MEMORANDUM

State of Alaska

Department of Law

TO: Joseph L. Perkins, Commissioner
Department of Transportation
and Public Facilities

DATE: June 24, 1996

FILE NO: 661-96-0200

TEL. NO.: 269-5163

SUBJECT: Legal Authority to Impose a Passenger Facility Charge and Expenditure of Revenues on Previously Approved Capital Projects

FROM: Elizabeth J. Hickerson
Assistant Attorney General
Transportation Section, Anchorage

You have asked our opinion on (1) whether the Commissioner of Transportation and Public Facilities (DOT&PF) has the legal authority to impose a Passenger Facility Charge (PFC) on air travel; and (2) whether revenues derived from PFCs can be spent on capital projects previously approved by the legislature that were originally designated to be paid from the Airport Improvement Program (AIP) or International Airport Revenue Fund (IARF). This opinion is limited to the imposition of PFCs at the Anchorage and Fairbanks International Airports that make up the Alaska International Airport System (AIAS).

In summary, the commissioner by order may impose a PFC at the AIAS airports, and PFC revenues may be spent as matching or supplemental state funds on previously approved AIAS capital projects if the Administrator of the Federal Aviation Administration (FAA) authorizes the imposition of a PFC and the use of the PFC revenues on those projects.

Background

In 1990, the United States Congress amended the Federal Aviation Act to give public agencies that control commercial service airports the ability to apply for permission to impose PFCs on passengers enplaned[1] at those airports. 49 U.S.C. app. § 1513(e). Public airports that receive approval from the Administrator of the Federal Aviation Administration (FAA) may impose a PFC of $1.00, $2.00, or $3.00 on passengers enplaned at those airports and use those revenues to finance the cost of federally approved projects. 14 C.F.R. § 158.5. The federal authority over PFC is exclusive and no state, political subdivision, or contract with air carriers or other entities may impair the imposition or collection of a PFC, or the use of PFC revenues. 14 C.F.R. § 158.7.

---

[1] "Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce." 14 C.F.R. § 158.3.

PFC revenues collected by a public agency may only be used to finance costs of federally approved projects at the airports controlled by the public agency. 14 C.F.R. § 158.13. PFC revenues are non-federal funds, but may be combined with federal grant funds or used to meet the non-federal share of the costs funded under the federal airport grant program. 14 C.F.R. § 158.13 (c) and (d). There are stringent federal accounting requirements and PFC revenues must be deposited in the account used by the public agency's airport capital fund. 14 C.F.R. § 158.67.

A public agency must submit detailed information to the FAA when applying for the authority to impose a PFC and to use PFC revenue on an approved project. 14 C.P.R. § 158.25. In addition, the public agency must make various assurances to the FAA, including that the public agency has the legal authority to impose a PFC and to finance and carry out the proposed project.[2] The public agency must also assure that all official actions have been taken that are necessary to authorize the filing of the application. 14 C.F.R. § 158, App. A.

After federal approval, the public agency may impose a PFC. While PFC revenues are collected by commercial air carriers, the PFC revenue is regarded as trust funds held by collecting carriers as agents for the benefit of the public agency, and the revenues must be submitted to the agency on a monthly basis. 14 C.F.R. § 158.51. The public agency must deposit unliquidated PFC revenues in the airport's capital fund. 14 C.F.R. § 158.67(a). The FAA periodically performs audits and reviews to ensure that the use of PFC revenue by the public agency is in compliance with the federal law. 14 C.F.R. § 158.71. Failure to comply with the federal law may result in the loss of federal airport grant funds in addition to any excess PFC collected or the amount of PFC revenues not spent in accordance with the federal guidelines. 14 C.F.R. § 158.87.

PFCs May Be Imposed at AIAS Airports by order of the Commissioner

As discussed above, federal regulation requires that the public agency seeking authority to implement a PFC program must certify that it has the legal authority to impose a PFC. The AIAS airports are operated by DOT&PF. AS 02.15.090. The Commissioner of DOT&PF is delegated the authority to manage, operate, and maintain the AIAS airports. AS 44.42.020(a)(7). In addition, the commissioner is required to fix and collect fees and charges for the use and operation of the facilities at the international airports. AS 37.15.500.

---

[2] The public agency may apply for the authority to impose a PFC in advance of or concurrently with an application to use PFC revenues on an approved project. 14 C.F.R. § 158.25(a). The agency has to verify that it has the legal authority to impose and use the revenues on the approved projects. If the agency elects to apply in advance for the authority to impose a PFC, legal authority to use the revenues on the approved projects need not be shown until the agency applies for the authority to use the PFC revenues.

After public notice and an opportunity for public comment, the commissioner is specifically authorized to establish rates, charges and fees at the international airports by order. AS 02.15.090(a). Although no time period is required, we have previously recommended that the proposed rate, charge or fee be publicly noticed for 30 days prior to adoption. No regulation needs to be adopted for the establishment of the rate, charge or fee at the international airports, and no other official action is necessary.

The PFC is nothing more than a state user fee to passengers who enplane at the AIAS airports. Like all other fees and charges collected at the AIAS airports, the PFC must be adopted by order of the commissioner and deposited into the International Airports Revenue Fund under AS 37.15.430. No additional action is necessary under state law.

PFC Revenues May Be Used as State Funds on Projects Previously Approved by the State Legislature

PFC revenues are non-federal monies and are treated as state funds in Alaska. If the AIAS airports receive approval to impose a PFC, those monies would be deposited in the IARP. To be authorized to use the PFC revenues, the department must verify to the FAA that it has legal authority to use those revenues on a specific project. 14 C.F.R. § 158.29(b).

To meet this requirement, the department must show that the expenditure of state funds has been approved by the state legislature. Alaska Const. art. IX, S 13. Since federal law allows PFC revenues to be substituted for matching state monies, DOT&PF may substitute PFC revenues for state expenditures already authorized for a specific project.

Thus, the department may use PFC revenues as any other state funds available from the IARP as long as the use of the state funds on specific projects has been previously approved by the state legislature and the FAA. The department must receive additional authority to expend funds from the IARF, including PFC revenues deposited into that account, for new projects or increased levels of state appropriations.

Conclusion

We hope this adequately answers your questions concerning the authority to impose a PFC and use the PFC revenues.

EJH:kr