

# LEGAL SERVICES

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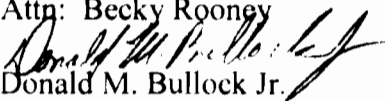
State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

March 24, 2010

**SUBJECT:** Use of money without an appropriation (CSHB 357(TRA))  
(Work Order No. 26-LS1356E)

**TO:** Representative Peggy Wilson  
Chair of the House Transportation Committee  
Attn: Becky Rooney

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed is CSHB 357(TRA) that includes the changes you requested.

With regard to the deletion of the word "appropriated" on page 2, line 10, and the insertion of the word "used" in its place, is it the committee's intent that the money may be spent without an appropriation?

Under terms of the federal Alaska Railroad Transfer Act (P.L. 97-469, Title IV), the "revenues generated by the State-owned railroad shall be *retained and managed* by the State-owned railroad for railroad and related purposes." 45 U.S.C. 1207(a)(5); emphasis added. According to a section-by-section analysis of the Alaska Railroad Transfer Act that was prepared at the time Congress passed the Act, this provision was intended to allow the railroad to "retain and manage its [sic] own revenues" and to "avoid the need for annual appropriations by the State for the railroad." Congressional Record, December 23, 1982, S16080. The apparent intent of Congress was that the revenues of the railroad be dedicated for railroad and related purposes and that the railroad have the discretion to determine how to use its revenues without having the legislature approve the use and expenditure of those revenues by an appropriation. This provision constitutes a federally mandated dedicated fund requiring that railroad revenues be retained by the railroad and used only for railroad and related purposes. 1984 Inf. Alaska Att'y Gen. Op., May 26 (366-575-84). However, this provision does not prevent the legislature from appropriating railroad revenue for railroad purposes or mandating that the railroad expend its revenue for a legislatively prescribed railroad or related purpose. *Id.*

Although there have been unsuccessful efforts to amend the Executive Budget Act to make it applicable to the Alaska Railroad Corporation, art. IX, sec. 13, Constitution of the State of Alaska prohibits the withdrawal of money from the treasury except in accordance with appropriations made by law. Thus, although the money from the land sales contemplated in CSHB 357(TRA) may be dedicated under 45 U.S.C. 1207(a)(5),

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whether it may be spent without an appropriation is a question that has not been answered by the courts.

DMB:plm  
10-171.plm

Enclosure