND ITS IN THE PUBLIC'S THE BEST INTEREST TO CONTINUE
I AM IN COMPLETE FAVOR OF THE SENATE BILL. IT WILL SAFEGUARD THE AVIATION

REF: SB 508, AIR CARRIERS/ESTABLISH SAFETY COMMISSION

SITKA, AK 99835
BOX 883

FROM: BOB RIGGS, RIGS AIR SERVICE

TO: SENATOR ELIASON

TARGET: LTRK SUBJ: POM

MSG 84-00037122 PRTY 1 04/19/84 12:47:13Z ORIG: LS00 IM=0004 OUT=0085
FROM: SITKA
TO: JUREAU

Handwritten notes:
sent 5/2/84
copy
to
of the report ATC
to the report ATC
Bills
Jureau

Handwritten note in a circle:
B EAU
C ERY

April 18, 1984

The Honorable Bill Sheffield
Governor of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield:

On January 20, 1984, Bob Jacobsen of Wings of Alaska wrote you on behalf of local Air Carriers regarding the proposed Jetfoil Service Project. You responded on January 24, 1984 and February 27, 1984 assuring Air Carriers that alternatives were being investigated. Additionally, you said, "I have asked the Marine Highway Task Force to study your concerns" and "the report will include an analysis." Incidentally, thank you for your letters.

On March 8, 1984, Steve Smith, President of Alaska Air Carriers Association, wrote you regarding the "artificial element in a relatively free market" that the jetfoil would cause and enclosed a resolution opposing the project which passed unanimously by the general membership at the Annual AACA Conference February 4, 1984.

Your Marine Highway Task Force Report, released April 11, 1984, concluded that jetfoil service for Southeast Alaska is not a cost effective alternative or supplement to the ferry system. Legislative reporter Joe La Rocca said, "The study also cites little-known safety hazards, the displacement of private air services and jobs by state-subsidized jetfoil operations, and the high cost of operating and maintaining jetfoil ships as factors leading to its recommendation."

Legislative leaders have also expressed their concern with respect to the utility of subsidized jetfoils in Southeast Alaska. Some Legislators' comments follow:

"It was a lousy appropriation . . . I have cited this expenditure on numerous public occasions as an example of how we should not be spending Alaska's money." Rick Halford, Senate Minority Leader

"The challenge we face is to provide adequate and perhaps expanded service of the Marine Highway System in the most cost efficient manner while not severely impacting the aviation industry." Joe Hayes, Speaker of the House

". . . the Boeing Jetfoil Project is one of the most blatantly useless projects ever advocated by a State Legislator. Surely the money spent on this unproductive effort could have been spent on some other activity or Capital need in Juneau that has lasting value." Robert Bettisworth, Chairman, Legislative Budget and Audit Committee.

Governor, we concur.

Governor Bill Sheffield
April 18, 1984
Page Two

Senator Bill Ray also wrote us and said, "the three million would go back into the general fund as it was not my appropriation, but the governors." (Governor, we were not aware that a senator had the constitutional capacity to make appropriations.)

Additionally, the Department of Law is privy to an expert in admiralty contracts. In fact, this expert has addressed the Joint Venture between Boeing and the State in a letter dated February 13, 1984. In that letter, Attorney James H. Bauer attempted to apprise the State they were entering a bad deal. Unfortunately, the contract between this powerful Joint Venture was signed April 3, just eight days before the public was advised that the Governor's Task Force recommended against jetfoil service for Southeast.

Yet, the Aries is on its way to Southeast to dodge orcas, humpbacks, and other marine mammals with tidal debris, gillnets and kyaks interspersed, to provide unfair competition and displace jobs in the air carrier industry and to carry tourists to Southeastern ports at an exorbitant cost to all Alaska residents.

An expert in his field, Attorney James H. Bauer says, "The only unusual or remarkable aspect to this particular transaction is that the State is paying Boeing to sell it a number of jetfoils. For Boeing to receive one-fifth the value (or more) of the jetfoil for such an abbreviated period of time is not commercially reasonable nor consistent with what would usually be charged for hire of a 240 passenger vessel."

Additionally, Governor, when discussing the proposed jetfoil service with a high ranking representative of Alaska Jetfoil Service, he advised us that Boeing would be spending about \$40,000 on a marketing campaign for Southeast, the obvious implication being that the spillover from the thousands of visitors Boeing will attract to Juneau will be beneficial to Air Carriers as well. Understanding that \$40,000 is less than two days of State subsidy to Boeing, we would rather attract our customers through the Division of Tourism's cooperative marketing effort, of which we are all members. We also understand that Alaska Jetfoil Service is planning extra sections during the Southeast Alaska State Fair in Haines. ("extra sections" is a term commonly used in the air carrier industry referring to additional flights to accommodate traffic.) In the past traffic loads have been adequately accommodated by Air Carriers and the present Marine Highway System.

We should also mention that having Boeing (the Alaska/Boeing Joint Venture) sponsor, in part, the evening news on our Public Television Station is insulting.

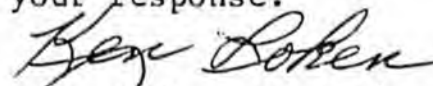
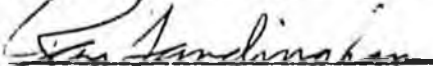
The significance of the injection of this artificial element will be to the detriment of existing rural community service. Roughly two-thirds of local Air Carrier revenues are generated during the summer months. Our summer revenues, much like Marine Highways, are used to provide unprofitable essential air service for rural Alaska during the lean winter months, without government subsidy.

Governor, we have heard sufficient public debate over the past 90 days. A respected 11 member task force found that not only will this jetfoil be unfair to private enterprise, but it is unsafe to passengers and whales and it is not cost effective.


Therefore, is it too late to save the State of Alaska three million dollars? If so, why? A subsidiary question -- why is it; when such a project has little or no merit, received negative expert and public testimony and only a selected few will benefit from its presence, we continue to spend good money after bad without due process? May we remind you, sir, this appropriation never had a public hearing and much of the evidence presented by Boeing during the 1983 Legislative Session was misleading and inaccurate.

If the jetfoil project is necessary for the people of Alaska and the Executive is under "Legislative Mandate" to work out a contract with Boeing, we suggest jetfoil operations begin January 16, 1985 rather than June 16, 1984. The result will be a more accurate test and private enterprise will not be so severely impacted. If the State of Alaska must test the jetfoil during the summer months, could we local air carriers be compensated for our lost revenues to ensure that the present level of air service will continue to be provided to rural Alaska in the winter time.

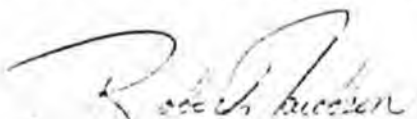
Thank you very much for your consideration. We look forward to your response.


Ken Loken, Ray Landingham
Channel Flying, Inc.



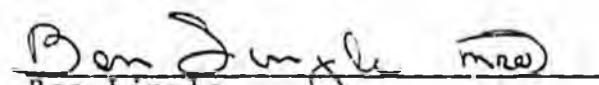
Lynn Bennett
LAB Flying Service



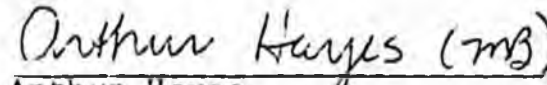
Robert Jacobsen
Wings of Alaska



Ken Ward
Ward Air



Ben Lingle
Skagway Air Service



Arthur Hayes (MB)
Glacier Bay Airways

Section

210. Judicial enforcement
 220. [Repealed]
 230. Violation a misdemeanor
 231. Civil penalties for violation
 232. Each violation a separate offense
 233. Penalties cumulative; actions to recover penalties

Section

234. Joinder of actions
 240. Public disclosure of information
 250. Definitions
 260. Short title

Sec. 02.05.010. Declaration of policy. The purpose and policy of this chapter is to

- (1) recognize and preserve the inherent advantage of air commerce;
- (2) foster sound economic conditions in air commerce and among air carriers in the public interest;
- (3) promote adequate, economical and efficient service by air carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices;
- (4) provide for the competition necessary to assure the sound development of an air transportation system properly adapted to and adequate to meet the needs of the commerce of this state;
- (5) improve the relations between and coordinate transportation by and regulation of air carriers;
- (6) provide for the administration and enforcement of this chapter to avoid conflict with the regulation of air carriers by the federal government;
- (7) maintain air transport services in the state on an economically sound basis, pending a study of the air transport needs of the state and the relationship of intrastate air services to the interstate and foreign air services subject to regulation by the federal Civil Aeronautics Board. (§ 2 ch 161 SLA 1960)

Cited in *Interior Airways, Inc. v. Wien Alaska Airlines*, 188 F. Supp. 107 (D. Alas. 1960).

Am. Jur. and ALR references. — 6 Am. Jur. Aviation, §§ 12, 14 to 17.

Airplanes and aeronautics, 69 ALR 316; 83 ALR 333; 99 ALR 173.

Police power over air navigation, 69 ALR 316; 83 ALR 333; 99 ALR 173.

Duty and liability of airplane carriers to passengers, 69 ALR 327; 83 ALR 354; 99 ALR 188.

Airplane carrier's duty toward passengers boarding or alighting, 69 ALR 327; 83 ALR 365; 99 ALR 191.

Assumption of risk by, and contributory negligence of, airplane passenger, 69 ALR 327; 83 ALR 372, 373; 99 ALR 193.

Limitation of liability of airplane carrier, 83 ALR 357; 99 ALR 189.

Presumption and burden of proof as to negligence of airplane carrier in case of injury to passenger, 83 ALR 368; 99 ALR 192.

Liability for injury to airplane passenger failing to pay fare, 83 ALR 372; 99 ALR 193.

Air carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 ALR2d 883.

Coverage of airplane passenger's trip insurance policy, 29 ALR3d 766.

Sec. 02.05.020. Organization.

Cross reference. — See Editor's note to AS 42.07.121.

Sec. 02.05.030. General powers and duties of the commission. (a) The commission shall administer the provisions of this chapter, and may make and amend general or special rules and regulations and issue the orders necessary to carry out the policy and purposes of this chapter. The commission shall issue these general rules, regulations, and orders under the provisions of the Administrative Procedure Act (AS 44.62).

(b) The commission may confer and hold joint hearings with authorities of the government of the United States having jurisdiction over matters affecting air commerce. The commission may also avail itself of the cooperation, services, records, and facilities of these authorities.

(c) When the interstate rates, fares, charges or classifications of air carriers affecting the commerce of this state are, in the opinion of the commission, excessive or discriminatory or are levied or imposed in violation of the Act of Congress entitled "Federal Aviation Act of 1958," and acts amending or supplementing it or are in conflict with the rulings, orders or regulations of the authorities having jurisdiction under these acts, or when interstate services are, in the opinion of the commission inadequate, unsatisfactory, or discriminatory, the commission may apply by petition to these authorities for relief, and may present to them all facts coming to the commission's knowledge as to violations of the rulings, orders, or regulations of these authorities, or as to violations of the Federal Aviation Act of 1958 or acts amending or supplementing it.

(d) The commission shall conduct its proceedings in a manner conducive to the proper dispatch of business and to the ends of justice. Any person may appear before the commission and be heard in person or by his attorney. Every official act of the commission shall be entered of record and the proceedings shall be open to the public upon the request of any interested party. (§ 5 ch 161 SLA 1960)

Sec. 02.05.040. Certificates required. Subject to the provisions of AS 02.05.050, no person may engage in air commerce unless there is in force a certificate issued by the commission authorizing that person to engage in air commerce as a scheduled carrier, contract carrier, or air taxi operator. (§ 6 ch 161 SLA 1960; am § 1 ch 203 SLA 1968)

Exemption from certification requirements. — AS 92.05.060 is construed as conferring sufficient authority on the commission to permit it to exempt an air carrier from the certification requirements of this section and to grant it temporary authority to operate a scheduled service if

the commission finds an emergency so requires, an undue burden exists, and the public interest would be served by the exemption. *Alaska Transp. Comm'n v. Alaska Airlines, Inc.*, Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967).

Sec. 02.05.050. Authority to engage in air commerce. (a) Scheduled carriers. Any person holding a certificate of public convenience and necessity issued under the provisions of this chapter or issued before March 2, 1960, under federal statutory authority authorizing intrastate air commerce inside the state,

(1) may engage in air commerce along the routes and between the points covered by his certificate or any amendments as authorized before March 2, 1960, or as may be authorized under the provisions of this chapter, and may engage in air commerce along the routes and between the points covered by an exemption, regulation, or order in effect before March 2, 1960, or as issued under the provisions of this chapter;

(2) may make charter trips and render other special services between points on routes which he is authorized by his certificate to serve. Charter trips and other special services may be rendered to or from any other point inside or outside the state if those trips originate at or are destined to a point on a route the carrier is authorized by its certificate to serve.

(b) Carriers exempted by Civil Aeronautics Board. A person who was authorized before March 2, 1960 to engage in air commerce inside Alaska solely under an exemption issued by the federal Civil Aeronautics Board may continue to engage in air commerce as authorized before March 2, 1960, but is subject to the conditions and limitations of the exemption as effective on that date.

(c) Contract carriers. A person authorized by this chapter to engage in air commerce as a contract carrier, or who, as a contract carrier, was a resident authorized to engage in and engaged in air commerce between September 1, 1959, and January 1, 1961, and who has made application for a certificate before July 1, 1967, may engage or continue to engage in air commerce to the extent that contract carriers were authorized before January 1, 1960, but subject to the conditions and limitations of the authority as effective on that date. A contract carrier is authorized both to employ or hire pilots and to lease, rent and own aircraft, but a person who has not received authority under this chapter may not operate under another person's contract carrier certificate of authority.

(d) Air taxi operators. The commission, by regulation, may establish more than one subclassification of air taxi operator and shall establish the extent to which a subclassification shall be regulated under the provisions of this chapter. A person authorized under this chapter to engage in air commerce as an air taxi operator

(1) may, in accordance with his certificate, the limitations established by this chapter and regulations of the commission, utilize in all areas of the state from which he is authorized to operate, aircraft having a maximum certificated takeoff weight of 12,500 pounds or less except as authorized on certificates in effect on September 26, 1972 or as otherwise authorized by the commission;

(2) may employ pilots and may lease, rent, and own aircraft; however, a person who is not authorized under this chapter may not operate under another person's air taxi certificate of authority;

(3) may charge individual passenger fares and per pound cargo rates on bush routes or points served by him on an irregular basis; however, no individual passenger fare and per pound cargo rate may be less than that contained in the published tariff of a scheduled carrier between points being served by the carrier;

(4) may enter into long-term, written exclusive charter contracts if

(A) the carrier continues to provide reasonable and continuous air taxi service to the public at its base of operations;

(B) term rates for a contractual period of less than 30 consecutive days are properly made, published and filed in accordance with AS 02.05.140 — 02.05.150 and the regulations of the commission; and

(C) a complete copy of the exclusive charter contract, including amendments or supplements, for a contractual period of 30 or more consecutive days is on file at the base of operations of the carrier and available to the commission on request before the performance of any service under the contract; except as provided in AS 02.05.150(a)(3), rates provided in the contracts are exempt from the provisions of AS 02.05.140 — 02.05.150;

(5) shall establish and register with the commission, on forms furnished by the commission, his base of operations; however, no person may operate from more than one base of operations except upon approval of the commission after a finding that public convenience and necessity requires it and a change in the base or bases of operations may be made only upon approval of the commission.

(c) Repealed by § 13 ch 146 SLA 1972. (§ 7 ch 161 SLA 1960; am §§ 1-3 ch 150 SLA 1966; am §§ 1, 2 ch 138 SLA 1967; am §§ 2, 3 ch 203 SLA 1968; am §§ 1, 13 ch 146 SLA 1972)

No regulations clarifying the meaning of "irregular" in subsection (d)(3) have been promulgated. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Limitation in subsection (d)(3) read with AS 02.05.150 mandate. — The limitation in paragraph (3) of subsection (d) allowing per passenger fares only on bush routes or points served irregularly must be read together with the mandate in AS 02.05.150 to provide service upon reasonable request. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

An air taxi operator's "upon reasonable request" cannot control the frequency of its flights between specific points. *Kodiak*

W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc., Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Insufficient evidence of violation of subsection (d)(3). — Evidence showing an "irregular" pattern of "service on reasonable request" was insufficient to support the commission's finding that an air taxi operator had violated paragraph (3) of subsection (d) by charging individual passenger fares while providing regular service between points already served on a regular basis by a scheduled air carrier. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Authority of commission to impose penalty for violation. — Where, although an air taxi operator violated paragraph (3) of subsection (d) by using a fare less than

the scheduled carrier's, the air taxi operator's tariff had been properly filed and accepted by the commission and there was no evidence that the air taxi operator knew that its tariff was unlawful, the commission could not penalize it for charges collected by it before it was notified that its tariff was in question. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1977).

Sec. 02.05.053. Restriction on holding authority as air taxi operator and contract carrier. No carrier may hold certificates both as an air taxi operator and as a contract carrier. (§ 2 ch 146 SLA 1972)

Revisor's note. — AS 02.05.053, as enacted by § 2, ch. 146, SLA 1972, provided that no carrier could hold certificates both as an air taxi operator and as a contract carrier after December 31, 1973 and provided procedures for the commission to carry out the prohibition before January 1, 1974. The expired provisions read as follows: "(b) Before January 1, 1974, the commission shall examine the operations of carriers holding both an air taxi certificate and contract carrier certificate and after notice and opportunity for hearing shall determine whether either or both of the carrier's authorities are dormant and upon a finding of dormancy revoke the dormant authority or authorities.

"(c) Before January 1, 1974, the commission shall examine outstanding certificates issued to a contract carrier and shall institute a proceeding either upon its own initiative or upon application of a certificated carrier actually in operation or upon complaint of an interested party and after notice and hearing determine

"(1) whether the carrier's authority is active or dormant and upon a finding of dormancy revoke the dormant authority;

Sec. 02.05.055. Public convenience and necessity required for operation of different types of aircraft. Before a certificated contract or air taxi operator may operate a different type of aircraft from that which he operated in Alaska during the period of May 1, 1965, to May 1, 1966, there must be a finding by the commission that public convenience and necessity require it. (§ 1 ch 147 SLA 1966; am § 4 ch 203 SLA 1968)

Sec. 02.05.060. Temporary exemption of air carriers. From time to time when an emergency requires, the commission may exempt from the requirements of this chapter or any provision of it, or a rule, regulation,

Standard of review. — Under the "reasonable basis" standard of review, deference will be given to the commission's determination so long as it is reasonable, supported by the evidence in the record as a whole, and there is no abuse of discretion. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

"(2) whether the carrier is operating as an air taxi or contract carrier within the contractual authority relating to air taxi operators under § 50(d)(4) of this chapter or within the restricted authority governing contract carriers as defined in § 250(8) of this chapter and if the commission finds that the operations of a person holding a contract carrier certificate, before September 26, 1972, (A) do not conform with the definitions of a contract carrier in § 250(8) of this chapter; and (B) are actually those of an air taxi operator and otherwise lawful, the commission shall issue a certificate authorizing the carrier to engage in air commerce as an air taxi operator and shall establish the base of operations from which the carrier may operate; however, the carrier may instead elect to retain its authority as a contract carrier restricting its operations to those of a contract carrier as defined in § 250(8) of this chapter.

"(d) A certificate which the commission finds should be revoked in accordance with (b) of this section may not be transferred or otherwise disposed of but must be revoked."

term, condition, or limitation prescribed under it, an air carrier or class of air carriers, if the commission finds that the enforcement of this chapter or provision of it, or a rule, regulation, term, condition or limitation is an undue burden on the air carrier or class of air carriers by reason of the emergency or unusual circumstances affecting the operation of the air carrier or class of air carriers, and is not in the public interest. The commission shall issue the regulation or order for a temporary exemption under the Administrative Procedure Act (AS 44.62) except that an order need not be of general applicability and a finding of emergency as required by AS 44.62.250 need not be first made as a condition to issuing an emergency regulation or order. (§ 8 ch 161 SLA 1960; am § 1 ch 109 SLA 1961)

The Alaska Air Commerce Act of 1960 was patterned in many respects after the Federal Aviation Act. *Alaska Transp. Comm'n v. Alaska Airlines, Inc.*, Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967).

Hence, federal decisions construing the Federal Aviation Act may be persuasive in construing analogous provisions of the Alaska Act. *Alaska Transp. Comm'n v. Alaska Airlines, Inc.*, Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967).

Commission's power coextensive with that of Civil Aeronautics Board. — The power of the commission under this section is in most respects coextensive with that of the Civil Aeronautics Board with respect to the granting of exemptions. *Alaska Transp.*

Comm'n v. Alaska Airlines, Inc., Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967).

Section confers authority to exempt from certification requirements of AS 02.05.040. — This section is construed as conferring sufficient authority on the commission to permit it to exempt an air carrier from the certification requirements of AS 02.05.040 and to grant it temporary authority to operate a scheduled service if the commission finds an emergency so requires, an undue burden exists, and the public interest would be served by the exemption. *Alaska Transp. Comm'n v. Alaska Airlines, Inc.*, Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967).

Sec. 02.05.070. Applications for certificates. (a) The commission may not consider an application for a certificate unless the application is in writing, in the form required by the commission, and accompanied by a proof of service upon the interested parties as required by the commission.

(b) Upon the receipt of an application for a certificate, the commission shall give notice (1) to the public by posting a notice of the application in the office of the commission; and (2) to those persons, and by such means as the commission determines by regulation. A public hearing shall be held on the application if the applicant, or a person having a substantial interest in the proceeding, requests it within the time provided by regulation.

(c) The commission, upon its own initiative, may conduct investigations to determine the need for additional air commerce and, if it appears to be needed, the commission may encourage the filing of applications for certificates authorizing the furnishing of air commerce. (§ 9 ch 161 SLA 1960; am § 5 ch 203 SLA 1968)

Sec. 02.05.075. Application fees. (a) The following fees shall be paid at the time of application including transfers, amendments, leases, and applications for temporary exemption:

- (1) Applications involving aircraft weight of 12,500 pounds gross take off weight or less \$100
- (2) Applications involving aircraft weight of 12,501 pounds gross take off weight or over \$200
- (b) Repealed by § 13 ch 146 SLA 1972. (§ 6 ch 203 SLA 1968; am § 15 ch 146 SLA 1972)

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 the applicant is fit, willing and able to engage in air commerce properly and to comply with the provisions of this chapter and the rules, regulations, and requirements of the commission; and
- (2) if the commission 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. (§ 10 ch 161 SLA 1960; am §§ 2, 3 ch 147 SLA 1966; am § 7 ch 203 SLA 1968; am § 3 ch 146 SLA 1972)

Effect of subsection (d). — Subsection (d) of this section does not more than to require air carriers to show that they can and will comply" with federal regulations before a certificate can be issued. It does not effect a wholesale incorporation of FAA regulations into the statute itself. *Widmyer v. Southeast Skyways, Inc.*, Sup. Ct. Op. No. 1697 (File No. 3231), 584 P.2d 1 (1978).

Sec. 02.05.090. Terms and conditions of certificate. (a) A certificate issued to a certificated carrier under this chapter shall specify the points between which, or the areas within which, the holder may operate as an air carrier and the service to be rendered. There shall be attached to the

exercise of the privileges granted by a certificate issued under the provisions of this chapter, or amendment to any certificate, such reasonable terms, conditions, and limitations as the public interest requires.

(b) Subject to the provisions of (c) of this section, unless and until a certificate is modified, suspended or revoked, the certificate is effective from the date specified in the certificate, and continues in effect until expiration.

(c) If a service authorized by a certificate for a certificated carrier is not inaugurated within 90 days immediately following the date of authorization or within a shorter period of time fixed by the commission; or if any service is not operated for a period of 90 days, or for any period of time designated by the commission, then in either event, the commission, after notice and opportunity for hearing, may order that the certificate ceases to be effective.

(d) No certificated carrier or carrier exempt under AS 05.02.050(b) violates any term, condition or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate, or by operating during an emergency between terminal and intermediate points not specified in its certificate under regulations prescribed by the commission.

(e) No certificate confers any proprietary, property, or exclusive right in the use of any air space, civil airway, public landing area or public air navigation facility.

(f) Except as provided in (g) of this section, each aircraft owned or leased by any person subject to the provisions of this chapter shall be registered with the commission before the aircraft is used in air commerce. Certificates of registration for each aircraft shall be issued by the commission. These certificates are valid for a period of 12 months from the date of registration and are renewed at the expiration of each 12 month period. The fees for registration of aircraft are as follows:

- (1) Aircraft weighing 4,000 pounds gross weight or less . . . \$ 25
- (2) Aircraft weighing over 4,000 pounds but less than 7,900 pounds gross weight 50
- (3) Aircraft weighing 7,900 pounds but less than 12,500 pounds gross weight 100
- (4) Aircraft weighing 12,500 pounds but less than 27,000 pounds gross weight 150
- (5) Aircraft weighing 27,000 pounds but less than 50,000 pounds gross weight 300
- (6) Aircraft weighing 50,000 pounds but less than 75,000 pounds gross weight 400
- (7) Aircraft weighing 75,000 pounds gross weight or more . . . 600

(g) Scheduled carriers certificated by the Civil Aeronautics Board that provide intrastate service between points in the state on their interstate or foreign routes and who use, for that intrastate service, aircraft based

primarily outside the state, shall register the aircraft used in intrastate service in the state with the commission. Registration fees shall be paid on the basis of the maximum number of aircraft used in the intrastate service during any 24-hour period during the year as provided by regulations of the commission.

(h) Failure to register an aircraft prior to its use in air commerce by a person holding a certificate of authority under this chapter may be cause for suspension or revocation of his certificate in accordance with AS 02.05.100. (§ 11 ch 161 SLA 1960; am § 1 ch 5 SLA 1966; am §§ 8, 9 ch 203 SLA 1968; am §§ 4, 5 ch 146 SLA 1972)

Legislative history report. — For 1966, see House Journal (1966), pp. 50 and legislative history report on ch. 5, SLA 51.

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, if the public convenience and necessity require it 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) voluntary discontinuance of operations;
- (3) intentional failure to comply with a provision of this chapter or an order, rule, or regulation issued under this chapter;
- (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 — 02.05.135. (§ 12 ch 161 SLA 1960; am § 1 ch 195 SLA 1970; am § 3 ch 32 SLA 1971)

Legislative history report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 02.05.110. Transfer of certificates. (a) A certificate may be transferred or leased subject to the approval of the commission, and under such reasonable rules and 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, that the transfer or lease will be consistent with the public interest. The application for approval shall be made jointly by the transferor and transferee or lessor and lessee.

(b) The transferee or lessee of a certificate issued after May 1, 1966, may only operate the type of aircraft specified on the certificate.

(c) A transferee or lessee of a certificate issued before May 1, 1966, may only operate the type of aircraft operated by the transferor or lessor in air commerce during the period of one year immediately preceding the date on which application is made for approval of the transfer or lease.

(d) Regardless of the date of issuance of a certificate, a transferee or lessee who wishes to operate aircraft of the type not operated by the transferor or lessor must apply to the commission for a certificate of convenience and necessity under AS 02.05.070 and qualify as a certified carrier with respect to operating that type of aircraft in air commerce.

(e) Only those rights under a certificate which are shown to be in active and regular use may be transferred. The transferor shall certify to the commission that the authority contained in the certificate has been in reasonable continuous and active use as to the territory or routes authorized to be served, and as to the various services authorized to be rendered by the carrier. The commission may require documentary evidence in support of the certification of the transferor. Dormant operating rights of the transferor may not be transferred unless the commission finds that the service is needed for the public convenience and necessity, and that the transferee will provide that service.

(f) Applications for transfer shall not be granted until:

(1) all unpaid claims for loss or damage arising out of the operations of the carrier have been paid or until the claims have been secured by the insurance carrier of the transferor, or by satisfactory bond, or after settlement approved by the commission as satisfactory for the protection of all claimants; and

(2) all money due shippers or other parties entitled to receive the money for shipments performed on a COD basis have been paid.

(g) For purposes of this section, a transfer requiring commission approval includes transfer of control over the certificate by any of the following ways:

(1) transfer from one business entity to another business entity, whether a sole proprietorship, partnership, corporation, joint venture, or any other authorized form of doing business;

(2) merger;

(3) consolidation;

(4) acquisition by one or more persons of a controlling interest in an air carrier firm by purchase, by acquisition of stock, or by any other means. (§ 13 ch 161 SLA 1960; am § 4 ch 147 SLA 1966; am § 10 ch 203 SLA 1968; am § 6 ch 146 SLA 1972)

Sec. 02.05.120. Abandonment or discontinuance of service by certificated carrier. No certificated carrier or carrier exempt under AS 02.05.050(b) may abandon or discontinue a service or part of a service for which a certificate has been issued by the commission, unless upon the application of the carrier, after notice and opportunity for hearing, the commission finds abandonment or discontinuance to be in the public

interest. An interested person may file with the commission a protest or memorandum of opposition to or in support of an abandonment. The commission may authorize temporary suspension or service in the public interest. (§ 14 ch 161 SLA 1960)

Sec. 02.05.130. Accident liability protection required. (a) No certificate may be issued to a person to operate as an air carrier within the state and no certificated carrier may operate within the state unless the person or carrier has procured and kept in force a reasonable security required by the commission for the protection of the public against damage and injury for which the carrier may be liable by reason of its operation as an air carrier.

(b) In fixing the amount of necessary security for a certificated carrier the commission shall give consideration to the character and amount of traffic, the number of persons affected and the degree of danger which the proposed operation involves.

(c) The commission may at any time refuse to accept, or revoke its acceptance of, any security or form of security, if, in its judgment the security does not comply with the regulations, or for any reason fails to provide satisfactory or adequate protection for the public. Refusal or revocation of acceptance of security does not relieve the carrier from compliance with this section. (§ 15 ch 161 SLA 1960; am § 2 ch 195 SLA 1970)

This section is a compulsory financial responsibility law which renders unenforceable, as between the insurer and injured air carrier passenger, policy exclusions relating to negligent operations by the air carrier. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

This section is a financial responsibility law or other law applicable to aircraft with respect to financial responsibility or liability arising out of the ownership, maintenance, or use of aircraft. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

The public is entitled to rely upon the assurances of coverage on file with the regulatory agency. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

Compliance. — Certification by an air service of a policy containing minimum coverage required by the commission's regulations, and acceptance thereof by the Alaska Transportation Commission as proof of financial responsibility, constituted full compliance with this section. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

Sec. 02.05.135. Evidence of protection; deposit of insurance policy, bond or other security. (a) The protection required under AS 02.05.130

shall be evidenced by deposit with the commission, covering each aircraft used or to be used under its certificate, either

(1) a policy or certificate of insurance issued by an insurer acceptable to the commission and approved by the state division of insurance, Department of Commerce;

(2) a bond or surety company licensed to write surety bonds in the state;

(3) other security approved by the commission; or

(4) such evidence of qualification of the carrier as a self-insurer as may be approved by the commission.

(b) Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer, or for approval of either securities or agreements, and notices of cancellation must be in the form prescribed or approved by the commission.

(c) Certificates of insurance and surety bonds shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate is, or is said to be, issued. In the case of a partnership, all partners shall be named. (§ 3 ch 195 SLA 1970; am § 7 ch 146 SLA 1972)

Sec. 02.05.136. Duration of protection; cancellation of insurance, bond or other security. (a) The protection against liability required by AS 02.05.130 shall be continued in effect during the active life of the certificate.

(b) Policies of insurance, surety bonds and other forms of security are not cancellable on less than 30 days' written notice to the commission and this shall be clearly stated in the policy or endorsement.

(c) The 30 day notice shall be measured from the date upon which the commission receives notice. (§ 3 ch 195 SLA 1970)

Sec. 02.05.137. Fiduciaries, insured and principal. The terms "insured" and "principal" as used in certificates of insurance, surety bonds, and notices of cancellation filed by or in behalf of air carriers shall be construed to include not only the air carrier named in the certificate, surety bond, or notice of cancellation, but also the fiduciary of the air carrier. The coverage of fiduciaries provided for in this chapter attaches at the moment of succession of the fiduciaries. (§ 3 ch 195 SLA 1970)

Sec. 02.05.140. Tariffs. (a) Filing of tariffs required. Every air carrier except contract carriers shall file with the commission and make available to the public tariffs showing all rates, fares and charges for air commerce between points served by it, and between points served by it and points served by any other carrier when through air commerce service and rates have been established, and all classifications, rules, regulations, practices, and services in connection with that commerce.

(b) Extent and manner of filing. Tariffs shall be filed and made available to the public as provided in (f) of this section for changed tariffs as set out there, otherwise to the extent and in the manner required by

Exclusions and excess coverage. —

There are few decided cases dealing with exclusions and excess coverage in policies issued to common carriers required by law to show proof of financial responsibility to a regulatory agency as a condition of certification. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

Where coverage in excess of minimum requirements is contained in a policy actually certified to the regulatory commission, exclusions should be voided to the full extent of coverage, absent a clear contractual provision limiting liability incurred solely as a result of the law to the minimum coverage required for certification. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

Rules and regulations. — Pursuant to the provisions of this section, reasonable rules and regulations were promulgated and the same were duly published in 3 Alaska Administrative Code, Division 3, Chapter 3, Part 3780, Sections 3781-3783. *Traill v. Felder*, 330 F. Supp. 560 (D. Alas. 1971).

regulations of the commission. The form of every tariff shall be prescribed by the commission. The commission shall prescribe a form as nearly similar as possible to the form of tariffs required of air carriers by the Civil Aeronautics Board or other agency of the federal government under the Act of Congress entitled "Federal Aviation Act of 1958," and acts amending or supplementing it. The rates, fares and charges shown in a tariff shall be stated in terms of lawful money of the United States.

(c) Rejection of tariffs. The commission may reject any tariff which is not consistent with this section and the regulations of the commission. A tariff so rejected is void.

(d) Observance of tariffs. No air carrier except contract carriers may charge, demand, collect or receive a different compensation for air commerce, or for a service in connection with air commerce, than the rates, fares, and charges specified in its effective tariffs. No carrier may in any manner or by any device, directly or indirectly, or through an agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the commission to be specified in the tariffs, except those specified in the tariff. If an excessive rate, fare, or charge is stated in a currently effective tariff through error, the air carrier may, in accordance with regulations prescribed by the commission, make appropriate refunds to a person paying that charge.

(e) Free or reduced rates. Nothing in this chapter prohibits certificated carriers, air taxi operators or carriers exempt under AS 02.05.050(b) under such terms and conditions as the commission prescribes, from issuing or interchanging tickets or passes for free or reduced rate transportation to their directors, officers, employees and retired employees and their immediate families; to witnesses and attorneys attending a legal investigation in which a carrier is involved in the proceedings; to persons injured in aircraft accidents and physicians and nurses attending those persons; to employees of the Federal Aviation Agency and the Post Office Department, whose carriage is authorized by the carriers under Parts 224 and 233 of the Economic Regulations of the federal Civil Aeronautics Board; and to any person or property with the object of providing relief in cases of general epidemic, pestilence, or other disaster. No carrier may provide free or reduced rate transportation to other persons or under other circumstances.

(f) Notice of change in tariff. Unless the commission otherwise orders, no change may be made in a rate, fare, or charge, or a classification, rule, regulation, or practice affecting the rate, fare, or charge or the value of the service thereunder, specified in any effective tariff of a certificated carrier, air taxi operator or carrier exempt under AS 02.05.050(b), except after 45 days' notice to the commission and 30

days' notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing. The commission, for good cause shown, may allow changes to take effect on less than 45 days' notice to the commission or 30 days' notice to the public under such conditions as the commission may prescribe. (§ 16 ch 161 SLA 1960; am §§ 3, 4 ch 133 SLA 1975)

Effect of amendment. — The 1975 amendment inserted "as provided in (f) of this section for changed tariffs as set out there, otherwise" in the first sentence of subsection (b) and rewrote subsection (f).

Subsection (c) does not place upon the commission an affirmative duty to review and disapprove tariffs which are improper. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

But the commission certainly is empowered to do so. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

No authority to impose penalty for certain violations. — The commission can act prospectively, but there is no statutory authority for the commission to impose a penalty as to tariffs which have been filed and accepted, and as to which the carrier has not received notice that its tariff is considered legally questionable, assuming that there is no evidence of bad faith or intentional misconduct on the part of the carrier. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Sec. 02.05.150. Rates and service. (a) Duties of certificated carriers. Every certificated carrier and every carrier exempt under AS 02.05.050(b) has the following duties:

(1) to provide air commerce, as authorized by its certificate, upon reasonable request and to provide reasonable through service in air commerce in connection with other carriers or with common carriers by railroad, motor vehicle, express or water;

(2) to provide adequate and reasonable service, equipment, and facilities, in connection with air commerce;

(3) to establish, observe and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to air commerce.

(b) Discrimination. No certificated carrier or carrier exempt under AS 02.05.050(b) may make, give, or cause an undue or unreasonable preference or advantage to a particular person, port, locality, or description of traffic or subject a particular person, port, locality, or description of traffic to any unjust discrimination or an undue or unreasonable prejudice or disadvantage.

(c) Power to prescribe rates and practices. If, after notice and opportunity for hearing, upon complaint or upon its own initiative, the commission is of the opinion that any individual or joint rate, fare or charge demanded, charged, collected, or received by a certificated carrier or a carrier exempt under AS 02.05.050(b) for air commerce performed by it, or any classification, rule, regulation, or practice affecting that rate, fare or charge, or the value of the service thereunder, is or will be unjust or unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial, the commission shall determine and prescribe the lawful rate, fare or charge which the carrier may thereafter demand, charge, collect or receive, or the classification, rule, regulation, or practice to be made effective.

(d) Suspension of rates. Whenever a certificated carrier or a carrier exempt under AS 02.05.050(b) files with the commission a tariff, other than an initial tariff, stating a new individual or joint rate, fare or charge for air commerce or a classification, rule, regulation, or practice affecting that rate, fare or charge, or the value of the service thereunder, the commission may, upon complaint or upon its own initiative, at once, and if it orders, without answer or other formal pleading by the carrier, but upon reasonable notice, enter upon an investigation concerning the lawfulness of the rate, fare or charge, or the classification, rule, regulation, or practice. Pending the investigation and the decision, the commission, by filing with the tariff, and delivering to the certificated carrier or the carrier exempt under AS 02.05.050(b) affected, a statement in writing of its reasons for the suspension, may suspend the operation of the rate, fare or charge, or the classification, rule, regulation, or practice, for a period of 90 days. If the proceeding has not been concluded and a final order has not been made within the 90-day period, the commission may from time to time extend the period of suspension for a period not exceeding 180 days in the aggregate beyond the time when the tariff would otherwise go into effect. Before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the commission, after opportunity for hearing, may make an order with reference thereto as would be proper in a proceeding instituted after the rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation or practice shall go into effect at the end of the period.

(e) Power to establish through transportation service. The commission shall, whenever required by the public convenience and necessity, after notice and hearing, upon complaint or upon its own initiative, establish through service and joint rates, fares or charges, or the maximum and minimum thereof, for air commerce performed by certificated carriers or carriers exempt under AS 02.05.050(b), or the classification, rules, regulations, or practices affecting the rates, fares, or charges, or the value of service thereunder, and the terms and

(f) Schedules. Certificated carriers and carriers exempt under AS 02.05.050(b) shall publish, post and file with the commission in accordance with general or special regulations prescribed by the commission, schedules showing the time of arrival and departure of regularly scheduled aircraft engaged in air commerce. (§ 17 ch 161 SLA 1960)

Limitation in AS 02.05.050(d)(3) read with mandate in section. — The limitation in AS 02.05.050(d)(3) allowing per passenger fares only on bush routes or points served irregularly must be read together with the mandate in this section to provide service upon reasonable request. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

An air taxi operating "upon reasonable request" cannot control the frequency of its flights between specific points. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Insufficient evidence of violation of AS 02.05.050(d)(3). — Evidence showing an "irregular" pattern of "service on reasonable request" was insufficient to support the commission's finding that an air taxi operator had violated AS 02.05.050(d)(3) by charging individual passenger fares while providing regular service between points already served on a regular basis by a scheduled air carrier.

Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc., Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

No authority to impose penalty for certain violations. — The commission can act prospectively, but there is no statutory authority for the commission to impose a penalty as to tariffs which have been filed and accepted, and as to which the carrier has not received notice that its tariff is considered legally questionable, assuming that there is no evidence of bad faith or intentional misconduct on the part of the carrier. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Standard of review. — Under the "reasonable basis" standard of review, deference will be given to the commission's determination so long as it is reasonable, supported by the evidence in the record as a whole, and there is no abuse of discretion. *Kodiak W. Alas. Airlines, Inc. v. Bob Harris Flying Serv., Inc.*, Sup. Ct. Op. No. 1820 (File Nos. 3641, 3759), 592 P.2d 1200 (1979).

Sec. 02.05.160. Federal laws and regulations. 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 of the United States or any other federal agency. (§ 18 ch 161 SLA 1960; am § 4 ch 195 SLA 1970)

Sec. 02.05.170. Accounts, records and reports. (a) The commission may require annual reports from any air carrier covering any operations 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. The commission may require from an air carrier specific answers to any questions pertaining to air commerce performed by it inside the state, and the books, records, properties or operations in connection therewith upon which the commission considers information is necessary. The commission may require these reports and answers to be under oath. The contents and form of the regular reports shall conform as nearly as possible to that required of air carriers by the Civil Aeronautics Board or other agency of the federal government under the Act of Congress entitled "Federal

Aviation Act of 1958," and acts amending or supplementing it. The commission may also require an air carrier to file with it a true copy of any contract, agreement, understanding, or arrangement, between the carrier and another carrier or person, in relation to traffic affected by the provisions of this chapter.

(b) The commission shall prescribe the forms of accounts, records, and memoranda to be kept by air carriers, including the accounts, records and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time these accounts, records and memoranda shall be preserved. The forms of accounts, records and memoranda prescribed by the commission as provided above shall conform to those prescribed by the Civil Aeronautics Board or other agencies of the federal government under the Act of Congress entitled "Federal Aviation Act of 1958," and acts amending or supplementing it.

(c) The commission shall be allowed access to all lands, buildings and equipment of any air carrier and to all accounts, records, and memoranda, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by the carriers. The commission may employ special agents or auditors, who may under the orders of the commission inspect and examine any lands, buildings, equipment, accounts, and memoranda.

(d) If an air carrier maintains records and accounts and furnishes reports in compliance with lawful regulations of the Civil Aeronautics Board of the United States or other agencies of the federal government with respect to operations and business in the state, this constitutes compliance with the provisions of (a) and (b) of this section and the regulations, rules and orders promulgated under those subsections by the commission. The commission may require any carrier to furnish the commission with copies of all reports submitted to the Civil Aeronautics Board of the United States or other agencies of the federal government, and in addition, the commission may require the preparation and submission of such special reports, records, and accounts as it considers necessary.

(e) An air carrier shall have an office in the state in which its property or some portion of its property is located and shall keep in that office all the books, accounts, papers, and records required by the commission to be kept within the state. These books, accounts, papers or records may not, at any time, be removed from the state except upon conditions prescribed by the commission.

(f) The commission shall require air carriers who act as transporters under AS 08.54.240 who transport persons between airports, landing strips or other landing areas officially listed in the United States government Flight Information Publication, Alaska Supplement, as revised, or the United States government Sectional Aeronautical Charts, as revised, to comply with the provisions of AS 08.54.146 relating to the filing of game transporter reports with the Department of Fish and

Game. Air carriers maintaining regularly scheduled service between designated points are exempt from the reporting requirement of this subsection when engaged in regularly scheduled service. (§ 19 ch 161 SLA 1960; am § 8 ch 146 SLA 1972; am § 9 ch 106 SLA 1976)

Effect of amendment. -- The 1976 amendment added subsection (f).
Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Sec. 02.05.180. Methods of competition. The commission may, upon its own initiative or upon complaint by an air carrier or ticket agent, if it considers the action to be in the public interest, investigate and determine whether an air carrier or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air commerce or the sale thereof. If the commission finds, after notice and opportunity for hearing, that the air carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition, it shall order the air carrier or ticket agent to cease and desist from those practices or methods of competition. (§ 20 ch 161 SLA 1960)

Sec. 02.05.190. Complaint to and investigations by the commission.
(a) Any person may file with the commission a complaint in writing with respect to anything done or omitted to be done by any person in contravention of a provision of this chapter or of a requirement established under this chapter. If the person complained against does not satisfy the complaint and there is reasonable ground for investigating the complaint, the commission shall investigate the matters complained of. The state Department of Public Safety shall assist the commission in the investigations. Whenever the commission is of the opinion that the complaint does not state facts which warrant an investigation or action on its part, it may dismiss the complaint without hearing.

(b) The commission may institute an investigation at any time, on its own initiative, in any case and as to any matter or thing concerning which complaint is authorized to be made to the commission by a provision of this chapter, or concerning which a question may arise under the provisions of this chapter, or relating to the enforcement of the provisions of this chapter. The commission may proceed with an investigation instituted on its own motion as though it had been appealed to by complaint.

(c) If the commission finds, after notice and opportunity for hearing, by an investigation instituted that any person has failed to comply with any provisions of this chapter or any requirement established under this chapter, the commission shall issue an appropriate order to compel that person to comply. (§ 21 ch 161 SLA 1960)

Sec. 02.05.200. Orders, notice and service. (a) Repealed by § 5 ch 104 SLA 1969.

(b) Agent for process. Every air carrier shall designate in writing an agent upon whom service of all notices and process and all orders, decisions, and requirements of the commission may be made for and on behalf of that carrier. The designation shall be filed in the office of the commission. The designation may from time to time be changed by like writing similarly filed. Service of all notices, process, orders, decisions and requirements of the commission may be made upon the carrier by service upon the designated agent at his office or usual place of residence with like effect as if made personally upon the carrier. In default of the designation of the agent, service of a notice or other process in a proceeding before the commission, or of an order, decision or requirement of the commission may be made by posting the notice, process, order, requirement or decision in the office of the commission.

(c) Service of notices. Services of notices, processes, orders, rules and regulations upon a person may be made by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to the person or agent. Whenever service is made by registered or certified mail, the date of mailing is considered the time when service is made.

(d) Suspension and modifications of orders. Except as otherwise provided in this chapter, the commission shall suspend or modify its orders under the Administrative Procedure Act (AS 44.62), if applicable, or upon the notice and in the manner it considers proper.

(e) Duty to comply. Every person subject to this chapter, and its agents and employees, shall observe and comply with all orders, rules, regulations, and certificates issued by the commission under this chapter affecting that person.

(f) Findings of fact. Every order of the commission shall set forth the findings of fact upon which it is based, and shall be served upon the parties to the proceeding and the persons affected. (§ 22 ch 161 SLA 1960; am § 5 ch 104 SLA 1969)

Cross reference. — See Editor's note to AS 42.07.121.

Sec. 02.05.210. Judicial enforcement. (a) If a person violates a provision of this chapter or a rule, regulation, requirement, or order under this chapter, or any term, condition or limitation of any certificate or permit issued under this chapter, the commission, or if there is a violation of AS 02.05.040 or 02.05.050 any party in interest, without prior resort to the commission, may apply to the superior court for the enforcement of that provision or rule, regulation, requirement, order, term, condition, or limitation. The court may enforce obedience by any process including the restraint of the person, its officers, agents, employees and representatives, from further violation.

(b) Upon the request of the commission, the Department of Law shall institute and prosecute all necessary proceedings for the enforcement of the provisions of this chapter or a rule, regulation, requirement, or order under this chapter, or a term, condition or limitation of a certificate or permit, and for the punishment of all violations. (§ 23 ch 161 SLA 1960)

Sec. 02.05.220. Administrative and judicial review.

Repealed by § 5 ch 104 SLA 1969.

Cross reference. — See Editor's note to AS 42.07.121.

Sec. 02.05.230. Violation a misdemeanor. A person who knowingly violates a provision of this chapter or a regulation, order or decision of the commission, or a final order or decree of a court, or who knowingly procures, aids or abets a violation, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$500 for each offense. (§ 25 ch 161 SLA 1960; am § 9 ch 146 SLA 1972)

Sec. 02.05.231. Civil penalties for violation. The commission may, after notice and opportunity for a hearing, levy a civil penalty of not more than \$150 for each offense upon a person who violates or who procures, aids, or abets, a violation by an air carrier of a provision of this chapter, or an order, decision, rule or regulation of the commission. A levy of penalty shall be made by written order of the commission. (§ 10 ch 146 SLA 1972)

Sec. 02.05.232. Each violation a separate offense. Each violation of the provisions of this chapter or of an order, decision, rule or regulation of the commission by a person is a separate and distinct offense and, if a continuing violation, each day of continuance is a separate and distinct offense. (§ 10 ch 146 SLA 1972)

Sec. 02.05.233. Penalties cumulative; actions to recover penalties. (a) Penalties occurring under this chapter are cumulative and a suit for the recovery of one penalty is not a bar to and does not affect the recovery of another penalty and is not a bar to a criminal prosecution and imposition of a fine against a person.

(b) Neither a criminal prosecution nor an action to recover a penalty as provided in this chapter is a bar to an enforcement proceeding to require compliance, nor to any other remedy provided by this chapter.

(c) Actions to recover penalties or impose fines under this chapter shall be brought by the attorney general. All fines imposed and all penalties recovered under this chapter shall be paid to the commission and deposited in the general fund of the state. (§ 10 ch 146 SLA 1972)

Sec. 02.05.234. Joinder of actions. Under applicable court rules, appeals from orders of the commission, applications for enforcement of

commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the actions. (§ 10 ch 146 SLA 1972)

Sec. 02.05.240. Public disclosure of information. Any person may make written objections to the public disclosure of information contained in an application, report or document filed under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. Whenever an objection is made, the commission shall order the information withheld from public disclosure when in its judgment a disclosure of the information would adversely affect the interest of that person and is not required in the interest of the public. (§ 26 ch 161 SLA 1960)

Sec. 02.05.250. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "air carrier" means a person undertaking to engage in air commerce whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or property for compensation or hire in intrastate commerce within the state, including the carriage by aircraft of persons or property which move partly by aircraft and partly by other forms of transportation;

(3) "aircraft" means a contrivance used or designed for navigation or flight in the air;

(4) "air taxi operator" means an air carrier coming within the classification of "Alaskan air taxi operators," as defined and established by Part 293 of the Economic Regulations of the federal Civil Aeronautics Board, adopted on December 30, 1958, and made effective on February 3, 1959;

(5) "commission" means the Alaska Transportation Commission or its designated representative;

(6) "type of aircraft" means

(A) the classification of aircraft as being either fixed-wing aircraft or rotary-wing aircraft, and

(B) as to fixed-wing aircraft in excess of 12,500 pounds gross certificated takeoff weight, a specific make and basic model of aircraft, including modifications to it that do not change its handling characteristics;

(7) "base of operations" means the point, together with the reasonably contiguous or closely related surrounding community or geographical area, from which the carrier represents to the public that it engages in air commerce, and at where it stations its aircraft, has its facilities and generally conducts its business as an air carrier;

(8) "contract carrier" means an air carrier holding a certificate of public convenience and necessity which authorizes it to provide, in

accordance with written contracts for exclusive use of the carrier's aircraft, air service of a continuing nature for a definite and limited number of persons; a contract carrier's air service is designed to meet the distinct air transportation needs of the individual customer; a contract carrier does not represent to the public at large expressly or by course of conduct that it furnishes transportation for compensation, hire, or lease;

(9) "dormancy" means failure of a person who holds a certificate of authority as an air taxi operator or a contract carrier to own or lease and operate aircraft in air commerce during the two quarters preceding an accusation by the commission;

(10) "supplemental base of operations" means the point together with the reasonable contiguous or closely related surrounding community or geographical area, from where, in addition to its "base of operations," the carrier also represents that it engages in air commerce. (§ 3 ch 161 SLA 1960; am § 2 ch 139 SLA 1966; am § 5 ch 147 SLA 1966; am §§ 11, 12 ch 146 SLA 1972)

Sec. 02.05.260. Short title. This chapter may be cited as the Alaska Air Commerce Act of 1960. (§ 1 ch 161 SLA 1960)

Chapter 10. Alaska Aeronautics Act of 1937.

Section	Section
10. Supervision over aeronautics and communication	50. [Repealed]
20. Investigations and hearings	60. Community and private cooperation
30. Use of reports of or testimony in investigations as evidence and department employees as witnesses	70. Penalties
40. Regulations governing radio ground stations	80. Department defined
	90. Short title

Sec. 02.10.010. Supervision over aeronautics and communication.

(a) The department shall have supervision over aeronautics and communications inside the state, and shall make recommendations for the establishment, location, maintenance, operation and use of airports, landing fields, air markings, air beacons, and other navigation facilities, and for the establishment, operation, management, and equipment of all air schools, flying clubs, and other persons giving air instruction.

(b) The department shall, whenever it considers the action necessary in the interest of general safety or the safety of those engaged in aeronautics, adopt and promulgate rules and regulations establishing minimum standards with which all air navigation facilities, air schools and flying clubs shall comply, and shall adopt and enforce rules, regulations and orders to safeguard from accident and to protect the safety of persons operating or using aircraft and persons and property on the ground, and to develop and promote aeronautics and communications in the state. However, the rules, regulations and orders

SCR

18

Office of Advocacy's
6th ANNUAL CONFERENCE

for State and Local Officials on Small Business Initiatives

The Office of the Chief Counsel for Advocacy invites you to attend the 1984 Conference for State and Local Officials on Small Business Initiatives, on December 5-7, 1984, at the Hyatt Islandia Hotel on Mission Bay, in San Diego, California.

**The Conference
and Who It's For**

The conference will bring together approximately 500 state legislators and program officials, mayors, and other municipal executives to discuss current small business developments.

This two-day conference gives state and local leaders, who share an interest in small business issues, an opportunity to exchange ideas about innovative legislative and programmatic initiatives in their jurisdictions and to discuss how they are working to promote small business.

Workshop topics will range from general issues such as capital formation, taxation, procurement, and regulatory reform to more specific areas such as small business incubators, hospital cost containment, bad check legislation, and worker's right to know laws.

**Location and
Reservations**

The San Diego Hyatt Islandia on Mission Bay offers conference attendees an attractive and convenient location, only minutes away by courtesy limousine from San Diego's Lindberg Field Airport.

Room rental rates for conference participants are \$69 (single) and \$90 (double). These rates will also apply for participants arriving up to three days before the conference and for those remaining three days after the conference.

Attendees are encouraged to mark their calendars for this important annual conference and make their reservations directly with the Hyatt, by calling toll free 1-800-228-9000.

**Further
Information**

The Office of Advocacy of the U.S. Small Business Administration will supply further details on the conference in coming weeks. For general information call (202) 634-7600. More specific inquiries should be made to the Office of State and Local Affairs at (202) 634-7547.

Birch &
Beaver Creeks
(designation
as wild
rivers)

SENATE JOINT RESOLUTION NO. 25, by the Resources Committee. Requests the U.S. Congress to amend Sec. 603 of the Alaska National Interest Lands Conservation Act (ANILCA) by deleting Birch Creek and Beaver Creek from designation as wild rivers. States that both creeks are located in parts of Alaska with a long history of mining activity and mining exploration and development has traditionally been and presently is a vital part of the economy of Interior Alaska. The wild river designation may result in the curtailment of existing mining activity and prevent its future expansion and the designation as wild rivers is totally inappropriate.

Introduced April 18 and referred to Resources.

Small Business
Development

SENATE CONCURRENT RESOLUTION NO. 18, by Senator V. Fischer. Requests the Governor to direct state agencies involved in contracting and subcontracting for government services to assure that "(1) the scope and size of state funded construction projects realistically reflect the ability of local businesses to successfully bid construction contracts; (2) all work associated with state funded construction projects be contracted out to be performed by the private sector as much as possible; and (3) a bidders preference adequate to assure a reasonable opportunity to successfully compete for state funded construction contracts and subcontracts is created for small Alaska-owned businesses, including those owned by women, minorities, and other economically disadvantaged groups."

Also requests the Governor to create a task force "to address state policy in contracting, local hire, and small business advocacy and to make recommendations to assure that state policy emphasizes and promotes small business development and maintenance in Alaska, and to recommend methods to provide a source of credit and bonding for small Alaska-based business and develop a definition of small Alaska-based business to realistically reflect the average assets and capabilities of existing contractors."

Requests the Governor to direct the Attorney General "to investigate and recommend measures available to the state to assure that a reasonable portion of state funded construction dollars be contracted through local, small Alaskan businesses."

Introduced April 19 and referred to Labor & Commerce.

Statewide
Trail System
(development
of)

SENATE CONCURRENT RESOLUTION NO. 19, by Senator V. Fischer. Requests the Governor to direct appropriate state agencies "to develop a plan for a comprehensive statewide system of trails that will (1) provide for standards, procedures, and management guidelines for designating trails within a statewide trails system; (2) provide access to areas of historical, natural, or recreational interests; (3) protect and enhance the use and enjoyment of publicly owned land and resources by the public; (4) protect existing trails now in public ownership and access from loss to the public; (5) propose a state and local government capital improvement plan which includes inter-agency coordination

Mike Thomas, American Association of Insurers
Box 1211
Juneau, Alaska 99802
586-3340
Spoke in opposition to HB 7

Dan Motley
9304 Turn
Juneau, Alaska 99801
789-3603
Spoke in opposition to certain provisions of HB 7

PREVIOUS ACTION

No previous Senate Labor and Commerce Committee action on SS SCR 18, or on CS SSHB 7(Fin).

ACTION NARRATIVE

Tape #35
007

Sen. Eliason called the meeting to order with Senators Mulcahy, Sackett, and Pettyjohn in attendance.

017

(SS SCR 18)

Sen. Vic Fischer, sponsor of SS SCR 18, testified on the resolution which is to support and promote small business development in Alaska. For the past few years he has been involved in an effort to help small and minority businesses in Alaska. The Senate State Affairs Committee (which he chairs) conducted interim study on the subject last year, and Sen. Fischer provided the interim report, entitled "Effects of State Contracting Procedures on Small and Minority-Owned Alaskan Businesses".

080

Sen. Sackett moved to pass SS SCR 18 out of committee with individual recommendations. There were no objections.

084

(Sen. Rodey arrived.)

100

(HB 7)

Sen. Joe Josephson, who sponsored mandatory auto insurance legislation in the Senate (SB 223), testified in support of HB 7. He has been coordinating his efforts with Rep. Joe Hayes, sponsor of HB 7 in

CR 18 TITLE & SPONSOR SUMMARY

16:50 6/04/84 PAGE 1 OF 3

RENDED TITLE: SSSCR 18AM

RELATING TO SMALL BUSINESS DEVELOPMENT IN THE STATE

GENERAL DOLLARS: \$0 (F. NOTE)

TIME SPONSOR: FISCHER, V. .

OTHER DOLLARS: \$0

CO-SPONSORS:

CURRENT STATUS: 6/04/84 IN (H) RULES

CR 18 SENATE ACTION

16:50 6/04/84 PAGE 2 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

05/26/83	01	1126	FIRST READING -- COMMITTEE REPORTS
06/01/83	02	1158	L&C -- DP04, NR01
01/10/84	03	1775	SECOND READING
01/16/84	04	1775	AM01 ADOPTED BY UNAN CONSENT
01/16/84	05	1775	PASSED BY DIV 19-00-01
***	**	**	*** *** ***

CR 18 HOUSE ACTION

16:50 6/04/84 PAGE 3 OF 3

DATE SEQ PAGE

LEGISLATIVE ACTION

01/18/84	06	2280	FIRST READING -- COMMITTEE REPORTS
02/09/84	07	2869	L&C -- DP06
05/04/84	08	3645	FIN -- CC07
05/04/84	09	3645	FIN F/NOTE EQUALS ZERO
***	**	**	RULES *** *** ***

Bill Fact Sheet

Date Received _____

Bill Number ^{SS} SCR 18 Title _____

Fiscal Note - Date Requested _____ Date Received _____

- Of Whom _____

Dept. Position Paper - Date Requested _____ Date Received _____

- Of Whom _____

Resource People

Initial Hearing - Date 5-21-83
People Contacted

Sen. Fischer
Leg. { DCED
Lizison { DoL
DoTPF

Follow-up Hearing - Date _____

Final Action _____ Date _____

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



RAFT

Senate State Affairs Committee 1982 interim report

EFFECTS OF STATE CONTRACTING PROCEDURES ON SMALL AND MINORITY-OWNED ALASKAN BUSINESSES

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Senate State Affairs Committee
1982 Interim Report

EFFECTS OF STATE CONTRACTING PROCEDURES ON
SMALL AND MINORITY-OWNED ALASKAN BUSINESSES

During the 1982 interim, the Senate State Affairs committee investigated the effects of state construction contracting procedures on small and minority-owned business in Alaska. This is a report on that effort.

Specifically, the committee examined an interagency agreement between the state Department of Transportation and Public Facilities (DOTPF) and the Alaska State Commission on Human Rights (ASCHR) affecting minority owned businesses contracting with the state.

The following report includes a review of that agreement, description of development and transmittal of a polling questionnaire, an analysis of the results, and recommendations based on suggestions and information received during the course of administering the questionnaire.

ASCHR/DOTPF AGREEMENT

In 1980 the ASCHR entered into an agreement with DOTPF to increase participation of minority owned businesses in contracting for state funded capital projects.

DOTPF agreed to take affirmative action in insuring minority owned business had an equitable chance to successfully bid state funded projects. Included in the agreement were provisions requiring that DOTPF:

- create the position of Minority Business Enterprise officer in DOTPF
- Prepare and distribute a policy and procedure memorandum outlining the scope and authority of the MBE officer
- charge the MBE officer with responsibility for developing and implementing an affirmative action plan
- identify and certify MBE's
- require successful prime contract bidders to submit proof of having contacted MBE's as subcontractors (when they intend to subcontract) for information and to solicit bids
- be responsible for notifying and informing minority owned businesses of contracting bids and procedures
- establish, print, maintain, update and distribute a MBE directory

DOTPF and ASCHR also agreed on goals for assuring a reasonable percent of total state construction dollars were contracted to minority owned businesses. Those goals required that 7.5% of total construction dollars for projects under \$100,000, not subject to competitive bid, to be contracted through MBE's in FY 1981 (the first year of the agreement), 11.5% in FY 1982, and 15% in FY 1983. Identical percentage goals were agreed upon for total subcontracting dollars on wholly state funded construction projects.

These goals were not considered quotas, and terms of the agreement provided that justified failure by DOTPF to meet these goals would not be considered to be a breach of the agreement.

The agreement further required that ASCHR actively monitor DOTPF's compliance and required DOTPF to provide adequate and accurate records to enable the Commission to document their compliance.

This agreement represented final resolution of a complaint originally filed with the Commission in December, 1978. After several months of negotiations between agencies, it was finalized and went into effect for the first time in 1980.

By June of 1982, a guest editorial in the Anchorage Times by E. Louis Overstreet, charged that DOTPF had not complied with the agreement. He based this charge on an "unreleased report" that "documents the failure of DOTPF to live up to the provision of an agreement it entered into with the Alaska Human Right commission in February 1980".

Shortly after that editorial appeared, a constituent delivered a copy of the ASHRC file charging DOTPF with non-compliance to the Senate State Affairs Committee. That constituent requested the committee to review the effectiveness of the agreement in increasing minority business participation and to find out why the ASCHR was "suppressing" a report of non-compliance under the "cover" of confidentiality.

The committee formally requested a compliance report from the ASCHR. ASCHR, however, was statutorily prevented from meeting the committee's request due to terms of the agreement with DOTPF* and restrictions under state law (AS 18.80.115).

The ASCHR subsequently filed an action in superior court charging DOTPF with non-compliance on October 14, 1982. However, until they had exhausted conciliation efforts, and met the time provisions for filing and rebuttal laid out in the agreement, they were prevented from disclosing any information about DOTPF's compliance or non-compliance.

* Part III, paragraph 4, of the agreement states: "Whether or not a breach of this agreement has occurred shall be determined by the superior court. Prior to filing an action seeking any such determination by the superior court, the parties agree to maintain strict confidentiality regarding any alleged breach and any conciliation efforts".

Because of the confidentiality restrictions, the committee was unable to enlist the help of the Commission or the Department in determining compliance with and effectiveness of the agreement. At the time they were asked to investigate, it was impossible to predict whether there had been compliance, how long conciliation efforts may take or, indeed, if they were being pursued at all.

The Committee met the same restriction and frustration the minority business community faced when asking for swift and affirmative state action in increasing opportunities to participate in state funded construction projects. In addition, as the committee of oversight, Senate State Affairs was vitally interested in how seriously state agencies complied with agreements made with the Commission.

In order to independently determine the effectiveness of this agreement, the committee prepared and distributed a questionnaire to prime and subcontractors relating to state construction contract award procedures, specifically as they apply to minority owned businesses and the DOTPF/ASCHR agreement.

Following is a description of that questionnaire, an analysis of the results, and recommendations based on suggestions and information received during the course of administering the questionnaire.

QUESTIONNAIRE DESCRIPTION AND METHOD

Two questionnaires were prepared by Committee staff with help from minority businesses, DOTPF's Minority Business Enterprises officer, the Minority Business Assistance Center, and the ASCHR Systemic Discrimination Unit. One was directed to prime contractors, the other to minority owned businesses eligible to subcontract a DOTPF project. (Copies of questionnaire are attached).

Committee staff obtained a list of bid applicants for DOTPF construction projects from 1980 to 1982 and were able to compile a mailing list from that information. When it could be determined, only successful bidders for DOTPF contracts were sent prime contractor questionnaire.

A mailing list for minority owned business was compiled from a directory provided by DOTPF's Minority Business Enterprise officer, the Minority Business Assistance Center, and other constituent sources. Each was sent a Minority Business Enterprise questionnaire.

In addition to returned questionnaires, some recipients phoned or wrote to the committee to provide additional comments or suggestions regarding state contracting procedures and small or minority owned businesses. Copies of that correspondence is available on request.

The two questionnaires covered a time period from June of 1980 through June of 1982 (the same time period as ASCHR's affirmative action agreement with DOTPF), and limited themselves to state funded construction projects.

Besides specific contracting information, contractors were also asked to provide suggestions and recommendations for legislation (or no legislation), to address the philosophical and public policy considerations of minority business set aside programs, and, in some cases, to provide business and personal history (residency, years in business, etc.)

Each questionnaire was accompanied by a Senate State Affairs Committee cover letter explaining the purpose of oversight on the DOTPF/ASCHR agreement. The committee requested return of the questionnaires within two weeks of transmittal and enclosed a self-addressed, stamped envelope in an attempt to increase timely participation in the polling process.

STATISTICAL ANALYSIS OF QUESTIONNAIRES

Prime Contractor Questionnaire:

- 436 questionnaires mailed, 49 returned = 11.2% return rate
- nearly half the respondents claimed to have been a successful DOTPF contractor during the time period covered.
- 20% claimed not to be aware of the MBE Directory, 25% didn't use the directory to locate sub-contractor, and nearly half said they "maintained their own list" for locating sub-contractors.
- significant number of respondents were not aware that a MBE contact form was required as part of a DOTPF bid package.
- 36% of respondents said they have never been contracted by DOTPF regarding minority owned businesses and state contracting.
- most prime contractors felt DOTPF was making a serious effort in assuring MBE's adequate opportunity to bid state construction contracts.
- 20% of prime contractors said they were philosophically opposed to minority owned set aside or advocacy programs and that current MBE programs should be eliminated.
- 18% of respondents felt no legislative action was necessary.

Subcontractor Questionnaire:

- 450 mailed out, 58 returned = 12.9% return rate
- 79% of the respondents were certified as MBE's (12 in 1982, 17 in 1981, 11 in 1980)

- Over half the respondents indicated no awareness of MBE officer services
- over half claimed never to have received bid information from DOTPF.
- 28% of respondents had subcontracted on DOTPF projects.
- 33% of respondents claimed to have been contacted by prime contractors
- 67% of respondents claimed never to have been contacted by prime contractors
- of the successfully bid contracts, most were less than \$100,000.
- less than half of the respondents knew about the MBE contact form requirement.
- a majority of likely construction project bidders said they had problems getting bonding and credit.
- over half the respondents businesses have been operating in Alaska for over 3 years with half of those over five years.
- over half the respondents have lived in Alaska over 10 years with over half of them having lived here more than 20 years.

The general questions in the minority business questionnaire addressed and identified problems preventing small Alaskan owned businesses from successfully bidding on state funded construction contracts. A discussion of those problems follows.

PROBLEMS IDENTIFIED

In the last ten years, billions of dollars have been allocated for state funded construction contracts. The sudden explosion of construction, coupled with the size and scope of many projects, has placed small and minority owned Alaskan businesses at a tremendous disadvantage in successfully bidding for contracts.

Besides the "normal" problems with Alaskan-based businesses (high cost of labor and transportation, vast distances, little infrastructure etc.), small and minority owned businesses face special problems.

Minority owned businesses are usually small businesses (under \$1 million dollars in gross revenues per fiscal year) and are often unable to get bonding, loans or credit, for large-scale contracts. In

addition, they are often unaware of bidding procedures or notices, and are out of the mainstream of the contracting "network".

A brief review of DOTPF construction contract awards from 1978 through 1982 illustrates the problem well. While nearly 50% of the awards are in amounts under \$1 million dollars, they represent less than a third of total contract dollars. The vast majority of total construction dollars go to a relative handful of contracts over \$1 million dollars.

Most large-scale construction projects are awarded to out-of-state contractors. Even the existing state statute giving a bidders preference to Alaskan-based business, is not sufficient to overcome the competitive edge large, national or international companies have in bidding state funded construction contracts.

Since most of these prime contractors tend to subcontract to other "outside" companies, small and minority owned Alaskan businesses are excluded from taking advantage of the massive input of state dollars into capital projects.

The executive branch has attempted to address this issue through the ASCHR/DOTPF agreement but, so far, has been unable to insure that a reasonable portion of state funded construction dollars remain in Alaska through contracting with small and minority owned businesses.

LEGISLATIVE RECOMMENDATIONS

Specific statutes need addressed by the legislature, to assure a reasonable opportunity for Alaskan owned small businesses to participate in the current flood of state funded construction projects.

Following are recommendation for legislation based on information obtained from the questionnaires:

1. Establish an Alaska Small Business Administration under the Department of Commerce and Economic Development (DCED), modeled after the federal program that would: a) define small businesses for the purpose of this administration, b) provide a source of credit and bonding for Alaska based small businesses, c) promote and advocate for small business development and maintenance in Alaska.
2. Create a statewide office of minority business enterprises in the Department of Commerce and Economic Development, to aide, advocate and support small, minority owned businesses in Alaska.
3. Define "small" Alaskan-based businesses to realistically reflect the average assets and capabilities of existing contractors. Defining "small" as a business having under \$2 million dollars in gross revenues for the year preceeding application for certification under an Alaskan small business administration, appears, from the questionnaire, to be a reasonable definition for Alaska.

4. Give adequate bidder preference to Alaska-based businesses that are small and/or minority owned. The current 5% bidders preference should be raised to a 15% preference to small, Alaskan based businesses. The 15% preference should require that the low bidder receive the contract if they re-submit a bid within 10% of the next lowest bid submitted.

5. Require prime contractors and joint ventures to award no less than 50% of total subcontract dollars to small or minority owned Alaskan businesses identified and certified by the Department of Commerce and Economic Development.

6. Include women, Viet Nam veterans and other economically disadvantaged classes of Alaskans in minority status for the purpose of these contracting considerations.

7. Require that no less than 30% of state funded construction contracts be awarded in amounts under \$1 million dollars with half of those in amounts under \$250,000.

8. Pass a legislative resolution calling upon the Governor to create a task force to address state policy in contracting, local hire, and small business advocacy. Require that the executive, judicial, and legislative branch, as well as other working Alaskans, are included in the task force to assure full representation.*

9. Require surety bonders to keep adequate records to document why businesses are denied credit or bonding.

* Court decisions on the jurisdiction and authority of states to limit employment and contracting opportunities to residents or "protected" classes of citizens have been many and varied. A U.S. supreme court decision, issued in February 1983, upheld a Boston Mayor's Executive Order requiring that 50% of wages paid on city funded or administered construction projects be limited to Boston residents.

Based on the findings of that decision, Senate Bill 174, was introduced in the Alaska legislature on March 10, 1983, by Senator Joe Josephson. SB 174 requires that, when a construction project is wholly funded by state money and the state or an agency of the state is signatory to the contract, worker hours on a craft-by-craft basis must be performed at least 50% by bona fide state residents.

SB 174 adopts the specific language of the U.S. Supreme Court decision and replaces AS 36.10.010 in an attempt to strengthen Alaska hire preference laws to meet anticipated court challenges.

While not directly affecting small and minority business contracting, it appears that the Boston decision puts Alaska "back in the residency business". Alaska's authority to grant bidder preferences to resident owned small businesses, for instance, is strengthened by the supreme courts decision.



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

Official Business

To: Alaskan Contractors (Prime Contractor Questionnaire)

From: Senator Vic Fischer, Chair
Senate State Affairs Committee

Date: September 29, 1982

Re: Minority business contracting

In the last five years, massive amounts of public dollars have gone to the State Department of Transportation and Public Facilities (DOTPF) for statewide construction projects.

It is the intent of the legislature that all Alaskan businesses are assured an equal chance to bid on and participate in state funded capital projects.

In order to assure this, the State Human Rights Commission entered into an agreement with DOTPF in June of 1980 to increase participation of minority owned small businesses in state construction contracting.

As the committee of oversight for the Human Rights Commission, the Senate State Affairs Committee is vitally interested in how seriously state agencies comply with agreements made with the Commission. We cannot determine this without your help.

The enclosed questionnaire was prepared by the Committee to help determine just how effective that agreement has been. Direct information from you is the only way to verify or refute the success of this agreement. Your response will be greatly appreciated.

The scope of this questionnaire includes contracts and sub-contracts involving minority owned businesses from June 1980 to June 1982. It does not include female owned businesses nor projects paid through federal, municipal or private funds.

The purpose of the agreement is to help, not hinder, your efforts to include small minority owned businesses in subcontracting procedures. We need to know if you think it has been successful and where you feel the system could be improved.

Please return this questionnaire by ²²October 15 to Senator Vic Fischer, Chair, Senate State Affairs Committee, 1024 W 6th Avenue, Suite 204-C, Anchorage, Alaska 99501. We have enclosed a self-addressed, stamped envelope for your convenience. For further information call Ginger Baim, in my office, at 278-3654.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____

1. Did you submit a bid on any contracts for DOTPF projects from June 1980 through June 1982? _____ Yes _____ No.

2. Have you subcontracted any work for DOTPF from June 1980 to June 1982? _____ Yes _____ No.

List firms you have subcontracted with on DOTPF projects from June 1980 to June 1982.

- 1. _____ 4. _____
- 2. _____ 5. _____
- 3. _____ 6. _____

(Please list additional firms on space provided at the end of this questionnaire.)

3. Are you aware of the MBE Directory prepared by DOTPF's Office of Minority Business Enterprises (OMBE) _____ Yes _____ No.

4. When did you become aware of this directory? _____

5. Did you refer to the MBE Directory when looking for subcontractors? _____ Yes _____ No.

6. Is the MBE Directory adequate for your needs? _____ Yes _____ No.
What would you like done to improve its usefulness to you?

7. How else do you contact MBE's? _____

Do you maintain your own list? _____ Yes _____ No.

8. Are you familiar with the MBE contact form provided by DOTPF? _____ Yes _____ No.

9. Are you aware that in order for DOTPF to approve a subcontract, a completed MBE contact form (25 A 329) must be submitted? Yes No.

10. Has DOTPF, to your knowledge, ever approved a subcontract without a completed MBE contact form? Yes No. (If yes, please provide additional information at the end of this questionnaire).

11. How many times did DOTPF contact you regarding MBE's from June 1980 to June 1982? _____ Was the contact adequate to fully inform you of the subcontracting requirements? Yes No. Do you know the contact person within DOTPF to call for further information about minority business contracting? Yes No.

12. From your personal experience, how serious do you perceive DOTPF to be in pursuing methods to assure adequate involvement of MBE's in state contracting? Very serious Serious enough Not serious "whitewash" _____

Comments? _____

13. What would you like to see DOTPF do to help contractors comply with MBE contact requirements?

14. What would you like to see the legislature do to help assure all small Alaskan businesses an equal chance to bid on and participate in state funded construction projects? _____

15. When bidding on a project for which you intend to subcontract, what problems would it present to you should DOTPF require evidence of having contacted a MBE as part of your bid package? _____

