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Introduced:
Referred: Transportation
and Finance

IN THE SENATE BY DANKWORTH AND KERTTULA

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE -- SECOND SESSION

A BILL

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1 Introduced:
2 Referred: Transportation
and Finance

3
4 IN THE SENATE BY DANKWORTH AND KERTTULA

5 SENATE BILL NO. _____

6 IN THE LEGISLATURE OF THE STATE OF ALASKA

7 TWELFTH LEGISLATURE -- SECOND SESSION

8 A BILL

9
10 For an act entitled: "An act relating to the Alaska Railroad."

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

12 * Section 1. A.S. 42 is amended by adding a new chapter to
13 read:

14
15 "CHAPTER 40. ALASKA RAILROAD AUTHORITY

16
17 ARTICLE 1. FINDINGS

18
19 Sec. 42.40.100. LEGISLATIVE FINDINGS AND POLICY. (a) The
20 legislature finds, determines, and declares that:

21 (1) The United States government has expressed its
22 determination to discontinue federal operation of the Alaska
23 Railroad at the earliest possible date;

24 (2) For the time being, private acquisition and
25 operation of the railroad in a manner consistent with the federal
26 transfer legislation and this chapter is not considered to be a
27 reasonable possibility, or in the best interests of the citizens
28 of the state;

1 (3) Continued operation of the railroad is
2 possible only if the state acquires the railroad from the federal
3 government and provides for operation of the railroad;

4 (4) Continued operation and development of the
5 Alaska Railroad is essential to the long-term economic growth and
6 development of the state and its natural resources and will serve
7 an important public purpose; and

8 (5) Continued operation of the Alaska Railroad
9 will promote the general welfare of the people of the state by
10 providing important freight and passenger service to residents of
11 the state, to businesses of the state, to military installations
12 in the state and to nonresidents visiting or doing business in
13 the state.

14 (b) It is the policy of the state:

15 (1) to foster and promote the development of the
16 state's lands and natural resources;

17 (2) to foster and promote the long-term economic
18 growth and development of the state;

19 (3) to provide necessary and desirable freight and
20 passenger rail transportation services to the state's residents,
21 visitors, businesses and military installations in the state;

22 (4) to develop and implement plans for a transpor-
23 tation network that achieves the goals set forth in subparagraphs
24 (b)(1), (2), and (3) above; and

25 (5) to provide reasonably high quality, safe,
26 economical, and efficient transportation to the state's people,
27 visitors, businesses and military installations in the state.

28 (c) The legislature further declares that:

29 (1) The exercise of the powers of the state in the
30 interest of all the people of the state is necessary to

Pages 3 & 4

All suggested changes set forth on page 3 deal with granting to the Railroad greater responsibility and authority to manage its own affairs and cause it to be a greater asset to the State of Alaska when functioning as a railroad.

In those areas in which the Railroad is described as a "public authority," lines 2 and 7 on page 3 and lines 10, 19 through 21 and line 24 on page 4, seem to the Railroad to be emphasizing the public characteristic of the Railroad more than the profit-making, self-sustaining aspect of future Railroad activity. The Railroad recognizes its public responsibility, but if it is to function in the transportation marketplace in competition with other modes of transportation characterizing it as a public agency places emphasis on railroad characteristics which causes the Railroad to lose its competitive edge. The Railroad feels this would not aid the State, because it would probably lead to greater needs for subsidization.

1 accomplish the goals listed above in (b) of this section by
2 authorizing the creation of ^{an} ~~a public~~ authority with the powers,
3 duties, and functions as provided in this chapter, to operate the
4 Alaska Railroad and its rail, industrial, port and other
5 properties;

6 (2) It is in the best interests of the people of
7 this state for the ~~public~~ authority created by this chapter to
8 operate the Alaska Railroad in such a way as to:

9 (a) be ~~exclusively~~ responsible for and pru-
10 dently protect the financial and legal obligations of the Alaska
11 Railroad;

12 (b) render the railroad authority, and not
13 the State of Alaska, a common carrier subject to the jurisdiction
14 of the Interstate Commerce Commission;

15 (c) be able to raise capital by issuing obli-
16 gations ^{which may be} / exempt from federal and state taxation;

17 (d) carry out its responsibilities on a self-
18 sustaining basis; to the fullest extent possible;

19 (e) provide the types and levels of safe,
20 efficient and economical transportation to meet the overall needs
21 of the state, supported where necessary by state investment in
22 capital improvements / or by other means;

23 ~~(f) provide the best possible combination of~~
24 ~~high quality safe, efficient and economical transportation;~~

25 (g) operate according to sound business
26 management practices;

27 (h) provide the level of service that best
28 satisfies the needs of the people of the state;

29 (i) operate in a fiscally sound manner ^{with} / ~~and~~
authority to invest and diversify; and

30 (j) ensure that borrowing by the authority
does not indirectly endanger the state's own borrowing capacity.

1 (3) The continued operation of the railroad will
2 assure greater utilization, development, reclamation and settle-
3 ment of the state's lands for the maximum benefit of the people;
4 and

5 (4) The important public purposes to be served by
6 the railroad authority require the authority to have all of the
7 powers and duties granted to it by this chapter; the legislature
8 intends that the authority, consistent with sound business man-
9 agement practices, will exercise its powers and duties ~~as a~~
10 ~~public service~~ on behalf of the State of Alaska and recognizes
11 that the exercise of the powers and duties granted by this
12 chapter will require the authority to engage in the wide variety
13 of different kinds of conduct authorized by this chapter.

14
15 ARTICLE 2. CREATION AND ORGANIZATION

16
17 Sec. 42.40.200. ESTABLISHMENT OF AUTHORITY. There is
18 established the Alaska Railroad Authority. The authority is a
19 public corporation/^{established under the provisions of Title 10 of the Alaska}~~and, for purposes of Section 22 of Article III~~
20 ~~of the Alaska Constitution, an instrumentality of the state~~
21 ~~within the Department of Transportation and Public Facilities~~ ^{that} ~~but~~
22 has a legal existence independent of and separate from the state.
23 The exercise by the authority of the powers provided in this
24 chapter is considered an essential governmental function of the
25 state. The legal existence and authority of the Alaska Railroad
26 Authority shall commence and become effective upon the governor's
27 appointment, under Sec. 42.40.215, of all members of the
28 authority's board of commissioners. The existence of the
29 authority shall be perpetual.
30

The Railroad, because of its emphasis on business orientation of the new Railroad authority, suggests that the board appointed by the Governor should have a greater business, rather than governmental, flavor. Therefore it suggests that the only government person on the board be that highest official in the Executive Branch which lends a greater credence to the stature of the Railroad as an entity of State government. The Railroad feels that it can function as a profit-making asset in the stable of assets serving under the seal of the State of Alaska. It will make revenues in excess of \$50 million this year alone, and has over 500 employees. It is the transportation connecting link between ice-free tidewater and the interior of Alaska, and 80% of the population of the State lives in the railbelt. Therefore, the Governor of the State should serve on its board; along with the Governor, the Chief Executive Officer of the Railroad should serve on the board as most CEO's in private firms serve on the board.

1 Sec. 42.40.205. LIMITATION OF LIABILITY. All liabilities
2 incurred by the authority shall be satisfied exclusively from the
3 assets and credit of the authority and no creditor or other per-
4 son shall have any right of action against the state on account
5 of any debts, obligations or liabilities of the authority.

6 Sec. 42.40.210. BOARD OF COMMISSIONERS. The powers of the
7 authority are vested in the board.

8 Sec. 42.40.215. APPOINTMENT AND COMPOSITION OF BOARD.

9 **See below.

10 (a) ~~The board of the authority consists of the Commissioner of~~
11 ~~Transportation and Public Facilities, six public members~~
12 ~~appointed by the governor, and the authority's chief executive~~
13 ~~officer as an ex officio, nonvoting member.~~ The public members
14 shall be persons with substantial experience or professional
15 training and expertise in fields relevant to the purposes of this
16 chapter, including, but not limited to transportation, business
17 and finance and have such standing in their communities as to
18 command the respect of their fellow citizens. ~~One public member~~
19 ~~shall be an executive of an American railroad or organization~~
20 ~~which is not a connecting carrier of the Alaska Railroad.~~ At
21 least two public members shall reside in areas served by the
22 railroad. The public members may not be state officers or
23 employees.

24 (b) The governor may exercise the power of appointment
25 only upon acceptance by the legislature by law of the closing
26 report or its substantive equivalent prepared and submitted under
27 the federal transfer legislation. The closing report must
28 include a statement of the assets and liabilities of the Alaska
29 Railroad proposed to be transferred to and assumed by the
30 authority ^{and the State} /which is as specific and definitive as practicable
under the federal transfer legislation. The legislature may

** (a) The board of the authority consists of the Governor or in his stead the Lt. Governor, the chief executive officer of the authority, a union representative appointed by the Governor, and six public members appointed by the Governor. One of the six shall be an executive of an American Railroad or organization which is not a connecting carrier. The union representative shall be selected from a list of members submitted by the unions representing the -5- organized employees of the Railroad. The director of the Department of Transportation and Public Facilities shall be an ex officio member of the board.

1 accept or reject the report and may not condition acceptance on
2 its modification in any material respect.

3 (c) The public members of the board must be confirmed
4 by a majority of the membership of the legis'ature in joint
5 session. Any public member duly appointed by the governor,
6 unless and until he has been rejected by the legislature, has the
7 full powers and responsibilities of a confirmed board member.

8 (d) The board shall elect one of its members to serve
9 as chairman. The chairman ~~may~~ call meetings of the board at
10 least quarterly and shall preside at the meetings and perform
11 such other duties as the board prescribes in its rules.

12 (e) The board also shall elect a vice chairman, a
13 treasurer and a secretary and prescribe their specific duties in
14 its rules.

15 ~~(f) The governor by written notice to the member may~~
16 ~~remove a public member from the board for:~~

17 (1) incapacitation caused by injury or sickness
18 that leaves the member unable to perform his or her duties under
19 this chapter;

20 (2) continued refusal or inability to attend regu-
21 lar or duly called special meetings of the board;

22 (3) conviction of a misdemeanor involving moral
23 turpitude or a felony; or

24 (4) any action that was intended to harm the
25 authority whether or not resulting in a conviction.

26 Sec. 42.40.220. TERM OF OFFICE; VACANCIES. (a) The public
27 members of the board serve for a term of six years. However,
28 with respect to the six members first appointed, the governor
29 will designate two to serve a term of two years, two to serve a
30 ~~term of four years, and two to serve a term of six years.~~

1 ~~(b) A vacancy on the board is filled by appointment by~~
2 ~~the governor and the appointment must be confirmed by the~~
3 ~~legislature in joint session. A member selected to fill a~~
4 ~~vacancy will hold office for the balance of the full term for~~
5 ~~which his predecessor on the board was appointed.~~

6 (c) A vacancy on the board does not impair the
7 authority of a quorum of members to exercise all the powers and
8 ~~perform all the duties of the board.~~

9 Sec. 42.40.225. COMPENSATION AND EXPENSES. The public mem-
10 bers of the board receive compensation at the rate of Four
11 Hundred Dollars (\$400) for each day such members are engaged in
12 actual performance of duties as members of the board. The
13 board's rules will provide for consistent compensation for par-
14 tial days during which members are engaged in actual performance
15 of their duties. Members are entitled to per diem and travel
16 expenses authorized by law for state boards and commissions under
17 A.S. 39.20.180.

18 ~~Sec. 42.40.230. QUORUM AND NOTICE OF MEETINGS. Four members~~
19 ~~of the board are a quorum for the transaction of business. In~~
20 ~~addition to the notice requirements of A.S. 44.62, notice of a~~
21 ~~meeting of the board, including an agenda for the meeting, must~~
22 ~~be given to each member, the governor, the leadership of the~~
23 ~~legislature, at least two newspapers of statewide circulation and~~
24 ~~upon request to members of the general public.~~

25 Sec. 42.40.240. VOTING. The board's rules shall provide for
26 the manner of voting and any representation of persons absent
27 from meetings. For example, the rules may, but need not provide
28 for or allow: voting and conferring by telephone or mail or
29 voting as directed in a written proxy taking a position on a par-
30 ~~ticular issue, so long as such voting is consistent with~~

Lines 4
thru 16

The Railroad has certain reservations about the way the hiring and firing and compensation are structured. The Railroad feels that the board should appoint the Chief Executive Officer and the CEO should appoint all other employees and fix their compensation. If the Railroad is not successful, the board should get another CEO.

However, one important comment should be made regarding the executive salary limited to that salary established for departmental commissioners. Presently there are 11 executive officials of The Alaska Railroad who make in excess of \$50,000 base pay a year, plus 17-1/2%, soon to be raised to 22-1/2% cost of living allowance. If it is assumed that all executive officials are within the federal tax bracket of 50%, it can be assumed that the COLA which is tax free means a real take-home pay of double the figure set by the federal government. Therefore, these 11 executive officials must make the real income of \$70,000 to \$90,000, which is in excess of a commissioner's salary. Some of them may wish to take a pay cut to continue as a State employee, but some of them will not. It is the Railroad's opinion that all 11 are valuable assets to not only the Railroad but to the State of Alaska.

1 ~~A.S. 44.62.310. However, no proxy may be allowed delegating to~~
2 ~~the holder discretion to act for a principal on undisclosed or~~
3 ~~general matters.~~

4 Sec. 42.40.250. EXECUTIVE OFFICIALS. (a) The board shall
5 appoint and fix compensation for the chief executive officer and
6 ~~legal counsel~~ of the authority. The appointments are subject to
7 the approval of the governor. The chief executive officer
8 appoints and fixes compensation for the other executive offi-
9 cials. The appointments and compensation are subject to board
10 approval. All executive officials serve at the pleasure of the
11 board. ~~No executive official may be compensated at a rate in~~
12 ~~excess of that established by the state for departmental com-~~
13 ~~missioners except as may be temporarily required by the federal~~
14 ~~transfer legislation.~~ The chief executive officer may appoint
15 and fix compensation for any additional personnel necessary to
16 carry out the purposes of this chapter.

17 Sec. 42.40.260. DELEGATION. (a) Reserving general or par-
18 ticular authorization or concurrence, as appropriate, the board
19 shall delegate powers and duties necessary and appropriate for
20 the management of the daily affairs and operations of the
21 authority to the chief executive officer.

22 (b) Within 180 days of its establishment, the board
23 shall adopt by resolution policies governing the following activ-
24 ities of the authority to be conducted, subject to any board
25 review specified in the policies, by the chief executive officer
26 or designated executive official:

27 (1) leasing, granting easements in and permits
28 for the use of or other conveyances of an interest in authority
29 real property other than a transfer or conveyance of fee simple
30 or the authority's entire interest in said real property;

1 (2) establishment of specific rates and tariffs;
2 and

3 (3) routine changes in service levels.

4 (c) General or particular board authorization or con-
5 currence is required, without limitation, for any of the following:

6 (1) transfer or conveyance of fee simple or of the
7 authority's entire interest in real estate other than the execu-
8 tion of a release of a lien or satisfaction of a mortgage after
9 payment has been received.

10 (2) the issuance of notes, debentures, or bonds,
11 and the mortgaging or pledging of authority assets to secure
12 those instruments;

13 (3) the donation of money, property or other
14 assets belonging to the authority;

15 (4) an action by the authority as a surety or
16 guarantor;

17 (5) all individual capital projects with an esti-
18 mated completion cost in excess of Two Hundred Fifty Thousand
19 (\$250,000), or the performance of which by the authority extends
20 over a period of one year or more from the date of execution of
21 the agreement;

22 (6) adoption annually under A.S. 40.42.425 of
23 long-range program and capital plans;

24 (7) certification of annual reports to be filed
25 under A.S. 42.40.410;

26 (8) generally applicable, comprehensive increases
27 and decreases in rates;

28 (9) diversification and major expansion or reduc-
29 tion of services beyond those provided on the date of transfer or
30 as subsequently provided under this chapter;

Lines 9-30 -

Conflicts of interest the portion of the ARR bill. It is believed unnecessary, as part of this statute, to laboriously reiterate detailed provisions for conflicts of interest, when there is presently a state statute on conflict of interests and the modification suggested by the railroad adequately covers this matter.

- 1 (10) the exercise of the power of eminent domain;
2 (11) expansion of main or branch lines, other than
3 routine track realignment as necessary to maintain service levels
4 in effect on the date of transfer; and
5 (12) selection of independent auditors and ac-
6 countants.

7 ARTICLE 3. ADMINISTRATIVE PROVISIONS

8
9 Sec. 42.40.300. CONFLICTS OF INTEREST. ~~(a) Except as pro-~~
10 ~~vided in this section, no board member or employee of the~~
11 authority may participate in any decision of the authority in
12 which he, or a member of his immediate family has a direct or
13 indirect financial interest. For purposes of this section,
14 "participate in a decision" includes all discussions, delibera-
15 tions, preliminary negotiations, and votes concerning a matter
16 which is the subject of formal action by the board.

17 (b) (1) A board member or employee is not considered
18 to have a direct or indirect financial interest in a decision if
19 he or a member of his immediate family has only a remote interest
20 and if the fact and extent of the interest is disclosed to the
21 board in a public meeting and is noted in the minutes of the
22 board before any participation by the member or employee in the
23 decision, and thereafter in a public meeting the board authorizes
24 or approves the participation by a vote of its membership exclud-
25 ing the interested member or employee. As used in this subsec-
26 tion, "remote interest" means:

27 (i) that of a nonsalaried officer of a
28 nonprofit corporation;

29 (ii) that of an employee or agent of a

30 ~~contracting party where the compensation of the employee or agent~~

Each director on the board and each executive official of the authority shall comply with the requirements of financial disclosure contained in A.S.39.50.010-.200. The board may provide in its rules for the removal by the board of a director or official who intentionally violates an applicable prohibition contained in A.S.39.50.010-.200.

Lines 1-30 -

See comment on page 10.

The railroad suggests the total deletion of the special conflicts of interest statute found in the railroad bill. The railroad should be treated as any other arm of State Government. It is the opinion of the Legislature the State Conflict of Interest Act is not strong enough that act not the railroad act should be amended. Cosmetically the railroad act should be as succinct as possible.

1 ~~consists entirely of fixed wages or salary and the contract is~~
2 awarded by bid or by other competitive process;

3 (iii) that of a landlord or tenant of a
4 contracting party, except in cases where the property subject to
5 the lease or sublease is owned or managed by the authority;

6 (iv) that of a holder of less than one per-
7 cent of the shares of the corporation or cooperative that is the
8 contracting party;

9 (v) that of an owner of a savings and loan
10 or bank savings or share account or credit union deposit account
11 if the interest represented by the account is less than two per-
12 cent of the total deposits held by the institution; or

13 (vi) other interests that in good faith are
14 defined as remote by rules or regulations adopted by the
15 authority.

16 (2) The provisions of this subsection do not apply
17 to a board member or employee financially interested in a deci-
18 sion who influences or attempts to influence a board
19 member or employee with respect to the decision before he is
20 authorized to participate in the decision as provided by this
21 subsection.

22 (c) A board member or employee is not considered to be
23 directly or indirectly financially interested in a decision when
24 the decision could not affect him in a manner different from its
25 effect on the public or community generally.

26 (d) An action, including the award of a contract, in
27 which a board member or employee participates in violation of
28 this section or A.S. 39.50.090 is void if the board member's or
29 employee's vote was necessary to make up a majority of those
30 ~~voting on the decision. In a case where a board member or~~

Lines 19
thru 28

The Railroad suggests a modification of the requirement for public council meetings. The Railroad suggests that the executive sessions of the board should be allowed regarding all of the corporate powers given to the Railroad by this Act. All discussions by the board regarding all business decisions vis a vis the corporate powers should be available to the board in executive session. This does not mean that they must discuss these powers within an executive session, but merely have the authority to do so when necessary.

Obviously any discussion of tariffs, divisions and contract rates should fall within the power of the board to discuss those matters in executive sessions.

1 ~~employee participates in a decision in violation of this section~~
2 or A.S. 39.50.090, and where his vote was not necessary to make
3 up a majority of those voting, the board may ratify the action
4 after disclosure of the violation in a public meeting of the
5 board and without participation by the interested member or
6 employee in the decision to ratify. A board member or employee
7 who violates any prohibition contained in this section or in
8 A.S. 39.50 forfeits his office upon a determination by the board
9 in a public meeting that the violation was intentional.

10 (e) The executive employees and board members of the
11 authority are subject to A.S. 39.50.

12 (f) Within 120 days of the first meeting of the board,
13 the board shall adopt and may subsequently amend rules imple-
14 menting this section, providing additional conflict of interest
15 and ethical rules and regulations as it considers appropriate,
16 and providing for the removal by the board of a board member or
17 employee who intentionally violates a prohibition contained in
18 ~~this section or in A.S. 39.50.~~

19 Sec. 42.40.310. PUBLIC BOARD MEETINGS. (a) The meetings of
20 the board are public, with the exception of executive sessions as
21 permitted by A.S. 44.62.310 and subsection (b).

22 (b) In addition to those subjects excepted from public
23 meeting requirements by A.S. 44.62.310, the board may consider in
24 executive session pursuant to the requirements of that section
25 matters that pertain to land acquisition or disposal or
26 proprietary information, as defined in a manner consistent with
27 the standards and practices of the Interstate Commerce Commission
28 for protection of the information.

29 Sec. 42.40.320. MINUTES OF MEETINGS. The board shall keep
30 minutes of each meeting and shall send a certified copy of the

1 minutes of the public portion of each meeting to the governor and
2 the leadership of the legislature.

3 Sec. 42.40.330. ADMINISTRATIVE PROCEDURE. (a) Except for
4 A.S. 44.62.310 and 44.62.312, regarding public meetings, as
5 limited by A.S. 42.40.310(b), and for A.S. 44.62.320(a),
6 regarding legislative review of regulations, the Administrative
7 Procedure Act (A.S. 44.62) does not apply to the authority, its
8 rules, its regulations, or actions taken under this chapter. The
9 authority shall make available to members of the public copies of
10 the rules and regulations adopted under this section. Within 45
11 days after adoption, the chairman ^{of the board} of the authority shall submit a
12 regulation adopted under this section to the chairman of the
13 Administrative Regulation Review Committee under A.S. 24.20.400 -
14 24.20.460.

15 (b) The board shall adopt rules and regulations to
16 govern its procedures and to carry out the purposes of this
17 chapter. Within 90 days after its first meeting, the board shall
18 adopt rules establishing a procedure for giving advance public
19 notice and an opportunity for the public to comment on proposed
20 regulations of the authority that the board determines are
21 likely, if adopted, to have a substantial impact on the public or
22 will be used in the authority's dealings with a significant
23 segment of the public. The rules shall also provide for the
24 adoption of emergency regulations without public notice and com-
25 ment when the immediate adoption or repeal of a regulation is
26 necessary to continue or reinstate the orderly operation of the
27 authority's facilities or programs. However, emergency regula-
28 tions may not remain in effect more than 120 days unless during
29 that period the board complies with the public notice and comment
30 procedure required for regulations which are not of an emergency
nature.

1 (c) The rules adopted under (b) of this section
2 establishing a regulation-making procedure and all rules or regu-
3 lations relating to procurement of property by the authority,
4 conflicts of interest, disclosure of information in the
5 possession of the authority, or the regulation of persons outside
6 the authority through the exercise of police power will be sub-
7 mitted to the attorney general for review and approval before
8 becoming effective. The attorney general will respond to the
9 authority within 30 days after receipt of the rules or regula-
10 tions either approving them as consistent with the Constitution
11 and statutes of the State of Alaska or disapproving them as in
12 conflict with the Constitution and statutes. A disapproval of
13 rules or regulations will be accompanied by a memorandum of law
14 explaining the conflict with existing law and a recommendation
15 for revisions to cure the defect. Rules or regulations submitted
16 to the attorney general are considered approved if the attorney
17 general fails to approve or disapprove them, as specifically pro-
18 vided in this subsection, within thirty days after receipt.

19 (d) A regulation is not subject to the procedures in
20 (b) of this section if it is one that:

21 (1) relates to the use of public works, including
22 terminal areas, industrial reserves, rights-of-way and streets,
23 under the jurisdiction of the authority if the effect of the
24 order is indicated to the public by means of signs or signals;

25 (2) is directed to a specifically named person or
26 to a group of persons and does not apply generally throughout the
27 state;

28 (3) concerns service schedules of the railroad; or

29 (4) relates to specific tariffs, divisions, and
30 contract rate agreements.

(e) The authority is an agency of the State of Alaska

Lines 23-30 -

The railroad, in its function as an entity of business and industry must be afforded specific protections from disclosure not required by other agencies.

Our suggested language provides such protections, while still bringing the railroad within the requirements of A.S. 09.25.110-.120.

1 for purposes of jurisdictional determinations and judicial review
2 of the authority's action.

3 Sec. 42.40.335. PRE-EXISTING RULES, REGULATIONS AND ORDERS
4 OF THE ALASKA RAILROAD. The board, by resolution, may continue
5 in force for a period of not more than two years after transfer
6 all or part of the rules, regulations and orders of the Alaska
7 Railroad which were in effect one day before the date of transfer
8 and are not inconsistent with this chapter or other state law.
9 All authorities continued in force under this section shall
10 expire on the second anniversary of the date of transfer. The
11 board may adopt in its rules, regulations and orders the
12 substance of former federal authorities relating to the Alaska
13 Railroad. This adoption is not considered a continuation of the
14 federal authorities if made in compliance with the procedural
15 requirements of this chapter and other applicable law.

16 Sec. 42.40.340. PENALTY FOR VIOLATION OF DESIGNATED
17 REGULATION. A person other than an authority executive official
18 or employee within the scope of his employment, who violates an
19 authority regulation, designated as necessary to protect life,
20 health or property, shall be guilty of a misdemeanor punishable
21 by a fine of not more than \$1,000 or by imprisonment of not more
22 than six months, or both.

23 Sec. 42.40.345. PUBLIC DISCLOSURE OF INFORMATION. ~~(a) Facts
24 and information in the possession of the authority are public,
25 and communications, reports, files, books, accounts and papers of
26 every nature in its possession are open to public inspection at
27 reasonable times. However, the authority may, by rule or regula-
28 tion, designate matters of a nonpublic, privileged, or
29 proprietary nature, consistent with the standards and practices
30 of the Interstate Commerce Commission for the protection of these
matters.~~

(u) The authority shall be subject to the provisions of A.S.09.25.110-.120, except as to those materials and information ordinarily treated by railroads as confidential, such as business records, divisions of -15- revenue, contracts, legal or personnel records, or other materials protected as confidential.

Line 9

Conforms with suggested (a) on Page 15.

Line 13

42.40.400 - GENERAL POWERS, should read the "Board of Directors, by its own undertaking, or by appropriate delegation to the Chief Executive Office, may" rather than "The Authority may." This change will make the line of power much clearer. The "Authority" is the ultimate entity but all powers and duties should be granted to either the Board of Directors of the "Authority" or the C.E.O. There should be a new paragraph placed in the Bill granting the power to the Board of Directors to assign to the C.E.O. such corporate powers as, in the Board of Directors" opinion, would best serve the business of The Alaska Railroad.

Lines 17 - 18

(4) This subsection is potentially in conflict with 42.40.250 as currently written. 42.40.250 as currently written gives the Board of Directors, with the approval of the Governor, the power to appoint the C.E.O. and the legal counsel, and all executive officers serve at the pleasure of the Board of Directors. The powers set forth in 42.40.400 as rewritten by the Railroad are clearer and less cluttered, and can be assigned to the C.E.O.

Line 19

Subsection (5) runs contrary to 42.42.450 as rewritten by the Railroad or is redundant to 42.42.450, as currently written.

1 (b) A person may make written objections to the public
2 disclosure of information contained in an application, report or
3 document filed with the authority, stating the grounds for the
4 objection. When an objection is made, the board may order the
5 information withheld from public disclosure if the information
6 would adversely affect the interest of that person; is not
7 required in the interest of the public; and may be protected from
8 disclosure consistent with the standards and practices of ~~the~~
9 ~~Interstate Commerce Commission.~~ subsection (a) of this section.

10
11 ARTICLE 4. POWERS AND DUTIES

12
13 Sec. 42.40.400. GENERAL POWERS. ^{board, by its own undertaking,} ~~The/authority may:~~
14 or by appropriate delegation to the Chief Executive Officer, may:

- 15 (1) adopt a seal;
- 16 (2) adopt rules and regulations;
- 17 (3) sue and be sued;
- 18 (4) appoint officers, employees, trustees, and
19 agents, and prescribe their powers and duties;
- 20 ~~(5) hire legal counsel to represent the authority;~~
- 21 (6) make contracts and execute instruments
22 necessary or convenient in the exercise of its powers and duties;
- 23 (7) acquire by purchase, lease, bequest, devise,
24 gift, exchange, the satisfaction of debts, the foreclosure of
25 mortgages, or otherwise, real or personal property, rights,
26 rights-of-way, franchises, easements, and any other interests in
27 land, including land lying under water and appropriation of water
28 rights that are located in the state, taking title to the prop-
erty in the name of the authority;
- 29 (8) acquire property by eminent domain and/or by a
30 declaration of taking;

1 (9) hold, maintain, use, operate, lease, exchange,
2 donate, improve, convey, alienate, dispose of, mortgage,
3 encumber, and otherwise grant security interests in or transfer
4 any real or personal property including without limitation facil-
5 ities and equipment;

6 (10) borrow money and issue its bonds or notes and
7 provide for and secure their payment, provide for the rights of
8 their holders and purchase, hold, or dispose of its bonds or
9 notes;

10 (11) secure the payment of its obligations by
11 pledge or mortgage or other lien on its contracts, revenues,
12 income, or property;

13 (12) contract with and accept transfers, gifts,
14 grants or loans of funds or property from the United States, the
15 state, and its political subdivisions, and in that regard comply
16 with the provisions of federal, state, or local programs when
17 necessary;

18 (13) acquire, hold and dispose of stocks, member-
19 ships, contracts, bonds, general or limited partnership interests
20 or other interests in another corporation, association, part-
21 nership, joint venture or other legal entity, and exercise the
22 powers or rights in connection with these interests which are
23 provided in contracts or agreements and that are allowed by law
24 concerning the satisfaction of debts;

25 (14) undertake the management operation, main-
26 tenance, use, and control of all of the properties of the Alaska
27 Railroad including without limitation, the tracks, equipment and
28 other property transferred to it by the federal government or by
29 any person;

30

Page 18

Line 6

The word "Authority" should be changed to "board."

Line 9-10

(17) It should read "lend the authority's funds, property, credit or services for authority purposes."

1 (15) undertake or provide for the acquisition,
2 construction, maintenance, equipping, and operation of con-
3 necting, switching, terminal, or other railroads and railroad
4 facilities in the state;

5 (16) recommend to the legislature and the governor
6 any tax, financing, and security measures the ^{board} ~~authority~~ considers
7 appropriate for maximizing the public interest in the operation
8 of the railroad;

9 (17) lend/ ^{the authority's} ~~its~~ funds, property, credit or services
10 for authority purposes;

11 (18) consent to the modification of the rate of
12 interest, time of payment of an installment of principal or
13 interest, or other terms of a loan, contract, or agreement of any
14 kind to which the authority is a party;

15 (19) include in any borrowing the amounts
16 necessary to establish reasonable reserves and pay financing
17 charges and interest on the obligations for a reasonable period
18 after which the authority estimates funds will be otherwise
19 available to pay the interest, consultant, advisory, and legal
20 fees, and such other expenses as are necessary or incident to
21 this borrowing;

22 (20) maintain offices and facilities at places it
23 may designate;

24 (21) purchase the authority's bonds at a price not
25 more than the principal amount of them plus interest;

26 (22) cancel bonds purchased under 42.40.400(21);

27 (23) apply to the appropriate agencies of the
28 state, the United States, and to a foreign country and other
29 proper agencies for the permits, licenses, or approvals as may be
30 necessary to construct, maintain and operate transportation

Line 25

Between the word "on" and the word "property" the phrase "or to" should be inserted. The change is requested to allow the security force to act as state law enforcement officers for violations that occur to property owned, managed or transported by the authority but that do not occur on property owned, managed or transported by the authority.

1 services, and to obtain, hold and reuse the licenses and permits
2 in the same manner as other persons or operating units;

3 (24) prescribe rates to be charged for services
4 provided by the Alaska Railroad;

5 (25) determine the routes, schedules, and types of
6 service to be provided by the Alaska Railroad;

7 (26) enter into contracts, leases, and other
8 agreements with connecting carriers, shippers, and other persons
9 concerning the service, activities, operations, properties and
10 facilities of the railroad, including contracts, leases and other
11 agreements that contain provisions intended to preserve and
12 expand the railroad's traffic base;

13 (27) plan for and undertake expansion of the
14 railroad and railroad activities, including extension of the
15 Alaska Railroad's rail system and acquisition and operation of
16 other modes of transportation service connecting to the
17 railroad's rail service;

18 (28) adopt regulations designed to safeguard prop-
19 erty owned, managed or transported by the authority, to protect
20 employees and persons using the authority's property or services,
21 and to promote safe, healthy, secure, and effective railroad
22 operations, which regulations shall have the force of law and be
23 enforceable in the same manner as civil and criminal statutes of
24 the state; and maintain a security force to enforce state law and
25 the authority's regulations. For violations that occur on ^{or to} prop-
26 erty owned, managed or transported by the authority, the security
27 force has the same powers and statewide jurisdiction as state law
28 enforcement officers;

29 (29) adopt rules and regulations having the force
30 of law that require designated classes of proprietary and person-
nel information and communications to be confidential;

Line 29-30

Lines 29 - 30 of page 20 and lines 1 - 12 of page 21 should be stricken. Both the Governor and the Legislative Auditors are inexperienced in railroad accounting, in transportation law such as the Interstate Commerce Act, and in business practices as opposed to governmental practices. As a result, information of a confidential nature is subject to leakage without the safeguards of a fiduciary relationship between an accounting firm and the authority. The Railroad believes information in the hands of either the legislative or governor auditor would not remain confidential. If the Legislature and the Governor want access to audit information, they should either be given a voice along with the board in selecting the accounting firm or alternatively they should be allowed access through an independent certified accountant experienced in railroad accounting. Only the former alternative is presented in the suggested Railroad changes to the bill.

1 (30) hire and discharge railroad personnel and
2 determine benefits and other terms and conditions of employment,
3 that may be established in accordance with the obligations
4 imposed by the federal legislation that transfers the Alaska
5 Railroad to the state.

6 (31) ~~assume and satisfy all liabilities of the~~
7 ~~United States or its agencies as provided by the federal transfer~~
8 ~~legislation and the closing report, or its substantive equiva-~~
9 ~~lent, made under it and as accepted by the legislature; and~~

10 (32) do all things necessary, convenient or
11 desirable to carry out the powers and duties expressly granted or
12 necessarily implied in this chapter, or under other laws of the
13 state, or the laws and regulations of the federal government.

14 Sec. 42.40.410. ANNUAL REPORT. The board shall direct prep-
15 aration of, certify and distribute to the governor and to each
16 member of the legislature by February 1 of each year a report
17 generally describing the operations and financial condition of
18 the authority. The board may include in the report suggestions
19 for legislation relating to the structure, powers, or duties of
20 the authority or relating to the operation of railroad facilities
21 of the authority.

22 Sec. 42.40.420. ANNUAL AUDIT. The board, ^{/after concurrence by the}
^{/legislature and the governm} shall have the
23 financial records of the authority audited annually by an inde-
24 pendent certified public accountant experienced in railroad
25 accounting. To the extent practicable, for the five years
26 following the date of transfer, the status of the assets and
27 liabilities specifically identified in the closing report sub-
28 mitted under the federal transfer legislation shall be noted in
29 the annual audit. ~~The authority shall, at all times during nor-~~
30 ~~mal business hours and as often as the governor's internal~~

Line 22-28

42.40.425 (a) (1) should stop after the words "A.S. 37.07.050" on line 22. The Alaska Railroad should not be subject to legislative auditor and the division of budget and management unless the ARR is using State funds. An annual independent audit is recommended. 37.07.050 sets forth the requirements for "agency programs and financial plans." Nothing more need be said.

1 ~~auditor or the legislative auditor considers necessary, make~~
2 ~~available to the governor's internal auditor or the legislative~~
3 ~~auditor for examination all of its financial records, and will~~
4 ~~permit the governor's internal auditor or legislative auditor to~~
5 ~~audit, examine and make excerpts or transcripts from the records,~~
6 ~~and to make audits of all contracts, invoices, materials,~~
7 ~~payrolls, records of personnel, conditions of employment, provi-~~
8 ~~sion of services and the rates at which the services are provided~~
9 ~~and other data related to all these matters. Access to the above~~
10 ~~information shall be unrestricted, but disclosure of it is sub-~~
11 ~~ject to A.S. 42.40.340 and rules and regulations implementing~~
12 ~~that section.~~

13 Sec. 42.40.425. LONG-RANGE PROGRAM AND CAPITAL PLANNING.

14 (a) Within 18 months of the date of transfer, the authority
15 shall prepare and the board shall adopt long-range program and
16 capital improvement plans.

17 (1) The long-range program plan shall delineate
18 the manner in which the authority will accomplish the purposes of
19 and fulfill its responsibilities under this chapter during each
20 of the five years commencing with the year in which the initial
21 plan is adopted. The plan shall provide information substan-
22 tially consistent with the requirements of A.S. 37.07.050, the
23 ~~format of which shall be jointly determined by the authority, the~~
24 ~~legislative auditor and the division of budget and management.~~
25 ~~Beginning three years after the preparation of the initial plan,~~
26 ~~the governor and the legislative auditor may conduct an annual~~
27 ~~performance and efficiency audit of the authority's compliance~~
28 ~~with the plan.~~

29
30

Page 22

Lines 4 - 7

Subsection (2) should consist of the first sentence only. 47.07.060 requires the Governor to present long-range capital plans to the Legislature. The Railroad should be included in that.

1 (2) The long-range capital improvement plan shall
2 present and explain the authority's anticipated capital improve-
3 ments for each of the five years commencing with the year in
4 which the initial plan is adopted. ~~The plan shall, without limi-~~
5 ~~tation, include all of the information required by Sec.~~
6 ~~42.40.700(b) together with any other information prescribed by~~
7 ~~the governor or the legislative auditor.~~

8 (b) The plans shall be annually revised by the
9 authority and adopted by the board.

10 (c) The authority shall provide copies of its initial
11 and subsequent plans to the governor and the leadership of the
12 legislature.

13 Sec. 42.40.430. USE OF AUTHORITY ASSETS. (a) The authority
14 shall apply all funds, property, other assets and credit of the
15 authority toward activities authorized by this chapter. The
16 authority may not issue shares of stock, pay dividends, make pri-
17 vate distribution of assets, make loans to council members or
18 employees, or engage in business for private benefit. The use of
19 authority funds, property, other assets or credit for purposes
20 not authorized by law by persons having the possession or control
21 of it is prohibited.

22 (b) Notwithstanding the provisions of this section, the
23 authority may:

24 (1) assist board members and employees as members
25 of a general class of persons to be assisted by an activity to
26 the same extent as other members of the class and as long as no
27 special privileges or treatment accrues to the member or employee
28 by reason of his status or position in the authority;

29 (2) return to board members and employees fees,
30 dues or service charges originally contributed by them and
surplus to the purposes for which collected;

1 (3) defend and indemnify any current or former
2 authority employee, agent, or board member, and their successors,
3 against all costs, expenses, judgments, and liabilities,
4 including attorney's fees, reasonably incurred by or imposed upon
5 him in connection with or resulting from any claim, action, or
6 proceeding, civil or criminal, in which he is or may be made a
7 party by reason of being or having been an authority board
8 member, employee or agent or by reason of an action alleged to
9 have been taken or omitted by him as a board member, employee, or
10 agent if he was acting in good faith on behalf of the authority
11 and within the scope of duties imposed or authorized by law.
12 This power of indemnification is not exclusive of other rights
13 to which authority board members, employees, and agents are
14 entitled as a matter of law; and

15 (4) purchase insurance to protect and hold per-
16 sonally harmless its employees, agents, and board members from
17 any action, claim, or proceeding instituted against the foregoing
18 individuals arising out of the performance, purported perfor-
19 mance, or failure of performance, in good faith, of duties for,
20 or employment with, the authority and to hold these individuals
21 harmless from expenses connected with the defense, settlement, or
22 monetary judgments from such actions, claims, or proceedings.
23 The purchase of such insurance and its policy limits are discre-
24 tionary with the authority board, and such insurance is not con-
25 sidered to be compensation to the insured individuals. The
26 powers conferred by this paragraph are not exclusive of any other
27 powers conferred by law to purchase liability insurance.

Lines 11-25

Subsection (b) of 42.40.500 should be stricken. All of the Railroad land should be held intact until the reversionary period set forth in the Federal legislation is over. During this reversionary period, according to a draft of the Federal transfer legislation, land "converted to a use that would prevent the property from being used to operate or support the Railroad" would trigger either a reversion to the United States or a payment by the State of the value of the real property. If the Federals require a three-year period, then during that same period the legislators can determine whether they wish the Railroad to operate its own coal lands or the subsurface of all its lands or they wish the Commissioner of Natural Resources to do so. In the meantime, the State should take no action reducing the Railroad's interest in lands conveyed from the Federal Government.

The Railroad, during this debate will argue for the control of the subsurface to its lands. The Alaska Railroad does have coal reserves the same as the Union Pacific Railroad, the Burlington Northern, Inc., and the Denver Rio Grande, etc. If the Alaska Railroad loses its mineral rights to the State, it would reduce the potential of the ARR to earn royalties to keep revenues above expenses and to use coal once the petroleum era is over. Also, the right to use the subsurface for rocks, sand and gravel and for tunnels, ditches, and other recontouring of land is important to the Railroad.

1
2
3 ARTICLE 5. RAIL PROPERTIES

4 Sec. 42.40.500. RAIL PROPERTIES. (a) The authority shall
5 receive from the United States and, in its own name, take title
6 to all rail properties transferred under the federal transfer
7 legislation. All lands among the rail properties so transferred
8 or otherwise acquired by the authority are subject to
9 A.S. 38.95.010 and are not subject to classification or disposal
10 under A.S. 38 or other state law, except as otherwise specifi-
11 cally provided in this chapter.

12 ~~(b) Within 120 days after transfer of the rail proper-~~
13 ~~ties, the authority shall convey to the state the subsurface~~
14 ~~estate of and the mineral rights in the lands among the rail~~
15 ~~properties. The conveyance shall be made by one or more~~
16 ~~quitclaim deeds executed by the general manager and delivered to~~
17 ~~the commissioner of natural resources. The authority may reserve~~
18 ~~in each quitclaim deed the right to extract and use for the~~
19 ~~authority's purposes sand, gravel and other construction~~
20 ~~materials on the subject lands. The interest retained by the~~
21 ~~authority after conveyance to the state under this subsection~~
22 ~~entitles it to exclusive use and control of the surface, complete~~
23 ~~subjacent and lateral support of the surface, and the right to~~
24 ~~tunnel, ditch, recontour, excavate and otherwise use the subsur-~~
25 ~~face for railroad, transportation, transmission and related pur-~~
26 ~~poses.~~

27 (c) The authority is authorized to litigate, compro-
28 mise, and otherwise settle claims related to the transfer of rail
29 properties from the United States and to recover for breach of
30 warranties made or other obligations assumed by the United States
or other party in relation to the transfer or status of the rail
properties.

Lines 14-21

Subsection (f) of 42.40.500 should be deleted, because no interest in real property should be disposed of until after the termination of the Federal reversionary period during which time any land converted from possible railroad use either reverts to the United States or the State pays the United States the value of the real property.

1 (d) The authority is authorized to submit applications
2 on its own behalf as a political subdivision of the state for
3 acquisition of interests in federal lands available under
4 federal law that will enhance the operations of the authority and
5 to receive conveyances of all the interests in its own name.

6 (e) The authority, as an agency of the state, may
7 acquire in its own name from the United States under the Surplus
8 Property Act (50 App. U.S.C. 1622 et seq.), the Federal Property
9 and Administrative Services Act of 1949 as amended (40 U.S.C. 471
10 et seq.), or other law, property under the control of a federal
11 department or agency that is useful for the authority's purposes
12 and may acquire from the Department of Administration property of
13 the state made available under A.S. 44.71.010 - .040.

14 ~~(f) Before disposing of an interest in real property,~~
15 ~~other than a leasehold, a utility or access easement, or a land~~
16 ~~use permit, to a party other than the state, the authority shall~~
17 ~~give public notice of the disposition in two newspapers of~~
18 ~~general circulation. The authority shall make copies of the~~
19 ~~notice available to the public at its administrative office, and~~
20 ~~mail copies of the notice to the director of the division of~~
21 ~~lands, the governor and the leadership of legislature.~~

22 Sec. 42.40.510. CLASSIFICATION, ACQUISITION AND USE OF
23 STATE LANDS FOR RAILROAD PURPOSES. (a) The board by resolution
24 may identify lands owned by or subject to selection by the state,
25 including tide and submerged lands, as necessary or useful for
26 present or intended railroad purposes. The resolution shall
27 include a statement of and justification for the present or
28 intended railroad use and the date when such use should commence.
29 Upon submission of the resolution and a request for classifica-
30 tion and conveyance to the commissioner of natural resources, the

Lines 20-30

All of subsection (c) of 42.40.510 should be stricken. There is no need for joint management of Railroad lands. Moreover, the joint use of Railroad lands could trigger either the reversion of land to the United States or the payment by the State of the value of the lands. During the reversionary period, the legislature should determine who is to control the land, whether it be the surface or subsurface, and whether joint control is necessary.

1 commissioner may temporarily classify and reserve the lands iden-
2 tified in the request for railroad purposes and may temporarily
3 vacate a classification allowing disposal or lease of such lands
4 under laws or programs of the state. Such a temporary classifi-
5 cation and vacation will be subject to valid existing rights.

6 (b) Within 180 days after receiving the request, the
7 commissioner of natural resources by departmental order shall
8 either (1) permanently classify the surface estate of those lands
9 for railroad purposes and, subject to valid existing rights, con-
10 vey the state's interests in and to the surface estate of those
11 lands to the authority; or (2) deny the classification and con-
12 veyance as not in the best interest of the state. The com-
13 missioner of natural resources may approve in part and deny in
14 part the request for classification. In the absence of a reser-
15 vation to the contrary, a conveyance under this subsection vests
16 in the authority the exclusive right to extract and use sand,
17 gravel and other construction materials on the lands conveyed
18 without regard to the classification of such resources as part of
19 the surface or subsurface estate.

20 ~~(c) The authority and the commissioner of natural~~
21 ~~resources may agree to joint management of railroad lands and to~~
22 ~~conditions for classification of such lands. The authority and~~
23 ~~the commissioner of natural resources may agree to periodic joint~~
24 ~~review of state lands to determine their suitability for railroad~~
25 ~~purposes and periodic joint review of the status of railroad~~
26 ~~lands to determine the necessity for their continued ownership by~~
27 ~~the authority. The authority may reconvey to the state lands~~
28 ~~that the authority and the commissioner of natural resources~~
29 ~~jointly identify as unnecessary or unsuitable for the authority's~~
30 ~~purposes.~~

Lines 16-17

The words "Chief Executive Officer" should replace the words "General Manager."

Lines 20-30

42.40.515 should be deleted until such time as the reversionary period set forth in the Federal statute is complete, because non-railroad uses of railroad lands could trigger the reversion of real property to the Federal government or the payment by the State of the value of the real property interest. During this same period, strenuous debate can be had with legislators, the Governor and the public as to the management and development of Railroad land. However, the authority should have the right to use or to develop natural resources on its lands so that its income will be greater than its expenses.

1 (d) The authority's ownership of a surface interest in
2 state land entitles it to exclusive use and control of the
3 surface, complete subjacent and lateral support of the surface,
4 and the right to tunnel, ditch, recontour, excavate or otherwise
5 use the subsurface for railroad, transportation, transmission
6 and related purposes.

7 (e) When physical conditions require that track or
8 other right-of-way fixtures of the authority be moved from the
9 existing location and relocated on state-owned lands adjacent to
10 or in the vicinity of the existing right-of-way, and the ^{chief executive} ~~general-~~
11 ~~manager~~ ^{officer} determines that such relocation is necessary to maintain
12 safe and adequate rail operations, the authority may effect the
13 necessary relocation after notice to the department of natural
14 resources. The relocation shall be limited to land adequate to
15 restore or continue safe rail operations at a normal level.
16 Within 45 days after a relocation under this subsection, the
17 authority shall request classification and conveyance of the
18 lands for railroad purposes in accordance with (a) of this sec-
19 tion.

20 ~~Sec. 42.40.515. DEVELOPMENT OF OIL, GAS, MINERALS AND~~
21 ~~GEOHERMAL RESOURCES ON AUTHORITY LANDS. (a) The department of~~
22 ~~natural resources, in accordance with A.S. 38.05, may lease or~~
23 ~~otherwise develop oil, gas, minerals and geothermal resources~~
24 ~~located on lands in which the authority owns an interest,~~
25 ~~including a surface interest, only upon satisfaction of the~~
26 ~~following conditions:~~

27 (1) ~~The department of natural resources submits to~~
28 ~~the authority a request for authorization identifying the~~
29 ~~interest to be developed and describing with specificity the pro-~~
30 ~~posed plan for development of the interest, potential negative~~

1 ~~effects the proposed development may have on the authority's~~
2 operations, and measures which will be instituted to avert or
3 mitigate such effects;

4 (2) The authority reviews the request for authori-
5 zation and, after considering potential negative effects and pro-
6 posed mitigation measures, determines that the plan of
7 development presents no appreciable risk of interference with the
8 operations of the authority;

9 (3) The department of natural resources and the
10 authority agree upon a suitable requirement that the lessee or
11 party other than the state undertaking the development reimburse
12 the authority from the proceeds of the development for costs
13 incurred by the authority and materials lost by the authority as
14 a result of the development; and

15 (4) The authority issues to the department of
16 natural resources a written authorization to proceed with the
17 plan for lease or development. The authority may not unreason-
18 ably withhold its consent to a request for authorization sub-
19 mitted by the department of natural resources under this section.

20 (b) The department of natural resources shall require
21 a party other than the state exercising rights under this section
22 to post a surety bond in an amount sufficient to secure the
23 authority against potential detrimental effects of the activity
24 undertaken.

25 (c) The department of natural resources shall maintain
26 an accurate record of all income received by the state from the
27 lands in which the authority has an interest and of the value of
28 all subsurface conveyed by the authority to the state. The
29 ~~department of natural resources shall prepare a yearly summary of~~

Lines 24-26

Because this subsection (b) of 42.40.520 requires the Railroad to convey the subsurface estate to the State, the Railroad is prevented from using eminent domain to acquire subsurface resources such as coal, gravel, sand and rock.

1 ~~such income and subsurface value and submit it to the legislature~~
2 ~~before March 15 of each year after transfer.~~

3 ~~(d) There is established in the state treasury a fund~~
4 ~~which is identified as the Alaska Railroad Income Fund. All~~
5 ~~income received by the state from lands in which the authority~~
6 ~~has an interest shall be deposited into the fund. The fund shall~~
7 ~~be subject to appropriation by the legislature.~~

8 Sec. 42.40.520. LAND USE REGULATION. The board is
9 authorized to adopt regulations governing land use by private
10 parties having interests in or permits for lands owned or managed
11 by the authority. The power conferred by this section is exer-
12 cised for the common health, safety and welfare of the public
13 and, to the extent constitutionally permissible, shall not be
14 limited by the terms and conditions of leases, contracts or other
15 transactions with private parties.

16 Sec. 42.40.530. EMINENT DOMAIN AND ACQUISITION OF PROPERTY
17 AND MATERIALS. (a) The authority may exercise the power of emi-
18 nent domain, pursuant to A.S. 09.55.240 - .460, to acquire land
19 or an interest therein for lawful purposes consistent with this
20 chapter.

21 (b) The authority may acquire a fee simple title
22 whenever, in the judgment of the authority, ownership of a fee
23 simple is necessary to effectuate the authority's lawful purposes
24 in condemning property. ~~When the authority acquires a fee~~
25 ~~simple, it shall as soon as practicable reconvey the subsurface~~
26 ~~estate to the state by a quitclaim deed.~~

27 (c) A.S. 09.55.310(a)(4) and A.S. 09.55.350 do not
28 apply to the authority.

29 (d) The authority may file a declaration of taking,
30 under A.S. 09.55.420 - .460, in the same manner and with the same
effect as the state; and

Lines 1-4

Subsection (b) of this section 42.40.530 requires the subsurface estate to be reconveyed to the State so this subsection (e) would have no effect unless the subsurface or the gravel, sand and rock part of the subsurface could remain with the Railroad.

1 (e) The authority's power of eminent domain includes,
2 without limitation, the power to obtain material, including clay,
3 gravel, sand, or rock, the land necessary to obtain the material,
4 and access to the land and material.

5 (f) The authority may vacate land, or part of it, or
6 rights in land acquired for railroad purposes by executing and
7 filing a deed in the appropriate recording district. Upon
8 vacating, title reverts to the State of Alaska, if compensation
9 has been paid.

10
11 ARTICLE 6. FINANCIAL PROVISIONS
12

13 Sec. 42.40.600. BONDS AND NOTES. (a) The authority, by
14 resolution of the board, may issue bonds and bond anticipation
15 notes to provide money to carry out its purposes.

16 (b) The principal and interest on the bonds or notes of
17 the authority are payable from money or assets of the authority.
18 Bond anticipation notes may be payable from the proceeds of the
19 sale of bonds or from the proceeds of sale of other bond antici-
20 pation notes or, if bond or bond anticipation note proceeds are
21 not available, the notes may be paid from other money or assets
22 of the authority. Bonds or notes may be additionally secured by
23 a pledge of a grant or contribution or other property from the
24 federal government, the state or any of its other political sub-
25 divisions, or a corporation, association, institution or person,
26 or a pledge of money, income, or revenues of the authority from
27 any source.

28 (c) Bonds or bond anticipation notes may be issued in
29 one or more series and shall be dated, bear interest (fixed or
30 variable) at the rate or rates per year or within the maximum

1 rate, be in the denomination, be in the form, either coupon or
2 registered, carry the conversion or registration provisions, have
3 the rank of priority, be executed in the manner and form, be
4 payable from the sources in the medium of payment and place or
5 places inside or outside the state, be subject to authentication
6 by a trustee or fiscal agent, and be subject to the terms of
7 redemption with or without premium, as the resolution of the
8 board may provide. Bond anticipation notes mature at the time or
9 times as may be determined by the board. Bonds mature at the
10 time, not exceeding 50 years from their date, as may be deter-
11 mined by the board. Before the preparation of definitive bonds
12 or bond anticipation notes, the authority may issue interim
13 receipts or temporary bonds or bond anticipation notes, with or
14 without coupons, exchangeable for bonds or bond anticipation
15 notes when these definitive bonds or bond anticipation notes have
16 been executed and are available for delivery.

17 (d) Bonds or bond anticipation notes may be sold in the
18 manner, on the terms, and at the price the board determines.

19 (e) If an officer whose signature or a facsimile of
20 whose signature appears on bonds or notes or coupons attached to
21 them ceases to be an officer before the delivery of the bond,
22 note or coupon, his signature or facsimile is valid as if he had
23 remained in office until delivery.

24 (f) Bond or bond anticipation note proceeds may not be
25 dedicated to activities other than those the board reasonably
26 determines to be specifically related to the purposes for which
27 the instruments are issued.

28 (g) In a resolution of the board authorizing or
29 relating to the issuance of bonds or bond anticipation notes, the
30

1 board has power by provisions in the resolution that will consti-
2 tute covenants of the authority, and contracts with the holders
3 of the bonds or bond anticipation notes:

4 (1) to pledge to a payment or purpose all or a
5 part of its revenues to which its right then exists or may
6 thereafter exist, and the money derived from the revenues, and
7 the proceeds of its bonds or notes;

8 (2) to covenant against pledging all or part of
9 its revenues, or against permitting or suffering a lien on the
10 revenues or its property;

11 (3) to covenant as to establishment of reserves or
12 sinking funds and the provision for and the regulation and dispo-
13 sition of the reserves or sinking funds;

14 (4) to covenant with respect to or against limita-
15 tions on a right to sell or otherwise dispose of property of any
16 kind;

17 (5) to covenant as to bonds and notes to be
18 issued, and their limitations, terms and conditions, and as to
19 the custody, application and disposition of the proceeds of the
20 bonds and notes;

21 (6) to covenant as to the issuance of additional
22 bonds or notes, or as to limitations on the issuance of addi-
23 tional bonds or notes and the incurring of other debts;

24 (7) to covenant as to the payment of the principal
25 of or interest on the bonds or notes, as to the sources and
26 methods of payment, as to the rank or priority of the bonds or
27 notes with respect to a lien or security, or as to the accelera-
28 tion of the maturity of the bonds or notes;

29 (8) to provide for the replacement of lost, sto-
30 len, destroyed or mutilated bonds or notes;

1 (9) to covenant against extending the time for the
2 payment of bonds or notes or interest on the bonds or notes;

3 (10) to covenant as to the redemption of bonds or
4 notes and privileges of their exchange for other bonds or notes
5 of the authority;

6 (11) to covenant to create or authorize the
7 creation of special funds of money to be held in pledge or other-
8 wise for operating expenses, payment or redemption of bonds or
9 notes, reserves or other purposes, and as to the use and disposi-
10 tion of the money held in the funds;

11 (12) to establish the procedure, if any, by which
12 the terms of a contract or covenant with or for the benefit of
13 the holders of bonds or notes may be amended or abrogated, the
14 amount of bonds or notes the holders of which must consent to
15 amendment or abrogation, and the manner in which the consent may
16 be given;

17 (13) to covenant as to the custody of its proper-
18 ties or investments, their safekeeping and insurance, and the use
19 and disposition of insurance money;

20 (14) to vest in a trustee or trustees inside or
21 outside the state property, rights, powers, and duties in trust
22 as the authority may determine, that may include any or all of
23 the rights, powers and duties of a trustee appointed by the
24 holders of bonds or notes of the authority, and to limit or abro-
25 gate the rights of the holders of the bonds or notes of the
26 authority to appoint a trustee under this chapter or limit the
27 rights, powers and duties of the trustee;

28 (15) to pay the costs or expenses incident to the
29 enforcement of the bonds or notes or of the provisions of the
30 resolution or of a covenant or agreement of the authority with
the holders of its bonds or notes;

1 (16) to agree with an authority trustee that may
2 be a trust company or bank having the powers of a trust company
3 inside or outside the state as to the pledging or assigning of
4 revenues or funds which or in which the authority has any rights
5 or interest; the agreement may further provide for other rights
6 and remedies exercisable by the trustee as may be proper for the
7 protection of the holders of bonds or notes of the authority and
8 not otherwise in violation of law and may provide for the
9 restriction of the rights of an individual holder of bonds or
10 notes of the authority;

11 (17) to appoint and provide for the duties and
12 obligations of a paying agent or paying agents, or other fidu-
13 ciaries as the resolution may provide inside or outside the
14 state;

15 (18) to limit the rights of the holders of bonds
16 or notes of the authority to enforce a pledge or covenant
17 securing the bonds or notes; and

18 (19) to make covenants other than and in addition
19 to the covenants expressly authorized in this section, of like or
20 different character, and to make the covenants to do or refrain
21 from doing the acts and things as may be necessary, or convenient
22 and desirable, in order to better secure bonds or notes or which,
23 in the absolute discretion of the council will tend to make bonds
24 or notes more marketable, notwithstanding that the covenants,
25 acts or things may not be enumerated in this section.

26 Sec. 42.40.610. INDEPENDENT FINANCIAL ADVISOR. In nego-
27 tiating the private sale of bonds or bond anticipation notes to
28 an underwriter, the board shall retain a financial advisor who is
29 independent from the underwriter.

30 Sec. 42.40.615. VALIDITY OF PLEDGE. The pledge of assets or
revenues of the authority to the payment of the principal or

1 interest on bonds or notes of the authority is valid and binding
2 from the time the pledge is made, and the assets or revenues are
3 immediately subject to the lien of the pledge without physical
4 delivery or further act. The lien of a pledge is valid and
5 binding against all parties having claims of any kind in tort,
6 contract, or otherwise against the authority, irrespective of
7 whether those parties have notice of the lien of the pledge.
8 Nothing in this section prohibits the authority from selling
9 assets subject to a pledge, except that a sale may be restricted
10 by the trust agreement or resolution providing for the issuance
11 of the bonds or notes.

12 Sec. 42.40.620. REMEDIES. A holder of bonds or notes or of
13 coupons attached to them issued under this chapter, and a trustee
14 under a trust agreement or resolution authorizing the issuance of
15 the bonds or notes, except as restricted by a trust agreement or
16 resolution, either at law or in equity, may enforce all rights
17 granted under this chapter or under the trust agreement or reso-
18 lution, or under any other contract executed by the authority
19 under this chapter, and may enforce and compel the performance of
20 all duties required by this chapter or by the trust agreement or
21 resolution to be performed by the authority or by its board mem-
22 bers or employees.

23 Sec. 42.40.625. NEGOTIABLE INSTRUMENTS. Bonds and notes and
24 interest coupons attached to them issued under this chapter are
25 negotiable instruments under the laws of this state, subject only
26 to applicable provisions for registration.

27 Sec. 42.40.630. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.
28 Bonds and notes issued under this chapter are securities in which
29 all public officers and public bodies of the state and its polit-
30 ical subdivisions, all insurance companies, trust companies,

1 banking associations, investment companies, executors, admin-
2 istrators, trustees and other fiduciaries may properly and
3 legally invest funds, including capital in their control or
4 belonging to them. These bonds and notes may be deposited with a
5 state or municipal officer of any agency or political subdivision
6 of the state for any purpose for which the deposit of bonds or
7 notes of the state is authorized by law.

8 Sec. 42.40.635. REFUNDING BONDS. (a) The authority may
9 provide for the issuance of refunding bonds for the purpose of
10 refunding any bonds then outstanding that have been issued under
11 this chapter, including the payment of any redemption premium on
12 them and any interest accrued or to accrue to the date of redemp-
13 tion of the bonds. The issuance of the refunding bonds, the
14 maturities and other details of them, the rights of the holders
15 of them, and the rights, duties and obligations of the authority
16 in respect of them are governed by the provisions of this chapter
17 which relate to the issuance of bonds, insofar as those provi-
18 sions may be appropriate.

19 (b) Refunding bonds may be sold or exchanged for
20 outstanding bonds issued under this chapter and, if sold, the
21 proceeds may be applied, in addition to other authorized pur-
22 poses, to the purchase, redemption or payment of the outstanding
23 bonds. Pending the application of the proceeds of refunding
24 bonds, with any other available money, to the payment of the
25 principal, accrued interest and any redemption premium on the
26 bonds being refunded, and, if so provided or permitted in the
27 resolution authorizing the issuance of the refunding bonds or in
28 the trust agreement securing them, to the payment of any interest
29 on the refunding bonds and any expenses in connection with the
30 refunding, the proceeds may be invested in direct obligations of,

Lines 25-28

This section creates a financial revolving fund. All Revenues go into the fund; all expenses are taken from the fund. The surplus in the fund can be obligated to capital improvements, major maintenance programs, and other financial needs.

Lines 24-30

42.40.655 - The Board of Directors "may" instead of "shall maintain in full force and effect public liability insurance." The reason for this change is that the authority may find that the authority may not be able to obtain insurance at either any cost or a reasonable cost and that therefore it is more efficient to be its own insurer and defend its own tort lawsuits. It is a business decision, not a political one, and so should remain with the Railroad. If the ARR maintains public liability insurance, any additional coverage required by the State naming the State as an additional insured should be funded by the State.

1 or obligations the principal of and the interest on which are
2 unconditionally guaranteed by, the United States of America, the
3 State of Alaska or other entities with comparably rated credit
4 that mature or that will be subject to redemption, at the option
5 of the holders of them, not later than the respective dates when
6 the proceeds, together with the interest accruing on them, will
7 be required for the purposes intended.

8 Sec. 42.40.640. CREDIT OF STATE NOT PLEDGED; REQUIRED
9 DISCLAIMER. Bonds and notes issued under this chapter do not
10 constitute a debt, liability, or obligation of the state or a
11 pledge of the faith and credit of the state or of a political
12 subdivision other than the authority but are payable solely from
13 the revenues or assets of the authority. Each bond and note
14 issued under this chapter shall contain on its face a statement
15 that the authority is not obligated to pay it nor the interest on
16 it except from the revenues or assets pledged for it and that
17 neither the faith and credit nor the taxing power of the state or
18 of a political subdivision other than the authority is pledged to
19 the payment of the principal of or the interest on the bond or
20 note.

21 Sec. 42.40.645. NO PERSONAL LIABILITY. No board member or
22 employee of the authority is subject to personal liability or
23 accountability because of his execution of bonds or notes or
24 their issuance.

25 Sec. 42.40.650. REVENUES. Revenues generated by the Alaska
26 Railroad Authority do not become part of the general fund of the
27 state but shall be retained and managed by the authority for pur-
28 poses authorized by this chapter.

29 Sec. 42.40.655. INSURANCE. The authority ^{may} shall maintain in
30 full force and effect public liability insurance in an amount

Lines 21-25

The phrases "expansion, reduction or diversification of services" and "significant and permanent change in the level and nature of services" need to be clarified. The above two phrases are far too broad and can be interpreted to apply to expansions, reductions or diversifications of service due to normal business changes.

1 reasonably calculated to cover potential claims for bodily
2 injury, death or disability, and property damage that may arise
3 from or be related to its operations and activities, naming the
4 state as an additional insured. Any cost incurred for naming the State as
an additional insured shall be funded by the State of Alaska.

5 Sec. 42.40.660. SAFEGUARDING OF FUNDS. The authority shall
6 maximize revenues from and deposit all funds in depositories
7 acceptable to the governor and otherwise safeguard the funds
8 under instructions as the governor may from time to time issue.

9 Sec. 42.40.665. FIDELITY BOND. The authority shall obtain a
10 fidelity bond in an amount determined adequate by the board for
11 its members and any official responsible for accounts and finan-
12 ces to be in full force and effect for the duration of his tenure
13 in office.

14 Sec. 42.40.670. REVERSION OF ASSETS. In the event the
15 authority ceases to exist, for whatever reason, its assets
16 revert to the state.

17

18 ARTICLE 7 - STATE OVERSIGHT

19

20 Sec. 42.40.700. STATE REVIEW. (a) Prior to un ertaking:

21 (1) expansion, reduction or diversification of
22 services provided by the railroad upon date of transfer to the
23 authority or as subsequently provided under this chapter that
24 would represent a significant and permanent ^{planned}/change in the level
25 and nature of services provided;

26 (2) extension of main or branch lines by more than
27 25 miles or five percent of the railroad's total track mileage,
28 whichever is greater; or

29

30

Lines 13-30

42.40.700 - Subsection (c) and (d) should be stricken as unnecessary. The review of any proposed action of the Railroad are unnecessary because the legislature and/or the Governor can, through resolution or legislative act or Governor's edict suggest changes or stop any action of the Railroad.

The power of the governor to intervene would make the authority a part of the executive branch government. For the benefit of the citizens of the State of Alaska, the authority should be operated as a business in competition with the rest of the transportation industry, which is in the private sector of the economy. The power of the governor to intervene would allow the governor the opportunity to award his political friends and punish his political enemies.

Similarly, the power of the legislature to intervene with respect to any "expansion, reduction or diversification of services"(an over broad phrase), would allow intervention on the basis of political reasons when only business considerations should be used.

1 (3) the issuance of securities, notes, bonds or
2 contracting for other borrowings with a term in excess of one
3 year and in an amount exceeding \$5 million (\$5,000,000);

4 the board shall notify the governor and leadership of the
5 legislature of any such proposal, and when necessary may request proper
6 funding or aid in funding.

7 (b) The notice shall be in writing and describe the
8 proposed undertaking in detail, specifying its financial impact
9 on the authority; its impact on the level and nature of services
10 provided by the authority; why the project is necessary or
11 desirable to achieve the purposes of this chapter; and whether
12 and when the undertaking will itself be self-sustaining finan-
13 cially.

14 ~~(c) Within 60 days of receipt of the notice, the gover-~~
15 ~~nor, in his sole discretion, may either (i) disapprove the pro-~~
16 ~~posed undertaking; (ii) suspend the proposed undertaking and~~
17 ~~direct that it not be implemented until the legislature has~~
18 ~~reviewed it under subsection (d) herein; or (iii) approve it, in~~
19 ~~which case the authority may proceed. A decision by the governor~~
20 ~~disapproving the proposed undertaking also will be dispositive~~
21 ~~and binding on the authority, unless the authority is directed to~~
22 ~~proceed under A.S. 42.40.710. If the governor suspends the pro-~~
23 ~~posed undertaking, he shall promptly transmit his decision to the~~
24 ~~board and the leadership of the legislature in the form of a~~
25 ~~recommendation that the proposed undertaking be either approved~~
26 ~~or disapproved by the legislature. The governor is considered to~~
27 ~~have approved the authority's proposed undertaking if he fails to~~
28 ~~act under this subsection within the prescribed time.~~

29 (d) Once in session, within 90 days of receipt of the
30 ~~governor's recommendation the legislature may, by law, reject the~~

Line 5

Subsection (e) should be realphabetized to (c). The words "notwithstanding the foregoing" should be stricken.

Line 11

"(c)" should be substituted for "(e)".

Lines 13-14

These two lines should be deleted.

Line 15

"(2)" should be deleted.

Line 18 on

42.40.710 should be stricken. All the Railroad would need would be a resolution passed by either house of the Legislature or a Governor's edict. The action forcing mechanism would make the authority more a part of the government than a business enterprise and subject the authority to railroad decisions made on a political basis rather than a business basis. The rest of the transportation is in the private sector of the economy so the government would be competing with private transportation companies on political grounds but with the resources behind the state government. The action forcing mechanism could allow the State to force the authority to charge unreasonably low land rents or low tariffs in direct competition with private land owners and private transportation companies. Politics should be separated from the day to day operations of the railroad authority. The operations of the railroad should be run by business considerations.

1 ~~proposed undertaking. The legislation is binding on the~~
2 ~~authority. The legislature is considered to have concurred in~~
3 ~~the proposed undertaking if it fails to pass legislation within~~
4 ~~the prescribed time. The concurrence also is binding.~~

5 (c) ~~(e)~~ Notwithstanding the foregoing, a proposed extension
6 of main or branch lines by more than 50 percent of the railroad's
7 total track mileage and requiring the issuance of securities,
8 notes, bonds or contracting for other borrowings on an amount in
9 excess of \$50 million (\$50,000,000) must be specifically
10 authorized by law.

11 (d) ~~(f)~~ Any undertaking described in subsection (a) or ~~(e)~~ ^(c)
12 herein is considered approved for purposes of this section if ^(c)

13 ~~(1) the authority has been directed to act pur-~~
14 ~~suant to A.S. 42.40.710; or~~

15 ~~(2) the legislature by law has specifically~~
16 ~~approved the undertaking by authorizing, appropriating funding~~
17 ~~for or guaranteeing authority borrowing for it.~~

18 ~~Sec. 42.40.710. ACTION-FORCING MECHANISM. (a) The governor~~
19 ~~or the legislature, by resolution, may request that the authority~~
20 ~~exercise its powers and authorities or refrain from doing so.~~
21 ~~Notice of a request shall be given to the legislature by the~~
22 ~~governor and to the governor by the legislature.~~

23 (b) To the greatest extent practicable within 30 days
24 of receipt of a request the board shall respond to both the
25 governor and the leadership of the legislature in writing
26 specifying:

27 (1) the manner in which it proposes to take the
28 requested action or any modification thereof requested by the
29 authority; or

30 (2) the specific reasons, financial, legal or
~~otherwise, why the board declines to take the requested action.~~

Page 41

Lines 9-30
and following
page, lines
1-11

42.47.715 should be stricken under the same above reasoning. The operations of the railroad authority should be governed by business considerations rather than political ones so that it can compete fairly with private enterprise. On the other hand, the expansion of the railroad requiring state funds is a political decision. Moreover, section 42.40.720 serves many of the same purposes as 42.47.715.

1 (c) At the request of the governor or on its own ini-
2 tiative, the legislature by law may then direct the authority to
3 take the requested action or the legislature may act to cure the
4 problem precluding the authority from taking it. In the event
5 the authority is unable to take the action for financial reasons,
6 it is obligated to do so, even if directed, only upon provision
7 by the legislature of sufficient funds to plan and implement the
8 action.

9 Sec. 42.40.715. INTERVENTION. (a) When authorized by law,
10 the governor as provided in the legislation may intervene and
11 exercise such control over the authority as is necessary and
12 appropriate to correct any deficiency or to assure that the
13 purposes of this chapter may be reasonably accomplished,
14 including directing affirmative action when:

15 (1) The board has requested such intervention by
16 resolution;

17 (2) The authority has represented to the public or
18 to creditors that recourse may be had to the assets, property or
19 credit of the state on account of acts or omissions of the
20 authority, unless the secondary or direct liability has been
21 expressly assumed by the state;

22 (3) The authority has failed to file an annual
23 report as required by A.S. 42.40.410 within 120 days after
24 receipt of formal notice of the omission;

25 (4) A deadlock has occurred in the board, or the
26 membership of the board is insufficient to constitute a quorum
27 for conduct of affairs so that the authority is unable to conduct
28 its operations or perform its activities; or

29 (5) The assets of the authority have been or are
30 committed to be misapplied or wasted or illegally expended; or

1 ~~the authority has committed or is about to commit a material~~
2 violation of this chapter.

3 (b) The governor may take actions necessary to achieve
4 the object of the intervention stated in the legislation and make
5 corrections ancillary thereto, and shall accomplish the purposes
6 of the intervention as expeditiously as reasonable; board members
7 and employees may not be displaced nor the conduct of their
8 duties impaired more than necessary to accomplish the purposes of
9 the intervention and the intervention shall cease as soon as the
10 objective stated in the legislation and corrections ancillary
11 thereto have been accomplished.

12 Sec. 42.40.720. TRUSTEESHIP. (a) When authorized by law,
13 the governor may petition the Superior Court of the State of
14 Alaska for the Third Judicial District at Anchorage to impose a
15 trusteeship over the authority and appoint the trustees therefor
16 under any of the following circumstances:

17 (1) The board has requested the same by
18 resolution;

19 (2) The authority has become insolvent or other-
20 wise unable to carry out its contractual obligations to creditors
21 and other persons;

22 (3) The authority has filed an annual report that
23 is false or deceptively misleading on a material matter;

24 (4) The authority has become incompetent or
25 ineligible to carry out the public purposes for which it was
26 created;

27 (5) The authority has misused, abused, or con-
28 tinuously exceeded the power or authority conferred by this
29 chapter or committed repeated violations of this chapter; or
30

1 (6) The assets of the authority have been or are
2 committed to be misapplied or wasted, or illegally expended, or a
3 material violation of this chapter has been committed or is about
4 to be committed ~~and the governor has determined that intervention~~
5 ~~as provided in A.S. 42.40.715 would not be feasible under the~~
6 ~~circumstances; or~~

7 (7) The credit-worthiness of the State of Alaska
8 has been directly or indirectly substantially impaired by actions
9 of the authority.

10 (b) The trustees appointed by the superior court shall
11 take reasonable actions necessary during the trusteeship to
12 achieve its object. The trustees have the power and authority to
13 reorganize the authority and amend its rules and regulations;
14 suspend or remove board members and executive officials; manage
15 the assets and affairs of the authority; and exercise all powers
16 necessary or appropriate to fulfill outstanding agreements, to
17 restore the capability of the authority to perform the functions
18 and activities for which it was created, to reinstate its credit
19 or credibility with its creditors or obligees or the credit of
20 the state or its credibility with its creditors or obligees to
21 the extent impaired by authority actions.

22
23 ARTICLE 9. PERSONNEL AND GENERAL
24 PROVISIONS

25
26 Sec. 42.40.800. PERSONNEL. (a) All personnel employed by
27 the Alaska Railroad are personnel of the Alaska Railroad
28 Authority, and not of the State of Alaska. A.S. 39.05 - .51,
29 inclusive, do not apply to personnel of the authority.
30

1 (b) For the purposes of the Public Employment Relations
2 Act, A.S. 23.40.020 - .260, the authority is considered a "public
3 employer" within the meaning of that act, except that A.S.
4 23.40.070(3) does not apply to the authority, and the authority's
5 employees are classified as employees under A.S. 23.40.200(a)(1).

6 (c) As soon as practicable after transfer, the
7 authority and its employees shall adopt collective bargaining
8 agreements that continue the provisions of the agreements in
9 effect at the Alaska Railroad immediately prior to transfer. The
10 agreements between the authority and its employees shall remain
11 in effect until they expire by their terms or, as required under
12 the federal transfer legislation, they are renegotiated, subject
13 to the approval of the board.

14 (d) The authority may not enter into any collective
15 bargaining agreement concerning wages, hours, working conditions
16 or other employment terms, conditions and benefits with any orga-
17 nization representing the authority's executive officials.

18 Sec. 42.40.810. POLITICAL ACTIVITIES. (a) No funds,
19 assets, or property of the authority may be used for partisan
20 political activity or to further the election or defeat of
21 candidates; nor shall funds or a substantial part of the activi-
22 ties of the authority be used for publicity or educational pur-
23 poses designed to support or defeat legislation pending before
24 the Congress of the United States, or the legislature of the
25 state, provided, however, that board members and employees of the
26 authority may communicate with and appear before committees of
27 the congress or the legislature as well as local legislative
28 bodies in connection with funding and other matters directly
29 affecting the authority or its ability to carry out the purposes
30 for which it is created and respond to requests by members of

Lines 12
thru 17

The Railroad requests that the word "municipality" be deleted from any license or permit provision in this statute. The Railroad presently negotiates with a number of municipalities regarding crossings, traffic signals, etc. If the municipalities were granted authority to regulate the Railroad's passage through their boundaries, the Railroad's transportation of goods and services would be so erratic as to be totally non-operable.

1 congress, the legislature or local legislative bodies for infor-
2 mation, views and testimony.

3 (b) A board member or employee who violates the provi-
4 sions of this section is subject to personal liability in the
5 form of a civil penalty assessed by a judge of the superior court
6 in an amount not to exceed Five Thousand Dollars (\$5,000). An
7 action to enforce this penalty may be brought by any person. A
8 violation of this chapter does not constitute a crime and
9 assessment of the civil penalty by a judge does not give rise to
10 any disability or legal disadvantage based on conviction of a
11 criminal offense.

12 Sec. 42.40.820. LICENSES AND PERMITS. Whenever the laws of
13 a ~~municipality~~, the state, or the United States require a license
14 or permit to undertake certain activities or perform an act, the
15 authority, prior to undertaking the activity or performing the
16 act, shall comply therewith to the same extent as the state,
17 except as otherwise provided in this chapter.

18 Sec. 42.40.830. UNAUTHORIZED REPRESENTATION. All persons
19 who assume to act for the authority without authority to do so
20 are jointly and severally liable for the debts and liabilities
21 incurred or arising as a result thereof.

22 Sec. 42.40.840. CLAIMS AGAINST THE AUTHORITY. (a) All
23 claims and lawsuits involving activities of the railroad,
24 including without limitation suits in contract, quasi-contract,
25 or tort, shall be brought against the authority, and not against
26 the State of Alaska.

27 (b) For the purposes of actionable claims, under-
28 takings, payments of judgments, execution, interest, punitive
29 damages, statutes of limitations, bonds, costs, and similar mat-
30 ters related to the presentation and prosecution of claims by and

1 against the authority, the authority and its board members and
2 employees enjoy the same rights, privileges, and immunities as
3 the state and state officers, as provided in A.S. 09.10.120,
4 09.50.250 - .290, 09.65.040 and other similar or related
5 statutes.

6 (c) Claims against the authority are not subject to the
7 provisions of A.S. 44.77.010 - .070 regarding claims against the
8 state.

9 (d) The authority is not subject to the provisions of
10 A.S. 44.80.010, regarding the state as a party to action.

11 Sec. 42.40.855. EXEMPTION FROM TAXATION. (a) The real and
12 personal property of the authority and its assets, income and
13 receipts are declared to be the property of a political sub-
14 division of the state and devoted to an essential public and
15 governmental function and purpose, and the property, assets,
16 income, and receipts are exempt from all taxes and special
17 assessments of the state or a political subdivision of the state,
18 including, without limitation, all boroughs, cities, municipali-
19 ties, school districts, public utility districts and other taxing
20 units. All bonds of the authority are declared to be issued by a
21 political subdivision of the state and for an essential public
22 and governmental purpose and to be a public instrumentality and
23 the bonds, and the interest on them, the income from them and the
24 transfer of the bonds, and all assets, income and receipts
25 pledged to pay or secure the payment of the bonds, or interest on
26 them, are at all times exempt from taxation by or under the
27 authority of the state, except for inheritance and estate taxes
28 and taxes on transfers by or in contemplation of death.

29 (b) Nothing in this section affects or limits an exemp-
30 tion from license fees, property taxes, or excise, income or

1 other taxes, provided under any other law, nor does it create a
2 tax exemption with respect to the interest of any business
3 enterprise or other person, other than the authority.

4 (c) For purposes of A.S. 14.17 relating to the com-
5 putation of the required local effort by a district as defined in
6 A.S. 14.17.250(3), all property exempted from taxation by this
7 chapter are considered taxable real and personal property.

8 Sec. 42.40.870. PAYMENTS IN LIEU OF LOCAL REAL PROPERTY
9 TAXATION AND IMPACT AID. (a) To the extent feasible, without
10 impairing the authority's financial viability and consistent with
11 sound business principles, including but not limited to the
12 operation of the railroad on a self-sustaining basis, the need
13 for capital accumulation and consistency with regulation by the
14 Interstate Commerce Commission, the authority may:

15 (1) make partial payments to political sub-
16 divisions served by the railroad or in which the authority has
17 substantial land holdings in lieu of local taxation of authority
18 real property; and

19 (2) provide financial assistance to political sub-
20 divisions and other local districts in the development of public
21 education and other facilities required to be developed as a
22 result of expanded authority activities in the area.

23 (b) The board shall adopt regulations prescribing the
24 conditions under and the extent to which it will undertake to
25 provide payments or assistance, including, but not limited to the
26 conditions cited in subsection (a): the relative magnitude of
27 the taxation effort deficit or impact caused by authority activi-
28 ties in an area; the relative need among communities affected by
29 authority activities; and the present or anticipated benefits to
30 the communities attributable to authority activities.

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(a) spouse;

(b) dependent parent, parent-in-law, child, son-in-law or daughter-in-law; or

(c) any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the authority officer or employee;

(8) "land" means all interests in real property, including tide and submerged lands;

(9) "Leadership of the legislature", for purposes of notice and filings required by this chapter, means the president of the senate, the speaker of the house, the chairmen and ranking minority members of the senate and house transportation committees, the chairman of the legislative budget and audit committee or jurisdictional successors thereto or persons or offices they may designate;

(10) "rail properties" means all right, title and interest of the United States to real and personal property, tangible and intangible, identified in the closing report prepared under the federal transfer legislation and transferred to the authority under the legislation;

(11) "regulation" has the same meaning as that term is defined in A.S. 44.62.640.

(12) "rules" means rules, standards, or written procedures relating to the governance and internal management and

Sec. 42.40.910. SEVERABILITY. In the event a court of competent jurisdiction adjudges any clause, sentence or paragraph or section of this chapter to be invalid or unconstitutional, the judgment or decree does not affect, invalidate or impair the remainder thereof and the effect of the judgment or decree is

1 confined to the clause, sentence, paragraph, section or part of
2 this chapter so adjudged to be invalid or unconstitutional.

3 Sec. 42.40.920. CONSTRUCTION. This chapter shall deliber-
4 ately be construed so as to effectuate its purposes.

5 Sec. 42.40.930. DATE OF EFFECTIVENESS. The provisions of
6 this act take effect upon enactment of the federal transfer
7 legislation.

8
9 ARTICLE 10. APPLICATION OF OTHER LAWS

10
11 Sec. 42.40.1010. CONFLICTING LAWS INAPPLICABLE. Insofar as
12 the provisions of this act are in conflict with the provisions of
13 other law, or parts thereof, the provisions of this act shall
14 prevail.

15 Sec. 42.40.1020. REPEAL, AMENDMENT AND APPLICATION OF
16 EXISTING STATUTES.

17 (1) A.S. Title 19 does not apply to the operations
18 of the authority.

19 (2) The authority is considered a "political
20 subdivision" of the state for the purposes of A.S. 23.10.055.

21 (3) A.S. 23.10.420 does not apply to the opera-
22 tions of the authority.

23 (4) A.S. 30.15 does not apply to the operations of
24 the authority.

25 (5) Authority activities are not considered
26 "public works" or "public projects" for the purposes of the
27 following provisions under A.S. Title 35:

28 (a) A.S. 35.05.010;

29 (b) A.S. 35.10.010;

30 (c) A.S. 35.10.015;

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- (d) A.S. 35.10.030;
- (e) A.S. 35.10.040;
- (f) A.S. 35.10.050;
- (g) A.S. 35.10.090 - .120;
- (h) A.S. 35.10.130 - .135;
- (i) A.S. 35.10.160 - .200;
- (j) A.S. 35.15;
- (k) A.S. 35.27; and
- (l) A.S. 35.30.10.

(6) The following chapters of A.S. Title 36 do not apply to the operations of the authority:

- (a) A.S. 36.05;
- (b) A.S. 36.10;
- (c) A.S. 36.15;
- (d) A.S. 36.20; and
- (e) A.S. 36.25.

(7) The following provisions of A.S. Title 37 do not apply to the operations and budgeting procedures of the authority:

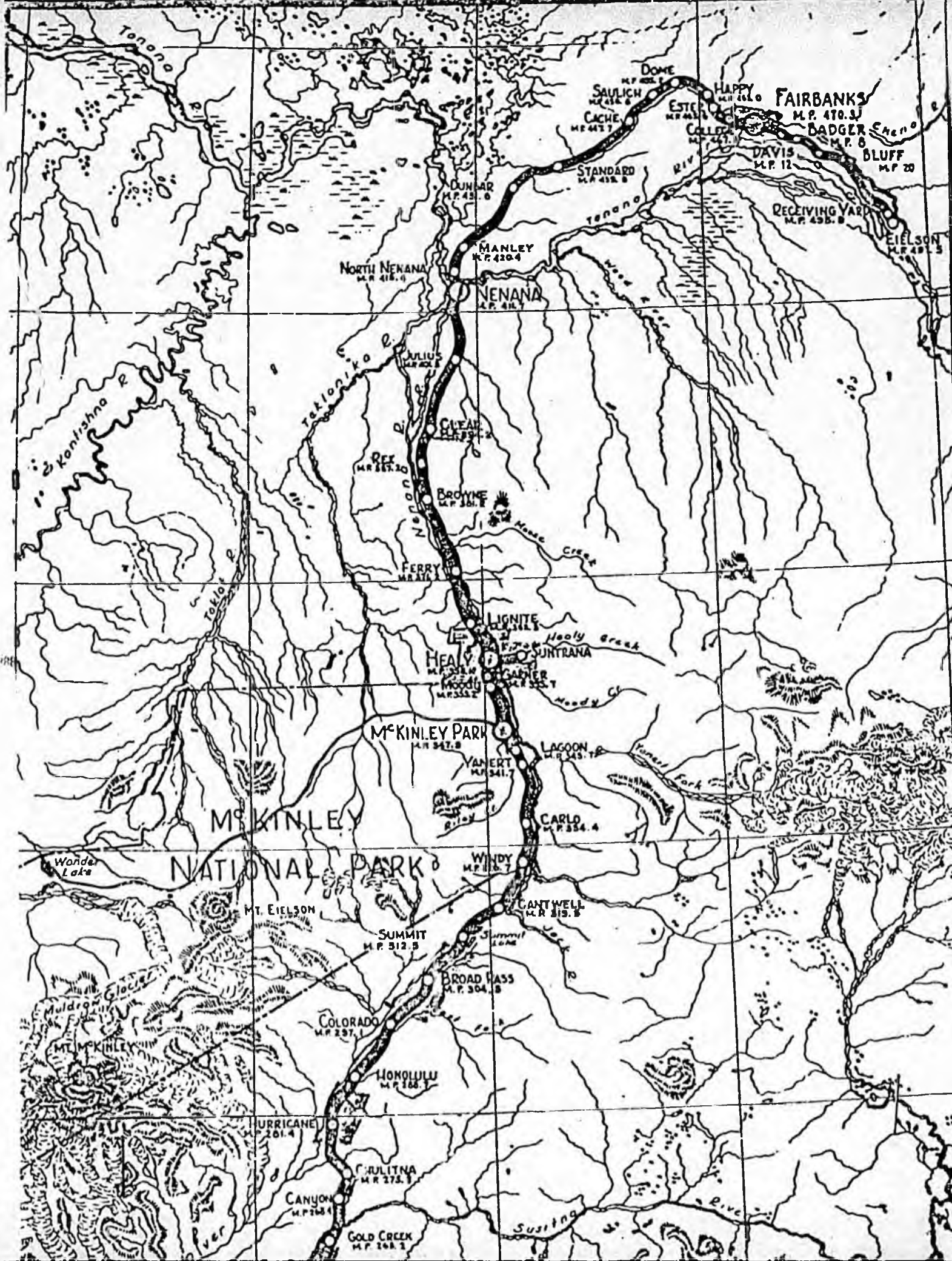
- (a) A.S. 37.05;
- (b) A.S. 37.07;
- (c) A.S. 37.10.010 - .060;
- (d) A.S. 37.10.085;
- (e) A.S. 37.20; and
- (f) A.S. 37.25.

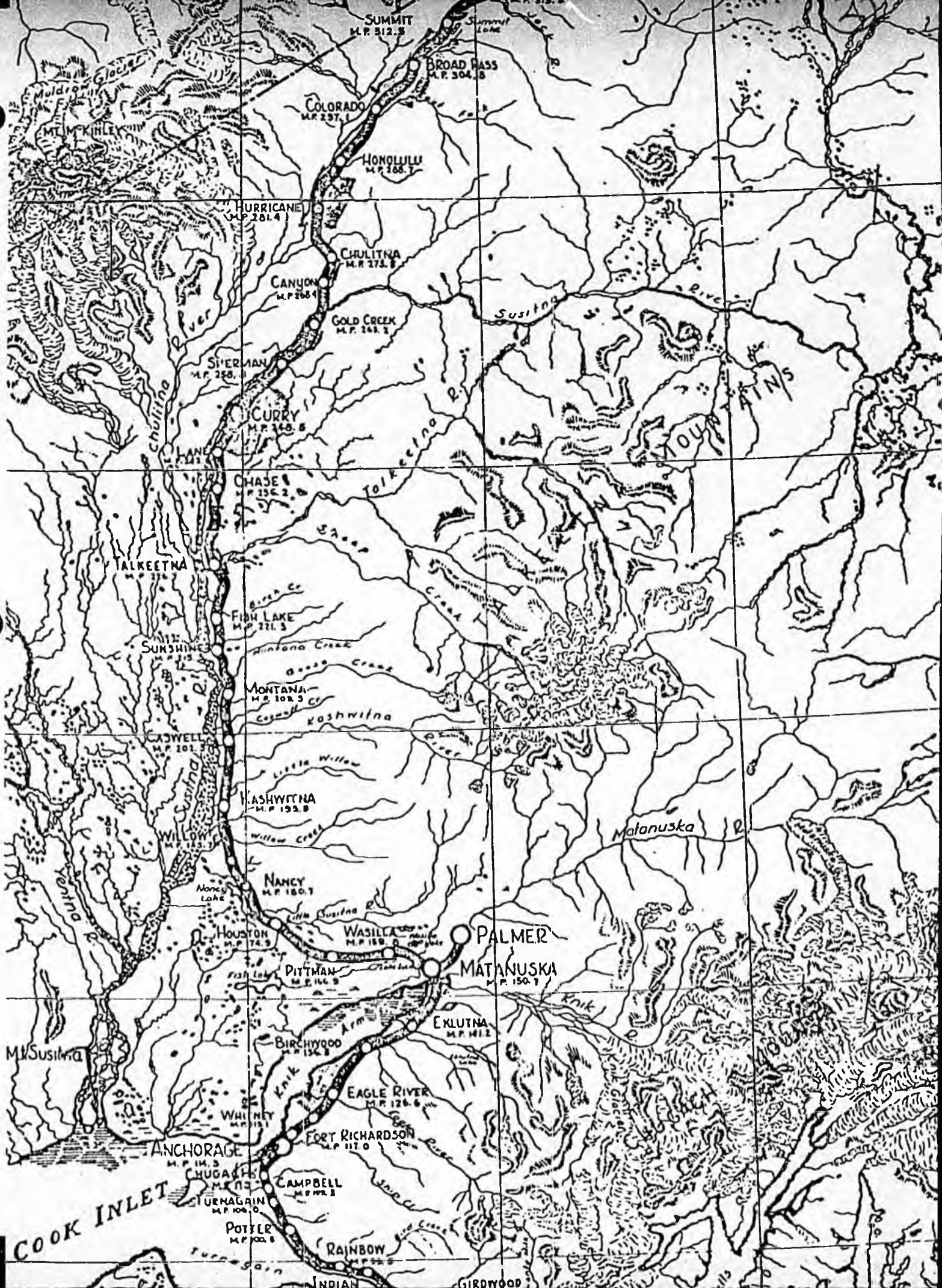
(8) The authority is not subject to the jurisdiction of the Alaska Transportation Commission.

(9) A.S. 39.50.200(b) is amended by adding a new paragraph as follows: "(45) Alaska Railroad Authority."

1 (10) No subsequently enacted statute shall be
2 interpreted or construed to apply to the authority, the railroad
3 or any of the authority's activities unless it specifically so
4 provides by its terms.
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PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.





CROWLEY MARITIME CORPORATION



April 7, 1982

Senator Jalma Kerttula
President, Alaska State Senate
Juneau, Alaska

Dear Senator Kerttula:

I understand the Senate Transportation Committee will soon mark up substitute SB 212, creating an Alaska Railroad authority, and that the full Senate will consider the bill shortly. The Alaska Hydro-Train strongly supports your efforts and urges you to take all possible measures to assure that the Alaska Railroad is able to operate efficiently in the private sector environment in which it must operate. Operating as much as possible like a private business, the Railroad will be better able to provide efficient, low-cost transportation to the benefit of the State of Alaska.

Respectfully,

Thomas E. Garside
Vice President
Common Carrier Services

TEG:mkh

NORTHWEST AND ALASKA DIVISION

Crowley Maritime Plaza
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Portland, Oregon 97217
(503) 283-1244
Telex 38-0935



SEA-LAND
SERVICE, INC.

April 10, 1981

Mr. Greg O'Clarey
National President
Alaska Region Vice President
Inland Boatmen's Union
124 Front Street
Juneau, Alaska 99801

Dear Greg:

Enclosed are some suggested changes which we feel should be made in House Bill No. 12, Senate Bill No. 212, Senate Bill No. 213, and Senate Bill No. 221. No change is recommended in Senate Bill No. 156. Copies of all bills are attached.

Our people are going over House Joint Resolution No. 20 and Senate Joint Resolution No. 18, as well as the new House Bill No. 312, to see if we can recommend any changes in them.

Since all of the above bills are 'initial starters', it would be a good idea to clean up the language now as, I suppose, no one knows which one will be embellished at a later date. The language we have recommended is language that we hope will make the Railroad a viable unit of the State Government and will be able to pay for its operations from its revenues.

Best regards to you and 'Mickey'.

Sincerely,

SEA-LAND SERVICE, INC.

H. L. Schuyler
Director Public Affairs
Alaska Division

HLS:kt
Enclosures

STATE OF ALASKA
ALASKA RAILROAD LEGISLATION

House Bill No. 12

Page 3 -- At line 7, amend Subsection 12 to read as follows:

"(12) Establish, levy, and collect fully compensatory rates and other charges for the use of its railroad facilities. The Authority is specifically prohibited from allowing use of its railroad facilities on a non-reimbursable basis, or from levying and collecting rates and other charges for the use of such facilities that do not reflect the total direct and indirect costs which arise from such use."

Page 4 -- At line 7, redesignate "(e)" as "(f)" and insert new "(e)":

"(e) The proceeds resulting from the issuance of bonds pursuant to this section may only be used for the acquisition, construction and improvement of railroad facilities in the state. None of the proceeds may be used to meet the Authority's operating expenses or any deficit resulting from an insufficiency of operating revenues."

Senate Bill No. 156

No change is recommended.

Senate Bill No. 212

Page 3 -- At line 24, amend subsection (9) as follows: "(9) Borrow money and issue its negotiable bonds or notes, the proceeds of which may only be used for the acquisition, construction, or improvement of railroad facilities in the state; provide for and secure the payment of said bonds or notes; provide for the rights of their holders; and purchase, hold or dispose of any of its bonds or notes;"

Page 3 -- At line 27, add the word "capital" after "its".

Page 4 -- At line 28, add the following new sentence: "The Authority is prohibited from authorizing the use of the Alaska Railroad's facility by any person on a non-reimbursable basis, or from levying and collecting rates and other charges for the use of such facilities that do not reflect total and indirect costs which arise from such usage.

Page 5 -- Delete line 20 and replace with "to meet its capital obligations and expenses."

Senate Bill No. 213

Renumber Section 2 as Section 3, and insert new Section 2: "None of the monies appropriate herein may be utilized by the Alaska Railroad Authority to meet deficits and operating revenues resulting from its failure to levy and collect rates and other charges for the use of its railroad facilities that reflect the total direct and indirect costs which arise in such usage.

- FILE

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 622
SEATTLE, WASHINGTON 98119

H. L. SCHUYLER
Director Public Affairs
Alaska Division

February 19, 1982

TELEPHONE:
(206) 638-6348

Honorable Bill Ray
Alaska State Senator
Room 103, Capitol Building
State Capitol, Pouch V
Juneau, Alaska 99811

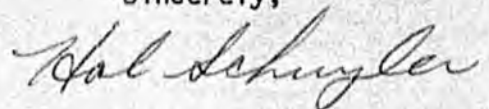
Dear Senator Ray:

A short note to thank you for taking the time to discuss Sea-Land's concern over the Alaska Railroad Authority Bill, S.B. 212, and its amendments.

We agree with you that the A.R.R. is a necessary tool to promote the growth of Alaska's Resources and the Alaska Hinterland. However, we are concerned that it operates as a corporation to serve its Capitol and shows a profit, as all businesses must do to exist. Sea-Land's main concern is that the competitive factors are on an equal footing.

Thanks again.

Sincerely,



HLS:kt

P.S. Two cartons, one red and one green, are forthcoming.

Technical amendments to *** "inter-lineated" draft

- 1) On page 4, at line 3, following the word "not ," add the words "directly or"
- 2) On page 7, at line 14, add a new subsection: "(d) A member whose term has expired shall serve until his successor has been appointed by the Governor."
- 3) On page 9, at line 21, delete the word "governing" and insert in lieu thereof the word "delegating;" at line 22 delete the words "be conducted" through the word "by" in line 23; at line 24, following the word "official" insert a comma and the words "subject to any board review specified in the policies"
- 4) On page 14, at line 3, following the word "information"; on page 17 at line 6, following the word "matters"; and at line 15 of the same page following the word "Commission," add the words "including but not limited to proprietary information associated with specific shippers, divisions and contract rate agreements" On these same pages add "U.S." preceding each reference to the Interstate Commerce Commission.
- 5) On page 14, at line 10 delete the words "and for" through the word "regulations," on the next line; At line 19 following the period add a new sentence: "The legislature by appropriate action may annul or temporarily suspend a regulation adopted by the authority."
- 6) On page 16, at line 12, following the word "after" insert the words "the date of"
- 7) On page 21, at line 30, delete the word "railroad"
- 8) On page 25, at line 21 following the word "classification" insert a comma and the word "control"

9) On page 25, at line 28, strike the words "general manager" and insert in lieu thereof the words "chief executive officer"

10) On page 28, at lines 26-27 strike the words "general manager" and insert in lieu thereof the words "chief executive officer"

11) On page 30, at line 19, following the word "legislature," insert the words "and the authority"

12) On page 30, at line 27, following the word "adopt," insert the word "exclusive"

13) On page 36, at line 13, delete the word "council" and insert in lieu thereof the word "board"

14) On page 38, at line 9 delete the word "appropriate" and insert in lieu thereof the word "applicable"

15) On page 41, at line 29, following the word "approved" insert the words "or rejected" and at line 30, following the word "act" insert the words "or to refrain from acting"

16) On page 42, at line 28 delete the word "may" and insert in lieu thereof the word "shall"

17) On page 43, at line 12, following the word "ommission" insert the words "or has filed an annual report that is false or deceptively misleading on a material matter"

18) On page 51, at line 3, following the word "house," insert the words "the minority leaders of each house,"; delete the words "and ranking minority members" on lines 5-4; and on line 4, following the word "transportation" insert the words "and finance"

19) On page 52, at line 18 delete the text of (5) and insert in lieu thereof the following:

A.S. Title 35 does not apply to the operations of the authority.

Delete subsection 6 of AS 42.40.1020 on page 51.

Senate Bill No. 221

Page 1 -- Lines 12 and 13 have been revised to read as follows: "For the achievement of the goals of reasonable freight costs, long-term economic growth and continuing common carrier service.

Page 1 -- At line 20, add "self-sustaining, financially viable" after "a".

Page 3 -- At line 22, add "in self-sustaining, financially viable" after "operate".

Page 4 -- At line 11, delete "fares" and replace with "fully compensatory rates".

Page 5 -- At line 11, redesignate "(e)" as "(f)" and insert new "(e)":
"(e) The proceeds resulting from the issuance of bonds pursuant to this section may only be used to meet the capital obligations and expenses of the Authority. None of the proceeds may be used to meet the Authority's operating expenses or any deficit resulting from an insufficiency of operating revenues."

Senate Bill No. 212

Page 3 -- At line 24, amend subsection (9) as follows: "(9) Borrow money and issue its negotiable bonds or notes, the proceeds of which may only be used for the acquisition, construction, or improvement of railroad facilities in the state; provide for and secure the payment of said bonds or notes; provide for the rights of their holders; and purchase, hold or dispose of any of its bonds or notes;"

Page 3 -- At line 27, add the word "capital" after "its".

Page 4 -- At line 28, add the following new sentence: "The Authority is prohibited from authorizing the use of the Alaska Railroad's facility by any person on a non-reimbursable basis, or from levying and collecting rates and other charges for the use of such facilities that do not reflect total and indirect costs which arise from such usage.

Page 5 -- Delete line 20 and replace with "to meet its capital obligations and expenses."

Senate Bill No. 213

Re-number Section 2 as Section 3, and insert new Section 2: "None of the monies appropriate herein may be utilized by the Alaska Railroad Authority to meet deficits and operating revenues resulting from its failure to levy and collect rates and other charges for the use of its railroad facilities that reflect the total direct and indirect costs which arise in such usage.

SB 212 establishes the Alaska Railroad Authority. A 7 member board of directors will act as the governing body. (DOT/PF Commissioner and 6 public members appointed by the Governor) The board may employ a president to manage the authority (subject to the Governors approval) and other staff.

The authority is authorized to acquire, provide for the operation and maintenance of, and sell bonds in order to pay for existing costs or development of the railroad or railroad facilities.

The authority is directed (Sec 3, page 14) to enter into negotiations with the Federal government for the transfer of ownership of the Alaska Railroad to the authority subject to money available from appropriations for the purpose.

POSITION STATEMENT

There is pending legislation that would provide for the transfer of the federally owned and operated Alaska Railroad to the State of Alaska. This legislation, if enacted, would transfer ownership, operation and financial support of the Alaska Railroad from the federal government to the State of Alaska government. We do not oppose this action.

The Alaska trucking industry feels very strongly, however, that there are serious concerns regarding the impact state ownership, operation and control of the railroad could have on the privately owned and unsubsidized trucking firms in Alaska.

Further, the trucking industry feels strongly that any transfer legislation should address these concerns in a manner that will protect the future integrity of privately owned carriers in providing service for cargo movement between the Lower 48 and Alaska and within Alaska. Without such protection, the general public of the State of Alaska will have little chance of continuing to enjoy the benefits of strong and vigorous competition in transportation.

Today, the State of Alaska is well served by strongly competitive water and motor carriers providing service to, from and within Alaska. All of these firms are privately owned and receive no subsidy from the state or federal government.

Federal subsidy of the Alaska Railroad has removed any necessity for the railroad to recover its capital costs from its freight revenue.

Transfer of the Alaska Railroad from federal ownership and operation to state ownership and operation could involve the risk that the State would utilize rail properties and facilities in a manner that would artificially impact the level of rates which would otherwise be set by competition among the unsubsidized, privately-owned carriers.

The state-owned railroad must not be allowed to become a subsidized trucking company. It is essential that if the state-owned railroad competes with water and motor carriers, it must do so in a way that allows rate levels to be set through vigorous competition by the privately-owned carriers that have the requirement of buying and paying for their capital equipment, as well as earning a profit and paying taxes.

The state-owned railroad must not be allowed to instigate predatory pricing policies that would reduce railroad rates below that of competitive trucking companies that operate on parallel routes.

Legislation that addresses the transfer of the Alaska Railroad from the federal government to the state government must include safeguards that will encourage increased productivity within the private sector and less reliance on government entities to provide services that can be provided by the private sector.

The trucking industry in Alaska sincerely hopes that legislation can be developed in a way that will assure the future viability of privately owned water and motor carriage for the State of Alaska.

OUTLINE OF SEPTEMBER 29, 1981

TOTE DRAFT AMENDMENTS TO S. 1500

1. Add to Congressional Finding of S. 1500 a provision that further sets the tone for this legislation. To-wit: subsidized rail transport in Alaska is acceptable only where private enterprise cannot do the job.
2. Prohibit subsidization of service that competes with private carriers. (First sentence in a new paragraph 3(a)(2) of S. 1500)
3. Prohibit expansion of ARR motor carrier and water service as long as ARR remains subsidized.
4. Subsidy will be considered to exist for a particular service if the full expense level, including subsidy and cost of capital, exceeds the rate. (A new subsection 2(b) and the second sentence in new paragraph 3(a)(2))
5. The state would be required to maintain and make available to the public data showing the railroad's condition. Information would have to be sufficient to allow tracing of the subsidy.
6. As part of the closing agreement the state would be required to show it had taken steps to have the ARR operate like a business.
7. Impose enforcement provisions requiring the court to award damages and reasonable attorney fees as well as enjoin the offending subsidization.

24 September 1981

1. Add a new subsection 1(c) and renumber the existing subsection 1(c) as 1(d):

(c) Except where private enterprise is unable to provide freight transport service, such service in Alaska no longer requires nor should enjoy government financial support.

2. Add a new subsection 2(b) as follows and renumber existing sections 2(b) through 2(d) as 2(c) through 2(e):

(b) "full expense level" means the level described by the Interstate Commerce Commission in the study of the Alaska Railroad's rates in Ex Parte No. 405, served June 15, 1981, including direct costs plus the freight portion of overhead expenses and fixed expenses, including depreciation and including the subsidy and the cost of capital attributable to that service.

3. Add a new paragraph 3(a)(2), as follows, and renumber paragraphs 3(a)(2) through (4) as paragraphs 3(a)(3) through (5):

(2) The State has agreed that the Alaska Railroad shall be operated in a businesslike manner and that it shall not use public funds to directly or indirectly subsidize transportation services that compete with unsubsidized privately owned for hire carriers in interstate commerce and that as long as the Alaska Railroad receives public funds it will not expand in any way its current water or motor carrier service. The State further agrees that the amount of subsidy attributable to a particular service shall

be the extent to which the full expense level exceeds the rate charged for that service. The State also agrees to develop, maintain and to release to the public upon demand and to publish not less than quarterly current comprehensive data showing the expenditure of all public subsidies on the railroad (including the allocation by specific function of subsidy monies to rail services), the cost incurred in providing any service subsidized directly or indirectly by public revenues, and the revenues derived from providing such services.

4. Add just prior to the period in section 4 the following:

"and that describes in detail the procedure and instrumentality to be employed by the state to implement subsection 1(c) and paragraph 3(a)(2) of this act."

5. Change Sec. 5 to Sec. 5(a)

Add Sec. 5(b):

(b) The State owned railroad shall be operated in strict compliance with the terms of the Certification of the Secretary and agreements by the State giving rise to such Certification as described in section 3 of the Act. Any act or omission constituting noncompliance shall be enjoined by the United States District Court upon petition by any person or carrier and other appropriate relief shall be awarded any person or carrier injured by such act or omission, and the Court shall award appropriate damages and reasonable attorney's fees.

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE

4016 EVERGREEN
FAIRBANKS, ALASKA 99701

907-479-3550



Senate

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
RESOURCES COMMITTEE
907-465-3834
HOME 907-769-9182

April 13, 1982

G. A. Seeliger
1001 Noble Street
Fairbanks, Alaska 99701

Dear Al:

Thank you for your letter concerning SB 212 which would create a vehicle for State control and operation of the Alaska Railroad.

The points you raised in your letter were compelling and I felt it imperative that both the Senate President and the Chairman of the Senate Transportation Committee were made aware of your concerns. I have, therefore, provided each with a copy of your letter.

It is my understanding that all parties to this legislation are working towards legislation which addresses many of the problems and concerns which have been raised in the past. This legislation may well be nearly finalized.

Al, I'll try to keep you appraised of developments in this area as they occur. Thanks again.

Sincerely,

Bettye Fahrenkamp
Alaska State Senator

BF/eb

cc: Senator Verttula
Senator Ray ✓

G. A. Seeliger
1001 Noble Street
Fairbanks, Alaska 99701

April 9, 1982

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V - Mail Stop 3100
Juneau, Alaska 99811

Dear Bettye,

I have read Senate Bill No. 212, which is a proposed act to create an Alaska Railroad Authority. I have several misgivings about the proposed act, and have listed them below.

1) The State proposes to hand the Alaska Railroad over to a State Authority without provision for capitalization or funding of any kind. It is my belief that even though I am normally an anti-subsidy man, the Alaska Railroad will never be operated unless it has substantial subsidy type support. The consequences of the State cutting the railroad loose to fend for itself, in my view, would be disastrous because it would inevitably raise the cost of shipping commodities to this area by many percentage points.

2) I notice the Alaska Railroad Authority is to be administered by a six man commission. I believe, in the first place, that the number is wrong -- there should be an odd number of commissioners. Secondly, I think the commissioners should be appointed from the railbelt area because it is a regional transportation problem. Most of those appointed should be from the Fairbanks area since we have the greatest direct interest in the railroad.

3) There is no provision made for liquidated damages suffered by those persons who have invested rather heavily in warehouses and other improvements in the railroad areas.

4) If the railroad ever did have a chance of operating at a break-even figure, this bill would destroy any chance of financial independence due to the retention by the State of potentially valuable mineral properties.

5) I see a number of sections which are designed to make it possible for the governor and the legislature to essentially booby-trap the commission, tying its hands very neatly so it would be almost impossible to administer a successful business operation. For this reason, I can foresee that the Alaska Railroad Authority could, and probably would become a punching bag in the legislature.

The Honorable Bettye Fahrenkamp

Page 2
4/9/82

For the above mentioned reasons, I sincerely hope you will either amend the bill or defeat it. As it stands, it is a bad bill.

Very truly yours,


G. A. Seeliger

GS:sr

Page 19
of new
CSSB 212 .

1. Revise AS 42.40.400(a)(24) to read as follows:

(24) prescribe rates to be charged for services provided by the Alaska Railroad; provided, however, the authority, when establishing rates to be charged for carriage of commodities in competition with private carriers, shall include any direct or indirect subsidies as costs in such rates; a private carrier may challenge a rate as unreasonably low if it is below the average rate charged by private carriers; a private carrier challenging a rate under this provision shall, on request, demonstrate that its rate is not, unreasonably high under applicable regulatory standards;

Page 39
of new
CSSB 212

2. Revise AS 42.40.700(b) by adding a sentence to read as follows:

(b) The notice shall be in writing and describe the proposed undertaking in detail, specifying its financial impact on the authority; its impact on the level and nature of services provided by the authority; why the project is necessary or desirable to achieve the purposes of this chapter; and whether and when the undertaking will itself be self-sustaining financially. The notice shall be published in accordance with provisions of AS 42.40.230.

TED STEVENS, ALASKA
 LOWELL P. WECKER, JR., CONN.
 JAMES A. MC CLURE, IDAHO
 PAUL LARALT, IOWA
 JAKE GARN, UTAH
 HARRISON SCHAFFT, N. CAROLINA
 THAD COCHRAN, MISSISSIPPI
 MARK ANDREWS, N. DAKOTA
 T. W. KASTON, JR., WIS.
 ALFONSO M. D'AMATII, N.Y.
 MARK MATTINGLY, GA.
 WARREN RUSSMAN, N.J.
 ARLEN SPECTER, PA.

WILLIAM PROSSER, W.VA.
 JOHN E. STONER, WIS.
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 GARDNER H. SPENCER, N. DAKOTA
 PATRICK J. LEAHY, VT.
 JIM SLEDES, TEXAS
 DONALD W. RIEDEL, ARIZ.
 DALE BARNETT, ARIZ.

United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, D.C. 20510

J. KEITH ROBERTS, STAFF DIRECTOR
 THOMAS L. VAN DEN HOEK, CHIEF STAFF DIRECTOR

March 26, 1981

The Honorable M. E. Dankworth
 Alaska State Senator
 Pouch V
 Juneau, Alaska 99811

Dear Ed:

Thank you for your invitation to reiterate my remarks before the Alaska Legislature regarding the Alaska Railroad. I am eager to work with you and the Governor in negotiations between the Federal Government and the State of Alaska concerning ownership of the Alaska Railroad.

If the President's proposed budget is accepted by Congress, a multi-billion dollar reduction in the U.S. Department of Transportation's budget will mean loss of federal funds for the Alaska Railroad after Fiscal Year 1982, if not before. I have been told privately that the Federal Government would prefer to end federal ownership this year. Should the Railroad lose the financial support of the Federal Government and this support not be replaced, the Alaska Railroad will be shut down and dismantled.

The Alaska Railroad is an essential method of transportation for over half of our population. If the coal resources in our State are to be recovered, we must have an operating railroad. I could go on, but I hope we're all agreed on the importance of keeping the Railroad operational.

As I discussed the other day, the mood in Washington is to streamline the federal budget by cut-backs in funding and elimination of many programs. The Alaska Railroad is seen in Washington as a non-national budget item for which federal funding can and should be eliminated. I have been told that legislation which would do this may be introduced at the request of the Administration in the next few months. There must be authority within the State to negotiate with the Federal Government on this issue.

The Honorable M. E. Dankworth

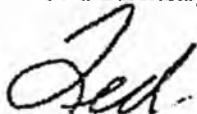
March 26, 1981

Page Two

My staff and I will be at your disposal. We wish to work closely with you in the negotiations between the Federal Government and the State of Alaska to ensure a fair and equitable transfer of ownership of the Alaska Railroad to the State of Alaska.

With best wishes,

Cordially,



TED STEVENS

United States Senator

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Railroad ownership

This may be the legislative session in which something concrete is done toward gaining more state control over the Alaska Railroad. We believe developments in that direction are necessary for Alaska's development.

The railroad is owned and run by the federal government, but we believe it's reasonable and desirable for the state to work toward taking over the line. President Carter's budget proposed getting rid of the railroad to save money and the budget-conscious Reagan administration is not likely to reverse that position.

In recent times, except for some of the pipeline construction years, the line has lost money. The combined congressional appropriation and net loss over the past five years average \$8 million a year. That would not be a particularly heavy subsidy for the state to undertake, particularly in light of the fact that the state subsidy for the Alaska ferry system has been running at \$20 million a year.

The railroad is to much of Interior Alaska what the ferry system is to Southeastern. Both are vital transportation links for our state and the railroad holds enormous potential for Alaskan development.

But it's unlikely that we can expect much more than caretaker status for the line from the federal government. The railroad's managers are under orders from Washington to at least break even. And consequently railroad officials in Alaska must take a hard-nosed attitude. Every additional service or rail extension must pay its way.

Frankly, some of the needed railroad extensions and services won't pay their own way, at least not in the immediate future, and that's where the state comes in with its oil wealth.

There have been calls for state officials to begin negotiating with the federal government to take over the line. That's one good approach and we hope the state initiates those talks soon.

In addition, legislation has been introduced to create an Alaska Railroad Authority that could sell bonds to operate and expand the rail system. The goal of such work would be to promote the state's growth and development.

And pressure is building in the Legislature to get on eastward extension of the railroad to

let to say precisely which approach is the legislative hearing process should be on that question. But we believe we are pleased by the general trend: that of our state leaders are coming to understand the importance of the railroad in Alaska's development and are inclined to act.

Arch. James P. 1/15/81

Railroad sale in Carter budget

Times Washington Bureau

Washington — President Carter's proposed 1982 fiscal budget calls for the sale or transfer of the Alaska Railroad by 1983 and attempts to block reconstruction of the Alaska Highway.

The spending plan, released today, says Alaska is the only state that benefits from the two transportation systems. It also says the state can afford to bankroll the railroad.

(See related story, page A-8)

"The benefits from operating the Alaska Railroad are largely concentrated in that state, making continued federal funding inappropriate," the document says. "Moreover, the state has sufficient funds with which to support and improve the railroad's operation."

The Alaska Railroad is operated by the federal government under a law enacted in 1914. The 1982 budget for the railroad is \$7 million, down from nearly \$10.7 million in 1981.

Alaska Railroad Assistant Manager Arnie Polanchek said today the railroad has technically been up for sale since the early 1970s.

"It's really nothing other than a continuing question that comes up," he said. "It's just the federal government's policy that they would like to see the railroad transferred to the state."

Past attempts to sell the line to private railroad corporations have been unsuccessful.

"Someday it may happen but it's going to take legislation by both the federal government and the state government. A lot of things will have to be worked out."

Polanchek had no idea of the government's asking price for its only railroad. "It'll depend on the legislation and what the federal govern-

ment thinks they should receive for it," he explained.

Carter's budget now moves to Congress is expected to be revised by the incoming Reagan administration.

Earlier this week, incoming Transportation Secretary Drew Lewis promised to work with the Alaska congressional delegation and the state on the possible transfer of the railroad from the federal government to state control. The commitment came at a hearing of the Senate Environment and Public Works Committee.

Carter's budget notes that freight tonnages will continue below the peak achieved during construction of the Alaska pipeline, but that the railroad hopes to achieve some increase in 1982.

The railroad made its last official "profit" during the pipeline years of 1977-78, Polanchek explained. Since then, the system has been showing a paper loss due to depreciation of the physical plant and the railroad's steady reinvestment of funds into improvements.

But fiscal 1981, said Polanchek, has been "a good year."

As in the past, Carter's budget also tries to bar the congressionally authorized reconstruction of the Alaska Highway by not including any funds for the project.

The 1973 Federal-Aid Highway Act authorized \$58.7 million for the reconstruction of the Alaska Highway from the Alaskan border to Haines Junction, Canada, and the Haines Cutoff Highway from Haines Junction to the south Alaskan border.

The costs of the project have skyrocketed to \$180 billion.

(See RAILROAD, page A-3)

Railroad

Continued from page A-1)

The appropriation is being requested for 1982 because the benefits from construction of the highway accrue primarily to one state — Alaska, the budget says.

In other items of interest to Alaska, the budget seeks:

— \$36.6 million for the office of federal inspector of the Alaska gas to coordinate the issuing of permits, carry out environmental and engineering reviews and conduct field surveillance on the project. This represents an increase from the fiscal 1981 total of \$21.5 million.

— \$3.5 million for the Alaska Power Administration, which operates and markets hydroelectric power from two federal projects in the state — Eklutna near Anchorage and Snettisham near Juneau. This is up from \$3 million in fiscal 1981.

— \$2.2 billion for Coast Guard operations in fiscal 1982, up from \$2 billion last year. The money would be used for search and rescue opera-

tions, maintenance of navigation aids, ice breaking, prevention and cleanup of marine pollution, and inspections of offshore drilling rigs.

The money would allow the replacement of three aging cutters, the purchase of 41 jet surveillance aircraft and 90 new rescue helicopters.

The Carter administration wants to defer until 1983 major efforts to improve and modernize several Coast Guard training and shore facilities, but it supports increases in pay and benefits for Coast Guard personnel in 1982.

— \$7.1 billion for Comprehensive Employment and Training Act programs nationwide, including \$3.8 billion for public service employment (an increase of \$7 million from 1981), \$3 billion for general training and employment (a \$144-million increase), and \$314 million to support job placements in the private sector.

But again, we don't think that's an unreasonable amount of information to ask from a candidate for elected office. The public has a right to know who cares enough about someone's election to make a major campaign contribution.

There are several good proposals in the report to Sen. Bennett's committee, but we believe this particular one isn't among them. We hope it's put to rest quietly.

For Alaska Daily M. West

Who'll own the railroad?

What boy has not dreamed of having his own train? It may come to pass that Alaskans will realize that dream, and on a scale no little boy would have expected.

What brings this all to mind is the budget proposal to end federal ownership of the Alaska Railroad. It's not a new idea, but it may be one that gets more serious attention now than it has in the past. It's the only railroad the federal government owns and, since the end of the pipeline days, it has been losing money.

The operating loss has been declining—\$4 million last year compared to \$6 million the year before—but the federal government seems less and less inclined to carry such a loss. And the line also receives federal money for capital improvements.

Outgoing President Jimmy Carter's budget proposal said ownership of the line should be turned over to the state or a private owner by 1983. We doubt that deadline can or should be met, but we do believe it's time for the state to begin thinking about the railroad.

It's evident that the line is of greater importance to Alaska than to the federal government, and therefore we believe the impetus for expansion and improvements in the railroad must come from Alaska.

State officials are justifiably wary of just plunging in; they say they want to study the issue. That's a prudent course and we believe state railroad studies should be pushed by this session of the Legislature.

Beyond that, it's too early to recommend a definite course, but it's not too early for the state to begin developing a policy toward the railroad. It's vital to Alaska and we should have a strong hand in determining what role it will play in our future.

Carter: Give railroad to state

Empire Washington Bureau
WASHINGTON.—The Alaska railroad should be handed over to the state or a private party by 1983, according to President Carter's proposed 1982 budget.

The preliminary budget, which lists Office of Management and Budget recommendations for government expenditures, suggests the railroad sale or transfer as part of an outline of transportation policy priorities of the departing President.

The Alaska Railroad is the only federally owned rail system in the country.

"Legislation is being proposed to Congress that would provide for takeover of the railroad," a Federal Railroad Administration spokesman said Thursday, adding that Democrats are not holding out great hopes of Congressional approval of the transfer in this session.

The Alaska Railroad has been running at a deficit since completion of the Trans-Alaska Pipeline in 1976.

The railroad received \$10.6 million from the federal government for capital expenditures in fiscal 1981, including \$4.5 million for new passenger cars.

The preliminary budget for fiscal 1982 earmarks \$7 million for the railroad's capital costs. Operating costs are paid from the railroad's revenues.

In meetings earlier this week, Alaska Sen. Frank Murkowski suggested to Secretary of Transportation-designate Drew Lewis that his department investigate turning the railroad over to the state.

Sen. Ted Stevens, R-Alaska, has in the past supported transfer of the railroad to the state, but is concerned about the terms. A spokesman for Stevens said he expressed his concerns to the Reagan transition team.

Empire 1/19/81 *dyk*

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3
In another effort to cut costs and remove the Railroad from activities that are not vital federal interests, a decision has been made to terminate the present contract for providing freight barge service on the Tanana and Yukon Rivers. The ARR plans to sell its river equipment, including a tugboat and several barges, and is willing to lease its dock facilities and other land holdings that may be needed for the State or a private business to continue operating the barge service.

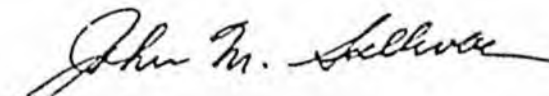
Proposed Transfer of the Alaska Railroad to State
Ownership

It has been the policy of the past three Administrations to cease federal operation of the Railroad by transferring it to the State or a private buyer. Private companies have expressed an interest in the Railroad in the past and several concerns have recently contacted the General Manager. We suggest that this is a good time to begin serious discussion of State take-over because (1) the Railroad is essentially an intrastate railroad primarily serving the freight and tourist needs of the State, (2) the State is in a strong fiscal condition and would be able to support the Railroad's capital and operating needs, and (3) the transfer process, which will probably take two to three years to implement, should begin now while the Railroad is in a slump before the natural gas pipeline construction activity begins in a few years.

Commissioner Ward indicated that there has been some discussion within the State about eventual State acquisition of the Railroad. I would hope that these discussions can now lead to a decision to assume State responsibility for the Railroad so that we can begin the complex process of transferring ownership. I firmly believe it is in the State's interest to actively press for State ownership at this time for both the transportation needs of the State and to preserve the public services that the Railroad provides in Alaska.

We look forward to continuing this important discussion and are hopeful it will lead to increased State support for the passenger service in the coming year as well as ultimate transfer of the Railroad to State ownership. If I can be of further assistance to you or provide additional information, please let me know. Both the Alaska Railroad and Federal Railroad Administration staffs are available to meet with and assist State officials in this regard.

Sincerely,


JOHN M. SULLIVAN
Administrator



ISSUE: ALASKA RAILROAD OWNERSHIP AND OPERATIONS

The 63rd Congress passed an Act on March 12, 1914 which authorized the President to locate, construct, and operate a railroad in the Territory of Alaska. This was the beginning of the Alaska Railroad, an experiment by the federal government in railroad ownership and operations that has been carried out over more than six decades. The federal government continues to own and operate the Alaska Railroad.

The 1914 Act instructed the President that the railroad was:

"... not to exceed in the aggregate one thousand miles, to be so located as to connect one or more of the open Pacific Ocean harbors on the southern coast of Alaska with the navigable waters in the interior of Alaska, and with a coal field or fields as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein ..." (emphasis added)

In large measure the Alaska Railroad has carried out the Congressional mandate given in its organic act. The Alaska Railroad operates 478 miles of single main line track from the deep-water ports of Seward and Whittier through Anchorage to Fairbanks, with branch lines to Eielson Air Force Base, Fairbanks International Airport, Palmer, and the Suntrana coal fields near Healy. The Railroad serves the agricultural communities in the Matanuska Valley. The settlements along the Alaska Railroad encompass the vast majority of the urban development of Alaska and have come to be known as "The Railbelt".

At the time in history when the White Pass and Yukon Railway was constructed, around the turn of the century, and a few years later when the Alaska Railroad was built, the situation in Alaska was vastly different from current conditions. Alaska was almost totally undeveloped. There were virtually no roads -- only trails -- and no automobiles or trucks, no Marine Highway System, and the railroads were the only reasonable transportation alternative to reach the interior of the territory. In short, the railroads were a transportation monopoly with essentially no competing transportation modes.

In addition, Anchorage did not exist until it was built to house the railroad construction crews on public railroad property which was sold to private interests. World-wide transportation and communication were very slow and this fact minimized the need for large military defense installations in Alaska. The principal economic activities in



Alaska were fishing, hunting, trapping, and prospecting. Industrialization was unknown and the economy was very basic, with commerce related to the major economic activities. Only the most hearty and fittest survived the harsh climatic existence.

Alaska today is a startling contrast to the conditions and situations in which the railroads were first constructed. Early railroad decisions had a driving force because railroads were the only reasonable land transportation alternatives at that time. Now, that force has been reduced and changed to defining the role that railroads play in Alaska in the context of a total transportation system. Railroads in Alaska today must meet present market demand for transportation services and define more clearly the services they can provide better or at less cost than other modes in the context of Alaskan and Northwest Canadian development.

The role, market, and service definitions of railroads in Alaska at this time must be applied and evaluated in the examination of the ownership and operational considerations. This is true, not only for the existing railroad system, but also for any railroad expansion including the frequently discussed link to Canadian railroads and through them to the continental United States.

In examining the Alaska Railroad ownership and operations alternatives, it is essential that consideration be given to the other major components of the State's transportation system. Ports, barges, ships, the Marine Highway, pipelines and the State Highway System are of prime importance. Of lesser importance relative to railroad use, development, and operations are the airports and air service (freight and passengers). This latter transportation component is extremely important in Alaska. Its primary relationship to railroads, however, is more indirect, frequently involving only fuel supplies.

Railroad investment decisions, by the federal and state governments, must be made within the framework of other transportation investment decisions. This is especially acute relative to ports and highways, both of which have historically been public investment responsibilities. Governmental decisions regarding port development, for example, will significantly impact upon rail traffic since all freight inbound to Alaska or outbound from the State use port facilities. Thus, public port investment decisions can either enhance or discourage rail traffic depending upon the nature, extent, type, and scheduling of port facilities and services.

By the same token, highway development investment decisions also have important implications on railroad investments and operations.



For example, the George Parks Highway from Fairbanks to Anchorage, completed in 1971, closely parallels the Alaska Railroad between Alaska's two major cities. The opening of this highway substantially reduced the land transportation mileages thereby enabling trucks to pick up cargo at the Port of Anchorage and deliver it more economically to Fairbanks. Therefore, the general public investment in a highway diverted traffic from the Alaska Railroad public investment. The extent of traffic diversion and an analysis of its economic impact including the resulting increase of public investment required on the Alaska Railroad is certainly beyond the scope of services of this project. However, it is clear that substantial diversion did occur and has had longterm implications on the changing role, function, and financial aspects of the Railroad.

A similar example may be found on the White Pass and Yukon Route between Skagway, Alaska and Whitehorse, Yukon. Funded by the Alaskan government and the federal government of Canada, the Skagway to Whitehorse Highway (known as the Klondike or Carcross Highway) was completed in the late summer of 1978. According to the Canadian Transport Commission "Report of Inquiry into the White Pass and Yukon Railway and Other Surface Transportation Services into and out of the Yukon", in its first complete summer of operation, this highway resulted in the erosion of twenty-eight thousand passengers from the White Pass and Yukon Route. Passenger revenues amount to 19% of the railway's total revenues. The White Pass generally carries about 60-70 thousand passengers per year. Traffic diversion due to public investment in alternative transportation modes is obviously one important factor in railroad finances.

It is within this context that the Alaska Railroad ownership and operation alternatives must be examined.

At the time the Department of Transportation and Public Facilities developed the Request for Proposals for this project, the issue of the ownership and operation of the Alaska Railroad was less important than it has become during the project development period. The attention given to this issue by the consultants has been substantially changed during the project by mutual agreement between the consultants and the Department. This change in emphasis has been necessitated by an inquiry by the Federal Railroad Administration, owners and operators of The Alaska Railroad, of the State's interest in the possible acquisition of the Railroad.



Additionally, the Alaska Legislature's interest in the feasibility of establishing a rail link between the Alaska Railroad and Canadian railroads and the continental railroads in the Lower 48 states raises other significant ownership and operational issues. These latter issues include such questions as: Who would own such a link? Who would have operational responsibilities? Is there adequate traffic to cover operational costs? Will there be a return on the capital investment? If operational costs are not covered by revenue, who will assume the responsibility for the required subsidy? If an operational subsidy is required, how long will it be before a subsidy is no longer necessary? What are the implications of such a trans-Alaska/Canada rail link on the present shipping patterns related to the ports of Seattle, Vancouver and others?

Clearly these are important questions. It is also clear that the scope, schedule, and financial resources of this project are inadequate to seek the essential answers to these questions.

It is now the intent of this project to raise key railroad, public investment, and related issues within the framework of the project research and definitional analysis that has been completed. The continuous rail planning process outlined in this project report provides an approach which will enable the decision-makers in Alaska and in the federal government, in cooperation with private interests and supported by an informed public, to have useful information on which to base vital railroad decisions.

In order to better understand the issue of ownership and operation of the Alaska Railroad, it is necessary to make some observations based upon work on this project. These observations may be summarized as follows:

1. There is a strong dedication on the part of officials and employees to the Alaska Railroad and to an effective and efficient operation.
2. The existing traffic base for the Railroad is quite small because of the sparse Alaskan population and limited manufacturing and industrial development.
3. Natural resource development in Alaskan offers opportunities for significantly expanded rail traffic.



4. The Alaska Railroad has not in the past had an effective marketing program in Alaska and in the "lower 48". Recent steps have been taken, however, to strengthen the marketing program. Governmental ownership of the Alaska Railroad makes marketing difficult. Some private transportation companies perceive the Railroad as being unfair competition because of public support for the Railroad.
5. The Alaska Railroad has been largely limited to the use of public funds for capital investments.
6. Alaska Railroad officials must function within governmental constraints such as personnel procedures, procurement practices, and public funding, leading to time delays and frustration.
7. Most employees of the Alaska Railroad are unionized public employees.
8. Much of the traffic on the Alaska Railroad has historically been for the military. Although the Railroad continues to have the capacity for military transport, the traffic in the last decade or so has shifted significantly toward private freight movement.
9. There are major questions regarding the land under the control of the Railroad. The land status is uncertain if the Railroad were to be sold.
10. The institutional, accounting, and other arrangements between the Railroad and Alaska Hydro-Train, Yutana Barge Lines and others require further examination and clarification.
11. The Alaska Railroad is taking the necessary steps to improve its management of real property, partially in response to a General Accounting Office report. These management improvements should increase the income from non-operating property and provide more uniform rental agreements.
12. Rail passenger service on the Alaska Railroad needs careful evaluation relative to the nature of the market and the determination of subsidy sources. Service improvements are planned, but the need for subsidy even with the improvements is apparent.



Further explanation and observations may be found elsewhere in this report.

There are at least four major alternatives for ownership and operation of the Alaska Railroad: (1) federal, (2) state, (3) private, and (4) combination of public and private. Obviously, there are numerous variations or combinations which could be explored. A comprehensive investigation and analysis of each of these alternatives and the longterm implications are essential, but beyond the scope of this project.

Federal Ownership and Operation Alternative

This alternative of a continuation of federal ownership and operation is the maintenance of the status quo. Although this alternative is clearly the easiest to implement since it requires no action by anyone, it appears to be unsatisfactory. The recent inquiry by the Federal Railroad Administration of the interest of the State in acquiring the Railroad is evidence of the federal government's dissatisfaction with the present situation. In some ways it is unfortunate that such an inquiry was made while this project was being undertaken. If the information resulting from the completion of this project had been available to the State before the federal disposition inquiry was made, Alaska decision-makers would have been better prepared to cope with the issue.

Under the present situation, the Alaska Railroad cannot be operated as one would operate a private railroad for six basic reasons: (1) there is no way to seek and be sure of obtaining the much needed capital investment funds, (2) marketing efforts are difficult because of the competition issue, (3) railroad management does not have the required flexibility to make and be accountable for major decisions, (4) railroad employees are unsure whether they work for a railroad or the federal government, (5) the parameters of rail service in Alaska have substantially changed from early conditions under which the Railroad was constructed (previously discussed), and there has not been a recent evaluation of the current applicability of the basic organic act, and (6) the Railroad is unable to be as responsive as it might be in meeting the rail service needs of Alaska in such a dynamic environment.

It is possible to continue to have the federal government own and operate The Alaska Railroad. Some improvements can be made under such circumstances, but the improvements will only be minor and will not include major shifts in the responsiveness and operations of the Railroad.



State Ownership Alternative

Ownership of the Alaska Railroad by the State of Alaska is the second major alternative. It would be possible for the State to own and operate the Railroad. However, several factors seem to favor only State ownership and not State operation, if this alternative is selected. Currently, there is no interest in state railroad operations. The State does not presently have the experience, knowledge, or personnel required to operate the Railroad. In addition, most of the basic reasons why the Railroad cannot be operated under federal jurisdiction as one would operate a private railroad apply equally to State operations. There would also be a tendency for political involvement in operational decisions. For these reasons, the consultants for this project do not consider operation by the State to be a viable or reasonable alternative. The discussion of this alternative is, therefore, confined to State ownership.

The State of Alaska could take title to the Alaska Railroad. Before making such a commitment, however, it will be essential that legal counsel for the State carefully examine the matter and determine the necessary procedures, conditions, and process for acquisition. Undoubtedly there will be many legal questions. One such question is the land issue, specifically related to the quality of the title in light of the Alaska Native Claims Settlement Act of 1971. For example, the Eklutna land decision clearly reserve the right-of-way and all areas used for railroad operations. This decision transferred some \$40 million or more in potential profits from land to Eklutna from the Railroad, thereby affecting the desirability of the property.

An alternative to direct purchase by the State could be the selection of the Railroad's land as a part of the withdrawal by the State of federal land under the Alaska Statehood Act of 1958. It appears that acquisition through selection by the State is a viable alternative if the State determines that acquiring the Alaska Railroad is in its best interest.

State ownership of railroad rights-of-way has become much more common in the last few years, particularly by states which have faced the loss of rail service due to railroad bankruptcy. While state ownership interest started in the Northeastern United States because of massive bankruptcies and abandonments, states in the Midwest and other regions have more recently been faced with similar problems due primarily to the Milwaukee and Rock Island problems.



The chief advantage to Alaska of state ownership is the control of the Railroad and the more effective integration of railroads as a significant component of the State's total transportation system. With state ownership, Alaska could not only plan for the integration of its transportation system among the port, highway, barge and Marine Highway system, but more importantly, the State could more easily implement its transportation plans. As previously pointed out, public responsibilities and state interest already extends to the other transportation modes so essential to the future of the Alaska Railroad. State ownership would provide the Governor, the Legislature, the Department of Transportation and Public Facilities, and other state agency decision-makers with the opportunity to actually make and carry out major significant capital investment decisions between transportation modes. This decision-making and full implementation responsibility relative to transportation could be effectively used to reinforce state policies on land and natural resource protection and development. In this manner the State could assure local rail service to those areas where it is useful to stimulate agricultural, commercial, industrial, and resource development.

An operational agreement could be negotiated with a suitable railroad operator with the necessary conditions thereby assuring rail users with the level and quality of service the State wants and is willing to finance.

It is clear from examination of the financial records of the Railroad that capital and operating losses have occurred from time to time in the past. The data also reveals the likelihood of additional losses. There is evidence that revenue from the freight operations have been necessarily used to subsidized the passenger operations. If the State assumes the ownership and operational responsibility for the Alaska Railroad, Alaska must be prepared to cover any future capital and operating losses.

This approach would also simplify the relationship between the State and the federal government. The State is qualified to receive federal financial assistance under the 803 program of the Railroad Revitalization and Regulatory Reform Act (4R Act) of 1976 as amended unless the Railroad has increased traffic of a magnitude that prevents it from being considered a low density line. The State retains the option of participation in the 803 program as long as it is eligible. Alaska should carefully evaluate the difficulties, time, cost, and federal involvement in considering participation in this Federal Railroad Administration program. State participation in the 803 program requires



following FRA guidelines and obtaining plan and project approvals. It should be noted that this FRA program was designed to assist railroads, through the states, which were facing line abandonments of uneconomic and marginal branch lines and not to accommodate system growth. If full advantage is to be taken by Alaska of its opportunities for economic, agricultural, and resource development, rail service to areas not presently served remains an important consideration by the State.

It should be noted that there are federal funds available for branch line funding, redeemable preference shares, loans and other programs. A transfer of ownership from the federal government to the State does not impair funding eligibility. Arrangements would also be necessary for federal assistance through legislation relative to employee benefits for the current federal employees of the Railroad.

Private Ownership and Operation Alternative

Several years ago, the Federal Railroad Administration expressed some interest in the transfer of the Alaska Railroad from federal ownership and operation to the private sector. At that time the State did not have a Department of Transportation and Public Facilities, the financial resources, or serious interest in State ownership. Expression of interest by railroads in the continental states were sought. Some private companies did express an interest in the possible acquisition of the Railroad.

Those private companies that were most serious carefully evaluated the traffic (existing and potential), the cost of acquisition and operation, and the return on investment. Based upon their analyses, they decided that the return on their investment was insufficient to warrant the financial commitment.

Changes in the traffic base of the Alaska Railroad such as major coal export or mineral extraction and shipment could significantly change the economics of the Railroad. Such changes would make the Railroad more attractive to private investors.

This alternative must be viewed, however, from the State's perspective and not necessarily from the private enterprise view. There



are sound arguments as to why the private sector should be encouraged to own and operate the Railroad. Obviously, the private sector is much more experienced and knowledgeable in railroad ownership and operations. This private approach could potentially expand the public tax base while minimizing the necessity for governmental employment increases. Private companies have more flexibility than public agencies in the management of a business enterprise. In addition, decisions can be made more rapidly in the private sector than in government.

If the Railroad were privately owned and operated, the role of the State of Alaska changes. The State could become the regulator and not the implementor. It will be more difficult to assure the integration of the railroad with other transportation modes. Railroad expansion will be based upon a more strict test of return on investment, profit, and economic considerations.

The trade-off associated with this alternative seems to be private investment capital, know-how, experience, and ability to rapidly respond to changing markets and development in exchange for State or federal control, implementation, public rail service, policy reinforcement, public funds, and transportation system integration.

Public and Private Combination Alternative

The fourth alternative for the ownership and operation of the Alaska Railroad involves a combination of public and private interests. Many possible variations of this alternative appear viable depending upon the relative roles, negotiations, compromises, and decisions. Since the alternative variations are almost endless, it seems appropriate to outline one approach that illustrates the possibilities and serves as a point of departure for discussion purposes.

For purposes of discussion, it is assumed that the public would own the land and facilities. The motive power, rolling stock, and equipment could be owned either privately or by the public. Operational responsibilities are assumed to be by the private sector.

One approach within these parameters would be to have a Board of Directors appointed by the Governor (perhaps for staggered terms and confirmed by the Senate or not). The Board would be made up of



businessmen and people knowledgeable about railroads. They could be paid a reasonable stipend for serving and would be given this total responsibility for oversight of the property and the administration of the contract with the private operator. An example of this type of approach is the USRA Board created by federal legislation.

Consideration would have to be given to the total number of Board members. The responsibilities, authority, power and duties of the Board would have to be carefully determined and articulated. If such a Board is created, it seems appropriate to delineate its access to both public and private funds. Creativity and innovation will be required in the establishment of such an entity. Among the issues requiring attention are the following: (1) operator incentives, (2) source of funds if subsidy is required, (3) freight and passenger service levels and responsibilities, (4) labor provisions, (5) maintenance responsibilities and funding, (6) responsibility for liability, (7) natural disaster recovery, (8) equipment and facility acquisition and disposition, (9) industrial development and property management responsibilities, (10) accountability (to whom and when) and (11) institutional relationships with marine owners and operators. This list is illustrative and not exclusive.

The advantages of public ownership of the land and improvements are numerous. The problem of land ownership disputes would be minimized. There would be no problem of recovery of federal or state funds expended on lines which were discontinued before the expiration of their useful life. Public powers could be used, if necessary, for expansion of the railroad system. The Railroad could more effectively be integrated into the State's total transportation system.

Private operations with incentives for excellence also has advantages. It enables the railroad operations to be carried out by people with relevant experience, training, and capability. Marketing could be conducted in the way it is carried out within the private sector. Rail service requirements could be incorporated into the operational agreement and the users and public could be assured that service is at a proper level by enforcement of the requirements. A reasonable profit level needs to be achievable by the operator.

The public and private combination appears to be one viable alternative for the Alaska Railroad.



ISSUE: RAILROAD EXPANSION IN ALASKA

For at least the last twenty years, there has been serious discussion about the possible expansion of railroads in Alaska. Many studies have been conducted, presented, and discussed. And yet both the Alaska Railroad and the White Pass and Yukon Railway are essentially the same system as they were when constructed. Railroad expansion in Alaska continues to be a significant issue.

This project, as a part of Alaska Rail Planning Program, was never intended to include another analysis of railroad expansion in Alaska. Rather, the report describes the background and major issues and policies, so essential to decision-making by the State of Alaska, the federal government, and private railroad and transportation interests.

The issue of Alaskan railroad expansion has four principal inter-related and inseparable elements. These elements must be carefully considered prior to an expansion decision. Failure to make a clear determination and statement relative to each element will likely result in short-term and long-term implications for all the people of Alaska. The four major elements related to the Alaskan railroad expansion issues are: (1) purpose of the expansion, (2) timing of the expansion, (3) cost, and (4) responsibility of the expansion and the continuing responsibility of railroad operation after construction is completed.

Purpose

The purpose of any railroad expansion needs to be logically thought out and then articulated as an affirmative policy statement of the State of Alaska. If there were large markets for products that were manufactured or produced in Alaska, or if there were markets within Alaska for products, from other areas and these products were suitable for shipment by rail (i.e. large volumes, heavy, substantial distance, continuous flow), the purpose of railroad expansion to meet the market demand would be clear. It is obvious that these conditions do not exist in Alaska at this time.

Coal and minerals appear to be the most logical potential Alaska products for rail shipments. The discussion relative to these natural resources products and their development may be found in a previous section of this report.



A second line of reasoning indicates that if railroad lines are extended, development to support them will follow. In reality the inter-relationship between railroad expansion and supporting development is more complex than the above statement indicates.

In examining this issue it is important to acknowledge that railroad construction is very expensive, especially in Alaska. High capital construction cost requires a high volume of revenue traffic if there is to be a reasonable return on the construction investment.

Railroads are absolutely dependent upon high traffic volumes and have the capacity to carry these high volumes. For example, a single train can carry cargo in the range of 4,000-8,000 tons. If one train runs each day of the year, the volume carried would be on the order of 1.5 to 3.0 million tons annually -- one way. Obviously, several trains in each direction can be physically moved over the tracks each day. Unit coal trains from Wyoming through Colorado to Texas, for example, number more than 20 trains per day and may soon run as high as 56 trains per day.

The Alaska Railroad is classified by the Federal Railroad Administration as a "low density" railroad since it carries less than 3 million gross tons per year. In 1978 The Alaska Railroad carried 2.2 million freight revenue tons and in 1979 the tonnage carried was down to 1.8 million tons.

It seems clear that the construction of the Alaska Railroad, while providing a very important service, has not resulted in stimulating tremendous economic development commensurate with its traffic transporting capacity.

Another example of high expectations, that building a railroad will automatically stimulate needed economic development but with disappointing results, is the experience with the British Columbia Railway. In a report by the Royal Commission on the British Columbia Railway, "An Interim Report on the Future of the Fort Nelson Extension", dated December 1977, the following statement is made:

"... The Fort Nelson Extension should never have been built; it was built however, and this is the reality with which we must now deal.

The question which faces the Province, and on which the Commission must advise, is whether to roll it up, and write it off, or spend massive sums over the next three years to make the line serviceable. In



between lies the possibility of first aid treatment -- the application of bandaids, with the ultimate disposition postponed. If the line is kept in service, there is no expectation it can cover even its operating costs in the foreseeable future, leave alone pay any part even of the interest on money borrowed for its reconstruction or temporary repair ..."

Evidently not enough development followed the railroad extension, completed in 1971, to make the railroad economically viable. The line cost about \$70 million originally and needs another \$36 million for reconstruction. As of 1977, they were losing \$33 million a year just in operating cost. This is substantially more than (almost twice) the total revenue from freight on the Alaska Railroad in 1979. As a result of this situation on the British Columbia Railway, the board of directors has requested an open ended subsidy for the railroad to cover all future annual expenditures and operating losses.

The purpose of reporting these facts is not to indicate that railroads are unimportant in Alaska, but rather to show the importance of clearly determining the purpose of any proposed railroad expansion and to evaluate realistically the implications of such expansion, prior to major project commitments.

Timing

The timing of railroad expansion is also critical. If the State of Alaska were to expand the Alaska Railroad, laying aside all related issues, the expansion should be timed in such a way that full advantage would be taken of development which would generate rail traffic. The timing element is extremely critical and yet very complex and difficult. The scheduling of new railroad construction frequently requires several years of preliminary work including the design, location, financing, and then actual construction. The lead time necessary for railroad construction may be several years.

Since the development of natural resources offers the greatest potential for rail traffic, railroad expansion should coincide with such resource development. Private enterprise will be the most likely resource developers. This poses an interesting challenge -- finding out when and where such development will occur in time to permit the proper schedul-



ing of railroad construction. The rail planning process should include a mechanism for letting potential resource development management know of the State's interest in providing rail transportation and other needed transportation facilities and services.

In summary, the State of Alaska should carefully consider the timing element within the railroad expansion issues.

Cost

Cost considerations are another of the vital elements related to railroad expansion. The costs have two facets: construction of the railroad expansion and the cost of operations after completion of construction. The former, although not easy to estimate, is usually easier to obtain than the latter estimates. Alaska has construction experience, but no railroad operational experience. It is also a reality that governments generally are more familiar with large public works projects which are highly visible and easily recognized. The more difficult are the operational costs since they frequently involve intangibles such as labor, rates, fuel costs, pension programs, marketing effort, and the like.

Operational costs are also difficult to estimate because they are affected by decisions beyond the control of the governmental construction agency. For example, private shippers make the decision on how and when to use rail services or perhaps, to ship by truck if that alternative is available.

A railroad, relying on a natural resource shipper, is largely dependent upon that shipper locating a suitable market for his products. This is certainly beyond the control of the railroad. And yet, if resource products make up a substantial part of the revenue traffic base, the loss of that shipper's market can have a noticeable adverse impact upon the operating cost of the railroad. Such a loss of revenue may result in governmental subsidy if the public investment in the railroad is to be protected. An example is the loss of the asbestos traffic by the White Pass and Yukon Railway.

The railroad situation for the State is somewhat analogous to the urban community experience in public transit whereby the capital improvement funds for buses or other equipment from the federal government is



relatively easy to obtain, but the subsidy requirement including the operation and maintenance of that equipment increases geometrically. Subsidy funding is also more difficult to obtain, locally or from the federal or state government.

A careful assessment should be made by the State of Alaska of any railroad expansion capital improvement costs and of the long term operational costs which may be incurred if the expansion is made. State decision-making officials will want to evaluate both capital and operational costs before making a railroad expansion decision.

Responsibility

The final major element in the consideration of the railroad expansion issue is the assignment of responsibility for construction, ownership and operations.

It appears important for a decision on railroad expansion to be made after the decision on the ownership and operations of the Alaska Railroad. If the ownership and operations of The Alaska Railroad remains the responsibility of the Federal Railroad Administration, then it would be logical for the expansion to also be a federal responsibility. On the other hand, if the State or a private enterprise were to assume the responsibility for the Alaska Railroad, then the expansion responsibility might well be given to the new owners.

It is possible for the federal government to retain ownership and operational responsibility for the Alaska Railroad and for the State of Alaska to assume the expansion responsibility. Under these circumstances the State will want to seek and obtain an agreement for the operations, maintenance, and marketing of rail service and facilities on the railroad expansion lines including possible federal responsibility. Failure to obtain such agreement in advance of construction could potentially result in a railroad line without an operator.

This element of the railroad expansion issue requires the compilation and analysis of substantial data on which to make an intelligent and logical decision on the assignment of the construction and operational responsibility for railroad expansion lines.



* * * * *

The issue of railroad expansion in Alaska is not new nor is it devoid of previous study. The research on this project has located at least thirteen studies or surveys related to this issue. In addition the Alaska Legislature in its 1980 session passed a resolution requesting the Legislative Council to conduct: "(1) a cost benefit analysis of a proposal to construction a rail line from Fairbanks to the Canadian border; and (2) a cost benefit analysis of any other Alaska rail line construction which may be proposed by the Legislative Council ..." (emphasis added). The Legislative Council report is to be presented to the First Session of the Twelfth Legislature within 10 days of the date it convenes (January 1981).

A list of previous railroad expansion and related reports follows in Exhibit V-1, "Railroad Expansion Studies and Reports". A review of these documents indicates that insufficient attention has been given to date to the operational and potential traffic aspects, as well as the purposes, timing, and assignment of responsibilities. The costs included in a number of these reports will require updating to accurately reflect the changes that have occurred and current inflation, energy, and related factors.

Overview

THE ECONOMY

The Alaskan economy, at a low level following completion of the trans-Alaska oil pipeline, contracted still further during 1979. Construction was down, vacancy rates for single family rental units reached 25 percent in Anchorage, and the State population dropped by several thousand persons. Uncertainty over the Alaska lands issue has caused corporations to defer capital investments in the State. Alaska, as it enters the 1980's, remains an underdeveloped area.

The construction of a 4,800-mile natural gas pipeline from Alaska's North Slope is an increasingly likely prospect and would be the principal stimulant of the economy in the 1980's. Because Alaska is rich in natural resources other than petroleum, there are other possibilities for expanding Alaska's economic base. These include copper and coal mining, fishing and seafood processing, forestry products, and hydropower. In the near term, the State, using its surplus oil revenues, is expected to increase the funding of capital improvement projects in 1980. Tourism, up 10 percent in 1979, continues to grow; and commercial fishing, up 20 percent over 1978, also promises to grow rapidly as the offshore-bottom fishing industry develops.

In years past, traffic and revenues on The Alaska Railroad have risen and fallen with the Alaskan economy, and this pattern will continue. Because there is no manufacturing activity in Alaska, and no immediate prospects for its development, the Alaskan economy will continue to fluctuate throughout the 1980's. Alaska Railroad financial results during the decade will reflect these fluctuations.

THE RAILROAD

Fiscal year 1979 saw a continuation of the decline in freight traffic (Table I) that began in 1977 following the completion of the trans-Alaska oil pipeline. All major commodities hauled in FY 1979 dropped from FY 1978 (Table II); as in FY 1978, the largest decline was in petroleum products because the refinery located near Fairbanks increased its bulk petroleum market share and thereby lessened the surrounding area's dependence on shipments via the Railroad. If the anticipated construction activity increases and an export coal movement is started, FY 1980 should reflect a modest upturn in freight traffic. No substantial gains are expected in the long-haul traffic to Fairbanks, however, until the gas pipeline project begins.

Non-freight revenues increased, led by passenger revenues which were up 35 percent. Non-operating revenues were up 26 percent; and other

operating revenues increased 3 percent—from \$3.3 million to \$3.4 million. Total expenses were reduced almost \$2 million; but revenues primarily reflecting the drop in freight traffic declined by nearly \$4 million. These losses were incurred despite a 14-percent reduction in employment. Increased labor costs and material prices tended to offset the personnel reductions and the higher tariffs.

TABLE I: RAILROAD STATISTICAL HIGHLIGHTS

ITEM	1979 FY	1978 FY	% CHANGE
Total Revenues (million \$)	25.2	29.0	- 13.4
Total Expenses (million \$)	31.8	33.8	- 5.5
Gain (Loss) (million \$):			
Before Depreciation (gross)	(3.4)	(1.3)	-151.8
After Depreciation (net)	(6.6)	(4.5)	- 45.3
Capital and Major Maintenance Program (million \$)	9.4	3.6	+161.1
Average No. Employees	648	753	- 13.9
Freight:			
Revenue (million \$)	18.2	23	- 21
Revenue-Tons Carried (million)	1.8	2.2	- 16.9
Revenue Ton-Miles (million)	257	330	- 22.1
Revenue per Ton-Mile (cents)	7.1	7	+ 1.4
Average Distance Carried (miles)	142	152	- 6.6
Carloads Handled	36,499	40,557	- 10
Total Train-Miles (thousand)	370	375	- 1.4
Passengers:			
Revenue (million \$)	1.6	1.2	+ 35.3
Miles (million)	13.8	12	+ 15.5
Gross Ton-Miles (million)	878	915	- 4.8

TABLE II: FREIGHT TRAFFIC BY COMMODITY

COMMODITY	1979 FY	1978 FY	% CHANGE
Revenue Tons Carried (thousand):			
Sand & Gravel	637.5	727.2	-12.3
Coal	523.9	593.3	-11.7
Manufactures & Misc.	276.9	307.8	-10.0
Petroleum, Oil, Lubricants	219.6	373.9	-41.3
TOFC/COFC (Piggyback)	88.7	99.5	-10.9
Products of Forests	55.2	67.8	-18.6
Products of Agriculture	7.1	8.2	-13.4
Total Tonnage	1,808.9	2,177.7	-16.9
Revenue Dollars (thousands):			
Sand & Gravel	\$ 1,009	\$ 972	+ 3.8
Coal	3,207	3,507	- 8.6
Manufactures & Misc.	6,738	8,413	-19.9
Petroleum, Oil, Lubricants	3,877	6,362	-39.1
TOFC/COFC (Piggyback)	2,327	2,484	- 4.4
Products of Forests	886	1,231	-28.0
Products of Agriculture	114	72	+58.3
Total Revenue	\$18,158	\$22,991	-21.0

The Railroad's working ratio (expense/revenue, excluding depreciation) was 123 percent, up from 110 percent in FY 1978. Although expenses of all three operating departments—Transportation, Engineering, and Mechanical—were \$2 million less than expenses incurred in FY 1978, the 21-percent drop in freight revenues more than offset the economies.

The FY 1979 breakdown of revenues and expenses by percentages is shown in Figure 1. Freight revenues constituted 72 percent of total revenues, with the remaining 28 percent accruing from other than freight movements.

The capital and major maintenance program rose sharply because of the \$6.3 million appropriation by Congress for repairs to the Railroad's Seward and Whittier dock facilities.

Table III shows revenues, expenses, gains (losses), and cash flow for each quarter of fiscal years 1978-79. It reflects the declines in traffic which occur during the winter months, and the increases which occur during the summer months.

Although expenses are closely controlled and monitored, the Railroad will probably not show a profit until the construction equipment and material for the natural gas pipeline start to move into Alaska.

TABLE III: QUARTERLY FINANCIAL RESULTS
FISCAL YEARS 1978-79
(Million dollars)

QUARTER	REVENUE	EXPENSE	GAIN (LOSS)	CASH FLOW
FY 1978:				
1	\$ 7.1	\$ 8.9	\$(1.8)	\$(1.0)
2	5.7	8.3	(2.6)	(1.8)
3	7.1	8.4	(1.3)	(0.5)
4	9.2	8.0	1.2	2.0
Total Oct. 1977- Sept. 1978	\$29.1	\$33.6	\$(4.5)	\$(1.3)
FY 1979:				
1	\$ 5.4	\$ 7.9	\$(2.5)	\$(1.7)
2	5.7	7.7	(2.0)	(1.2)
3	6.7	8.2	(1.5)	(0.7)
4	7.4	8.0	(0.6)	0.2
Total Oct. 1978- Sept. 1979	\$25.2	\$31.8	\$(6.6)	\$(3.4)

The Railroad is taking active measures to reduce expenses further while continuing essential service to the public. Rising costs will continue to have a detrimental effect on the financial situation in FY 1980. The perennial deficits from passenger service will be offset in FY 1980 by an agreement recently signed by the Railroad and the State to cover losses associated with the Whittier shuttle service, and by a Federal appropriation which included \$1.5 million for the Anchorage-Fairbanks passenger service.

To build community and shipper awareness of the Railroad, the Railroad, with the support of the State and the numerous communities along the Railbelt, celebrated Alaska Railroad Week from September 10 through 16. The following noteworthy events took place: the Railroad ran special trains; a poster was produced; officials gave speeches; an Anchorage newspaper prepared a special section on the Railroad; the Anchorage museum presented an exhibit; and communities sponsored a variety of special events.

Since the Government of the State of Alaska has substantial surplus funds because of the growth of oil revenues, the Federal Government believes that ownership of The Alaska Railroad should be with the State Government. The Federal Government believes that The Alaska Railroad exists primarily for the benefit of the residents and shippers in Alaska; they need and deserve a much larger voice in determining the role that they want the railroad to play.

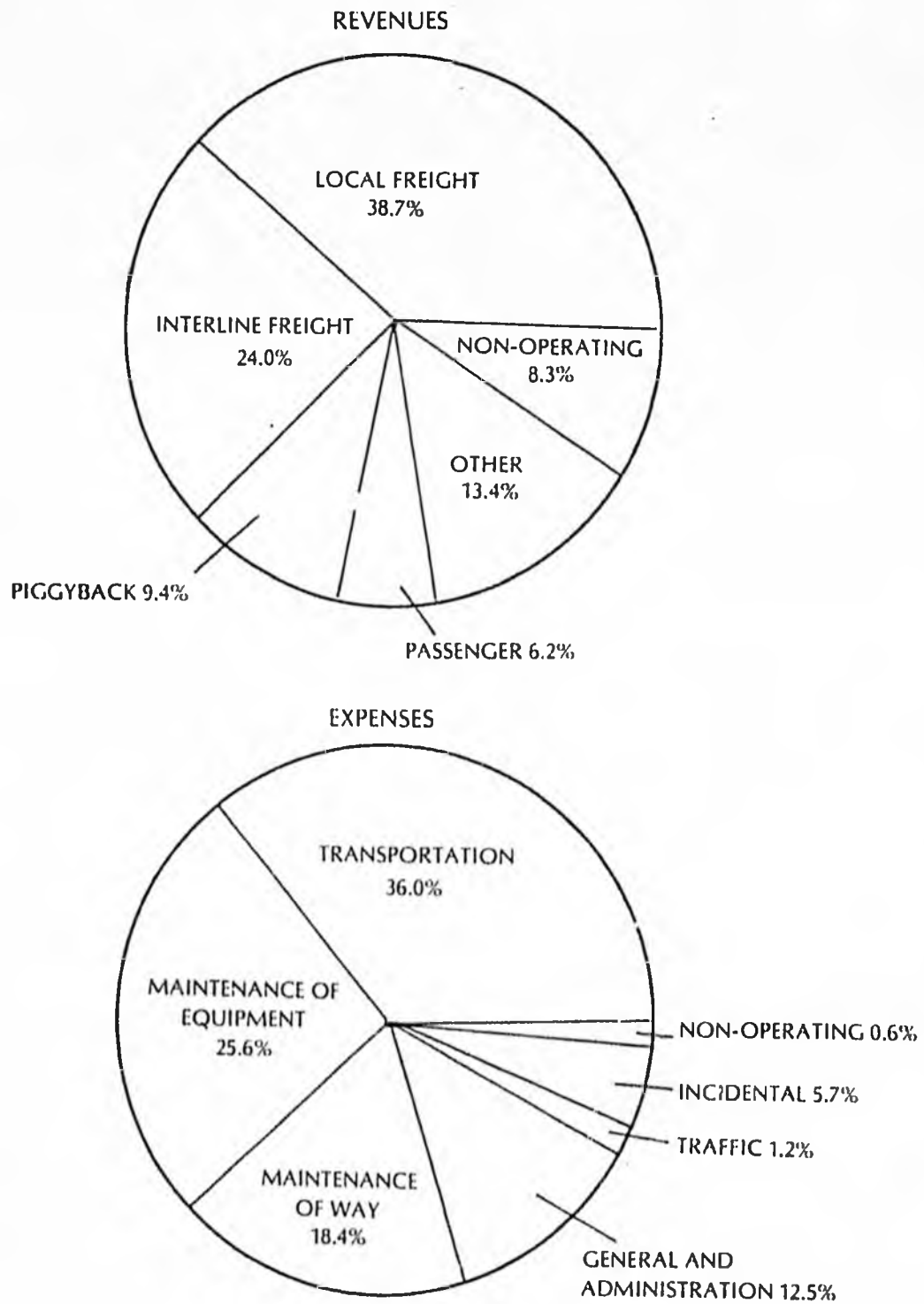


FIGURE 1: FY 1979 TOTAL REVENUES AND EXPENSES.

Financial

The following four financial statements (Tables V through VIII) describe the financial situation of The Alaska Railroad.

TABLE V: STATEMENT OF INCOME
FISCAL YEARS 1978-79
 (Thousand dollars)

CATEGORY	1979	1978
Operating Revenues (Note 3):		
Freight	\$18,158	\$22,991
Passenger	1,564	1,156
Other (Note 17)	3,378	3,293
	<u>\$23,100</u>	<u>\$27,440</u>
Operating Expenses (1) (Note 4):		
Maintenance of Way & Structures (Note 5)	\$ 5,235	\$ 6,154
Maintenance of Equipment	7,845	8,576
Transportation	11,821	12,123
Traffic Management	470	421
Incidental	1,937	1,889
General and Administration (Note 6)	4,256	4,249
	<u>\$31,564</u>	<u>\$33,412</u>
Income (Loss) from Operations	(8,464)	(5,972)
Non-operating Properties (Note 18):		
Income (2)	2,081	1,651
Less Expense (1)	204	213
Net	<u>1,877</u>	<u>1,438</u>
Net Gain (Loss):		
Less Extraordinary Item:	\$ (6,587)	\$ (4,534)
Deferred Outlays (Note 7)	40	543
Adjusted Net Gain (Loss)	<u>\$ (6,627)</u>	<u>\$ (5,077)</u>
(1) Depreciation included in Expenses (Note 8)	\$ 3,219	\$ 3,196
(2) Income foregone because of PL 95-611 delaying implementation of fair market value rents	\$ 300	

Notes follow Table VIII.

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Adjusted Net Gain (Loss)	<u>\$ (6,627)</u>	<u>\$ (5,077)</u>
(1) Depreciation included in Expenses (Note 8)	\$ 3,219	\$ 3,196
(2) Income foregone because of PL 95-611 delaying implementation of fair market value rents	\$ 300	

Notes follow Table VIII.

TABLE VI: BALANCE SHEET
SEPTEMBER 30, 1978-79
(Thousand dollars)

CATEGORY	1979	1978
Assets:		
Current Assets:		
Cash (Note 9)	\$ 5,225	\$ 5,714
Trust and Deposit Funds (Note 10)	63	87
Accounts Receivable	6,791	9,724
Materials and Supplies (Note 11)	6,339	6,578
Prepaid Expenses:	83	—
	<u>\$ 18,501</u>	<u>\$ 22,103</u>
Properties:		
Land (Note 12)	618	433
Buildings	12,389	12,151
Roadway Structures & Facilities	110,689	108,828
Equipment	41,330	40,926
Non-operating Property	3,932	3,542
Total Properties	<u>168,958</u>	<u>165,880</u>
Less Accumulated Depreciation:	49,587	46,766
Properties—Net	<u>119,371</u>	<u>119,114</u>
Additions and Betterments in Progress (Note 13)	11,759	7,305
	<u>131,130</u>	<u>126,419</u>
Other Assets and Deferred Charges	1,748	1,743
Total Assets	<u>\$151,379</u>	<u>\$150,265</u>
Liabilities & Proprietary Interest of the U.S. Government:		
Current Liabilities:		
Accounts Payable	\$ 1,615	\$ 1,607
Accrued Payrolls Payable	1,325	1,468
Trust and Deposit Funds (Note 10)	63	87
Provision for Employees Annual Leave (Note 14)	3,003	3,162
Other Liabilities and Unadjusted Credits	(2)	1,708
	<u>936</u>	<u>1,234</u>
Total Liabilities	<u>3,937</u>	<u>5,504</u>
Proprietary Interest (Note 15):		
Net Investment	167,603	158,294
Retained Earnings from July 1, 1954	(13,534)	(8,456)
Current Year Operating Results	(6,627)	(5,077)
Total Proprietary Interest (Note 15)	<u>147,442</u>	<u>144,761</u>
Total Liabilities and Proprietary Interest	<u>\$151,379</u>	<u>\$150,265</u>

Notes follow Table VIII.

TABLE VII: STATEMENT OF CHANGES IN FINANCIAL POSITION
FISCAL YEARS 1978-79
(Thousand dollars)

FUNDS	1979	1978
Funds Were Provided by:		
Revenues and Other Receipts	\$ 25,290	\$ 29,135
Appropriations from Congress (Note 16)	<u>9,300</u>	<u>3,000</u>
Total Funds Provided	34,590	32,135
Funds Were Used for:		
Labor	22,138	23,713
Other	5,445	4,356
Capital Improvements & Replacements	<u>8,181</u>	<u>5,823</u>
Total Funds Used	35,764	33,892
Increase (Decrease) in Government Equity	(1,173)	(1,757)
Other Increases (Decreases):		
Undelivered Orders	(705)	(2,176)
Supplies and Materials	(157)	210
Properties	4,711	2,066
Other	<u>5</u>	<u>(236)</u>
Total, Other	3,854	(136)
Total Increase (Decrease) in Government Equity	<u>\$ 2,681</u>	<u>\$ (1,893)</u>
Proprietary Interest:		
Beginning Balance	\$144,761	\$146,654
Increase (Decrease)	<u>2,681</u>	<u>(1,893)</u>
Ending Balance (Note 15)	<u>\$147,442</u>	<u>\$144,761</u>

Notes follow Table VIII.

TABLE VIII: FIVE-YEAR CONDENSED SUMMARY OF OPERATIONS
FISCAL YEARS 1975-79
(Thousand dollars)

CATEGORY	1979	1978	1977	1976		1975
				TQ (Note 2)	JUNE 30	
Operating Revenues	\$23,100	\$27,440	\$33,376	\$ 9,737	\$52,517	\$41,416
Operating Expenses	31,564	33,412	35,727	11,129	49,406	36,208
Income from Operations	(8,464)	(5,972)	(2,351)	(1,392)	3,111	5,208
Non-operating Properties (Note 18):						
Income	2,081	1,651	1,646	314	1,161	871
Expense	204	213	255	35	191	272
Non-operating Gain (Loss)	1,877	1,438	1,391	279	970	599
Net Gain or Loss	\$ (6,587)	\$ (4,534)	\$ (960)	\$ (1,113)	\$ 4,081	\$ 5,807
Less Extraordinary Item:						
Deferred Outlays (Note 7)	40	543	809	917	1,038	—
Adjusted Net Gain (Loss)	\$ (6,627)	\$ (5,077)	\$ (1,769)	\$ (2,030)	\$ 3,043	\$ 5,807
Operating Ratio	136.64%	121.76%	107.04%	114.30%	94.08%	87.43%
Working Ratio (Excludes Depreciation)	122.71%	110.12%	97.69%	107.02%	89.26%	81.66%

Notes follow Table VIII.

NOTES TO FINANCIAL STATEMENTS

1. Summary of Significant Accounting Policies

The Alaska Railroad utilizes generally accepted principles, standards, and related requirements of governmental accounting as approved by the Comptroller General of the United States. Operations are conducted in a manner consistent with related commercial enterprises and, at the same time, in conformance with the requirements incumbent upon a Government agency.

In accordance with the customary practice of the industry, the Railroad uses betterment and retirement accounting instead of depreciation accounting for roadbed and track. Under this concept, prescribed by the Interstate Commerce Commission, the cost of replacing track structure—less salvage recovered—is charged to the appropriate operating expense account and only the cost of betterments is capitalized. The amounts capitalized are not depreciated; but, upon retirement of track structure, the entire amounts capitalized—less salvage recovered—are charged to expense.

The accounting system and related procedures disclose financial condition and operating results to provide full accountability of the Government's investment in the Railroad and to afford management the necessary data to carry out its responsibility in the most efficient and economical manner.

The Railroad is financed from a revolving fund that bears the expenses of operating the Railroad, including incidental or collateral functions, and accrues revenues commensurate with such expenses by charging its customers for service performed.

2. Transition Quarter

In 1976, as the Federal Government changed to a new fiscal year, a transition quarter (TQ) was placed between fiscal year 1976 and fiscal year 1977. Commencing FY 1977, fiscal years end September 30 of the corresponding calendar year instead of June 30. The financial statements and text of this annual report are designed to clarify this change in fiscal years and avoid any misunderstanding. All financial statements show exact dates of the periods covered.

3. Revenues

By the assessment of the applicable tariff or contract rate for the service performed, revenues from rail operations are included in income on an accrual basis upon the completion of service.

4. Expenses

Expenses are accrued or applied or both on a basis consistent with generally accepted accounting principles.

5. Maintenance of Way and Structures

Maintenance of way and structures include expenses incurred by engineering (\$4,718,000) and communications (\$517,000).

6. General and Administration

General and administration include expenses under: general and administrative (\$3,681,000); operations division (\$296,000); loss on excess current inventories (\$8,000); and prior-year adjustments (\$271,000).

7. Deferred Outlays

Deferred outlays include projects for which appropriated funds are used, but are not capitalized as fixed assets until completion

8. Depreciation

Provisions for depreciation are computed principally on the straightline method based on estimated service lives of depreciated properties, except for the railway track structure, which is computed under the generally accepted industry betterment method. Depreciation charges are determined through use of composite, or group, rates applicable to various classes of property.

The following is a breakdown of depreciation by major property accounts in FY 1979:

	(Thousand dollars)
Buildings	\$ 322
Other structures & facilities	703
Equipment	1,957
Communications	142
Riverboats	94
Other	1
Total	\$3,219

9. Cash

Cash refers to the fund balance with the U.S. Treasury, which is the net amount of cash receipts, e.g., revenues, proceeds from sales and amounts of congressional appropriations, less disbursement.

10. Trust and Deposit Funds

Trust and deposit funds include special deposits and other collections that are not covered by the revolving fund and are cleared by disbursement or transfer, as appropriate. A contra account to this asset account is reflected in the liability section.

11. Materials and Supplies

Inventories, consisting primarily of replacement or repair parts for equipment and road property, construction materials, and fuel, are valued at average cost, including freight.

12. Land

Land includes only property purchased by the Railroad in fee simple from private owners and carried at acquisition cost. The Railroad owns over 38,000 acres that are withdrawn from the public domain at no cost, and this land is not included in the financial records.

13. Additions and Betterments in Progress

This is a control account for authorized capital projects during the period of construction or procurement. Upon completion of the capital project, the related costs are transferred into the appropriate fixed asset property account.

14. Provision for Employees' Annual Leave

Provision for employees' annual leave includes the estimated liability for annual leave accruals earned and the charges for annual leave taken.

15. Proprietary Interest of the U.S. Government

The proprietary interest is designed to show the Federal Government's net interest in The Alaska Railroad. At the end of FY 1979, it is summarized as follows:

	(Thousand dollars)
Appropriation by Congress	\$226,596
Allotments from other agencies, sale of lots, etc.	1,724
Property transferred or donated (not public domain)	19,785
Earthquake losses	(16,738)
Deficits from operations and capital losses to June 30, 1954	(63,764)
Retained earnings (July 1, 1954, to Sept. 30, 1978)	(13,534)
FY 1979 operating results	(6,627)
Total proprietary interest of the U.S. Government	\$147,442

16. Congressional Appropriations

Funds appropriated by Congress were obligated within the fiscal year, as shown below:

	FY 79	(Million dollars) FY 78
Congressional appropriations received	\$9.3	\$3.0
Obligated during fiscal year	<u>7.7</u>	<u>3.0</u>
Amount unobligated at end of fiscal year	1.6	0.0

17. Other Operating Revenues

Other operating revenues include operating revenues that were neither freight nor passenger. Individual accounts exceeding \$100,000 in FY 1979 were:

	(Thousand dollars)
Work performed for others—	
reimbursements	\$1,234
Equipment rentals	479
Switching	340
Whittier shuttle-vehicles only	258
Wearfare and handling	150
Mail	107
Demurrage	104
All other	<u>676</u>
Total	\$3,378

18. Non-operating Properties

Non-operating properties include income and expense from other than railroad operating accounts. Non-operating incomes in FY 1979 were:

	(Thousand dollars)
Land	\$1,600
Riverboats	256
Buildings	186
All other	<u>39</u>
Total	\$2,081

Non-operating expenses in FY 1979 were:

	(Thousand dollars)
Buildings	\$106
Riverboats	97
All other	<u>1</u>
Total	\$204

Chairman
Row
Jan

AMENDMENT
MEMORANDUM

TO: Members, Senate Transportation Committee
FROM: Alaska Railroad Staff Work Group
RE: Additional Amendments to Committee Substitute
(new ** draft)
DATE: April 12, 1982

This new ** draft before you today reflects the changes adopted by the Committee on April 8, 1982. Additional changes have been incorporated following review of materials submitted by the management of the Alaska Railroad and of concerns raised by the House Committee. These additional changes (other than purely technical ones) are:

- 1) deleting the words "in . . . capital improvements" on page 3;
- 2) adding an ex officio, nonvoting board member who represents the labor organizations at the railroad on page 5;
- 3) clarifying conditions of the appointment of a rail executive to the board on page 5;
- 4) requiring that at least four members of the board reside in areas served by the railroad, also on page 5;
- 5) adding the words "or the state" on page 6 to be consistent with the federal transfer legislation;
- 6) changing the term for board members to five years and adjusting the staggering of initial board member terms

appropriately on page 7;

7) reducing board member compensation from \$400 to \$300 per day on page 7;

8) eliminating approval by the governor of appointment of the authority chief executive officer but retaining it, for competence, of the legal counsel on page 8;

9) eliminating the cross-reference to A.S. 44.62.312 on page 14 (Section 312 is a policy statement which is unnecessary and may be confusing);

10) adding the words "or to" on page 21 to ensure protection of authority property; and

11) reducing the time limits on gubernatorial (from 60 to 45 days) and legislative (from 90 to 60 days) review of proposed authority actions on page 42.

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These are changes to clean
draft of bill.

Authority Operation of Federal Railroad

On page 6, line 2, following the word "legislation" and on
page 51, line 23, following the word "legislation" add:

or upon approval by the legislature of operation
of the Federal Alaska Railroad by the authority.

Coal Utilization

- 1) On page 25, line 18, delete the word "and" and insert a comma in its place.
- 2) On page 25, line 19, add the following after "materials" and before "on": ", and coal"
- 3) On page 27, line 19, add the following after "use" and before "sand": "for its purposes"
- 4) On page 27, line 20, delete the word "and" and insert a comma in its place; and add the following after "materials" and before "on": "and coal"
- 5) On page 28, line 23, add a new subsection 42.40.510(f) as follows:

(f). Before the authority extracts or utilizes coal on lands in which it owns an interest, as authorized by A.S.42.40.500(b) and (b) of this section, it will submit a request for authorization to do so to the department of natural resources. Within 45 days of receiving the request, the department of natural resources will approve the request if it determines that the coal described in the request is located on lands in which the authority owns an interest and is not subject to valid existing rights of a third party. The title to all coal on lands in which the authority owns an interest is in the State of Alaska until the coal is severed from the land and utilized by the authority under this subsection or otherwise disposed of in accordance with A.S. 38.05.150 and A.S. 42.40.515. The authority may use coal made available to it under this chapter for operational, non-income producing purposes only, including the generation of power to support operations and compensation in kind of a person with whom the authority contracts to extract coal.

Elimination of Conveyance of Subsurface to State

- 1) On page 25, lines 11-25, delete subsection 42.40.500(b) in its entirety and renumber subsections accordingly.
- 2) On page 29, line 21, add following the word "development" the words "and conveys to the state the necessary interest"
- 3) If the coal utilization amendment is adopted, delete from A.S. 42.40.510(f) the words "A.S. 42.40.500(b) and"

Elimination of Strike Prohibition

On page 45, line 15, delete the comma and insert in lieu thereof a period; delete the phrase

"and the authority's employees are classified as employees under A.S. 23.40.200(a)(1)."

Private Management

- 1) On page 8, line 28, add a new subsection 42.40.250(b) as follows:
 - (b) Notwithstanding subsection (a), the board may provide for, in a manner consistent with the purposes of this chapter and subject to the approval of the state as provided in A.S. 42.40.700, the management and operation of the railroad by a third-party contractor.
- 2) On page 18, line 25, add following the word "undertake," the words "or provide for"
- 3) On page 40, line 6, delete the word "or"
- 4) On page 40, line 9, following "(\$5,000,000);" add the word "or"
- 5) On page 40, line 10, add a new paragraph (4):
 - (4) provision for the management and operation of the railroad by a third-party contractor

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1981

SUBJECT: Alaska Railroad Authority
(Work Order No. 12-1364)

TO: Senator Bill Ray

FROM: Thomas A. Sofo *TAS*
Legislative Counsel

You have requested that this office undertake a section-by-section analysis of SB 212 and SB 221 with notations of any differences which exist between the two bills. Both bills create an Alaska Railroad Authority. SB 212 and SB 221 share more parallel provisions than they do differences. In the interest of economy of time and effort, I have attempted to summarize the main differences which exist between the two bills since this seems to be most salient feature of your request. I do not believe that one will encounter much difficulty in understanding what a given section of either bill says, but I am aware that there is some need to be able to compare differences between the two bills. I have undertaken that comparison in narrative form below. You may find that future reference would be facilitated if the format of this memo is changed into some sort of graphic presentation.

Both bills create the Alaska Railroad Authority as a public corporation of the state. However, the composition of the governing board varies. Under SB 212, the board consists of at least one banker, one attorney, one economist, one transportation person, and one business person [sec. 42.40.030.]. Under SB 221, the board consists of the commissioner of transportation and public facilities, two senators, two representatives and two members of the general public [sec. 44.87.015]. Only SB 212 specifically sets out a conflict of interest section [sec. 42.40.050]. SB 221 calls for the employment of an executive director to manage the authority [sec. 44.87.025], while SB 212 gives this job to

Senator Bill Ray
Page 2
April 7, 1981

the president [sec. 42.40.100]. The general powers of the authority under both bills are practically identical. One of the purposes of the authority under SB 221 is to enter into talks with the federal government and Canadian provinces regarding an international rail connection [sec. 44.-87.030]. Nowhere is this expressly mentioned in SB 212 although this purpose could be implied easily under sec. 42.40.120. Only SB 212 expressly calls for an annual report [sec. 42.40.120], and audit [sec. 42.40.150].

The financial provisions of both bills are similar. SB 212 differs as it provides for bond anticipation notes [sec. 42.-40.160(b)]. SB 221 provides for a maximum forty year maturity for authority bonds [sec. 44.87.040(b)], while SB 212 calls for a fifty-year maximum [sec. 42.40.150(c)]. SB 212 goes into much more detail when describing the resolution which authorizes the issuance of bonds [sec. 42.40.160(f)], than does SB 221 [sec. 44.87.040(b)]. Only SB 212 calls for an independent financial advisor [sec. 42.40.170]. SB 221 specifically refers to trust indentures and trust agreements and provides that an issue of bonds may be secured by such instruments while SB 212 is silent on this point [sec. 44.-87.045]. SB 212, unlike SB 221, provides for the issuance of refunding bonds [sec. 42.40.220]. Only SB 212 provides for the dissolution of the authority [sec. 42.40.270], and for the exemption of authority personnel from the State Personnel Act [sec. 42.40.280]. The last substantive difference in the financial provisions of these two bills is that only SB 221 expressly states that income from investments of the authority is limited to maintenance or improvement of railroad facilities [sec. 44.87.075].

Call me at your convenience if you have any problems with understanding the content of a specific section beyond the differences identified by this comparison.

TAS:ljb

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Official Business

Alaska State Legislature

Senate

Office of the President

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO : COMMITTEE MEMBERS
SENATE TRANSPORTATION COMMITTEE

FROM : SENATOR JAY KERTTULA

DATE : APRIL 12, 1982

SUBJECT: REQUESTED AMENDMENTS TO SB 212
FROM FRANK JONES

The attached information which was provided by Frank Jones, Manager, Alaska Railroad, are the same recommendations that were made to staff over two weeks ago. Many of these suggestions have been incorporated in the most recent version of SB 212.

JK/gt/aj

Where the Railroad is described as a "public authority," lines 2 and 7 on page 3 and lines 10, 19 through 21 and line 24 on page 4, the word "public" should be deleted.

The word "public" implies a government function. It emphasizes the governmental characteristics of the Railroad to the detriment of the business aspects of the authority. However, the authority is not performing normal governmental functions, but it is instead performing transportation services ordinarily in the private sector of the economy. The authority should be more like a business than a governmental entity; should have flexibility to meet changing conditions; should be free of political interference where normal operations are concerned, and should have the assets that lower 48 railroads have. However, the word "public" connotes the opposite of the above. It connotes an inefficient government bureaucracy rather than a more efficient business. It connotes possible political interferences.

Line 16

The authority should be allowed the flexibility of either issuing tax free obligations or to be taxable obligations. The authority may be able to issue taxable bonds similar to those issued by transportation companies, such as airlines, railroads and trucking firms at better interest rates simply because the the financial markets are familiar with such bonds, whereas the financial markets may stay away from the tax free bonds of an unique quasi-governmental railroad authority not backed by the financial strength behind the State of Alaska.

Pages 3 & 4 - Continued

Lines 17 & 18 In order that the state's transportation industry remain competitive but healthy, the authority should be run as much as possible like any other private transportation business.

Line 22 The authority should be given the flexibility to be supported by means other than state investment.

Line 29 The authority should be given broad flexible powers to meet the changes that future decades are sure to produce. The authority should be allowed to invest its funds to maximize its income until the principal and interest are needed.

The Railroad, because of its emphasis on the business orientation of the new Railroad authority, suggests that the board appointed by the Governor should have a greater business, rather than governmental, flavor. Therefore it suggests that the only government person on the board be the highest official in the Executive Branch. This lends a greater credence to the stature of the Railroad as an entity of State government. The Railroad feels that it can function as a profit-making asset in the stable of assets serving under the seal of the State of Alaska. It will take in revenues in excess of \$50 million this year alone, and has over 500 employees. It is the transportation connecting link between ice-free tidewater and the interior of Alaska, and 70% of the population of the State lives in the railbelt. Therefore, the Governor of the State should serve on its board. Along with the Governor, the Chief Executive officer of the Railroad should serve on the board as do most CEO's in private firms serve on their boards of directors. Moreover, a labor representative should be on the board to represent the labor side of railroading. Progressive business organizations recognize the importance of labor to well run organizations.

Lines 4-16

The Railroad has certain reservations about the way the hiring and firing and compensation are structured. The Railroad feels that the board should appoint the Chief Executive Officer and the CEO should appoint all other employees and fix their compensation. If the Railroad is not successful, the board should get another CEO.

However, one important comment should be made regarding the limitation of executive salary to that salary established for departmental commissioners. Presently there are 11 executive officials of The Alaska Railroad who make in excess of \$50,000 base pay a year, plus 17-1/2%, soon to be raised to a 22-1/2% cost of living allowance. If it is assumed that all executive officials are within the federal tax bracket of 50%. It can be assumed that COLA, which is tax free, when equated to taxable income would then be doubled. Therefore, these 11 executive officials presently have a taxable income of \$70,000 to \$90,000, which is in excess of a commissioner's salary. All of these executives have expressed their concerns in accepting a 20% - 30% reduction and indicated they would circulate their resumes and seek other employment. This action would adversely affect the new authority. The loss of experienced executives could have a serious affect on the State.

Section 42.40.250 originally had subsection (b) which would allow the Railroad to be managed by a private contractor. This power has been deleted from the new SB 212. Even the Railroad's 1914 Enabling Act allowed for the operating of the Railroad by a private contractor. It is suggested that lanuage be included that would permit private contractor operation if the Board so deemed.

Lines 9-30 on

It is believed unnecessary, as part of this statute, to laboriously reiterate detailed provisions for conflicts of interest, when there is presently a state statute on conflict of interests and the modification suggested by the railroad adequately covers this matter. If it is the opinion of the Legislature the State Conflict of Interest Act is not strong enough, that act, not the railroad act, should be amended. The railroad act should be as succinct as possible, not detailed and inflexible.

Lines 19-29

The railroad suggests a modification of the requirement for public board meetings. The railroad suggests that the executive sessions of the board should be allowed regarding all of the corporate powers given to the authority by this Act. All discussions by the board regarding all business decisions vis vis the corporate powers should be conductable by the board in executive session. This does not mean that they must discuss these powers within an executive session, but merely have the authority to do so when necessary.

Obviously any discussion of tariffs, divisions and contract rates should fall within the power of the board to discuss in executive sessions.

Because healthy competition brings down the cost of transportation services to the citizens of Alaska, the authority should be able to compete effectively against the rest of the transportation industry by holding its meetings in executive session. No board of any transportation company discusses strategy and assesses their own strength and weakness at meetings routinely open to their competitors.

Lines 3 - 15

There are presently existing 143 volumes with 469 supplemental orders of Railroad Rules and Regulations. This requirement of review is a monumental task which will require considerable unnecessary immediate expenses on behalf of the Railroad. This requirement of change in Rules does not aid the Railroads ability to function. The Railroad and the State would be best served by continuing the existing Rules and Regulations if they are not inconsistent with this chapter and State law until it becomes necessary through Railroad operations to change these Rules and Regulations.

Lines 23-30 -

The railroad, in its business function must be afforded specific protections from disclosure not required by other agencies. The reason for this is that the transportation industry, whether it be railroads or ships or planes or trucks, is both competitive and overwhelmingly private. Because the transportation industry is competitive, the authority should not have to disclose information helpful to competitors.

Our suggested language provides such protections, while still bringing the railroad within the requirements of A.S. 09.25.110-.120.

Therefore, to maintain a competitive and healthy Alaska transportation industry, the above changes should be made.

Line 9

Conforms with suggested (a) on Page 15.

Line 13

42.40.400 - GENERAL POWERS, should read the "Board of Directors, by its own undertaking, or by appropriate delegation to the Chief Executive Office, may" rather than "The Authority may." This change will make the line of power much clearer. The "Authority" is the ultimate entity but all powers and duties should be granted to either the Board of Directors of the "Authority" or the C.E.O. There should be a new paragraph placed in the Bill granting the power to the Board of Directors to assign to the C.E.O. such corporate powers as, in the Board of Directors' opinion, would best serve the business of The Alaska Railroad.

Lines 17 - 18

(4) This subsection is potentially in conflict with 42.40.250 as currently written. 42.40.250 as currently written gives the Board of Directors, with the approval of the Governor, the power to appoint the C.E.O. and the legal counsel, and all executive officers serve at the pleasure of the Board of Directors. The powers set forth in 42.40.400 as rewritten by the Railroad on line 13 are clearer and less cluttered, and can be assigned to the C.E.O.

Line 19

Subsection (5) runs contrary to 42.42.450 as rewritten by the Railroad or is redundant to 42.42.450, as currently written. To structure the authority like a business, the Chief Executive Officer should have the power to hire the legal counsel.

Line 6

The word "Authority" should be changed to "board."

Line 9-10

(17) It should read "lend the authority's funds, property, credit or services for authority purposes."

Line 25

Between the word "on" and the work "property" the phrase "or to" should be inserted. The change is requested to allow the security force to act as state law enforcement officers for violations that occur to property owned, managed or transported by the authority but that do not occur on property owned, managed or transported by the authority.

Line 29-30

Lines 29 - 30 of page 20 and lines 1 - 12 of page 21 should be stricken. Both the Governor and the Legislative Auditors are inexperienced in railroad accounting, in transportation law such as the Interstate Commerce Act, and in business practices as opposed to governmental practices. As a result, information of a confidential nature is subject to leakage without the safeguards of a fiduciary relationship between an accounting firm and the authority. The Railroad believes information in the hands of either the legislative or governor auditor would not remain confidential. Most business contracts are made in private rather than in the press. In fact, publication of business deals in the press often portend problems. If the Legislature and the Governor want access to audit information, they should either be given a voice along with the board in selecting the accounting firm or alternatively they should be allowed access through an independent certified accountant experienced in railroad accounting. Only the former alternative is presented in the suggested railroad changes to the bill.

The state would benefit by the above changes which structure the authority more like a business rather than a government bureaucracy. The structuring of the authority like a business helps maintain both an efficient competitive railroad authority and an efficient competitive transportation industry. Both are needed for a healthy Alaska economy. Moreover, the above changes would buffer the authority from political interference and influential constituents.

Line 22-28

42.40.425 (a) (1) should stop after the words "A.S. 37.07.050" on line 22. The Alaska Railroad should not be subject to legislative auditor and the division of budget and management unless the ARR is using State funds. An annual independent audit is recommended. 37.07.050 sets forth the requirements for "agency programs and financial plans." Nothing more need be said.

Therefore, the above deletion would help maintain a competitive efficient Alaskan transportation industry by structuring the authority more like a business and buffering it from political interference.

Lines 4 - 7

Subsection (2) should consist of the first sentence only. 47.07.060 requires the Governor to present long-range capital plans to the Legislature. The Railroad should be included in those plans that would aid the railroad in developing plans for long range capital improvements when any of those kinds of improvements must be financed by the Legislature and the Governors office.

Lines 11-25

Subsection (b) of 42.40.500 should be stricken. All of the Railroad land should be held intact until the reversionary period set forth in the Federal legislation is over. During this reversionary period, according to a draft of the Federal transfer legislation, land "converted to a use that would prevent the property from being used to operate or support the Railroad" would trigger either a reversion to the United States or a payment by the State of the value of the real property. If the Federals require a ten year period, then during that same period the legislators can determine whether they wish the Railroad to operate its own coal lands or the subsurface of all its lands or they wish the Commissioner of Natural Resources to do so. In the meantime, the State should take no action reducing the Railroad's interest in lands conveyed from the Federal Government.

The Railroad, during this debate, will argue for the control of the subsurface to its lands. The Alaska Railroad does have coal reserves the same as the Union Pacific Railroad, the Burlington Northern, Inc., and the Denver Rio Grande, etc. If the Alaska Railroad loses its mineral rights to the State, it would reduce the potential of the ARR to earn royalties to keep revenues above expenses and reduce the railroads potential of State subsidy funds. Also, the right to use the subsurface for rocks, sand and gravel and for tunnels, ditches, and other recontouring of land is important to the Railroad. Therefore, subsection (b) should be deleted to prevent any chance of essential railroad lands reverting to the Federal Government. Why expose crucial right of way land, gravel land, port land, and industrial land to any possibility of reversion? Moreover, subsurface gravel, rock and coal are needed to either produce income or lessen expenses (gravel for roadbeds) and thereby make the authority profitable so that it need not even ask for a

Lines 14-21

Subsection (f) of 42.40.500 should be deleted, because no interest in real property should be disposed of until after the termination of the Federal reversionary period during which time any land converted from possible railroad use either reverts to the United States or the State pays the United States the value of the real property.

Therefore, this subsection should be taken out, because the State should not place itself in the position of exposing itself to a high probability of the reversion of land to the United States if Railroad land is disposed of during the reversionary period.

Lines 20-30

All of subsection (c) of 42.40.510 should be stricken. There is no need for joint management of Railroad lands. Moreover, the joint use of Railroad lands could trigger either the reversion of land to the United States or the payment by the State of the value of the lands. During the reversionary period, the legislature should grant to the Railroad the right to control the land, whether it be the surface or subsurface.

Therefore, all of this subsection should be deleted so that the valuable land resources of The Alaska Railroad are not exposed to any possible danger, whether remote or imminent, of reversion back to the United States. These lands are crucial to rail transportation in Alaska. Moreover, joint management increases coordination expenses, to the authority and at the same time lessens the potential of the use of these lands to either produce income or lessen expenses, such as the gravel costs of roadbeds. If the Railroad is to be profit oriented then the Railroad should control its own lands.

Lines 10-11

The words "Chief Executive Officer" should replace the words "General Manager."

Lines 20-30

42.40.515 should be deleted until such time as the reversionary period set forth in the Federal statute is complete, because non-railroad uses of railroad lands could trigger the reversion of real property to the Federal government or the payment by the State of the value of the real property interest. During this same period, strenuous debate can be had with legislators, the Governor and the public as to the management and development of Railroad land. However, the authority should have the right to use or to develop natural resources on its lands so that its income will be greater than its expenses.

Therefore, this section should be deleted so that the valuable land resources of The Alaska Railroad are not exposed to any possible danger of reversion back to the Federal Government. These lands are irreplaceable to rail transportation in Alaska. Moreover, the management of the subsistence of authority lands by the department of natural resources adds another level of bureaucracy before development of the lands to take place. Thus, department of natural resource management of authority lands could interfere with normal railroad uses of authority lands or delay or prevent the use of lands to produce income for the authority or to reduce the expenses of the authority.

Lines 24-26

Because this subsection (b) of 42.40.530 requires the Railroad to convey the subsurface estate to the State, the Railroad is prevented from using eminent domain to acquire subsurface resources such as coal, gravel, sand and rock.

Therefore, to develop the mineral and agricultural potential of Alaska, these three lines need to be deleted, because gravel, rock and sand are needed to build the roadbeds of new rail extensions. This would stymie development of the Railroad lands and therefore the Railroad.

Lines 1-4

Subsection (b) of this section 42.40.530 requires the subsurface estate to be reconveyed to the State so this subsection (e) would have no effect unless the subsurface or the gravel, sand and rock part of the subsurface could remain with the Railroad.

Therefore, to allow the Authority to have Eminent Domain to acquire gravel lands needed for expansion of the Railroad, Subsection (b) should be eliminated.

Lines 24-30

42.40.655 - The Board of Directors "may" instead of "shall maintain in full force and effect public liability insurance." The reason for this change is that the authority may find that the authority may not be able to obtain insurance at either any cost or a reasonable cost and therefore, it is more efficient to be its own insurer and defend its own tort lawsuits. It is a business decision, not a political one, and so should remain with the Railroad. If the ARR maintains public liability insurance, any additional coverage required by the State naming the State as an additional insured should be funded by the State.

Therefore, the change here benefits the state by allowing the authority to operate like a business rather than imposing a burden on the authority that may eventually lead it to request subsidization from the state.

Lines 21-25

The phrases "expansion, reduction or diversification of services" and "significant and permanent change in the level and nature of services" need to be clarified. The above two phrases are far too broad and can be interpreted to apply to expansions, reductions or diversifications of service due to normal business changes.

The State would benefit by the clarification because State review is not needed of expansions, reductions or diversifications of service due to normal business charges.

This might apply to a reduction in the service of the Whittier Shuttle or the winter reduction of trains to Fairbanks. It is not clear as drafted.

Lines 13-30

42.40.700 - Subsection (c) and (d) should be stricken as unnecessary. The review of any proposed action of the Railroad is unnecessary because the legislature and/or the Governor can, through resolution or legislative act or Governor's edict suggest changes or stop any action of the Railroad.

The power of the governor to intervene would make the authority a part of the executive branch government. For the benefit of the citizens of the State of Alaska, the authority should be operated as a business in competition with the rest of the transportation industry, which is in the private sector of the economy. The power of the governor to intervene would allow the governor the opportunity to award his political friends and punish his political enemies.

Similarly, the power of the legislature to intervene with respect to any "expansion, reduction or diversification of services"(an over broad phrase), would allow intervention on the basis of political reasons when only business considerations should be used.

Therefore, the deletion of 42.40.700 (c) & (d) would benefit the State by insulating the authority from harmful political pressure and thereby maintaining a healthy private transportation industry capable of healthy competition with the Railroad as well as each other.

Line 5

Subsection (e) should be realphabetized to (c). The words "notwithstanding the foregoing" should be stricken because we have requested a deletion of the preceding paragraph.

Line 11

"(c)" should be substituted for "(e)".

Lines 13-14

These two lines should be deleted because we are asking that 42.40.710 be deleted.

Line 15

"(2)" should be deleted, housekeeping amendment.

Line 18 on

42.40.710 should be stricken. All the Railroad would need would be a resolution passed by either house of the Legislature or a Governor's edict. The action forcing mechanism would make the authority more a part of the government than a business enterprise and subject the authority to railroad decisions made on a political basis rather than a business basis. The rest of the transportation is in the private sector of the economy so the government would be competing with private transportation companies on political grounds but with the resources behind the state government. The action forcing mechanism could allow the State to force the authority to charge unreasonably low land rents or low tariffs in direct competition with private land owners and private transportation companies. Politics should be separated from the day to day operations of the railroad authority. The operations of the railroad should be run by business considerations.

Therefore, the deletion of section 42.40.710 would affect the State by preventing the State from unfairly interjecting itself into the free enterprise and free market system.

Lines 9-30 .
and following
page, lines
1-11

42.47.715 should be stricken under the same above reasoning. The operations of the railroad authority should be governed by business considerations rather than political ones so that it can compete fairly with private enterprise. On the other hand, the expansion of the railroad requiring state funds is a political decision.

Therefore, the striking out of Section 42.47.715 which set forth the Governors' intervention in control of the Railroad is really covered in Sec. 42.40.720 and is unnecessary. The power of the authority should be vested in the Board.

42.47.715 is really unnecessary if 720 remains in the Bill. 720 allows the government to get a court to impose a Trusteeship over the Railroad under circumstances similar to 715. Therefore, the State is amply protected and the deletion of 715 streamlines the Railroad operation and this Bill.

Lines 12-17

The Railroad requests that the word "Municipality" be deleted from any license or permit provision in this statute. The Railroad presently negotiates with a number of Municipalities regarding crossings, traffic signals, etc. If the Municipalities were granted authority to regulate the Railroads' passage through their boundaries, the Railroads' transportation of goods and services could be controlled and severely disrupted by Municipality control and Mayoral constituents.

Line 16

Chief Counsel has been incorrectly deleted from the
definition of "Executive Officials."

Line 16

Chief Counsel has been incorrectly deleted from the
definition of "Executive Officials."

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 26, 1981

SUBJECT: Sectional analysis of Alaska Railroad
Authority Bill (Work Order Number 12-0866)

TO: Senator M. E. Dankworth

FROM: Randolph G. Berry *RGB*
Legislative Counsel

In accordance with your request, the following is a section-by-section analysis of your bill establishing the Alaska Railroad Authority (Work Order No. 12-0093).

Sec. 1 of the bill:

Sec. 42.40.010 establishes the Alaska Railroad Authority as a public corporation within the Department of Transportation and Public Facilities.

Sec. 42.40.020 provides that the authority shall be governed by a board of directors.

Sec. 42.40.030 sets out the membership of the board of directors, the method of appointment, and qualifications of the members.

Sec. 42.40.040 provides for a four year term of office for directors and provisions for filling of vacancies.

Sec. 42.40.050 sets out procedures to be followed in the event of a conflict of interest by a member of the board of directors.

Sec. 42.40.050 provides for per diem and travel expenses for the directors.

Sec. 42.40.070 establishes the quorum for the board of directors.

FEB 26 1981

Sec. 42.40.080 provides that board meetings are public meetings.

Sec. 42.40.090 requires board to keep minutes of its meetings.

Sec. 42.40.100 allows the board to employ a president to manage the authority and sets out certain qualifications for the president.

Sec. 42.40.110 sets out the general powers of the authority, including operating authority and financial powers.

Sec. 42.40.120 provides that the authority shall provide for the operation of the Alaska Railroad, either operating the railroad itself or otherwise, and allows the authority to expand the operations of the railroad.

Sec. 42.40.130 provides that the board shall adopt and issue regulations pertaining to its operations and the operations of the railroad.

Sec. 42.40.140 requires the board to prepare and distribute an annual report.

Sec. 42.40.150 requires an annual audit of the authority by the legislative auditor or by an independent auditor acceptable to the legislative auditor.

Sec. 42.40.160 allows the authority to issue and sell bonds and notes to provide money for corporation purposes, including the operation, maintenance and expansion of the railroad; provides that these bonds and notes are payable from funds and assets of the corporation; allows the authority to determine the number, denomination and other matters relating to the issuance of bonds and notes; allows the authority to make pledges and guarantees with respect to the security for the bonds and notes; the payment of interest and principal, the redemption of the bonds, and the establishment of special funds for payment or redemption of the bonds or notes; and allows the

authority to make pledges with regard to the appointment and powers of a trustee or trustees to protect the interests of the holders of the bonds and notes issued by the authority.

Sec. 42.40.170 requires the authority to retain the services of an independent financial advisor when negotiating for the private sale of bonds or notes.

Sec. 42.40.180 provides that pledges of assets or revenue made by the authority as security for the payment of principal or interest on bonds or notes are binding on the authority.

Sec. 42.40.190 grants the holders of authority bonds or notes, or trustees appointed to protect the holder's interests, to enforce the rights granted under this chapter and pledges made under the trust agreement or resolution of the board.

Sec. 42.40.200 provides that bonds and notes of the corporation are negotiable instruments.

Sec. 42.40.210 provides that bonds and notes of the authority are securities which are eligible for investment of state funds and qualify for investment of reserves and other funds by insurance companies, banks and other companies maintaining reserve accounts.

Sec. 42.40.220 allows the authority to issue refunding bonds to replace previously issued and outstanding bonds and notes of the authority.

Sec. 42.40.230 provides that the authority is not allowed to pledge the taxing power of the state or assets of the state other than the assets of the authority.

Sec. 42.40.240 protects the officers and employees of the authority from personal liability for the issuance of bonds or notes by the corporation.

Sec. 42.40.250 grants tax exempt status to the authority and to bonds and notes issued by the authority.

Sec. 42.40.270 allows the board of directors to dissolve the authority after provision for repayment of all its bonds and notes, but requires legislative approval of the dissolution.

Sec. 42.40.280 provides that personnel of the authority are in the exempt state service.

Sec. 42.40.990 defines various terms used in the previous sections.

Sec. 2 establishes the terms for initial members of the board of directors appointed under sec. 42.40.030.

Sec. 3 provides for the board of directors of the Alaska Railroad Authority to enter into negotiations with representatives of the federal government for the transfer of the Alaska Railroad to the authority.

RGB:ljb

1 Senator Ray, Senator Kertulla, Senator Dankworth, Committee Mem-
2 bers: I am Leonard Black and am speaking for the coalition of
3 The Alaska Railroad labor unions. This coalition includes the
4 Brotherhood of Railroad Carmen, the International Association of
5 Machinists, the United Transportation Union, the American Feder-
6 ation of Government Employees, and the American Train Dispatchers
7 Association, all of whom represent employees of The Alaska Rail-
8 road, and also have representatives here today. The significance
9 of this Bill and State acquisition of The Alaska Railroad is
10 particularly important at this time when the State of Alaska is
11 entering into an exciting era; we are expanding the development
12 of our vast mineral deposits. The Alaska Railroad is vital to
13 the success of this effort. All of this is happening at a time
14 when the Federal Government is seeking to divest itself of the
15 Railroad which it considers to be within the proper domain of the
16 State. The employees of The Alaska Railroad appreciate the con-
17 siderations incorporated to date in SB212 and strongly endorse
18 and support the concept of transferring the Railroad to the State
19 of Alaska. We want the transfer to proceed smoothly and our
20 future relationship with the Authority to be successful for the
21 State, the employees of The Alaska Railroad, our customers, and
22 the taxpayers. We are all taxpayers and citizens of Alaska as
23 well as employees of the Railroad. As such, we are vitally
24 concerned about the financial viability and future success of the
25 Railroad. With this perception as our mandate, we have reviewed
26 the Bill and with the full concurrence of our coalition, we would
27 like to offer these proposed alterations.

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RATIONALE FOR PROPOSED LANGUAGE

1 Page 1, line 3

2 (a) We believe that it is in the best interest of the Alaska
3 Railroad Authority and the State of Alaska that employees be
4 allowed to move between other State agencies and the Authority
5 without any loss of time and benefits. To limit the mobility of
6 other State employees as it would relate to employment with the
7 Authority appears to be shortsighted. We do not know what the
8 future holds for either the Authority or the State. We do be-
9 lieve that mobility between the Authority and other State em-
10 ployers is in the best interest of both the Authority and the
11 State.

12

13 Page 1, line 8

14 Our support for a system of merit employment with the Authority
15 should not be construed as advocating a full scale bureaucratic
16 nightmare in hiring employees. We strongly solicit your support
17 in guaranteeing that the Authority is not subject to employment
18 by "pressure." We do not want the positions and jobs of the
19 Authority to be filled on the basis of political friends, nepo-
20 tism, or other factors not directly related to the qualifications
21 of the individual for the position to be filled. This issue is
22 vitally important to all people involved with the State acquisi-
23 tion of the Railroad. No one will benefit from employment on the
24 Railroad of those that are not highly qualified to fill the posi-
25 tions for which they are being considered. Employment on the
26 Railroad should be free of nepotism, cronyism, and must statutor-
27 ily require that the people hired are those that are eminently
28 qualified for the positions for which they are being hired.

29

30 Page 1, line 14

31 (b.) We strongly believe that under the Public Employment Rela-
32 tions Act, the Authority employees should be classified into

1 Category A-3 rather than the current classification of A-1. We
2 see no difference in the day-to-day operations of The Alaska
3 Railroad versus those of any other railroad operating in the
4 Lower 48. Employees of the Lower 48 carriers have the right to
5 take job action. We believe the day-to-day necessities of The
6 Alaska Railroad are no stronger nor any more vital to the economy
7 and the welfare of the State of Alaska than the Lower 48 rail-
8 roads are to the Lower 48.

9
10 Page 1, line 19

11 (c) This provision would absolutely guarantee that the accrued
12 leave balances of all employees will be transferred in tact and
13 available to employees of the Authority to take as needed.

14
15 Page 1, line 22

16 (d) We strongly believe that the current level of benefits
17 should not be reduced for any current employee of the Authority
18 after the transfer. To reduce benefits could have a severe ad-
19 verse impact on the morale and positive attitude that our employ-
20 ees currently have as we look forward to ownership of The Alaska
21 Railroad by the State of Alaska. To reduce any existing benefit
22 would be extremely shortsighted and the long-term negative impact
23 on the morale and productivity of the workforce would be far more
24 costly than any dollar savings that could be imagined.

25
26 Page 1, line 25

27 (e) We feel that this is self-explanatory.

28
29 Page 1, line 29 - page 4, line 16

30 (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o) are guaran-
31 tees that are currently enjoyed by all State of Alaska employees.

1 In reviewing the governing Alaska Statutes, the coalition unani-
2 mously felt that these items were of paramount importance to the
3 employees of the Railroad. The guarantees contained in these
4 provisions of the Alaska Statutes are so fundamental, so abso-
5 lutely necessary, to protect the rights and privileges of all
6 employees of the Railroad that we strongly believe these guaran-
7 tees should be statutorily provided. This proposal merely
8 extends the same guarantees to all employees of the Authority as
9 are currently enjoyed by all other State employees covered under
10 this section of the statute. These safeguards protect the per-
11 sonal lives, family lives, and basic constitutional rights of
12 employees. We cannot conceive of any earthly reason that there
13 would be any objection to the coverage of all employees of the
14 Authority with these basic human rights.

15

16 Page 4, line 18

17 (p) This would provide an option for [redacted] employees of the
18 Authority currently covered by the Federal retirement system to
19 transfer the retirement benefits from the Federal system to the
20 Alaska Public Employment Retirement System so long as all funds
21 deposited with the Federal retirement system were transferred to
22 the State fund. Retirement coverage is a very, very vital issue
23 to those employees currently on the Railroad. The concern of the
24 employees for their safeguards that they have earned and worked
25 for for many, many years in the form of retirement benefits, is
26 one of the most serious items of concern to employees across the
27 board.

28

29 Page 4, line 25

30 We feel that labor's participation on the Board is important as
31 our knowledge of "grass roots" operation of railroading would be
32 invaluable in assuring that the policies set forth by the Board

1 would be workable and provide a minimum of organizational disrup-
2 tion.

3
4 Page 5, line 3.

5 We believe this language should be added to Article 30. First of
6 all, it is consistent with the American system of jurisprudence
7 and a right to due process and, second, it is a continuance of a
8 right that all employees currently have against the arbitrary and
9 capricious removal from their position or employment. Many em-
10 ployees on the Railroad are not represented by bargaining unit
11 representatives. This is not of their own doing. Under the
12 Federal Labor Relations Program, management officials above the
13 first level of supervision are statutorily barred from organizing
14 into unions and collectively negotiating a labor agreement. Many
15 of the people in this category have expressed fears and apprehen-
16 sions about being arbitrarily or capriciously demoted or removed
17 for non-job-performance related reasons. Should this group of
18 employees choose to collectively organize and bargain the terms
19 and conditions of employment, then this provision would no longer
20 apply to that group and we strongly urge that they do so. How-
21 ever, we also recognize that there are managers on the property
22 who for one reason or another may not be protected by the terms
23 of a labor agreement. For those employees, we are urging that
24 you provide a due process review before any career or livelihood
25 or family life is destroyed for reasons not related to poor job
26 performance. The maxim I'm quoting is this: If the action will
27 not stand the test of a third party review, the action should not
28 be taken. This is a minimal protection to this group of people
29 who currently, as Federal employees, have a far greater protec-
30 tion than this proposal would provide.

ARTICLE 8. PERSONNEL & GENERAL PROVISIONS

1 Sec. 42.40.800. Personnel.

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(a) All personnel employed by The Alaska Railroad are personnel of the Alaska Railroad Authority. Employment with the Authority is deemed to be employment with the State and all time and benefits are transferrable to other State agencies. A.S. 39.05 - .51 do not apply to employees of the Authority. A.S. 23.40.070(3) does not apply to the Authority. The Authority will develop a system of employment that provides for the hiring and promotion of applicants and employees on the basis of the knowledges, skills, and abilities required to perform the duties of the position for which they are being considered.

(b) For the purposes of the Public Employment Relations Act, A.S. 23.40.020 - .260, the Authority is considered a "public employer" within the meaning of that act. The Authority's employees are classified as employees under A.S. 23.40.200(a)(3).

(c) All accrued leave balance shall be fully transferred with the employees to the Authority.

(d) The level of current benefits for all employees shall not be diminished or reduced as a result of this transfer.

(e) Nothing in this statute shall be interpreted as to preclude the unions and the Authority from negotiating conditions of employment and benefits that are provided for by Alaska Statute.

(f) No department, agency, official, officer, or any person employed by the Authority may directly or indirectly:

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1. require or coerce any employee of the Authority to participate in any way in any activity or undertaking unless the activity or undertaking is related to the performance of official duties;

2. require or coerce any employee of the Authority to make any report concerning any of his activities or undertakings unless the activity or undertaking is related to the performance of his official duties;

3. except as directly related to the performance of his official duties, require or coerce any employee of the Authority to submit to any interrogation or examination or psychological test which is designed to elicit from him information concerning:

a. his personal relationship with any person connected with him by blood or marriage,

b. his religious beliefs or practices,

c. sexual matters,

d. his political affiliation or philosophy;

4. coerce any employee of the Authority to invest or contribute his earnings in any manner or for any purpose;

5. restrict or attempt to restrict after-working-hour statements, pronouncements or other activities, not otherwise prohibited by law or personnel rule, of any employee of the Authority, if the employee does not purport to speak or act

1 in an official capacity.

2

3 (g) The provisions of (a) of this section do not diminish the
4 authority of an authorized law enforcement agency to conduct
5 criminal investigations of Authority employees suspected of being
6 involved in criminal activity.

7

8 (h) An Authority employee may be a member of a national, state,
9 or local political party, may take part in a political campaign,
10 and may exercise his right as a citizen to express his opinion,
11 register his party preference, if any, serve as a delegate to
12 party conventions, and cast his vote. This section also permits
13 appointment, nomination, or election to nonpartisan public office
14 in a local government unit. However, this section may not be
15 construed as permitting any employee to take an active part in
16 the management of a political party above the precinct level.

17

18 (i) No person may give, render, pay, offer, solicit, or accept
19 money, service, or other valuable thing in connection with an
20 appointment, promotion, or advantage in a position within the
21 Authority.

22

23 (j) No person may require an assessment, subscription, contribu-
24 tion, or service for a political party from an employee of the
25 Authority.

26

27 (k) No person may seek or attempt to use a political party en-
28 dorsement in connection with an appointment or promotion in the
29 Authority.

30

31 (l) An employee of the Authority who seeks nomination or becomes
32 a candidate for state or national elective political office shall

1 immediately resign his position.

2

3 (m) No action affecting the employment status of an employee of
4 the Authority or applicant for a position in the Authority, in-
5 cluding appointment, promotion, demotion, suspension, or removal,
6 may be taken or withheld for racial, political, or religious
7 reasons.

8

9 (n) No person may make a false statement, certificate, mark,
10 rating, or report with regard to a test, certification, or ap-
11 pointment or in any manner commit a fraud preventing the impar-
12 tial execution of the personnel rules adopted by the Authority.

13

14 (o) No person may deceive or obstruct another person in his
15 right to examination, eligibility, certification, appointment, or
16 promotion.

17

18 (p) [REDACTED] employees of the Authority will have the option of
19 transferring their accrued retirement benefits currently provided
20 for by the Federal Government, to the Alaska Public Employment
21 Retirement System, so long as all funds on deposit with the Fed-
22 eral retirement system are transferred to the State retirement
23 system.

24

25 (q) One labor representative shall be selected to serve as a
26 full voting member of the governing Board of Directors. This
27 selection will be made [REDACTED] from a list
28 submitted by the Unions representing the organized employees of
29 The Alaska Railroad. [REDACTED]

30 [REDACTED]

31

32

1 Add to Article 4, #30 (page 18, line 24)

2

3 A full-time permanent employee of the Authority who has completed
4 the probationary period and who is not covered by a collective
5 bargaining agreement and is dismissed, demoted, or suspended for
6 more than 30 calendar days shall be notified in writing by his
7 supervisor of the action and the reason for it and ~~shall~~^{may} be heard
8 publicly by the board of directors and may be represented by
9 counsel at the hearing. In order to be heard, the complainant
10 shall request a hearing within 15 days of dismissal, demotion, or
11 suspension.

12

13 If the board finds that the action complained of was taken for a
14 political, racial or religious reason or in violation of the
15 rules adopted by the Authority, the individual will be reinstated
16 to his position without loss of pay or leave benefit and made
17 totally whole, including the payment of all expenses incurred by
18 the employee in the defense of the action, for the period of his
19 dismissal, demotion, or suspension.

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Testimony of Totem Ocean Trailer Express, Inc.,
Before Alaska Senate Transportation Committee on
Senate Bill No. 212 April 6, 1982

Mr. Chairman, Members of the Transportation Committee:

I am Leonard Shapiro, Vice President of Pricing for Totem Ocean Trailer Express. Tote operates two new deep water Ro/Ro vessels between Tacoma, Washington, and Anchorage, Alaska, where we interline trailers to motor carriers and the Alaska Railroad for movement to the interior of Alaska.

We at Totem greatly appreciate this opportunity to express our views concerning the transfer of the Alaska Railroad to the State of Alaska. It should be noted that Totem is among the top five (5) customers of the Alaska Railroad and, therefore, we strongly support a financially strong railroad.

Totem has analyzed in great detail Senate Bill No. 212 and we wish to offer our support to most of the bill. We feel it enables the State of Alaska to smoothly handle the transfer of power from the federal to the State level. We specifically support the position which Senate Bill No. 212 takes on future expansion of the Alaska Railroad, inasmuch as the railroad would be the most economic means whereby the State can develop its extensive mineral resources.

Development of these resources will mean a significant increase in the economic activity of the State and, therefore an increase in the economic activity for all carriers.

Many of you have undoubtedly heard rumors concerning Totem's position on this takeover of the Alaska Railroad by the State of Alaska. I wish to assure all present today that rumors to the effect that "Totem opposes the takeover of the Alaska Railroad by the State and desires the railroad to remain under Federal control" are totally untrue. Further we have absolutely no desire to "tie the hands of the Alaska Railroad" for rate purposes. Totem's sole desire, insofar as Senate Bill 212 is concerned, is to ensure that all participants in Alaska's intergrated transportations system "play by the same rules". As I mentioned above Totem is one of the top five customers of the Alaska Railroad and as such depends on the Alaska Railroad for a significant portion of the transportation service we need in order to reach the interior of the State. For Totem to oppose in any way legislation which would ensure a financially sound railroad, would be sheer business folly.

In reviewing Senate Bill 212 there are two primary areas of concern for Totem. These are -

- (1) Entry of the Alaska Railroad into the water carrier or motor carrier field - it is Totem's belief that the Alaska Railroad will "have its hands full" in the coming years improving its right-of-way and extending its right-of-way to tap the mineral resources of the State of Alaska. Private enterprise has shown a willingness to supply necessary water and motor carrier services both within and to the State of Alaska. We can see no need for the Alaska Railroad to operate in competition with these services. Obviously if private enterprise refuses, does not, or cannot supply these necessary services the railroad should return to the State Legislature for specific authority to enable it to enter into these businesses.

- (2) Rate making policies of the Alaska Railroad - The Alaska Railroad, by virtue of State ownership, will enjoy both direct and indirect subsidies. By direct subsidies I refer to such items as direct cash appropriations from the State Legislature for either capital or operating purposes. Indirect subsidies would take the form of the ability to finance debt utilizing tax exempt bonds, the ability to avoid the payment of federal, state and local property and income taxes, freedom from the need to earn a profit with which to support added investment, a re' cion

in expenses based on a State-owned entities ability to avoid paying for license and other fees, etc.

Private carriers faced with competition from a State-owned entity are at a distinct disadvantage if such competition is based on "cost alone" inasmuch as the State-owned entity has the benefit of both direct and indirect subsidies. In the case of the Alaska Railroad cross competition exists for a segment of the rail market. We at Totem have no desire to have any impact on the pricing policies of the Alaska Railroad for the movement of traditional bulk rail commodities.

We feel, however, that the Railroad should not be allowed to utilize either direct or indirect subsidies in the pricing of cross-competitive commodities where they wish to offer rates below those of the privately owned carriers.

Totem has proposed amendments to S.B. 212 which would prohibit the railroad from pricing below the levels set by the privately owned carriers where the railroad utilized either direct or indirect subsidy to achieve this level of price. It should be noted here that we have no desire to stop the railroad from meeting rates set by the

privately owned carriers. We also have absolutely no desire to stop the railroad from pricing below the rates set by privately owned carriers if the rate does not include the utilization of any direct or indirect subsidy.

We have offered a series of specific suggestions to committee staff from both houses concerning these areas and we look forward to continuing discussions with you in these areas.



TOTEM OCEAN TRAILER EXPRESS, INC.

619 WAREHOUSE AVENUE, SUITE 242 / ANCHORAGE, ALASKA 99501

PHONE: (907) 276-5868

Proposed Amendments to S.B. 212

2/5/82

1. Amend § 42.40.010 (ALASKA RAILROAD AUTHORITY) by adding the following phrase at the end of the first sentence: "for the purpose of providing rail transportation services within the State of Alaska."

Comment: The proposed amendment would clarify the legislative intent that the Railroad Authority refrain from entering the motor carrier or water carrier business.

2. Redesignate § 42.40.120 (OPERATION OF THE ALASKA RAILROAD) as § 42.40.120(a).
3. Add four new subsections to § 42.40.120 (OPERATION OF THE ALASKA RAILROAD), designated as § 42.40.120(b), (c), (d), and (e) as follows:
"(b) The board shall solicit bids from qualified private persons or firms to operate the Railroad on a contract basis and shall contract for private professional management of the Railroad unless the board determines by a 3/4 vote that direct management of the Railroad's operations by the board will be significantly less costly."

Comment: Private, professional management of the Alaska Railroad will help to insure that the Railroad is run on an independent, self-sustaining basis and will deviate from that principle only to extent that the legislature authorized the subsidy of specific enumerated services. Direct operation of the Railroad by an unpaid board of directors would tend to reduce the Railroad's accountability. Contract management can be subjected to restrictions and regulated by incentives and penalties which would not be appropriate to control the board.

"(c) Notwithstanding any other provision of this Act, the operation of the Alaska Railroad shall not be extended to the provision of any motor carrier or water carrier service which would compete with any motor carrier or water carrier service actually provided by a private carrier."

Comment: Where private enterprise is capable of providing a transportation service, the government should stay out. The purpose of this amendment is not to restrict or eliminate any current operations of the Railroad but only to prevent expansion of existing operations in direct competition with private carriers.

"(d) Each competitive service provided by the Alaska Railroad shall generate sufficient revenues to the Railroad to cover the cost of that competitive service; provided that nothing in this subsection shall prevent the Railroad from meeting a rate offered by a private carrier for a competitive service."

"(e) The Alaska Railroad shall be subject to the antitrust laws of the state of Alaska."

Comment: A "competitive service" is defined elsewhere as a service which competes with one or more private carriers. Private companies engaged in freight transportation should not be undercut and driven out of business by the operations of a subsidized, state-owned railroad. Where it competes with private freight carriers, the Railroad should be required to play by the same rules that govern the private carriers. Thus, where it competes with private freight carriers, the Railroad should be required to conduct its operations on a self-sustaining, non-subsidized basis and in accordance with the Alaska antitrust laws.

We have no objection to state subsidization of those services (e.g., passenger and bulk commodity services) which do not compete with private carriers.

Our goal is only to prevent the Railroad's use of government subsidies to compete unfairly with private carriers.

4. Amend § 42.40.150 (ANNUAL AUDITS) by inserting a semi-colon at the end of the last sentence and adding the following:

"except that the financial records of the authority shall identify separately the cost of each service provided by the Alaska Railroad and revenues to the Railroad generated by each such service. The financial records of the authority and of the Alaska Railroad shall be available to the public at such reasonable times and places as the Board may designate."

Comment: These provisions are intended to assure that records are maintained by the Railroad, and accessible to the public, which are necessary to determine compliance by the Railroad with the requirement that the Railroad operate on a self-sustaining basis when it competes with private carriers.

5. Redesignate § 42.40.990 (DEFINITIONS) as § 42.40.290 and amend § 42.40.290 to add three new subsections, designated § 42.40.290(4) and (5), and (6), as follows:

"(4) A "service" provided by a carrier means any activity which the carrier performs or offers to perform, either individually

or as part of a through route, as a common carrier, contract carrier or both, including, but not limited to, any single or multiple commodity freight service."

"(5) A "competitive service" means any service in which the Alaska Railroad does or would compete with one or more private carriers, except that passenger service and bulk commodity service are expressly excluded from the term."

"(6) The "cost to the Alaska Railroad of a competitive service means all capital, operating and other costs actually or constructively incurred by the Railroad which directly or indirectly enhance the Railroad's ability to provide the competitive service. Such costs shall include:

(A) An imputed cost for any property or other right, privilege or thing of value used, received or acquired by the Alaska Railroad without cost or for a consideration less than fair market value. The imputed cost of such properties, rights, privileges and things of value shall be their fair market value as of the date of their acquisition or use, whichever occurs first. In the case of tangible real or personal property, market value shall be the M.A.I. appraised replacement cost, less observed depreciation.

(B) An imputed financing cost computed on the fair market value of the property, rights, privileges and things of value described in paragraph (A) of this section at the rate determined by the

Interstate Commerce Commission in the most recent revenue adequacy proceeding as the average cost of capital in the railroad industry;
and

(C) If the Alaska Railroad receives any capital or operating funds through grants or other direct or indirect subsidies from the state or federal governments or any other source, or through the issuance of tax exempt bonds or obligations, an imputed financing cost computed on the amount of such funds at the rate determined by the Interstate Commerce Commission in the most recent revenue adequacy proceeding as the average cost of capital in the railroad industry.

(D) To the extent that costs described in this section, actual or imputed, benefit more than one of the services provided by the Railroad, the Railroad shall fairly allocate such costs among such services in proportion to the use or benefit which each service derives."

Comment: The definitions are necessary to specify the meaning of proposed subsection 42.40.120 (d), which requires the Railroad to generate sufficient revenues from each service which competes with private carriers to cover the cost of providing that service. The definition of cost is intended to place the Railroad on the same footing as any private railroad and on the

same footing as the private carriers with whom the Railroad competes. The definition is intended to prevent the Railroad from using public subsidies to compete unfairly with private carriers.

6. Add a new section 42.40.300 (COMPLIANCE), as follows:

"The Alaska Railroad shall be operated in strict compliance with this Act. The Superior Courts of the state of Alaska shall enjoin any act or omission in violation of the terms of this Act upon petition by any person and shall grant all other appropriate relief, including damages, to any person injured by such act or omission."

Comment: The Alaska courts should be authorized to enforce the requirements of the Act.

TESTIMONY

BEFORE

THE ALASKA SENATE TRANSPORTATION COMMITTEE

APRIL 6, 1982

JUNEAU, ALASKA

H. L. SCHUYLER

SEA-LAND SERVICE, INC.

I AM HAROLD L. SCHUYLER, DIRECTOR OF PUBLIC AFFAIRS FOR SEA-LAND SERVICE, INC.'S ALASKA DIVISION.

WE, AT SEA-LAND, DO NOT OPPOSE THE TAKEOVER OF THE ALASKA RAILROAD BY THE STATE OF ALASKA FROM THE FEDERAL GOVERNMENT. THE RAILROAD IS NECESSARY FOR THE FUTURE GROWTH OF ALASKA RESOURCE DEVELOPMENT AREAS AND COMMUNITIES. COAL, MINERALS, AND FARMING PRODUCTS MUST HAVE AVENUES TO TIDEWATER PORTS IN ORDER TO BE EXPORTED TO WORLD MARKETS.

WE HAVE ANALYZED IN GREAT DETAIL SENATE BILL NO. 212 AND APPLAUD ITS IMAGINATIVE AND FAR-REACHING PURPOSE; HOWEVER, WE, AT SEA-LAND, ARE CONCERNED ABOUT THE ADMINISTRATION, OPERATION, POLICIES, AND RULES AND REGULATIONS UNDER WHICH THE ALASKA RAILROAD AUTHORITY WILL BE OPERATING IN CARRYING OUT ITS MISSION.

AS PRESENTLY DRAFTED, THE LEGISLATION PROVIDES US THE FOLLOWING CONCERNS:

1. A STATE OWNED ENTITY WHICH IS EXEMPT FROM ALL FEDERAL, STATE, AND LOCAL TAXES HAS A GREAT ADVANTAGE OVER OTHER COMPETITIVE MODES OF TRANSPORTATION THAT ARE PAYING TAXES TO THE FEDERAL, STATE, AND LOCAL COMMUNITIES.
2. THE OPPORTUNITY FOR THE PROPOSED RAILROAD AUTHORITY TO SELL BONDS OR BOND ANTICIPATION NOTES AS TAX EXEMPT VEHICLES GIVES THE AUTHORITY ANOTHER DEFINITE EDGE IN OBTAINING CAPITAL FOR IMPROVEMENTS AS COMPARED TO PRIVATE TRANSPORTATION THAT MUST COMPETE FOR MONEY IN THE OPEN MARKET, PAYING CONSIDERABLY HIGHER INTEREST RATES THAN DOES THE STATE GOVERNMENT.

3. THE RAILROAD AUTHORITY IS VESTED WITH THE ABILITY TO ACQUIRE AND OPERATE OTHER MODES OF TRANSPORTATION SERVICE CONNECTING TO THE RAILROAD'S RAIL SERVICE IN DIRECT COMPETITION WITH PRIVATE TRANSPORTATION. THIS ALLOWS THE RAILROAD TO BUY TRUCK LINES, WATER CARRIERS, AND AIRLINES. THIS PART OF THE BILL IS PARTICULARLY WORRISOME AS THE ALASKA RAILROAD AUTHORITY COULD VERY WELL BECOME A STATE TRANSPORTATION SYSTEM WITH NO COMPETITION AS THE PRIVATE SECTOR WOULD NOT BE ABLE TO FINANCIALLY COMPETE WITH THE AUTHORITY. THERE IS ALSO THE FACT THAT THE STATE WOULD LOSE A CONSIDERABLE AMOUNT OF TAX BASE IF AND WHEN PRIVATE SECTOR TRANSPORTATION COMPANIES ARE FORCED OUT OF BUSINESS.

4. THE LEGISLATION LIBERALLY DISCUSSES RATE MAKING, AND RATE POLICY. THE ESTABLISHMENT OF RATES FOR ALASKA RAILROAD AUTHORITY'S REVENUES WILL EFFECT THE PRIVATE CARRIERS OF OTHER MODES OF TRANSPORTATION. WE ARE CERTAINLY NOT SUGGESTING THAT THE LEGISLATURE DICTATE THE AUTHORITY'S RATE POLICIES, HOWEVER, WE FEEL THAT ALL RATES PRESCRIBED BY THE AUTHORITY MUST BE AT A LEVEL SUFFICIENT TO RECOVER THE FULL COST OF PROVIDING THE PARTICULAR TRANSPORTATION CONCERNED, TAKING INTO FULL ACCOUNT THE LEVEL OF SUBSIDY AND THE COST OF BORROWED CAPITAL. SEA-LAND WOULD URGE SPECIFIC LEGISLATIVE AMENDMENTS WHICH WOULD PROHIBIT A STATE-OWNED RAILROAD FROM CHARGING RATES WHICH ARE BELOW THOSE CHARGED BY PRIVATELY-OWNED CARRIERS, FOR FREIGHT ON WHICH BOTH CARRIERS COMPETE, WHERE THE RATES DO NOT RECOVER THE FULL COST OF THE SERVICE OFFERED (TO INCLUDE ANY DIRECT OR INDIRECT SUBSIDY).

5. WE FEEL THE LEGISLATION NEEDS AN ANTITRUST PROVISION. THE LEGISLATION NEEDS TO BE AMENDED TO PLACE THE STATE-OWNED RAILROAD UNDER STATE ANTITRUST

LAWS. ALL OF THE PRIVATELY-OWNED WATER CARRIERS AND MOTOR CARRIERS ARE SUBJECT TO THE FEDERAL AND STATE ANTITRUST LAWS, AND WHILE THIS BODY CANNOT PLACE THE RAILROAD UNDER FEDERAL ANTITRUST LAWS, STILL IT IS OUR BELIEF THAT THE RAILROAD SHOULD BE SUBJECTED TO THE SAME LAWS AS ARE THE PRIVATE CARRIERS. IN SHORT, WE SHOULD ALL PLAY BY THE SAME RULES.

6. I AM SURE YOU GENTLEMEN ARE AWARE THAT THE STAGGERS RAIL ACT OF 1980 HAS VIRTUALLY DEREGULATED INTERSTATE RAIL SERVICE. AS A PRACTICAL MATTER, THE ALASKA RAILROAD AND ALL OTHER MAJOR RAIL LINES ARE TOTALLY UNREGULATED. WHILE DEREGULATION MAY BE GOOD IN THEORY, THE TRADE BETWEEN ALASKA AND THE LOWER 48 IS IN ESSENCE A MICROCOSM: ALL TRANSPORTATION MODES COMPETE DIRECTLY WITH EACH OTHER FOR THE SAME BASIC CONSUMABLES. WE READILY ACKNOWLEDGE THAT LARGE PORTIONS OF THE ALASKA RAILROAD'S FREIGHT ARE BULK COMMODITIES; STILL, ALL OF THE COMPETING MODES ARE REGULATED WHILE THE RAILROAD IS NOT, THUS GIVING THE RAILROAD A DISTINCT COMPETITIVE EDGE WHICH CAN BE SUBJECT TO ABUSE.

7. THE BILL PROVIDES FOR THE ESTABLISHMENT OF CONTRACT RATES BY THE RAILROAD. THE STAGGERS ACT ALLOWS CONTRACT RATES BUT THAT LAW CONTEMPLATED THE RAILROADS ENTERING INTO CONTRACTS WITH MAJOR SHIPPERS WHOSE CARGO THEY HAD HISTORICALLY HANDLED FOR THE BENEFIT OF BOTH. THAT CONTRACT ABILITY WAS NOT ENVISIONED TO BE USED AS A COMPETITIVE TOOL, AS IT HAS BEEN UTILIZED BY THE ALASKA RAILROAD. SEA-LAND HAS CHALLENGED THESE PRACTICES, BOTH BEFORE THE INTERSTATE COMMERCE COMMISSION AND IN THE COURTS, TO NO AVAIL BECAUSE THE RAILROAD IS UNREGULATED AND IMMUNE FROM SUIT. WE CANNOT LEGALLY

ESTABLISH CONTRACT RATES AND, THEREFORE, CANNOT EFFECTIVELY COMPETE WITH SUCH RATES. WE URGE THIS BODY TO CRITICALLY SCRUTINIZE THAT PORTION OF THE BILL AND DELETE SUCH PROVISIONS FROM THE LEGISLATION.

8. ARTICLES 4 AND 5 OF THE LEGISLATION PROVIDE FOR THE AUTHORITY TO EXERCISE THE STATE'S POWER OF EMINENT DOMAIN/CONDEMNATION. SEA-LAND DOES NOT CHALLENGE THE STATE'S ABILITY IN THIS AREA, BUT WE STRONGLY FEEL THIS RIGHT SHOULD NOT BE LODGED WITHIN THE AUTHORITY BUT SHOULD BE RESERVED TO THE STATE TO PRECLUDE ANY COMPETITIVE USE OR ABUSE. IT IS A SIMPLE MATTER FOR THE RAILROAD AUTHORITY TO APPROACH THE STATE TO OBTAIN THE ABILITY TO ACQUIRE THE NECESSARY RIGHTS OF WAY.

9. SEA-LAND NOTES THAT THE AUTHORITY CAN DETERMINE WHAT INFORMATION IT KEEPS CONFIDENTIAL. WE URGE THAT THIS ABILITY IS SUBJECT TO POSSIBLE ABUSE. AT A MINIMUM, ALL RATES, RULES, PRACTICES, DIVISIONS OF REVENUE, CONTRACTS, IF ANY, AND COST DATA MUST BE OPEN TO PUBLIC INSPECTION.

WE, AT SEA-LAND, ARE NOT HERE MERELY TO TELL YOU WHAT IS WRONG WITH THIS PROPOSED LEGISLATION. WE WISH TO BE CONSTRUCTIVE AND ASSIST YOU GENTLEMEN IN REACHING THE BEST POSSIBLE COMPROMISE WHICH WILL WORK TO THE BENEFIT OF THE STATE, ITS CITIZENS, AND THE TRANSPORTATION CARRIERS SERVING ALASKA. TO THIS END, I AM ENCLOSING AS AN APPENDIX HERETO, CERTAIN LANGUAGE AND PROPOSED AMENDMENTS TO THIS BILL WHICH WE FEEL WILL GO A LONG WAY TOWARD MEETING THE NEEDS OF ALL INTERESTED PARTIES, WHILE PROTECTING THE COMPETITIVE ENVIRONMENT IN THE ALASKA TRADE.

I AWAIT YOUR QUESTIONS.

THANK YOU.

ALASKA STATE SENATE BILL NO. 212 - RAILROAD AUTHORITY

1) Article 1, Page 2. Findings.

Sec. 42.40.100 - Legislative Findings and Policy.

Paragraph (b). It is the policy of the state...

Sub-paragraph (5) To provide reasonably high quality and low cost transportation to the people, visitors, and businesses of the state.

Change: We suggest that the entire sub-paragraph (5) or just "and low cost" be deleted.

2) Paragraph (c), Page 3. The legislature further declares that...

Sub-paragraph (2)

Sub-paragraph (f) Provide the best possible combination of high quality and reasonably low cost transportation.

Change: Suggest that the entire sub-paragraph (f) be deleted or delete the words, "and reasonably low cost" and replace with "effectively managed".

3) Paragraph (c), Page 3.

Sub-paragraph (2)

Sub-paragraph (g) Operate according to sound business management practices.

Change: Add to this statement, "and in a manner that is consistent with the total transportation needs of the people of the State of Alaska.

4) Paragraph (c), Page 3.

Sub-paragraph (2)

Sub-paragraph (j) Ensure that borrowing by the authority does not indirectly endanger the state's own borrowing capacity.

Change: Insert after "authority", "is kept at the minimum level necessary to meet the railroad's capital needs and", before the word "does".

5) Article 2, Pages 4 and 5.

Sec. 42.40.215. Appointment and Composition of Council.

Comments: Given its structure, per diem compensation level, and conflict of interest provisions (see Article 3), it's quite likely that members will be highly politically motivated; have little, if any, knowledge of business and specifically transportation issues; and be very much subject to the whim of the Governor and the Railroad. Perhaps there is a business or trade organization in Alaska that could be designated in the Statute to nominate members of the Council for the Governor's consideration, or at least to develop recommendations as to their qualifications.

6) Sec. 42.40.250, Page 7.

Paragraph (b). The council may provide for, in a manner consistent with the purposes of this chapter and subject to the approval of the governor, the management and operation of the railroad by a third-party contractor.

Comment: The operation of the railroad may be operated by a third party under contract, after a formal bid procedure.

7) Article 2, Page 9.

Sec. 42.40.250. Executive Officials and Limited Delegation.

Paragraph (c). The general manager of the Authority manages the daily affairs and operations of the Authority.
Sub-paragraph (8) establishment of rates.

Change: This should be expanded and defined as "a joint management and council responsibility."

8) Sec. 42.40.310, Pages 11 and 12.

Paragraph (6). Public Council Meetings.

Comment: All deliberations and decisions relative to land acquisition or disposal should be made public information.

9) Article 3, Page 14.

Sec. 42.40.340. Public Disclosure of Information.
Paragraph (a).

Change: Delete second sentence.

10) Article 4, Page 15.

Sec. 42.40.400. General Powers.
Sub-paragraph (8). Acquire property by eminent domain and/or by a
declaration of taking.

Change: Delete this paragraph.

11) Article 4, Page 16.

Sec. 42.40.400
Sub-paragraph (16)

Change: After the word "railroad", insert "as a common carrier."

12) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (24)

Change: Delete "and low cost" from their sentence and add, "All rates
thus described shall be at a level sufficient to recover the full cost
of providing the particular transportation service concerned."

13) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (26)

Change: Delete their paragraph and replace with, "Enter into contracts
and leases pertaining to the properties and facilities of the Railroad."

14) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (27).

Change: Delete their paragraph and replace with, "Plan for and under-
take the extension of the Alaska Railroad's Rail System into areas of
the State not presently served."

15) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (28).

Change: Delete all after "operations" on Line 10, Page 18, and substitute "and the Railroad has the same ability as any private transportation company to preserve and protect such employee property and operations."

16) Article 5, Page 27.

Sec. 42.40.530. Eminent Domain and Acquisition of Property and Materials.

Change: Delete entirely.

17) Article 6, Page 28.

Sec. 42.40.600. Bonds and Notes.
Sub-paragraph (2).

Change: Delete last word "purposes" and add, "approved capital improvement and expansion projects."

18) Article 7, Page 26.

Sec. 42.40.700. State Review.
Sub-paragraph (a). Prior to undertaking...

Comment: We should make mention of the fact that the words are already sufficient to include the purchase of water or truck carriers.

19) Article 8, Pages 43 and 44.

Sec. 42.40.855. Exemption from Taxation.

Comment: Recommend deletion of entire section. This section both exempts the properties of the railroad from state and local taxes, and provides that bonds and bond anticipation note interest payments shall also be exempt. This is a very substantial subsidy measure and will afford the Railroad a significant cost advantage over its competitor commercial firms. If this section is not deleted, the legislation should require the authority to take into account a hypothetical tax liability based on railroad industry standards in the computation of rail rates.

STATE OF ALASKA TAKEOVER OF THE ALASKA RAILROAD:

SUPPORT FOR POSITION OF WATER CARRIERS AND MOTOR CARRIERS SERVING ALASKA.

THE ISSUE:

As you are undoubtedly aware, the federal government has indicated a desire to transfer ownership of the Alaska Railroad to the State of Alaska.

Current press reports indicate that, while the state is agreeable to taking over ownership and operation of the Alaska railroad, there are a host of problems with the transfer legislation. Most of these problems revolve around the transfer of rail lands as well as the ability of the State of Alaska to further expand the railroad.

In addition to the problems mentioned above, the existing water carriers and motor carriers who operate between the Lower 48 and the State of Alaska, are seriously concerned with the potential impact this transfer may have on the existing transportation system between the Lower 48 and various destinations in Alaska. It should be noted that currently Alaska enjoys one of the finest integrated transportation systems in the nation. Water service is provided between the Lower 48 and Alaska utilizing all major modes (ro-ro, container, rail barge and break bulk barge). Competition between the carriers providing this service has always been intense and the result has been very high levels of service as well as relatively low prices for the service. Indeed, price competition has been so severe that many observers have often equated this competition to that of a "rate war."

Within the State of Alaska the transportation system has become very well developed with a multitude of motor carriers, as well as the Alaska Railroad, serving intrastate needs. This system is well integrated with many of the highway carriers using rail piggyback service for a portion of their movement. Again, the marketplace has seen a very high degree of both service and price competition.

THE CONCERNS OF THE WATER CARRIERS AND MOTOR CARRIERS:

In assessing the impact the transfer from federal to state ownership will have on existing, privately-owned water carriers and motor carriers, we have three major concerns. All of these concerns revolve around the fact that the railroad would be owned by a state entity and thus not subjected to the normal "checks and balances" any privately-owned business is subjected to when that business is faced with the need to earn a profit to enable it to re-invest in its business, as well as pay a fair return to its stockholders. Our major concerns are:

1. Entry by the Railroad into the Water Carrier or Motor Carrier business:

The private carriers desire legislation which will prohibit entry by a state-owned railroad into the water carrier or motor carrier business.

We feel quite strongly that the Alaska Railroad, which has enjoyed an average subsidy of 17.5 percent of revenue for the past several years, should direct all of its energies towards operating the most efficient rail service possible. Utilization of either their direct or indirect

subsidies (indirect subsidies are those the railroad enjoys by virtue of public ownership: examples would be significantly lowered interest rates due to tax exempt bonds; elimination of need to earn a profit; lack of any requirement that they pay interest on their working capital; freedom from taxation; elimination of the requirement that they pay for licenses, permits, etc.) to enter the water or motor carrier fields. Currently, the water carrier field is served by all four major modes, ro-ro, container, rail barge and break bulk barge, and we see no long-term shortfall in available capacity. Within the motor carrier field, there are a multitude of motor carriers available in the state, and this industry has been severely depressed for several years, i.e., there has been significant overcapacity available.

2. Antitrust:

Private carriers desire legislative amendments which would place a state-owned railroad under both the federal and state antitrust laws.

All of the privately-owned water carriers and motor carriers are subject to the federal and state antitrust laws. It is our belief that the railroad should be subjected to the same laws as the private carriers are. In short, we should all play by the same rules.

3. Ratemaking Policy:

Private carriers desire specific legislative amendments which would prohibit a state-owned railroad from charging rates which

are below those charged by privately-owned carriers, for freight on which both carriers are cross-competitive, that is, compete for the same traffic, where the rates do not recover the full cost of the service offered (to include any direct or indirect subsidy).

The railroad, by virtue of state ownership, will in all probability enjoy some form of direct subsidy as well as enjoy the benefits of indirect subsidization (as discussed above, by virtue of state ownership the railroad is not faced with all of the expenses which a privately-owned and operated corporation is subjected).

We believe that on all traffic where the railroad competes for the same traffic with privately-owned and operated carriers, the railroad should not be permitted to utilize its direct or indirect subsidies to set rates below those established in the private marketplace. This, we feel is simply "fair play" inasmuch as the private carriers do not have available to them the railroad's direct or indirect subsidies and we have no desire to become involved in any subsidy schemes. Certainly, if the railroad, without using either direct or indirect subsidies, can price their service below that of the privately-owned and operated carriers, they should be allowed to do so.

ANSWERS TO QUESTIONS WE HAVE BEEN ASKED:

In making our feelings known, we have been asked the following questions by many individuals:

1. Why Isn't ICC Regulation of the Alaska Railroad's Rates Sufficient to Eliminate any Problems the Private Carriers Might Have With the Railroad Utilizing Subsidies to Compete With the Private Carriers?

The privately-owned carriers feel, quite strongly, that the ICC is not set up to regulate a state-owned railroad. Commission cost accounting procedures have no method of taking into account either direct or indirect subsidization which the state-owned railroad may receive. It should further be noted that a primary component of commission regulation of railroads is the fact that the railroad must face the "test of the marketplace" in terms of its ability to earn a profit, i.e., a primary component of the Staggers Act, which significantly changed the reasonableness test for railroad rates was the feeling that in the "long run" the railroads would not price their services below cost because they would have to eventually earn a profit on the provision of those services.

As discussed in the foregoing, a state-owned railroad would of course have no need to earn a profit. Additionally, the ICC has no method of factoring in to any cost analysis (assuming that they utilize their current cost formulas) the value of direct and indirect subsidies which would be received by the railroad. Thus, commission regulation is not a viable method of ensuring that the economic advantages enjoyed by a state-owned railroad are not utilized unfairly against the railroad's privately-owned competitors.

2. Doesn't the Desire of the Private Carriers to Establish a "Rate Floor" in Reality "Tie the Hands" of the Alaska Railroad?

The privately-owned carriers have absolutely no desire to establish anything akin to a "rate floor" or to "tie the hands" of the Alaska Railroad. What we desire is simply that the railroad "play by the same rules" as privately-owned carriers. Our sole concern regards the railroad's rate practices on movements of commodities which can and do move by both the railroad and the privately-owned carriers. We have absolutely no desire to have any impact on the railroad's rate policies for the movement of such bulk commodities as coal, gravel and other historic rail bulk commodities.

Within that area of commodities which are cross-competitive, all we have asked is that the railroad not be allowed to use its direct or indirect subsidies when it sets prices which are below those which have been set between private carriers in a free and competitive marketplace. It should be noted that our position allows the railroad to meet any rates set by the private carriers irrespective of whether or not the railroad can earn a profit by so doing -- all we ask is that the railroad not be allowed to artificially depress the rates of the private carriers through the use of either direct or indirect subsidies -- if the railroad can legitimately price below the private carriers and still earn a profit, they should certainly be allowed to do this.

3. What is the Position of the Private Carriers on the Expansion of the Railroad?

The private carriers feel the railroad should be expanded and utilized as the primary tool in developing the mineral deposits within the State of Alaska. Any expansion of the railroad will improve the overall business climate in Alaska and such improvement will automatically mean there will be more business available for all carriers. We feel it is a legitimate use of state power for the state to use its railroad to assist in opening up undeveloped areas of the state and the private carriers will certainly support the Alaska railroad in these efforts.

4. The Privately-Owned Carriers Proposed Amendments to the Current Transfer Legislation are Too Complex:

While we admit that our proposed amendments to the current transfer legislation are somewhat complex, it must be realized that the issues we attempt to address are quite complex. Certainly, within the rate area any legislation which attempts to deal with this problem must include rigorous definitions of what both the intent and the method of implementation are if we are to avoid abuses by either side. The private carriers have no "pride of authorship" in this area and we stand ready to work with all members of the public sector to ensure that the state arrives at the fairest, and easiest-to-enforce legislation.

5. Isn't This Only a "Tempest in a Teapot" and in Fact Private Carriers Will "Continue to do Business As Usual" No Matter How the Transfer of the Railroad Occurs?

Certainly the private carriers have not suggested that "if we do not get what we want" we will close our doors. We also do not feel that this

would be the natural outcome if the private carriers are unsuccessful in obtaining the legislation we seek. What we do feel will occur, over time, is that the private carriers, if faced with competition from a state-owned railroad which uses its direct and indirect subsidies to either underprice them or operate a competing water or motor carriage service, will simply fail to reinvest the necessary dollars to maintain a viable privately-owned and operated service.

One needs only look at the existing services which are available in the water-carrier field to see that some of the vessels serving Alaska are extremely old (average age 40 years, in some cases). The ability of the private water carriers to generate the needed capital to replace overage equipment as well as to convince their stockholders that the necessary commitments of capital will be economic, is a function of the carrier's perception of the marketplace in the "long run." Certainly most business would find it difficult to authorize the commitment of almost \$100 million per vessel (the approximate construction cost of any new vessels which would be placed in operation in an Alaskan service) when faced with competition from a state-owned railroad which had access to both direct and indirect subsidies with no constraints on their use.

In the motor carrier field problems could "come on" much more quickly. Many of the motor carriers operating within the Alaska area are not now well capitalized or in the best financial health. Indeed, there have been several recent bankruptcies. Certainly investment in new trailers and tractors would slow down if these carriers were faced with unrestrained competition from a state-owned railroad which had access to both direct and indirect subsidies.

EVALUATION
OF THE
INTERSTATE COMMERCE COMMISSION BUREAU OF ACCOUNTS
SECTION OF COST DEVELOPMENT JUNE 15, 1981 STUDY
OF THE ALASKA RAILROAD WATER/RAIL CONTRACT RATES AND
WATER/RAIL TARIFF CHARGE RATES

Executive Summary

This evaluation of an Interstate Commerce Commission (ICC) examination of the Alaska Railroad's pricing was occasioned by expressions that the ICC had concluded that the Alaska Railroad insofar as it competes with private companies is not pricing below costs. No ICC study stands for that proposition.

Working with data supplied by the Alaska Railroad, and thus presumably favorable to the Railroad's position, the ICC report in fact demonstrates that the Alaska Railroad's prices for competitive service are provided at a level below the costs the Alaska Railroad would experience if it were an unsubsidized private enterprise.

A recently released General Accounting Office study casts doubt on anyone's ability to determine whether the Alaska Railroad is pricing above costs.^{1/} GAO concludes that despite its having drawn attention to the railroad's lack of costing data, corrective action was not initiated until December, 1981, and is still not completed. Thus, the Alaska Railroad's costs of providing freight transportation service is still unknown.

^{1/} Comptroller General's Report to the Congress, Alaska Railroad's Federal Rule Should End; Some Management Problems Remain, February 25, 1982, hereinafter, "the GAO Study," pages 14 and 15.

Introduction

The Conference Report on Appropriations for the Department of Transportation and Related Agencies^{2/}, for fiscal year 1981, directed the ICC to provide a determination (along with supporting data) to the House and Senate Committees on Appropriations as to whether the Alaska Railroad's (the "ARR" or "the Railroad") water/rail contract rates and water/rail tariff charges recover the full variable cost of such service as well as any subsidy allocable in providing such service. The pertinent part of the Conference Report states,

PAYMENT TO THE ALASKA RAILROAD REVOLVING FUND

Amendment Number 36: The Conferees also direct the Interstate Commerce Commission, in cooperation with the Federal Railroad Administration and the State of Alaska, to provide a determination (along with supporting data) to the House and Senate Committees on Appropriations as to whether Alaska Railroad water/rail contract rates and water/rail tariff charges recover the full variable cost of such service as well as any subsidy allocable in providing such service. Such determination shall be provided no later than June 1, 1981.

Report No. 98-1400, 96th Congress, 2d Session, p. 14.

The Senate Appropriations Committee gave its reasons for ordering the study as follows:

"The Committee is concerned that the federally owned and subsidized Alaska Railroad may be pricing its interstate water/rail services at a level so low as to threaten the existence of its unsubsidized private carrier competition...".

S. Report No. 96-932, 96th Congress, 2d Session, p. 43.

The ICC completed the required study, entitled, "Study of the Alaska Railroad Water/Rail Contract Rates and Water/Rail Tariff Charge Rates Pursuant to Amendment No. 36 to the Conference

Report Making Appropriations for the Department of Transportation and Related Agencies" (the "Study") on June 15, 1981. The Study used some of the same methods employed in an earlier ICC study of two contract rates published by the ARR. The earlier study, mandated by Section 709 of the Staggers Rail Act of 1980, P.L. 96-448, was published on June 1, 1981, and was entitled, "Study of the Alaska Rates Pursuant to Section 709 of the Staggers Rail Act of 1980" (the "Staggers Act Study").

Background

The principal commercial link between Alaska and the contiguous or "lower 48" states is by water. No rail route exists, and motor carriage up the Al-Can Highway is both prohibitively expensive and subject to restrictions by the Province of British Columbia.

At present three water carriers haul virtually all the freight moving to Alaska from the lower 48 states. Totem Ocean Trailer Express ("TOTE"), Sea Land Service Inc. (Sea Land), and the U.S. Government owned and operated ARR are the three principal common carriers which publish tariffs for the transportation of cargo by water between the lower 48 and Alaska.

TOTE transports trailers in "RO-RO" (roll on/roll off) vessels, and Sea Land transports containers in container ships. TOTE and Sea Land publish competing tariffs, each of which states through routes and joint rates which are concurred in by various motor carriers.

The ARR, which itself only provides intrastate rail service inside Alaska, also publishes a through route/joint rate tariff

for water/rail service between the lower 48 and Alaska. The water portion of this transportation is provided by Alaska Hydrotrain, a division of Crowley Maritime Corporation. Hydrotrain transports rail cars on barges pursuant to the ARR's water/rail tariff.

TOTE, Sea Land, and the ARR all offer complete through transportation to or from inland points in the lower 48 to or from inland points in Alaska in conjunction with their respective concurring and connecting carriers. Thus TOTE, Sea Land, and the ARR are direct competitors in providing transportation between the lower 48 and Alaska.

More than 80 percent of the freight traffic (except oil) moving between Alaska and the lower 48 moves between Anchorage and the Puget Sound. Most of that movement is by water. But Alaska Hydrotrain, the only water carrier of rail cars in the trade, publishes no tariffs and establishes no separate charges for its services. Its prices are included in the joint rates charged by the ARR.

As the Conference Report indicates, TOTE and Sea Land, the ARR's unsubsidized competitors, have complained that the Railroad is using the public subsidy it receives to publish below cost rates on traffic for which it competes with ARR/Hydrotrain. The Congress therefore mandated the study to examine whether the ARR was using the subsidy it receives^{2/} to price its

^{2/} The ARR received \$6.5 million in subsidy in FY 1980, \$10 million in FY 1981, and \$6 million in 1982. In addition, the ARR/Hydrotrain service has received substantial ongoing benefits through government construction of facilities such as the harbor facilities at Whittier, which the ARR may use free of debt service.

competitive service^{3/} at a level below that which it could maintain without subsidy.

Analysis

The ICC concluded that the ARR's charges for rail service recover the cost of providing that service.

Of obvious importance to a finding related to costs is that one know what the costs are. The ICC stated that the only cost data available was that "developed by the railroad's costing system."^{4/}

Therein lies a basic weakness with the Study. The Railroad has no effective cost information. The General Accounting Office, at page 18 of its Feb. 25, 1982, study, noted that in its 1978 report GAO had concluded: "Furthermore, the Railroad did not have information on the cost of transporting specific commodities to use in setting rates and making other marketing decisions." GAO then reported that little substantive change had occurred. Then at page 21 GAO said,

"...[W]e continue to believe that complete cost information is crucial to an effective marketing program. An FRA rate consultant stated that rates are determined by the market conditions, not by costs. Our previous reports stated that Alaska Railroad's rates should be based primarily on costs, but even if they are based on market conditions, as the consultant suggests, complete cost and revenue information is needed to determine

^{3/} The ARR maintains a number of services for which little or no competition exists. An example is the rail passenger service between Anchorage and Fairbanks. In addition, neither TOTE nor Sea Land compete for the carriage of bulk commodities between the lower 48 and Alaska.

^{4/} The Study, p. 13.

which business is the most profitable and should therefore be emphasized and encouraged through marketing efforts."

Thus, the cost data underpinning for any conclusions simply do not exist on the ARR.

Even if we assume that the cost data has some relation to fact, the Study shows the Railroad's rates to be below cost "as well as any subsidy allocable in providing such service." The Study demonstrates that the ARR's prices for its competitive rail service are set at a level below the costs that the ARR would have to pay to meet that service if it did not receive a subsidy from the Federal Government. If the ARR were privately owned, it would be losing substantial amounts on its competitive service.

Table 1 below, which was compiled using data and assumptions used by the ICC in the Study, demonstrates this point.

Table 1

WATER/RAIL RAILCAR TRAFFIC: COMPARISON OF REVENUE PER CARLOAD AND FULL VARIABLE COSTS PER CARLOAD

(Cost of Capital at Government Rate and at Private Enterprise Rate)

Traffic Category	Revenue per Carload	Full Variable Costs per Carload		Ratio of Revenue to Full Variable Costs	
		Govt. Rate	Pvt. Rate	Govt. Rate	Pvt. Rate
Competitive	1224	1193	1389	1.03	.88
Noncompetitive	1492	1045	1216	1.43	1.23
Total	1299	1151	1340	1.13	.97

The far right-hand column on Table 1 shows the "Ratio of Revenue to Full Variable Costs"^{5/} for "competitive," "noncompetitive," and total rail/water traffic moving between the lower 48 and Alaska. The Study does not break the water/rail traffic down into competitive or noncompetitive categories. But TOTE has demonstrated -- without contradiction from the ICC or the ARR -- that it and Sea Land face competition from the ARR on about 20 percent of their traffic; the bulk of the "competitive traffic" is lumber and building materials.^{6/}

^{5/} The variable cost of providing transportation service includes the costs that vary according to the extent of that service, as opposed to fixed costs, which remain constant. Examples of variable cost include labor, fuel, and wear and tear on equipment, while an example of a fixed cost is the service on outstanding debt. The allocation of costs into the variable or fixed categories may be made in different ways, depending on the period of time under consideration and the assignment of certain "common" costs to different services. In the Study, the ICC computed seven different levels of variable cost, described at pages 17-20 of the Study. Table 1 uses the lowest level and, thus, the level most favorable to the Railroad's position, i.e. ICC's "Level I" variable cost computation, the level closest to the ARR's direct or out-of-pocket costs. The other cost levels contain some allocation of indirect costs to this traffic.

^{6/} TOTE identified 15 commodities with which it competes with the ARR in a "Motion for Supplementary Action" filed at the ICC on January 9, 1981, in Ex Parte No. 405, the proceeding in which the ICC developed the Staggers Act Study. A copy of the Motion, and the attached Verified Statement of expert witness Carl M. Snavely, Jr., is available from counsel for TOTE, Garvey, Schubert, Adams & Barer, 1000 Potomac Street, N.W., Washington, D.C. 20007, upon request. The Study develops cost/revenue ratios for a number of different commodity groups in Appendices E, F, and H. A comparison of the TOTE list of 15 commodities with the commodities listed in the Appendices produced a list of seven competitive commodity categories, as follows: housebuilding materials, agricultural commodities, iron and steel, machinery, paper and printing paper, food and drink, and manufactured and miscellaneous. The list is not exhaustive, but it is representative: most of the traffic as to which TOTE/Sea Land and the ARR compete is lumber and building materials designated as "housebuilding" in Appendices E, F, and H.

With cost of capital computed at the "embedded cost" to the Government,^{7/} Table 1 shows that the revenues from the competitive traffic exceeded the full variable costs by three percent, whereas the revenues from the noncompetitive traffic exceeded the full variable costs by 43 percent.

However, Table 1 also shows that when the cost of capital is increased to the "private enterprise requirements," -- i.e. the cost of capital to private enterprises rather than to the Government -- the competitive traffic fails to cover the full variable costs by 12 percent. In contrast, the revenues on the noncompetitive traffic exceed the full variable costs by 23 percent.

Hence, the Study shows that the availability of the Government's capital subsidy does permit the ARR to continue the long-term carriage of the competitive commodities at a revenue level which would not support a private enterprise railroad. The only conclusion available is that the Alaska Railroad is using its favored position to compete unfairly with private business.

As the language in the Senate Appropriations Committee Report indicates, the Committee wanted the Commission to

^{7/} The embedded cost of capital to the Government is the price the Government actually paid for the capital it has invested in rail facilities; the cost is much lower than the cost of capital to a private individual, since (1) in many cases the Alaska Railroad could rely on its subsidy monies rather than borrowing funds and (2) the interest rate available to the Alaska Railroad reflects the fact that it is an agency of the United States Government, and as such has the full faith and credit of the United States behind it.

determine if the pricing practices of the Alaska Railroad
(1) increased its reliance on the Federal subsidy and/or
(2) threatened the existence of its unsubsidized competitors.
However, the Commission directed its entire effort to merely
developing revenue-to-full variable cost ratios.

The Commission study is silent both as to the effect of the
ARR's rate policies on the level of the Federal subsidy, as well
as to the effect of those policies on the private enterprise
carriers with which the railroad competes.

The ARR's rate policies can have several effects on the
competitive private enterprise water carriers. Obviously, if
its rates divert traffic from those carriers to the railroad,
there is a direct and negative impact on the gross revenues of
the competitive carriers and, dependent on the economics of the
situation, on their net revenues. More subtle perhaps is the
impact on the willingness of the private enterprise carriers to
take the risk of future investment in the Alaska trade.

Over the long run, private enterprise capital cannot compete
pricewise with Government funding. As a result, the private car-
riers will gradually withdraw investment from the trade by not
replacing existing investment as it becomes worn out or obsolete.
Ultimately, the private carrier will go out of business altogether
unless the Government funded carrier does not have or does not
obtain sufficient capacity to meet the demands of the trade.

Even in times of high demand, a history of below-cost rates --
i.e. below the costs that private enterprise carriers would have
to pay -- by the Government funded carrier will cause the private

enterprise carriers to be reluctant to make investments in new capacity to meet future increases in demand. They will recognize that, if the demand increases do not materialize as projected, the Government funded carrier can and, perhaps, will undertake rate actions that will undercut their return on the new investment.



UNIVERSITY OF ALASKA
Institute of Social and Economic Research
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Anchorage, Alaska 99501
Phone (907) 278-4621

15 January 1981

The Honorable Jalmar Kerttula
President, Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula,

In light of your longstanding interest in Interior Alaska and the role the Alaska Railroad might play in the region's economic development, I wanted to share with you a number of policy issues surrounding the proposed change in the ownership and operation of the Alaska Railroad.

In the attached memorandum, John Gray of my staff identifies many of these policy issues and suggests a way to examine them. John has shared his thoughts informally with staff of DOTPF and reports that they are making every effort to address these issues with the limited resources and time available to them. Hopefully, the departmental analyses will be sufficiently timely and pertinent to legislative interests to contribute to the legislature's final determination.

The Institute has devoted several years to developing a professional capability to aid the state in its transportation policy development and training and has made substantial progress in the past few years. As discussed in the enclosed Review, our transportation system is inextricably intermodal, with something like 85 percent of all goods being transported by more than one mode of travel. This interrelationship suggests that any possible changes in one mode, such as the railroad, may affect other modes to which it is linked and those with which it competes. Moving more freight by rail suggests changes in the demand and handling capacity of port facilities, warehousing, and transfer facilities and very real impacts on highway uses and on the trucking industry. Ideally, these intermodal impacts will also be taken into account in deciding the fate of the Alaska Railroad.

Alaska has an exciting opportunity to build a foundation for its future. Hopefully, the sudden availability of surplus revenues will not make us less judicious or wise in making such important decisions as the sound development of our transportation and power infrastructure.

JAN 19 1981

UNIVERSITY OF ALASKA

The Honorable Jalmar Kerttula


15 January 1981

Page Two

If I or the Institute can be of any assistance to you as you consider this important question, please feel free to call me.

With best regards.

Sincerely,



Lee Gorsuch
Director

LG/ds

Enclosure

cc. ✓ Senator Ed Dankworth
Senator Bill Ray
Representative Pappy Moss
Representative Brian Rogers
Ms. Fran Ulmer, Director, DPDP
Ms. Jessie Dodson, Special Asst., Governor's Office
Commissioner Bob Ward, DOTPF
Commissioner Chuck Webber, CED
John Gray, Asst. Prof., ISER

MEMORANDUM

January 9, 1981

TO: Lee Gorsuch

FROM: John Gray *JG*

SUBJECT: Policy Questions Requiring Examination Prior to a Change in Institutional Status of the Alaska Railroad

There now exists a fairly high probability that the Alaska Railroad will undergo some form of change in its institutional framework over the course of the next two to four years. This expectation is based on the perception by federal decision makers that:

- The Alaska Railroad no longer serves its original function (a frontier development tool) but has become a component in a more mature transport and economic system;
- The state now possesses the resources to assume responsibility for the operation and, if necessary, subsidization of the railroad;
- Mid- to long-term traffic prospects suggest that private capital might find some degree of involvement in the railroad increasingly attractive; and
- The railroad would be capable of providing more effective support to both public and private objectives under a revised organizational and institutional structure.

Clearly, the types of changes which could evolve from the modification which these perceptions represent could have considerable influence on both federal and state transport policy and the potential for utilization of the railroad as a development tool by or in the state. To understand the breadth of the possible changes it is first necessary to identify the issues which are critical to the parties potentially involved and how various scenarios of the railroad's future could influence these issues.

The consultant's report to the Department of Transportation and Public Facilities on the preliminary phase of the Statewide Rail Systems Study identified a number of questions requiring consideration prior to decision making on this issue. These, and a number of others listed below, include:

- The status of rail-related lands both in relationship to ANCSA conveyances and to the railroad's operational and industrial development requirements;
- The status of public employee unions, existing labor agreements, employee benefits and retirement programs, and employee protection conditions;
- Design of an ownership/operational structure which permits the railroad to seek investment capital;
- Design of an ownership/operational structure which avoids the public/private conflicts now inherent in the marketing of the railroad's services;
- Design of an ownership/operational structure which give management the flexibility to make entrepreneurial decisions and to be accountable for the outcomes of these decisions;
- A determination of whether passenger service is necessary and, if so, whether it is a public good which should be subsidized if the railroad is required to continue its operation;
- A determination of whether the railroad represents an appropriate mechanism for implementing state development policy and, if so, under what types of financial, operational, political, and economic conditions;
- A determination of the present and historic financial status of the railroad particularly as this information relates to the prospect of attracting private capital, both equity and debt;
- The desirability or usefulness of establishing a state rail regulatory capability;
- The determination of tax status (federal, state, local) of revenues and for real and operating property after conveyance;
- An assessment of traffic potential for the railroad and how an institutional realignment might affect various traffic possibilities;
- A determination of responsibility and operational mechanisms for subsidies should operating revenues not be sufficient to cover operation costs and capital renewal;

- An analysis of the different possible impacts of various institutional arrangements on potential rail extensions;
- An analysis of the impact on rail competitors of various institutional arrangements for the railroad; and
- Determination of which federal funding programs would or would not be available under different ownership/operational structures.

While many of these questions have already been identified none have undergone any detailed examination. Although there are fifteen areas of interest identified above they seem to group themselves into several broad categories each of which is somewhat interrelated to the others.

The first and central of these concerns the ownership, operational, and political form of any scheme for rail status revision. This form may place important limitations on the scope of management decision making flexibility, responsiveness to state policy making and the ability to operate the railroad in a manner acceptable to the various potentially interested parties. A variety of options appear to be available including:

- Maintain the status quo. That is, continue to function as a federal agency.
- Reorganize as a federal corporation. In form this might be somewhat similar to Canadian National Railway.
- Reorganize as a state agency. This would give the railroad somewhat the same status as the Marine Highway System.
- Reorganize as a state corporation. Such an operation might be similar to either the British Columbia Railway, the Ontario Northland Railway or to any number of small operations developed in the Eastern and Mideastern U.S. during the past five years.
- Reorganize with a combination of state ownership and private operation. This would give the state ownership of some combination of the railroad's real and operating assets while a private entrepreneur would either enter into a long-term lease agreement or contract to operate the property in a manner similar to the arrangement between the Southern Railway and the city of Cincinnati for operation of several hundred miles of line owned by that city.
- Sell the railroad to a private firm who would then function in a manner similar to comparable operations elsewhere in the country.

Clearly, these options can differ substantially in the range and size of their impacts upon the state. They also would provide considerable variation in the amount of investment by the state (although none of them would necessarily entirely eliminate state involvement). Finally, the form chosen for the railroad would determine almost entirely the degree to which rail decision making in the state would be political rather than commercial.

A second group of the decision questions might be termed institutional. These include the labor, lands, regulatory, federal relationship and, to some degree, the intermodal competition questions. While these are related to the structural matters outlined above, they are grouped separately since they have substantial portions which are applicable to any of the forms noted above. Their solutions may also take several forms in any one of the cases noted above. These may also be among the most difficult questions to answer since they tend to involve a variety of rather vocal political constituencies.

The final set of areas are those involving finance and traffic. Clearly, they cannot be separated from the structural matters outlined, however, much of the content of these questions can be relevant to any of the potential forms. As such, they may serve as descriptive baselines against which to evaluate alternatives. Much of the background for these areas already exist in two documents:

- "The Preliminary Statewide Rail Systems Study"
- "The Alaska Railroad - Future Freight Markets"

The latter item would require a good deal of updating.

The principal area which is lacking is a solid understanding of the railroad's financial structure. I would suspect that much of the accounting data which one might need to compare the ARR operations with those of other carriers will not exist since the railroad has been required to maintain its books on the basis of federal government accounting practices rather than industrial practices. Additionally, valuing existing capital assets could be very difficult because of the railroad's federal status. However, it will be necessary to perform such an evaluation, particularly if private capital is to be brought into the concept.

I would suggest that the following study procedure would produce most quickly results of value to decision makers. It is based on the premise that the central element in the analysis is the structural ownership/operational form that would result from the decision making. The first step would appear to be the careful and complete definition of each of the potential structural forms including any subtypes. These definitions would then be compared to each of the fifteen questions

each of the fifteen questions raised earlier. To as great an extent as possible, these relationships should be quantified, however, this is clearly not possible in all of the areas. In some cases qualitative assessment will be necessary with, if possible, some thought given to a (relatively) subjective weighting of alternatives. As mentioned, many of the institutional matters may require considerations outside a specific structural form and should thus be evaluated and defined in the same manner as the forms with the results then used to judge the interaction of institutional alternatives with structural forms.

For strict decision making purposes, it is not usually of great value to have large volumes of detailed quantitative information. Therefore, I believe that the final product should be in the form of a matrix with the structural forms on one axis and decision questions (or sub-questions) on the second axis. The contents of each matrix location would be a weighting factor which would compare the quality of the forms in addressing the question. It would probably not be appropriate to suggest a best solution (although it would be possible to do so) rather, it would be more useful to indicate a best course of action in regards to each question. The text would be both a qualitative and quantitative analysis which would support the entries in the matrix.

Finally, I would emphasize that any work in this area should be coordinated with the continuing DOTPF rail planning program. This information and contacts available through their office are much more extensive than we could possibly develop within a reasonable timeframe. Further, individuals in that office have been involved in various aspects of this work for almost six months and have begun to develop a good deal knowledge in the field. They would also probably be involved in any plan of execution that in any way concerned an expenditure of state funds for the capital or operating acquisition or subsidies and would, in any case, be a part of intermodal planning efforts related to the railroad.

ADOPTED

Technical amendments to *** "inter-lineated" draft

- 1) On page 4, at line 3, following the word "not," add the words "directly or"
- 2) On page 7, at line 14, add a new subsection: "(d) A member whose term has expired shall serve until his successor has been appointed by the Governor."
- 3) On page 9, at line 21, delete the word "governing" and insert in lieu thereof the word "delegating;" at line 22 delete the words "be conducted" through the word "by" in line 23; at line 24, following the word "official" insert a comma and the words "subject to any board review specified in the policies"
- 4) On page 14, at line 3, following the word "information"; on page 17 at line 6, following the word "matters"; and at line 15 of the same page following the word "Commission," add the words "including but not limited to proprietary information associated with specific shippers, divisions and contract rate agreements" On these same pages add "U.S." preceding each reference to the Interstate Commerce Commission.
- 5) On page 14, at line 10 delete the words "and for" through the word "regulations," on the next line; At line 19 following the period add a new sentence: "The legislature by appropriate action may annul or temporarily suspend a regulation adopted by the authority."
- 6) On page 16, at line 12, following the word "after" insert the words "the date of"
- 7) On page 21, at line 30, delete the word "railroad"
- 8) On page 25, at line 21 following the word "classification" insert a comma and the word "control"

9) On page 25, at line 28, strike the words "general manager" and insert in lieu thereof the words "chief executive officer"

10) On page 28, at lines 26-27 strike the words "general manager" and insert in lieu thereof the words "chief executive officer"

11) On page 30, at line 19, following the word "legislature," insert the words "and the authority"

12) On page 30, at line 27, following the word "adopt," insert the word "exclusive"

13) On page 36, at line 13, delete the word "council" and insert in lieu thereof the word "board"

14) On page 38, at line 9 delete the word "appropriate" and insert in lieu thereof the word "applicable"

15) On page 41, at line 29, following the word "approved" insert the words "or rejected" and at line 30, following the word "act" insert the words "or to refrain from acting"

16) On page 42, at line 28 delete the word "may" and insert in lieu thereof the word "shall"

17) On page 43, at line 12, following the word "ommission" insert the words "or has filed an annual report that is false or deceptively misleading on a material matter"

18) On page 51, at line 3, following the word "house," insert the words "the minority leaders of each house,"; delete the words "and ranking minority members" on lines 3-4; and on line 4, following the word "transportation" insert the words "and finance"

19) On page 52, at line 18 delete the text of (5) and insert in lieu thereof the following:

A.S. Title 35 does not apply to the operations of the authority.

Delete subsection 6 of AS 42.40.1020 on page 51

As you know

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 212 (Dankworth, Kerttula & Sturgulewski)
 Title An Act establishing the Alaska Railroad Authority
 Requested by Sens. Dankworth, Kerttula & Sturgulewski Date 2/26/81

II. FISCAL DETAIL

Agency Affected DOT/PF
 Program Category Affected N/A
 BRU, Program, Or Subprogram(s) Affected Transportation
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

(See Footnote #1)	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		160.5	243.8			
200 TRAVEL		25.2	28.0			
300 CONTRACTUAL		270.0	270.0			
400 COMMODITIES						
500 EQUIPMENT		5.0	2.0			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		460.7	543.8			

FUNDING (Thousands of Dollars)

(See Footnote #2)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		460.7	543.8			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

ASSUMPTIONS/EXPENDITURE BREAKDOWNS:

- A) All cost estimates are in FY 82 dollars.
- B) Expenditures will not commence prior to FY 83. The Act carries an outdated effective date.
- C) FY 83 and 84 estimates cover only initial organizational structuring and expenses through the transfer negotiation stages.

D) 100 Personal Services:

Position	FY 83 Range	Salary	Overhead (27%)	Total
President (Dir. level)	26	\$59,225	\$15,985	\$75,210
Executive Secretary	10	\$21,505	\$ 5,750	\$27,255
Planner V	21	\$45,770	\$12,305	\$58,075
				\$160,540

IV. DATE 1/18/82 PREPARED BY Mark S. Hickey
 AGENCY DOT/PF - S.E. Planning and Programming
 Original: Legislative Finance PHONE 364-4332
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

PAGE TWO

100 Personal Services (cont.): FY 84

<u>Position</u>	<u>Range</u>	<u>Salary</u>	<u>Overhead (27%)</u>	<u>Total</u>
President (Dir. Level)	26	\$62,215	\$16,790	\$ 79,005
Executive Secretary	10	\$23,345	\$ 6,325	\$ 29,670
Planner V	21	\$49,680	\$13,455	\$ 63,135
Planner III	17	\$37,145	\$10,005	\$ 47,150
Clerk Typist II	07	\$19,550	\$ 5,290	\$ 24,840
				<u>\$243,800</u>

(These positions reflect the authority noted in the legislation allowing the President to employ additional staff as necessary. The staff growth in FY 84 is based on the assumption of increased duties following organizational structuring in the FY 83 year.)

E) 200 Travel: FY 83

Quarterly meeting of the board of directors, with an assumption of additional attendance by the President (average attendance = 8):

Round-trip air fare @ \$350 x 8 = \$2,800

Two days per diem @ \$80 per day x 8 = \$1,280

Incidental meeting expenses = \$130

Total per meeting = \$4,210 x 4 meetings = \$16,840

Additional travel requirements of board and staff (including D.C. trips for negotiations):

12 trips per year @ \$700 air fare and per diem = \$8,400

FY 83 Total = \$25,240

FY 84 travel budget reflects a small increase due to additional staff and greater duties: \$28,000

F) 300 Contractual: FY 83 and 84

Office Space Rental: 1,000 net square feet @ \$20 annual nsf cost = \$20,000

Bond counsel and consultant requirements: \$250,000 Total: \$270,000 per year

(These latter contractual requirements reflect the authority noted in the legislation and are based on the assumption of needed expertise to establish the appropriate bonding authorities and the organizational format of this public corporation.)

G) 500 Equipment: Minor expenditures for the necessary business machines are indicated under this category.

FISCAL NOTE: SB 212 An Act establishing the Alaska Railroad Authority

PAGE THREE

FOOTNOTES:

1. No actual estimates are provided for subsequent fiscal years because of the difficulty in predicting levels of responsibility beyond initial organizational structuring and potential expenses through the transfer negotiation stages. In that Sec. 42.40.120 specifically requires the authority to provide for the operation of the Alaska Railroad following transfer, there exists the real possibility of the State incurring significant liabilities for the ongoing operation of the railroad. Although rough estimates could be provided of these potential costs, there exists a structural limitation under this piece of legislation as drafted, since Sec. 42.40.230 clearly states that neither the credit nor the taxing powers of the State or its political subdivisions may be pledged by the authority, and that the State and its political subdivisions will not be liable for the debts incurred by the authority.

2. The legislation does not address a specific source of funding for the establishment of this public corporation. Consequently, the first two years of funding are depicted under the General Fund category. Although no funding is shown under the Federal Fund category, there are both planning and operational assistance grants available from the Federal Railroad Administration, U.S. Department of Transportation, to aid local rail operations. DOT/PF is currently the recipient of rail planning funds, which represents the major source of funds of DOT/PF's rail studies. However, while it is apparent that if this public corporation is formed, it will become the administrator of these funds, it is doubtful that the State of Alaska would be allowed to use these funds other than for technical rail planning. As a result, these funds are not depicted as a source of funding for the contractual requirements noted above.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

**

SECTION-BY-SECTION EXPLANATION TO ** DRAFT

ARTICLE 1. FINDINGS

Sec. 42.40.100. FINDINGS. The individual findings are self-explanatory. Each was included for a specific purpose. In addition to describing the factual and policy setting in which the transfer of the railroad to the state is occurring, findings are necessary to establish the legislature's expectations with respect to the authority. Some findings are required by the state Constitution and others will strengthen the ability of the authority to secure tax-exempt financing.

ARTICLE 2. CREATION AND ORGANIZATION.

Sec. 42.40.200. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established in this section. Its existence commences on the appointment by the governor of all of the members of its board of commissioners.

Sec. 42.40.205. LIMITATION OF LIABILITY. That all the authority's liabilities are exclusively its own and not the state's is clearly stated in this section.

Sec. 42.40.210. BOARD OF COMMISSIONERS. Self-explanatory.

Sec. 42.40.215. APPOINTMENT AND COMPOSITION OF BOARD. Subsection (a) provides that the board consists of the Commissioner of Transportation and Public Facilities and six "public" members, who may not be state officers or employees.

The authority's chief executive officer and an authority employee, appointed by the Governor, representing the unions on the property are ex officio, non-voting members. A general qualification standard is provided in order to encourage the appointment of persons who can make substantive contributions to the council. One member is to be or have been an executive of a non-connecting railroad, if legally permissible. At least four public members must come from areas served by the railroad.

Subsection (b) provides that the governor exercises his power of appointment only upon enactment of state legislation accepting the closing report prepared under the federal transfer legislation. The closing report is to include a specific accounting of the assets and liabilities being transferred. The legislature may not condition its acceptance of the report on its modification but may only accept or reject it.

Subsection (c) provides for confirmation of board members by the legislature but also provides that appointed members have full powers and responsibilities until rejected.

Subsections (d), (e), and (f) relate to the election of board officers and the removal of board members for specific reasons.

Sec. 42.40.220. TERM OF OFFICE; VACANCIES. Other than initial board members who serve staggered terms to ensure long-term continuity, board members will serve five year terms, as provided in this section. The section also provides for the appointment, subject to confirmation, of replacement members to fill unexpired

terms and the preservation of the authority of a board quorum in the event of a vacancy. A member whose term has expired serves until his successor has been appointed.

Sec. 42.40.225. COMPENSATION AND EXPENSES. Compensation in the amount of \$300 per day for public board members is provided in this section. The board is responsible for determining, in its rules, how partial work days will be compensated. Members also are entitled to per diem and travel expenses.

Sec. 42.40.230. QUORUM AND NOTICE OF MEETINGS. A quorum of four voting members is established by this section. In addition to the notice requirements of state law, this section provides that notice of meetings must be given to board members, certain state officials, two newspapers of statewide circulation and, upon request, members of the general public.

Sec. 42.40.240. VOTING. This section provides that the board rules will prescribe the manner of voting and any representation of absent members.

Sec. 42.40.250. EXECUTIVE OFFICIALS. This section provides for appointment of authority officials and personnel. The board itself appoints and fixes compensation for a chief executive officer and legal counsel. Appointment of legal counsel is subject to the approval of the Governor for competence. The chief executive officer, subject to board approval, names the other executive officials. These officials, designated in the definitions, all serve at the pleasure of the board. The chief

executive officer appoints all other personnel. No executive official, except as may be temporarily required by the federal transfer legislation, may receive more compensation than state departmental commissioners.

Sec. 42.40.260. DELEGATION. This section provides that the daily affairs and operations of the railroad are the responsibility of the chief executive officer. The board is required to delegate to the chief executive officer certain matters such as leasing, specific rate-setting, routine changes in service levels and procurement. General or particular board authorization or concurrence is required for other enumerated activities.

ARTICLE 3. ADMINISTRATIVE PROVISIONS

Sec. 42.40.300. CONFLICTS OF INTEREST. This section prohibits a board member or employee from participating in a decision in which he, or a member of his immediate family, has a direct or indirect financial interest. The board may authorize a member or employee to participate when the financial interest is only a remote one, as defined in subsection (b). Additionally, a board member or employee may participate where he will not be affected in a manner different from the public generally. Subsection (d) voids board action where a vote in violation of Sec. 42.40.300 was necessary to make up the majority. Otherwise, the board may ratify action taken after a separate vote without participation by the interested person. An intentional violation of Sec.

42.40.300 or A.S. 39.50 results in the forfeit of the member's or employee's office.

Subsection (e) extends A.S. 39.50, requiring the submission of financial disclosure statements and compliance with conflict of interest standards, to the executive employees and board members. The board is also required in subsection (f) to adopt within 120 days of the first meeting rules implementing the conflict of interest section.

Sec. 42.40.310. PUBLIC BOARD MEETINGS. This section requires that board meetings be public and that executive sessions be used only when permitted by the state open meetings statute, A.S. 44.62.310, or when the matters under discussion pertain to land acquisition or disposal or proprietary information.

Sec. 42.40.320. MINUTES OF MEETINGS. This section requires the board to keep minutes of its meetings and to send certified copies of the minutes covering the public portion of each meeting to the governor and to the leadership of the legislature.

Sec. 42.40.330. ADMINISTRATIVE PROCEDURE. This section provides that the state's Administrative Procedure Act does not apply to the authority, with the exception that the Open Meeting Act applies to the authority's meetings. The authority is required to make its rules and regulations available to the public. The legislature may, by appropriate action, annul or temporarily suspend an authority regulation.

Subsection (b) requires the authority to provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public. Emergency regulations may be adopted, but may remain in effect for only 120 days. Subsection (c) requires that certain types of rules and regulations be submitted to the attorney general for review and approval. Subsection (d) exempts from the rulemaking procedures four designated classes of regulations. Subsection (e) provides that the authority shall be considered an agency of the state for purposes of judicial review of the authority's actions.

Sec. 42.40.335. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD. This section allows the authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 42.40.340. PENALTY FOR VIOLATION OF DESIGNATED REGULATION. This section makes a violation (other than by an authority official or employee within the scope of his employment) of any of the authority's regulations designated as necessary to protect life, health, or property a misdemeanor punishable by a \$1,000 fine and/or six months imprisonment.

Sec. 42.40.345. PUBLIC DISCLOSURE OF INFORMATION. This section requires that information in the possession of the authority is public unless the authority, by rule or regulation, withholds

such information by designating it to be of a nonpublic or privileged nature. A procedure is also established whereby individuals may object to public disclosure of information in the possession of the authority, and such information may be withheld if the public interest is not adversely affected.

ARTICLE 4. POWERS AND DUTIES

Sec. 42.40.400. GENERAL POWERS. This section delineates the numerous powers the authority needs in order to effectively manage and operate the Alaska Railroad. The list is intended to be nonexclusive but each of the enumerated powers appears for a specific reason. Most are obviously required by the authority to enable it to operate and manage the railroad. Others strengthen the authority's ability to engage in tax-exempt financing. Others will enable the authority to satisfy reasonably foreseeable requirements of the federal transfer legislation and still others anticipate the role the railroad will play in the future economic development of the state.

Sec. 42.40.410. ANNUAL REPORT. A report generally describing the operation and financial condition of the authority, certified by the board, is required by this section to be submitted to the governor and each member of the legislature by February 1 of each year.

Sec. 42.40.420. ANNUAL AUDIT. This section obligates the board to have the authority's financial records audited annually by an independent certified public accountant experienced in rail

accounting. The audit, during the five years following transfer, is to include the status of the assets and liabilities identified in the closing report prepared under the federal transfer legislation. The financial records of the authority also are subject to audit and inspection by the governor's internal auditor and the legislative auditor. Access to these materials by these officials is unrestricted but disclosure is limited.

Sec. 42.40.425. LONG-RANGE PROGRAM AND CAPITAL PLANNING.

This section obligates the authority to prepare long-range program and capital plans. The planning process is intended to ensure authority fidelity with the purposes of this chapter. The five-year, annually updated program plan required by paragraph (a)(1) is to provide information substantially consistent with that required of line agencies by the Executive Budget Act, although the format in which it is presented is to be developed by the authority, the legislative auditor and the division of budget and management. Three years after the preparation of the first program plan, the governor and legislative auditor may conduct a performance and efficiency audit of the authority's compliance with its plan. Paragraph (a)(2) provides for a companion five-year capital improvement plan which also is to be annually updated. The information provided in this plan is to be consistent with that required in Sec. 42.40.700(b) for projects subject to state review.

Subsection (c) requires distribution of the annually updated plans to state officials.

Sec. 42.40.430. USE OF AUTHORITY ASSETS. This section requires use of authority funds, property, assets and credit for activities authorized by this chapter. It also precludes the issuance of stock, loans to board members or employees, business for private benefit and other activities inappropriate for a public authority. Subsection (b) makes it clear that the authority is allowed to serve its employees or board members in the same manner it would others in the same general class, such as passengers or shippers, as long as no special privilege is accorded the employees or board members. It also expressly permits the authority to indemnify and insure its employees, agents and board members.

ARTICLE 5. RAIL PROPERTIES

Sec. 42.40.500. RAIL PROPERTIES. Sec. 42.40.500 provides that the authority will receive and own the properties of the Alaska Railroad transferred under the federal legislation. These properties, as defined by A.S. 42.40.900(10), include both real and personal property of the railroad. Like state lands, the authority's lands are protected from adverse possession by A.S. 38.95.010. Subsection (a) also provides that the authority's lands may not be disposed of without compliance with the specific procedures contained in Chapter 40.

Subsection (b) requires the authority to convey the subsurface estate of the lands it receives to the state within 120 days after transfer. The authority may reserve the right to use sand, gravel and other materials on the lands conveyed to the state. Its retained interest includes the right to tunnel and otherwise use the subsurface as necessary for transportation and related purposes.

Under subsection (c), the authority is given the power to litigate and settle any claims arising out of the transfer process, including claims for breach of warranty by the United States. Under subsection (d), the authority may submit applications for interests in federal lands, such as rights-of-way, and receive conveyances of those interests. Additionally, the authority is authorized by subsection (e) to acquire state and federal surplus property under existing law.

Subsection (f) requires the authority to give public notice of the disposal of interests in land, other than leases, easements, and land-use permits.

Sec. 42.40.510. CLASSIFICATION, ACQUISITION AND USE OF STATE LANDS FOR RAILROAD PURPOSES. Sec. 42.40.510 provides a mechanism allowing the authority to acquire state lands for railroad purposes with the concurrence of the Commissioner of Natural Resources. Such acquisition would be necessary in the event of an expansion which involves use of state lands for new routes. The acquisition procedure is initiated by a resolution of the

authority's council identifying specific lands for rail purposes. Within 180 days after receiving the resolution, the Commissioner of Natural Resources is required to either permanently classify and convey the surface estate of the requested lands for railroad purposes or to deny the classification as not in the best interest of the state. Conveyances under this section include sand, gravel and other construction materials useful for railroad purposes.

Subsection (c) also allows the authority and the Commissioner to engage in joint management of railroad lands, to agree to conditions for the classification of state lands as railroad lands, and to periodically review both state and railroad lands to determine their suitability for railroad purposes. The authority may reconvey to the state lands which it no longer needs.

Subsection (d) elaborates on the nature of the authority's retained interest.

Subsection (e) provides an emergency procedure for relocation of right-of-way and related fixtures to state lands where such relocation is necessary to maintain safe and adequate rail operations. Within 45 days after relocation, the authority must request classification and conveyance of the state lands under the normal procedure.

Sec. 42.40.515. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LANDS. The Department of Natural Resources may lease or develop resources on authority

lands only after a review procedure involving both the Department of Natural Resources and the authority has been completed. The review procedure requires an agreement as to suitable reimbursement for any costs incurred by the authority as a result of the development. The authority's approval of the development must be evidenced by a written authorization. Additionally, subsection (b) requires the department of natural resources to require a surety bond from any party other than the state engaged in resource development on railroad lands.

Subsection (c) requires the Department of Natural Resources to maintain records and annually report to the legislature concerning the income received from the subsurface of railroad lands and the value of all subsurface conveyed by the authority to the state.

Subsection (d) establishes the Alaska Railroad Income Fund in the State Treasury for income received by the state from lands in which the authority has an interest. The fund is subject to appropriation by the Legislature.

Sec. 42.40.520. LAND USE REGULATION. This section authorizes the authority to promote the common health, safety, and welfare of the public by adopting regulations governing land use by private parties having interests, such as leases or permits, in lands owned or managed by the authority.

Sec. 42.40.530. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS. This section confers eminent domain power on the

authority under the state's general eminent domain statute. When the authority acquires a fee simple interest, which may be necessary to ensure control of activities on the surface estate, the authority must reconvey the subsurface to the state. The authority is exempted from the requirements of A.S. 09.55 that fences and cattle guards be built in cases where land is condemned for railroad purposes.

Subsection (d) authorizes the authority to acquire land by filing a declaration of taking.

Subsection (e) clarifies that the authority may exercise eminent domain to obtain materials as well as the land and access necessary to develop them. The authority is also authorized by subsection (f) to vacate land, or any part of it, and reconvey title to the state, if compensation was paid for it.

ARTICLE 6. FINANCIAL PROVISIONS

Sec. 42.40.600. BONDS AND NOTES. This section authorizes the authority, by resolution of the board, to issue bonds and bond anticipation notes to provide money to carry out its purposes. The section vests broad discretion in the board in the exercise of this authority. Other than specific limitations provided in this section such as a maximum term of 50 years for instruments and the requirement that bond or note proceeds be dedicated to activities specifically related to the purposes for which the instruments are issued, it is intended that the board have the maximum flexibility legally permissible in financing its

activities. The 18 covenants and powers delineated in subsection (g) are not intended to be exclusive. Paragraph (19) is a general grant of authority to the board to exercise such other powers and make such other covenants, notwithstanding their omission from the specific list, as may be necessary, convenient and desirable.

Sec. 42.40.610. INDEPENDENT FINANCIAL ADVISOR. The board is required by this section to retain a financial advisor independent of the underwriter in negotiating the private sale of bonds and notes.

Sec. 42.40.615. VALIDITY OF PLEDGE. This procedural section facilitates the pledge of assets or revenues to the payment of authority debt. It provides for automatic lien attachments; gives the liens priority against all parties with junior position regardless of notice; and allows the authority to sell assets subject to a pledge.

Sec. 42.40.620. REMEDIES. For the benefit of holders of authority securities, this section provides that remedies and rights available under the terms of such instruments are to be broadly enforceable.

Sec. 42.40.625. NEGOTIABLE INSTRUMENTS. Self-explanatory.

Sec. 42.40.630. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. This section authorizes public and private entities and individuals, including the state, and its other political subdivisions,

institutions and others subject to regulation by state law to invest in authority securities.

Sec. 42.40.635. REFUNDING BONDS. The issuance of refunding bonds to refund outstanding bonds is authorized by this section. Insofar as may be appropriate, the provisions of this chapter also apply to refunding bonds. Subsection (b) authorizes investment of refunding bond proceeds, pending their application as contemplated upon issuance, in direct or guaranteed obligations of the United States, the state or other entities with comparably rated credit.

Sec. 42.40.640. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER. This section states that the authority's securities are not obligations of the state and are payable exclusively from revenues or assets of the authority, without recourse to the state or its other political subdivisions. It also requires that each instrument issued by the authority contain a disclaimer on its face to this effect.

Sec. 42.40.645. NO PERSONAL LIABILITY. Self-explanatory.

Sec. 42.40.650. REVENUES. This section provides for authority retention and management of its own revenues, which do not become part of the state's general fund.

Sec. 42.40.655. INSURANCE. In addition to requiring the authority to maintain adequate insurance, this section requires that the state be named as an additional insured.

Sec. 42.40.660. SAFEGUARDING OF FUNDS. Self-explanatory.

Sec. 42.40.665. FIDELITY BOND. Self-explanatory.

Sec. 42.40.670. REVERSION OF ASSETS. Self-explanatory.

ARTICLE 7. STATE OVERSIGHT

Sec. 42.40.700. STATE REVIEW. This section requires the authority to obtain the approval of at least the governor and possibly the legislature for certain enumerated major actions. The authority must first notify the governor and the leadership of the legislature that it proposes to undertake any of the designated actions. The governor may either disapprove the proposal, suspend it pending review by the legislature or approve it. Approval or disapproval are final and dispositive. If the governor suspends the proposal, he transmits his decision and his recommendation to the legislature. The legislature may then reject it. If either the governor or the legislature fail to act within the time provided, the proposal is deemed approved and the authority may proceed.

Subsection (e), the foregoing notwithstanding, requires specific authorization by the legislature by law of any proposed extension representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million.

Subsection (f) provides that this section is satisfied if the authority has been directed to proceed with a project through the Sec. 42.40.710 action-forcing mechanism or in the event the legislature has funded a project independently.

Sec. 42.40.710. ACTION-FORCING MECHANISM. This section requires the authority to respond formally to a request for consideration of a proposal by either the governor or the legislature. Within 30 days of receiving such a request, the authority, in writing, must commit to undertake the suggested proposal or explain why it will not or is precluded from doing so. At the request of the governor or on its own initiative, the legislature may then direct the authority to proceed, its response notwithstanding, if the legislature also provides funds to plan and implement the proposal.

Sec. 42.40.715. INTERVENTION. This section provides that the governor, when so authorized by the legislature, may intervene in and exercise control of the authority under certain delineated circumstances. The intervention mechanism permits the governor to correct the deficiencies and is to cease as soon as the necessary corrections have been made.

Sec. 42.40.720. TRUSTEESHIP. This section provides that the legislature may also authorize the governor to petition the State Superior Court at Anchorage to impose a trusteeship over the authority under specific circumstances, including insolvency, misapplication of resources or impairment of the state's creditworthiness. The trustees appointed by the court are given broad powers to cure the situation.

ARTICLE 8. PERSONNEL AND GENERAL PROVISIONS

Sec. 42.40.800. PERSONNEL. This section provides that the employees of the authority are not employees of the state. It also provides for application of the state's Public Employment Relations Act to the authority's employees.

Subsection (c) directs the authority to adopt collective bargaining agreements which continue, until they expire or are renegotiated, the provisions of the agreements in effect immediately prior to transfer.

Subsection (d) precludes organization of the authority's executive officials.

Sec. 42.40.810. POLITICAL ACTIVITIES. This section precludes use of authority funds in political activities including legislative efforts. Nevertheless, board members and employees are authorized to participate in legislative proceedings at all levels of government in connection with matters directly affecting the authority. Violations of this section are subject to personal fines up to \$5,000 under subsection (b).

Sec. 42.40.820. LICENSES AND PERMITS. This section provides that the authority, to the same extent as the state and except as otherwise provided in this chapter, will comply with local, state and federal licensing and permitting requirements.

Sec. 42.40.830. UNAUTHORIZED REPRESENTATION. Self-explanatory.

Sec. 42.40.840. CLAIMS AGAINST THE AUTHORITY. Subsection (a) of Sec. 42.40.840 requires that all legal claims involving the authority be brought against the authority and not against the State of Alaska. This requirement reaffirms that the debts of the authority are not the debts of the state.

Subsection (b) extends certain rights, privileges and immunities of the state and state officers to the authority and its council members and employees. Among these are the requirement that legal actions generally be brought within six years (A.S. 09.10.120), immunity against suit for actions taken with due care or in the exercise of discretion (A.S. 09.50.250), and an exemption from giving bond in actions where such is ordinarily required (A.S. 09.65.040).

Subsection (c) provides that claims against the authority will not be subject to the administrative procedure for presenting and deciding claims against the state or its agencies. (A.S. 44.77.010 et seq.)

Subsection (d) clarifies that A.S. 44.80.010, concerning the state's status as a party to actions against departments and agencies, does not apply to the authority. As a result, the state may not be named in an action against the authority and the Department of Law is not required to bring or defend actions concerning the authority.

Sec. 42.40.855. EXEMPTION FROM TAXATION. This section exempts the authority from state and political subdivision

taxation. Subsection (c) provides that authority property is considered taxable for the limited purposes of computing state aid to local school districts.

Sec. 42.40.870. PAYMENTS IN LIEU OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID. This section authorizes the authority to provide, in its discretion and under certain circumstances, partial payments in lieu of local real property taxation by communities in which the authority has substantial land holdings. The authority also is allowed to provide discretionary impact aid to localities for public education and other facilities required to be developed as a result of expanded authority activities in such areas.

ARTICLE 9. MISCELLANEOUS PROVISIONS

Sec. 42.40.900. DEFINITIONS.

(1) through (6) Self-explanatory.

(7) "Immediate family" is defined for purposes of Sec.

42.40.300 CONFLICTS OF INTEREST.

(8) Self-explanatory.

(9) "Leadership of the legislature" is defined for purposes of notice and filings required by this chapter. The definition specifically provides that the designated office-holders may designate persons or officers to receive such notices and filings.

(10) Self-explanatory.

(11) "Regulation" is defined to have the same meaning as that term is defined under the State Administrative Procedure Act.

(12) "Rule" is distinguished from "regulation" as it relates to the authority's internal affairs and not to activities affecting the public at large.

Sec. 42.40.910. SEVERABILITY. Self-explanatory.

Sec. 42.40.920. CONSTRUCTION. Self-explanatory.

Sec. 42.40.930. DATE OF EFFECTIVENESS. This section provides that the chapter becomes effective upon enactment of federal legislation transferring the Alaska Railroad.

ARTICLE 10. APPLICATION OF OTHER LAWS

Sec. 42.40.1010. CONFLICTING LAWS INAPPLICABLE. Self-explanatory.

Sec. 42.40.1020. REPEAL, AMENDMENT, AND APPLICATION OF EXISTING STATUTES.

(1) A.S. Title 19 does not apply to the authority -- sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways; some of its provisions regarding construction, public bids, etc., arguably apply to other activities of DOT/PF, to which the authority will be nominally assigned.

(2) The authority is considered a "political subdivision" for purposes of A.S. 23.10.055 -- state wage and hour statute.

(3) A.S. 23.10.420 does not apply to the authority -- full-crew law.

(4) A.S. 30.15 does not apply to the authority -- procedures for state grants for construction of local port facilities.

(5) Authority activities are not subject to A.S. Title 35, which deals generally with public works. The authority is exempt from public bidding requirements, Department of Transportation and Public Facilities supervision of construction, planning of projects, etc.

(6) The following provisions of A.S. Title 37 do not apply to the authority's operations and budgeting procedures:

(a) A.S. 37.05 -- the Fiscal Procedures Act establishes uniform accounting, purchasing, post auditing, and related financial provisions for all "state agencies" and requires state agencies to submit reports, documents, and statements to the Department of Administration for accounting purposes, requires federal funds received by state agencies to be deposited in the state treasury, makes the Department of Administration responsible for all accounts and purchases of state agencies, requires competitive bidding procedures, and imposes other financial and reporting requirements;

(b) A.S. 37.07 -- Executive Budget Act;

(c) A.S. 37.10.010 - .060 -- these sections make the Department of Administration the custodian of state funds and

require all officers, boards, commissions, etc., to account to the Department of Revenue for all moneys received;

(d) A.S. 37.10.085 -- prohibits a political subdivision of the state from subscribing to the stock of the corporation for loaning credit or borrowing money for use of the corporation;

(e) A.S. 37.20 -- authorizes the governor to accept federal grants and transfers of property, and making land so transferred subject to the jurisdiction of the initial Department of Natural Resources; and

(f) A.S. 37.25 -- determines which unexpected appropriations lapse and which do not.

(7) The authority is not subject to the jurisdiction of the Alaska Transportation Commission.

(8) A.S. 39.50.200(b) is amended to include the authority.

(9) Provides subsequently enacted statutes shall not be interpreted to apply to the authority unless they do so specifically by their terms.

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