

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8504 SENATE TRANSPORTATION

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WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 455-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 18, 1994

*The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill raising the tax rate on transfers or consumption of motor fuel. The bill would bring our tax rate more in line with that of other states and raise much-needed revenue for highway maintenance. Additionally, the bill would make certain changes regarding the proceeds from the tax.

Alaska is one of only three states with motor fuel tax rates of less than 10 cents per gallon (Georgia, seven and one-half cents; Alaska, eight cents; and Wyoming, nine cents). The mean national tax rate on motor fuel is 18.66 cents. The tax rates in other western states on motor fuel are: Washington, 23 cents; Oregon, 24 cents; Idaho, 21 cents; Colorado, 22 cents; California, 17 cents; and Nevada, 24 cents.

The bill would raise the motor fuel tax rate for most fuels to 25 cents per gallon. Aviation fuel and fuel used in and on watercraft would remain at their current rates as set by statute.

One cent of the 25-cent tax would go into a special "storage tank assistance" account in the general fund, added by sec. 4 of the bill. The legislature may appropriate from this account into the storage tank assistance fund established by AS 46.03.410. That fund provides grants, testing, and site analysis to owners and operators of underground petroleum storage tanks.

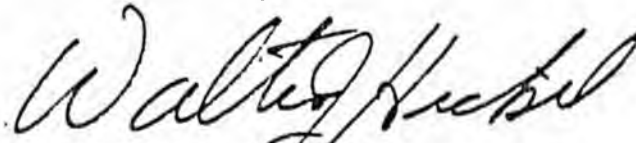
TRANSMITTAL LETTER

The Honorable Rick Halford
February 18, 1994
Page 2

Currently, anyone who uses motor fuel, other than aviation fuel or fuel for watercraft, in any engine other than a motor vehicle licensed for the public highways is entitled to a refund of six cents of the existing eight-cent tax. The refund would remain at the current statutory rate of six cents.

I urge your prompt consideration and passage of this important bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the typed name.

Walter J. Hickel
Governor

Alaska State Legislature

SENATOR
BERT SHARP
CHAIRMAN



FAIRBANKS

DENALI BANK BUILDING
119 N. CUSHMAN, SUITE 201
FAIRBANKS, ALASKA 99701
(907) 452-7885/7886

SESSION ADDRESS

STATE CAPITOL, ROOM 514
JUNEAU, ALASKA 99801-1182
(907) 465-3004/4921

Senate Transportation Committee

MEMORANDUM

DATE: February 28, 1994

TO: Senate Transportation Committee Members

FROM: Senator Bert Sharp, Chairman
Senate Transportation Committee

RE: Sectional Summary for draft CS for SB 334

Sections 1 & 2 of CSSB 334 grant authority to the municipalities to levy a motor fuel tax not to exceed two cents per gallon.

Sections 3 & 5 increase the statewide motor fuel tax from 8 cents to 24 cents a gallon, less up to 2 cents per gallon within municipalities levying a motor fuel tax.

Sections 4 & 6 increase the statewide fuel tax from 24 cents to 25 cents upon expiration of the 1 cent surcharge as triggered in section 15.

Sections 7, 8 & 11 make technical changes to accommodate other sections of the bill.

Section 9 sets forth that the revenue from the motor fuel tax shall be deposited in a special highway fuel tax account in the general fund. The legislature may appropriate funds from it for expenditure by DOT&PF for maintenance and construction of highway and ferry projects.

Section 10 requires DOT&PF to submit an annual budget covering anticipated revenues and expenditures for approval by the legislature.

Section 12 levies a 1 cent per gallon surcharge on the sale, transfer and consumption of motor fuel. The revenue collected under this section shall be available for appropriation to the Department of Environmental Conservation for the storage tank assistance fund.

Section 13, in conjunction with Section 15, repeals the 1 cent per gallon surcharge on July 1, 1996.

Section 14 provides a July 1, 1994 effective date for the increase in the motor fuel tax and imposition of 1 cent per gallon surcharge.

Section 15 establishes a July 1, 1996 effective date for an additional 1 cent per gallon increase in the motor fuel tax and the repeal of the 1 cent per gallon surcharge.

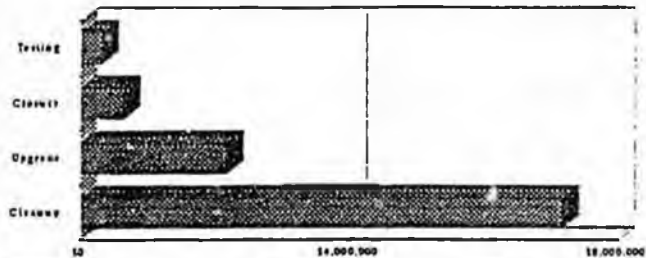


THE STORAGE TANK ASSISTANCE PROGRAM

The Storage Tank Assistance Fund -- What is it all about?

- AN ENVIRONMENTAL CLEANUP PROGRAM RESTORING ALASKA'S DRINKING WATER SUPPLIES.
- Providing grants and loans to Alaskan businesses to offset the high cost of environmental cleanups to keep Alaskan businesses in business.
- A POLLUTION PREVENTION PROGRAM FOR UNDERGROUND PETROLEUM STORAGE TANKS.
- Providing incentives and grants to tank owners and operators to upgrade or close their tanks to prevent future leaks.
- AN ALASKAN BUSINESS ASSISTANCE PROGRAM.
- Providing relief to Alaskan businesses and private individuals faced with the high cost of environmental compliance.

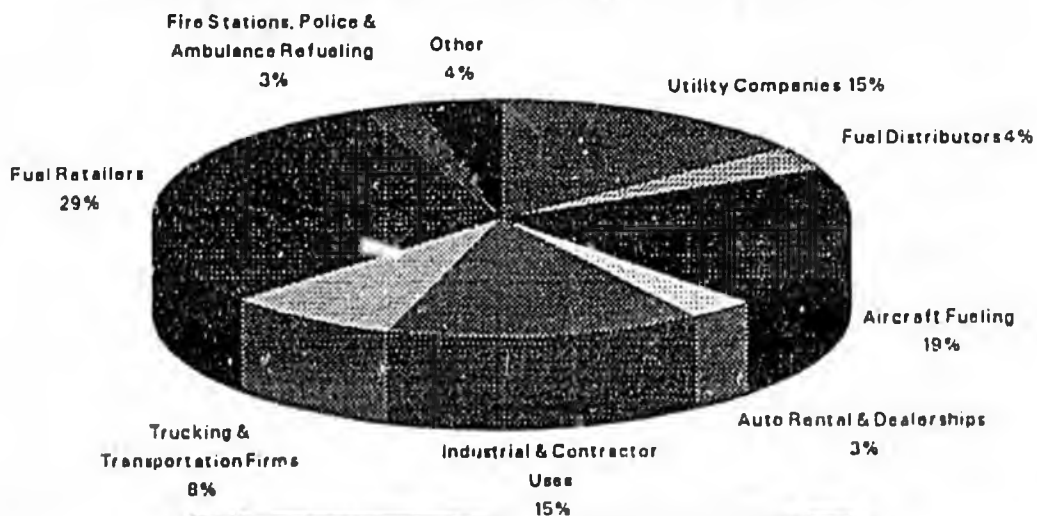
Storage Tank Assistance Fund Expenditures Since 1991



Since Program Inception in 1991

- Over \$ 10.6 Million has been expended or encumbered for financial assistance grants and loans.
- A total of 386 financial assistance requests for tank tightness testing or site assessments have been funded.
- 75 financial assistance requests for soil or groundwater cleanup have been funded.
- 52 financial assistance requests to upgrade tanks to new EPA standards and prevent future leaks have been funded.
- 83 financial assistance requests to close out old or unused tanks have been funded.

Tank Uses for USTs Eligible for Financial Assistance



WHAT AGENCY ADMINISTERS THE STORAGE TANK ASSISTANCE FUND?

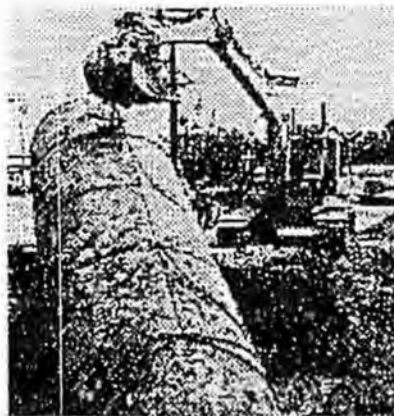
* The Department of Environmental Conservation administers the Storage Tank Assistance Fund. The Department is responsible for advertising the application periods, receiving the applications, processing the requests, administering the grants and auditing project costs. The Division of Investments in the Department of Commerce and Economic Development works in partnership with the DEC to provide cleanup loans for eligible UST owners and operators.

* The Department of Environmental Conservation has a staff of two Environmental Specialists in Anchorage to process the actual grant applications. A Grants Administrator, Environmental Technician and a Clerk Typist provide additional support for the program. A Project Manager supervises the activities and provides application and project guidance to UST owners and operators, contractors and consultants.

* The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. Members are appointed by the Governor and serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee. The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks.

* The Board is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations.

* Although the Board developed the financial assistance regulations, the Department of Environmental Conservation actually implements those regulations by physically processing each applicant's request for financial assistance. This enables the Board to remain objective and unbiased when a dispute arises. The Board is then tasked with resolving the matter in a prompt and conscientious manner.



For Further Information Contact the Board of Storage Tank Assistance at (907)465-5219 or the Department of Environmental Conservation, UST Program, at (907) 465-5200. The UST Financial Assistance Office Can Be Contacted at (907) 273-4342.

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

OPPOSING

SB 334 INCREASING THE TAX ON MOTOR FUEL

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM HERE TODAY IN OPPOSITION TO SB 334.

NFIB/ALASKA IS COMPRISED OF 4,400 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION. THERE IS NOT ENOUGH SPACE ON THE ANNUAL POLL TO PLACE EVERY POSSIBLE ISSUE BEFORE OUR MEMBERS. THEREFORE, WE ALSO USE THE PREVIOUS YEARS BALLOT RESULTS AS GUIDANCE ON ISSUES.

THE 1993 SURVEY OF NFIB/ALASKA MEMBERS FOUND OVERWHELMING SUPPORT - 92 PERCENT - TO REDUCE STATE GOVERNMENT SPENDING BEFORE INCREASING PRESENT TAXES. NFIB/ALASKA OPPOSES SB 334 BECAUSE THE LACK OF REVENUE IS NOT THE REAL ISSUE, EXPENDITURES ARE THE ISSUE. THE STATE OF ALASKA IS SPENDING BEYOND ITS MEANS. THERE IS NO WAY TO BALANCE THE BUDGET WITHOUT REDUCING GOVERNMENT SPENDING.

I OFFER THE FOLLOWING SUGGESTION FOR HELPING TO REDUCE THE OPERATING BUDGET - PROHIBIT OR REDUCE THE COMMERCIAL ACTIVITIES OPERATED BY STATE AND LOCAL AGENCIES. SMALL BUSINESSES, IN ALASKA, FACE COMPETITION FROM STATE AND LOCAL GOVERNMENT IN A WIDE VARIETY OF COMMERCIAL AREAS. THE MANY SMALL BUSINESSES FACING GOVERNMENT COMPETITION ARE:

- PRINTING FIRMS
- GIFT SHOPS
- VIDEOTAPE OUTLETS

- DAY-CARE CENTERS
- SERVICE STATIONS
- LANDSCAPING
- ROAD REPAIR AND MAINTENANCE
- LABORATORIES
- MEDICAL CARE PROVIDERS
- PHARMACIES
- ARCHITECTURE AND ENGINEERING FIRMS
- OFFICE FURNITURE
- AUTO BODY REPAIR

GETTING GOVERNMENT OUT OF BUSINESS WOULD GO A LONG WAY TO BRING THE SIZE AND COST OF STATE AND LOCAL GOVERNMENT DOWN TO REASONABLE AND AFFORDABLE LEVELS - WITHOUT RAISING TAXES.

NFIB/ALASKA THANKS YOU FOR THE OPPORTUNITY TO COMMENT ON THIS LEGISLATION. IF YOU HAVE ANY QUESTIONS, I WILL TRY TO ANSWER THEM.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BII

Bill Version: SB 334
(S) Publish Date: 2-22-94

Revision Date: _____ Dept. Affected: Revenue
 Title: Increase motor fuel tax rate BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: () Rules by Request of the Governor
 Requestor: _____ COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE: General	82,246.0	82,246.0	82,246.0	82,246.0	82,246.0	82,246.0
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
04 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)

(See Attached)

Prepared by: Larry E. Meyers *Larry E. Meyers* Phone: 465-2320
 Division: Income and Excise Audit Division Date: February 14, 1994
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel* Date: February 14, 1994
 Agency: Department of Revenue

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Bill Analysis

Sections 1 and 2 of this bill increases the motor fuel tax on highway fuel by 17 cents per gallon from the existing 8 cents to 25 cents. Aviation fuel and fuel used in watercraft would remain at their current rates.

One cent of the 25-cent tax would be deposited into a special "storage tank assistance" account in the general fund under section 4 of the bill.

This bill takes effect July 1, 1994.

Operating Costs

Department of Revenue does not anticipate any additional costs for implementing this bill. The Department would update existing forms to reflect the increased tax rate.

Revenue

In determining the amount of additional revenue generated from this bill, the Department of Revenue used motor fuel revenue data available from FY 93. The amounts below do not reflect impacts on fuel usage, if any, due to increased tax rates and other factors.

Department of Revenue estimates that each cent increase in the highway motor fuel tax rate yields \$4,838,000 in additional revenues. Accordingly, a 17-cent increase would yield \$82,246,000. Of this amount, \$4,838,000 would be deposited into a special "storage tank assistance" account in the general fund as provided under section 4 of the bill.

FISCAL NOTE

No. 2

Bill Version: SB 334

(S) Publish Date: 2-22-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Revision Date: _____
Title: Fuel Tax Increase
Sponsor: _____
Requestor: Governor's Office

Department Affected: Environmental Conservation
BRU: Spill Prevention and Response
Component: Underground Storage Tank

COMPONENT SERIAL NO. 1207

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
3F	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: Bob Poe, Director
Division: Information & Administrative Services

Phone: 465-5010
Date: 2/14/94

Approved by Commissioner: _____
Agency: Department of Environmental Conservation

Date: 2/14/94

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FISCAL NOTE

3
Bill Version: SB 334
(S) Publish Date: 2-22-94

Revision Date:
Title: Fuel Tax Increase

Department Affected: DOT&PF
BRU:

Sponsor: Governor
Requestor:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Roger Allington, Director _____

Phone: 465-4070

Division: Planning _____

Date: February 15, 1994

Approved by Commissioner: *[Signature]*

Phone: 465-3901

for B.A. Campbell

Agency: Department of Transportation and Public Facilities

Date: February 16, 1994

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**SENATE BILL 334
MOTOR FUEL TAX INCREASE
INFORMATION SHEET**

This Administration believes that it is desirable to have users pay, at least in part, for highway construction and maintenance. The purpose of SB 334 is to generate a motor fuel tax sufficient to balance transportation maintenance and operating costs and revenues.

This strategy is partially based on public opinion polls that showed support for a motor fuel tax increase only if the motor fuel tax was to be used for transportation maintenance and operations.

The declining crude oil prices now make it imperative that additional sources of revenue be developed immediately.

In 1993, total appropriations for highways from the general fund approximated \$114 million distributed as follows:

Direct DOT&PF maintenance and operations (M&O)	\$56,200,000
Deferred maintenance and non-federal projects	8,600,000
Administration and construction oversight	10,800,000
Revenue Sharing for Roads	<u>6,500,000</u>
SUB-TOTAL	\$82,100,000
State Match for Federal Aid Highway Funds	<u>32,000,000</u>
TOTAL GENERAL FUND FOR HIGHWAYS	\$114,100,000

At present, the major revenue source that comes into the general fund to support these activities is the state tax on motor fuel. Currently, our eight cents per gallon motor fuel tax yields \$28 million per annum; leaving an \$85 million imbalance between general fund costs of maintaining, operating and constructing the highways and the revenues derived from users through the motor fuel tax program.

The average state gas tax nationwide is 20 cents (\$0.20), varying from eight cents (\$0.08) in Alaska and Georgia to 28 cents (\$0.28) in Connecticut. There are seven states at the 20 cent (\$0.20) average; four at 21 cents (\$0.21); four at 22 cents (\$0.22); two at 23 cents (\$0.23); and three at 24 cents (\$0.24). Nebraska is at 25 cents (\$0.25); Rhode Island is at 26 cents (\$0.26) and Connecticut is at 28 cents (\$0.28).

House Bill 509 proposes to increase the motor fuel tax in Alaska from eight cents (\$0.08) per gallon (set 33 years ago, in 1961) to 25 cents (\$0.25) per gallon. The proposal would allocate one cent (\$0.01) per gallon to be deposited in the special storage tank assistance account in the general fund. The remaining 24 cents (\$0.24) per gallon would be deposited in the motor fuel tax account of the general fund, yielding an estimated \$109 million per annum for maintenance, operations and state matching funds for highways. This proposed 24 cent (\$0.24) tax nearly closes the gap between revenues and expenditures (\$114 million in costs vs \$109 million in revenues.)

► It should be noted the actual dollar amount spent for highway maintenance and operations in FY 1993 was almost the same as was spent in FY 1983; \$56 million vs \$56 million. However, based upon the Consumer Price Index, it would require \$76 million in 1993 dollars to equal the value of \$56 million in 1983. (CPI 1983 to 1993 = 135.7%)

8-GS2029E
Chenoweth
2/25/94

CS FOR SENATE BILL NO. 334(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act increasing the motor fuel tax, imposing a motor fuel surcharge and
2 terminating its imposition, adding to the purposes for which revenues from the
3 motor fuel tax may be expended, and authorizing municipalities to levy and the
4 state to collect and remit a motor fuel tax not to exceed two cents per gallon;
5 and providing for an effective date."

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

7 * Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

8 (53) AS 29.45.750 (municipal motor fuel tax)

9 * Sec. 2. AS 29.45 is amended by adding a new section to read:

10 ARTICLE 5A. MOTOR FUEL TAX.

11 Sec. 29.45.750. MUNICIPAL MOTOR FUEL TAX. (a) Subject to the
12 limitations of levy set by (b) of this section, a municipality may, by ordinance, levy,
13 on the same transactions and subject to the same restrictions and exemptions as set out

1 in AS 43.40, a tax on motor fuel.

2 (b) The tax authorized by this section that is levied

3 (1) by a unified municipality or by a city may not exceed two cents per
4 gallon;

5 (2) by a borough may not exceed

6 (A) two cents per gallon for a levy that is

7 (i) nonareawide; or

8 (ii) within a city that does not levy the tax; or

9 (B) within a city that levies the tax, a rate of two cents per
10 gallon minus the tax rate per gallon levied by the city.

11 (c) The tax authorized under this section does not apply to

12 (1) aviation gasoline;

13 (2) motor fuel used in and on watercraft of all descriptions; and

14 (3) aviation fuel other than gasoline.

15 (d) The levy authorized by this section is in addition to any other levy of a
16 municipal tax on the sale, transfer, or consumption of motor fuel. The governing body
17 of a municipality shall promptly inform the commissioner of revenue of its adoption
18 of an ordinance to levy, or to amend an ordinance that levies, the tax authorized by
19 this section.

20 (e) If a municipality enacts an ordinance to levy the tax authorized by this
21 section, the Department of Revenue shall

22 (1) collect the tax in the manner provided for collection of the tax
23 proposed by AS 43.40; and

24 (2) after retaining one percent of the amount collected under (1) of this
25 subsection to offset the expenses of administration, remit to the municipality the
26 balance of the proceeds of the tax.

27 * Sec. 3. AS 43.40.010(a) is amended to read:

28 (a) On sales or transfers of motor fuel in the state outside a municipality
29 that levies a tax under AS 29.45.750, there [THERE] is levied a tax of 24 [EIGHT]
30 cents a gallon. On sales or transfers of motor fuel within a municipality in the
31 state that levies a tax under AS 29.45.750, there is levied a per gallon tax of 24

1 cents less the rate per gallon, not to exceed two cents per gallon, that is imposed
2 by a levy of a motor fuel tax by the municipality or municipalities under
3 AS 29.45.750. The tax under this subsection is levied on all motor fuel sold or
4 otherwise transferred within the state, except that

5 (1) the tax on aviation gasoline is four cents a gallon,

6 (2) the tax on motor fuel used in and on watercraft of all descriptions
7 is five cents a gallon, and

8 (3) the tax on all aviation fuel other than gasoline is two and one-half
9 cents a gallon.

10 * Sec. 4. AS 43.40.010(a) is amended to read:

11 (a) On sales or transfers of motor fuel in the state outside a municipality that
12 levies a tax under AS 29.45.750, there is levied a tax of 25 [24] cents a gallon. On
13 sales or transfers of motor fuel within a municipality in the state that levies a tax under
14 AS 29.45.750, there is levied a per gallon tax of 25 [24] cents less the rate per gallon,
15 not to exceed two cents per gallon, that is imposed by a levy of a motor fuel tax by
16 the municipality or municipalities under AS 29.45.750. The tax under this subsection
17 is levied on all motor fuel sold or otherwise transferred within the state, except that

18 (1) the tax on aviation gasoline is four cents a gallon,

19 (2) the tax on motor fuel used in and on watercraft of all descriptions
20 is five cents a gallon, and

21 (3) the tax on all aviation fuel other than gasoline is two and one-half
22 cents a gallon.

23 * Sec. 5. AS 43.40.010(b) is amended to read:

24 (b) On consumption of motor fuel in the state outside a municipality that
25 levies a tax under AS 29.45.750, there [THERE] is levied a tax of 24 [EIGHT] cents
26 a gallon. On consumption of motor fuel within a municipality in the state that
27 levies a tax under AS 29.45.750, there is levied a per gallon tax of 24 cents less the
28 rate per gallon, not to exceed two cents per gallon, that is imposed by a levy of
29 a motor fuel tax by the municipality or municipalities under AS 29.45.750. The
30 tax under this subsection is levied on all motor fuel consumed by a user, except that

31 (1) the tax on aviation gasoline consumed is four cents a gallon,

1 (2) the tax on motor fuel used in and on watercraft of all descriptions
2 is five cents a gallon, and

3 (3) the tax on all aviation fuel other than gasoline is two and one-half
4 cents a gallon.

5 * Sec. 6. AS 43.40.010(b) is amended to read:

6 (b) On consumption of motor fuel in the state outside a municipality that levies
7 a tax under AS 29.45.750, there is levied a tax of 25 [24] cents a gallon. On
8 consumption of motor fuel within a municipality in the state that levies a tax under
9 AS 29.45.750, there is levied a per gallon tax of 25 [24] cents less the rate per gallon,
10 not to exceed two cents per gallon, that is imposed by a levy of a motor fuel tax by
11 the municipality or municipalities under AS 29.45.750. The tax under this subsection
12 is levied on all motor fuel consumed by a user, except that

13 (1) the tax on aviation gasoline consumed is four cents a gallon,

14 (2) the tax on motor fuel used in and on watercraft of all descriptions
15 is five cents a gallon, and

16 (3) the tax on all aviation fuel other than gasoline is two and one-half
17 cents a gallon.

18 * Sec. 7. AS 43.40.010(e) is amended to read:

19 (e) Sixty percent of the proceeds of the revenue from the taxes levied under
20 this section on aviation fuel, excluding the amount determined to have been spent by
21 the state in its collection, shall be refunded to a municipality owning and operating or
22 leasing and operating an airport in the proportion that the revenue was collected at the
23 municipal airport. All other proceeds of the taxes levied under this section on
24 aviation fuel shall be paid into a special aviation fuel tax account in the state general
25 fund. The legislature may appropriate funds from this account for aviation facilities.

26 * Sec. 8. AS 43.40.010(f) is amended to read:

27 (f) The proceeds from the revenue from the tax levied under this section on
28 motor fuel used in boats and watercraft of all descriptions shall be deposited in a
29 special watercraft fuel tax account in the general fund. The legislature may
30 appropriate from this account for water and harbor facilities.

31 * Sec. 9. AS 43.40.010(g) is amended to read:

1 (g) The proceeds of the revenue from the tax levied under this section on all
2 motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in
3 a special highway fuel tax account in the state general fund. The legislature may
4 appropriate funds from it for expenditure by the Department of Transportation and
5 Public Facilities directly or as matched with available federal-aid highway money for
6 maintenance of highways, construction of highway projects and ferries included in the
7 program provided for in AS 19.10.150, including approaches, appurtenances and
8 related facilities and acquisition of rights-of-way or easements, [AND] other highway
9 costs including surveys, administration, and related matters, and pedestrian, air
10 quality, and transit improvements. All departments of the state government
11 authorized to spend funds collected from taxes imposed by this section [CHAPTER]
12 shall perform, when feasible, all construction or reconstruction projects by contract
13 after the projects have been advertised for competitive bids, except that, when feasible,
14 arrangements shall be made with political subdivisions to carry out the construction
15 or reconstruction projects. If it is not feasible for the work to be performed by state
16 engineering forces, the commissioner of transportation and public facilities may
17 contract on a professional basis with private engineering firms for road design, bridge
18 design, and services in connection with surveys. If more than one private engineering
19 firm is available for the work the contracts shall be entered into on a negotiated basis.

20 * Sec. 10. AS 43.40.010(i) is amended to read:

21 (i) Within 30 days after the legislature convenes the Department of
22 Transportation and Public Facilities shall submit an annual budget covering anticipated
23 revenues and their expenditure, for the consideration and approval by the legislature.
24 The budget shall cover all money collected or anticipated to be collected under this
25 section [CHAPTER] for the year following the adjournment of each regular session
26 of the legislature.

27 * Sec. 11. AS 43.40.010(j) is amended to read:

28 (j) The proceeds from the tax levied under this section on motor fuel used
29 in snow vehicles and, unless a tax refund is applied for under AS 43.40.050(a), other
30 internal combustion engines not used in or in conjunction with a motor vehicle
31 licensed to be operated on public ways shall be deposited in a special nonpublic

1 highway use account in the general fund. The legislature may appropriate from this
2 account to the Department of Transportation and Public Facilities for trail staking and
3 shelter construction and maintenance.

4 * Sec. 12. AS 43.40 is amended by adding a new section to read:

5 Sec. 43.40.012. SURCHARGE ON MOTOR FUEL. (a) In addition to the tax
6 levied by AS 43.40.010, there is levied a surcharge of one cent a gallon on all motor
7 fuel subject to tax under AS 43.40.010.

8 (b) The surcharge imposed by (a) of this section shall be collected and
9 remitted in the same manner as the tax levied and collected under AS 43.40.010.

10 (c) Notwithstanding any other provision of this chapter, the commissioner of
11 revenue shall deposit amounts received from the levy of the surcharge under this
12 section into the general fund.

13 (d) The legislature may appropriate the annual estimated balance of the
14 account maintained under AS 37.05.142 for deposits into the general fund to the
15 Department of Environmental Conservation for the storage tank assistance fund
16 established under AS 46.03.410.

17 * Sec. 13. AS 43.40.012 is repealed.

18 * Sec. 14. Sections 1 - 3, 5, and 7 - 12 of this Act take effect July 1, 1994.

19 * Sec. 15. Sections 4, 6, and 13 of this Act take effect July 1, 1996.

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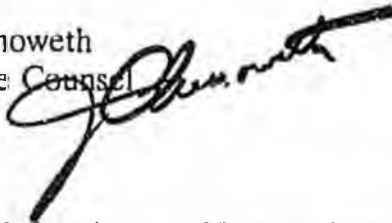
MEMORANDUM

September 29, 1993

SUBJECT: Proposed off-airport car rental levy (Work Order No. 8LS-1273)

TO: Representative Eldon Mulder
ATTN: Paula Conru

FROM: Jack Chenoweth
Legislative Counsel



You have provided a copy of the August 20 materials prepared by the Alaska International Airports System, a division of the Department of Transportation & Public Facilities, circulated to interested parties, and submitted to your office. The materials describe a proposal to initiate an off-airport rental car regulatory program. The department proposes to adopt a regulation setting out program requirements covering operating, financial reporting, and responsibility requirements. At the same time, the department anticipates imposition of an annual fee for the privilege that off-airport car rental companies enjoy for having access to the respective international airport properties. The fee would be calculated as a percentage of gross sales, specifically 8 percent of gross sales obtained from rental car customers at the respective airports. The latter provision has drawn objection, including a September 20 letter from Anchorage attorney Dan Coffey, representing Dollar Rent-a-Car of Alaska, an off-airport company, setting out objections to the proposed levy--Mr. Coffey describes it as a "tax"--and asking that the department forego the proposal.

You have invited comments.

*

Let me respond in part by following the outline of, and commenting upon, Mr. Coffey's stated objections.

AS 02.15.010 et seq. and 17 AAC 42.300 [sic] et seq. do not provide the department with authority to impose a levy.^{1/}

With respect, I don't think this argument will prevail.

Mr. Coffey's letter cites language in AS 02.15.090(a)^{2/} and concludes that the subsection does not provide a sufficient basis from which to authorize imposition and

^{1/} There is no chapter of administrative regulations identified as "17 AAC 42." Rather, the relevant chapter is 17 AAC 40. 17 AAC 40.340(a) purports to set out a basis for second party use of airport facilities. The regulation identifies standards applicable to computation of "land lease" rental rates and "building lease" rental rates, but is silent as to computation of fees for privileges. In any event, since off-airport users do not gain access to the facilities and do not operate under a "lease," the standards set out in that subsection of the regulation would be of doubtful applicability.

^{2/} Both Mr. Coffey's remarks and mine rely on an interpretation and application of AS 02.15.090(a). This provision was amended by the recently-concluded First Session of the Eighteenth Legislature, retroactively to January 1, 1993, and, with its amended language (highlighted in the material following) now reads as follows:

(a) In operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases, and other arrangements covering periods not exceeding 55 years with a person, municipality, or the United States, granting the privilege of using or improving an airport or air navigation facility or a portion of it or space in it for commercial, governmental, or other public purposes, including private plane tie down; or conferring the privilege of supplying goods, commodities, services or facilities at an airport or air navigation facility. The department may establish the terms and conditions and fix the charges, rentals, and fees for the privileges or services that are reasonable and uniform for the same class of privilege or service. Charges, rentals, or fees authorized by this subsection may be fixed for the international airports by order of the commissioner or by negotiated or competitively offered contract. Notwithstanding AS 37.10.050(a), the fixing of charges, rentals, or fees as permitted under this subsection is not subject to the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act). The terms, conditions, charges, rentals and fees shall be established with due regard to the property and improvements used and the expense of operation to the state. However, use of state land and buildings by the Alaska Wing, Civil Air Patrol and its squadrons shall be permitted without rental charges. The department shall provide for public notice and an opportunity to comment before a charge, rental, or fee is fixed by order of the commissioner as permitted under this subsection. The public may not be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or a portion of them.

The net effect of the substantive changes wrought by ch. 33, SLA 1993, of course, was to provide the commissioner wider latitude to set, amend, or repeal charges, rentals, and fees free of the constraints of the state's Administrative Procedure Act.

collection of the levy. AS 02.15.090 was enacted as part of the Aeronautics Act of 1949. Its subsection (a) provides, in relevant part:

(a) In operating an airport or air navigation facility owned or controlled by the state, **the department may enter into contracts, leases, and other arrangements** covering periods not exceeding 55 years with a person, municipality, or the United States, **granting the privilege of using or improving an airport or air navigation facility or a portion of it** or space in it for commercial, governmental, or other public purposes, including private plane tie down; **or conferring the privilege of supplying goods, commodities, services or facilities** at an airport or air navigation facility.

(Emphasis added). My view is that neither the Department of Law (in its eventual review considering the consistency of the proposed regulation with the underlying statute) nor a court would hesitate to find that (1) the ability of a car rental company to provide rental cars on airport grounds is a "service privilege," (2) the right of a car rental company to have access to the airport in conducting its business is subject to regulation under the statute, and (3) the phrase "other arrangements," when understood and construed with reference to "charges . . . and fees" appearing later in the subsection, will support imposition and collection of a levy. This sentence of AS 02.15.090(a) does not, in my view, constrain the department's involvement with second parties to negotiated arrangements (i.e. contracts and leases). Rather, it authorizes the department to give leave to operate car delivery and return services on airport premises through issuance of a certificate or license.

The proposed levy does not comply with that portion of the requirement imposed by AS 02.15.090(a) that fees be established "with due regard to the property and improvements used and the expense of operation to the state."

The effort in question involves adoption of a proposed regulation to define "off-airport rental car business" and to recognize in the body of administrative law the operation of off-airport rental car businesses at the state's international airports as operations subject to regulation. In addition, wholly apart from the proposed regulations--outside the authority of AS 44.62, the Administrative Procedure Act--the department proposes to impose and collect a levy from these businesses for the privilege of allowing them to continue to operate at these airports.

The department cites several statutes as its authority to adopt regulations. AS 02.15.090(a), cited by Mr. Coffey, is a key provision.

I read AS 02.15.090(a) as imposing two standards of general applicability to charges and levies that the department proposes to impose. Mr. Coffey's letter identifies both.

The first provides, in AS 02.15.090(a), in relevant part:

... **The terms, conditions, charges, rentals and fees shall be established with due regard to the property and improvements used and the expense of operation to the state.** ...

Mr. Coffey's objection makes the point that the client, Dollar Rent-A-Car of Alaska, does not impose a burden on the facilities at the international airports in the usual course of conducting its business apart from its operation of vehicles on a department-maintained road. The client makes use of the road in common with all other persons having business at the airports. His point, as I take it, is that the state incurs no expense in response to wear and tear of airport roads in their use by Dollar and its customers apart from the costs it incurs for the benefit of all airport users in common. ^{3/}

The "due regard" requirement is not discussed in the body of Alaska law. For aid in understanding what may be required of an agency we may profitably consider its definition in other jurisdictions. "Due regard" has generally come to mean the degree of consideration that is appropriate to the demands of a particular case, Willis v. Jonson, 130 S.W.2d 828, 832 (Ky. 1939), Runvon v. Smith, 212 S.W.2d 521, 523 (Ky. 1948). It contemplates that the decision maker will give some proper and suitable regard to the factors or elements identified. "To give due consideration to a particular factor," one court has declared

... necessarily means to give such weight or significance to it as under the circumstances it seems to merit, and this, of course, involves discretion;

United States v. Interstate Commerce Commission, 88 F.2d 780 (D.C. Cir. 1937), at 783. On review of any regulation and levy ultimately adopted, a court that finds that the agency gave consideration to these standards would be reluctant to question the weight of the consideration given by the agency to these factors, and probably would not annul the regulation. On the other hand, if the court finds that the agency failed to take these factors into consideration at all, it may well set aside the regulation and the levy adopted.

^{3/} For purposes of this memo, I'll accept that assertion as true, though it occurs to me that the summary really does overlook such potential contingencies as airport personnel's provision of property security services and emergency services involving the company's vehicles, both of which may in greater demand than the level of services provided to public users of the airport because of the volume of the company's vehicles that use the two international airport facilities.

Evaluating against that standard, then, in proposing the levy, has the department given "due regard to the property and improvements used and the expense of [airport] operation of the state"?

I've reviewed the materials you provided, giving particular attention to the August 1993 report entitled "Off-Airport Rental Car Privilege Fees." The introduction summary, set out at page 4 of that report, observes that the state's international airports desire to meet certain goals.^{4/} The discussion that follows notes the potential for "on airport operators [to] relocate off of airport property, pay[ing] the \$25 permit fee, and continu[ing] to access the airport passenger market," thereby "reduc[ing] a significant existing revenue source" It also cites the obligation in law that the international airports "be self supporting" and the requirement attached to federal grants that the grantees must be "as financially self sustaining as possible." Without so stating, the commentary seems to infer that the levies to be charged on-airport and off-airport companies must be reasonably comparable in order to avoid the probable shift of on-airport operations to an off-airport location, thereby reducing the likelihood that the operation of the airports would be self-sustaining.

The report also summarizes, at page 8, a cost/benefit evaluation. Noting that the department will incur additional expenses for program administration and monitoring--a one time charge of an estimated \$25,000 and recurring annual costs of \$6,000--the evaluation identifies a potential of \$270,000 of additional annual revenue from an 8% levy. Aside from costs of start up, the annual return from the levy would be roughly 45 times the amount of direct expenses.

^{4/} The introduction declares:

The [International] Airports desire to meet the following goals:

1. Preserve existing revenue,
2. Generate additional revenue,
3. Ensure that businesses pay fees consistent with the benefits they derive from the Airports, and
4. Continue a high level of service to the traveling public with convenient transfer from air to ground transportation.

In keeping with these goals, the state proposes to adopt a regulation and implement privilege fees for Off-Airport Operators.

....

Apart from these references there is arguably virtually no discussion on the part of the department of the relationship between the class of services provided by off-airport based rental companies and the claim they have on the airport property and improvements used and the costs actually incurred by the department in allowing that use. Has the department, for example, attempted to identify the comparative use of the roads by on-airport and off-airport companies? Has it attempted to identify the proportion of off-airport based users to all roadway users? Is the fact that the estimated annual revenue exceeds annual program administration costs by so wide a margin evidence that the department has made no reasonable effort to identify the relationship or fit between the nature and amount of the proposed levy and the actual expense attributable to off-airport based users of airport improvements.

All this is to suggest that, at this point in the history of the consideration of the proposed regulation and levy, it is open to argument that, in developing and, ultimately, adopting the regulation and the levy, the department may have failed to adhere to the standard identified by which its decision should be controlled. That failure may serve as a basis for a successful challenge of the proposed regulation and levy on the basis that they are inconsistent with that portion of the statute that they purport to interpret and implement. See AS 44.62.030.^{5/}

★
"By 9/28/93
"Due regard"

The proposed levy does not comply with a requirement imposed by AS 02.15.090(a) that charges and fees that are established for certain airport related privileges and services be "reasonable and uniform."

The same subsection, subsection (a), imposes a second general standard applicable to the department in its setting of fees authorized by the Aeronautics Act of 1949. Again, AS 02.15.090(a) provides, in relevant part:

... The department may establish the terms and conditions and fix the charges, rentals, and fees for the privileges or services that are

^{5/} The section directs:

CONSISTENCY BETWEEN REGULATION AND STATUTE.

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

I contend, as I think Mr. Coffey would acknowledge, that the ability to impose a levy derives from permission to do so given in AS 02.15.090(a). Moreover, though, under the most recent amendment of the subsection, the process of fixing the amount of the imposition may be taken without regard to the niceties of the Administrative Procedure Act, determination of the amount of the fee must be in accordance with the standards set out in the subsection.

reasonable and uniform for the same class of privilege or service.

.....^{6/}

In the context in which the standard may be applicable to off-airport car rental companies, one probable interpretation of the standard set out in this sentence would be that "charges" and "fees" imposed for "privileges" must be both "reasonable" and "uniform." In his letter, Mr. Coffey contends that, at least as presently contemplated, the proposed 8% levy on gross sales of off-airport rental companies is not.

I don't know that it is necessary to provide an extended discussion of whether or not the department's proposed fee is "reasonable." In the context of evaluating the amount of a proposed levy, "reasonable" connotes that the amount to be recovered is "appropriate" or "fit." Court decisions in Alaska generally hold that regulations will stand so long as they are "reasonable and not arbitrary,"^{7/} but, with only one

^{6/} As a threshold consideration, it is not clear to me whether the standard set out in the clause "that are reasonable and uniform . . ." is intended to apply just to the "charges, rentals, and fees for the privileges or services" that are collectable or whether it is also applicable to modify the "terms and conditions" of use of airport facilities. This memo need not attempt to resolve that ambiguity.

^{7/} The seminal decision is Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971), wherein the court asserted:

[W]here an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, we will review the regulation in the following manner: First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment.

Among later decisions mentioning the "reasonable and not arbitrary" test are Kenai Peninsula Fisherman's Cooperative Ass'n., Inc. v. State, 628 P.2d 897, 906 (Alaska 1981):

If [a regulation is] adopted according to APA procedures and within the discretion vested in the [agency] by the legislature, our review is limited to (1) whether the regulation is consistent with the statute (i.e. within the scope of the agency's authority) and reasonably necessary to its purposes, and (2) whether the regulation is reasonable and not arbitrary.

(continued...)

exception, ^{8/} the court has not gone out of its way to provide guidance as to when a proposed regulation is in fact to be regarded as "reasonable."

The matter of the proposed regulation's uniformity raises a host of interesting questions. The statute speaks, of course, to the requirement that "charges" and "fees" imposed for "privileges" must be ". . . uniform for the same class of privilege or service"

Mr. Coffey's letter raises a challenge that a levy "which is substantially identical for both on- and off-airport operators" cannot be uniform. He may be right. What I cannot tell from the statute is what the legislature contemplated when it called for uniformity of treatment "for the same class of privilege or service." Does it necessarily mean that all car rental agencies--operating in the class of "auxiliaries" under 17 AAC 40.320(b)--constitute one service class for purposes of determining a uniform fee? Does the statute at least contemplate that a fee distinction should be drawn between car rental companies that conduct business within the facility as "building lessees" (to use the language of 17 AAC 40.340(a)(1)) versus those who

^{7/}(...continued)

and Kalmakoff v. State, Commercial Fisheries Entry Commission, 693 P.2d 844, 853 (Alaska 1985):

If . . . a regulation is consistent with a statute's purposes and reasonably necessary to carry them out, we will not overturn it, provided it is reasonable and not arbitrary.

^{8/} In State v. Anderson, 749 P.2d 1342, the court's analysis of the validity of regulations applicable to subdivision plats raised, as one question to be answered, whether the regulation was "reasonable." It answered the question by drawing from the record evidence that the agency's requirements imposed by the regulations in question bore both a fair and a substantial relationship to the statutory objectives determined by the legislature, finding that the requirements were, in fact, reasonable:

On this basis, we do not think that the regulations are unreasonable or arbitrary. On the contrary, [the regulations] embody a very practical method for accomplishing the goal of insuring safe [wastewater] disposal systems in newly-formed subdivisions. When plan review and approval is done at this early stage in subdivision development, problems are more easily solved by, for example, simply redrawing lot lines. Also, as the state argues, it is more cost-effective for the developer to have the entire subdivision reviewed and approved at one time; he is able to pass on the costs to lot purchasers, and such purchasers may in turn be assured that their property is suitable for the disposal system. We conclude that the provisions are reasonable and not arbitrary.

Id., at 1346. Even so, the court's latest formulation leaves open the question of whether any regulation that is "not arbitrary" is necessarily "reasonable."

enjoy only a license or privilege to go upon airport property to deliver or return rented vehicles? Does the statute indeed require that a distinction between the two groups of car rental companies be maintained? This is an old statute and I could not find any legislative history for it in the Legislative Research Library. Consequently, the answers to these questions will arise out of the administrative decisions eventually made by the agency and, ultimately, if a court challenge is brought, by a judicial opinion.

The proposed levy does not comply with constitutionally-imposed equal protection requirements.

In support of his contention that the proposed levy is not consistent with constitutionally-grounded equal protection standards, Mr. Coffey cites two cases, Herrick's Aero-Auto-Aqua Repair Service v. Department of Transportation and Public Facilities, 754 P.2d 1111 (Alaska 1988), and Alamo Rent-A-Car, Inc. v. Sarasota Manatee Airport Authority, 825 F.2d 367 (11th Cir 1987), cert. den. 484 U.S. 1003, 108 S.Ct. 1022, 98 L.Ed.2d 987 (1988). Interestingly, the department's report of the off-airport rental car privilege fee study likewise cites the Herrick decision to support its proposal to adopt a regulation to impose additional insurance requirements and to impose the new revenue levy.

At issue in Herrick was the department's differential treatment of airplane repair services who operate their businesses on land leased at the Anchorage International Airport--the opinion identified them as "lessees"--in contrast with those operating as mobile or itinerant mechanics who come on to the airport property and provide similar services primarily to aircraft parked at airport tie-downs but also at other locations--named in the opinion as "permittees." The department enforced certain regulations (relating to securing permits and enumerating certain prohibited activities) against the lease-based service businesses but did not against the itinerants. Similarly, the department enforced a comprehensive public liability insurance requirement against the lease-based businesses but did not require the itinerants to provide like coverage.

The lessees brought suit claiming, in the words of the opinion,

. . . that, as a consequence of DOT's activity, they [the lessees] have been damaged to the extent of fees and insurance premiums paid and business lost because of their inability to price services competitively with itinerant mechanics.

754 P.2d 1111, at 1113. The trial court granted summary judgment to the lessees on the permit requirement, but otherwise refused to grant the lessees the relief they requested.

On appeal, the Supreme Court affirmed the trial court's disposition of the matter in part and reversed it in part. On the points critical for purposes of the discussion set out in this memo, the Supreme Court found an equal protection violation:

In reviewing equal protection claims under the Alaska constitution this court uses a "uniform-balancing" test which place[s] a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved. . . . The minimum burden the state must meet is the rational basis test described in Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). . . . This rational basis test questions whether the classification is "reasonable, not arbitrary" and rests "upon some ground of difference having a fair and substantial relation to the object of this legislation." Isakson, 550 P.2d at 362. Under this test, we will not "hypothesize facts which will sustain otherwise questionable legislation." Id. Thus, the minimum burden that the state must meet when defending legislation challenged on equal protection grounds under the Alaska constitution is greater than that required under the United States Constitution. . . .

Herrick, 754 P.2d at 1114 (citations and footnotes omitted). Noting that the challenge raised by the lessees "deals with legislation of economic and commercial interest," the Court applied only the minimum level of scrutiny, requiring that, to support its distinction, the department "need only show that its objectives were legitimate." Id. Surprisingly, the department failed to meet that burden. Accordingly, the Court said:

We conclude that DOT's enforcement policies violated the equal protection due to the lessees, and thus uphold the trial court's grant of summary judgment to the lessees. We disagree with the trial court, however, on the issue of the remedy for this violation. . . . When a court finds that an administrative agency is enforcing its regulations in a way which violates equal protection, it should enjoin the offending activity. . . .

Id., at 1116.

The fact situation in Herrick involved the department's disparate treatment of airport lessees and permittees. In contrast, the principal point of discussion relating to the matter under consideration is whether the department may give substantially similar

treatment to persons who are decidedly not, according to Mr. Coffey, similarly situated. ^{9/}

The question of the levy aside for a moment, as a threshold observation I want to note that the department's proposed regulation by itself operates to impose requirements that are more stringent on off-airport car rental companies than those now operating under lease. This may be intentional, though it may also be the result of the department's failure to try to conform the proposed regulation of off-airport

^{9/} In point of fact, Mr. Coffey's letter calls attention to the department's handling of several pairings. Primarily, of course, it speaks to the department's efforts to

... [treat] off airport operators [sic] the same as on airport operators.

This is understandable because an off-airport based company is the client.

But the regulation presents, and Mr. Coffey's letter rightly identifies, another problem:

Secondly, it [the proposed regulation] treats rental car agencies different from all other businesses which pick up their customers at the airport. The hotels, the tour companies (most of which are owned by out of state operators), hunting and fishing lodges, RV rental companies and other who pick up customers at the airport are not subject to the proposed tax.

As to this distinction, it may be that the department chose not to subject them to the proposed levy because of its reading of an existing statute, AS 02.15.095:

COURTESY CARS. Notwithstanding the provisions of AS 02.15.-090(a), the department may not exclude from the streets, roads, highways, parking facilities, or other portions of a state-operated airport designated for operation or parking of ground transportation vehicles, nor may the department prohibit from picking up and discharging passengers, those motor vehicles commonly known as "courtesy cars" owned or operated by hotels, motels or other similar places of public accommodation for the transportation of their guests to and from the airport at the request of the guest and for which service no charge is made to the guest.

The statute prevents the department from excluding those vehicles, but it arguably doesn't preclude the department from imposing a reasonable levy on them for the privilege of using the airport's facilities. Reading between the lines, then, Mr. Coffey would seem to be prepared to contend that the proposed regulation would provide differing treatment to two groups who do no more than drive on to airport roads to pick up and discharge passengers for business related purposes: off-airport based rental car companies would be subject to the panoply of the requirements of the regulation, while those identified in the above-cited statute would not. Assuming that all of the perceived ills that may warrant the department's regulation of the off-airport rental car companies' use of airport facilities also arise by the use of those facilities by companies identified in this statute, one wonders whether the department can justify the disparate treatment proposed even under the low-level "rational basis" standard of Isakson as discussed and applied in Herrick.

operators to the general body of regulations relating to airports. Two examples may suffice.

Proposed 17 AAC 40.045(a) directs that off-airport based businesses first apply to obtain a privilege under 17 AAC 40.320. Thus, like applications from on-airport companies, those received from off-airport companies must be evaluated under the latter provision. Under 17 AAC 40.382 ^{10/}, a lease may not be terminated without providing notice and opportunity for hearing. The language of that regulation begs the question of whether "lessee" in the sentence's main clause may be read as providing basic due process protection to permittees under the proposed regulation. The definition of "lessee" provided for the chapter in 17 AAC 40.390--to be designated "17 AAC 40.990" as part of the department's proposal--suggests to me that it does not. If it does not, the department may not be committed to provide off-airport companies the same or substantially similar due process rights in the modification or termination of a privilege that are provided to on-airport based companies who have entered into leases.

Second, of particular concern in light of Mr. Coffey's letter is the financial responsibility or insurance requirement. For off-airport car rental businesses, the department's regulation proposes to require compliance with AS 28.33.010, ^{11/} the

^{10/} Under this regulation, the department provides that

Before the termination or cancellation of a lease or other interest granted under this chapter, the department will provide the lessee with notice and an opportunity to be heard.

^{11/} Under that statute, the off-airport rental operator would be required to meet the following requirements:

(a) A person who carries passengers or freight for hire intrastate in a commercial motor vehicle or a person who carries freight in a motor vehicle for commercial purposes, or a person who rents or leases a motor vehicle for the use of another to carry freight shall procure and maintain security in the following minimum amounts:


- (1) \$200,000 for property damage in a single occurrence;
- (2) \$500,000 for bodily injury or death in a single occurrence.

(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;
- (2) a bond of a surety company licensed to write surety bonds in the state;
- (3) evidence accepted by the department, showing ability to self-insure; or
- (4) other security approved by the department.

provisions of which are established and enforced by the Department of Public Safety. By contrast, under 17 AAC 40.360(20), the Department of Transportation and Public Facilities requires of lessees--presumably including its on-airport car rental business lessees--a significantly lesser requirement. ^{12/} On their face, the financial responsibility requirements between the two groups are inconsistent.

Moreover, the introduction to the department's regulation raises a question as to whether the financial requirements of the regulation or those of the statute are to apply to off-airport car rental companies. Proposed 17 AAC 40.045(b)(6) would impose the statutory requirements of AS 28.23, but the lead-in to 17 AAC 40.360 declares that the words "lease," "lessor," and "lessee" in this section shall be understood to include reference to "permit," "permittor," and "permittee," respectively, where applicable, inferring that perhaps the insurance requirements of the regulation do in fact apply to permittees. ^{13/}

Given these distinctions and the confusion arising out of a set of regulations that, in my view, is incompletely modified to secure an uncertain objective, I sense that the content of the regulations circulating for public comment provides a potentially fruitful basis for an equal protection-based challenge. 

There are other aspects of an equal protection based claim that I will leave to others to develop.

^{12/} Under paragraph (20):

The lessee shall, at his own expense, maintain and keep in force during the term of the lease, adequate insurance to protect both the lessor and the lessee against comprehensive public liability, products liability (where applicable), and property damage, in no less than the following amounts:

(A) property damage arising from one accident or other cause in a sum of not less than \$50,000;

(B) personal injury or death, liability insurance not less than \$100,000 per person and \$300,000 per accident.

^{13/} But only if it be understood that the application for a privilege under the department's proposed 17 AAC 40.045(a) results in the applicant's obtaining a "permit" and gaining the status of a "permittee." The proposed regulation would have an off-airport rental car business to apply for a privilege, but I can't find anything that indicates how holding or possessing that privilege is to be evidenced. Does a piece of paper--a permit or certificate--issue, or is the matter committed by an entry into the records of the Alaska International Airports System? I don't know; the regulations do not provide an answer.

The amount of the proposed levy is confiscatory.

I can't comment to this objection, for I don't have any information from which to prepare an evaluation. My sense is that an debate on this point is subsumed within the argument as to whether the department is acting in conformity to AS 02.15.090(a) and its directive that "charges . . . and fees for the privileges or services [provided at the airports] are reasonable."

* * *

In summary --

My own view is that a challenge to the proposed regulation and levy based on an asserted lack of statutory authority to enact them will likely fail.

A challenge based upon the failure of the proposed regulation and levy to conform to the standards set out in AS 02.15.090(a) should, in my view, enjoy a reasonable chance of success, particularly, in my judgment, if the department does no more to establish a record as it contemplates adoption of the proposed regulation and levy on these off-airport based car rental activities apart from relying on its August 1993 report.

OK
REGARD
FOR
PROPERTY
WFO

The eventual success of an objection grounded solely on state constitutional equal protection requirements is problematical. The record as I have indicates to me that the department's distinction between off-airport based car rental companies, on the one hand, and other off-airport based operations--hotels, tour companies, lodges, RV companies, and the like--invites probable criticism substantially along the lines discussed by the court in Herrick.

Since the equal protection standard applicable is the least stringent, rational basis test, the agency enjoys a relatively wide degree of discretion. Whether or not the court would find an equal protection-based violation in the asserted like treatment of off-airport and on-airport car rental companies is not clear. However, it seems to me that the department has not helped its cause by producing a proposed set of administrative regulation additions without concerning itself as to whether, and to what extent, the proposed additions may or may not conform to the existing body of regulations in 17 AAC 40. The agency's attempt to fit the proposed additions into that body of administrative regulations raises serious questions about the treatment that will ultimately be given the two groups, seriously undercutting, in my view, the department's argument that off-airport and on-airport based car rental companies are so substantially similar as to warrant the treatment proposed.

I would end only by observing that, as to the matter of the imposition of the levy--the department's "fee" and Mr. Coffey's "tax"--the legislature's enactment of the

Representative Eldon Mulder
September 28, 1993
Page 15

amendment to AS 02.15.090(a) by ch. 33, SLA 1993, adds or overlays an element to these arguments that adds a little weight to an agency's taking unilateral action to impose the levy. I suspect it means that Mr. Coffey and others confronting the agency's efforts probably should be prepared to argue that, despite the exclusion of charges and fees imposable under that subsection from the Administrative Procedure Act's requirements, the legislature's Act really was not intended to eliminate compliance with substantive requirements of that subsection to the effect that levies must be "reasonable and uniform" and set "with due regard to the property and improvements used and the expense of operation to the state."

* * *

I trust this is sufficient for your purposes.

JBC:gc
93-481.glc

SEP 22 1993

LAW OFFICES OF
DAN K. COFFEY

207 E. Northern Lights Blvd., Suite 200
Anchorage, Alaska 99503

(907) 274-3385

(907) 274-4258 FAX

September 20, 1993

Alaska International Airport System
P. O. Box 190649
Anchorage, Alaska 99519

Attn: Judy Pank

Re: Proposed Tax on Off-Airport
Car Rental Companies

Dear Ms. Pank:

My office represents Dollar Rent-a-Car of Alaska which is an off airport rental car operator. The purpose of this letter is to inform the department of transportation of my client's opposition to the proposed tax on its operations.

In preparation for writing to you, I have reviewed the statutes and regulations which governing your authority to promulgate the proposed regulations and the case law concerning your authority to proceed in the manner you are proposing.

Initially, we disagree that AS 02.15.010 et seq and 17 AAC 42.300 et seq provide you with the authority to impose such a tax as is being proposed by the regulation.

AS 2.15.090 grants the department the authority to "enter into contracts, leases and other arrangements...conferring the privilege of supplying goods, commodities, services or facilities at an airport..." and to "establish the terms and conditions and fix the charges, rentals and fees for the privileges or services..." What the department is proposing is the imposing of a user fee/tax for which it has no authority. If the department wants to negotiate a "lease, contract or other arrangement" with my client, please advise as to what consideration we can expect from the department in exchange for the tax which you are proposing.

Even if the department has the authority to impose such a tax, AS 02.15.090 (a) requires that "[t]he terms, conditions, charges, rentals and fees shall be established with due regard to the property and improvements used and the expense of operation to the state". My client uses only the public road to and from the airport. The only cost to the department associated with my client's use of the airport is the cost of maintaining the road to and from the airport.

Further, you are proposing that off airport rental agencies pay substantially the same fee as imposed on those rental agencies who lease premises and parking facilities on airport. This violates the requirement that the fees be "reasonable and uniform." On-

LEGAL OPINION RE:
PROPOSED REGS

airport operators have counters, on site parking and other benefits none of which are being conferred on off-airport operators. How can a tax/fee which is substantially identical for both on and off airport operators be reasonable and uniform?

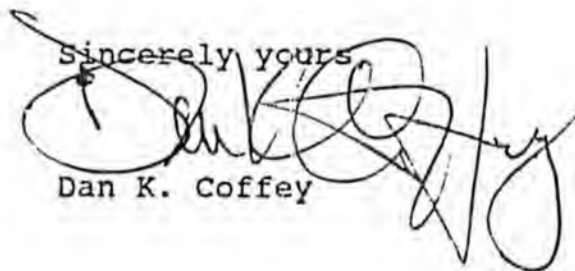
Further, we completely disagree with your reading of the Herrick. In that case the Supreme Court established the requirement that the department treat those similarly situated the same. Your proposed regulation violates that requirement in two ways. First, it treats off airport operators the same as on airport operators. Secondly, it treats rental car agencies different from all other businesses which pick up their customers at the airport. The hotels, the tour companies (most of which are owned by out of state operators), hunting and fishing lodges, RV rental companies and others who pick up customers at the airport are not subject to the proposed tax.

The Department relies for this latter distinction on the Alamo case. This case was decided under the 14th amendment to the United States Constitution. Any decision in Alaska will be based on the Alaska equal protection provisions which our Supreme Court has ruled are much more protective of individual rights than those of the US constitution. Further, in that case, the authority for the airport owner to assess fees/taxes was clearly established by statute. In this case, there is no statutory authority for what is being proposed.

Finally, the amount being sought by the department is confiscatory. To demand eight percent (8%) of the gross of any business for simply picking people up at the airport is ridiculous. This type of charge is equal to the total net income of many business. To require such payment could break a small business.

Based on the foregoing, my client requests that the department not proceed with the proposed tax. If these regulations are implemented, my client will file suit against the department seeking to enjoin the implementation of the regulations.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Dan K. Coffey', written over the typed name below.

Dan K. Coffey

cc: Senators Sharp, Phillips, Kelly and Kertulla
Representatives Foster and Mulder
Mr. Pat Ryan, chief of staff

Alaska State Legislature

SENATOR
BERT SHARP
CHAIRMAN



Senate Transportation Committee MEMORANDUM

FAIRBANKS

DENALI BANK BUILDING
119 N. CUSHMAN, SUITE 201
FAIRBANKS, ALASKA 99701
(907) 452-7885/7886

SESSION ADDRESS

STATE CAPITOL, ROOM 514
JUNEAU, ALASKA 99801-1182
(907) 465-3004/4921

DATE: April 18, 1994

TO: Senate Transportation Committee Members

FROM: Senator Bert Sharp, Chairman
Senate Transportation Committee

RE: Work Draft CS for SB 343

Work Draft CS for SB 343 amends the original bill in order to allow DOT&PF to continue collecting a flat, yearly fee from businesses that operate courtesy cars at the airports. The new language was added to line 14 of the bill and states that the department may not impose a fee for the operation of courtesy cars "by a business located outside the terminal area if the charge or fee is based upon the amount of revenue generated from individuals who use the courtesy cars."

This new language conforms SB 343 to the House version of the bill currently in the House Finance Committee.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 343

APPROVED: 

TITLE: Courtesy Cars Operated at
Airports

DATE: March 18, 1994

The Department of Transportation and Public Facilities (DOT&PF) opposes passage of SB 343. This bill expands the courtesy car definition in AS 02.15.095 to include transport to car rental businesses located outside airport terminals. It also prohibits state airports from charging fees for any courtesy car operation.

SB 343 would adversely affect AIA and FIA on-airport car rental revenue, which exceeded \$2 million in FY93. SB 343 encourages on-airport car rental businesses to move off of the airport and avoid paying fees because it prohibits the airports from charging fees to competing businesses who access the same passengers. Under AIA and FIA airline operating agreements, the loss of over \$2 million in existing non-airline revenue will require the airports to make up the shortfall by increasing air carrier landing fees.

Both on- and off-airport car rental businesses access similar passenger markets. AIA currently has a significant amount of off-airport car rental activity that directly competes with the on-airport car rental businesses. Those off-airport businesses pay a small annual permit fee to the airport, as shown on the attached historical revenue information sheet. On-airport car rental businesses will be at a continued competitive disadvantage if airports are prohibited from charging fees to off-airport businesses who regularly use the airports to access customers.

In 1993, AIA and FIA issued a report summarizing research, alternatives, rationale, and recommendations on a proposed new off-airport car rental program and fee. The airports then held public hearings, implemented regulations, and adopted an off-airport fee which takes effect June 1, 1994.

BILL NO: SB 343

TITLE: Courtesy Cars Operated at Airports

DATE: March 18, 1994

When current AIA and FIA car rental contracts were offered in 1987, potential bidders for the on-airport business asked the airports to impose off-airport car rental fees to eliminate the competitive disadvantage faced by on-airport firms.

The off-airport car rental fee issue has been addressed at airports throughout the nation over the past ten years. The courts have upheld the right of airports to charge off-airport car rental fees for access to airport passengers. The U.S. Supreme Court has let stand lower court decisions that uphold the right of airports to charge off-airport car rental fees. The courts also recognized that hotel courtesy cars and off-airport car rental vehicles are very different types of service and airports are not required to treat them as the same class of use.

Off-airport car rental interests have repeatedly lobbied the U.S. Congress to prohibit airports from charging off-airport car rental fees. The U.S. Congress, as well as many state legislatures, have rejected these attempts.

HISTORICAL CAR RENTAL REVENUE

Anchorage and Fairbanks International Airports On and Off Airport Comparison

	<u>FY 1990</u>	<u>FY 1991</u>	<u>FY 1992</u>	<u>FY 1993</u>
ANCHORAGE INTERNATIONAL				
On-Airport	\$1,551,599	\$1,449,373	\$1,648,600	\$1,776,126
*Off-Airport	75	125	175	175
FAIRBANKS INTERNATIONAL				
On-Airport	\$247,871	\$274,429	\$321,905	413,254
*Off-Airport	0	0	0	0
TOTAL (BOTH AIRPORTS)				
On-Airport	\$1,799,470	\$1,723,802	\$1,970,505	\$2,189,380
*Off-Airport	75	125	175	175

*Currently, a \$25/year fee is charged to hotels and car rental agencies for a permit which allows them to access the airport with their courtesy vans. This permit is also required of taxicabs, but these figures do not reflect those revenues.

HISTORICAL REV.

FISCAL NOTE

Revision Date:
Title: Courtesy Cars Operated at Airports

Department Affected: DOT&PF
BRU: AIA and FIA

Sponsor: Senate Transportation
Requestor:

Component: AIA Admin & FIA Admin
Component Serial Number: #613 and #619

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$0

ANALYSIS: SB 343 doesn't directly affect operating or capital budgets, it creates potential for loss of a significant amount of revenue for AIA and FIA. If car rental firms outside the terminals are not subject to fees for accessing the same passenger market as in-terminal firms, the car rental agencies who operate in the terminals may relocate outside the terminals. This would be a disservice to the traveling public and could eliminate the \$2 million in revenue AIA and FIA receive (FY93) from in-terminal car rental firms. Such a loss in non-airline revenue would require airlines to make up for the lost revenue through increased landing fees.

Prepared by: John Ungar, AIAS Comptroller

Phone: 266-2541

Division: Alaska International Airport System

Date: March 11, 1994

Approved by Commissioner: 

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 17, 1994

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8-LS1794E ✓
Cook
4/13/94

CS FOR SENATE BILL NO. 343(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the operation of courtesy cars at certain airports."

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

3 * Section 1. AS 02.15.095 is amended to read:

4 Sec. 02.15.095. COURTESY CARS. Notwithstanding the provisions of
5 AS 02.15.090(a), the department may not exclude from the streets, roads, highways,
6 parking facilities, or other portions of a state-operated airport designated for operation
7 or parking of ground transportation vehicles, nor may the department prohibit from
8 picking up and discharging passengers, those motor vehicles commonly known as
9 "courtesy cars" owned or operated by hotels, motels, or other similar places of public
10 accommodation, or by rental car businesses located outside the terminal area, for
11 the transportation of their customers [GUESTS] to and from the airport at the request
12 of the customer [GUEST] and for which service no charge is made to the customer.
13 The department may not impose a charge or fee for the operation of courtesy cars
14 at a state-operated airport by a business located outside the terminal area if the

1 charge or fee is based upon the amount of revenue generated from individuals
2 who use the courtesv cars [GUEST].

SENATE BILL NO. 343

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Introduced: 3/9/94
Referred: Transportation

A BILL

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10 accommodation, or by rental car businesses located outside the terminal area, for
11 the transportation of their customers [GUESTS] to and from the airport at the request
12 of the customer [GUEST] and for which service no charge is made to the customer.
13 The department may not impose a charge or fee for the operation of a courtesy
14 car at a state-operated airport [GUEST].

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

DATE: 3/9/94

FURTHER:

Date of 5-Day Notice: 3/24/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

Transportation Committee considered SENATE BILL NO. 343

"An Act relating to the operation of courtesy cars at certain airports."

and recommends:

replace with _____ CS SB 343 (TRA)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

- same title
- new title
- technical title change (HB only)

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DOT + PF	3/11/94	X	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

T. Kelly

Roll E. Kelly

OTHER RECOMMENDATIONS:

Roll E. Kelly Do Pass

Chair: Signature and Recommendation

Attached is a chronology of the off airport rental car process.

HB 520/ SB 343

BACKGROUND

SB 343

Pertinent Dates. Copies of Documents Attached.

7/26/93	Memo (Ungar to Chitty) and all supporting information sent to HDQTRS for Commissioner concurrence before proceeding. Concurrence signed by Chitty 7/31/93.	pp 2-3
8/20/93	Mailed full package to all on and off airport rental car interests we could identify through the yellow pages of FBX and ANC phone books. Package included the report, copy of a public notice on the proposed regulation, copy of the proposed regulation, and a copy of the public notice on the 8% fee.	pp 4-8
9/15/93	Public hearing in Anchorage	
9/16/93	Public hearing in Fairbanks	
11/1/93	Commissioner signed order adopting the regulation	p. 9
11/5/93	Sent regulation to DOL for final processing	pp 11-13
12/6/94	DOL memo to Commissioner about regulation adoption; Regs filed with Lt. Gov's Office	
1/12/94	Regulation effective (30 days after filing by Lt. Gov)	
1/19/94	Letter from J. Pank to rental car interests informing of regulation status and clarifying minimum fee requirements. Public notice on inadvertent deletion of minimums from the original public notice was included with a 30 day comment period. Rec'd no comments.	pp 14-15
2/23/94	Memo (Ungar to Sandvik) recommending fee adoption. Concurrence by Helvi 3/8/94	pp 16-17

ALL PUBLIC NOTICES WERE POSTED AT BOTH AIRPORTS AND PUBLISHED IN THE ANCHORAGE AND FAIRBANKS PAPERS, AS WELL AS THE AAJ

Original notice was also published in the Journal of Commerce.

2

MEMORANDUM**State of Alaska**Department of Transportation and Public Facilities
Anchorage International AirportTO: Dick Chitty
Deputy Commissioner

DATE: July 26, 1993

TELEPHONE NO: 266-2541

FROM: John Ungar *JU*
AIAS ControllerSUBJECT: Off-Airport
Rental Car Fees**RECEIVED**
JUL 29 1993
DOT&PF
DEPUTY COMMISSIONER

The Anchorage (ANC) and Fairbanks (FAI) International Airports propose to implement off-airport rental car privilege fees as described in the attached draft report. We propose a fee of 8% of gross sales derived from customers picked up at the Airports. Also attached is a proposed regulation which supports the program.

The ANC Director, FAI Acting Manager, Regional Directors, Statewide Aviation/Leasing, and Department of Law all agree with the concepts we propose in the report recommendations. Our plan is to make the report and proposed regulation public at the same time and follow their release with a public hearing.

Our reasons for initiating off-airport rental car fees are:

1. to raise new revenue (approximately \$270,000 annually) and
2. to protect a significant existing revenue source from the on-airport rental car concessions.

Preservation of the existing revenue source is critical because the Airports receive nearly \$2 million annually from the on-airport rental car concessions. Off-airport firms are direct competitors who tap the same airport passenger market and now pay only a \$25 annual permit fee. It is particularly important we address off-airport rental car fees now because the Airports will soon re-bid the on-airport car rental concessions. If no off-airport fee is in place, the amount we receive in the on-airport bid solicitation may be significantly less than we might otherwise receive. Some rental car firms may either offer low bids or relocate off the airport.

Off-airport car rental fees are common at United States airports, but are often implemented with difficulty. The matter has been heavily litigated in state and federal courts but case law has established an airport operator's right to charge such fees.

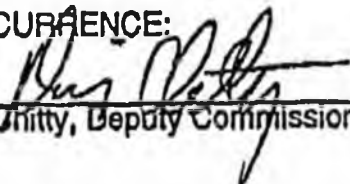
Rental car interests often have strong and opposing views on this subject and frequently work through both political and legal channels. It is important for the State to provide consistent information on this subject and I recommend a single point of contact within the department. Because this involves a fee issue for both FAI and ANC, I request you designate me as sole point of contact and refer inquiries to me. If I anticipate or experience a problem, I will coordinate closely with you.

3

If we take a "no action" approach, on-airport firms are likely to contact the commissioner, governor, or legislators. If we do take action, off-airport firms are likely to take similar steps. Even though this might create some controversy, I strongly recommend we move ahead.

If you and the Commissioner concur with our approach to addressing off-airport car rental fees and with the proposed regulation, please indicate by signing below.

CONCURRENCE:



Dick Chitty, Deputy Commissioner

7/31/93
Date

- cc: Lowell Humphrey, ANC Director
- Jim Fiorenzi, FAI Business Manager
- John Horn, Central Region Director
- Steve Sisk, Northern Region Director
- Judie Pank, ANC Policy Planner

JP

Attachments



Alaska
International
Airport
System

P.O. Box 190649
Anchorage, Alaska
USA 99519-0649
(907) 266-2525
FAX (907) 243-0663

4
August 20, 1993

TO: Car Rental Agencies and Other Interested Parties

The Anchorage and Fairbanks International Airports are taking steps to initiate an off-airport rental car program. The airports propose to adopt a regulation covering program requirements and to implement a percentage of gross sales privilege fee.

We encourage interested parties to submit written comments and/or to participate in the public hearings scheduled for September 15th in Anchorage and September 16th in Fairbanks.

Enclosed is the following information:

- A copy of the public notice for the proposed regulation
- A copy of the proposed regulation
- A copy of the public notice for the proposed fee
- A report on the airports' study of the subject

If you are missing any of the listed items, please contact me at the Anchorage International Airport Director's Office, P.O. Box 196960, Anchorage AK 99519-6960. My telephone number is (907) 266-2549 and my fax number is (907) 243-0663.

Please do not hesitate to call me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Judie Pank".

Judie Pank
Policy Planner

Enclosures

cc: Lowell Humphrey, ANC Director
Doyle Ruff, FAI Manager
John Ungar, AIAS Controller

5

NOTICE OF PROPOSED CHANGES TO THE REGULATIONS
OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Notice is given that the Department of Transportation and Public Facilities, under authority of AS 02.15.020, AS 02.15.060, AS 02.15.090 and AS 37.15.500 proposes to amend regulations¹ in Chapter 40 of Title 17 of the Alaska Administrative Code, to include a definition of and operations for off-airport rental car businesses that conduct certain activities on the Anchorage and Fairbanks International Airport premises. The proposed regulations include application, fee, operating, and financial report and responsibility requirements. In addition, the existing definition section for Chapter 40 (17 AAC 40.390) is repealed and readopted as 17 AAC 40.990, in order to place the section in a more appropriate location. The proposed regulations will take effect no sooner than January 1, 1994.

Notice is also given that any person interested may present written statements or arguments relevant to the proposed action by writing to the Department of Transportation and Public Facilities, Alaska International Airport System, c/o Judie Pank, P.O. Box 196960, Anchorage, Alaska 99519-6960. Written comments should be received no later than 5 p.m., September 20, 1993.

Oral public hearings on these proposed regulations will be held at 9 a.m. September 15, 1993 in the Susitna Conference Room in C Concourse at Anchorage International Airport, 5000 West International Airport Road, Anchorage Alaska, and at 9 a.m., September 16, 1993 in the Pope and President Room at Fairbanks International Airport, 5450 Airport Way, Fairbanks, Alaska.

If you are a person with a disability who may need a special modification in order to comment on the proposed regulations, please contact Judie Pank at (907)266-2549 or (907)266-2686 (TTY), by no later than 5 p.m. on September 9, 1993 to make any reasonable arrangement.

This action is not expected to require an increased appropriation. Copies of the proposed regulations may be obtained at the Anchorage International Airport Director's Office or the Fairbanks International Airport Manager's Office.

The Commissioner, after the oral hearings scheduled above, will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them.

DATED at Anchorage, Alaska this 19th day of August, 1993.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Judie Pank 8/19/93
Judie Pank, Policy Planner
Anchorage International Airport

¹Department of Law File No. 993-93-0116

Register , 1993

Transp. and Public Facilities

17 AAC 40 is amended by adding a new section to Article 1 to read:

17 AAC 40.045. OFF-AIRPORT RENTAL CAR BUSINESS. (a) A person who operates an off-airport rental car business that wishes to pick up customers at the Anchorage or Fairbanks International Airports shall first obtain permission by applying for a privilege under 17 AAC 40.320.

(b) An off-airport rental car business that obtains permission to pick up customers at the Anchorage or Fairbanks International Airports shall

- (1) follow airport rules set out in this chapter;
- (2) comply with the terms of any privilege granted under 17 AAC 40.320;
- (3) pay a fee fixed under AS 02.15.090(a);
- (4) no later than the 30th day following the end of the month, file with the department a monthly report stating the amount of gross revenue received from customers picked up at the Anchorage and Fairbanks International Airports, respectively;
- (5) allow the state to audit any accounts concerning the report described in (4) of this subsection; and
- (6) comply with the requirements of financial responsibility under AS 28.33.010 and AS 23.30.045.

(Eff. ___/___/___, Register ___)

Authority:	AS 02.15.020	AS 02.15.230	AS 37.15.500
	AS 02.15.090	AS 23.30.045	
	AS 02.15.220	AS 28.33.010	

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17 AAC 40.390 is repealed and readopted as 17 AAC 40.990.

17 AAC 40.990 is amended by adding a new paragraph to read:

(16) "off-airport rental car business" means a rental car business that operates at a location that is not in the Anchorage or Fairbanks International Airport terminal area and that uses vehicles to transport customers between the Anchorage or Fairbanks International Airport terminal and the location of the car rental business. (In effect before 7/28/59; am 11/14/62, Register 7; am 6/10/64, Register 16; am 1/13/73, Register 44; am __/__/ , Register __)

Authority: AS 02.15.020 AS 02.15.070
AS 02.15.060 AS 02.15.090

8

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NOTICE OF PROPOSED OFF AIRPORT RENTAL CAR PRIVILEGE FEE

In accordance with AS 02.15.090(a), 17 AAC 40.070(c), and 17 AAC 40.340(a), the State of Alaska Department of Transportation and Public Facilities (DOT&PF) proposes to adopt a percentage privilege fee for off-airport rental car firms using the Anchorage and Fairbanks International Airports.

The proposed fee is 8% of gross sales for business derived by picking up rental car customers at the airports.

Interested parties may obtain information on DOT&PF's review of off-airport rental car fees by contacting Judie Pank, Anchorage International Airport, P.O. Box 196960, Anchorage AK 99519-6960; telephone 266-2549 or 266-2686(TTY).

DOT&PF will hold oral public hearings on the proposed fee and program recommendations concurrently with oral hearings for off airport rental car business regulations. The hearings will be at 9 a.m. on September 15, 1993 in the Susitna Room (adjacent to Gate C-2) in the South Terminal at Anchorage International Airport and at 9 a.m. on September 16, 1993 in the Pope and President Room at Fairbanks International Airport.

Written comments concerning the proposed fee may be presented at the public hearings or mailed to Judie Pank at the address listed above. To be considered, written comments must be received by no later than 5 p.m, September 20, 1993.

Persons with a disability who may need special accommodation to comment on the proposed fee or participate in the public hearing should contact Judie Pank at the above address and phone number by September 9, 1993 to make reasonable arrangements.

Upon its own motion, or based on written or oral comments, DOT&PF may adopt proposals within the scope of this notice without further notice or may decide to take no action.

Judie Pank
Judie Pank, Policy Planner
Anchorage International Airport

8/19/93
Date

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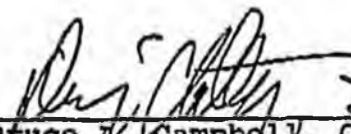
ORDER ADOPTING, AMENDING, AND REPEALING
REGULATION OF DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

The attached two pages of regulations, dealing with off-airport rental car operations at the Anchorage and Fairbanks International Airports, are hereby adopted and certified to be a correct copy of the regulations that the Department of Transportation & Public Facilities adopts under the authority of AS 02.15.020, AS 02.15.060, AS 02.15.090, and AS 37.15.500 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and AS 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect of the 30th day after it has been filed by the lieutenant governor as provided in AS 44.62.180.

DATE: 11/1/93

Acting For  *Dep. Comm*
Bruce W. Campbell, Commissioner
Department of Transportation &
Public Facilities

FILING CERTIFICATION

I, John B. Coghill, Lieutenant Governor for the State of Alaska, certify that on _____, 19____, at _____ .m.

I filed the attached regulations according to the provisions of AS 44.62.040 - 33.62.120.

Lieutenant Governor

Effective _____.

Register _____.

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MEMORANDUM**State of Alaska**Department of Transportation and Public Facilities
Anchorage International AirportTO: Elizabeth Hickerson
Assistant Attorney General
Department of Law

DATE: November 5, 1993

TELEPHONE NO.: 266-2549

FROM: Judie Pank *Judie*
Policy Planner
Anchorage International AirportSUBJECT: Off Airport Rental
Car Regulations

The DOT&PF Commissioner has signed the adoption order for the off airport rental car regulations. In accordance with the requirements specified in the Drafting Manual for Administrative Regulations, I've attached the following information for your final review and processing through the Regulations Attorney.

1. Original *Affidavit of Notice of Proposed Regulation and Furnishing of Additional Information*, signed and notarized;
2. Original *Affidavit of Oral Hearing*, signed and notarized;
3. Original *Affidavits of Publication* from the Fairbanks Daily News Miner, the Anchorage Daily News, and the Alaska Journal of Commerce;
4. Copy of the public notice;
5. Original adoption order, signed by the Commissioner; and
6. An original plus one copy of the regulation.

I believe this is the total package you need to go ahead with processing this regulation through the Department of Law. Please give me a call if you need further information from me.

Thanks for your assistance.

Attachmentscc: Lowell Humphrey, ANC Director
D. C. Ruff, FIA Manager
John Ungar, AIAS Controller

JP/jp

MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Bruce Campbell
Commissioner
Dept. of Transportation
and Public Facilities

DATE: December 6, 1993

FILE: 993-93-0116

TEL.NO.: 465-3600

SUBJECT: Regulations re Off-
Airport Rental Car
Operations at Anchorage
and Fairbanks Inter-
national Airports
(17 AAC 40.045)

Deborah E. Behr
FROM: Deborah E. Behr
Assistant Attorney General
Legislation/Regulations Section

Under AS 44.62.060, we have reviewed your adoption of these regulations and approve the changes for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with the 2 pages of regulations and related documents.

You might wish to contact the lieutenant governor's office to confirm the filing date and effective date of the regulation changes.

The August 19, 1993 public notice and the November 1, 1993 adoption order both state that this action is not expected to require an increased appropriation. Therefore, AS 44.62.195 does not require a fiscal note.

In accordance with AS 44.62.125(b)(6), some corrections have been made in the regulations, as shown on the attached copy.

DEB:cl

cc w/enc.: *J*udie Pank, Policy Planner
Anchorage International Airport

Elizabeth J. Hickerson
Assistant Attorney General
Anchorage

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Register , 1994 Transp. and Public Facilities

17 AAC 40 is amended by adding a new section to Article 1 to read:

17 AAC 40.045. OFF-AIRPORT RENTAL CAR BUSINESS. (a) As of June 1, 1994, a person who operates an off-airport rental car business and who wishes to pick up customers at an Anchorage or Fairbanks International Airport terminal building shall first obtain permission by applying for a privilege under 17 AAC 40.320. Applications for a privilege under this subsection will be available at the Anchorage and Fairbanks International Airports no later than April 15, 1994.

(b) An off-airport rental car business that obtains permission to pick up customers at an Anchorage or Fairbanks International Airport terminal building shall

DEB

- (1) follow airport rules set out ^{in law, including} in this chapter;
- (2) comply with the terms of any privilege granted under 17 AAC 40.320;

DEB

- (3) pay a fee fixed under AS 02.15.090(a);
- (4) no later than the last day of each month, file with the ^D department ^{of Transportation and Public Facilities} a monthly report stating the amount of gross revenue received during the previous month from customers picked up at an Anchorage or Fairbanks International Airport terminal building, respectively; and

DEB

- (5) allow the ^{Department of Transportation and Public Facilities} state to audit any accounts concerning the report described in (4) of this subsection.

~~(Eff. / / , Register)~~

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Register , 1994

Transp. and Public Facilities

Authority: ~~AS 02.15.020~~
~~AS 02.15.090~~

~~AS 02.15.220~~
~~AS 02.15.230~~

~~AS 37.15.500~~ DEB

Publisher
Please
add this
subsection
(b) to
17 AAC
40.045,
DEB

~~17 AAC 40.046. DEFINITIONS.~~ (b) Unless the context indicates
otherwise, in ~~17 AAC 40.045~~ ^{this section} ~~17 AAC 40.046,~~ DEB

"off-airport rental car business" means a rental car
business that is not located in an Anchorage or Fairbanks
International Airport terminal building. (Eff. ___/___/, Register
___)

Authority: AS 02.15.020
AS 02.15.060

AS 02.15.070
AS 02.15.090
AS 02.15.220
AS 02.15.236
AS 37.15.500

DEB



Anchorage
International
Airport

State of Alaska DOT & PF
P.O. Box 190649
Anchorage, Alaska
USA 99519-0649
(907) 266-2525
FAX (907) 243-0663

14
January 19, 1994

TO: Rental Car Firms and Other Interested Parties:

This letter is to let you know the current status of the Anchorage and Fairbanks International Airports' proposal to adopt off-airport rental car regulations and fees.

Off airport rental car regulations have been adopted (17 AAC 40.045) and became effective January 12, 1994. Airport leasing staff are preparing permits which will be available by April 15. All off airport rental car operators must have a permit by June 1 if they wish to conduct business on the airport.

We received comments on the proposed 8% of gross sales privilege fee in September, 1993, and the comments are still under consideration. We anticipate a final fee decision by the end of February.

The airports typically charge a minimum fee for leases and permits. That minimum is \$100 for an agreement with a term of less than one year or \$250 for an agreement with a term of one year or more. These minimums would also apply to off airport rental car permits. Off airport operators would pay the minimum OR the percentage fee, whichever is greater.

We did not make the minimum fees clear in our original public notice, so are issuing a supplemental public notice to correct that oversight. Attached is a copy of the notice.

Feel free to give me a call if you have questions or would like further information on the status of off airport rental car fees. You can reach me at (907) 266-2549.

Sincerely,

A handwritten signature in cursive script that reads "Judie Pank".

Judie Pank
Policy Planner

cc: Diane Barth, ANC Leasing Chief
Jane Brownfield, FIA Leasing Chief
Lowell Humphrey, ANC Director
D. C. Ruff, FIA Manager
John Ungar, AIAS Controller

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STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
SUPPLEMENTAL NOTICE OF OFF AIRPORT RENTAL CAR FEE

In accordance with AS 02.15.090(a), 17 AAC 40.070(c), and 17 AAC 40.340(a), the State of Alaska Department of Transportation and Public Facilities (DOT&PF) issues this supplemental notice to the Notice of Proposed Off Airport Rental Car Fee published in August and September, 1993.

Comments have already been received on the August, 1993 notice of a proposed 8% of gross sales privilege fee for business off airport rental car firms derive from picking up passengers at the Fairbanks and Anchorage International Airports. DOT&PF is considering the adoption of a minimum fee in conjunction with the percentage fee previously proposed.

DOT&PF invites comments on the proposed minimum fee only. DOT&PF proposes that each year off airport rental car agencies pay the greater of either the minimum fee OR 8% of revenue received from passengers picked up at the airports. The proposed minimum is \$100/year for a short term permit (less than one year) and \$250/year for a longer term permit (one year or more duration).

Written comments concerning the proposed minimum fee may be mailed to Judie Pank, Anchorage International Airport, P.O. Box 196960, Anchorage AK 99519-6960. To be considered, written comments must be received by no later than 5 p.m. on Thursday, February 17, 1994.

Persons with a disability who may need special accommodation to comment on the proposed minimum fee should contact Judie Pank at the above address (phone 266-2549; TTY 266-2686; fax 243-0663).

Upon its own motion, or based on written comments, DOT&PF may adopt proposals within the scope of this notice without further notice or may decide to take no action.

Judie Pank

Judie Pank, Policy Planner
Anchorage International Airport

Date 1/18/94

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MEMORANDUM**State of Alaska**Department of Transportation and Public Facilities
Anchorage International AirportTO: Helvi Sandvik
Deputy Commissioner

DATE: February 23, 1994

RECEIVED

FEB 25 1994

TELEPHONE NO.: 266-2525

FROM: John J. Ungar
AIAS Controller990
Deputy CommissionerSUBJECT: Off Airport Rental Car
Fee Recommendation

On November 1, 1993 former Deputy Commissioner Chitty signed an order adopting off-airport rental car regulations. The regulations are now in effect and require off-airport rental car operators to have a permit and begin paying fees on June 1, 1994. The fee is not specified in the regulation and in accordance with AS 02.15.090(a), the Commissioner can adopt the fee by order.

This memo addresses only the fee recommendation. Attached is a fee adoption order for consideration and signature.

We completed the required public notices and held public hearings on the proposed 8% of gross sales privilege fee in conjunction with the hearings on the regulations. Most objections received during and after the hearings were related to the percentage fee. Attached are copies of all written comments and the report containing our original recommendation. Also attached is a summary of oral comments and a brief response to the concerns.

After the public comment period, we reconsidered our original 8% fee recommendation and looked again at various fee structure possibilities. We considered the following:

- Per-trip fee
- Per-contract fee
- Flat fee
- Percentage fee of less than 8%
- Phasing in the percentage fee by increasing it 1%/year up to a maximum of 8%
- Different fees for ANC and FIA
- Maintaining the status quo
- Exempting a portion of gross sales from the fee requirement

We concluded that our original reasons for not recommending per-trip, per-contract, and flat fees are still appropriate (see attached Report, Page 9 and 10). We found no valid reason to reduce the proposed percentage or to phase it in over a period of years. Eight percent is less than the maximum charged to on-airport rental car firms and is common within the United States airport industry.

We looked at whether fee structures should be different for the two international airports because of community and airport size. Our research shows that off-airport rental car fee structures throughout the country are not related to airport size (see attached Report, Appendix 3). We believe the rental car market is similar in Anchorage and Fairbanks and the reasons for implementing off-airport rental car fees are the same at both airports. We therefore recommend identical fees for ANC and FIA.

OFF-AIRPORT RENTAL CAR PRIVILEGE FEES

ANCHORAGE AND FAIRBANKS INTERNATIONAL AIRPORTS

AUGUST, 1993

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DEFINITIONS

The following definitions apply in this report:

Airport: The Anchorage and Fairbanks International Airports collectively, unless otherwise identified.

ANC: Anchorage International Airport.

FAI: Fairbanks International Airport.

FY 1992: State of Alaska Fiscal Year 1992 (July 1, 1991 through June 30, 1992).

Off-Airport Operator: An individual or organization conducting a vehicle rental business from a location other than an Airport terminal, either by use of shuttle vehicles to transport passengers from the terminal to the vehicle rental business location or by picking up passengers at the terminal in the vehicle the passenger will rent.

On-Airport Operator: An individual or organization authorized to conduct a vehicle rental business from an Airport terminal building under a written agreement with the Airport.

Privilege Fee: A fee charged an operator for the opportunity to conduct business on the Airports and to enjoy the business benefits derived from the presence of the Airport and access to its passengers.

Rental Car(s): Automobiles, passenger vans, trucks, and other similar vehicles for road transportation. This definition does not include motor homes or other similar vehicles containing built-in sleeping accommodations.

State: The State of Alaska, Department of Transportation and Public Facilities, Alaska International Airport System (Anchorage and Fairbanks International Airports combined).

INTRODUCTION

The Airports desire to meet the following goals:

1. Preserve existing revenue,
2. Generate additional revenue,
3. Ensure that businesses pay fees consistent with the benefits they derive from the Airports, and
4. Continue a high level of service to the traveling public with convenient transfer from air to ground transportation.

In keeping with these goals, the State proposes to adopt a regulation and implement privilege fees for Off-Airport Operators.

This report summarizes the Airports' study of the subject and provides recommendations for an Off-Airport Operator program.

NOTE: Interested parties may obtain copies of documents referred to in the report by contacting the Airports. Copying charges are \$. 25 per page.

Copies of court decisions may be obtained from the Anchorage or Fairbanks Law Libraries.

OVERVIEW

Both On- and Off-Airport Operators provide rental car services to airline passengers and depend on the presence of the Airports to conduct a portion of their business. The benefits On- and Off-Airport Operators derive from the Airports are essentially the same and include the following:

- Access to the Airport passenger market, and
- Presence of Airport constructed and maintained facilities such as terminals, roadways, and runways necessary to accommodate the passengers that are rental car customers.

Gross Sales

During FY 1992 On-Airport Operators reported combined gross sales of over \$20,000,000 from business conducted at ANC and FAI, of which \$17,320,000 in gross sales were reported at ANC. The Airports estimate that Off-Airport Operators account for 16.5%* of the ANC rental car passenger market and generate approximately \$3,400,000** in annual gross sales from business conducted at ANC. FAI currently estimates negligible gross sales from Off-Airport Operator activity, but recognizes that such activity might grow.

Airport Revenue Comparison

In FY 1992, the Airports received over \$1,900,000 from On-Airport Operator privilege fees. During the same time period the Airports received only \$175 from Off-Airport Operators.

Appendix 1 compares the revenue from the fees paid by On- and Off-Airport Operators at ANC and FAI during FY 1990, FY 1991, and FY 1992.

Estimated Additional Airport Revenue

If the State adopts the recommendations in this report, the Airports estimate they would receive \$270,000** in additional annual revenue from Off-Airport Operators.

* Based on data collected at ANC in a February, 1993 survey conducted by Hellenthal and Associates, Inc.

** Estimates are based on data collected during February, 1993. ANC recognizes these estimates may be conservative due to seasonal fluctuations in the volume of rental car activity.

AUTHORITY

The State of Alaska owns ANC and FAI and operates them through the Department of Transportation and Public Facilities (department) under authority of AS 02.15.060, AS 02.15.090, and AS 37.15.410-550.

AS 02.15.060 establishes the authority of the department to "...plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports....".

AS 02.15.090 sets forth the department's authority to operate and to grant user privileges, and to "...establish the terms and conditions and fix the charges, rentals, and fees for the privileges or services, that are reasonable and uniform for the same class of privilege or service.....".

AS 37.15.500 provides that the "...commissioner of transportation and public facilities shall fix and collect such fees, charges and rentals derived by the state from the ownership, lease, use and operation of the airports and all of the facilities and improvements of them or used in connection with them as will provide revenues sufficient to comply with all covenants of the bond resolution."

EXISTING ARRANGEMENTS

On-Airport Operators

On-Airport Operators have existed as airport concessions at ANC and FAI for at least 20 years. They have consistently paid a percentage fee for the privilege of conducting rental car business on the Airports.

Six On-Airport Operators currently provide service to the traveling public at ANC and six provide service at FAI. In recent years ANC and FAI selected successful bidders for the On-Airport concessions based on the highest minimum financial guarantee offered.

The existing agreements require concessionaires to pay the greater of the minimum guarantee amount bid or a percentage of gross sales privilege fee established by the Airports. The current agreements require from 8-10% of gross sales, depending upon the volume of business. Prior to 1987, the percentages were a straight 10%.

Airports in the United States typically charge privilege fees to On-Airport Operators. Although there are some exceptions, the percentage fee most commonly used is 10% of gross sales. The term "gross sales" is often referred to as "gross receipts".

The current agreements at ANC and FAI require On-Airport Operators to provide evidence of insurance coverage, submit annual statements of gross sales, and allow the State to audit concessionaire records.

Insurance language from the current On-Airport Operator agreements is attached as Appendix 5 and includes requirements for workers' compensation, comprehensive general liability, and automobile liability. Audit and annual gross sale statement requirements from current On-Airport Operator agreements are shown in Appendix 6.

Existing On-Airport Operator agreements at FAI and ANC expire on April 30, 1994, and October 31, 1994, respectively.

Off-Airport Operators

Several Off-Airport Operators provide rental car service to ANC passengers from facilities located off Airport property or away from the Airport terminals. Since at least the late 1970's, Off-Airport Operators have conducted car rental business at ANC. There has been some Off-Airport Operator activity at FAI in the past, but activity is minimal at this time.

The Airports require Off-Airport Operators to purchase a \$25 annual permit for each shuttle vehicle used on the Airports. The annual permit is primarily used for identifying vehicles with permission to operate on the Airport and the fee is not related to the business benefits Off-Airport Operators derive from the Airports. The permit now granted to Off-Airport Operators is the same type of permit used for taxicabs and hotel/motel courtesy vehicles.

The annual permits currently used at ANC do not require any specific types or minimum levels of insurance coverage but applicants must provide some evidence of insurance coverage. FAI currently requires specific insurance minimums of \$50,000 property damage and \$100,000/\$300,000 personal injury or death. There are no audit or annual gross sales statement requirements at either Airport.

DISCUSSION

After careful consideration, ANC and FAI concluded that On- and Off-Airport Operators have access to the same airport passenger market, provide essentially the same service to those passengers, and should thus be subject to comparable fee and insurance requirements. This conclusion is consistent with AS 02.15.090, 17 AAC 40.320, and a 1988 Alaska Supreme Court decision (Herrick v. State of Alaska, 754 P.2d 1111 (Alaska 1988)).

Preservation of Existing Revenue

ANC and FAI receive in excess of \$1.9 million annually from On-Airport Operators. The Airports find it important to encourage car rental agencies to operate from the Airport terminals to the extent the terminals can accommodate such activity. If the Airports continue to differentiate the type of fee for operators providing essentially the same class of service, this may discourage potential bidders from participating in competitive bids for the on-Airport rental car concessions. On-Airport Operators might relocate off of Airport property, pay the \$25 permit fee, and continue to access the Airport passenger market. On-Airport Operator movement to off-Airport locations would reduce a significant existing revenue source and could decrease a level of service the Airports desire to provide for the traveling public.

Generation of Airport Revenue

ANC and FAI are obligated by law to be self supporting and the Airports receive no general fund monies. Federal Aviation Administration grant assurances also require the Airports to be as financially self sustaining as possible. All airlines and other users operating at either or both ANC and FAI pay rates and fees sufficient to cover the combined operating and capital costs for both Airports.

Continuation and implementation of fees appropriate to the various non-airline classes of Airport use is integral to the Airports' efforts to maintain reasonable air carrier rates and fees. It is also consistent with 17 AAC 40.340(a)(1) that states in part ".....privileges and permits granted will be set at an amount that will produce fair and reasonable revenue."

Consistent with AS 37.15.500, ANC and FAI will use revenue generated through off-Airport rental car privilege fees to maintain and operate both Airports.

Cost/Benefit Evaluation

ANC and FAI evaluated the costs and benefits to the Airports of implementing an off-Airport rental car program. The Airports estimate a \$25,000 initial implementation cost and a \$6,000 annual expense for program administration and monitoring. Costs include staff expense in drafting and administering agreements and audit expenses in monitoring compliance. Benefits include Airport revenue enhancement, preservation of existing revenue, and a closer approximation of similar fee arrangements for businesses providing essentially the same service to ANC and FAI passengers. Retention of the existing revenue source and the potential for \$270,000 in additional annual revenue far outweigh the cost for implementation and ongoing administration.

Economic and Tourism Effects

ANC and FAI considered potential impacts on the local economy and tourism, as well as the possibility of increased costs to rental car users. The Airports concluded that Off-Airport Operator fees at ANC and FAI will have no greater effect on the local economy or tourism than do the fees currently paid by On-Airport Operators. The Airports do not anticipate adverse effects on the tourism industry nor costs to rental car users beyond those that they pay to On-Airport Operators for use of rental cars.

Off-Airport Operator privilege fees will help support maintenance of improvements to Airport facilities used by visitors and Alaska residents alike.

Other Ground Transportation

ANC and FAI considered whether other ground transportation modes provide the same service as rental cars and concluded that rental car businesses, whether on or off the Airport, are significantly different from other types of ground transportation. Each ground transportation category constitutes a different class of use. This finding is consistent with existing case law. (Alamo Rent-A-Car, Inc. v. Sarasota Manatee Airport Authority, 825 P.2d 367 (11th Cir. 1987), cert. den. 484 U.S. 1003 (1988)).

ANC and FAI contracted with KPMG Peat Marwick to conduct a ground transportation inventory in 1990. Among other recommendations, the inventory report suggested ANC and FAI consider ground transportation fees separately by class of services provided in relation to the business benefits each class of service derives from the Airports. KPMG Peat Marwick recommended ANC and FAI consider percentage of gross sales privilege fees for Off-Airport Operators.

Ongoing user fee analysis at the Airports will include a review of the various classes of ground transportation use. The Airports are addressing Off-Airport Operator fees first because of the impact such fees might have on the upcoming On-Airport Operator bids at ANC and FAI.

Fee Options Considered

The Airports considered several different fee arrangements for Off-Airport Operators:

Per-Trip Fee

This fee is charged to Off-Airport Operators each time one of their shuttle vehicles enters the Airport for pick up or drop off of passengers. Such fees vary considerably among airports in the United States and are typically based upon each airport's specific roadway configuration, presence or absence of an automated vehicle identification (AVI) system, or the cost of the roadways.

Airports outside of Alaska that charge a per-trip fee usually have an AVI system to provide trip information for use in billing operators. Some airports, however, depend on activity reports filed by operators and the airports periodically audit the operator. Some airports charge Off-Airport Operators a per-trip fee in addition to a percentage privilege fee.

Neither ANC or FAI currently has an AVI system. Auditing the number of trips to verify accuracy of payments would require round-the-clock, in-person monitoring. The Airports conclude that a per-trip fee is not practical and do not recommend such a fee at this time. It is possible either Airport may install an AVI system in the future and will reevaluate use of per-trip fees at that time.

Per-Contract Fee

A per-contract fee consists of a set charge for each rental-car contract resulting from an Airport passenger pick up.

Although some lower 48 airports use a per-contract fee, the national trend is toward a percentage of gross sales fee consistent with the type of fee typically charged On-Airport Operators. This information was obtained from a variety of sources including the American Association of Airport Executives, the consulting firm of KPMG Peat Marwick, individual discussions with airport executives, and the April 1992 Parking Professional. Appendices 2 and 3 summarize some of this information.

A per-contract fee does not take into account the variation in gross sales between short and long term rental car contracts. ANC and FAI believe a per-contract fee is inconsistent with the Airport's goal of raising revenue and does not reflect the business benefits Off-Airport Operators derive from Airport use. In addition, a per-contract fee differs significantly from the type of fee paid by On-Airport Operators who provide rental car services to essentially the same passenger market.

Flat Fee

This is a set monthly or annual fee charged to Off-Airport Operators for use of the Airport.

ANC and FAI concluded it is not practical to establish a flat fee that adequately represents the business benefits Off-Airport Operators derive from the Airports since various Off-Airport Operators will have differing levels of Airport use. Further, a flat fee does not take into account that On- and Off-Airport Operators serve essentially the same Airport passenger market.

Percentage Privilege Fees

Charging Off-Airport Operators a percentage of gross sales is widely accepted throughout the United States airport industry as a fair indication of the business benefits rental car firms derive from airports. Percentage of gross sales fees for both On- and Off-Airport Operators reflect the fact that car rental business is a distinct class of use. On-Airport Operators pay percentage fees; Off-Airport Operators should have the same type of fee structure because they are the same class of use.

OTHER AIRPORTS IN THE UNITED STATES

Airports in the United States began charging privilege fees for off-airport rental car operations during the 1980s, with many airports implementing these fees between 1988 and 1993. According to the American Association of Airport Executives, well over 70 airports in the United States now charge off-airport rental car fees. See Appendices 2 and 3 for a partial list.

Appendix 2 illustrates the diversity of fee structures in existence for on- and off-airport rental car agencies at airports throughout the country. The fee structures are not easy to compare because each airport varies in ground transportation equipment, ramp and roadway configuration, amount of terminal space available for rental car operations, passenger profile, and size. The information is presented only to illustrate the airport industry practice of charging fees for airport use by off-airport rental car firms.

Although there are a variety of available fee structure options, percentage of gross sales privilege fees are now common at many airports in the United States. Appendix 3 shows current off-airport rental car percentage fees at several small, medium, and large hub airports.

The primary reasons for implementing off-airport rental car fees at most airports have been one or more of the following reasons:

1. To preserve existing revenue generated from on-airport rental car firms and to prevent giving an incentive to such firms to move off the airport.
2. To increase overall airport revenue.
3. To ensure a consistent contractual arrangement with all car rental firms doing business on the airport.

Some rental car companies have attempted to prevent airports from imposing off-airport rental car fees through legal and political channels. In a number of lawsuits challenging off-airport fees on statutory and constitutional grounds, state and federal courts have consistently upheld an airport operator's right to impose off-airport privilege fees. A partial list of relevant cases is shown in Appendix 4.

RECOMMENDATION

The Airports believe the off-airport privilege fee should reflect airport industry practice, be consistent with the type of fee paid by On-Airport Operators, and relate to the business benefits Off-Airport Operators derive from the Airports.

The Airports therefore recommend implementing a percentage of gross sales privilege fee for Off-Airport Operators who use the Airports from which to derive business.

The Airports recommend requiring Off-Airport Operators to enter into a written agreement with the Airports before conducting rental car business at ANC or FAI. The Airports' tentative schedule is to issue Off-Airport Operator agreements on December 1, 1993 with an effective date of January 1, 1994.

The Airports recommend that the agreement contain at least the following provisions:

A privilege fee based on 8% of gross sales from Airport-related business.

Eight percent is in line with industry practice. It is lower than the 10% maximum fee currently charged On-Airport Operators and reflects the fact that On-Airport Operators have a presence in the terminal and therefore more direct exposure to passengers without prior reservations.

A requirement for the Off-Airport Operator to demonstrate evidence of insurance coverage. See Appendix 5 *.

A requirement to submit audited annual statements of gross sales. See Appendix 6 *.

A requirement to submit to the Airports monthly payments and certified activity reports stating gross sales derived from business generated through customers picked up at the Airport.

A requirement allowing the Airport to conduct audits to verify the accuracy of payments made to the State. See Appendix 6 *.

A contractual definition of gross sales as similar as possible to that used for On-Airport Operators. See Appendix 7*.

* The language in these appendices is contained in current On-Airport Operator agreements, which may be modified during preparation of the future agreements. The requirements for Off-Airport Operators will be similar to then-current On-Airport Operator requirements, where reasonable and appropriate.

LIST OF APPENDICES

- Appendix 1 Comparison of revenues received from On- and Off-Airport Operators at the Anchorage and Fairbanks International Airports for fiscal years 1990, 1991, and 1992.
- Appendix 2 Fee structures currently in place at some United States airports.
- Appendix 3 Percentage privilege fees in place at some United States airports of varying sizes.
- Appendix 4 Partial list of court decisions related to off-airport rental car fees.
- Appendix 5 Insurance requirements contained in current ANC and FAI On-Airport Operator agreements.
- Appendix 6 Audit and annual gross sales report language contained in current ANC and FAI On-Airport Operator agreements.
- Appendix 7 Gross sales definition contained in current ANC and FAI On-Airport Operator agreements.

CAR RENTAL REVENUE
ANCHORAGE AND FAIRBANKS INTERNATIONAL AIRPORTS
ON AND OFF AIRPORT COMPARISON

ANCHORAGE INTERNATIONAL	FY 1990	FY 1991	FY 1992
On Airport	\$ 1,551,599	\$ 1,449,373	\$ 1,648,600
Off Airport	\$ 75	\$ 125	\$ 175
 FAIRBANKS INTERNATIONAL			
On Airport	\$ 247,871	\$ 274,429	\$ 321,905
Off Airport	\$ 0	\$ 0	\$ 0
 TOTAL (Both Airports)			
On Airport	\$ 1,799,470	\$ 1,723,802	\$ 1,970,505
Off Airport	\$ 75	\$ 125	\$ 175

AIRPORT	On-A/P Rental Car	Off-A/P Rental Car	AIRPORT	On-A/P Rental Car	Off-A/P Rental Car
Anchororage International Airport	GROSS SALES: < \$50,000 = 8% \$50,000 to \$100,000 = 9% >\$100,000 = 10% <u>OR</u> Minimum guarantee + \$60 parking fee per space in garage or \$30 per space outside garage	-----	Dade County Aviation Department	Lease agreements vary with company	\$500 annual fee + 2.50/trip for seating capacity < = 15 <u>OR</u> + \$3 per trip for capacity > 15
Baltimore/Washington International Airport	-----	no charge	Daytona Beach Regional Airport	10% of gross <u>OR</u> Minimum contract guarantee	N/A
Broward County Aviation Department	10% of gross	\$3.10 per contract	DFW International Airport	10% of gross	8% of gross
Charlotte/Douglas International Airport	10% of gross <u>OR</u> Minimum guarantee + ready car space rental	IN PROCESS OF REVISING FEES	General Mitchell International Airport	Minimum guarantee <u>OR</u> <\$1 million = 8% <\$2 million = 9% >\$2 million = 10% + \$70 per stall + \$32 sq/ft counter fee per year; + \$32 sq/ft service area fee per year (land); and + \$6 sq/ft service area fee per year (building)	\$500 annual permit per courtesy vehicle
Chicago O'Hare International Airport	10% of gross + counter space rental + on property rent	IN PROCESS OF REVISING FEES	Greater Orlando Aviation Authority	10% of gross	8% of gross

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AIRPORT	On-A/P Rental Car	Off-A/P Rental Car	AIRPORT	On-A/P Rental Car	Off-A/P Rental Car
Cincinnati	-----	4.50% first year 4.75% second year caps at 5%	Harrisburg International Airport	10% of gross + \$24 sq/ft counter space fee + \$10 per ready return fee/month	10% of gross
Clark County Dept. -- McCarren International Airport	9% of gross OR Minimum guarantee \$57,583 + \$20 Sq/ft counter space rental	\$3 per contract for people picked up by courtesy vans	Hartsfield International Airport	10% of gross	8% of gross
Cleveland Hopkins International Airport	-----	\$250 per vehicle every 6 months	Hillsboro County Aviation	10% of gross	\$2,600 per vehicle + 8% of gross with \$500,000 exemption
Port of Columbus International Airport	9% of gross	\$1.00 per trip			

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AIRPORT	On-A/P Rental Car	Off-A/P Rental Car	AIRPORT	On-A/P Rental Car	Off-A/P Rental Car
Houston International Airport & Hobby Airport	8-10% of gross based on passenger traffic with \$180,000 exempt	Greater of 4% of gross based on passenger traffic OR aggregate trip fee based on seating capacity: 1-11 = \$0.50 12-24 = \$0.75 > 25 = \$1.00	Kansas City International Airport	9% of gross revenues monthly	7% of gross revenues monthly
Indianapolis Airport Authority	10% of gross	7% of gross	Los Angeles International Airport (LAX)	10% of gross	7 % of gross + circuit fee: \$0.32 for vehicles < 25 passengers; \$0.48 for vehicles > = 25 passengers
John Wayne Airport	Greater of 10% of gross OR \$5,724 per month	9% of gross	Lee County Port Authority - - Southwest Regional Airport/Fort Myers	10% of gross	4% of gross for small firms. 8% of gross for large firms + \$1 trip fee + vehicle permit fee based on seating capacity: < 5 passengers \$15 per month 6-12 passengers \$35 per month. 13-17 passengers \$50 per month
Kalamazoo County Airport	9.2% of gross + \$13.83 per sq/ft of counter space	9% of gross			

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