

TO AACA Board of Directors: AACA sought council from one the state's leading authorities on ADOT regulatory authority on leasing and fees. Below are slightly modified comments related to the aircraft registration program proposed by ADOT&PF.

1. LEGAL AUTHORITY

The statute set out below was repealed by the legislature in 2001 (Section 14, Chapter 56, Session Laws of Alaska 2001). Prior to its repeal, this may be the only authority ever given to DOT&PF to implement an aircraft registration program, and this authority was restricted to the times of emergency or military necessity. (SEE BELOW).

When the legislature repealed AS 02.15.010 in 2001, the legislature removed the limited aircraft registration authority from DOT&PF. This repeal expressed the intent of the state legislature that DOT&PF should have no authority to implement any kind of aircraft registration scheme in Alaska. This appears to remain unchanged as of November 10, 2017.

Apart from the state legislature adopting new enabling law, DOT&PF has no statutory authority to adopt regulations for establishing statewide aircraft registration fees and requirements.

The opinion of the attorney general's office is that the following provisions of the Alaska Statutes give DOT the authority to enact the proposed regulation regarding registration of aircraft, and is not dependent upon whether or not an aircraft utilizes state-run airports or facilities: AS 02.10.010; AS 02.15.010; AS 02.15.020; AS 02.15.190; AS 02.15.220; AS 02.15.230; AS 44.42.020; and AS 44.42.030. Aircraft registration will be required unless an aircraft is exempt, or has received a waiver.

These provisions do not specifically call out powers to create a registration tax.

Sec. 02.15.010. Purpose. *The purpose of this chapter is to encourage and develop aeronautics and the establishment and operation of a state system of airports through cooperation with municipalities, and otherwise, including cooperation with the federal government and acceptance and utilization of federal funds allotted for this purpose.*

Sec. 02.15.020. Powers of department. (a) *The department may perform acts, issue and amend orders, adopt reasonable general or special regulations and procedures, and establish minimum standards, consistent with the provisions of this chapter, as it considers necessary to carry out the provisions of this chapter.*

(b) *The department may enter into contracts necessary or advisable to the execution of the powers granted it by this chapter. Where the planning, acquisition, construction, improvement, maintenance, or operation of an airport or air navigation facility is financed wholly or partially with federal money, the department, as agent of the state, or of a municipality, or person, may let contracts in the manner prescribed by the federal authorities acting under the laws and rules and regulations of the United States.*

(c) *The department may accept federal money and money from other public or private sources to accomplish in whole or in part any of the purposes of this chapter. All federal money accepted under this chapter shall be accepted and expended by the department upon the terms and conditions prescribed by the United States.*

Sec. 02.15.190. Collection of aeronautical data. *The department may collect, assemble, and publish aeronautical data pertinent to the operation of aircraft within the state. This data*

is for the benefit of the aviation industry and the general public, and may not duplicate data published by any other governmental agency.

Sec. 02.15.220. Enforcement of aeronautics laws. (a) The department and its officers and employees, and every state and municipal officer charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement of this chapter and of all regulations adopted and orders issued under it and any other state regulations or laws pertaining to the operation of aircraft.

Sec. 02.15.230. Police powers vested. (a) The commissioner and those officers and employees of the department whom the commissioner may designate have general police powers in aid of the enforcement of this chapter and the regulations and orders issued under it and all other laws of the state relating to aeronautics.

(b) Upon bilateral agreement, the commissioner may designate individuals licensed under [AS 18.65.400](#)-18.65.490 and police officers employed by the state or its political subdivisions to be present during the final passenger screening process before the boarding of each flight required to be in compliance with passenger screening regulations of the Federal Aviation Administration. Persons designated under this section, while performing their duties under that agreement, have the general police powers set out in (a) of this section.

Sec. 44.42.020. Powers and duties. (a) The department shall

(1) plan, design, construct, and maintain all state modes of transportation and transportation facilities and all docks, floats, breakwaters, buildings, and similar facilities;

(2) study existing transportation modes and facilities in the state to determine how they might be improved or whether they should continue to be maintained;

(3) study alternative means of improving transportation in the state with regard to the economic costs of each alternative and its environmental and social effects;

(4) develop a comprehensive, long-range, intermodal transportation plan for the state;

(5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;

(6) cooperate and coordinate with and enter into agreements with federal, state, and local government agencies and private organizations and persons in exercising its powers and duties;

(7) manage, operate, and maintain state transportation facilities and all docks, floats, breakwaters, and buildings, including all state highways, vessels, railroads, pipelines, airports, and aviation facilities;

(8) study alternative means of transportation in the state, considering the economic, social, and environmental effects of each alternative;

(9) coordinate and develop state and regional transportation systems, considering deletions, additions, and the absence of alterations;

(10) develop facility program plans for transportation and state buildings, docks, and breakwaters required to implement the duties set out in this section, including but not limited to functional performance criteria and schedules for completion;

(11) supervise and maintain all state automotive and mechanical equipment, aircraft, and vessels, except vessels and aircraft used by the Department of Fish and Game or the Department of Public Safety; for state vehicles maintained by the department, the department shall, every five years, evaluate the cost, efficiency, and commercial availability of alternative fuels for automotive purposes, and the purpose for which the vehicles are intended to be used, and convert vehicles to use alternative fuels or purchase energy efficient vehicles whenever practicable; the department may participate in joint ventures with public or private partners that will foster the availability of alternative fuels for all automotive fuel consumers;

(12) supervise aeronautics inside the state, under [AS 02.10](#);

(13) *implement the safety and financial responsibility requirements for air carriers under [AS 02.40](#);*

(14) *inspect weights and measures;*

(15) *at least every four years, study alternatives available to finance transportation systems in order to provide an adequate level of funding to sustain and improve the state's transportation system.*

(b) *The department may*

(1) *engage in experimental projects relating to available or future modes of transportation and any means of improving existing transportation facilities and service;*

(2) *exercise the power of eminent domain, including the declaration of taking as provided in [AS 09.55](#);*

(3) *publish plans, schedules, directories, guides, and manuals for distribution, with or without charge, to private or public entities or persons;*

(4) *operate state housing in support of the department's statutory responsibilities and charge rent that is consistent with applicable collective bargaining agreements, or, if no collective bargaining agreement is applicable, competitive with market conditions;*

(5) *charge reasonable fees to cover the costs of issuing easements, licenses, and permits and to cover the costs of reproduction, printing, mailing, and distribution of contract and bid documents and design and construction standards manuals;*

(6) *charge and collect fees for training services and technical assistance provided by department personnel.*

Sec. 44.42.030. Regulations. *The department may adopt regulations under [AS 44.62](#) (Administrative Procedure Act) to implement, interpret, or make more specific its powers and duties.*

The matter may have to be settled in the courts. It should be kept in mind that, if aircraft operators do not promptly file suit on this lack of authority issue and they acquiesce to pay the fees, they may be handing DOT&PF the ability to increase the fees by regulation in the future.

The AACA and the Airmens Association Board of Directors may agree on this issue and could collaborate.

2. PUBLIC NOTICE

The notice summary of the estimated costs associated with the implementation of the proposed regulations, both for DOT&PF's administration and private party compliance is proposed at \$51,000 for the initial year and \$5,000 for subsequent year. When it becomes apparent that the cost to implement the regulation is beyond the estimated cost cited here, the ADOT leadership may choose to come back and amend the regulation and amend cost.

3. REASON FOR THE PROPOSED REGULATION

ADOT asserts the reason for the proposed regulation is to comply with Federal Aviation Administration requests and generate new revenue. Is there a revenue objective? What will the program revenue be used for?

4. PROPOSED REGULATIONS

A. Proposed 17 AAC 41.010(2)(C) was amended. The fee proposed for private aircraft is \$150/year and commercial owned aircraft is \$250/year.

B. There are no enforcement mechanisms included in the proposed regulations. In statements made to the press, DOT&PF officials have indicated they anticipate the program will operate on the honor system. This allows the department to avoid having to publicly estimate the costs of enforcement at this time, which makes implementation appear very cheap. Later, when it becomes apparent that many aircraft owners are not complying with the regulation, they may choose to come back and amend the regulation to add in enforcement provisions (which may not be cheap!).

C. Aircraft in foreign and interstate operations will be exempt. As with the current fuel tax situation the major carriers operating at ANC and FAI will not be impacted by the regulation. The burden of the registration scheme will fall on Alaskan based aircraft, namely private pilots and in-state commercial operators.

5. SELF REGISTRATION

Most airports enter the information directly online at www.BasedAircraft.com which allows them to review the end results and correct any tail numbers that didn't match the FAA Aircraft Registration data or investigate any aircraft that were reported by other airports. If preferred, other means are also available:

- You can email it (as an attachment if needed) to basedaircraftsupport@basedaircraft.com.
- You can fax a list directly to: Attention: National Based Aircraft Inventory Program (504) 304-2525
- You can mail it to: GCR C/O National Based Aircraft Inventory Program 2021 Lakeshore Drive, Suite 500 New Orleans, LA 70122

TEXT OF THE REPEALED STATUTE

Article 01. REGISTRATION AND FLIGHT PLANS

Sec. 02.20.010. Registration of aircraft.

(a) Every owner or operator of an aircraft that is based in the state shall register the aircraft with the department at those times designated by it when, in its judgment registration is necessary by reason of emergency or military necessity.

(b) Registration shall be made upon a form furnished by the department and shall set forth the following information:

- (1) name and address of owner;
- (2) make, type, model, and license number of aircraft;
- (3) make, quantity, and horsepower of engines;
- (4) seating capacity, cruising range, and special utility of aircraft;
- (5) make, power, and frequencies of radio transmitter;
- (6) other radio equipment and flight instruments;
- (7) location of airport at which usually based;
- (8) such further information as the department may require during a national emergency or if requested by the military authorities.

(c) Registration forms shall be available at the office of the department and at the manager's office at all major airports within the state. The registration fee is \$1 for each aircraft, and this fee, together with the completed registration form, shall be mailed or otherwise delivered to the office of the department