

COMMITTEE REPORT

HOUSE

(11)

FURTHER:

Date: 5/2/84

3/23/84

The Committee on FINANCE has had HB 512

"An Act establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 512 (Finance) same title new title
- and recommends NO RECOMMENDATION
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

WILCO H. FRITZ
R.B. Stewart

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bob W. Smith (No Rec)
W. Farnace (Bad Bill)
James (No Rec)
Joseph (No Rec)
J.H. M... 1 1
J.P. Young (No Rec)
Robert B. Adams (No Rec)
Albert B. Adams

CHAIRMAN

Offered: 5/2/84
Referred: Rules

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 512 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and pro-
8 viding for an effective date."

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

10 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
11 finds that

12 (1) it is the policy of the state to

13 (A) provide safe, economical, and efficient transportation
14 to residents, businesses, visitors, and military installations in the
15 state;

16 (B) foster and promote the long-term economic growth and
17 development of the state;

18 (C) develop and implement plans for a transportation net-
19 work;

20 (D) foster and promote the development of the state's land
21 and natural resources;

22 (2) the Alaska Railroad is an essential part of the state trans-
23 portation network that may, unless preserved by state action, cease to be a
24 transportation option in Alaska;

25 (3) the federal government has offered to the state the option
26 of taking over the Alaska Railroad to ensure its continued existence;

27 (4) it is in the state's best interest to accept the railroad
28 under the terms and conditions offered by the United States government; and

29 (5) there is vast potential in Alaska's natural resource areas

1 and extension of the Alaska Railroad into natural resource areas is neces-
2 sary for long-term economic growth.

3 (b) It is the purpose of this Act to

4 (1) create a viable economic entity with the powers and duties
5 necessary to operate and manage the Alaska Railroad pending eventual trans-
6 fer of the railroad to the private sector for its ownership or operation or
7 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
8 1982);

9 (2) provide for the level of railroad service that best satis-
10 fies the needs of the people of the state consistent with the other find-
11 ings and policies of this section;

12 (3) create a public corporation with the powers, duties, and
13 functions needed to operate the Alaska Railroad and manage its rail, indus-
14 trial, port and other properties in the best interest of the people of the
15 state by ensuring that the corporation will

16 (A) be exclusively responsible for the management of the
17 financial and legal obligations of the Alaska Railroad;

18 (B) operate the railroad as a common carrier subject to the
19 jurisdiction of the United States Interstate Commerce Commission
20 consistent with 45 U.S.C. 1207;

21 (C) have the ability to raise capital for expansion by
22 issuing bonds exempt from federal and state taxation;

23 (D) generally carry out its responsibilities on a self-
24 sustaining basis;

25 (E) provide the best possible combination of types and
26 levels of safe, efficient, and economical railroad transportation to
27 meet the overall needs of the state, supported when necessary by state
28 investment;

29 (F) provide for the most efficient and prudent operation of

1 the railroad according to sound business management practices
2 consistent with the technology in use;

3 (G) preserve the integrity of the railroad utility corridor
4 for transportation, communication, pipeline, and transmission
5 purposes;

6 (H) in all job classifications, provide for the employment
7 of women and minorities if qualified;

8 (I) provide for the payment of equal pay for equal work;

9 (4) ensure that borrowing by the corporation does not directly
10 or indirectly endanger the state's own borrowing capacity.

11 * Sec. 2. AS 42 is amended by adding a new chapter to read:

12 CHAPTER 40. ALASKA RAILROAD CORPORATION.

13 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

14 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
15 established the Alaska Railroad Corporation. The corporation is a
16 public corporation and is an instrumentality of the state within the
17 Department of Commerce and Economic Development. The corporation has
18 a legal existence independent of and separate from the state. The
19 exercise by the corporation of the powers provided in this chapter is
20 considered an essential government function of the state.

21 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
22 corporation are vested in the board of directors. The board consists
23 of the commissioner of commerce and economic development, the commis-
24 sioner of transportation and public facilities, and seven members
25 appointed by the governor. The seven appointed members must be regis-
26 tered voters in the state except as provided in (1) and (2) of this
27 subsection. A member of the board may not be an employer of a
28 transportation company, a company using the railroad's freight
29 services, except infrequently, or a lessee of corporation land.

1 Except for the commissioners and the member appointed under (5) of
2 this subsection, a member may not be a state officer or employee.
3 Appointed members shall have the following qualifications:

4 (1) one member of the board shall be a person who has
5 substantial experience in railroad management; a person who is not a
6 resident of the state may be appointed under this paragraph;

7 (2) one member of the board shall be or have been an execu-
8 tive official of a United States railroad and shall be selected in
9 accordance with 49 U.S.C. (Interstate Commerce Act); a person who is
10 not a resident of the state may be appointed under this paragraph;

11 (3) two members shall have substantial experience as owners
12 or managers of a business in the state;

13 (4) at least two members shall be from each judicial
14 district directly served by the Alaska Railroad;

15 (5) one member shall be an employee of the corporation who
16 is a member of a collective bargaining unit.

17 (b) Except for the commissioners, the members of the board shall
18 be confirmed by a majority of the members of each house of the legis-
19 lature in joint session. A member appointed by the governor has the
20 full powers and responsibilities of a confirmed board member until the
21 member is rejected by the legislature or the legislature adjourns
22 without confirming the member.

23 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for the
24 commissioner of commerce and economic development, and the commission-
25 er of transportation and public facilities, the members of the board
26 serve for staggered terms of five years each.

27 (b) The governor may, by written notice to a member, remove the
28 member from the board for

29 (1) incapacitation caused by injury or sickness that leaves

1 the member unable to perform duties under this chapter;

2 (2) continued refusal or inability to attend meetings of
3 the board;

4 (3) conviction of a felony; or

5 (4) malfeasance or misfeasance.

6 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
7 commerce and the commissioner of transportation and public facilities,
8 a vacancy on the board is filled by appointment by the governor, and
9 the appointment must be confirmed by the members of each house of the
10 legislature in joint session. A member appointed to fill a vacancy
11 holds office for the balance of the term for which the member's prede-
12 cessor was appointed.

13 (b) A vacancy on the board does not impair the authority of a
14 quorum of members to exercise the powers and perform the duties of the
15 board.

16 (c) An appointed member of the board whose term has expired
17 shall serve until a successor has been appointed.

18 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
19 member of the board is entitled to compensation at a rate of \$400 for
20 each day the member is engaged in the actual performance of duties as
21 a member of the board. The board may provide by rule for compensation
22 for partial days during which an appointed member is engaged in actual
23 performance of duties as a member of the board.

24 (b) In addition to compensation under (a) of this section, an
25 appointed member of the board is entitled to per diem and travel
26 expenses authorized by law for state boards and commissions.

27 Sec. 42.40.060. BOARD OFFICERS. (a) The board shall elect from
28 its membership a chairman and vice-chairman and prescribe their duties
29 by rule.

1 (b) The board shall appoint a secretary and prescribe the duties
2 of the secretary.

3 ARTICLE 2. MANAGEMENT.

4 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is responsi-
5 ble for the management of the corporation but may delegate certain
6 powers and duties to the chief executive officer in accordance with
7 AS 42.40.120. In managing the corporation the board shall

8 (1) be responsible for the management of the financial and
9 legal obligations of the Alaska Railroad;

10 (2) operate the Alaska Railroad as a common carrier subject
11 to the jurisdiction of the United States Interstate Commerce Commis-
12 sion consistent with 45 U.S.C. 1207;

13 (3) generally manage the corporation on a self-sustaining
14 basis;

15 (4) provide for safe, efficient, and economical railroad
16 transportation to meet the overall needs of the state;

17 (5) raise needed capital for expansion by issuing bonds of
18 the corporation while ensuring that borrowing by the corporation does
19 not directly or indirectly endanger the state's own borrowing
20 capacity;

21 (6) review state and other land disposal proposals to aid
22 in planning for future development or expansion of railroad transpor-
23 tation services;

24 (7) ensure that standards of the United States Interstate
25 Commerce Commission for class I railroads are used for accounting
26 purposes by the corporation;

27 (8) ensure that the procurement procedures of the corpora-
28 tion comply with the procurement standards and procedures established
29 for state agencies to the extent practicable consistent with efficient

1 railroad operations;

2 (9) apply to the legislature for an appropriation to be
3 used to provide a service that is not otherwise self-sustaining if a
4 subsidy is required to maintain that service.

5 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
6 point the chief executive officer of the corporation who serves at the
7 pleasure of the board. The board shall fix the compensation for the
8 chief executive officer.

9 (b) The chief executive officer of the corporation shall appoint
10 and fix the compensation for other executive officers. The compensa-
11 tion for an executive officer appointed under this subsection is
12 subject to board approval.

13 Sec. 42.40.120. DELEGATION. (a) The board may by rule delegate
14 to the chief executive officer powers and duties necessary or appro-
15 priate for the management of the daily affairs and operations of the
16 corporation.

17 (b) The board shall by rule establish procedures for carrying
18 out the following powers and duties of the corporation and may dele-
19 gate the exercise of the following powers and duties in accordance
20 with the procedures to the chief executive officer or other executive
21 officers designated by the board:

22 (1) leasing, granting easements in, issuing permits for the
23 use of, or conveying other interests in property, except the corpo-
24 ration's entire interest in land;

25 (2) establishing specific rates, tariffs, divisions, and
26 contract rate agreements;

27 (3) making routine changes in service levels;

28 (4) establishing procurement and accounting procedures for
29 the corporation; and

1 (5) performing procurement activities.

2 (c) The board may by rule require the exercise of a power or
3 duty delegated under (a) or (b) of this section to be subject to board
4 approval. Specific board approval is required for the following:

5 (1) issuing bonds;

6 (2) mortgaging or pledging corporation assets;

7 (3) donating property or other assets belonging to the
8 corporation;

9 (4) acting as a surety or guarantor;

10 (5) adopting a long-range program or capital improvement
11 plan;

12 (6) adopting annual reports;

13 (7) effecting general, comprehensive increases and de-
14 creases in rates;

15 (8) diversifying, expanding, or reducing services in a
16 major way;

17 (9) expanding the main or branch rail lines, other than
18 performing routine track alignment as necessary to maintain service
19 levels in effect on the date of transfer;

20 (10) selecting independent auditors and accountants;

21 (11) exercising the power of eminent domain;

22 (12) entering into collective bargaining agreements;

23 (13) adopting annual budgets; and

24 (14) beginning capital projects with an estimated completion
25 cost of more than \$500,000 or an estimated completion time of more
26 than one year.

27 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

28 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
29 board shall call meetings of the board at least once every three

1 months and may call other meetings of the board as necessary. The
2 chairman shall preside at meetings.

3 (b) Except for executive sessions, the meetings of the board are
4 public. The board shall provide by rule for a method of providing
5 notice to the public of its meetings.

6 (c) The board shall keep minutes of each meeting.

7 Sec. 42.40.160. QUORUM AND VOTING. (a) Five members of the
8 board constitutes a quorum for the transaction of business.

9 (b) Five affirmative votes are required for board action. The
10 board shall provide by rule for the manner of voting, except that the
11 board may not provide for voting by proxy. The rules may provide for
12 voting and conferring by telecommunication devices.

13 Sec. 42.40.170. EXECUTIVE SESSIONS. (a) The question of hold-
14 ing an executive session shall be determined in accordance with
15 AS 42.40.160. A subject may not be considered at an executive session
16 unless it is mentioned in the motion calling for the executive session
17 or is auxiliary to a subject mentioned. An action may not be taken at
18 an executive session.

19 (b) Only the following subjects may be discussed in an executive
20 session:

21 (1) matters, the immediate knowledge of which would clearly
22 have an adverse effect upon the finances of the corporation;

23 (2) unless the person has requested to have the subjects
24 discussed in public, subjects that tend to prejudice the reputation
25 and character of a person;

26 (3) matters that, by law or municipal charter or ordinance,
27 are permitted to be kept confidential from public disclosure;

28 (4) matters pertaining to personnel;

29 (5) matters pertaining to the corporation's legal position;

1 (6) land acquisition or disposal; and

2 (7) proprietary or other information of a type treated as
3 confidential under the standards and practices of the United States
4 Interstate Commerce Commission, including practices that protect
5 information associated with specific shippers, divisions, and contract
6 rate agreements.

7 Sec. 42.40.180. RULES. (a) The board shall adopt rules to
8 carry out its functions and the purposes of this chapter, including
9 rules to safeguard property owned, managed, or transported by the
10 corporation and to protect employees and persons using the corpora-
11 tion's property or services. At least 15 days before the adoption of
12 a rule, the board shall give public notice of the proposed action by
13 publishing a notice in at least three newspapers of general circula-
14 tion in the state and by mailing a copy of the notice to each person
15 who has requested notice of proposed rules. The notice must state the
16 time, place, and nature of the proceedings and must contain a summary
17 of the subject of the proposed change.

18 (b) On the date and at the time and place designated in the
19 notice required under (a) of this section the board shall provide each
20 interested person an opportunity to present statements in writing
21 concerning the proposed rule and shall give members of the public an
22 opportunity to present oral statements for a total period of at least
23 one hour.

24 (c) The board shall consider all relevant matters presented to
25 it before adopting a rule. The board may take action on a rule that
26 varies in content from the summary provided with the notice of the
27 proposed rule if the subject of the rule was reflected in the summary
28 and it provided reasonable notice to the public as to whether their
29 interests could be affected by the board's action on that subject.

1 (d) The board shall establish in the bylaws of the corporation
2 additional procedures for adopting rules if necessary.

3 Sec. 42.40.190. EMERGENCY RULES. (a) The board shall establish
4 in the bylaws of the corporation a procedure for the adoption of a
5 rule on an emergency basis. An emergency rule may be adopted only
6 when necessary for the orderly operation of the corporation's facil-
7 ities or programs. The requirements of AS 42.40.180 do not apply to
8 actions taken under this section. However, within 10 days after the
9 adoption of a rule on an emergency basis the board shall give notice
10 of its action that substantially complies with the notice requirements
11 of AS 42.40.180(a).

12 (b) An action taken under this section remains in effect for not
13 more than 120 days. To prevent an emergency rule from lapsing the
14 board may adopt the same rule under AS 42.40.190 before the end of the
15 120-day period.

16 Sec. 42.40.200. VALIDITY OF RULES. (a) Failure to mail notice
17 to a person under AS 42.40.180(a) or 42.40.190(a) does not invalidate
18 an action taken by the board.

19 (b) An interested person may challenge a rule adopted by the
20 board by bringing an action in the superior court. In addition to
21 other grounds, a court may declare a rule invalid

22 (1) for substantial failure by the board to comply with
23 AS 42.40.180 or 42.40.190; or

24 (2) if the rule was adopted under AS 42.40.190, upon the
25 grounds that the emergency rule was not necessary for the orderly
26 operation of the corporation's facilities or programs.

27 Sec. 42.40.205. APPLICATION. Adoption of a rule is not subject
28 to AS 42.40.180 or 42.40.190 if it

29 (1) relates only to the internal management of the

1 corporation;

2 (2) relates to specific rates, tariffs, divisions, and
3 contract rate agreements;

4 (3) relates to service schedules of the railroad;

5 (4) is directed to a specifically named person or to a
6 group of persons and does not apply to the general public; or

7 (5) relates to the use of public works under the jurisdic-
8 tion of the corporation if the effect of the order is indicated to the
9 public by means of signs or signals.

10 Sec. 42.40.210. PREVIOUSLY ADOPTED RULES AND ORDERS. (a) The
11 board may provide by resolution that rules and orders in effect on the
12 date of transfer remain in effect until amended or repealed by the
13 board. The board may adopt the substance of former federal rules or
14 orders relating to the Alaska Railroad and this may not be considered
15 a continuation of the federal rules or orders if adopted by the board
16 in accordance with procedural requirements of this chapter or other
17 law.

18 (b) AS 42.40.180 does not apply to actions taken under this
19 section.

20 Sec. 42.40.220. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
21 as provided under (b) of this section, information in the possession
22 of the corporation is public and is open to public inspection at
23 reasonable times.

24 (b) The corporation may by rule designate as confidential and
25 withhold public disclosure of matters of a nonpublic, privileged, or
26 proprietary nature. Those matters include personnel records, communi-
27 cations with and work product of legal counsel, and, consistent with
28 the standards and practices of the United States Interstate Commerce
29 Commission for the protection of these matters, other information

1 including proprietary information associated with specific shippers,
2 divisions and contract rate agreements.

3 Sec. 42.40.230. CONFLICTS OF INTEREST. (a) Except as provided
4 in this section, a board member or executive officer of the corpora-
5 tion may not participate in a decision of the corporation in which
6 that person or a member of that person's immediate family has a direct
7 or indirect financial interest unless the financial interest is a
8 remote financial interest and participation is approved under (b) of
9 this section.

10 (b) A board member or executive officer may participate in a
11 decision if that person or a member of that person's immediate family
12 has only a remote interest, the fact and extent of the interest is
13 disclosed to the board in a public meeting and is noted in the minutes
14 of the board before any participation by the member or in the deci-
15 sion, and thereafter in a public meeting the board by vote authorizes
16 or approves the participation. If the person whose participation is
17 under consideration is a board member, that person may not vote under
18 this subsection. For purposes of this subsection, "remote interest"
19 means an interest that in good faith is defined as remote by rules
20 adopted by the corporation.

21 (c) A board member or executive officer is not considered to be
22 financially interested in a decision when the decision could not
23 affect that person in a manner different from its effect on the public
24 or community.

25 (d) Within 120 days of the first meeting of the board, the board
26 shall adopt and may subsequently amend rules implementing this sec-
27 tion, providing additional conflict of interest and ethical rules it
28 considers appropriate, and providing for the removal by the board of a
29 board member or executive officer who intentionally violates a

1 prohibition contained in this section.

2 (e) For purposes of this section

3 (1) "participate in a decision" includes all discussions,
4 deliberations, preliminary negotiations, and votes;

5 (2) "immediate family" means

6 (A) spouse;

7 (B) dependent parent, parent-in-law, child, son-in-
8 law, daughter-in-law, sibling, uncle, aunt, niece, or nephew.

9 Sec. 42.40.240. COMPLAINT PROCEDURE. The board shall provide by
10 rule for a formal procedure for the receipt and consideration of
11 complaints or suggestions regarding activities of the corporation.

12 ARTICLE 4. POWERS AND DUTIES.

13 Sec. 42.40.250. GENERAL POWERS. In addition to the exercise of
14 other powers authorized by law, the corporation may

15 (1) adopt a seal;

16 (2) adopt bylaws governing the business of the corporation;

17 (3) sue and be sued;

18 (4) appoint trustees and agents of the corporation and
19 prescribe their powers and duties;

20 (5) hire legal counsel to represent the corporation;

21 (6) make contracts and execute instruments necessary or
22 convenient in the exercise of its powers and duties;

23 (7) acquire by purchase, lease, bequest, devise, gift,
24 exchange, condemnation, the satisfaction of debts, the foreclosure of
25 mortgages, or otherwise, personal property, rights, rights-of-way,
26 franchises, easements, and other interest in land, and acquire by
27 appropriation water rights that are located in the state, taking title
28 to the property in the name of the corporation;

29 (8) hold, maintain, use, operate, improve, lease, encumber

1 and otherwise grant security interests in land or personal property
2 and exchange, donate, convey, alienate, or otherwise dispose of per-
3 sonal property, subject to other provisions of this chapter;

4 (9) contract with and accept transfers, gifts, grants or
5 loans of funds or property from the United States and the state or its
6 political subdivisions, subject to other provisions of federal or
7 state law or municipal ordinances;

8 (10) undertake and provide for the management, operation,
9 maintenance, use, and control of all of the property of the corpo-
10 ration, including tracks, equipment and other property transferred to
11 the corporation by the federal government or any person;

12 (11) recommend to the legislature and the governor any tax,
13 financing, or financial arrangement the corporation considers appro-
14 priate to carry out the duties under this chapter;

15 (12) maintain offices and facilities at places it desig-
16 nates;

17 (13) apply to the state, the United States, and foreign
18 countries or other proper agencies for the permits, licenses, rights-
19 of-way, or approvals necessary to construct, maintain, and operate
20 transportation and related services, and obtain, hold, and reuse the
21 licenses and permits in the same manner as other railroad operators;

22 (14) prescribe rates to be charged for services provided by
23 the Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska
24 Railroad Transfer Act of 1982);

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

27 (16) enter into contracts, leases, and other agreements
28 with connecting carriers, shippers, and other persons concerning the
29 services, activities, operations, property, and facilities of the

1 corporation, including agreements that contain provisions to preserve
2 and expand the railroad's traffic base;

3 (17) plan for and undertake expansion of the railroad and
4 railroad activities, including extension of the rail system, and
5 contract with other modes of transportation services connecting to the
6 rail system;

7 (18) hire and discharge railroad personnel and determine
8 benefits and other terms and conditions of employment;

9 (19) assume all rights, liabilities, and obligations of the
10 Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad
11 Transfer Act of 1982);

12 (20) maintain or provide for a security force to protect
13 property owned, managed or transported by the corporation and persons
14 using railroad transportation services provided by the corporation;

15 (21) issue its bonds and provide for and secure their pay-
16 ment, provide for the rights of their holders and hold or dispose of
17 them;

18 (22) purchase the corporation's bonds at a price not more
19 than the principal amount of them plus interest;

20 (23) cancel bonds of the corporation purchased by the corpo-
21 ration;

22 (24) secure the payment of its bonds by pledge, mortgage, or
23 other lien on its contracts, revenue, income, or property;

24 (25) consent to the modification of the rate of interest,
25 time of payment of an installment of principal or interest, or other
26 term of a loan, contract, or agreement to which the corporation is a
27 party;

28 (26) borrow money, including the amounts necessary to estab-
29 lish reasonable reserves, and pay financing charges and interest on

1 the obligations for a reasonable period after which the corporation
2 estimates other money will be available to pay the interest, consul-
3 tant, advisory, and legal fees, and other expenses necessary or inci-
4 dent to borrowing;

5 (27) acquire, hold, and dispose of stocks, memberships,
6 contracts, bonds, general or limited partnership interests or other
7 interests in another corporation, association, partnership, joint
8 venture, or other legal entity, and exercise the powers or rights in
9 connection with these interests that are provided in contracts or
10 agreements and that are allowed by law concerning the satisfaction of
11 debts;

12 (28) undertake and provide for the acquisition, construc-
13 tion, maintenance, equipping, and operation of connecting, switching,
14 terminal, or other railroads and railroad facilities in the state;

15 (29) do all things necessary or desirable to carry out the
16 powers and duties of the corporation granted or necessarily implied in
17 this chapter or other laws of the state or the laws or regulations of
18 the federal government.

19 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
20 of the fiscal year of the Alaska Railroad the board shall distribute
21 to the governor and to the legislature a report describing the opera-
22 tions and financial condition of the corporation during the preceding
23 fiscal year. The report may include suggestions for legislation re-
24 lating to the structure, powers or duties of the corporation or to the
25 operation or facilities of the corporation. Subject to AS 42.40.220,
26 the report shall itemize the cost of providing each category of ser-
27 vice offered by the railroad and the income generated by each cate-
28 gory.

29 Sec. 42.40.270. AUDITS. (a) The board shall have the financial

1 records of the corporation audited annually by an independent cer-
2 tified public accountant experienced in railroad accounting. The
3 board shall have an annual performance audit conducted by a recognized
4 railroad management expert to assure that the railroad is being man-
5 aged and operated effectively and efficiently in accordance with the
6 requirements of this chapter. Auditors shall use the standards of the
7 United States Interstate Commerce Commission for Class I railroads.

8 (b) The corporation shall make all of its financial records
9 available to an auditor appointed by the governor and to the legisla-
10 tive audit division for examination. Disclosure to the public by the
11 auditor or legislative audit division of this information is subject
12 to AS 42.40.200 and rules implementing that section.

13 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
14 provide a state oversight report to the governor and the legislature
15 before undertaking

16 (1) expansion, reduction, or diversification of services
17 provided by the railroad upon the date of transfer or as provided
18 under this chapter that the board determines would represent a signif-
19 icant and permanent change in the level and nature of services pro-
20 vided;

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

24 (3) the issuance of securities, bonds or contracts in an
25 amount exceeding \$5,000,000; or

26 (4) an application for an appropriation to be used for
27 providing any service that is not self-sustaining.

28 (b) The report under (a) of this section shall be in writing,
29 describe the proposed undertaking in detail, and specify

- 1 (1) its financial impact on the corporation;
2 (2) its impact on the level and nature of services provided
3 by the corporation;
4 (3) the reasons the action is necessary or desirable to
5 achieve the purposes of this chapter; and
6 (4) whether and when the undertaking is expected to be
7 self-sustaining financially.

8 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the
9 legislature approves the action by law, the corporation may not

- 10 (1) exchange, donate, sell, or otherwise convey its entire
11 interest in land;
12 (2) issue securities, bonds, or contracts in an amount
13 exceeding \$5,000,000;
14 (3) extend main or branch lines by more than 25 miles or
15 five percent of the railroad's total track mileage, whichever is
16 greater.

17 Sec. 42.40.290. LONG RANGE PROGRAM AND CAPITAL IMPROVEMENT
18 PLANS. (a) The corporation shall prepare and the board shall adopt a
19 long range program plan and a capital improvement plan. The board
20 shall consult with affected state agencies and municipalities in
21 preparing the plans. The long range program plan shall explain the
22 manner in which the corporation intends to accomplish the purposes of
23 this chapter during each of the five years after the plan is adopted.
24 The capital improvement plan shall present and explain the corpora-
25 tion's anticipated capital improvements for each of the five years
26 after the plan is adopted and shall reflect efforts to upgrade the
27 railroad and develop safer, more cost-effective rail operations.

28 (b) The board shall annually review and update the long range
29 program and capital improvement plans. The board shall provide copies

1 of the updated plans to the governor and the legislature by December 1
2 of each year.

3 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
4 shall apply all money, property, other assets, and credit of the
5 corporation toward activities authorized by this chapter. The corpo-
6 ration may not issue shares of stock, pay dividends, make private
7 distributions of assets, make loans to board members or employees, or
8 engage in business for private benefit. The use of money, property,
9 other assets, or credit of the corporation for a purpose not author-
10 ized by law by a person having the possession or control of it is
11 prohibited.

12 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
13 defend and indemnify a current or former member of the board, em-
14 ployee, or agent of the corporation against all costs, expenses, judg-
15 ments, and liabilities, including attorney's fees, incurred by or
16 imposed upon that person in connection with a civil or criminal action
17 in which the person is involved by affiliation with the corporation,
18 if the person acted in good faith on behalf of the corporation and
19 within the scope of official duties or powers.

20 (b) The corporation may purchase insurance to protect and hold
21 personally harmless its employees, agents, and board members from an
22 action, claim, or proceeding arising out of the performance, purported
23 performance, or failure of performance, in good faith, of duties for,
24 or employment with, the corporation and to hold them harmless from
25 expenses connected with the defense, settlement, or monetary judgments
26 from that action, claim, or proceeding. The purchase of insurance is
27 discretionary with the board and insurance is not considered to be
28 compensation to the insured person.

29 ARTICLE 5. CORPORATION PROPERTY.

1 Sec. 42.40.350. LAND. (a) The corporation shall take title in
2 its own name to all land transferred under 45 U.S.C. 1201 - 1214
3 (Alaska Railroad Transfer Act of 1982). All land that is transferred
4 or acquired by the corporation is designated as follows:

5 (1) railroad rights-of-way are railroad utility corridors;

6 (2) land outside the railroad utility corridors is rail
7 land.

8 (b) A railroad utility corridor shall be of a width at least 100
9 feet on both sides of the centerline of the extended main or branch
10 line, unless the corporation does not own or control sufficient land
11 for a corridor of that width. A railroad utility corridor may be
12 surveyed by the metes and bounds method. The corporation may not
13 convey its entire interest in land within a railroad utility corridor
14 except as provided in AS 42.40.285, 42.40.370(d), and 42.40.400. The
15 corporation may lease, grant easements or permits, or otherwise autho-
16 rize use of portions of a utility corridor for transportation, commu-
17 nication, and transmission purposes, including pipelines and support
18 functions associated with those purposes and for commercial and other
19 uses if the use does not restrict other parallel uses of the utility
20 corridor.

21 (c) The corporation may lease, grant easements or permits, or
22 otherwise authorize use of portions of rail land. However, the corpo-
23 ration may not convey its entire interest in rail land except as
24 provided in AS 42.40.285, 42.40.370(d), and 42.40.400.

25 (d) A lease by the corporation to a party other than the state
26 shall be made at fair market value as determined by appraisal by a
27 qualified appraiser or by competitive bid.

28 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
29 federal land it determines may be useful for railroad purposes and

1 request the commissioner of natural resources to select the land for
2 the state through the federal land selection process.

3 (b) The board may identify and request the commissioner of
4 natural resources to convey land necessary or useful for present or
5 future railroad purposes owned by or tentatively approved for transfer
6 to the state, including land not contiguous to land already held by
7 the corporation. The request must include a statement of and justi-
8 fication for the present or future railroad use. Upon receipt of a
9 request, the commissioner shall temporarily reserve the land iden-
10 tified in the request for railroad purposes and defer disposal or
11 lease of that land under other laws to a party other than the corpo-
12 ration. The temporary reservation of land is subject to valid exist-
13 ing rights and remains in effect for 180 days.

14 Sec. 42.40.370. CONVEYANCE OF STATE LAND. (a) Within 90 days
15 after receiving a request under AS 42.40.360(b) the commissioner of
16 natural resources shall by written decision

17 (1) designate the identified land for railroad purposes
18 and, subject to valid existing rights, convey the state's interests in
19 the land to the corporation;

20 (2) notify the corporation of reasons for refusal to desig-
21 nate the identified land for railroad purposes; or

22 (3) approve in part and deny in part the request for desig-
23 nation of the identified land and convey as appropriate.

24 (b) A conveyance of land under this section may be for less than
25 fair market value as determined by the commissioner of natural re-
26 sources.

27 (c) In the absence of a reservation to the contrary, a convey-
28 ance of land under this section vests in the corporation ownership,
29 control of the surface, material, and mineral estate, including the

1 right to extract or use timber and other construction materials, sand,
2 gravel, rock, and the right to tunnel, ditch, recontour, excavate, or
3 otherwise use the land for railroad, transportation, transmission, or
4 communication services.

5 (d) The corporation may reconvey to the state land received
6 under this section, under 45 U.S.C. 1201 - 1214 (Alaska Railroad
7 Transfer Act of 1982), by eminent domain, or otherwise that the corpo-
8 ration and the commissioner of natural resources jointly identify as
9 unnecessary or unsuitable for the corporation's purposes.

10 Sec. 42.40.380. USE OF STATE LAND. When emergency conditions
11 require that track or other right-of-way fixtures of the corporation
12 be moved from the existing location and relocated on state land adja-
13 cent to or in the vicinity of the existing right-of-way and the chief
14 executive officer determines that relocation is necessary to maintain
15 safe and adequate rail operations, the corporation may effect the
16 relocation with the concurrence of the Department of Natural Re-
17 sources. The relocation must affect only the amount of state land
18 necessary to adequately restore or continue safe rail operations at a
19 normal level.

20 Sec. 42.40.390. EMINENT DOMAIN. (a) The corporation may exer-
21 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
22 acquire land for railroad purposes consistent with this chapter.
23 Notwithstanding AS 09.55.250, the corporation may acquire a fee simple
24 title whenever, in the judgment of the board, ownership of a fee
25 simple title is necessary to carry out the purposes of this chapter.

26 (b) The corporation may file a declaration of taking in the
27 manner provided for the state under AS 09.55.420.

28 (c) The power of eminent domain conferred under this section
29 includes the power to obtain clay, gravel, sand, timber, rock, or

1 other material for the operation of the railroad, the land necessary
2 to obtain the material, and access to the land and material.

3 Sec. 42.40.400. VACATION OF EASEMENTS. The corporation may
4 vacate an easement acquired under 45 U.S.C. 1201 - 1214 (Alaska Rail-
5 road Transfer Act of 1962) by executing and filing a deed in the
6 appropriate recording district. Upon filing the deed the state shall
7 acquire the easement for use in conformity with 45 U.S.C. 1201 - 1214.

8 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
9 cations on its own behalf as an instrumentality of the state for
10 acquisition of federal land that will enhance the operations of the
11 corporation if it is available under a federal law other than the
12 Alaska Statehood Act of 1958 (P.L. 85-508, 72 Stat. 339). The corpo-
13 ration may receive in its own name conveyances of all interests in
14 federal land.

15 Sec. 42.40.420. MUNICIPAL USE OF LAND. Upon request of a munic-
16 ipality the corporation may authorize use of the railroad utility
17 corridor or rail land for a pedestrian walkway or trail. Before
18 authorizing a use under this section the board shall require the
19 municipality to execute an agreement in a form approved by the board
20 to

21 (1) hold the corporation harmless from and indemnify the
22 corporation for liability and claims arising from any use authorized
23 under this section including

24 (A) defending the corporation in a cause of action
25 brought against the corporation as a result of the use; and

26 (B) indemnifying the corporation for the amount of a
27 judgment, including prejudgment and postjudgment interest, ren-
28 dered against the corporation or for the amount of a settlement
29 entered into by the corporation, and for all costs and attorney's

1 fees incurred by the corporation in settling or defending the
2 claim; and

3 (2) stop the use upon request of the corporation if the use
4 interferes with expansion or replacement of railroad facilities,
5 creates a safety hazard, or interferes with railroad operations.

6 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
7 ation, as an instrumentality of the state, may acquire in its own name
8 from the United States under 50 App U.S.C. 1622 - 1622c (Surplus
9 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and
10 Administrative Services Act of 1949), or other law, property under the
11 control of a federal department or agency that is useful for the
12 corporation's purposes. The corporation may acquire from the Depart-
13 ment of Administration property of the state made available under
14 AS 44.71.010 - 44.71.040.

15 Sec. 42.40.435. EXCHANGE OF LAND. The corporation may exchange
16 land subject to AS 42.40.285. The corporation is an instrumentality
17 and agency of the state for purposes of exchanging land with the
18 United States, municipalities, corporations including corporations
19 formed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement
20 Act), and individuals.

21 Sec. 42.40.440. USE OF PESTICIDES AND HERBICIDES. Vegetation
22 control involving the use of pesticides or herbicides on land owned or
23 managed by the corporation may be conducted only in compliance with
24 state requirements applicable to other state pesticide or herbicide
25 use.

26 Sec. 42.40.450. ADVERSE POSSESSION. No prescription or statute
27 of limitations runs against the title or interest of the corporation
28 to or in land owned by the corporation or under its jurisdiction.
29 Title to or interest in land owned by the corporation or under its

1 jurisdiction may not be acquired by adverse possession or prescrip-
2 tion, or in any other manner except by conveyance from or formal
3 vacation by the corporation.

4 ARTICLE 6. FINANCIAL PROVISIONS.

5 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
6 by the corporation shall be satisfied exclusively from the assets or
7 revenue of the corporation and no creditor or other person has a right
8 of action against the state because of a debt, obligation, or liabil-
9 ity of the corporation.

10 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
11 fidelity bond in an amount determined by the board for board members
12 and each officer of the corporation responsible for accounts and
13 finances. A bond must be in effect during the entire tenure in office
14 of the bonded person.

15 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.-
16 310(b), the corporation shall protect its assets, services, and em-
17 ployees by purchasing insurance or providing for certain self-insur-
18 ance retentions. The corporation shall also maintain casualty, prop-
19 erty, business interruption, marine, boiler and machinery, pollution
20 liability, and other insurance in amounts reasonably calculated to
21 cover potential claims against the corporation or state for bodily
22 injury, death or disability, and property damage that may arise from
23 or be related to corporation operations and activities.

24 Sec. 42.40.530. REVENUE. Revenue generated by or appropriated
25 to the corporation shall be retained and managed by the corporation
26 for railroad and related purposes in accordance with 45 U.S.C. 1207-
27 (a)(5) (Alaska Railroad Transfer Act of 1982).

28 Sec. 42.40.540. APPROPRIATIONS. The corporation may request a
29 direct appropriation or grant from the legislature to assist in

1 carrying out the provisions of this chapter.

2 ARTICLE 7. BONDS.

3 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
4 resolution may issue bonds to provide money to carry out its purposes.

5 (b) Bonds may be issued in one or more series and shall, as
6 provided by the resolution of the board,

7 (1) be dated;

8 (2) bear fixed or variable interest at a required rate or
9 rates per year or within a maximum rate;

10 (3) be in a required denomination or denominations;

11 (4) be in a coupon or registered form;

12 (5) carry conversion or registration provisions;

13 (6) have a required rank or priority;

14 (7) be executed in the required manner and form;

15 (8) be payable as required from the sources, in the medium
16 of payment, and place or places inside or outside the state;

17 (9) be subject to authentication by a trustee or fiscal
18 agent; and

19 (10) be subject to terms of redemption with or without
20 premium.

21 (c) Bonds may be sold in the manner, on the terms, and at the
22 price the board determines. Bonds shall mature at the time, not
23 exceeding 50 years from their date, determined by the board, but notes
24 shall mature at the time or times determined by the board.

25 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds issued under this
26 chapter and interest coupons attached to them are negotiable instru-
27 ments under the laws of this state, subject only to applicable pro-
28 visions for registration.

29 Sec. 42.40.620. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued

1 under this chapter are securities in which all public officers and
2 public bodies of the state and its political subdivisions, all insur-
3 ance companies, trust companies, banking associations, investment
4 companies, executors, administrators, trustees and other fiduciaries
5 may properly and legally invest funds, including capital in their
6 control or belonging to them. These bonds may be deposited with a
7 state or municipal officer of an agency or political subdivision of
8 the state for any purpose for which the deposit of bonds of the state
9 is authorized by law.

10 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on
11 bonds of the corporation is payable from corporation money or assets.
12 Bonds may be additionally secured by a pledge of a grant or contribu-
13 tion from the federal, state, or municipal government or a corpora-
14 tion, association, institution or person, or a pledge of money, in-
15 come, or revenue of the corporation from any source.

16 Sec. 42.40.640. SECURITY FOR BONDS. In the discretion of the
17 board, an issue of bonds may be secured by a trust indenture, which
18 may be a trust company, bank or national banking association, with
19 corporate trust powers, located inside or outside the state, or by a
20 secured loan agreement or other instrument or under resolution giving
21 powers to a corporate trustee by means of which the corporation may

22 (1) make and enter into any and all the covenants and
23 agreements with the trustees or the holders of the bonds that the
24 corporation may determine to be necessary or desirable, including
25 covenants, provisions, limitations and agreements to

26 (A) the application, investment, deposit, use and
27 disposition of the proceeds of bonds of the corporation or of
28 money or other property of the corporation or in which it has an
29 interest;

1 (B) the fixing and collection of rentals, charges,
2 fees or other consideration for, and the other terms to be incor-
3 porated in, contracts with respect to the use of any of the
4 corporation's property;

5 (C) the fixing and collection of tariffs, fees,
6 charges or other consideration for the use or service of the
7 Alaska Railroad by passengers, and other users and freight;

8 (D) the terms and conditions upon which additional
9 bonds of the corporation may be issued;

10 (E) the vesting in the trustee of rights and remedies
11 exercisable by the trustee for the protection of the holders of
12 bonds of the corporation and not otherwise in violation of law
13 and the restriction of the rights of an individual holder of
14 bonds of the corporation;

15 (2) pledge, mortgage, or assign money, leases, agreements,
16 assets, or property of the corporation either presently in hand or to
17 be received in the future, or both; and

18 (3) provide for any other matters of like or different
19 character that in any way affect the security or protection of the
20 bonds.

21 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating
22 the private or public sale of bonds to an underwriter, the board shall
23 retain a financial advisor who is independent from the underwriter.

24 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the
25 corporation whose signature or a facsimile of whose signature appears
26 on bonds or coupons attached to them ceases to be an officer before
27 the delivery of the bond or coupon, the signature or facsimile is
28 valid the same as if the person had remained in office until delivery.

29 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets

1 or revenue of the corporation to the payment of the principal or
2 interest on bonds of the corporation is valid and binding from the
3 time the pledge is made and the assets or revenue are immediately
4 subject to the lien of the pledge without physical delivery or further
5 act. The lien of a pledge is valid and binding against all parties
6 having claims of any kind against the corporation, irrespective of
7 whether those parties have notice of the lien of the pledge.

8 (b) Nothing in this section prohibits the corporation from
9 selling assets subject to a pledge, except that a sale may be re-
10 stricted by the trust agreement or resolution providing for the issu-
11 ance of the bonds.

12 Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and
13 agrees with the holders of bonds issued under this chapter and with
14 the federal agency that loans or contributes funds in respect to a
15 project, that the state will not limit or alter the rights and powers
16 vested in the corporation by this chapter to fulfill the terms of a
17 contract made by the corporation with the holders or federal agency,
18 or in any way impair the rights and remedies of the holders until the
19 bonds together with the interest on them with interest on unpaid
20 installments of interest, and all costs and expenses in connection
21 with an action or proceeding by or on behalf of the holders, are fully
22 met and discharged. The corporation is authorized to include this
23 pledge and agreement of the state, insofar as it refers to holders of
24 bonds of the corporation, in a contract with the holders and insofar
25 as it relates to a federal agency, in a contract with the federal
26 agency.

27 Sec. 42.40.680. REMEDIES. A holder of bonds issued under this
28 chapter or of coupons attached to them, and a trustee under a trust
29 agreement or resolution authorizing the issuance of the bonds, except

1 as restricted by a trust agreement or resolution, either at law or in
2 equity, may

3 (1) enforce all rights granted under this chapter, the
4 trust agreement or resolution, or any other contract executed by the
5 corporation under this chapter; and

6 (2) compel the performance of all duties of the corporation
7 required by this chapter or by the trust agreement or resolution.

8 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
9 its political subdivisions are not liable for the debts of the corpo-
10 ration. Bonds issued under this chapter are payable solely from the
11 revenue or assets of the corporation and do not constitute a

12 (1) debt, liability, or obligation of the state or of a
13 political subdivision of the state; or

14 (2) pledge of the faith and credit of the state or of a
15 political subdivision of the state.

16 (b) The corporation may not pledge the credit or the taxing
17 power of the state or its political subdivisions. Each bond issued
18 under this chapter shall contain on its face a statement that

19 (1) the corporation is not obligated to pay it or the
20 interest on it except from the revenue or assets pledged for it; and

21 (2) neither the faith and credit nor the taxing power of
22 the state or of a political subdivision of the state is pledged to the
23 payment of it.

24 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
25 member or employee of the corporation is not subject to personal
26 liability or accountability because of the execution or issuance of
27 bonds.

28 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

29 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or

1 property of the corporation may not be used for political activity.
2 However, board members and employees may communicate with and appear
3 before committees of Congress, the state legislature, and municipal
4 governing bodies in connection with matters directly affecting the
5 corporation.

6 (b) A board member or employee who violates the provisions of
7 this section is personally subject to a civil penalty assessed by a
8 judge of the superior court in an amount not to exceed \$5,000. An
9 action to enforce this section may be brought by any person.

10 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
11 Railroad are employees of the corporation and not of the state. The
12 provisions of AS 39 do not apply to employees of the corporation.

13 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
14 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
15 employees. However, employees who are not executive officers may
16 organize and form, join, or assist an organization to engage in col-
17 lective bargaining through representatives of their own choosing and
18 engage in concerted activities for the purpose of collective bargain-
19 ing or other mutual aid or protection.

20 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
21 established a railroad labor relations agency that consists of three
22 members appointed by the governor. One member shall be a member of
23 the state personnel board. Members serve at the pleasure of the
24 governor.

25 (b) The railroad labor relations agency shall carry out the
26 provisions of AS 42.40.710 - 42.40.890.

27 (c) Members of the railroad labor relations agency receive no
28 compensation for their services, but are entitled to per diem and
29 travel expenses authorized for boards and commissions.

1 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
2 relations agency shall decide in each case, in order to ensure employ-
3 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
4 40.710 - 42.40.890 the unit appropriate for the purposes of collective
5 bargaining, based on such factors as community of interest, wages,
6 hours and other working conditions of the employees involved, the
7 history of collective bargaining, and the desires of the employees.
8 Bargaining units shall be as large as is reasonable, and unnecessary
9 fragmenting shall be avoided.

10 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
11 road labor relations agency shall investigate a petition if it is
12 submitted in a manner prescribed by the railroad labor relations
13 agency by

14 (1) an employee or group of employees or an organization
15 acting in their behalf alleging that 30 percent of the employees of a
16 proposed bargaining unit

17 (A) want to be represented for collective bargaining
18 by a labor or employee organization as exclusive representative;
19 or

20 (B) assert that the organization that has been certi-
21 fied or is currently being recognized by the corporation as
22 bargaining representative is no longer the representative of the
23 majority of employees in an appropriate unit; or

24 (2) the corporation alleging that one or more organizations
25 have presented to it a claim to be recognized as a representative of a
26 majority of employees in an appropriate unit.

27 (b) If the railroad labor relations agency has reasonable cause
28 to believe that a question of representation exists, it shall provide
29 for a hearing upon due notice. If the railroad labor relations agency

1 finds that there is a question of representation, it shall direct an
2 election by secret ballot to determine whether or by which organiza-
3 tion the employees desire to be represented and shall certify the
4 results of the election. Nothing in this subsection prohibits the
5 waiving of hearings by stipulation for the purpose of a consent elec-
6 tion in conformity with the regulations of the railroad labor rela-
7 tions agency or an election in a bargaining unit agreed upon by the
8 parties.

9 (c) The railroad labor relations agency shall determine who is
10 eligible to vote in an election held under this section and shall
11 establish rules governing the election. In an election in which none
12 of the choices on the ballot receives a majority of the votes cast, a
13 runoff election shall be conducted, the ballot providing for selection
14 between the two choices receiving the largest number of valid votes
15 cast in the election. If an organization receives the majority of the
16 votes cast in the election it shall be certified by the railroad labor
17 relations agency as exclusive representative of all the employees in
18 the bargaining unit. An election may not be held in a bargaining unit
19 or in a subdivision of a bargaining unit if a valid election has been
20 held within the preceding 12 months.

21 (d) Nothing in this chapter prohibits recognition of an organiza-
22 tion as the exclusive representative by the corporation by mutual
23 consent.

24 (e) An election may not be directed by the railroad labor rela-
25 tions agency in a bargaining unit in which there is in force a valid
26 collective bargaining agreement, except during a 90-day period preced-
27 ing the expiration date. However, no collective bargaining agreement
28 may bar an election upon petition of employees in the bargaining unit
29 but not parties to the agreement if more than three years have elapsed

1 since the execution of the agreement or the last timely renewal,
2 whichever was later.

3 Sec. 42.40.760. UNFAIR LABOR PRACTICES. (a) The corporation or
4 its agent may not

5 (1) interfere, restrain, or coerce an employee in the
6 exercise of the rights guaranteed in AS 42.40.720;

7 (2) dominate or interfere with the formation, existence, or
8 administration of an organization;

9 (3) discriminate in regard to hire or tenure of employment
10 or a term or condition of employment to encourage or discourage mem-
11 bership in an organization;

12 (4) discharge or discriminate against an employee because
13 the employee has signed or filed an affidavit, petition or complaint
14 or given testimony under AS 42.40.710 - 42.40.890;

15 (5) refuse to bargain collectively in good faith with an
16 organization that is the exclusive representative of employees in an
17 appropriate unit, including the discussing of grievances with the
18 exclusive representative.

19 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the corpo-
20 ration from making an agreement with an organization to require as a
21 condition of employment

22 (1) membership in the organization that represents the unit
23 on or after the 30th day following the beginning of employment or on
24 the effective date of the agreement, whichever is later; or

25 (2) payment by the employee to the exclusive bargaining
26 agent of a service fee to reimburse the exclusive bargaining agency
27 for the expense of representing the members of the bargaining unit.

28 (c) An organization or its agents may not

29 (1) restrain or coerce

1 (A) an employee in the exercise of the rights guaran-
2 teed in AS 42.40.720; or

3 (B) the corporation in the selection of a representa-
4 tive for the purposes of collective bargaining or the adjustment
5 of grievances;

6 (2) refuse to bargain collectively in good faith with the
7 corporation, if it has been designated in accordance with AS 42.40.-
8 710 - 42.40.890 as the exclusive representative of employees in an
9 appropriate unit.

10 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

11 If a verified written complaint by or for a person claiming to be
12 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-
13 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged
14 in a prohibited practice, is filed with the railroad labor relations
15 agency, it shall investigate the complaint or accusation. If it
16 determines after a preliminary investigation that probable cause
17 exists in support of the complaint or accusation, it shall try to
18 eliminate the prohibited practice by informal methods of conference,
19 conciliation, and persuasion. Nothing said or done during this en-
20 deavor may be used as evidence in a subsequent proceeding.

21 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor

22 relations agency fails to eliminate the prohibited practice by concil-
23 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
24 890 or before it attempts conciliation, it may serve a copy of the
25 complaint or accusation upon the respondent. The complaint or accusa-
26 tion and the subsequent procedures shall be handled in accordance with
27 the administrative adjudication portion of the Administrative Proce-
28 dure Act (AS 44.62).

29 Sec. 42.40.790. ORDERS AND DECISIONS. if the railroad labor

1 relations agency finds that a person named in the written complaint or
2 accusation has engaged in a prohibited practice, the railroad labor
3 relations agency shall issue and serve on the person an order or
4 decision requiring the person to cease and desist from the prohibited
5 practice and to take affirmative action that will carry out the pro-
6 visions of AS 42.40.710 - 42.40.890. If the railroad labor relations
7 agency finds that a person named in the complaint or accusation has
8 not engaged or is not engaging in a prohibited practice, the railroad
9 labor relations agency shall state its findings of fact and issue an
10 order dismissing the complaint or accusation.

11 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
12 relations agency may apply to the superior court in the judicial
13 district in which the prohibited practice occurred for an order en-
14 joining the prohibited acts specified in the order or decision of the
15 railroad labor relations agency. Upon showing by the railroad labor
16 relations agency that the person has engaged or is about to engage in
17 the practice, an injunction, restraining order, or other order that is
18 appropriate may be granted by the court and shall be without bond.

19 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
20 For the purpose of the investigations, proceedings, or hearings that
21 the railroad labor relations agency considers necessary to carry out
22 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
23 issue subpoenas requiring the attendance and testimony of witnesses
24 and the production of relevant evidence.

25 (b) The railroad labor relations agency may administer oaths,
26 examine witnesses, and receive evidence.

27 (c) The attendance of witnesses and the production of evidence
28 may be required from any place in the state at any designated place of
29 hearing.

1 (d) If a person refuses to obey a subpoena issued under AS 42.-
2 40.710 - 42.40.890, the superior court in the district in which the
3 person resides or is found may, upon application by the railroad labor
4 relations agency, issue an order requiring the person to comply with
5 the subpoena.

6 Sec. 42.40.820. REGULATIONS. The railroad labor relations
7 agency shall adopt regulations under the Administrative Procedure Act
8 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

9 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
10 person who violates a provision of an order or decision of the rail-
11 road labor relations agency is guilty of a misdemeanor and is punish-
12 able by a fine of not more than \$500.

13 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
14 of negotiation over the terms of a collective bargaining agreement, an
15 impasse as determined by the railroad labor relations agency exists
16 between the corporation and an organization, the railroad labor re-
17 lations agency shall appoint a person mutually agreeable to the
18 parties from a list of seven qualified mediators/arbitrators knowl-
19 edgeable in railway labor agreements to act as mediator in the dis-
20 pute.

21 (b) Before the determination of an impasse under this section,
22 the parties may also select a mediator by mutual consent.

23 (c) It shall be the function of the mediator to bring the
24 parties together to effectuate a settlement of the dispute, but nei-
25 ther the mediator nor the railroad labor relations agency has any
26 power of compulsion in mediation proceedings.

27 Sec. 42.40.850. STRIKES. (a) Following a decision by the
28 mediator to end the mediation proceedings, employees of a collective
29 bargaining unit may engage in a strike for a limited time if a

1 majority of the employees in that collective bargaining unit vote by
2 secret ballot to do so. The limit of the strike is determined by the
3 interest of the health, safety, or welfare of the public.

4 (b) The corporation may apply to the superior court in the
5 judicial district in which the strike is occurring for an order en-
6 joining the strike. A strike may not be enjoined unless it can be
7 shown that it has begun to threaten, or is about to threaten, the
8 health safety, or welfare of the public. A court, in deciding wheth-
9 er to enjoin the strike, shall consider the total equities in the
10 particular case, including the impact of a strike on the public and
11 the extent to which an employee organization and the corporation have
12 met their statutory obligations.

13 (c) If an impasse or deadlock still exists after the issuance of
14 an injunction, the parties shall submit the dispute to binding arbi-
15 tration. The arbitrator shall be the same person selected under
16 AS 42.40.840 and shall fashion the award the arbitrator considers
17 equitable.

18 (d) Notwithstanding (a) - (c) of this section, an organization
19 and the corporation may mutually agree to submit a dispute to binding
20 arbitration at any time.

21 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-
22 tion may participate in labor negotiations between the corporation and
23 an organization. The corporation shall seek advice of the Department
24 of Administration before entering into a collective bargaining agree-
25 ment concerning wages, hours, and other terms and conditions of em-
26 ployment. However, the final decision regarding collective bargaining
27 agreements, shall be made by the board.

28 (b) Upon the completion of negotiations between an organization
29 and the corporation, if a settlement is reached, the corporation shall

1 reduce it to writing in the form of an agreement. The agreement shall
2 include a grievance procedure that shall have binding arbitration as
3 its final step. Either party to the agreement has a right of action
4 to enforce the agreement by petition to the railroad labor relations
5 agency.

6 (c) The parties to an agreement under this section may agree to
7 terms that specify an expiration date for the agreement.

8 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
9 TION AND AUTHORIZATION. Upon written authorization of an employee
10 within a bargaining unit, the corporation shall deduct from the pay-
11 roll of the employee the monthly amount of dues, fees, and other
12 employee benefits as certified by the secretary of the exclusive
13 bargaining representative and shall deliver it to the chief fiscal
14 officer of the exclusive bargaining representative.

15 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of
16 AS 42.40.870, a collective bargaining settlement reached, or agreement
17 entered into, under AS 42.40.860 that incorporates union security
18 provisions, including a union shop or agency shop provision or agree-
19 ment, shall safeguard the rights of nonassociation of employees having
20 bona fide religious convictions based on tenets or teachings of a
21 church or religious body of which an employee is a member. Upon
22 submission of proper proof of religious conviction to the railroad
23 labor relations agency, the agency shall declare the employee exempt
24 from becoming a member of an organization. The employee shall pay an
25 amount of money equivalent to regular organization dues, initiation
26 fees, and assessments to the organization. Nonpayment of this money
27 subjects the employee to the same penalty as if it were nonpayment of
28 dues. The receiving organization shall contribute an equivalent
29 amount of money to a charity of its choice not affiliated with a

1 religious, labor, or employee organization. The organization shall
2 submit to the railroad labor relations agency proof of contribution.

3 Sec. 42.40.885. PROHIBITED ACTS. (a) The corporation or an
4 employee may not directly or indirectly

5 (1) require or coerce an employee to participate in any way
6 in any activity or undertaking unless the activity or undertaking is
7 related to the performance of official duties;

8 (2) require or coerce an employee to make any report con-
9 cerning an activity or undertaking of the employee's activities or
10 undertakings unless the activity or undertaking is related to the
11 performance of official duties;

12 (3) except as directly related to the performance of offi-
13 cial duties, require or coerce an employee to submit to an interro-
14 gation, examination, or psychological test that is designed to elicit
15 information concerning

16 (A) a personal relationship with a person connected
17 with the employee by blood or marriage,

18 (B) the employee's religious beliefs or practices,

19 (C) sexual matters,

20 (D) the employee's political affiliation or philoso-
21 phy;

22 (4) coerce an employee to invest or contribute earnings in
23 any manner or for any purpose;

24 (5) restrict or attempt to restrict after-working-hour
25 statements, pronouncements or other activities, not otherwise prohib-
26 ited by law or personnel rule, of an employee, if the employee does
27 not purport to speak or act in an official capacity.

28 (b) The provisions of (a) of this section do not diminish the
29 authority of an authorized law enforcement agency to conduct criminal

1 investigations of employees suspected of being involved in criminal
2 activity or to investigate other activity directly related to official
3 railroad business.

4 Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

5 (1) "collective bargaining" means the performance of the
6 mutual obligation of the corporation or its designated representatives
7 and the representatives of the employees to meet at reasonable times,
8 including meetings in advance of the budget making process, and nego-
9 tiating in good faith with respect to wages, hours, and other terms
10 and conditions of employment, or the negotiation of an agreement, or
11 negotiation of a question arising under an agreement and the execution
12 of a written contract incorporating an agreement reached if requested
13 by either party, but these obligations do not compel either party to
14 agree to a proposal or require the making of a concession;

15 (2) "election" means a proceeding conducted by the labor
16 relations agency in which the employees in a collective bargaining
17 unit cast a secret ballot for collective bargaining representatives,
18 or for any other purpose specified in AS 42.40.710 - 42.40.890;

19 (3) "organization" means a labor or employee organization
20 of any kind in which employees participate and that exists for the
21 primary purpose of dealing with the corporation concerning grievances,
22 labor disputes, wages, rates of pay, hours of employment and condi-
23 tions of employment;

24 (4) "terms and conditions of employment" means the hours of
25 employment, the compensation and fringe benefits, and the employer's
26 personnel policies affecting the working conditions of the employees,
27 but does not mean the general policies describing the function and
28 purposes of an employer.

29 ARTICLE 9. GENERAL PROVISIONS.

1 Sec. 42.40.900. CLAIMS. (a) All claims and lawsuits involving
2 activities of the railroad, including suits in contract, quasi-con-
3 tract, or tort, shall be brought against the corporation and not
4 against the state.

5 (b) For the purposes of actionable claims, undertakings, pay-
6 ments of judgments, execution, interest, punitive damages, statutes of
7 limitations, bonds, costs, and similar matters related to the pres-
8 entation and prosecution of claims by and against the corporation, the
9 corporation and its board members and employees enjoy the same rights,
10 privileges, and immunities as the state and state officers under
11 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

12 (c) Claims against the corporation are not subject to the pro-
13 visions of AS 44.77 regarding claims against the state.

14 (d) The corporation is not subject to the provisions of AS 44.-
15 80.010, regarding the state as a party to an action.

16 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
17 shall notify the Department of Law within 30 days before initiating
18 legal action unless special circumstances exist that require immediate
19 legal action to protect the corporation assets or to continue existing
20 service.

21 (b) If notice of legal action is not given under (a) of this
22 section, within seven days of taking action the board shall notify the
23 Department of Law of the action taken and of the special circumstances
24 that exempted the action from the requirements of (a) of this section.

25 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
26 the powers granted by this chapter shall be in all respects for the
27 benefit of the people of the state, for their well-being and prosper-
28 ity, and for the improvement of their social and economic conditions.
29 Subject to (b) of this section, the real and personal property of the

1 corporation and its assets, income, and receipts are exempt from all
2 taxes and special assessments of the state or a political subdivision
3 of the state.

4 (b) Bonds and notes issued under this chapter are issued by a
5 body corporate and public of the state and for an essential public and
6 governmental purpose. Therefore, the bonds and notes, the interest
7 and income from them, and all fees, charges, funds, revenue, income
8 and other money pledged or available to pay or secure the payment of
9 the bonds and notes or interest on them, are exempt from taxation
10 except for inheritance, transfer, and estate taxes.

11 (c) This section does not affect or limit an exemption from
12 license fees, property taxes, excise taxes, income taxes, or other
13 taxes, provided under any other law, nor does it create a tax exemp-
14 tion with respect to the interest of any business enterprise or other
15 person, other than the corporation.

16 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
17 ration is not subject to the jurisdiction of the Alaska Transportation
18 Commission.

19 (b) Unless specifically provided otherwise in this chapter, the
20 following laws do not apply to the operations of the corporation:

- 21 (1) AS 19;
- 22 (2) AS 30.15;
- 23 (3) AS 35;
- 24 (4) AS 37.05;
- 25 (5) AS 37.07;
- 26 (6) AS 37.10.010 - 37.10.060;
- 27 (7) AS 37.10.085;
- 28 (8) AS 37.20;
- 29 (9) AS 37.25;

1 (10) AS 38;

2 (11) AS 44.62.040 - 44.62.320.

3 (c) The corporation is subject to AS 45.50.562 - 45.50.596.

4 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
5 this chapter conflict with the provisions of other state law, the pro-
6 visions of this chapter prevail. Provisions of this chapter shall be
7 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
8 (Alaska Railroad Transfer Act of 1982).

9 Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
10 later than two years after the date of transfer, the Department of
11 Labor in consultation with the corporation shall develop and the
12 corporation, shall adopt a plan to achieve compliance with AS 18.60.
13 The plan shall be implemented and compliance achieved within five
14 years after it is adopted.

15 (b) No later than two years after the date of transfer, the
16 corporation in consultation with the Department of Public Safety and
17 appropriate municipal officials, shall develop and adopt a plan to
18 achieve compliance with building and related safety codes applicable
19 to facilities of the corporation. The plan shall be implemented and
20 compliance achieved within five years after it is adopted. In the
21 sole determination of the commissioner of public safety, any existing
22 building owned or controlled by the corporation that does not present
23 a serious safety hazard and for which compliance would be uneconomical
24 in consideration of its remaining useful life shall be exempted from
25 compliance with state or municipal safety codes.

26 Sec. 42.40.940. NEGOTIATION FOR SALE OF THE RAILROAD. The
27 governor may require the board to negotiate in good faith the sale of
28 the Alaska Railroad.

29 Sec. 42.40.950. REVERSION OF ASSETS. If the corporation ceases

1 to exist, for reasons other than sale of the Alaska Railroad, its
2 assets revert to the state.

3 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the con-
4 text otherwise requires,

5 (1) "board" means the board of directors of the Alaska
6 Railroad Corporation;

7 (2) "bonds" means bonds, bond anticipation notes, notes,
8 refunding bonds, or other obligations;

9 (3) "corporation" means the Alaska Railroad Corporation;

10 (4) "date of transfer" means the date on which the United
11 States Secretary of Transportation delivers the transfer documents
12 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

13 (5) "employees" means all persons employed by the corpo-
14 ration including executive officers;

15 (6) "executive officer" means the corporation's chief
16 executive officer, an employee who fulfills management functions and
17 is so designated by the board, and employees occupying the following
18 positions on the date of transfer: general manager, assistant general
19 manager, assistant to the general manager, chief of administration,
20 and general counsel;

21 (7) "land" means any interest in real property, including
22 tide and submerged land and any right appurtenant to the interest;

23 (8) "rule" means a standard of general application or the
24 amendment, supplement, revision, or repeal of a standard adopted by
25 the corporation to implement, interpret, or make specific the law
26 enforced or administered by it to govern its procedure.

27 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
28 the Alaska Railroad Corporation Act.

29 * Sec. 3. AS 42.40.010 is amended to read:

1 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
2 established the Alaska Railroad Corporation. The corporation is a
3 public corporation and is an instrumentality of the state [WITHIN THE
4 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
5 a legal existence independent of and separate from the state. The
6 exercise by the corporation of the powers provided in this chapter is
7 considered an essential government function of the state.

8 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
9 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
10 the terms of the appointed members of the first board of directors of the
11 Alaska Railroad Corporation are as follows:

- 12 (1) one shall serve a term of two years;
- 13 (2) two shall serve a term of three years;
- 14 (3) two shall serve a term of four years; and
- 15 (4) two shall serve a term of five years.

16 * Sec. 5. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
17 cable after establishment of the Alaska Railroad Corporation and before
18 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
19 tion and its employees shall adopt collective bargaining agreements that
20 continue the provisions of the agreements in effect between the Alaska
21 Railroad and its employees on the date of transfer of the railroad. The
22 collective bargaining agreements adopted under this section between the
23 corporation and its employees shall remain in effect to the extent required
24 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

25 (b) The board of directors of the Alaska Railroad Corporation shall
26 on or before the date of transfer of the Alaska Railroad to the state adopt
27 personnel rules necessary to prevent an interruption of services of the
28 railroad.

29 (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of

1 1982), within 180 days after the first meeting of the board of directors of
2 the Alaska Railroad Corporation, the board and representatives of employee
3 bargaining units shall establish procedures for the renegotiation of col-
4 lective bargaining agreements adopted under (a) of this section. The board
5 shall renegotiate all agreements adopted under (a) of this section within
6 two years after the date of transfer of the Alaska Railroad to the state
7 unless the parties agree to the contrary.

8 * Sec. 6. SALE OF RAILROAD. (a) Not later than two years following
9 the date of the transfer of the Alaska Railroad to the state, the Board of
10 Directors of the Alaska Railroad Corporation, in consultation with the
11 state, shall request proposals from the private sector for the acquisition
12 or operation of the Alaska Railroad. The board may engage the services of
13 an investment banking firm or other professional expertise to assist in the
14 development of the request and evaluation of proposals received. The board
15 shall consider every proposal from the private sector for the acquisition
16 or operation of the Alaska Railroad, even if it is not made in response to
17 a request for proposals under this subsection.

18 (b) In order to be considered responsive, a proposal must

19 (1) ensure continued or improved rail service;

20 (2) return to the state its investment in the Alaska Railroad to
21 the extent possible;

22 (3) be consistent with the terms and conditions of 45 U.S.C.
23 1201 - 1214 (Alaska Railroad Transfer Act of 1982), and not activate the
24 reversion provisions of 45 U.S.C. 1209 (Alaska Railroad Transfer Act of
25 1982);

26 (4) demonstrate with reasonable certainty that the railroad
27 after acquisition by the private sector will be operated as a profitable
28 carrier; as used in this paragraph, "profitable carrier" means a carrier
29 that will be able to

1 (A) generate sufficient revenue to meet its expenses,
2 including reasonable maintenance of necessary equipment and facil-
3 ities; and

4 (B) finance its capital needs in the private market; and

5 (5) demonstrate how the railroad can continue operation of
6 services, including current levels of passenger service.

7 (c) The board may negotiate the details of any proposal found to be
8 responsive, including the execution of a letter of intent to conclude a
9 transfer upon approval of the governor and the legislature.

10 (d) Within one year after requesting proposals under (a) of this
11 section, the board shall submit a report on the results of the process to
12 the governor, including its specific findings on the responsiveness of any
13 proposal received and its recommendations for conclusion of a transfer of
14 the railroad or its management to the private sector.

15 (e) Within 120 days after receipt of the board's report, if the board
16 has recommended transfer of the Alaska Railroad or its management to the
17 private sector, the governor shall

18 (1) disapprove the proposed transfer; or

19 (2) submit the report and recommendations to the legislature.

20 (f) Failure by the governor to act within 120 days after receipt of
21 the board's report shall be considered approval.

22 (g) The legislature may disapprove a proposed transfer without modi-
23 fication by law enacted within 45 days after the proposal is submitted. If
24 a proposal is submitted while the legislature is not in session, the legis-
25 lature may disapprove the proposal with 45 days after the beginning of the
26 next regular session. Failure by the legislature to act within the period
27 required under this subsection shall be considered approval of the pro-
28 posal.

29 (h) Unless a proposal under (a) of this section is approved, the

1 process provided in this section shall be repeated every two years.

2 (i) The board shall, within two years after the date of transfer of
3 the Alaska Railroad to the state, direct the executive officer of the
4 Alaska Railroad Corporation to prepare a report for the governor and the
5 legislature on the feasibility of other operational alternatives for trans-
6 fer consistent with the criteria under (b) of this section of all or part
7 of the railroad to the private sector, including allowing recipients of
8 permanent fund dividends to direct their dividends to a railroad purchase
9 fund.

10 * Sec. 7. SPECIAL REPORT. The corporation shall study any problems
11 created by vibrations due to operating the railroad from Ship Creek through
12 Inlet View to the Turnagain Area and extending to Potter's Marsh. The
13 study shall include consideration of any potential for problems that may be
14 created by hauling coal and larger quantities of gravel along that portion
15 of the rail line. By February 1, 1986, the corporation shall present a
16 report to the legislature on the study containing recommendations for
17 correcting any problems identified.

18 * Sec. 8. Section 3 of this Act takes effect on the effective date of
19 an amendment to the constitution of the State of Alaska relating to the
20 Alaska Railroad.

21 * Sec. 9. Sections 1, 2, and 4 - 7 of this Act take effect immediately
22 in accordance with AS 01.10.070(c).

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 5-1-84

REQUEST

FISCAL DETAIL

Bill/Resolution No.: CS HB 512 (Fin)
 Title: Alaska Railroad Corporation Act of 1984
 Sponsor: Hayes, et. al.
 Requestor: Rep. Bettisworth
 Date of Request: 5/1/84

Agency Affected:
 Program Category Affected:
 BRU, Program or Subprogram(s) Affected:
 Alaska Railroad

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		24,350				
200 TRAVEL		140				
300 CONTRACTUAL		5,900				
400 SUPPLIES		4,000				
500 EQUIPMENT		1,200				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		1,500				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		37,090				
CAPITAL	-0-	-0-				
REVENUE	-0-	37,350				

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER		37,350				
TOTAL	-0-	37,350				

POSITIONS:

FULL-TIME		478				
PART-TIME		38				
TEMPORARY		64/300				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Representative Bettisworth *By Stephen Drisk*
 Division: _____ Phone: 465-3706
 Date: 5/1/84

Approved by Commissioner: Al Adams, Chair *AAA*
 Agency: House Finance Committee Date: 5/1/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

CSHB 512 (Finance)

Fiscal Note Analysis

The Fiscal Note dated 5-1-84 contains operating revenues and expenses as well as other one time only expenses related to the transfer of the Railroad.

The Fiscal Note does not include capital expense items. Capital items should be included in a separate appropriation bill. The appropriation bill should contain an appropriation for acquisition of the Railroad in the amount of \$22,300,000 and \$9,000,000 for capital improvements including OSHA and building code rehabilitation upgrades and replacement of the working capital fund, etc.

ALASKA RAILROAD
Operating Expenses*
FY 85 (in \$000)

ATTACHMENT A

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (HB 352)

	Alaska Railroad							Board of Dir.	Other Expenditures				
	Dec.	Jan.	Feb.	March	April	May	June		Total	ARR Trans. Team	Est. Corp.	Other	Total
<u>Personal Services</u>													
Wages	2,400	2,640	2,640	2,800	2,910	3,035	3,160	19,585					
Fringe	540	590	590	625	650	675	700	4,370					
Sub Total								<u>23,955</u>	<u>120</u>		<u>275</u>	<u>24,350</u>	
<u>Travel</u>													
	12	12	12	16	16	16	16	<u>100</u>	<u>40</u>			<u>140</u>	
<u>Contracts</u>													
	370	370	360	350	350	350	350	<u>2,500</u>		<u>1,650</u>	<u>1,200</u>	<u>550</u>	<u>5,900</u>
<u>Supplies</u>													
	340	350	330	480	555	700	720	<u>3,475</u>			<u>525</u>	<u>4,000</u>	
<u>Equipment</u>													
	100	148	140	180	200	212	220	<u>1,200</u>				<u>1,200</u>	
<u>Grants & Claims</u>													
	200	200	200	200	200	250	250	<u>1,500</u>				<u>1,500</u>	
<u>Total</u>													
	<u>3,962</u>	<u>4,310</u>	<u>4,272</u>	<u>4,651</u>	<u>4,881</u>	<u>5,238</u>	<u>5,416</u>	<u>32,730</u>	<u>160</u>	<u>1,650</u>	<u>2,000</u>	<u>550</u>	<u>37,090</u>

*Minor Discrepancies due to rounding

ALASKA RAILROAD
Operating Expenses*
Analysis by Department
FY 85

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (HB 352)

	December	January	February	March	April	May	June	Total
General Manager & Staff								
<u>Personal Services</u>								
Wages	72	92	92	98	101	106	110	671
Fringe	16	21	21	22	22	23	24	149
Travel	2	2	2	3	3	3	3	18
Contracts	2	2	2	2	2	1	1	12
Supplies	9	9	8	11	12	15	16	80
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	101	126	125	136	140	148	154	930
<u>Transportation</u>								
<u>Personal Services</u>								
Wages	985	1,080	1,080	1,148	1,190	1,241	1,290	8,014
Fringe	222	243	243	257	267	277	286	1,795
Travel	2	2	2	2	2	2	2	14
Contracts	166	165	166	166	164	165	165	1,157
Supplies	140	143	133	202	236	300	310	1,464
Equipment	5	13	10	15	20	20	20	103
Grants & Claims	0	0	0	0	0	0	0	0
Total	1,520	1,646	1,634	1,790	1,879	2,005	2,073	12,547
<u>Motive Power & Equipment</u>								
<u>Personal Services</u>								
Wages	505	557	557	588	609	634	661	4,111
Fringe	114	124	124	131	137	141	146	917
Travel	1	1	1	2	2	2	2	11
Contracts	49	48	47	47	47	47	47	332
Supplies	76	77	73	107	124	157	162	776
Equipment	60	80	75	100	105	110	110	640
Grants & Claims	0	0	0	0	0	0	0	0
Total	805	887	877	975	1,024	1,091	1,128	6,787

*Minor Discrepancies due to rounding

(Continued)

	December	January	February	March	April	May	June	Total
<u>Engineering</u>								
Personal Services								
Wages	480	539	539	558	580	604	629	3,929
Fringe	108	118	118	125	130	134	140	873
Travel	1	1	1	2	2	2	2	11
Contracts	18	19	15	12	12	12	12	100
Supplies	70	74	69	100	115	143	147	718
Equipment	30	50	50	60	65	67	75	397
Grants & Claims	0	0	0	0	0	0	0	0
Total	<u>707</u>	<u>801</u>	<u>792</u>	<u>857</u>	<u>904</u>	<u>962</u>	<u>1,005</u>	<u>6,028</u>
<u>Administration</u>								
Personal Services								
Wages	289	304	304	332	347	362	377	2,315
Fringe	65	67	67	74	78	80	84	515
Travel	2	2	2	3	3	3	3	18
Contracts	111	113	107	101	104	104	104	744
Supplies	9	9	8	10	11	14	15	76
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	<u>476</u>	<u>495</u>	<u>488</u>	<u>520</u>	<u>543</u>	<u>563</u>	<u>583</u>	<u>3,668</u>
<u>Marketing & Sales</u>								
Personal Services								
Wages	48	48	48	53	58	58	62	375
Fringe	11	11	11	12	13	13	14	85
Travel	4	4	4	4	4	4	4	28
Contracts	6	5	5	4	4	4	4	32
Supplies	3	3	3	4	4	5	6	28
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	<u>72</u>	<u>71</u>	<u>71</u>	<u>77</u>	<u>83</u>	<u>84</u>	<u>90</u>	<u>548</u>
<u>Overheads</u>								
Personal Services								
Wages	21	21	21	24	25	30	32	174
Fringe	5	5	5	5	5	7	7	39
Travel	0	0	0	0	0	0	0	0
Contracts	18	18	18	18	17	17	17	123
Supplies	35	37	35	46	51	65	67	336
Equipment	5	5	5	5	10	15	15	60
Grants & Claims	200	200	200	200	200	250	250	1,500
Total	<u>284</u>	<u>286</u>	<u>284</u>	<u>298</u>	<u>308</u>	<u>384</u>	<u>388</u>	<u>2,232</u>

May 2, 1984

Amendment # 1

ALASKA RAILROAD

Pg. 2 line 21 after the word "capital" add the words "for expansion".

Pg. 2 line 29 add the words "most efficient and" ~~prior~~ to the word "prudent". Add the words "consistent with the technology in use" after the word ~~prudent~~ "Practices" on line 1, page 3

Pg. 3 line 3 add the following subsections:-

(H) Provide for the employment of women and minorities in all job classifications in their proportion in the state population.

(I) Provide for the payment of equal pay for jobs of comparable worth.

Pg. 3 line 3 after the word "communication" add the word " pipeline".

Pg. 3 line 28 change "10 years" to "one year".

Pg. 4 line 7 add a new subsection (4) to read:

(4) No member of the board shall be an employee or owner of a transportation company, a company using the railroad's freight services, except infrequently, or a lessee of railroad lands.

Pg. 4 line 15 after the word "board" add the words "appointed after December 31, 1986"

Pg. 4 line 16 add an additional sentence after the word "each" which reads:

"Board members appointed prior to December 31, 1986 shall be interim appointees serving at the pleasure of the governor without legislative confirmation."

Pg. 6; line 9 after the word "capital" add the words "for expansion"

Pg. 14 line 15 after the word "exchange" add the word "condemnation".

Pg. 14 line 29 after the word "use" add the word "expansion".

Pg. 19 line 6 remove the period after word "greater" and add the words: "except that the railroad may acquire right-of-way, engage in engineering and planning, and obtain permits as if authorized to construct unlimited miles."

Pg. 48 line 28 after the word "transfer" add "at any time after December 31, 1995".

Pg. 49 line 22, after the word "state" insert "direct the railroad's executive officer".

Lindauer.

Amendment

Page 4. line 7
add a new subsection to read.

~~and~~ (5). One member
shall be a member
of a railroad collective
bargaining unit.

HOUSE FINANCE COMMITTEE

MEETING OF 5/2

SUBJECT JL - #1

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE	X	
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN		
WARD	X	
ZHAROFF	X	
TOTAL	9	1

HOUSE FINANCE COMMITTEE

MEETING OF 5/2

SUBJECT # 5

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN	X	
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN		
WARD	X	
ZHAROFF	X	
TOTAL	9	1

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT H-7

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH		X
DUNCAN		X
FRITZ	X	
FURNACE		X
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN		A
WARD		X
ZHAROFF		X
TOTAL	3	1

FAICS

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT H 8

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN	X	
FRITZ		X
FURNACE		X
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN	X	
WARD		X
ZHAROFF	X	
TOTAL	4	7

FAILS

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 9

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE	X	
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN	X	
WARD	X	
ZHAROFF	X	
TOTAL	10	1

PASSED

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT

11

MEMBER	YES	NO
ADAMS		X
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE	X	
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN	X	
WARD	X	
ZHAROFF		X
TOTAL	6	5

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 12

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		✓
DUNCAN		X
FRITZ		X
FURNACE		X
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN		X
WARD		X
ZHAROFF		X
TOTAL	1	10

FAILS

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT

VIA - J N RESOND
11

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH		X
DUNCAN	X	
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER		X
MARTIN		X
WARD		X
ZHAROFF	X	
TOTAL	6	5

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT # 15

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN	X	
FRITZ		X
FURNACE	X	
GRUSSENDORF	X	
HURLBERT		X
LINDAUER	X	
MARTIN		X
WARD	X	
ZHAROFF	X	
TOTAL	6	5

PASSES

32

0

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 11

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN		X
FRITZ		X
FURNACE	X	
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN	X	
WARD		X
ZHAROFF		X
TOTAL	3	8

FAILS

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 15

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN	X	
FRITZ		X
FURNACE	X	
GRUSSENDORF	X	
HURLBERT		X
LINDAUER	X	
MARTIN		X
WARD	X	
ZHAROFF	X	
TOTAL	6	5

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF _____

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER		X
MARTIN	X	
WARD	X	
ZHAROFF		X
TOTAL	7	4

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT

FZ 7-7364

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN	X	
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN	X	
WARD	X	
ZHAROFF	X	
TOTAL	10	1

PASSED

Rep. Bob Bettisworth

CS for HB 512 (Finance)

Significant Differences Between 4/28/84 Draft And 5/1/84 Draft

1. The title is changed back to a much broader version.
2. The Corporation is now housed within the Department of Commerce and Economic Development until a constitutional amendment removes it. (Page 3, Line 9)
3. Commissioners of Department of Transportation and Public Facilities and the Department of Commerce and Economic Development are on the Board and remain on the Board even after a constitutional amendment. (Page 3, Line 16)
4. The Board shall contain at least two members from each Judicial District served directly by the Railroad. (Page 3, Line 22)
5. Public "consumer" is removed from the Board.
6. An employee who is a member of a bargaining unit representing employees of the Corporation is removed from the Board.
7. The Chief Executive Officer is removed from the Board.
8. Malfeasance and misfeasance are added as grounds for the Governor to remove a Board member. (Page 4, Line 26)
9. Delegation of Board powers to the Chief Executive is changed from "shall delegate" to "may delegate". (Page 5, Line 26)
10. Accounting and auditing procedures are required to comply with ICC standards for Class I Railroads. (Page 6, Line 15 and Page 17, Line 25)
11. Requirement that all complaints and suggestions received be responded to in the annual report is removed. (Page 17, Line 22)
12. Audit section is changed to require the performance audit to be conducted by a recognized railroad management expert. (Page 18, Line 27)

13. Legislative approval by law is required before the Railroad Corporation may:

- a. Convey the Corporation's entire interest in land.
- b. Issue securities, bonds or contracts in an amount exceeding \$5,000,000.00.
- c. Extend the Railroad by more than 25 miles or 5 percent.

14. The provision requiring the concurrence of the Governor before the Corporation may request direct appropriations from the Legislature is removed. (Page 26, Line 18)

15. A provision is added allowing the Governor to require the Board to negotiate for sale of the Railroad. (Page 45, Line 16)

16. Positive action by the Governor within 120 days is required (instead of no action) to disapprove sale of the Railroad. (Page 49, Line 5)

17. Positive action by the Legislature within 45 days is required (instead of no action) to disapprove any proposed sale of the Railroad. (Page 49, Line 12)

18. The requirement for submission of a report on operational alternatives is changed from five years after the date of transfer to two years after the date of transfer. (Page 49, Line 21)

19. The effective date is changed to immediate (except for the section removing the Railroad Corporation for the Department of Commerce and Economic Development which would be effective after the constitutional amendment). (Page 50, Line 7)

Alaska State Legislature

H. PAPPY MOSS, CHAIRMAN
BETTYE FAHRENKAMP, VICE CHAIRMAN
JAN FAIKS
DON GILMAN
JALMAR KERTTULA



STATE CAPITOL
POUCH V
JUNEAU, ALASKA
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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in
CS for House Bill No. 512 (Transportation)*

March 29, 1984

Title

Includes a brief description of the main elements of the bill. The list of statutes the corporation is exempt from is also included in the title.

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of the Department of Transportation and Public Facilities with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270

and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 42.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

*Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that may cease to be an option without state action. It also states that the railroad is necessary for long-term economic growth of the state and an essential part of the state transportation network. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. That it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity. It is also charged with protecting the railroad utility corridor.

*Section 2
Section 42.40.010

The Alaska Railroad is established as a public corporation within the Department of Commerce and Economic Development. However, Section 3 would remove the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 42.40.020

The corporation is run by a board with nine members including the Commissioner of Commerce and Economic Development, the Chief Executive Officer of the Corporation and one appointed member who is a representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the Commissioner of Commerce and Economic Development and the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

However, see Section 4 where 42.40.020 is amended if the Constitutional Amendment passes. Under this amendment the Commissioner of Commerce and Economic Development is removed from the board and the board is increased to eight appointed members.

The House version, [CSHB 512(Trsp)], is slightly different in that it gives the governor more discretion in naming public members to the board. In the Senate Bill the two railroad experts are mandatory members but in the House version they are optional. In addition, the Senate Bill requires all members of the board, except for the railroad experts, to be registered voters but in the House Bill the two non-registered voters may be any two of the seven public members. The House Bill also differs slightly in its description of the work experience requirements of board members. It allows work experience if it relates to fields relevant to this Act while the Senate Bill just requires five years of business experience. The Senate requirement is limited to business experience in Alaska while the House does not have a similar limitation.

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms and serve at the pleasure of the Governor. Section 10 sets up how the first board of directors will serve which results in staggered terms for members that follow.

However, see Section 6 and Section 7 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its power if it has a quorum of members.

Section 42.40.050 An appointed member of the board received \$250 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.

Sec. 42.40.060 The board is to elect a chairman and vice-chairman from its membership and appoint a secretary.

Section 42.40.100 - The board is to manage the corporation according to the guidelines provided in this section. This corporation is to be generally self-sustaining, subject to the ICC consistent with the Transfer Act and provide safe, efficient and economical transportation. The board must apply to the legislature for appropriations if a service is provided which is not self-sustaining. In addition, the board is responsible for reviewing all land disposals so that future expansions of the railroad are not restricted.

The House Bill, [CSHB 512(Trsp)], does not include the provision requiring the corporation to apply for an appropriation if it provides a service which is not self sustaining.

Section 42.40.110 The board appoints the Chief Executive Officer of the corporation and fixes his compensation. The Chief Executive Officer of the corporation appoints other executive officers. The salaries of the executive officers appointed by the Chief Executive Officer are subject to board approval.

The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action.

In addition to the delegated activities which require board approval found in the Senate version, the House Bill, [CSHB 512(Trsp)], requires specific board approval to begin capital projects with an estimated completion cost of \$500,000 or on estimated completion time of more than one year.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the meetings shall be given. The board is required to keep minutes of the meetings.

In addition to the requirement that minutes be kept of the meetings the House Bill, [CSHB 512(Trsp)], requires that a certified copy of the public portion of the minutes of each meeting be sent to the governor and the legislature.

Section 42.40.160 A quorum is established as five and an affirmative action by the board also requires five votes. The board may confer and vote by teleconferencing but may not vote by proxy.

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

In the House Bill, [CSHB 512 (Trsp)], the list of subjects to be covered in an executive session is more general in nature than the list in the Senate Bill. In addition, the list is permissive rather than an exclusive list. There is no majority vote requirement to call an executive session nor is there a prohibition against taking action in an executive session. There is no restriction to discuss only the topic contained in the motion.

Section 42.40.180 The board is to adopt rules to carry out the purposes of this chapter. It is required to give public notice 15 days before it adopts, amends or repeals a rule. Public notice consists of publishing in at least three newspapers of statewide circulation and to persons requesting notice. Every interested party must be given one hour to testify and all relevant matter must be considered.

But see Section 8 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board.

The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.

Section 42.40.190 The board is required to set up a process for adopting emergency rules. Emergency rules are to be limited to situations where they are necessary for the orderly operation of the corporation's facilities or programs. The requirements of 42.40.180 need not be followed but within 10 days public notice is to be given of the action. Rules adopted under this section remain in effect for no more than 120 days unless the procedures of 42.40.180 are followed.

The House Bill, [CSHB 512(Trsp)], has no similar restrictions or requirements for emergency rules. In the preceding section, the board is given full authority to set up a procedure for adopting emergency rules but the question of what topics may be covered by the emergency rules is not addressed.

Section 42.40.200 Sets up a procedure for challenging a rule adopted under 42.40.180(a) and 42.40.190(a) but restricts the ability to declare a rule invalid for procedural deficiency.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.210 The board may, by resolution, adopt the existing rules without following the rule making procedure of 42.40.180.

The rules adopted by resolution may not be inconsistent with this chapter or other state law. The House Bill also contains a

provision whereby the substance of previous federal rules may be adopted however the operative effect of this provision is unclear.

Section 42.40.220 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure by rule if they are of a nonpublic, privileged, or proprietary nature.

The House Bill, [CSHB 512 (Trsp)], requires that the board must by rule identify the records as confidential before they are withheld from the public.

Special Note: The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

Special Note: The House Bill, [CSHB 512(Trsp)], contains a section requiring an oversight report to the governor and the legislature before certain action is taken (Sec. 42.40.280). The Senate Bill contains no similar provision.

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

The House Bill, [CSHB 512 (Trsp)], also includes a provision that the report may include suggestions for legislation relating to the structure, powers or duties of the corporation or to operate facilities of the corporation.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

In the House Bill, [CSHB 512 (Trsp)], the performance audit is to be conducted by a qualified professional performance auditing firm rather than a railroad management expert as provided in the Senate Bill.

Section 42.40.280 The board must adopt a long-range program and capital improvement plan. The plan covers a five year period and must be updated annually. Copies of the updated plan are to be provided to the governor and the legislature by December 1 of each year.

The House Bill, [CSHB 512 (Trsp)], requires separate reports for each subject area. In addition, the board is required to consult with other state agencies when they develop the plans if another state agency is affected by their plans.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may sell or lease rail land however, none of the railroad utility corridor may be sold.

The House Bill, [CSHB 512(Trsp)], requires legislative approval for sale of rail land.

Section 42.40.360 The board may nominate federal land for state selection for a railroad purpose. The Commissioner of Natural Resources would acquire the land through the federal land selection process.

In addition, the board may request any state land from the Department of Natural Resources. Upon receipt of the written request the Commissioner of the Department of Natural Resources must reserve the land in the railroad's name for 180 days.

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

The House Bill, [CSHB 512 (Trsp)], does not contain a provision allowing transfer to the corporation for less than fair market value.

Section 42.40.380 The corporation is authorized to relocate rail facilities to state land when an emergency exists. The Chief Executive Officer makes the determination that it is necessary to relocate for safe and adequate rail operations. After the relocation the corporation is required to notify the Department of Natural Resources.

The House Bill, [CSHB 512 (Trsp)], does not require an emergency condition, rather it says simply that a physical condition must require relocation. However, the House Bill requires concurrence of Department of Natural Resources before the move.

Section 42.40.390 The board may develop rules governing land used by a third party. The rules are to protect the common health, safety, and welfare of the public and may not be limited by leases, contracts or other transaction.

No comparable provisions in the House Bill.

Section 42.40.400 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.410 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.420 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.430 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

The House Bill, [CSHB 512(Trsp)], allows the granting of a right-of-way on any rail property for use of a pedestrian walkway or trail. It does not contain a provision protecting parallel uses of the railroad corridor nor does it state who shall determine when the municipality shall vacate the right-of-way if it interferes with rail use.

Section 42.40.440 The corporation may acquire surplus property from either the federal government or the state.

Special Note: The House Bill contains a provision requiring compliance with state law if pesticides or herbicides are used by the corporation.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation is required to keep in force all manners of insurance to protect its assets, services, and employees from any potential liability. It may, however, provide for certain self-insurance retentions.

The corporation must provide public liability insurance under the House Bill. It is not authorized to self-insure.

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.49.600 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The proceeds from the bonds may not be used for any other purpose than that for which the instruments were originally issued. There is also a list of mandatory requirements that the instruments must comply with.

Special Note: The House Bill, [CSHB 512(Trsp)], sections on bonds and notes is substantially different from the Senate version. However, the powers, duties and obligations, of the corporations in relation to its ability to raise money through bonding ostensibly remains the same.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Payment of the principal or interest on lands may be made from assets or revenue of the corporation regardless of the source.

Section 42.40.640 This section authorizes the board to enter into certain agreements with holders of the bonds or bond anticipation notes and provides for a general authority to enter into additional agreements in the absolute discretion of the board if an agreement will make bonds or notes more marketable.

Section 42.40.650 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.660 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.670 The board is required to retain a financial advisor independent of an underwriter who is negotiating with them for a bond sale.

Section 42.40.680 The signatures of corporation officers on bonds or notes are valid regardless of the officers' current relationship to the corporation.

Section 42.40.690 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.700 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.710 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.720 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.750 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.760 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.770 The board or the employees organization may request the Department of Administration to participate in their contract negotiations. Any labor agreement accepted by the two parties must have a grievance procedure which has binding arbitration as its last step.

The House Bill, [CSHB 512(Trsp)], provides that the Department of Administration may participate in labor negotiations without stating at whose invitation or if in fact they need to be invited to participate. In addition, the corporation is required to confer with the Department of Administration before entering into labor negotiations.

Section 42.40.780 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees.

It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bill does. Those provisions can be found in the House Bill at; 42.40.740 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.

Section 42.40.790 Railroad employers have a full right to strike if a collective bargaining unit votes to do so by secret ballot. However, the parties may agree in writing to submit interpretation or application disputes to an arbitrator. Under this provision the railroad employees clearly fall under 23.40.200(a)(3) which are commonly referred to as "class 3" employees.

The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2

employees and class 1 employees (see AS 23.40.200). In the House version the employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

Section 42.40.800 Prohibits use of corporation money, assets or property for political activity except lobbying on matters which directly affect the corporation. It provides for a \$5000 penalty for violation of this section.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.810 Prohibits requiring or coercing employees to undertake activities, or restrain from activities, except as directly related to the performance of their official duties.

The House Bill, [CSHB 512(Trsp)] has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. The corporation board members and employees have the same immunities from liability for claims against the corporation as do other state officers. Claims against the corporation must first go through an administrative appeal process to the Department of Administration before going to court action.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 The corporation is exempt from the jurisdiction of the Alaska Transportation Commission. In addition, it is exempt from the following statutes:

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of DOT&PF with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270 and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

Section 42.40.930 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of the Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, [CSHB 512(Trsp)], has a substantially different list of positions under executive officer.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

Section 3 Amends 42.40.010 by removing the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 4 Amends 42.40.020(a) if the Constitutional Amendment passes by removing the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development if the Constitutional Amendment passes.

Section 6 Amends 42.40.030 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

Section 7 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

Section 8 Repeals 42.40.180 if the Constitutional Amendment passes and replaces it with a new section. The new section gives the board discretion in adopting a rule making process.

Section 9 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

Section 11 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

Section 12 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

Section 13 The effective date of Section 3-8 and 12 is the effective date of the Constitutional Amendment should it pass. Section 12 sections 1,2 and 9-11 take effect immediately.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1984

MAR 30 1984

SUBJECT: Alaska Railroad (CSHB 512 (Trsp))
TO: Representative Joe Hayes
FROM: Tamara Brandt Cook
Deputy Director *TBC*
Division of Legal Services

Here is the section by section analysis of HB 512 that you requested.

* Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds, among other things, that the Alaska Railroad is an essential part of the state transportation network that will cease to be an option without state action and that extending the railroad into natural resource areas is necessary for long-term economic growth. In (b) the purpose of the Act is stated to be, among other things, the creation of an entity to operate and manage the railroad pending the transfer of the railroad to private sector. It is the purpose of the legislature to create a public corporation to operate the railroad and that corporation should be created so that it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity.

* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation within the Department of Commerce and Economic Development.

Section 42.40.020 Seven members, at least five of whom are voters in the state, are appointed to the board of directors by the governor. No more than two appointed members may be from one judicial district and all members must have at least five years experience or training in fields relevant to the purposes of AS 42.40. The governor shall appoint one member who is an employee of the corporation and a member of a bargaining unit. The commissioner of commerce and economic development and the chief executive officer of the corporation shall serve as additional members. The appointed members are to be confirmed by the legislature.

This last provision can only function as a request to the governor to submit the members for confirmation. It is not, however, constitutionally enforceable under Article III, sections 25 and 26 of the State Constitution as construed in Bradner v. Hammond, 553 P.2d (Alaska, 1976).

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members. A member whose term expires serves until a successor has been appointed.

Section 42.40.050 An appointed member of the board receives \$400 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.060 The board elects from its membership a chairman and vice-chairman. The board appoints a secretary.

Section 42.40.100 The board is responsible for the management of the corporation. As part of this duty, the board is obligated to carry out certain itemized functions.

Section 42.40.110 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is

established, the board must delegate certain specified activities of the corporation. The board may require exercise of a delegated duty to be subject to board approval. Specific board approval is required for certain itemized actions.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The chairman must call a meeting every three months and may call other meetings as necessary. The board keeps minutes of meetings.

Section 42.40.160 Five members of the board constitute a quorum. Five affirmative votes are required for board action. The board provides for the manner of voting, but may not allow voting by proxy.

Section 42.40.170 The board may consider in an executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or information of a type treated as confidential by the Interstate Commerce Commission.

Section 42.40.180 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.190 The board may provide that rules and orders in effect on the date of transfer of the railroad to the state that are not inconsistent with AS 42.40 or other state law remain in effect.

Section 42.40.200 Information of the corporation is open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.210 A board member or executive officer of the corporation may not participate in a decision of the corporation in which that person or a member of his immediate family has a direct or indirect financial interest unless the interest is remote and participation is approved by the board. Within 120 days after the first meeting, the board shall adopt rules implementing this section, providing additional conflict of interest rules, and providing for the removal of a board member or executive officer who intentionally violates a prohibition contained in this section.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.260 A report describing the operations and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year of the railroad ends.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

Section 42.40.280 The board shall provide a state oversight report to the governor and the legislature before undertaking certain major actions. Requirements of the report are specified.

Section 42.40.290 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.300 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit.

Section 42.40.310 The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main

or branch line, or may be of lesser width if adjoining land is not rail land. Portions of the utility corridor may be leased or rented for transportation, communication, and transmission purposes. The corporation may authorize other uses of rail land, but sale is subject to approval of the legislature.

I note that, for some reason, other methods of disposing of land, such as trading it for other property, is not subject to legislative approval. This seems inconsistent from a policy point of view. It may also conflict with the "separation of powers" doctrine which is recognized in Alaska. Bradner v. Hammond, supra. While the precise question was not considered, a scheme that included legislative approval of a Cook Inlet land exchange survived consideration by the court. State v. Lewis, 559 P.2d 630 (Alaska 1977) However, that case involved approval of the exchange of large parcels of land only. The court emphasized the extreme nature of the state interest in settling the land issues arising out of the Alaska Native Claim Settlement Act and the unique nature of that situation. Neither of these considerations apply here. In this draft, legislative approval must be obtained before the sale of any parcel may take place, even very small parcels of little value. Requiring approval in every instance could interfere with the executive function of carrying out the purpose of the Act. Since only land of the Alaska Railroad Corporation is involved and not the land of any other state agency or entity, the provision could amount to local and special legislation.

Section 42.40.360 The board may request conveyance of land owned by or tentatively approved for transfer to the state. Upon receipt of a request the commissioner of natural resources shall temporarily reserve the land for railroad purposes and delay disposal or lease of that land under other laws. The temporary reservation remains in effect for 180 days.

Section 42.40.370 Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation, notify the corporation of reasons for refusal to classify the land for railroad purposes, or approve in part and deny in part the request. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or

subsurface estate. The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes.

Section 42.40.380 When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.390 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.400 The corporation may vacate land and title goes to the state.

Section 42.40.410 The corporation may acquire interests in federal land that is available under federal law.

Section 42.40.420 Upon request the corporation may grant to a municipality a right-of-way for a pedestrian walkway or trail. Before granting the right-of-way the board must require the municipality to agree to hold the corporation harmless and indemnify the corporation for any use made of the right-of-way and to vacate the right-of-way on request of the corporation if it interferes with expansion or replacement of railroad facilities.

Section 42.40.430 The corporation may acquire property available from the federal or state government.

Section 42.40.440 Vegetation control involving the use of pesticides or herbicides on land owned or managed by the corporation must be conducted in compliance with state requirements applicable to other state pesticide or herbicide use.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation must keep in force public liability insurance covering potential claims against the corporation or the state related to corporation activities.

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

This raises a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and the state constitution.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out AS 42.40.

Section 42.40.600 The corporation may issue bonds and bond anticipation notes. The board shall by resolution establish the form and manner of execution of bonds or bond notes. They may be sold as determined by the board and bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Bonds or notes are payable from corporation assets. Bonds or notes may be additionally secured from any source.

Section 42.40.640 An issue of bonds may be secured by a trust indenture or by a secured loan agreement giving powers to a corporate trustee by means of which the corporation may enter into any agreements with the trustees or holders of the bonds, pledge assets, and provide of any matter that affects the security of the bonds.

Section 42.40.650 In negotiating the sale of bonds or notes to an underwriter, the board must retain a financial advisor who is independent from the underwriter.

Section 42.40.660 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.670 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.680 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.690 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it, and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.700 A board member or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.710 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.720 Provisions relating to collective bargaining rights of public employees do not apply to the corporation's employees, but employees who are not executive officers may organize and engage in collective bargaining.

Section 42.40.730 A railroad labor relations agency is established to carry out the provisions of this article. Members receive no compensation but are entitled to per diem and travel expenses.

Section 42.40.740 The railroad labor relations agency shall decide the unit appropriate for the purposes of collective bargaining.

Section 42.40.750 The railroad labor relations agency must investigate a petition submitted by employees or a group of employees or organization alleging that 30 percent of the employees of a proposed bargaining unit want to be represented by an organization or that the organization reorganized by the corporation no longer represents the majority of employees in the unit. The railroad labor relations agency must also investigate a petition submitted by the corporation alleging that an organization has presented a claim to be recognized as representative of a majority of employees in a unit. The railroad labor relations agency must provide for a hearing on a question of representation and an election on the question if it finds that there is a question of representation. An election may not be held in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration of the agreement.

Section 42.40.760 Action that constitutes an unfair labor practice is set out.

Section 42.40.770 If a complaint that an unfair labor practice has occurred is filed with the railroad labor relations agency, it shall investigate the complaint and shall try to eliminate any prohibited practice found to exist by informal methods of conference.

Section 42.40.780 If the railroad labor relations agency fails to eliminate a prohibited practice by conference it may serve a copy of the complaint on the respondent and the complaint shall be handled under the administrative adjudication portion of the Administrative Procedure Act.

Representative Joe Hayes
Page 10
March 30, 1984

Section 42.40.790 If the railroad labor relations agency finds that a person has engaged in a prohibited practice, the agency shall issue an order requiring the person to desist and carry out the provisions of this Article. If the agency finds that a person named in a complaint has not engaged in a prohibited practice, the agency shall dismiss the complaint.

Section 42.40.800 The railroad labor relations agency may apply for an order from the court enjoining prohibited acts.

Section 42.40.810 The railroad labor relations agency may issue subpoenas, administer oaths, examine witnesses, and receive evidence.

Section 42.40.820 The railroad labor relations agency is required to adopt regulations to carry out this article.

Section 42.40.840 When negotiation of a collective bargaining agreement reaches an impasse, the railroad labor relations agency appoints a person to act as mediator. The mediator must attempt to bring the parties together to effectuate a settlement, but may not compel a settlement.

Section 42.40.850 After a decision by a mediator, the employees may strike for a limited time. The strike may be enjoined if it has begun to threaten the health, safety, or welfare of the public. After an injunction is issued, if an impasse still exists the dispute shall be submitted to binding arbitration.

Section 42.40.860 The corporation shall seek advice from the Department of Administration before entering into a collective bargaining agreement, but the final decision regarding the agreement shall be made by the board. An agreement shall be in writing and shall include a grievance procedure. Either party may enforce an agreement by petition to the railroad labor relations agency.

Section 42.40.870 On written authorization the corporation shall deduct from the payroll of an employee the amount of dues and employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver the money deducted to that bargaining representative.

Section 42.40.880 A collective bargaining agreement that incorporates union security provisions shall safeguard the

rights of nonassociation of employees with bona fide religious convictions and shall declare an employee exempt from becoming a member upon submission of proof of religious conviction. The employee must pay an amount equal to regular dues to the organization and the organization shall contribute it to a charity.

Section 42.40.890 Definitions of "collective bargaining", "election", and "organization" for purposes of this Article are provided.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. Certain laws applicable to claims against the state do not apply to the corporation.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.930 If provisions of this Act conflict with the provisions of other state law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions for the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

The following provisions take effect when a constitutional amendment is adopted:

* Section 3 The provision that the corporation is in the Department of Commerce and Economic Development is deleted.

* Section 4 The commissioner of commerce and economic development is eliminated from the board and another appointed member is added.

* Section 5 Reference to the commissioner of commerce and economic development is deleted.

* Section 6 Reference to the commissioner is deleted and the board members no longer serve at the pleasure of the governor.

* Section 7 The governor may remove a board member only for certain itemized causes.

* Section 8 The reference to the commissioner is deleted.

The following temporary law sections take effect immediately:

* Section 9 The corporation must prepare a report for the governor and the legislature on the long-term operations of the railroad. The report is due on January 1, 1988 and must contain specific recommendations on operational alternatives and the transfer of the railroad's operations to the private sector.

* Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

* Section 11 Before transfer of the railroad to the state, the corporation and its employees shall adopt collective bargaining agreements that continue the provisions in effect between the Alaska Railroad and its employees on the date of transfer. The agreements adopted under this section remain in effect to the extent required under the Alaska Railroad Transfer Act. On or before the date of transfer the board shall adopt personnel rules necessary to prevent an interruption of services, within 180 days after the first meeting of the board, the board and representatives of employee bargaining units shall establish procedures for the renegotiation of collective bargaining agreements. The board shall renegotiate all agreements adopted under this section within two years after the date of transfer.

The following sections contain effective dates:

Representative Joe Hayes
Page 13
March 30, 1984

* Section 12 Section 3 - 8 take effect on the effective date of a constitutional amendment relating to the Alaska Railroad.

* Section 13 The rest of the Act takes effect immediately.

TBC:ojb
J5/026

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER
Alaska Railroad Transfer Team

March 23, 1984

The Honorable Bette Cato
Chairman, House Transportation Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

Enclosed per your request is a fiscal note on the committee substitute for HE 512, an Act establishing the Alaska Railroad Corporation. Also enclosed is a detailed analysis with supporting documentation to explain its contents.

The estimates in this fiscal note are based on the results of the Alaska Railroad Transfer Team's Alaska Railroad Acquisition Assessment, released in December 1983. Although our "worst case" scenario has been used for these calculations, current indicators regarding uncertainty over potential traffic increases suggest this analysis for FY 85 is a more realistic forecast for determining actual fiscal impact.

Based on a request from the Senate Transportation Committee, the Transfer Team is re-assessing these estimates to develop a "best case" alternative for legislative consideration. This analysis will factor in the full impact of increased revenues from the export coal movement, SeaWay Express' entry into Seward, and additional special trains to meet the summer cruise ships at Whittier. This information will be provided to your committee as soon as it becomes available.

All estimates are presented in constant 1985 dollars and have been inflated from our original 1983 constant dollar estimates using an annual 6% inflation factor. The "general fund" line under the "funding component" is the projected annual shortfall to the State resulting from acquisition of the railroad. In FY 85, an overall appropriation of \$15.8 million will be needed to cover the expected shortfall.

The figures in this note are basically the same as those presented to the Senate Transportation Committee for the CS for SB 352. Another \$50,000 per year has been added to this note in response to the higher compensation levels for board members in Sec. 42.40.050, and the additional notice requirements in Sec. 42.40.090.

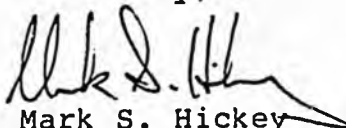
The FY 85 estimate is based on an assumption that actual transfer will occur somewhere between November and January of that fiscal year. Accordingly, most of the figures (e.g., revenues) are merely prorated for a seven month fiscal year ending in July 1985.

In addition, there are certain one-time, start-up expenditures directly attributable to the actual railroad transfer which causes the sizeable shortfall during FY 85. Included in this area are such items as \$4.9 million for replacement of the railroad's working capital fund, \$4.5 million for initiation of compliance with OSHA requirements and state and local building codes, and \$2 million for specific transition expenses to be incurred by the new corporation in taking over the railroad.

Another \$1.75 million of the 300 level contractual category is for the Alaska Railroad Transfer Team to perform its duties during FY 85. These funds are to support several one-time transition activities, most of which are already underway in this fiscal year. All other FY 85 fiscal impact to state agencies as a result of enacting this legislation has also been included in this submittal.

I trust this information helps to explain the highlights of the enclosed fiscal note. If you would like any additional assistance, please do not hesitate to contact me at 465-3900.

Sincerely,



Mark S. Hickey
State Railroad Coordinator

Enclosure

cc: Ray Gillespie, Legislative Liaison,
Office of the Governor
Ben Harding, Special Staff Assistant,
Office of the Governor
R. J. Knapp, Commissioner,
Department of Transportation &
Public Facilities
House Transportation Committee Members

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. CRB 512(Trsp)
Title: Alaska Railroad Corporation
Act of 1984

Sponsor: Hayes, et. al.
Requestor: Representative Cato
Date of Request: 3/22/84

FISCAL DETAIL

Agency Affected: _____
Program Category Affected: _____

BRU, Program or Subprogram(s) Affected:
Alaska Railroad

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		24,350				
200 TRAVEL		300				
300 CONTRACTUAL		4,800				
400 SUPPLIES		5,200				
500 EQUIPMENT		1,200				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		1,500				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING	-0-	37,350	57,800	58,050	57,350	57,950
CAPITAL	-0-	15,800	20,450	20,450	20,450	20,450
REVENUE	-0-	37,350	67,200	70,200	73,300	76,350

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	15,800	11,050	8,300	4,500	2,050
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	37,350	67,200	70,200	73,300	76,350
TOTAL	-0-	53,150	78,250	78,500	77,800	78,400

POSITIONS:

FULL-TIME	-0-	478	478			
FART-TIME	-0-	38	38			
TEMPORARY	-0-	64/300	64/300			

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund (Although the legislation does not speak to this point, every indication suggests use of a general fund appropriation to offset fiscal impact.)

ANALYSIS: Attach a separate page for analysis

Prepared By: Mark S. Hickey, State Railroad Coord. Phone: 465-3900
Division: Alaska Railroad Transfer Team Date: 3/22/84

Approved by Commissioner: R. J. Knapp Date: 3/22/84
Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION

FISCAL NOTE

Bill/Resolution No.: HB 512

Title: Alaska Railroad Corporation Act of 1984

BILL ANALYSIS

Overview:

This fiscal note is based upon the results of the Alaska Railroad Team's Alaska Railroad Acquisition Assessment, released in December 1983. That document provides a comprehensive analysis of the major issues concerning acquisition of the Alaska Railroad (ARR). It includes a thorough assessment of the financial exposure to the State from ensuring continued rail operations in accordance with the requirements of the Alaska Railroad Transfer Act of 1982 (ARTA).

The estimates presented in this fiscal note are derived from the "worst case" scenario of future railroad activity. Current indicators such as the continued uncertainty over the export coal contracts suggest use of this analysis as the most realistic forecast for determining actual fiscal impact. Please note that the acquisition cost of \$22.3 million for railroad purchase has been addressed in a separate fiscal note attached to the acquisition legislation.

While the data and forecasts used in both the Acquisition Assessment and this fiscal note reflect the input and work of the railroad and the United States Railway Association (USRA), the final estimates are based on independent analysis and downward adjustment by the Transfer Team. Our work includes such factors as removal of uncertain revenue increases, increased costs for compliance with state and local building codes, and additional adjustments for necessary capital rehabilitation.

This bill analysis is limited to providing explanations of the fiscal impact resulting from the proposed legislation. It should be noted that there exist policy conflicts between provisions of this legislation and the Sheffield Administration's Policy Statement of January 26, 1984.

Assumptions:

The FY 85 figures are based upon an assumption that actual railroad transfer will occur somewhere between November and January of that fiscal year. As a result, most of the estimates are merely prorated for a partial fiscal year ending in July 1985. However, there are certain one-time, start-up expenditures directly attributable to the actual railroad transfer which cause the sizeable shortfall during what is only a partial fiscal year.

Although a breakout of specific operating expenditures has been provided for FY 85 in order to provide the railroad operating entity a functioning program during its first year of operations, an actual budget structure has not been included to avoid prejudicing the new operating entity's prerogatives to formulate its own budget structure and subsequent submissions. Please note that the FY 85 submittal also contains the request for all funds needed by the Transfer Team and other state agencies to perform the duties resulting from passage of this legislation and acquisition of the railroad.

Although the current legislation places the Alaska Railroad within the Department of Commerce and Economic Development for purposes of the constitution, other sections of this bill anticipate removing it if a proposed constitutional amendment passes next November. Accordingly, this note does not address a specific "agency affected" to avoid a future conflict in this area.

Since the constitutional amendment cannot become effective until November if it passes, this note is predicated on an assumption that all funds for the corporation will be passed through by the respective line agency under which the corporation is located. Funds for all other state agencies will be passed on to the Transfer Team for further processing as appropriate.

Administrative costs incurred by the line agency under which the corporation is located should be minimal and will be covered as part of the corporation's overhead. Please note that all fiscal impact to state agencies resulting from this legislation have been coordinated by the Transfer Team and are reflected in this note.

All estimates are presented in constant 1985 dollars. An annual inflation factor of 6% has been used to convert the original 1983 constant dollar estimates in the Acquisition Assessment.

Operating Expenditures:

This estimate includes both general operating expenses and new expenditures resulting from the railroad transfer (i.e., additional costs due to potential loss of railroad gravel reserves under third-party claims). Included in the former category are costs for maintenance-of-way, maintenance of power and equipment, transportation services, communications, administration and overhead, marketing and real estate management. The latter category includes increased legal and overhead expenses, additional insurance and risk management contributions, fiscal impact to the Transfer Team and other state agencies because of railroad acquisition, and one-time, start-up costs for items such as the printing of new letterhead and the marking of personal property.

Although revenue is projected to increase during FY 87-89, costs during that period are not significantly larger than the first two years of operations due to the sizeable, one-time transfer related expenses immediately following transfer. These estimates are based on historical data provided by current railroad personnel and reflect anticipated operating expenditures needed to comply with the terms of ARTA.

Attachment A provides more details on the FY 85 submittal by object of expenditure. Some \$4 million of this estimate is to cover immediate expenditures resulting from actual transfer of the railroad. This includes the following:

- (1) \$1.750 million for the Alaska Railroad Transfer Team to perform its duties as outlined in Attachment B;
- (2) \$2 million for specific one-time, start-up costs to be incurred by the new entity for items such as the marking and inventorying of personal property, the printing of new stationery and payment warrants, additional legal costs, and certain corporation expenditures for the new Board of Directors;
- (3) \$200,000 in funds to conduct a final pre-transfer audit to establish the accuracy of balance sheets and the identification of accounting problem areas; and
- (4) \$80,000 in additional fiscal impact to the Department of Administration to ensure preservation of railroad archival records and additional labor relations work not budgeted for in the Transfer Team's FY 85 budget memo.

Another component of the FY 85 submittal includes \$270,000 in funds in direct response to the following requirements of the legislation:

- (1) \$200,000 to initiate the Special Report required in Section 9 on the feasibility of attracting private sector involvement in the railroad's operations;
- (2) \$35,000 to the Department of Natural Resources to respond to any state land request by the corporation under Section 42.40.360; and
- (3) \$35,000 to fund costs for the new railroad employees labor relations agency as provided in Section 42.40.780.

The remaining estimates in this area reflect the normal operating expenses by category for the part of FY 85 involving state operation of the railroad. These specific estimates have been prepared with the close cooperation of railroad administration and budgeting personnel. All expenditures for per diem and compensation of the Board of Directors have been included in the general estimates for the 100 and 200 categories.

Capital Expenditures:

The capital component of this fiscal note represents a combination of increased capital costs resulting from transfer and prorated expenditures for ongoing railroad operations. The analysis contained in Chapters 4 and 5 of the Acquisition Assessment serve as the basis for both of these estimates.

In addition, the results from the State's independent engineering condition assessment have been used to project an increased level of expenditure minimally acceptable to begin reversing deterioration of the railroad's physical plant, including the initiation of a systematic plan for replacing aged rolling stock. It is important to understand that engineering condition alone cannot be the basis for a projected level of sustained capital expenditure, but must be tempered by national trade-offs between long-term plant condition and available revenues.

The capital estimate of \$15.8 million includes a one-time expenditure of \$4.9 million to replace the railroad's working capital fund. ARTA establishes a process where little, if any, money will be transferred from the ARR's Revolving Fund because of pre-transfer federal claims and contingent liabilities that must be paid by the fund. As a result, an amount equal to about one month's worth of operating expenses (which is similar

to working capital requirements for other railroads) is needed to fund and maintain adequate working capital for the railroad after transfer.

Another capital expenditure resulting from railroad transfer is the initiation of compliance with Occupational Safety and Health Act (OSHA) requirements and state and local building codes. Approximately \$4.5 million per year has been set aside during the forecasted period to move toward compliance in these areas. Chapter 5.3 of the Acquisition Assessment provides more details regarding this requirement.

The remaining \$6.4 million of this estimate covers general railroad capital needs, prorated for the period of state ownership during FY 85. An additional \$7.85 million is projected for expenditure by the railroad for this program. Attachment C provides additional information regarding the capital improvement program to be performed during FY 85.

It should also be noted that based on a recent audit review of the ARR's financial statements, about \$4 million per year of capital expenditures could just as easily be categorized as operating costs (primarily maintenance-of-way expenditures) if generally accepted accounting principles are applied to the railroad. However, no adjustments have been made with our estimates to avoid creating greater confusion by conflicting with existing railroad procedures prior to a general system overhaul by the corporation upon transfer.

Revenue:

This estimate on a prorated basis represents projected FY 85 revenues from its freight, passenger and real property rental activities. The FY 85 revenue figure is based on a projected commodity mix fairly similar to the last two years of railroad operations. Attachment D contains some additional information from the ARR's 1983 Draft Annual Report regarding FY 82 and FY 83 operations.

These projections are based on information from the railroad and USRA, which were then adjusted downward by the Transfer Team to remove 50% of the net cash from anticipated revenue increases in export coal, interline and pipe traffic. If either of these movements were in fact to materialize in a significant way, it could sizeably reduce the need for general fund assistance during FY 87-89. Likewise, any major downswing from our projections would probably result in the need for even larger general fund assistance during those years.

Funding Source:

The "Other Funds" appearing on the fiscal note are railroad revenues.

Positions:

ARTA basically mandates a two-year period of full protection of current salaries and benefits for all employees who choose to transfer. What happens following that period becomes a matter for contractual negotiation between management and employees.

The figures presented in this part of the fiscal note are the actual number of employees in each category as of March 1, 1984. No estimate can be made of the actual number of those choosing to transfer, although it is anticipated that most employees will do so. In the case of temporary employees, the first number on this line is the actual number today, while the second estimate reflects the average number of temporary hires used in the summer for major maintenance work.

Summary:

The estimates provided in the attached fiscal note are primarily based on the Transfer Team's assessment of the likely fiscal impacts from state acquisition of the Alaska Railroad. It is important to reiterate that the acquisition cost of \$22.3 million has been addressed in a separate fiscal note attached to the acquisition legislation.

It is our view that the corporation's overall organization as currently envisioned in the proposed legislation will not have any appreciable impact immediately on the railroad's general financial condition. Beyond the increased cost for modifying the existing administrative and management systems during the first two or three years following state takeover, it is difficult to predict whether the proposed organizational arrangements in this legislation will generate cost efficiencies not enjoyed during federal ownership.

The philosophy in the current legislation is, to the extent possible, to foster a self-sustaining business orientation for railroad operations. This is consistent with the Transfer Team's analysis of the types of steps necessary to achieve a break-even position at some point during the first decade of state operations.

There is no specific mandate in this legislation for new extensions or any more services than those currently in existence. This should allow the railroad adequate time to reorganize and streamline its existing operations. In addition, although several specified planning responsibilities have been added to the railroad's duties, the long-term savings from performing these kinds of systematic assessments should more than compensate for any short-term costs resulting from performance of these efforts.

Attachment E is a ten year summary (FY 73-82) of the railroad financial operations during federal ownership. It should be noted that an additional \$66.2 million dollars in congressional appropriations was provided during this period to cover passenger expenses and certain capital needs.

ATTACHMENT A

Operating Budget - FY85

In Thousands (000) of Dollars

This operating budget is prorated for FY 85 except for the impacts to state agencies depicted in the 300 level. All amounts shown are in 1985 dollars. These estimates represent the total prorated FY 85 operating budget for the railroad following state acquisition. Projected revenues from the railroad's operations will serve as the main source of funds for these expenditures, with limited assistance from general fund appropriations.

<u>Category</u>	<u>Amount</u>	<u>Explanation</u>
100 Personal Services	\$24,350.0	This funding level is based upon current work force of 478 permanent full-time, 38 part-time and 64 temporary positions. Of this amount salary comprises \$19,980 and benefits comprise \$4,370. Also included in this estimate are the Board of Directors' compensation expenses.
200 Travel	300.0	This funding level is the estimate of travel funding needs, including the Board of Directors' travel expenses.
300 Contractual	4,800.0	This funding level includes coverage of the following areas: continuation of Transfer Team activities for FY 85 - \$1,750.0 (see Attachment B); Transfer Financial Audit - \$200.0; \$200.0 for initiation of the Special Report required in Section 9 of the bill; Department of Administration - \$80.0 for archives preservation and labor relations coordination; costs for the labor relations agency under Article 8 of the bill - \$35.0; Department of Natural Resources - \$35.0 for land designation activities under Article 5 of the bill. The remainder of these funds are for the railroad's general contractual needs resulting from capital improvement, operations and financial planning activities.

400 Supplies	5,200.0	This funding level is required for the day-to-day operations of the railroad, supporting all facets of operations from administration to maintenance of way.
500 Equipment	1,200.0	This item is the complement of the supply item also supporting day-to-day railroad operations.
700 Grants & Claims	1,500.0	This item provides for funds for the railroad's risk management expenses, payment of damage claims, workmen's compensation expenses and other money claims against the railroad. No grants are anticipated.
TOTAL:	<u>37,350.0</u>	

ALASKA RAILROAD TRANSFER PROJECT

FY 85 PROJECT BUDGET

The goal of the Alaska Railroad Transfer Team is to provide an orderly and informed decision-making process for possible transfer of the Alaska Railroad from federal ownership, thus ensuring continuation of essential rail services in Alaska. If a decision is reached to pursue state take-over of the railroad, then it is also the goal of the Alaska Railroad Transfer Team to organize and oversee a systematic transition from federal ownership.

This document discusses the major work components of the FY 85 budget submittal. The need to pursue some of these efforts is entirely contingent on a decision to acquire, while other work efforts are separate from that decision. Attachment A provides the FY 85 budget submittal as introduced by the Governor. Attachment B is the project budget for FY 84 and provides considerable detail regarding several work tasks, many of which are ongoing in 1985.

The following breakdown is structured on a component or agency basis, versus reiterating specific details regarding ongoing work tasks. As a result, some of this explanation should be read in conjunction with Attachment B in order to fully understand all of the scheduled work efforts.

Work Component #1 - Alaska Railroad Transfer Team Staff

As indicated in Attachment A, funding is needed to support four positions in the Office of the Commissioner, Department of Transportation and Public Facilities. These positions are as follows: a State Railroad Coordinator (Special Assistant II); a Planner IV; a Planner III; and a Correspondence Secretary III. These four individuals comprise the Transfer Team Staff with direct responsibility for performance and coordination of all team activities. This group reports directly to the Commissioner of DOT&PF in the performance of their duties. The following breakdown represents expenditures directly related to this area by object of expenditure.

<u>Object of Expenditure</u>	<u>Description</u>	<u>Amount</u>
Personal Services	4 Positions - DOT&PF	\$195,100
Travel	4 Positions - DOT&PF	66,000
Contractual	Printing/limited Professional Services	35,000
Supplies	Miscellaneous	8,000
	Total	\$304,100

Work Component #2 - Department of Natural Resources Assistance

An existing Reimbursable Services Agreement with the Department of Natural Resources will be continued during FY 85. Work efforts covered by this assistance include ongoing support activity by the Division of Technical Services for conveyance documents and related title review work. Additional support by DNR will be provided for coordination with the Bureau of Land Management's cadastral survey work and assistance from the Division of Land and Water Management to implement the railroad transfer. The following breakdown by object of expenditure presents the needed funding for these services.

<u>Object of Expenditure</u>	<u>Description</u>	<u>Amount</u>
Personal Services	4 Positions - DNR	\$191,900
Travel	4 Positions - DNR	20,000
Contractual	Miscellaneous	
	Professional Services	30,000
Supplies	Miscellaneous	<u>8,100</u>
	Total	\$250,000

Work Component #3 - Department of Labor Assistance

Specific assistance is still needed by the Department of Labor to perform an extensive survey of the railroad's physical facilities in relation to federal and state occupational safety and health laws, regulations and standards. Although this was scheduled for performance during FY 84, insufficient funding required postponement of this work effort until FY 85. Scheduled funds during FY 84 for this effort were diverted to cover additional labor relations work by the Department of Administration and the use of an Engineer-in-Training position to assist with the engineering condition assessment. The following breakdown provides an estimate for this activity by object of expenditure.

<u>Object of Expenditure</u>	<u>Description</u>	<u>Amount</u>
Personal Services	2 Full-time - DOL	\$142,700
	2 part-time	
Travel	2 Full-time - DOL	7,300
Training	2 Full-time	5,200
Contractual	Miscellaneous Professional	39,800
	Services	
Supplies	Miscellaneous	6,500
Equipment	Health Sampling Equipment/ Memory Typewriter	<u>12,000</u>
	Total	\$213,500

Work Component #4 - Department of Administration Assistance

Activity in the area will consist of continuing work efforts initiated during FY 84 explained under task #6 of Attachment B. Particular attention must be paid to the analysis of the five collective bargaining agreements, which will support the full scale initiation of the two-year renegotiation process in conjunction with the new entity established to operate the railroad. Another important work effort will be to conduct an orderly transition from federal to state ownership for all personnel matters and ensure that all of the specified requirements from the federal transfer legislation are properly met by the new organization established to operate the railroad. Other efforts include assistance with insurance and risk management needs. The following breakdown by object of expenditure presents the necessary funding for this area.

<u>Object of Expenditure</u>	<u>Description</u>	<u>Amount</u>
Personal Services	1 Full-time Position	\$105,000
	2 Part-time Positions	45,000
Travel	1 Full-time, 2 Part-time	105,000
Contractual	Liaison Assistance/ Miscellaneous	105,000
	Professional Services	
Supplies	Miscellaneous	<u>2,400</u>
	Total	\$257,400

Work Component #5 - Department of Law Assistance

Assistance from the Department of Law is needed for several tasks to be performed by existing AG staff and retained special counsel. Included are the following work efforts: (1) legal work pertaining to the 3(e) (ANCSA) claims against railroad property by native village corporations, including ongoing negotiation and staff work to support the State's position during the adjudication process; (2) legal assistance for the preparation of transfer documents and attention to related land conveyance problems; (3) resulting from the response to various court actions by third parties because the railroad transfer; (4) ongoing legal assistance with issues involving regulation by the Interstate Commerce Commission (ICC); and (5) support of efforts relating to personnel/labor relation matters. The following breakdown by object of expenditure presents the needed funding for this area.

<u>Object of Expenditure</u>	<u>Description</u>	<u>Amount</u>
Personal Services	Staff Attorneys	\$180,000
Travel	Staff Attorneys	20,000
Contractual	Wickwire Lewis	150,000
	David Walsh	75,000
	David Rogers	75,000
	Total	\$500,000

Work Component #6 - ICC Rate Valuation/Capital Plan Activity

Work efforts under this component will consist of the following: (1) initiation of planning work necessary to file the appropriate valuation studies before the ICC for purposes of rate-making justification; and (2) performance of ongoing capital planning analysis. This second task will be a continuation of efforts performed under task #5 in Attachment B. It will be coordinated with the initiation of the ICC valuation studies to maximize generation of a data base useful to both efforts. Funding in this area is needed for contractual assistance, which will be directly managed by the Transfer Team Staff.

<u>Object of Expenditure</u>	<u>Description</u>	<u>Amount</u>
Contractual	Consulting Assistance	\$225,000
	Total	\$225,000

ALASKA RAILROAD TRANSFER PROJECT BUDGET

PROJECT BUDGET

The following depicts the project budget by work component and amount:

	<u>Amount</u>
(1) Alaska Railroad Transfer Team Staff	\$ 304,100
(2) Department of Natural Resources Assistance	250,000
(3) Department of Labor Assistance	213,500
(4) Department of Administration Assistance	257,400
(5) Department of Law Assistance	500,000
(6) ICC Rate Valuation/Capital Plan Activity	<u>225,000</u>
Project Total	\$1,750,000

ATTACHMENT C

Capital Improvement Program - FY85

In Thousands (000) of Dollars

This CIP is prorated for FY 85. All amounts shown are in 1985 dollars. These estimates represent costs to the State, and are only part of the ARR's total capital budget. Revenues from the ARR for capital improvements will be added to State funding.

<u>Item</u>	<u>Amount</u>	
Working Capital Fund	\$ 4,900	As with all businesses, the ARR will need working capital. It is estimated that one month's worth of operating expenses will be adequate working capital for the ARR.
OSHA/Code Compliance	\$ 4,500	As a federal agency, the ARR has not been subject to many health, safety, and building code standards that would otherwise apply. These codes will apply upon transfer, and initial surveys conducted by the State have been used to determine necessary compliance levels. See Appendix C of the Alaska Railroad Acquisition Assessment for more details.
Other Capital Improvements	\$ 6,400	These expenses represent the minimal expenditure necessary for the ARR to maintain current levels of service, while initiating efforts to reverse deterioration of physical plant condition. Component priorities have been selected using the findings of the State's independent condition assessment. As indicated in the attached supplement, most capital improvements are for track and roadbed, upgrade of certain cargo handling facilities, and motive power and equipment purchases.
TOTAL	<u>\$15,800</u>	

Supplement to Item #3, Attachment C

Track & Roadbed - \$6,185,000

Ties - Install 50,000 @ \$42.00 ea.	= \$2,100,000.
Rail - Install 6 miles @ \$350,000 ea.	= \$2,100,000
Ballast - Install 85,000 yd ³ @ \$14 yd ³	= \$1,190,000
Other - (Turnouts, sledding, culverts, ditching)	= \$ 795,000

Bridges - \$883,000

Replace stringers, bents, and spans
Reset bearings, piles, and abutments

Tunnels - \$1,060,200

Line with multi-plate
Excavate rock fall areas

Docks - \$706,800

Preliminary work to rebuild barge slip #1 at Whittier

Communications - \$570,000

Complete microwave system
Remove pole lines
Acquire equipment

Motive Power & Equipment - \$4,845,000

Locomotives	= \$2,250,000
Upgrade Facilities	= \$1,845,000
Equipment	= \$ 750,000

Note: This totals \$14.25 million and is the ARR's overall FY 85 capital budget, of which \$6.4 million is covered under this fiscal note.

FINANCIAL

DRAFT

The following four financial statements (Tables VIII through XI) describe the financial situation (Note 1) of The Alaska Railroad.

TABLE VIII: STATEMENT OF INCOME
FISCAL YEARS 1982-83
(Thousand dollars)

CATEGORY	1983	1982
REVENUES (Note 2):		
Operating Revenues:		
Freight	\$43,787	\$47,877
Passenger	3,305	2,627
Other (Note 15)	5,305	4,941
Total Operating Revenues	<u>52,397</u>	<u>55,445</u>
Non-Operating Revenues (Note 16)	3,697	3,352
Total Revenues	<u>\$56,094</u>	<u>\$58,797</u>
EXPENSES (Note 3):		
Operating Expenses:		
Maintenance of Way & Structures (Note 4)	\$9,859 ⁽¹⁾	\$8,554
Maintenance of Equipment	12,326	11,702
Transportation	19,551	18,685
Traffic Management	865	757
Incidental	4,529	4,152
General and Administration (Note 5)	5,863	5,128
Total Operating Expenses	<u>52,993</u>	<u>48,978</u>
Non-Operating Expense (Note 17)	277	258
Total Expenses	<u>\$53,270</u>	<u>\$49,236</u>
NET PROFIT (Surplus)	\$2,824	\$9,561
Add Depreciation included in Expenses	4,404	3,712
CASH FLOW (Gain)	<u>\$7,228</u>	<u>\$13,273</u>

Notes follow Table XI

(1) Includes \$1.7 million which was part of Congressional Appropriation major maintenance and not included in FY 1982 expense.

Expense/Revenue Ratio	94.97%	83.74%
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TABLE IX: BALANCE SHEET
SEPTEMBER 1982-83
(Thousand dollars)

CATEGORY	1983	1982
ASSETS:		
Current Assets:		
Cash (Note 8)	\$9,646	\$14,966
Trust and Deposit Funds (Note 9)	32	7
Accounts Receivable	14,195	13,105
Materials and Supplies (Note 10)	10,143	7,040
Prepaid Expenses	<u>20</u>	<u>0</u>
	34,036	35,118
Properties:		
Land (Note 11)	265	265
Buildings	12,943	12,921
Roadway Structures & Facilities	127,215	125,000
Equipment	57,895	49,864
Non-Operating Property	<u>1,947</u>	<u>1,877</u>
Total Properties	200,265	189,927
Less Accumulated Depreciation:	<u>60,516</u>	<u>57,678</u>
Properties - Net	139,749	132,249
Additions & Betterments in Progress (Note 12)	<u>11,599</u>	<u>12,059</u>
	151,348	144,308
Other Assets and Deferred Charges	2,526	3,029
Total Assets	<u>\$187,910</u>	<u>\$182,455</u>
LIABILITIES & PROPRIETARY INTEREST OF THE U.S. GOVERNMENT:		
Current Liabilities:		
Accounts Payable	\$4,721	\$3,416
Accrued Payrolls Payable	1,320	1,056
Trust and Deposit Funds (Note 9)	<u>32</u>	<u>7</u>
	6,073	4,479
Other Liabilities and Unadjusted Credits	<u>2,209</u>	<u>3,152</u>
Total Liabilities	\$8,282	\$7,631
Proprietary Interest (Note 13):		
Net Investment	200,621	192,995
Retained Earnings from July 1, 1954	(18,171)	(23,578)
Current Year Operating Results	2,824	9,561
Extraordinary Items (Note 6)	<u>(5,646)</u>	<u>(4,154)</u>
Total Proprietary Interest (Note 13)	179,628	174,824
Total Liabilities & Proprietary Interest	<u>\$187,910</u>	<u>\$182,455</u>

Notes follow Table XI

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TABLE X: STATEMENT OF CHANGES IN FINANCIAL POSITION
FISCAL YEARS 1982-83
(Thousand dollars)

CATEGORY	1983	1982
Funds were provided by:		
Revenues and Other Receipts	\$56,438	\$58,699
Appropriations from Congress (Note 14)	<u>7,600</u>	<u>6,160</u>
Total Funds Provided	64,038	64,859
Funds were used for:		
Labor	35,579	33,221
Other	14,044	17,839
Capital Improvements & Replacements	<u>16,348</u>	<u>11,821</u>
Total Funds Used	65,971	62,881
Increase (Decrease) in Government Equity	(1,933)	1,978
Other Increases (Decreases):		
Undelivered Orders	(2,924)	3,983
Supplies and Materials	3,103	1,119
Properties	7,040	3,964
Other	<u>(482)</u>	<u>513</u>
Total, Other	6,737	9,579
Total Increase (Decrease) in Government Equity	<u>\$4,804</u>	<u>\$11,557</u>
Proprietary Interest:		
Beginning Balance	\$174,824	\$163,267
Increase (Decrease)	<u>4,804</u>	<u>11,557</u>
Ending Balance (Note 13)	\$179,628	\$174,824

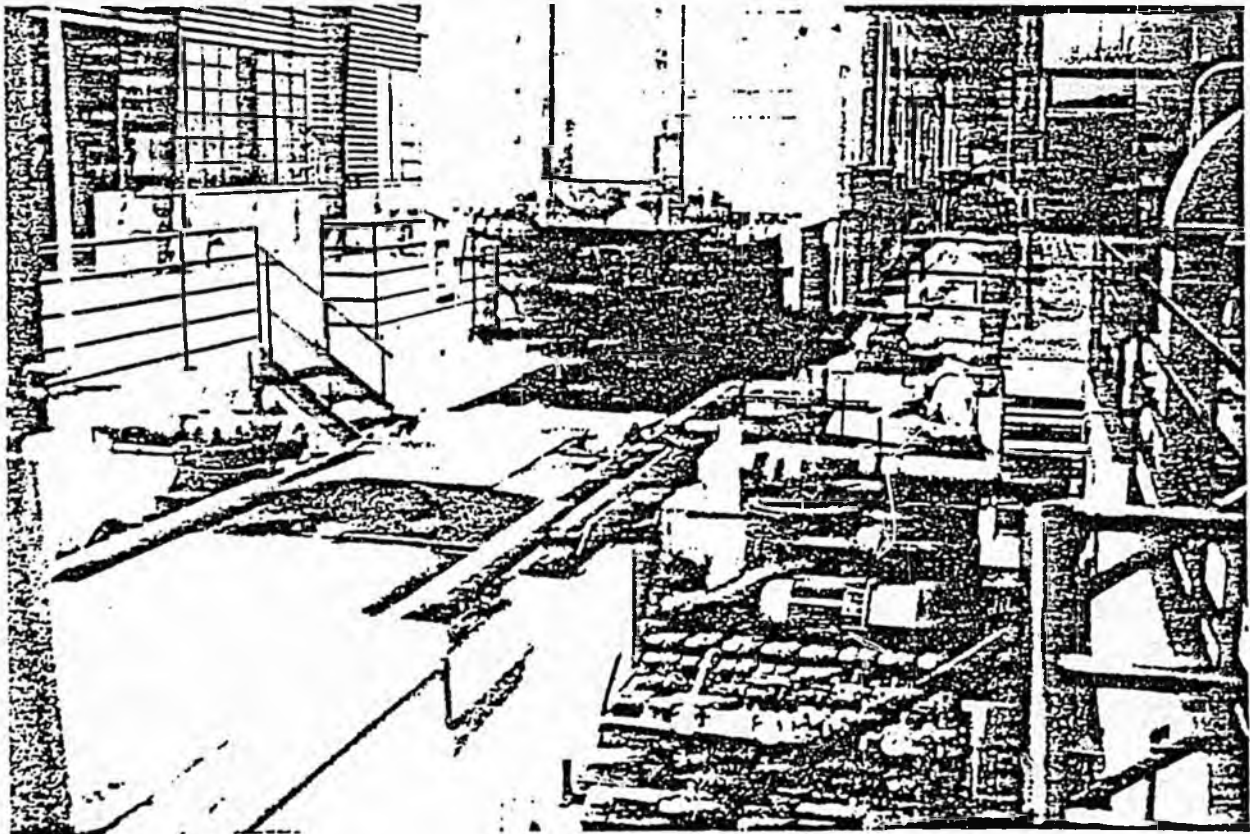
Notes follow Table XI

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TABLE XI: FIVE-YEAR CONDENSED SUMMARY OF OPERATIONS
FISCAL YEARS 1979-83
(Thousand dollars)

CATEGORY	1983	1982	1981	1980	1979
REVENUES:					
Operating	\$52,397	\$55,445	\$40,782	\$26,737	\$23,200
Non-Operating (Note 16)	<u>3,697</u>	<u>3,352</u>	<u>3,159</u>	<u>2,155</u>	<u>2,081</u>
Total Revenues	\$56,094	\$58,797	\$43,941	\$28,892	\$25,181
EXPENSES:					
Operating	\$52,993	\$48,978	\$40,358	\$34,380	\$31,285
Non-Operating (Note 17)	<u>277</u>	<u>258</u>	<u>273</u>	<u>344</u>	<u>204</u>
Total Expenses	\$53,270	\$49,236	\$40,631	\$34,724	\$31,489
NET PROFIT (LOSS)	\$2,824	\$9,561	\$3,310	(\$5,832)	(\$6,308)
Less Extraordinary Items (Note 6)	<u>(\$5,646)</u>	<u>(\$4,154)</u>	<u>(\$204)</u>	<u>(\$692)</u>	<u>(\$319)</u>
Annual Retained Earnings	(\$2,822)	\$5,407	\$3,106	(\$6,524)	(\$6,627)
Expense/Revenue Ratio	94.97%	83.74%	92.47%	120.19%	125.05%

Notes follow Table XI



A modern wheel truing machine was installed in a newly constructed shop building in 1983.

NOTES TO FINANCIAL STATEMENTS

1. SUMMARY OF ACCOUNTING POLICIES

The Alaska Railroad uses the 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.

As is the customary practice of the industry, the Railroad uses betterment and retirement accounting instead of depreciation accounting for roadbed and track. Under this method, prescribed by the Interstate Commerce Commission, the cost of replacing tracks and structures--less salvage recovered--is charged to the appropriate operating expense account and only the cost of betterments is capitalized. These capitalized items are not depreciated, but upon retirement of the tracks and structures, the entire capitalized amounts--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.

2. REVENUES

Revenues from rail operations are included in income on an accrual basis upon the completion of service.

3. EXPENSES

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

4. MAINTENANCE OF WAY AND STRUCTURES

Maintenance of way and structures include expenses incurred by engineering (\$9,207,000) and communications (\$652,000).

5. GENERAL AND ADMINISTRATION

General and administration accounts include expenses for headquarters and staff (\$1,378,000) and the administration department (\$4,485,000).

6. EXTRAORDINARY ITEMS

Extraordinary items include the loss on excess current inventories (\$23,000), deferred outlays (\$3,760,000), prior-year adjustments (\$697,000), and costs associated with the transfer evaluation (\$1,166,000).

7. DEPRECIATION

Depreciation is computed using the straightline method and is based on estimated service lives of depreciable properties, except for the railway track and structures, which are computed using the industry betterment method. Depreciation charges are determined by using the composite or group rates applicable to various classes of property.

The following is a list of depreciation charges in FY 1983:

	(Thousand dollars)
Mechanical - equipment	\$2,807
Engineering - buildings and structures	892
Transportation - docks	438
Communications	170
Non-operating	66
Other	<u>31</u>
Total	\$4,404

8. 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 disbursements.

9. TRUST AND DEPOSIT FUNDS

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

10. MATERIALS AND SUPPLIES

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

11. LAND

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

12. 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.

13. PROPRIETARY INTEREST OF THE U.S. GOVERNMENT

The proprietary interest shows the Federal Government's net interest in The Alaska Railroad. At the end of FY 1983, it is summarized as follows:

	(Thousand dollars)
Appropriation by Congress	\$259,496
Allotments from other agencies, sales of lots, etc.	1,724
Property transferred or donated (not public domain)	19,903
Earthquake losses	(16,738)
Deficits from operations and capital losses to 6/30/54	(63,764)
Retained earnings (7/1/54 to 9/30/82)	(18,171)
FY 1983 operating results	2,824
Extraordinary Items (Note 6)	<u>(5,646)</u>
 Total proprietary interest of the U.S. Government	 \$179,628

14. CONGRESSIONAL APPROPRIATIONS

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

	(Million dollars)	
	<u>FY 83</u>	<u>FY 82</u>
Congressional appropriations received	\$7.60	\$6.16
Obligated during fiscal year	<u>\$7.60</u>	<u>\$6.16</u>
 Amount unobligated at end of fiscal year	 \$0.00	 \$0.00

15. OTHER OPERATING REVENUES

Other operating revenues include those revenues that were neither freight nor passenger. Individual accounts exceeding \$90,000 in FY 1983 were:

	(Thousand dollars)
Reimbursable services	\$2,036
Sale of non-invested property	1,301
Reimbursements - real estate, utilities, and equipment	541
Whittier shuttle - vehicles	533
Wharfage and handling	148
Mail	145
Switching	116
Equipment rentals	90
All other	<u>395</u>
 Total	 \$5,305

16. NON-OPERATING REVENUES

Non-operating revenues in FY 1983 were:

(Thousand dollars)

Miscellaneous rentals	\$3,466
Interest earned	144
All other	<u>87</u>
Total	\$3,697

17. NON-OPERATING EXPENSES

Non-operating expenses in FY 1983 were:

(Thousand dollars)

Buildings	\$199
Depreciation	60
Equipment	10
All Other	<u>2</u>
Total	\$277



At a re-enactment of the original golden spike ceremony Governor Sheffield wields the same maul used by President Harding in 1923.

TRAFFIC

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FREIGHT

Table II shows freight revenue tons and freight revenue dollars by major classification of commodities for fiscal years 1983 and 1982. Total tonnage for fiscal year 1983 exceeded fiscal year 1982 by 34 percent. For the third consecutive year sand and gravel led all other commodities in percentage gains. The primary cause of the 60-percent escalation was a vigorous private and business construction year plus increases in public works projects in Anchorage. The drop in movements of iron and steel products from Seward to Fairbanks destined for the North Slope from its peak in 1982 accounted for the return of manufacturers and miscellaneous products to a lower level, but still above FY 1981.

TABLE II: FREIGHT TRAFFIC BY COMMODITY

COMMODITY	1983 FY	1982 FY	% CHANGE
REVENUE TONS CARRIED (000's)			
Sand and Gravel	4,397.7	2,753.8	+ 59.7
Coal	625.8	653.6	- 4.2
Petroleum, Oil, Lubricants	462.2	439.4	+ 5.2
Manufacturers and Misc.	323.1	449.9	- 28.2
TOFC/COFC (Piggyback)	98.0	122.4	- 19.9
Products of Forests	105.1	77.0	+ 36.5
Products of Agriculture	<u>6.1</u>	<u>6.8</u>	- 10.3
Total Tonnage	6,018.0	4,502.9	+ 33.7
REVENUE DOLLARS (000's)			
Sand & Gravel	6,647	4,556	+ 45.9
Coal	5,007	5,072	- 1.3
Petroleum, Oil, Lubricants	9,723	8,376	+ 16.1
Manufacturers and Misc.	15,704	22,512	- 30.2
TOFC/COFC (Piggyback)	3,625	4,915	- 26.2
Products of Forests	2,955	2,301	+ 28.4
Products of Agriculture	<u>126</u>	<u>145</u>	- 13.1
Total Revenue	43,787	47,877	- 8.5

PASSENGER

Aggressive and expanded advertising and marketing resulted in an overall increase of 21 percent in passenger ridership as shown in Table II. The marketing efforts included active promotion of tour packages which attracted, for the first time, nine cruise ships to stop at the Railroad's Port of Whittier, and provided over 14,000 of the special train riders.

TABLE III: PASSENGERS HANDLED

SERVICE	1983 FY	1982 FY	% CHANGE
Anchorage-Denali-Fairbanks	61,887	60,810	+ 1.8
Anchorage-Portage-Whittier (Shuttle)	117,740	95,449	+ 23.4
Specials	<u>31,732</u>	<u>18,857</u>	+ 68.3
Total Passengers Handled	211,359	175,116	+ 20.7

The number of vehicles carried on the Anchorage-Portage-Whittier (shuttle) service was 19,516, up 10 percent over FY 1982.

TARRIFS

The major rate adjustments made in FY 1983 are reflected in Table IV:

TABLE IV: FY 1983 TARIFF CHANGES

TYPE	DATE	% INCREASE
Interline	1-17-83	5
Intrastate:		
General Commodities	2-12-82	5
Gravel	4-19-83	3
Passenger:		
Anchorage - Fairbanks	1-01-83	10
Whittier Shuttle	7-01-83	10

Attachment E
3/14/84

ALASKA RAILROAD OPERATIONS SUMMARY
(Dollar Amounts in Thousands)
Fiscal Years 1973-1982*

	<u>FY 1973</u>	<u>FY 1974</u>	<u>FY 1975</u>	<u>FY 1976</u>	<u>FY 1977</u>	<u>FY 1978</u>	<u>FY 1979</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Operating Revenue	\$16,996	\$20,783	\$41,411	\$52,517	\$33,376	\$27,440	\$23,100	\$26,737	\$40,782	\$55,445
Non-Operating Revenue	681	703	871	1,161	1,646	1,651	2,081	2,155	3,159	3,352
<u>Total Revenues</u>	<u>17,677</u>	<u>21,486</u>	<u>42,287</u>	<u>53,678</u>	<u>35,022</u>	<u>29,091</u>	<u>25,181</u>	<u>28,892</u>	<u>43,941</u>	<u>58,797</u>
Operating Expenses	\$20,057	\$22,389	\$35,883	\$49,387	\$35,703	\$33,301	\$31,285	\$34,380	\$40,358	\$48,978
Non-Operating Expenses	153	158	272	191	255	213	204	344	273	258
<u>Total Expenses</u>	<u>20,210</u>	<u>22,547</u>	<u>36,155</u>	<u>49,578</u>	<u>35,958</u>	<u>33,514</u>	<u>31,489</u>	<u>34,724</u>	<u>40,631</u>	<u>49,236</u>
<u>Gain (Loss)</u>										
Before depreciation - cash flow (\$ 7)	\$ 1,300	\$ 8,513	\$ 6,628	\$ 2,186	(\$ 1,227)	(\$ 3,089)	(\$ 2,306)	\$ 6,567	\$13,274	
After depreciation	(\$ 2,533)	(\$ 1,061)	\$ 6,132	\$ 4,100	(\$ 936)	(\$ 4,423)	(\$ 6,308)	(\$ 5,832)	\$ 3,310	\$ 9,561
<u>Capital Expenditures</u>	<u>\$ 1,260</u>	<u>\$ 313</u>	<u>\$ 2,772</u>	<u>\$ 8,602</u>	<u>\$ 8,316</u>	<u>\$ 5,823</u>	<u>\$ 8,181</u>	<u>\$ 6,893</u>	<u>\$11,409</u>	<u>\$11,821</u>
<u>Revenue Tons of Major Commodities</u> (in thousands of tons)										
Sand and Gravel	2	1	1	104	700	727	637	396	1,797	2,754
Bulk Petroleum	363	414	557	624	532	374	220	252	379	439
Coal	565	563	584	607	550	593	524	590	653	654
Iron & Steel Pipe & Fittings	11	15	107	174	16	28	33	37	83	165
Piggyback	48	57	95	114	100	100	89	92	113	122
Forest Products	49	56	120	124	82	68	55	109	101	77
Manufactured Iron & Steel	18	37	60	89	19	12	12	10	8	19
Cement	15	14	25	32	42	33	33	32	43	51
Machinery and Machines	12	21	60	31	47	47	24	16	28	24
Mfrs. & Misc. NOS	32	34	44	29	17	13	25	26	11	**
Other	216	165	209	260	200	183	156	181	146	198
<u>TOTAL</u>	<u>1,331</u>	<u>1,337</u>	<u>1,862</u>	<u>2,188</u>	<u>2,305</u>	<u>2,178</u>	<u>1,808</u>	<u>1,741</u>	<u>3,362</u>	<u>4,503</u>
<u>Passengers</u>	<u>74,000</u>	<u>84,000</u>	<u>81,000</u>	<u>84,500</u>	<u>103,632</u>	<u>126,277</u>	<u>151,045</u>	<u>150,678</u>	<u>161,068</u>	<u>175,116</u>

* The Federal Government changed its fiscal year from July 1-June 30 to October 1-September 30 beginning in FY 1977, resulting in a transition quarter in 1976. To avoid a 15-month fiscal year for comparisons, these statistics use July 1, 1975 through June 30, 1976 as FY 1976, and October 1, 1976 through September 30, 1977 as FY 1977, dropping the transition quarter.

**Mfrs. & Misc. NOS. (not otherwise specified) discontinued, now included in specific categories.

THE HARVARD BUSINESS SCHOOL

ALASKA RAILROAD STUDY

SPRING 1982

TEAM MEMBERS:

PETER BOWE
CHRIS NEEDHAM
ED NELSON
MEAD TREADWELL

ALASKA RAILROAD STUDY

I. INTRODUCTION

II. EXECUTIVE SUMMARY

III. OPERATIONS

IV. MARKETING

V. FINANCE

VI. ENTITY

VII. EXPANSION

INTRODUCTION

This document is the condensation of a slide presentation prepared by four Harvard Business School students on the operations, markets, finances, organizational structure and expansion opportunities of the Alaska Railroad. The eight month long study, made in fulfilling the requirements of a Master's Degree in Business Administration, attempted to answer, from a business viewpoint, two broad questions:

* What is the Alaska Railroad?

* What can it be?

While the report was written during legislative deliberations on the future of the Railroad, our purpose was to go beyond the basic jurisdictional issues in that process to examine factors relating to the Railroad as a business entity. In doing so, we reached two basic conclusions. The Railroad not only can survive as an independent entity, but to take advantage of all of the opportunities open to it, the Railroad must be independent.

EXECUTIVE SUMMARY

WHAT IS THE ALASKA RAILROAD?

- *AS IS, THE ALASKA RAILROAD'S FREIGHT OPERATION IS WORTH \$8.5 MILLION.
- *TRACK AND EQUIPMENT ARE ADEQUATE FOR THE LINE'S CURRENT LEVEL OF VOLUME, WHILE THE LEVEL OF VOLUME IS HIGH ENOUGH TO ENSURE PROFITABILITY.
- *THE NET IMPACT OF FEDERAL OWNERSHIP IS DECIDEDLY NEGATIVE.

WHAT CAN IT BE? THE ALASKA RAILROAD...

- *CAN BE A PROFITABLE PRIVATE ENTITY WITH TAX AND FINANCIAL OPPORTUNITIES WORTH \$52.5 MILLION.
- *CAN BALANCE ITS TRAFFIC FLOWS SERVING MARKET NICHEs WORTH \$12.25 MILLION.
- *CAN EXPAND TO AMBLER ECONOMICALLY IF MINE DEVELOPMENT IS COORDINATED TO AGGREGATE TONNAGES.
- *CAN DO ALL OF THESE THINGS BETTER WITH MANAGERIAL INDEPENDENCE FROM GOVERNMENT.

OPERATIONS SUMMARY

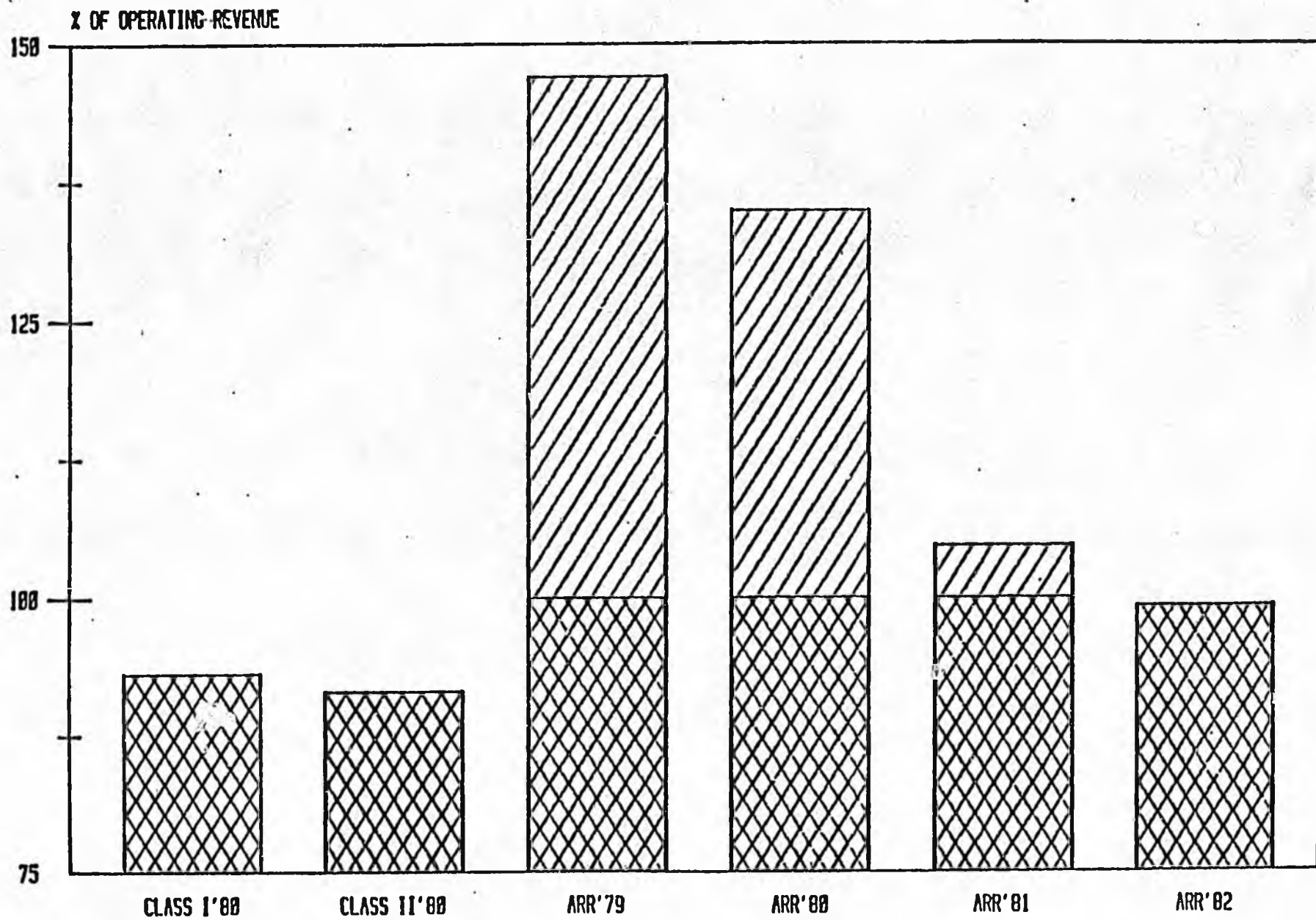
- * THE ARR'S LABOR COSTS ARE HIGH RELATIVE TO OTHER RAILROADS.
- * WORK RULES ARE COMPARABLE TO INDUSTRY NORMS.
- * THE APR'S LOCOMOTIVES AND ROLLING STOCK ARE VERY OLD. THIS AGE COUPLED WITH EXPENSIVE LABOR RESULTS IN HIGH MAINTENANCE COSTS.
- * THE TRACK IS IN GOOD SHAPE; HOWEVER, INCREASED TONNAGE COULD EXACERBATE AN IMPENDING NEED FOR A HIGHER TIE RENEWAL RATE.
- * INCREASED VOLUME HAS CAUSED A MARKED IMPROVEMENT IN MOST MEASURES OF OPERATIONAL EFFICIENCY. OVERALL, DESPITE ITS PROBLEMS, THE APR IS DOING O.K. OPERATIONALLY.

OPERATING RATIO ANALYSIS

- * The following bar charts show a time-series comparison of the ARR's performance according to the 5 key operating ratios: MOW, MOE, T & T, G & A, and overall Operating Ratio.
- * They show dramatically how increased volume since 1980 has improved performance.
- * However, the ratio improvement masks some underlying problems or events:
 - The decline in MOW is probably too severe and is indicative of some amount of deferred maintenance
 - The 1982 upturn in MOE shows how the old equipment is straining to cope with greater volume
 - T & T has benefitted from a new crew consist agreement in 1981 which eliminated 1 brakeman from each freight train's crew

RATIO COMPARISON

OPERATING RATIO



ALASKA RAILROAD

Comparison of Operating Ratios (% of Operating Revenue)

	Class I 1980	Class I 1981	Class II 1980	ARR 1979	ARR 1980	ARR 1981	ARR 1982 YTD
MDW	17.9	17.5	18.3	32.2	32.2	25.1	21.6
MOE	22.2	22.7	16.6	36.0	33.4	23.6	24.9
T & T	44.1	45.0	45.4	61.6	52.0	43.2	40.5
G & A	8.3	8.1	9.5	17.7	17.5	12.7	12.1
OPERATING	92.5	93.3	91.4	147.0	135.0	104.6	99.2

Sources: Alaska Railroad Annual Reports
 Moodys Transportation Manual 1981
 American Association of Railroads

LABOR COMPARISONS

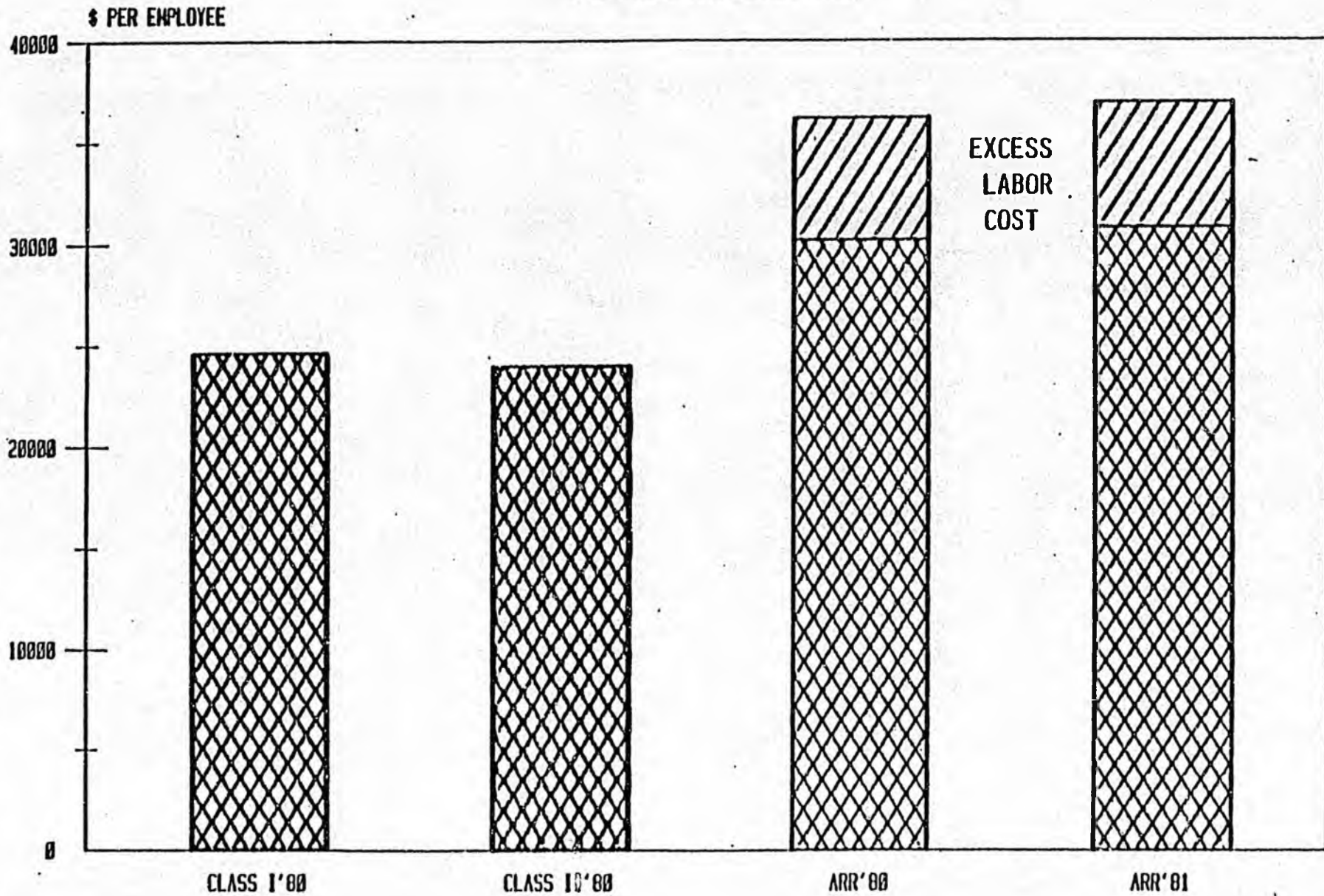
	Class I 80	Class II 80	ARR 79	ARR 80	ARR 81
Total Labor Cost/Operating Revenue	40.1%	49.6%	91.0%	81.2%	61.2%
Cost/Employee (\$000) ¹	\$24.7	\$24.1	NA	\$36.2	\$37.0
Oper. Rev./Employee (\$000)	\$57.4	\$51.3	NA	\$44.7	\$60.4

¹ARR labor costs are high relative to other railroads. After adjusting for a 20% Alaskan COLA, the ARR exceeds the average for Class I and II railroads by \$6-7,000.

$$\begin{aligned}
 \text{Additional Labor Cost} &= \text{Total Cost} - (\text{Class I} + \text{II average} \times 1.2 \text{ COLA}) \\
 \text{for 1980} &= \$36.2 - (\$24.3 \times 1.2) \\
 &= \$7,000
 \end{aligned}$$

LABOR COMPARISON

TOTAL LABOR COST PER EMPLOYEE



QUALITY OF ASSETS

A. Locomotives

- * average horsepower: 1911 HP
- * % of 3000 HP in total fleet: 25%
- * average age built -- 18.1 years
 Inc. rebuilds -- 17.0 years
 Class I average -- 10-11 years
- * 1981 average out-of-service (bad-order ratio): 16%
 Class I average: <10%

Comments

1. The ARR's tonnage and track characteristics strongly suggest a fleet of exclusively 3000 HP locomotives would be appropriate.
2. With locomotive useful economic life at approximately 18 years before rebuilds, the ARR's highest capital priority should be engine replacement.

QUALITY OF ASSETS (cont.)

B. Rolling stock

- * average age of cars: 30 years
 Class II average: 18 years
- * net book value of equipment as % of total assets: 11.3%
 Class II average: 20.7%

Comments

1. The ARR could improve its maintenance of equipment ratio (MOE/op. revs) through investment in new cars.
2. The ARR's recent agreements to buy 75 100-ton hopper cars are a good move in the right direction.

C. Road & Structure

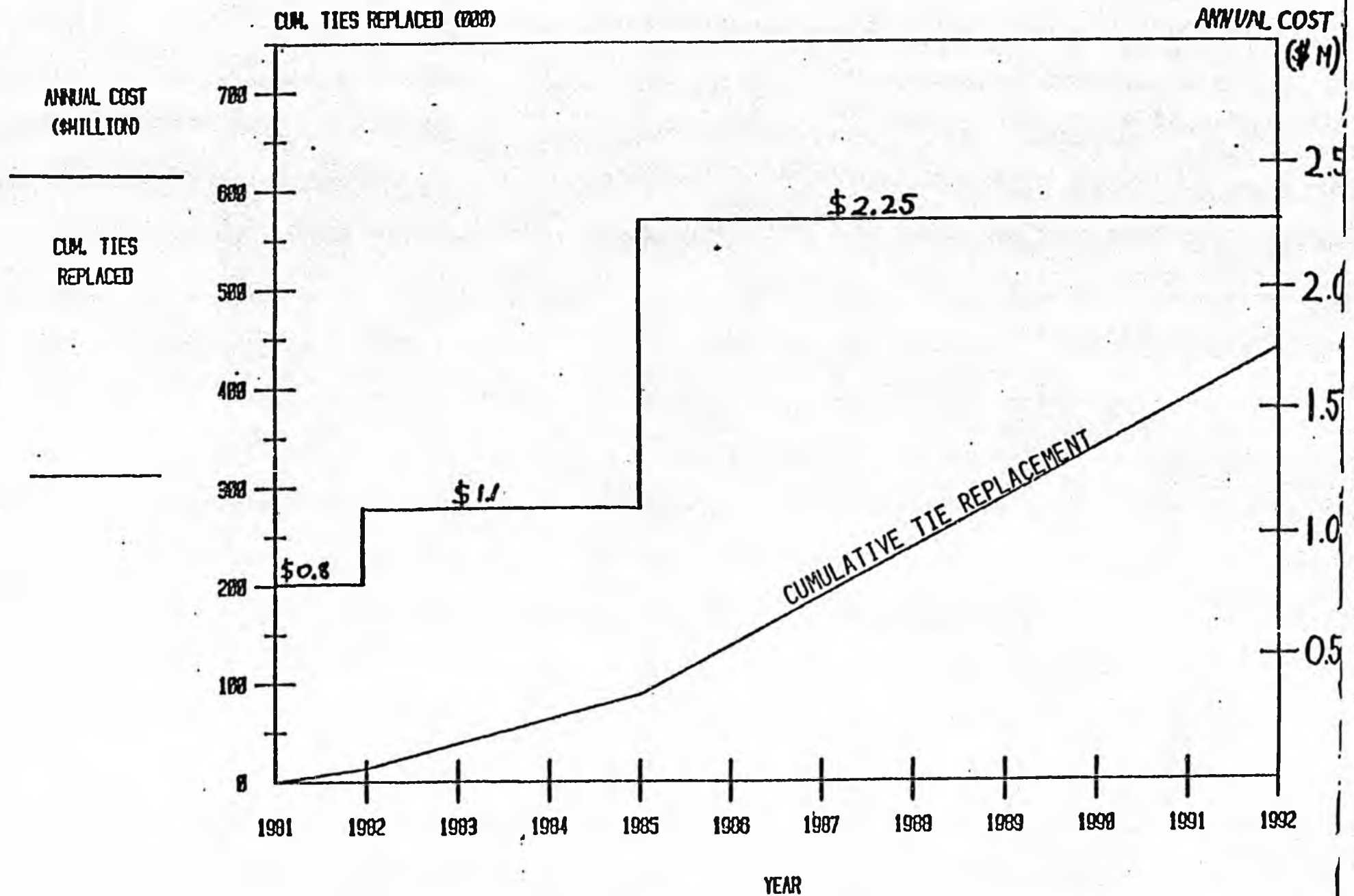
- * 40% of the track is rated Class IV (up to 45 MPH freight) by the Federal Rail Administration
- * only 5% is rated for less than 20 MPH operation
- * rail weight : 115 lb.
 Class I norm: 132 lb.
- * % of ties renewed per year: 1.2% (83-year cycle)
 Class I norm: 3.0% (33-year cycle)
- * % of road book value/total assets: 60.0%
 Class II average: 46.4%

Comments

1. The overall Class IV rating of the track is excellent.
2. At some multiple of current volume, the ARR will have to consider 132 lb. rail
3. The ARR faces a stepped-up tie renewal rate

EXPECTED FUTURE TIE REPLACEMENT & COST

1981-1992



TIE REPLACEMENT ANALYSIS

1. Total ties on ARR: 1.95 million

2. Key facts:

- i) Over 30 years ago, more than 25% (500,000+) of the ARR's ties were replaced in a single 3-year span, 1948-1950. The ARR risks a simultaneous mass deterioration of these ties.
- ii) Over the last 12 years, the ARR has replaced ties at a rate equal to an 83-year tie life expectancy.
- iii) The weighted average life of all ARR ties is about 27 years.
- iv) Most "lower 48" railroads use a 30-40 year tie life expectancy.
- v) A major savings (33%) in the tie installation labor costs results from tie renewals at rates in excess of 17,000 per year.

3. Cost per tie installed:

(1)

At replacement rate of 17,000/year or less using section crew labor

Tie	\$16.55
Shipping	3.45
Labor @ 1 hr/tie	23.00
Supervision, Machines	<u>8.50</u>
Total	\$51.50

(2)

At replacement rate of 17,000/year or more using tie gang labor

Tie	\$16.55
Shipping	3.45
Labor @ 2/3 hr/tie	15.50
Supervision, Machines	<u>8.50</u>
Total	\$44.00

4. Comparison:

In 1980, a major Class I railroad budgeted tie replacement costs as follows:

Tie	\$20.65
Labor	<u>9.55</u>
Total	\$30.15

5. The issue: What is the appropriate tie replacement cycle for the ARR, given its physical environment and light density traffic?

Factors Suggesting Shorter than Average Life

- * severe weather (effects unclear)
- * soft subgrade in many places
- * permafrost conditions
- * pit-run ballast

Factors Suggesting Longer than Average Life

- * weather
- * light traffic density

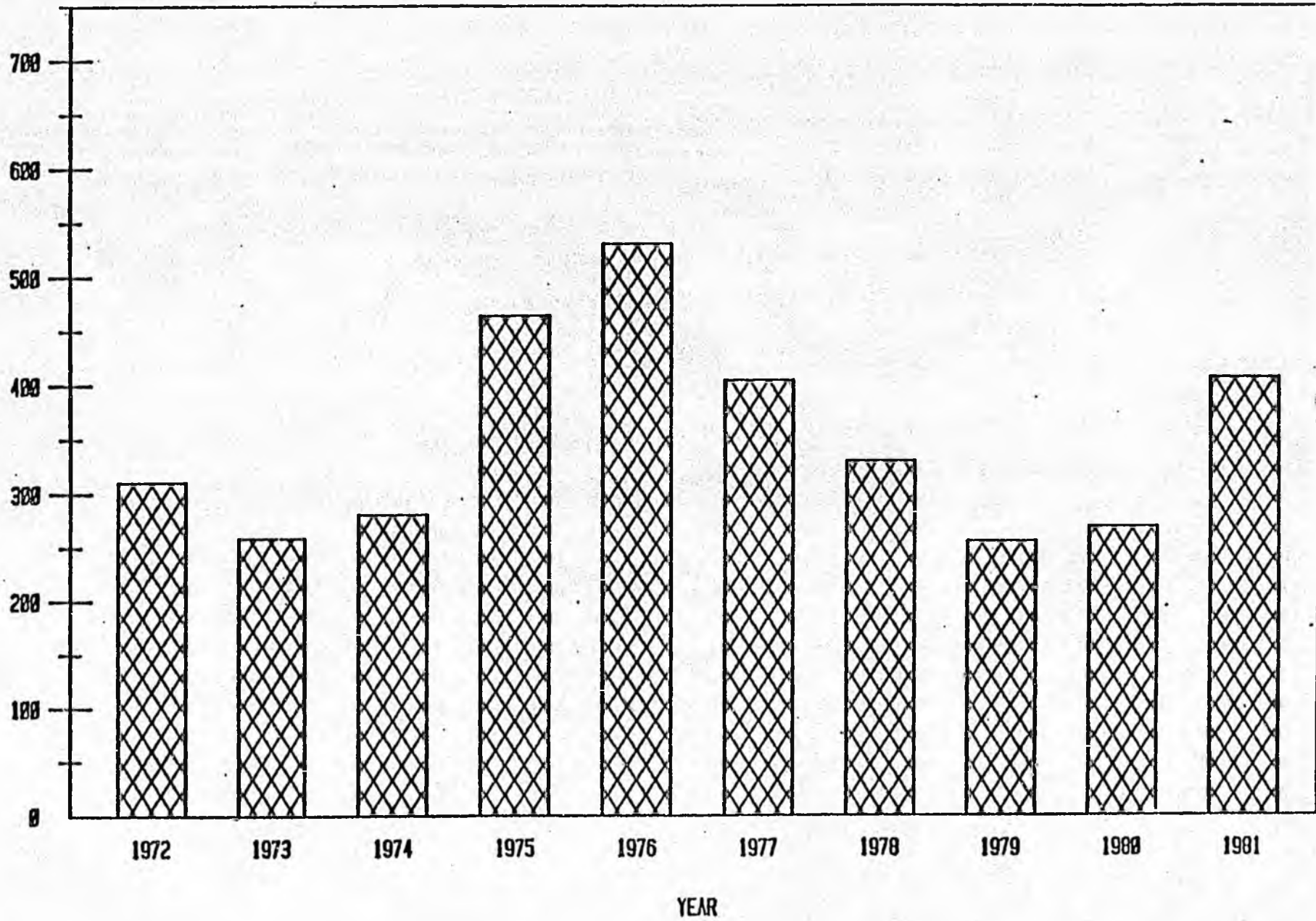
6. View of the ARR's Chief Engineer:

- i) "If tie life is 35 years, I'm in a lot of trouble."
- ii) "Within the next 5 years, we'll have to start replacing more than 50,000 ties per year."

ALASKA RAILROAD

REVENUE TON-MILES

TON-MILES (MILLIONS)



MARKETING SUMMARY

- *THE LEVEL OF ALASKA'S ECONOMIC ACTIVITY HAS REACHED THAT OF PEAK PIPELINE DAYS. THE ALASKA RAILROAD'S ONGOING VOLUME IS NOW AT A PROFITABLE LEVEL.
- *NEAR-TERM MARKET GROWTH OF GENERAL COMMODITIES PRESENTS TREMENDOUS OPPORTUNITY. IF UNREGULATED, THE RAILROAD CAN CONTINUE TO EXPLOIT ITS STRUCTURAL COST ADVANTAGE TO GAIN MARKET SHARE. ANTITRUST LAWS MAY APPLY ONCE THE RAILROAD LEAVES FEDERAL OWNERSHIP.
- *SOUTHBOUND OIL TRAFFIC, IF INTERIOR ALASKA REFINING EXPANDS ON PLAN, HAS A PRESENT VALUE OF \$8.232 MILLION. PROJECTED COAL EXPORTS TO ASIA RAISE THE RAILROAD'S PRESENT VALUE \$4.025 MILLION. BOTH COMMODITIES SOLVE A LONGTIME RAILROAD PROBLEM BY BALANCING VOLUME FLOWS WITH NORTHBOUND TRAFFIC.
- *PASSENGER TRAFFIC IS CLOSE TO PROFITABILITY ON ALL BUT LOCAL SERVICE BETWEEN ANCHORAGE AND FAIRBANKS. SELF-PROPELLED CARS, A STATE SUBSIDY, OR BOTH MAY BE NECESSARY TO CONTINUE THAT SERVICE.

COAL EXPORTS: WHAT IS IN STORE FOR THE ALASKA RAILROAD?

- * The Usibelli Mine; Healy will expand production as it is contracted for. Likelihood of high tonnages is dim, typified by slowness in getting contracts.
- * Mobil-held leases in the Yentana field, if developed, could mean substantial new tonnages for the railroad.
- * Railroad right-of-way is preserved to Jonesville Mine, closed mid-1960's. Development unlikely soon as mine is underground.
- * Off-system proposed development, such as Beluga and Bering River, may require rail service. Alaska Railroad should pursue the opportunity to service these areas and recognize fuller use of equipment.

ALASKA COAL EXPORTS: WHAT WILL MAKE THEM HAPPEN?

Markets

- * Total demand for steam coal in Japan, Korea, and Taiwan was 24.3 million tons in 1981. It is estimated demand will double by 1985; again by 1990.
- * Alaska, 1000 miles closer to Asian ports, has cost advantage over Western U.S.
- * Backhaul of coal south will help Alaska railroad keep prices down.
- * Central Alaska's low Btu/high moisture coal requires dedicated plants or a blending or coking process to raise coal value.

WHAT'S BEHIND NORTH POLE'S ADVANTAGE IN SERVING THE ANCHORAGE MARKET?

BY RAIL		BY TANKER AND PIPELINE	
Prudhoe-North Pole.....	\$3.72/bbl.	Prudhoe-Valdez.....	\$6.10/bbl.
Railroad to Anchorage...	2.66	Tanker to NIKISKI.....	50
Unloading charges.....	<u>.08</u>	Pipeline to Anchorage...	<u>.69</u>
TOTAL	\$6.46CUSTOMER SAVES .83.....	\$7.29

FOUR REASONS:

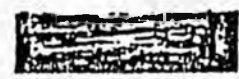
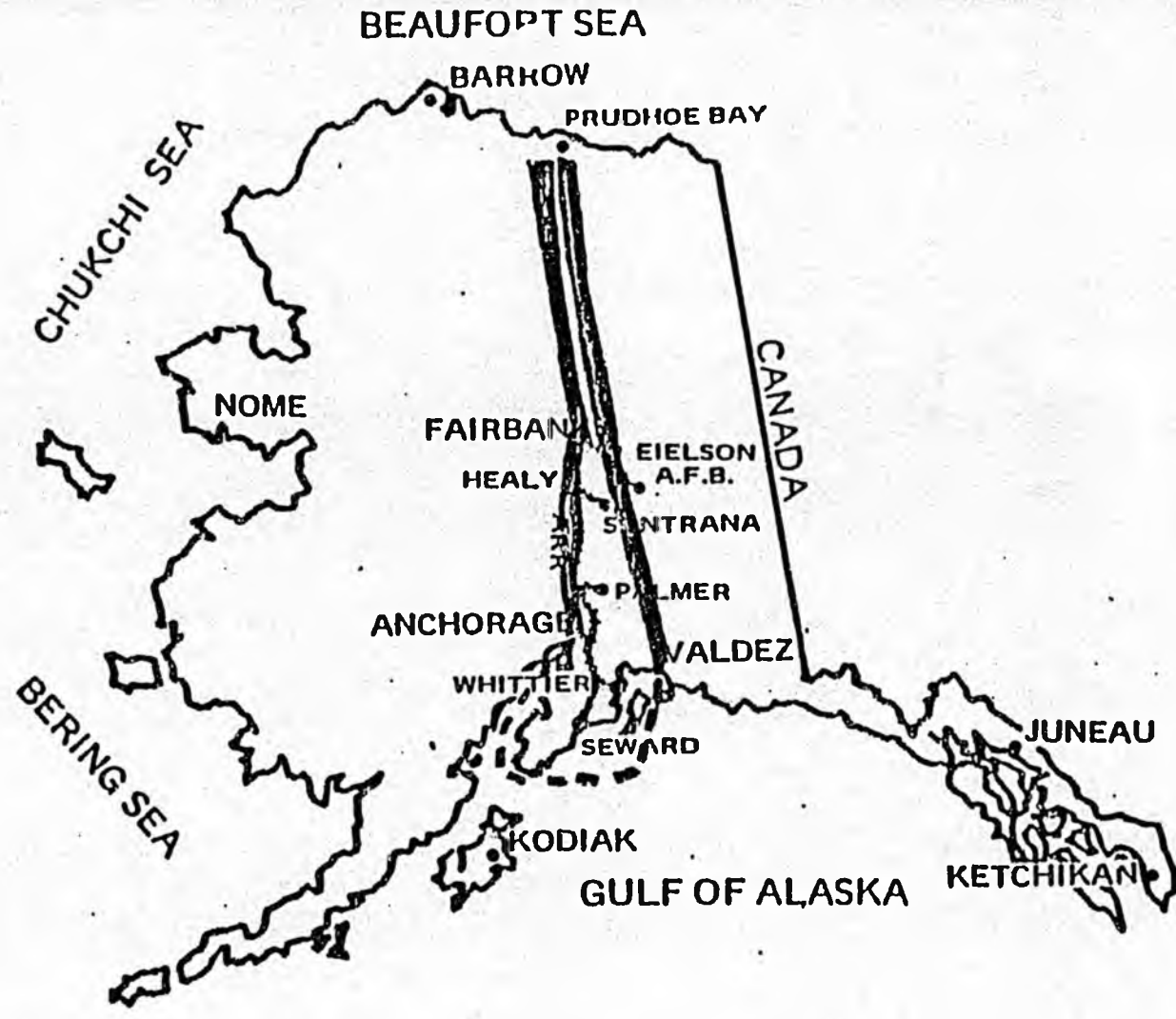
A. COOK INLET REFINERIES USE MORE NORTH SLOPE CRUDE

*Chevron retrofitted in 1981 to 100% production using ANS crude.
 Tesoro is now operating on 15% ANS production.

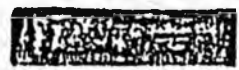
B. FERC DIFFERENTIATES BETWEEN INTRASTATE AND INTERSTATE IN TAPS PRICING.

C. INTERIOR REFINERIES INJECT RESIDUALS INTO THE PIPELINE.

D. ALASKA RAILROAD RATES STAY UNDER THE VALDEZ-NIKISKI "PRICE UMBRELLA."



RAIL ROUTE:
PRUDHOE-NORTH POLE-
ANCHORAGE



PIPE AND WATER
ROUTE: PRUDHOE-
VALDEZ-KENAI-
ANCHORAGE

OIL "PRICE UMBRELLA"

PRUDHOE-VALDEZ-KENAI-ANCHORAGE.....\$7.29/ barrel

PRUDHOE-NORTH POLE-ANCHORAGE.....6.46

COST SAVINGS \$.83/barrel

PROJECTED INCREASE IN PETROLEUM TRAFFIC

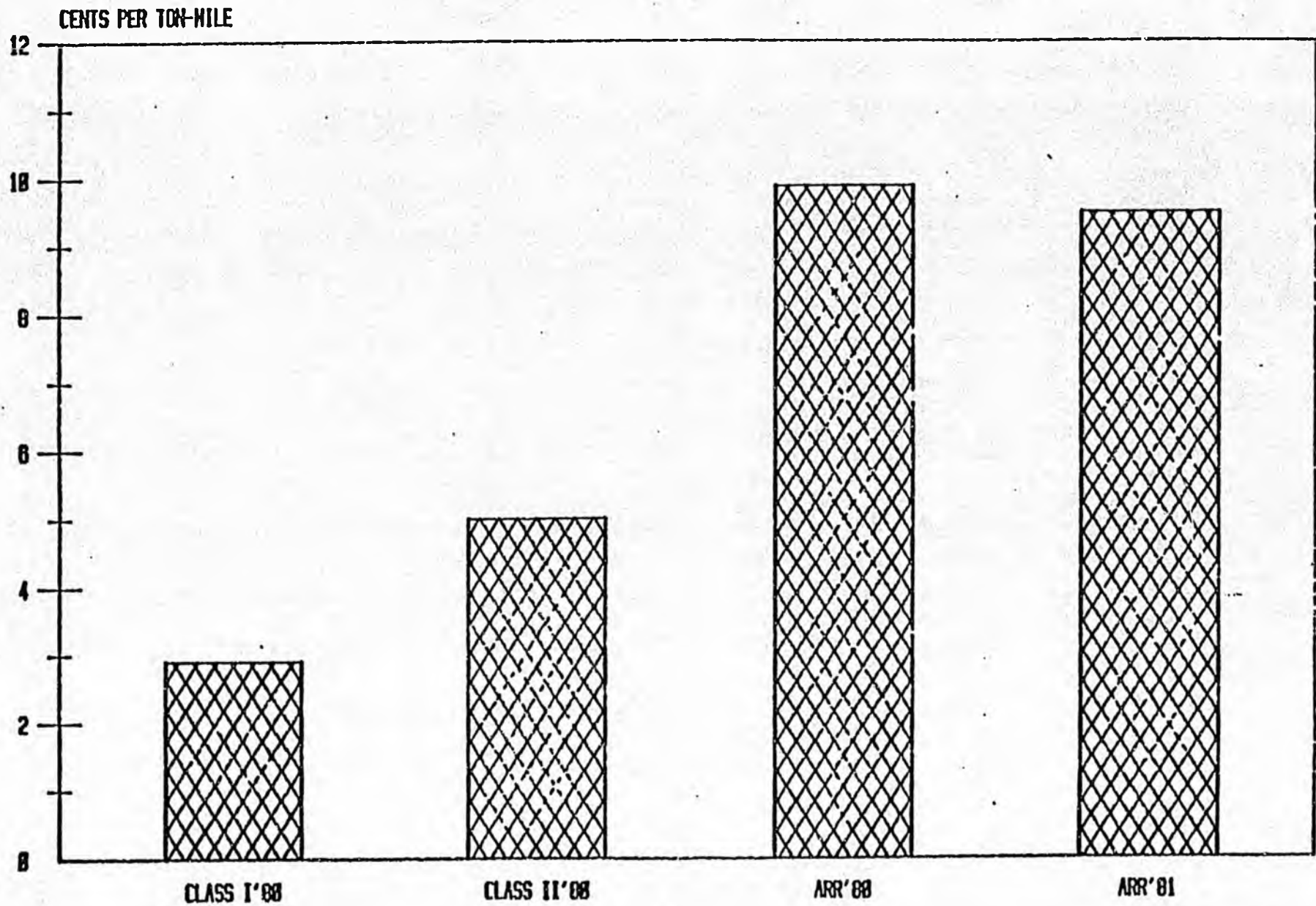
ASSUME:

- *BASE CASE OF 1300 CARLOADS OF OIL AND PRODUCT SHIPPED THROUGH 1992.
- *DEMAND ASSUMPTIONS ARE BASED ON NEAR TERM INCREASED CAPACITY AT NORTH POLE.
- *FURTHER, NORTHBOUND GASOLINE TRAFFIC FALLS OFF AS AN INTERIOR REFINERY ADDS THAT CAPACITY IN THE MIDDLE 1980'S.
- *EVENTUAL INCREASES IN SOUTHBOUND SHIPPING OF PRODUCTS FROM THE NEW REFINERY.
- *DOYON LTD., A NATIVE CORPORATION, RECENTLY SHELVED PLANS TO BUILD A REFINERY BECAUSE OF THE OIL GLUT. MAPCO IS CONSIDERING EXPANSION AT NORTH POLE, THE ONLY EXISTING INTERIOR FACILITY.

VALUE OF THIS TRAFFIC, BASED ON RAILROAD PROJECTIONS:

\$8.232 MILLION, discounted at 5% real return

FREIGHT REVENUE PER TON-MILE COMPARISON



ALASKA RAILROAD PRICING

- At about 10 cents per revenue ton-mile the Alaska Railroad charges almost twice what other Class II railroads charge.
- Clearly the differences in the costs of operation in Alaska are the major cause of higher prices since the Railroad is barely profitable with the current price structure.
- Volume gains have dramatic effects on costs per ton-mile. As volume benefits from market growth and increased market share, there will be an umbrella created between prices and costs.
- This umbrella may be used by the Railroad to either increase profitability or reduce prices and gain market share (which would result in even lower costs).
- Sea/Land and Tote appear to be very vulnerable to aggressive pricing by the Railroad and Alaska Hydrotrain. One railcar can carry three containerloads. Containers and trailers have higher per-ton variable cost than railcars.
- This cost advantage is greatest when a full 60-ton carload or more can be received by the shipper at one time. For such shippers the Railroad has begun using "contract rates" in which the shipper gets a lower price in return for guaranteed minimum tonnages and full-carload loading. For example, in lumber and plywood delivered to Anchorage in 1981 the Railroad had below average price increases to its shippers while receiving much greater revenues per carload.
- Contract rates permit the Railroad to be competitive for delivery not only to Fairbanks (a long haul) but to Anchorage (a short haul).

ESTIMATED MARKET SHARE IN THE RAILBELT

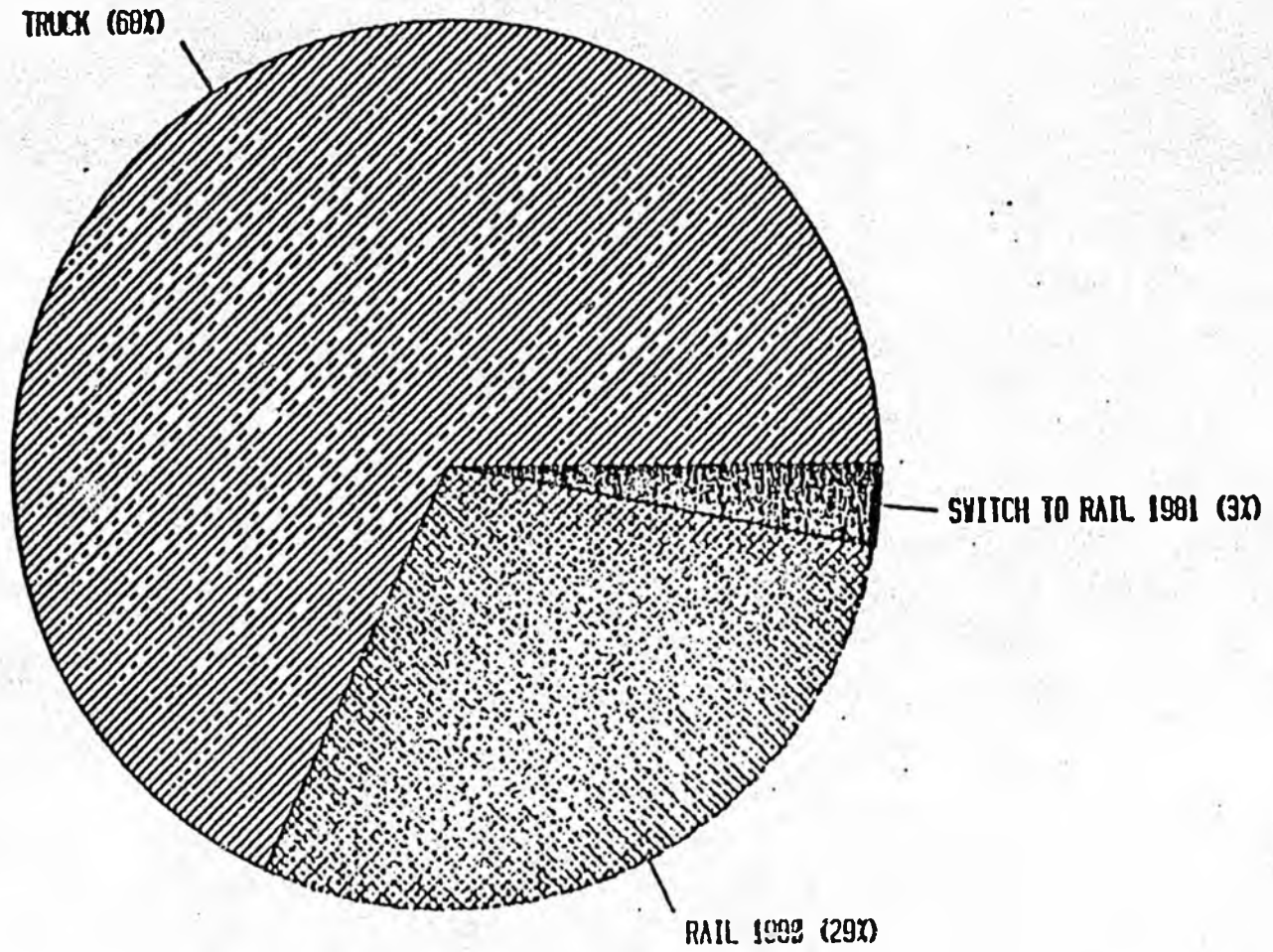
Railroad and Truck
1980 and 1981

	1980		1981	
	<u>1000's Tons</u>	<u>Share %</u>	<u>1000's Tons</u>	<u>Share %</u>
<u>Alaska Railroad</u> ¹				
Port of Whittier	219.9		271.0	
Port of Seward	7.8		22.5	
Port of Anchorage -- Bulk	44.1		70.7	
Port of Anchorage -- Piggyback to Fairbanks	<u>91.0</u>	<u> </u>	<u>102.4</u>	<u> </u>
Total Alaska Railroad	362.8	29	466.6	32
<u>Truck</u>				
Port of Anchorage -- Bulk	50.8		35.4	
Port of Anchorage -- Trailer and Container	<u>841.6</u>	<u> </u>	<u>955.3</u>	<u> </u>
Total Truck	892.4	71	990.7	68
Total Railbelt	1255.2	100	1457.3	100

¹Alaska Railroad data are for years ended September 30th while Port of Anchorage data is for periods ended December 31st. The last three months of the year are slow periods so the ARR fiscal data is a good approximation of the traffic in the calendar year.

ESTIMATED RAILBELT MARKET SHARE (TONS)

RAIL AND TRUCK 1988 & 1981



MARKET SHARE

- The Alaska Railroad picked up a 3% gain in share of total tons delivered to the railbelt between 1980 and 1981 through aggressive sales, contract rates, etc.
- This gain resulted in a 10.3% gain in general commodity tonnage for the railroad itself. As the graph shows, the modest 3% gain is large relative to the 29% share held by the railroad in 1980.
- The Port of Anchorage's share of total tonnage delivered to the railbelt fell 2%. While the total market grew 16% the Port grew only 13%.
- Sea/Land and Tote's total share of tonnages also dropped from 74.3% in 1980 to 72.6% in 1981 as the Railroad's contract rates shifted traffic to the Port of Whittier via rail barge.
- Railbarge share rose from 17.5% in 1980 to 18.6% in 1981.
- Due to the high fixed cost of railroads, containerships, railbarges, and ports, small shifts in volume have dramatic effects on profitability. This is why organizations such as Sea/Land, Tote, and the Port of Anchorage respond so vocally to the more aggressive stance of the Alaska Railroad.
- Pricing will also have dramatic effects on profitability. As marketing becomes more aggressive, profitability may decline for all parties except when volume gains outweigh price cuts as occurred for the Alaska Railroad in 1981.

FORECAST GENERAL COMMODITY¹ REVENUES & REVENUE TON MILES

(4% ANNUAL GROWTH, CONSTANT RAILROAD MARKET SHARE)

	<u>1980</u>	<u>1981</u>	<u>1990</u>	<u>2000</u>
Revenues ('000)	\$16,072	\$20,447	\$31,711	\$51,669
Revenue Ton-Miles (Millions)	133 M	184 M	285 M	465 M

Source: U.S. Army Corps of Engineers
Alaska Railroad

¹Excludes Gravel, Petroleum, and Coal.

REVENUE TON-MILES¹ BY COMMODITY GROUP

1980 and 1981

(In Millions)

	<u>1980</u>	<u>1981</u>	
Coal			
In State	59	64	+ 8.5%
Export	--	7	
Petroleum In Tank Cars			
Out of State	56	50	- 10.8%
North Pole	8	25	+312.5%
Gravel	15	77	+513.3%
Piggyback	39	40	+ 2.6%
Merchandise			
In State Origin	35	13	- 62.9%
Out of State Origin	<u>59</u>	<u>131</u>	+222.0%
	271	407	

Source: Alaska Railroad
Internal Data

1. A REVENUE TON-MILE IS ONE TON OF REVENUE-PRODUCING CARGO CARRIED ONE MILE.

TRAFFIC ANALYSIS

Causes of 50% Growth in Revenue Ton-Miles 1980-1981

Sources of Growth

- Oil - As Cook Inlet refineries have begun to use North Slope crude, the North Pole refinery has exploited a transportation cost advantage. The Railroad has accordingly carried more jet fuel south to Anchorage.
- Gravel - The Railroad has aggressively expanded its gravel haul business between Palmer and Anchorage with the construction boom in Anchorage.
- Merchandise - The Railroad has participated in the 16% growth in tonnages delivered to the Alaska Railbelt between 1980 and 1981 plus it gained about 3% in share of that market through contract rates and aggressive sales.
- Drilling Pipe - Only about 25% of growth in merchandise has been related to North Slope activity.

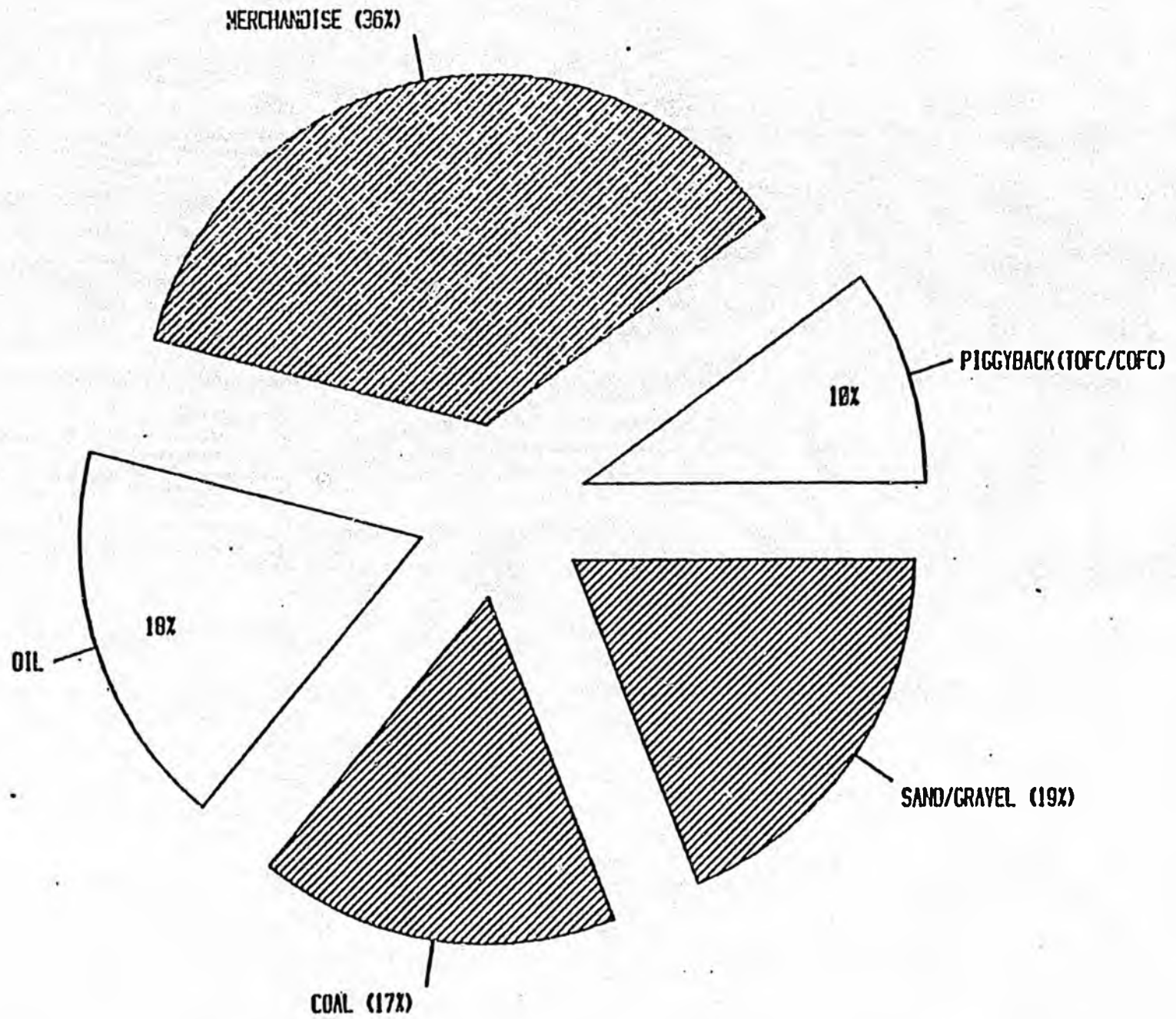
Declining Business

- Logs - Almost all the decline in in-state merchandise came from the closing of the chipping mill at Seward due to a court ruling on in-state timber primary processing. The Railroad no longer delivers logs from Nenana to Seward.

Conclusions:

- The Railroad's traffic volume, which has almost reached the level of pipeline-construction years, is based on a solid mix of business that does not rely on any one project or contingency. It is a result of the general growth and strength of the Alaska economy.

REVENUE TON-MILES BY GROUP 1981



MARKET STRUCTURE

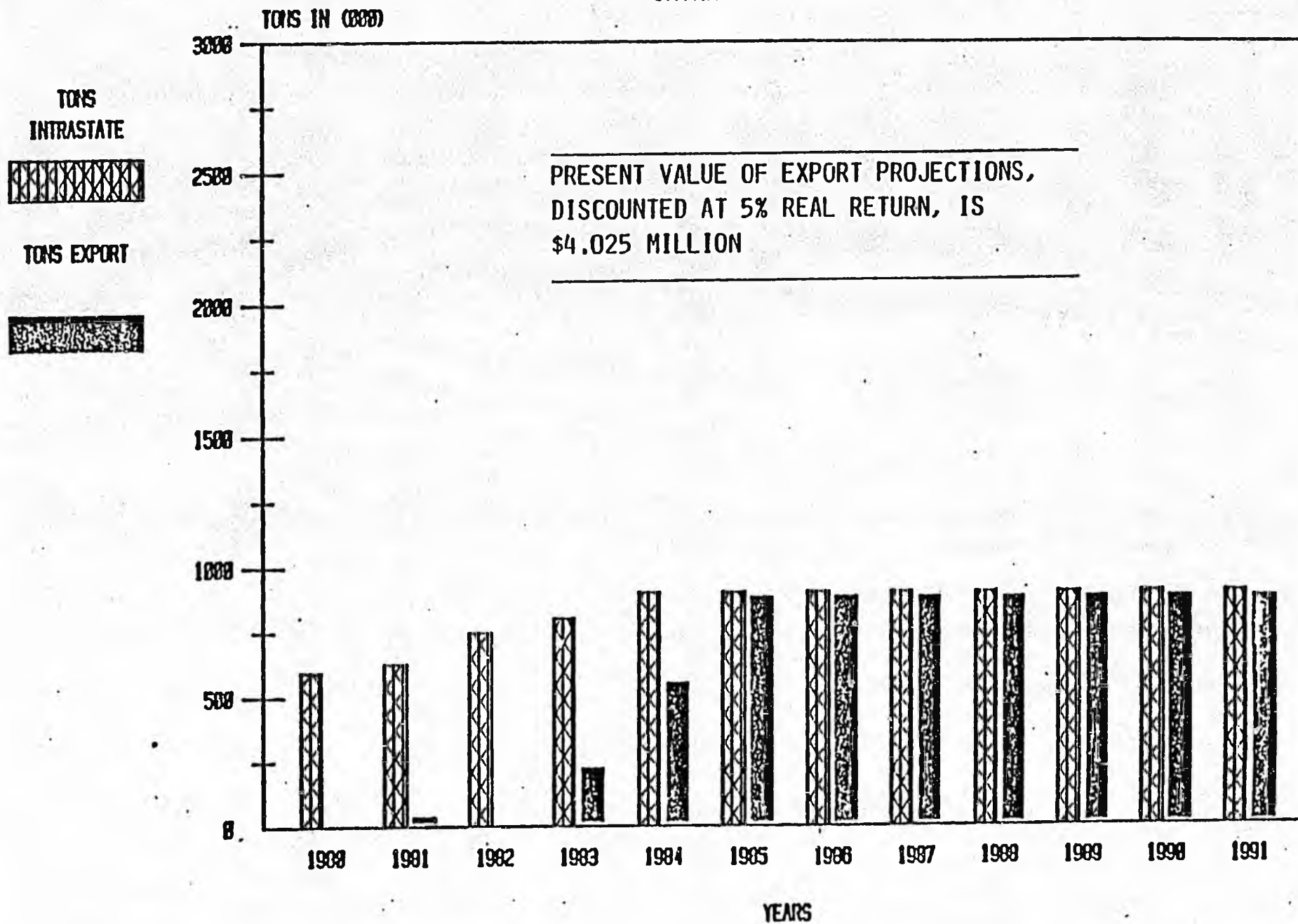
The Alaska Railroad's primary competitors in overland transportation are truckers. The Railroad dominates the Fairbanks market with deliveries from the Ports of Seward, Whittier, and Anchorage while truck delivery from the Port of Anchorage dominates the Anchorage market.

The Railroad receives piggyback traffic bound for Fairbanks from the container-ship firms, Sea/Land and Tote, but it also indirectly competes with these firms with rail deliveries to Anchorage via railbarge from the Port of Whittier. Thus the Railroad is a major player in the competition between containerships and railbarges for sea delivery from the lower-48 United States and Canada.

Similarly the Alaska Railroad has a major impact on which port handles deliveries to the Railbelt markets of Anchorage and Fairbanks. Drilling pipe delivered by the Railroad from Seward to Fairbanks bypasses the Port of Anchorage, for example. Lumber and plywood delivered by the Railroad to Anchorage under contract rates via the Port of Whittier also bypasses the Port of Anchorage even though Anchorage is the destination of the cargo.

COAL TRAFFIC PROJECTIONS

INTRASTATE & EXPORT



ANCHORAGE - FAIRBANKS PASSENGER SERVICE

DESCRIPTION:

The Alaska Railroad operates daily express passenger service northbound and southbound, with stops at Anchorage, Talkeetna, Denali National Park (Mt. McKinley), and Fairbanks in summer. It is a major means of tourist transport for the south-central region of Alaska. The trip from Anchorage to Fairbanks is 356 miles.

The Railroad also operates local passenger service in summer between Anchorage and Fairbanks twice each way each week. These trains service a remote region of homesteads between Talkeetna and Curry with flag stops. They also connect the major cities of Anchorage and Fairbanks.

In winter, a mixed freight and passenger train is operated northbound on Saturday and Southbound on Sunday. Up to 25 freight cars are added to the train to help offset passenger losses. Transportation and maintenance costs are then allocated to freight service. Real savings are minimal since an extra locomotive is usually added to the northbound mixed train. Regular winter freight trains during weekdays have extra capacity to handle the 25 cars during the week. Some savings may be realized in per diem expenses due to quicker turnaround of offline-origin cars.

A. Statistics

	<u>1980-1981 change</u>
* Ridership	+ .2%
* Revenues	+26.6%
* Fare Increase	+25.0%

B. Analysis and Conclusions

- * Consistent increases in fares have not damaged summer ridership.
- * Winter ridership has fallen due to higher fares and service cuts. Service has fallen from 3 trains per week to 1 train per week each way in winter.
- * The railroad is no longer an important intercity passenger link. Its fare is 65% of airfare and the trip takes 11 hours longer. Less than 30 passengers per week ride in winter from Anchorage to Fairbanks.
- * Tourist ridership in summer is less sensitive to higher fares and may rise over time.
 - Costs are fixed and load factor is only 54%.
 - Up to 30-40% additional ridership on express trains would incur no additional costs except traffic and promotion.

ANCHORAGE TO FAIRBANKS PASSENGER SERVICE

1980 TO 1982

	1980		1981			1982 (ESTIMATED)		
	<u>ALL</u>	<u>LOCAL</u>	<u>EXPRESS</u>	<u>LOCAL</u>	<u>TOTAL</u>	<u>EXPRESS</u>	<u>LOCAL</u>	<u>TOTAL</u>
GROSS REVENUE	1,305 ¹		1,386 ³	358 ¹	1,744 ²			
COMMISSIONS ⁴	(56)		(65)	(6)	(71)			
NET REVENUE	1,149		1,321	352	1,673	1,671	352	2,062
EXPENSES ⁵	(3,233)		(1,590)	(1,234)	(2,824)	(1,749)	(1,018)	(2,767)
	(1,984)		(269)	(882)	(1,151)	(78)	(666)	(744)

SOURCES: ALASKA RAIL AND DATA AND STUDY ESTIMATES

¹INCLUDES MAIL REVENUES OF \$111,000 IN 1980 AND \$137,000 IN 1981.

²THERE WAS A 25% FARE INCREASE IN 1981 WITH ALMOST NO LOSS IN RIDERSHIP.

³INCLUDES SPECIAL TRAIN REVENUE.

⁴TRAVEL AGENT COMMISSIONS ESTIMATED BASED ON ONE HALF OF SUMMER TICKETS AND 10% COMMISSION.

⁵ALLOCATED BASED ON # LOCAL AND EXPRESS TRAINS FOR 1981. NO ALLOCATION OF ADMINISTRATIVE OVERHEAD OTHER THAN AN ESTIMATED \$50,000 OF DIRECT TRAFFIC EXPENSES ARE INCLUDED.

THE WHITTIER SHUTTLE

DESCRIPTION:

The Whittier shuttle is a passenger train from Anchorage to Portage (50 miles), and a passenger train with flat cars added for automobile transport, from Portage to Whittier. A ferry to Valdez lands at Whittier.

Trains operate three days per week in winter and daily in summer. There are also two extra trains operated each week in summer.

STATE CONTRACT AND SUBSIDY:

The Whittier Shuttle is operated under contract to the State of Alaska. Currently the State guarantees minimum average revenues of \$3,300 per train-day and \$2,100 per train-day for summer extra trains.

At current service levels the guarantee amounts to \$803,400 annually. If passenger and auto revenues fall below that level for the year, the State will make up the difference. Revenues in excess of the minimum accrue to the Railroad.

WHITTIER SHUTTLE GAIN (LOSS)
((\$'000)

	<u>1980</u>	<u>1981</u>
Revenues	\$711	\$881
Subsidy	<u>50</u>	<u>881</u>
Total	761	881
Expenses	<u>(764)</u>	<u>(840)</u>
	(\$ 3)	\$ 41

1980 Subsidy Minimum:
Train-Days Subsidy

225 x \$3125	\$703,125
29 x \$2000	<u>58,000</u>
	\$761,125

1981 Subsidy Minimum:
Train-Days Subsidy

225 x \$3300	\$742,500
29 x \$2100	<u>60,900</u>
	\$803,400

Source: Alaska Railroad

FINANCE SUMMARY

- * Adjusting the ARR's accounting practices to conform to industry standards changes the 1981 reported profit to a loss. Even so, the trend is very favorable and 1982 will be profitable.
- * The ARR's freight operations are worth \$8.5M as is. This valuation will increase dramatically if performance continues to exceed projections.
- * Revenue-producing real estate could be mortgaged for \$15.3M.
- * As a corporation, the ARR could have raised \$11.6M in 1981 by leasing equipment and track. The present value of those leases would be \$5.3M.
- * As a corporation, the ARR could depreciate its \$82M "Frozen Asset Base" under the Reagan Tax Law. The present value of the tax savings would be \$31.9M.
- * ARR management is weak in the use of financial analysis tools.

VALUATION RECAP

(\$ MILLION)

1. FREIGHT OPERATIONS	\$ 8.5
2. REAL ESTATE	15.3
3. LEASING	5.3
4. FROZEN ASSET BASE TAX BENEFITS	<u>31.9</u>
TOTAL	\$61.0

PROJECTED FREE CASH FLOW FROM FREIGHT OPERATIONS ASSUMING CONSTANT 1982 LEVEL PERFORMANCE

Free Cash Flow

\$5.3 million	Net income as projected
+3.3	Depreciation
+2.57	Improvement in 1982 income to date over projections
-2.44	Major maintenance
-2.5	Imputed income tax
-5.0	Ongoing capital expenditures
<u>1.23</u>	Net after-tax free cash flow
\$8.49 million	Net present value

Notes:

- A. Fiscal year 1982 income of \$5.3 million is the amount projected by the Alaska Railroad. Passenger services, which are assumed to have a negative contribution of \$500,000, and non-operating accounts, are excluded.
- B. Depreciation source: ARR projections
- C. Year-to-date figures include the first five months of FY'82. Cash flow does not assume any improvement over original ARR projections for remainder of the year.
- D. Major maintenance is based on HBS study allocation.
- E. Ongoing capital expenditures are based on historical average, adjusted to exclude passenger capital expenditures and major maintenance.
- F. NPV assumes a 15-year cash flow with a 5% discount factor, and assumes tie replacement costs rise by \$0.62 million after tax in 1985.

REAL ESTATE FINANCE OPPORTUNITY

A. KEY FACTS:

*The Alaska Railroad's real estate rentals from land have risen over 20% per year for the last six years.

*The Railroad now holds no mortgages of any kind on its real property.

B. FINANCIAL IMPLICATIONS:

1982 Rental cash flow available for debt service: \$2.96 million

Loanable amount:¹ \$15.3 million

C. If we assume real estate cash flow rises just 15% per year and that the Alaska Railroad uses this income each year to borrow more money, the Railroad can raise capital according to the following schedule.¹

<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
\$2.3 million	\$2.64 million	\$3.04 million	\$3.49 million	\$4.01 million

1. Assumes 15% interest, 10 year term, and monthly repayments. Assumes bank lends 100% of the amount of the debt the cash flow can sustain.

LEASING AS A FINANCE OPPORTUNITY

- A. In 1981, the Alaska Railroad could have financed \$11.6 M of capital expenditures through lease transactions had it been a corporation.
- B. Three types of leases were available (\$ financeable):
 - (1) New Equipment Lease (\$3.4 million)
 - (2) Used Equipment Sale-Leaseback (\$6.6 million)
 - (3) Safe-Harbor Leasing of Track under ERTA of 1981 (\$1.6 million)
- C. The weighted average pre-tax cost of this money would have been 10.3%.
- D. The after-tax net present value of entering into such leases would have been \$5.3 million.

SUPPLEMENTAL INFORMATION ON LEASES

1. The primary purpose of leases is to transfer tax benefits -- principally ~~depreciation~~ and investment tax credits.
2. Only property owned or used by private, for-profit corporations, or exempted public corporations is eligible for tax benefits. See §48(a)5 of the IRS Code which says:
"Property used by the United States, any State or political subdivision thereof . . ., or any agency or instrumentality of any of the foregoing shall not be treated as §38 property."
(i.e. property eligible for tax credits.)
3. The economy Recovery Tax Act of 1981 (ERTA) changed railroad leasing in three fundamental ways:
 - * Reduced rolling stock depreciable life from 12 to 5 years
 - * Eliminated FMV purchase requirement for the residual asset value; the new so-called "safe-harbor" leasing allows a put/call agreement on the residual asset for 25-30% of book value
 - * Allowed the sale of excess tax benefits by one corporation to another
4. Senator Dole has proposed eliminating the third and possibly the second of these changes by ERTA. Some rescission appears likely.
5. Lessors can offer lower lease rates through the use of "leveraged lease" transactions in which the lessor generally borrows 70% of the asset's purchase cost. All the tax benefits then accrue to the lessor for just 30% of the asset's cost.
6. Lease terms are generally limited only by the asset's remaining useful economic life.
7. At the conclusion of the lease, the lessee has the option to renew the lease (generally for 10-year increments for rolling stock or locomotives) or to purchase the asset (under a put/call agreement). In the case of the Alaska Railroad, its bargaining position as lessee would be extremely strong because:
 - (1) the equipment would be in Alaska
 - (2) having served its useful economic life, the equipment would probably need an expensive overhaul
 - (3) the equipment would have a book value of zero
 - (4) the lessor would have already achieved his desired rate of return
8. Other than its relatively new GP-40's, book value of the Alaska Railroad's locomotive fleet is \$6.1M spread over 40 locomotives. This amount could theoretically be realized in a sale-leaseback transaction. However, the age and diversity of the equipment makes such a lease improbable.
9. Safe-harbor leasing of trackwork is possible through a non-recourse loan by the railroad to the leasing company which uses the loan to buy the track. The leasing company then leases the trackwork back to the railroad with lease payments equal to the debt service; hence the only net cash flow occurs in year zero.

"FROZEN ASSET BASE" TAX BENEFITS

1. Key Facts:

- i) The rails' use of betterment accounting (as opposed to ratable depreciation) for investment in track and structures has resulted in a large undepreciated "frozen asset base" on their balance sheets.
- ii) ERTA allows rails to write this base off over 5 to 50 years.
- iii) The ARR has an \$82 million "frozen asset base."

Track & Structures	\$75.0M
Tunnels	<u>7.0M</u>
	\$82.0M

**2. Tax Benefits
(using 5-year accelerated schedule)**

	<u>Amount</u>	<u>Writeoff</u>	<u>Tax Rate</u>	<u>After-Tax Cash Flow Benefit</u>
Yr. 1	\$82M	x 40%	x 46%	= \$ 15.1M
Yr. 2	82M	x 24%	46%	= 9.1M
Yr. 3	82M	x 18%	46%	= 6.8M
Yr. 4	82M	x 12%	46%	= 4.5M
Yr. 5	82M	x 6%	46%	= 2.3M

**3. Net Present Value (discounted at after-tax equivalent of 15% pretax)
\$31.9 million**

- 4. This tax benefit will be limited by that portion of the purchase price which is assigned to the fixed asset accounts.

ALASKA RAILROAD

Balance Sheet as of February 28, 1982

(\$000,000)

ASSETS		LIABILITIES & SHAREHOLDER'S EQUITY	
Current Assets	\$ 34.1	Current Liabilities	\$ 5.4
Fixed Assets		Other Liabilities	2.1
Land	0.3	Shareholder's Equity	
Net Buildings	5.6	Paid-In Capital	273.5
Structure	113.9	Retained Earnings	<u>(105.0)</u>
Gross Equipment	46.7	Sub-Total,	
less depreciation	27.1	Shareholder's Equity	168.5
Sub-Total, Fixed Assets	<u>139.4</u>		
Other Assets	2.5		
Total Assets	\$176.0	Total	\$176.0

COMMENTS ON BALANCE SHEET

ASSETS

- * The book value of land, almost all of which was given to the ARR by the Federal Government, is obviously an understatement of market value.
- * The high equipment depreciation is another indication of its age. Because of this factor and the fact that much of the equipment was government surplus donated to the ARR, we cannot assume book value even approximates market value.

EQUITY

- * The high equity/liabilities percentage is unusual. The ARR's 0% D/E ratio compares with a 30% average for our Class II sample. Based on this capitalization comparison, the ARR could support a significant amount of bank debt.

ENTITY SUMMARY

*PRIVATE OWNERSHIP AND OPERATION OF THE ALASKA RAILROAD, AS IT EXISTS TODAY, IS NOT A PRACTICAL QUESTION: IT IS PHILOSOPHICAL.

*HOWEVER A SUCCESSOR ENTITY IS ORGANIZED, IT MUST HAVE FREEDOM FROM --AND EQUAL LEGAL STANDING WITH-- GOVERNMENT TO TAKE ADVANTAGE OF MANAGEMENT AND MARKET OPPORTUNITY.

*UNNECESSARY COSTS OF DUREAUCRATIC ATTACHMENT ARE DIFFICULT TO MEASURE, BUT THEY ARE VERY SUSTANSIAL.

PHILOSOPHY

- * Railroads are traditionally private sector activity.
- * Management performs better with profit responsibility.
- * Governments fail to exploit entrepreneurial opportunities.
- * Once a railroad is profitable, governmental participation is unnecessary.
- * "Federal ownership of the [Alaska] Railroad now conflicts with or limits actions needed to improve its profitability."

--General Accounting Office Report to Congress,
February 25, 1982

PROFILE OF GOVERNMENT INVOLVEMENT IN RAILROADS

1. Ownership

The U.S. federal government, 11 states and 16 municipalities own or operate some type of rail property for approximately 30 railroads.

2. Organization

Either single or in combination,

- Commissions
- Authorities
- Departments of Transportation
- Or public benefit corporations

are organizational forms used.

ADVANTAGES

- * a government agency has strong negotiating position with labor
- * possibility of public funding, especially for expansion and natural disasters
- * lower cost of capital
- * tax-exempt status
- * probable exemption from anti-trust

DISADVANTAGES

- * lack of autonomy: bureaucratic control reduces managerial discretion and efficiency in every functional area
- * governmental personnel policies inhibit railroads' business needs
- * competing transportation modes consider publicly funded railroad as unfair competition
- * railroad has no legal standing against regulation
- * employees can benefit from both Civil Service and union representation
- * no possibility of creative financing; lack of tax benefits increases cost of equipment
- * inability to compensate management at competitive incentive rates, but Civil Service leads to top-heavy management
- * greater exit barriers for markets and services

SUPPLEMENTAL INFORMATION ON GOVERNMENT INVOLVEMENT IN RAILROADS

A. Size

* Of 30 publicly-owned or operated railroads, all but 3 are Class III railroads with revenues generally less than \$2M per year.

<u>Class I</u>	<u>Owner</u>
Conrail	USA (82%)
Long Island Railroad	State of New York (100%)

<u>Class II</u>	<u>Owner</u>
Alaska Railroad	USA (100%)

States Involved in Class III Railroads

Alabama	Michigan	South Dakota
Georgia	New Hampshire	Vermont
Iowa	South Carolina	West Virginia
		Wisconsin

B. Profitability

- * The LIRR has never been profitable since New York State bought it in 1965.
- * Government-owned Class III railroads have an average Return on Equity of 3.4% including public financial support as revenue.
- * Conrail became profitable in late 1981.

C. State-Owned Assets

- * About 50% own track and right-of-way only
- * About 50% own rolling stock as well

D. Control and Operating

- * Only 3 states use state employees for railroad operations.
- * 8 states lease railroad assets to private operators.

E. Financing Options

- * Because of §48(a) of tax code, leasing capital equipment on favorable terms is not possible for publicly-owned railroads.

F. Exception for Corporate Entity

- * Because of a specific clause in the 3R Act of 1976 and its charter as a private, for-profit corporation, Conrail has all the financing flexibility of a private corporation.
- * Long Island Railroad's case: When the LIRR switched from a stock corporation to a "public benefit corporation" in 1981, it forfeited all access to private financing or tax-aided schemes.

VIEWS OF NATIVE AND ENVIRONMENTAL GROUPS

Issue Summary and Interview Comments

- A. **ARR Transfer:** There is no consensus among native corporations about the ARR's transfer. In general, a given corporation's view depends on its satisfaction with land claims against the U.S.
- B. **Route Expansion:** Again, no consensus exists. However, all groups favored the ARR as the transportation mode which minimized land access and environmental disturbance.
- C. **Comments:** The following quotations show the diversity of opinions toward the ARR.

"Expanding the ARR would be a positive signal to investors. Cook Inlet Region Inc. is open to joint ventures for exploration and development."

Frank Klette, EVP, CIRI, Inc.

"We're opposed to the State's takeover of the railroad only because the State is more likely to spend more money on expansion than the Federal Government."

Don Argetsinger, Land Director, NANA Regional Corp.

"The fact that the ARR is owned by the government, whether State or Federal, makes competition with the private sector unfairly."

Dan Alex, Land Manager, Eklutna

"Expansion is inevitable, and railroads are much preferred to roads for minimizing impact on bush society."

David Cline, Audubon Society

"We don't want other people to be able to carve into our region by surface transportation. However, if push comes to shove, the railroad is much better than a road because of its limited access."

"All we really want is to have control over what happens in our region; we don't have problems with land tenure along the right-of-way."

Don Argetsinger, Land Director, NANA Regional Corp.

"We wouldn't want any railroad land if it is being used or ever contemplated being used."

Lionel L. Drage, President, Chugach Natives, Inc.

"We want the State to have the ARR in return for clarifying certain portions (of the Cook Inlet Land Exchange Law). \$1500 is O.K. with CIRI."

Roy Huhndorf, President, CIRI, Inc.

EXPANSION SUMMARY

*EXPANSION OF THE ALASKA RAILROAD IS NOT NECESSARY FOR CURRENT OPERATIONS.

*IN ORDER TO IMPROVE ITS MARKET BASE AND PRESERVE ITS MARKET SHARE IN THE RAILBELT, THE RAILROAD SHOULD BE CERTAIN IT IS INCLUDED IN KNIK AND TURNAGAIN CROSSING PROJECTS AND POSSIBLY THE SUSITNA PROJECT AS WELL.

*THE MOST LIKELY LARGE EXPANSION PROJECT AT THIS TIME IS TO AMBLER. AS A PRIVATE BUSINESS VENTURE, THE PROJECT IS TOO RISKY. COORDINATED DEVELOPMENT OF FOUR MINE SITES AND INVESTMENT WITHOUT A REQUIRED RATE OF RETURN COULD, WITH A TURNAROUND IN COPPER PRICES, MAKE THE EXPANSION FEASIBLE.

*IT IS MORE IMPORTANT FOR GOVERNMENT TO ENCOURAGE DEVELOPMENT IN A COORDINATED MANNER THAN TO PROVIDE DIRECT FUNDING FOR EXPANSION.

AMBLER EXPANSION ANALYSIS

Required Maximum Transportation Costs:

The WAAT Study found that when copper was at \$1.00/pound in 1980 a mine of the Arctic Camp type could support maximum transportation costs to Anchorage of \$47/ton. With the recent 30% decline in copper prices the necessary transportation is probably at or below \$30/ton. The study found that transportation to Anchorage was the most economically viable alternative.

Feasibility of Ambler Expansion:

The key variables for the expansion are mineral prices, coordinated mine development to achieve minimum tonnages of mineral concentrate to be shipped, and the return an expansion project must produce on the capital investment. As a free standing project, expansion probably could not be financed since a 15% or greater real return would probably be required. Resulting transportation costs would be in excess of the maximum amount the mine could support.

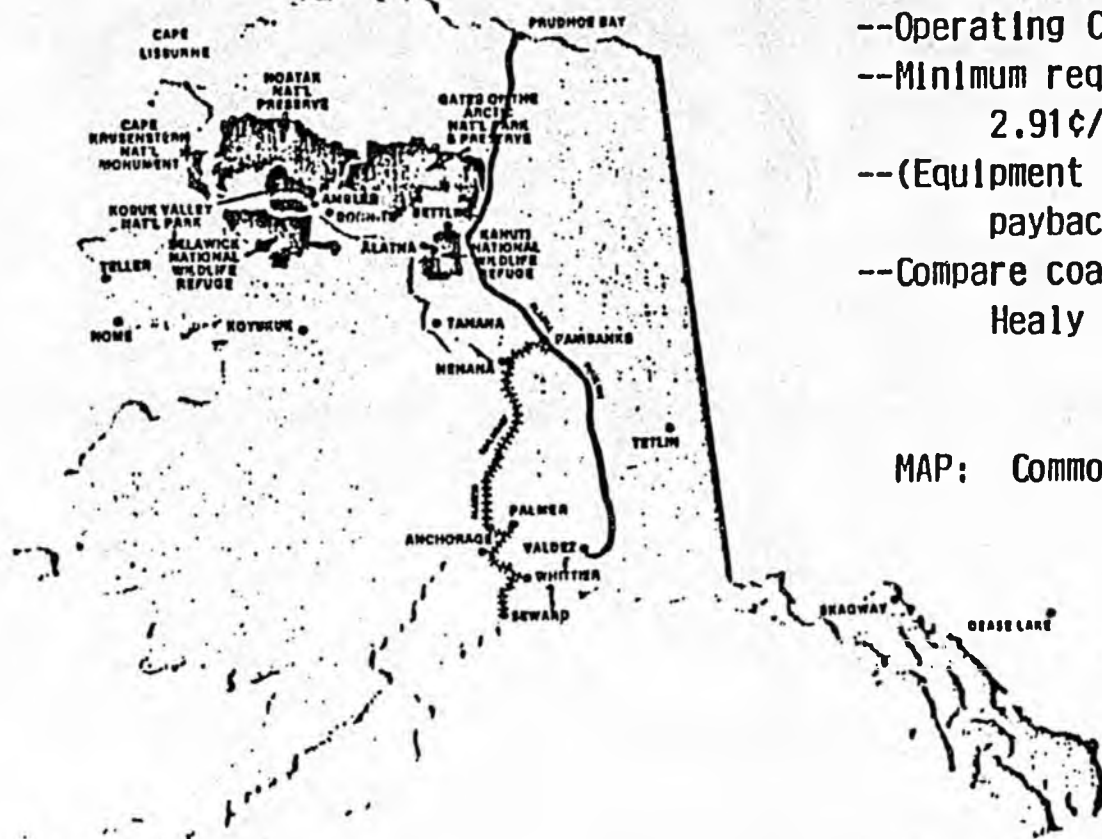
With some assistance from a "deep packet" private entity or the State, capital costs could be reduced by sharing of the financial risk through guarantees of outright grants. To cover transportation costs alone, 3 million tons per year would be required. Only 1.2 million tons production is currently projected.

The Prospects:

With continued exploration, larger annual tonnages might become available for shipment, thus bringing costs into line. Government would have to help in coordinating the development of a number of independently owned mines by aiding them in obtaining land access and other permits.

The absolute minimum cost of service to Ambler would be the \$20.70/ton operating cost which allows nothing for recovery of the capital costs of expansion.

EXPANSION TO AMBLER



- Construction Cost: \$1.306 Billion
\$3.147 million per mile
- Extension Miles: 415
- Miles to Tidewater, Anchorage: 712
- Operating Cost/ton: \$19.58
- Minimum required rate/ton: \$20.70
2.91¢/ton-mile
- (Equipment 5% IRR, No construction
payback)
- Compare coal costs:
Healy to Seward -- \$10.00/ton
-- 2.78¢/ton-mile

MAP: Commonwealth North Action Paper

AMBLER MINING DISTRICT MINERAL RESERVES

<u>SITE</u> ¹	<u>ANNUAL CONCENTRATE PRODUCTION</u>	<u>SUPPLIES ANNUALLY</u>	<u>LIFE</u>	<u>MINERALS</u>
ARCTIC CAMP	600,000 tons/yr.	100,000 tons	12-14 yrs.	Copper, Lead, Zinc, Silver
SUN	200,000	60,000	20	Copper, Lead Zinc, Silver
SMUCKER	150,000	36,000	20	Zinc, Silver
BORNITE	<u>30,000</u>	<u>6,000</u>	15	Copper
	980,000	202,000		

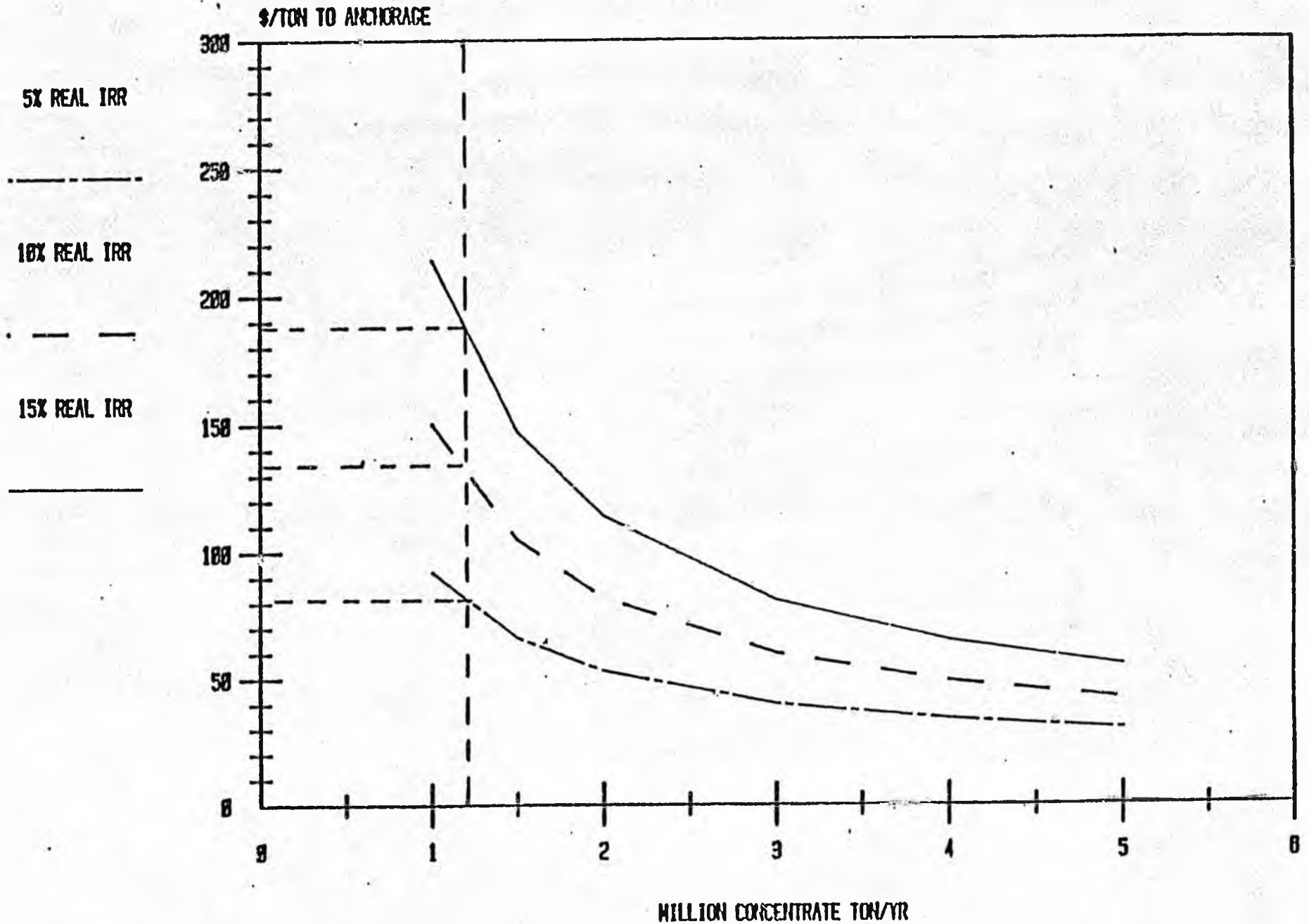
TOTAL TONS; 1,182,000

¹Four other sites are possible with a 15% probability that one will produce 125,000 tons of concentrates.

SOURCE: ALASKA MINERS ASSOCIATION, INC.
RAILROAD COMMITTEE

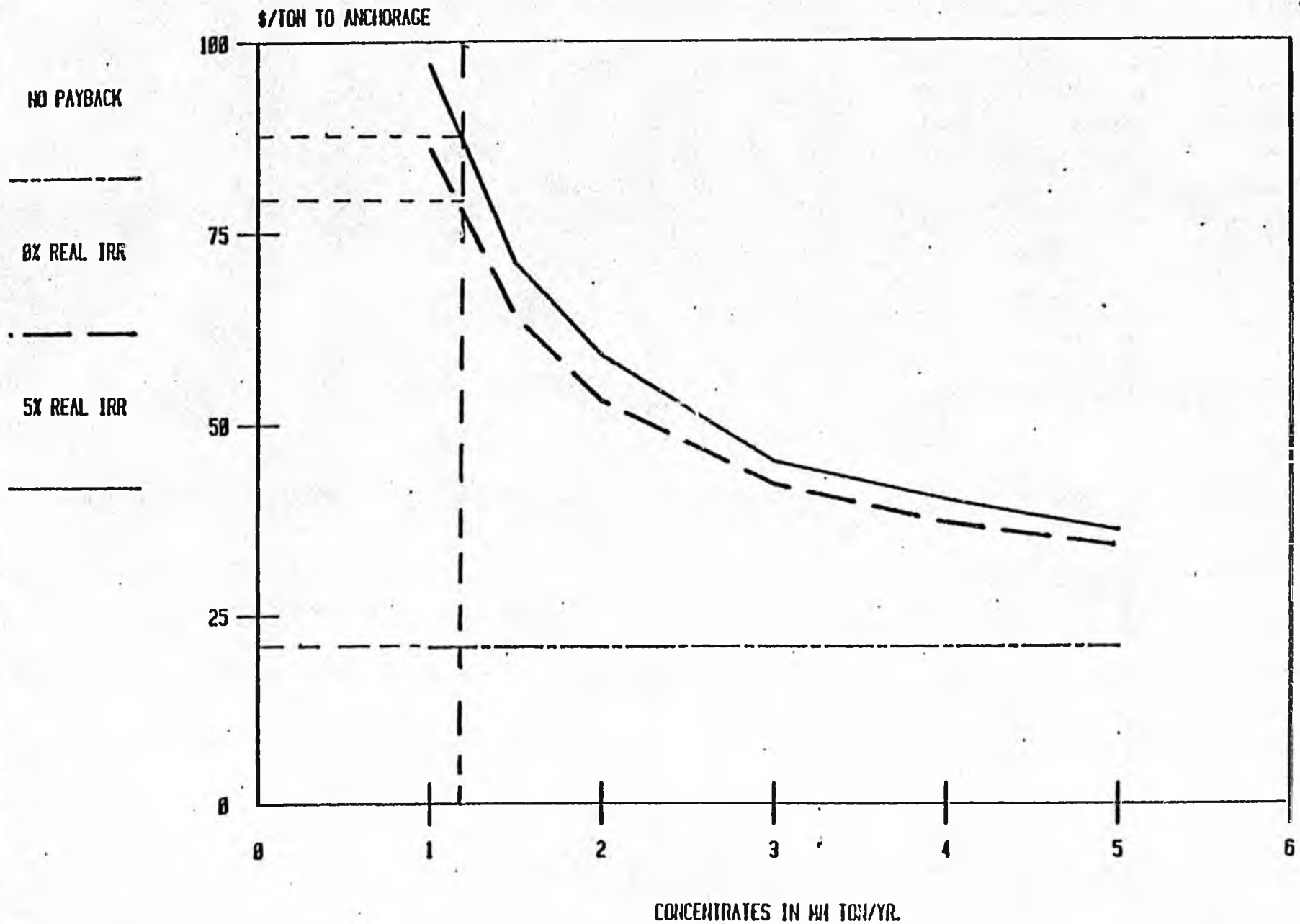
AMBLER MINING DISTRICT ARR EXTENSION

\$3.2M/mile FROM HENNA-48 YR. LIFE



AMBLER MINING DISTRICT ARR EXTENSION

\$3.2MM/MILE FROM NENANA-STATE AIDED



ACKNOWLEDGEMENT

The members of the Harvard Business School Alaska Railroad Study would like to thank the men and women of the Alaska Railroad for their tremendous cooperation and assistance. We would like to dedicate our report to them because without their help this report would not have been possible.

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Frank Jones
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Arnie Polanchek
John Gray
Ron Risch
Bruce Carr

Jack Hephorth
Oble Weeks
Dave Roderick
Bill Coghill
Don Harvey
Bob Wright

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Chris Needham
Trudie Headwell

Peter A. Bove
Edwin A. Nelson

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Yearbook of Railroad Facts 1981. Washington D.C.; Association of American Railroads, 1981.

List of Sources

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Alaska Materials Handling Corporation
Mr. Richard Lyon, President

Alaska Power Authority
Mr. Dave Wozniak

Alaska State Legislature
Sen. Mike Collette
Sen. Ed Dankworth
Sen. Frank R. Fargueon
Rep. Rick Halford, House Majority Leader
Mr. Peter Jeans, Office of Senator Ed Dankworth
Sen. Jay Kerttula, President State Senate
Mr. David Rogers, Office of Senator Ed Dankworth
Mr. Gordon Tope, Office of Senator Jay Kerttula

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ARCO Alaska
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Mr. Clifford Eby, Senior Financial Analyst
Mr. Larry Lassen, AVP for Accounting
Mr. Craig F. Rocky, Manager - Regulatory Analysis

Audubon Society, Anchorage Chapter
Mr. David R. Cline

Bear Creek Mining Company
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Mr. John Bivens, Railroad Consultant

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Ms. Heather Reed

Chugatch Natives, Inc.
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Mr. Carl Propp, Resource Manager

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Doyon, Ltd.
Mr. Morris Thompson, Vice President

Eklutna, Inc.
Mr. Dan Alex, Lend Manager

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Mr. Richard Schiefelbein, Deputy Administrator
Mr. John G. (Jack) Smith, Consultant

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Mr. Allen Scharbrooke, Attorney

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Professor David Kraege
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Institute of Social and Economic Research, University of Alaska
Mr. Lee Gorsuch, Director
Mr. Lee Husky, Analyst

Internal Revenue Service
Mr. John A. Polaris, Regulation Administrator

Interstate Commerce Commission
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Mr. Brian Holmer, Department of Accounting
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Mr. Robert Hayson, Assistant Controller

MAPCO Worth Pole Refinery
Mr. James Healy

Maine Central Railroad
Mr. Eric Smith, Assistant Treasurer

Milwaukee Road
Mr. Clayton Smith
Mr. David Young, Assistant Controller

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Mr. John Shively, President

Office of U.S. Senator Ted Stevens
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Port of Anchorage
Mr. Chris Gates, Marketing Manager

Radnor Associates
Mr. Lou Zahner

Sabena Belgian World Airlines
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Mr. Barron Pleasants

Solomon Brothers
Mr. William Garden, Partner

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Mr. Tom Coburn
Mr. Don Singleton

Southern Pacific Transportation Company
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Mr. Mark Hickey, Policy Analyst
Mr. Elliot Lipson
Mr. John Martin, Transportation Planner
Mr. Robert W. Ward, Commissioner

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Mr. Ronald Walt
Mr. Charles Webber, Commissioner

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Mr. Charles Green, Minerals Development Specialist
Mr. John W. Katz, Commissioner
Mr. Ed Kerne, Division of Agriculture
Mr. Mark Withov

Office of the Governor
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Ms. Peggy Hockett, Administrative Assistant, Washington, D.C.
Ms. Julie Hickney, Administrative Assistant, Juneau
Mr. Robert Palmer, Director of the Office of Special Projects

Suncoast Alaska Corporation
Mr. William C. Noll, President

Suncoast Shipping Company
Mr. Tae Il Kim, President

Tanon and Company
Mr. Jack Moran

Tundra Ties
Mr. Grace Pleasants

TXL Leasing
Mr. William Fernow

Union Pacific Railroad
Mr. Delbert C. Martin, Manager District Sales Anchorage
Mr. John Meyer, Vice Chairman

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Mr. Walter Dupree, Washington, D.C.
Mr. John Mulligan, Juneau Office

United States Geological Survey
Mr. John DeYoung

Vermont Transportation Agency
Mr. Robert Merchant, Railroad Consultant

West Virginia Railroad
Mr. John Killoran, Executive Director

PETER A. BOWE

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Phone: (617) 491-4419

education
1980-1982

HARVARD GRADUATE SCHOOL OF BUSINESS ADMINISTRATION BOSTON, MA
Candidate for the degree of Master in Business Administration in June 1982. Awarded First-Year Honors. Second year emphasis on production and finance. Director of Company Relations for the Small Business Club.

1974-1978

YALE COLLEGE NEW HAVEN, CT
Earned Bachelor of Arts degree, magna cum laude, with Distinction in History. Teaching Assistant in Economics. Selected as Freshman Counselor by College Dean. Varsity Sailing Team—elected Captain, Freshman Team; National Champions, 1975. Co-Chairman of College Social Committee.

work experience:
summer 1981

ELLCOTT MACHINE CORPORATION BALTIMORE, MD
Assistant to Chairman of this manufacturer of dredges and steel castings. Obtained broad exposure to company operations ranging from work on the foundry floor to contact with the company's bankers, lawyers, accountants, and union local officials. Used observations to write report for CEO and for owner demonstrating how to rationalize production reporting in the steel castings division; improve labor-management communication; formalize capital budgeting procedure; and save \$100,000 annually by using fees in lieu of balances to pay for bank services.

1978-1980

MORGAN GUARANTY TRUST COMPANY OF NEW YORK NEW YORK, NY

1979-1980

Account Representative in the Petroleum Department. Managed two account relationships. Arranged a 100% credit increase to \$25 million for these accounts. Had secondary responsibility for five additional accounts. Specialized in drilling rig and production payment financing. Performed study influencing pricing policy for oil import Letters of Credit with values as high as \$150 million.

1979

Risk Review Analyst in the Financial Analysis Department. Evaluated companies for potential solicitation using computer-assisted techniques, industry analysis, and interviews with officers of subject companies.

1978

Commercial Bank Management Program. Ranked in top fifth of six-month training program focusing on finance, accounting, and international economics.

1977

YALE ALUMNI FUND NEW HAVEN, CT
Fundraising Coordinator. Directed national campaign which raised over \$100,000.

summer

1977

Independent research in The Republic of South Africa for senior thesis.

1973-1976

Sailing Instructor. Was Head Instructor and Racing Instructor at American Yacht Club (Rye, NY) and Severn Sailing Association (Annapolis, MD) respectively.

personal background

Married. Interests include competitive sailing, nautical numismatics, travel, and real estate investment. Class Agent for Yale Alumni Fund.

references

Personal references available on request.

October 1981

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education
1980-1982

HANFORD GRADUATE SCHOOL OF BUSINESS ADMINISTRATION BOSTON, MASSACHUSETTS
Candidate for degree of Master in Business Administration in June 1982. Received First-Year Honors. Second-year emphasis on operations, marketing, and finance. Member of Transportation, Small Business, and Rugby Clubs.

1974-1978

UNIVERSITY OF MARYLAND COLLEGE PARK, MARYLAND
Received Bachelor of Science degree, magna cum laude, in Finance. Phi Beta Kappa and Omicron Delta Kappa. President of Social Fraternity, Rugby Club.

business experience
summer 1981

FROCTER & GAMBLE DISTRIBUTING COMPANY
CASE FOOD SALES DEPARTMENT CINCINNATI, OHIO
Summer MBA Sales Management Intern.

- Analyzed test market results.
- Planned and participated in district sales meeting.
- Sold case food promotions to retail accounts.
- Participated in sales management training program.

1979-1980

KACHEMAY SEAFOODS, INC. TOONAK, ALASKA

1978-1980

- Operations Manager. Responsible for purchasing, processing, and shipping of 1.2 million pounds of fresh salmon each summer.
- Supervised fifty hourly employees.
 - Developed and implemented recruitment and training programs.
 - Purchased operating supplies and equipment.
 - Established plant sanitation and maintenance programs.
 - Directed construction of plant and installation of equipment.

1978-1980

- Director
- Developed sales and cash flow forecasts for bank credit negotiations.
 - Participated in all phases of corporate planning.

1979-1980

- Sales Representative.
- Developed fresh salmon delivery capabilities for the domestic market.
 - Developed frozen salmon steak product line.
 - Closed sales to supermarket chains and restaurant wholesalers.

1973-1977

Summer positions in operations.

winters

1974-1978

Paid 95 percent of college expenses through part-time work.

personal background

Grew up in Greenbelt, Maryland. Have traveled in the United States, Europe, and Japan. Enjoy athletics, history, art, and politics. Married, no children. Excellent health.

references

Personal references available upon request.

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**work
experience
summer 1981**

HOUSTON, TEXAS
ROYAN MOSLE, INC.
Associate in Corporate Finance. Participated on small teams on seven energy-related projects involving merger/acquisition analysis, private placements, and public offerings. Developed pro forma computer models, negotiated with clients, and assembled and wrote a major debt memorandum. Hired as the first MBA summer associate in the department.

1972-1980

AMARILLO, TEXAS
**BAKER & TAYLOR DRILLING COMPANY
RAISE DRILLERS, INC.**
Employed interchangeably by these commonly owned and operated companies in the positions described below. Gained extensive operational and managerial experience in oil and gas drilling and underground coal mining.

1978-1980

Director of Training. Designed, implemented, and conducted an in-house training program for drilling rig crewmembers, resulting in turnover reduction and improved safety record. Received national recognition by presenting paper, "Turkey Contractor's Approach to Training," to the 1978 Drilling Contractors Training conference. Participated in planning tertiary oil recovery project using carbon dioxide.

1977

Area Manager. Assumed total responsibility for company's activities in West Virginia. Task included completing two \$1 million contracts for ventilation shafts in coal mines and supervising two project managers and 26 union employees. Constant pressure required technical and interpersonal skills. Company has contracted subsequent work for both clients.

1976-1977

Administrative Assistant. Assembled field operations data for daily upper management meetings. Prepared company billings and contract bids. Participated in frequent top-level planning sessions. Compiled first complete company inventory.

1972-1976

Assistant Project Manager/Project Engineer. On-site field assignments in Illinois, Ohio, and Pennsylvania. Progressed from engineering and contract scheduling to managing complete contract phases. Supervised crews of 4 to 10 men, often in remote locations.

**education
1960-1982**

**HARVARD GRADUATE SCHOOL
OF BUSINESS ADMINISTRATION** **BOSTON, MASSACHUSETTS**
Candidate for the degree of Master in Business Administration in June 1982. General management curriculum with second-year emphasis on finance and operations. Elected Treasurer of the Runners Club. Member of the Energy and Resource Management and Aquilodaca Clubs.

1968-1972

BETHANY COLLEGE **LINDSBORO, KANSAS**
Received Bachelor of Arts degree, cum laude, in Physics, May 1972. Elected student body president and president of Math and Physics Club. Selected for Who's Who in American Colleges and Universities.

personal

Raised on a Kansas wheat farm. Completed 1981 Boston Marathon. Single, private pilot. Enjoy physical labor and public speaking.

references

Personal references available on request.

October 1981

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**Home Address:
1131 West Fifth Avenue
Anchorage, Alaska 99501
Phone: 907-276-7783**

**work
experience
summer 1981**

TOKYO, JAPAN
THE SANWA BANK
Trainee, International Department of Japan's fifth largest commercial bank. One of eight United States business students selected as Japan Society Business Fellows. Studied financing of international trade, resource development projects throughout the Pacific Basin. Traveled independently to Korea, Eastern Europe, and Moscow to write about energy and transportation development for Alaska newspaper, others.

1980-1981

ANCHORAGE, ALASKA
COGEM ALASKA
Consultant in marketing, economic development. Initiated Alaska legislature's effort to establish a wood fiber processing industry to save costs of clearing land for agricultural, energy development. Edited in-flight magazine for When Ah Alaska. Worked with state and private teams to develop marketing plans for Bering Sea herring, Alaska native arts, and other "cottage industries." Public relations included legislative campaign, lobbying on Alaska lands issue in Washington, D.C.

1978-1980

WASHINGTON, D.C.
JOHN CONNALLY FOR PRESIDENT
Assistant Press Secretary/Computer Coordinator. Designed and supervised use of nationwide computer communications system for presidential campaign. Traveled in twelve states as press secretary and tour director for Mrs. John Connally.

1978

ANCHORAGE/JUNEAU, ALASKA
THE ANCHORAGE TIMES
Lead political reporter. Established a capital bureau for Alaska's largest newspaper. Won C.B. Blahon Memorial Award for distinguished investigative reporting. First place in the Pacific Northwest. Covered oil and gas development, public land law, fisheries, state finances, budgeting.

1977-1978

ANCHORAGE, ALASKA
WALTER J. INCKEL FOR GOVERNOR
Press Secretary. Campaign spokesman in 1978 Governor's race. Participated in conception of television and print advertising. Joint supervision over four employees, corps of volunteers.
Legal Aide - Contest of Election. Coordinated statewide investigation and audit of primary election results to service attorneys contesting primary election. Used skills gained to win recount crew in general election, which reversed results of a state senate race to win a Republican majority.

**education
1960-1982**

**HARVARD GRADUATE SCHOOL
OF BUSINESS ADMINISTRATION** **BOSTON, MASSACHUSETTS**
Candidate for the degree of Master in Business Administration in June 1982. First year honors. Finance, marketing, general management curriculum. Elected president, Concessions Board, which oversees student businesses, total sales of \$1 million plus annually. Elected vice president, Century Club. Member, Communications, Transportation, Energy and Resources Management, and Venturia Capital Clubs.

1974-1978

NEW HAVEN, CONNECTICUT
YALE COLLEGE
Bachelor of Arts degree in History with intensive work in English and Economics. President and Editorial Page Editor, Yale Daily News. Blitman College Social Chairman. Student Representative, University Committee on Investor Responsibility. Secretary, The Elizabethan Club. Yale Freshmen Crew. Administered events for Association of Yale Alumni.

**personal
background**

Raised in Connecticut before moving to Alaska in 1977. Served as U.S. Senate Page for Senator Lowell P. Weicker, Jr. in 1973. Hobbies include flying in small planes, hot air balloons, fly fishing, Nordic and Alpine skiing, wine, and collecting books on Arctic exploration and settlement.

references

Personal references available upon request.

October 1981

News

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Office of Public Affairs

September 22, 1983
CONTACT: Alex Bilanow

USRA ISSUES REPORT ON VALUATION OF THE ALASKA RAILROAD

United States Railway Association Chairman Stephen Berger announces the Association has sent to the Congress a new report, Valuation of the Alaska Railroad.

The report, as approved by the Board of Directors at its September 22 meeting, was submitted under the terms of the Alaska Railroad Transfer Act of 1982 (ARTA) which was signed into law on January 14, 1983. It makes a determination of the fair market value of the railroad under the Act, which is intended to transfer ownership of the railroad from the federal government to the State of Alaska.

The analysis value! the 525 route-mile railroad's operations, its physical plant, equipment, real estate assets, and costs which the State of Alaska would incur incident to transfer. The Association also analyzed proceeds and costs that could be incurred if the railroad's assets were converted to other uses.

As determined by the Association, the net value of the Alaska Railroad is \$22,271,000.

The railroad, built and administered by the federal government since it was opened in 1923, currently operates freight and passenger trains serving the state's principal cities of Anchorage and Fairbanks, the ports of Whittier and Seward, and natural attractions such as Denali National Park.

Principal freight commodities include gravel, coal, aviation fuel, pipe, building materials and piggyback. Interline rail freight traffic is interchanged at Whittier with barge lines linking the carrier with Seattle and Prince Rupert, British Columbia. In fiscal 1983, it is estimated the railroad will have carried 82,000 carloads and 204,000 passengers.

The United States Railway Association is a non-profit government corporation established under the Regional Rail Reorganization Act of 1973. It has financing and monitoring responsibilities toward Conrail. In addition to Chairman Berger, the Board is comprised of Transportation Secretary Elizabeth Hanford Dole, Comptroller General Charles A. Bowsher, Interstate Commerce Commission Chairman Reese H. Taylor, Jr., and Conrail Board Chairman L. Stanley Crane. There is also an Advisory Board consisting of five public members.

United States Railway Association

VALUATION

OF THE

ALASKA RAILROAD

September 1983

United States Railway Association

955 L'Enfant Plaza North, S.W.
Washington, D.C. 20595
(202) 488-8777

Stephen Berger
Chairman of the Board

September 23, 1983

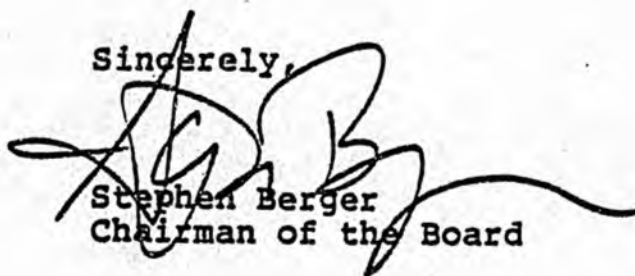
The Honorable George Bush
President
United States Senate
Washington, D.C. 20510

The Honorable Thomas P. O'Neill, Jr.
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

Pursuant to Section 605(d) (1) of the Alaska Railroad Transfer Act of 1982, P.L. 97-468, enclosed is the United States Railway Association's determination of the fair market value of the Alaska Railroad. Copies of the reports of consultants who assisted USRA in this analysis will be transmitted separately at a later date.

Sincerely,



Stephen Berger
Chairman of the Board

UNITED STATES RAILWAY ASSOCIATION

Board of Directors

Stephen Berger
Chairman of the Board

Charles A. Bowsler
Comptroller General of the United States

Elizabeth Hanford Dole
Secretary of Transportation

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Recommended by large shippers

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Recommended by the American Federation of Labor and
Congress of Industrial Organizations

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Chairman, Interstate Commerce Commission

Elizabeth Hanford Dole
Secretary of Transportation

Nathaniel Welch
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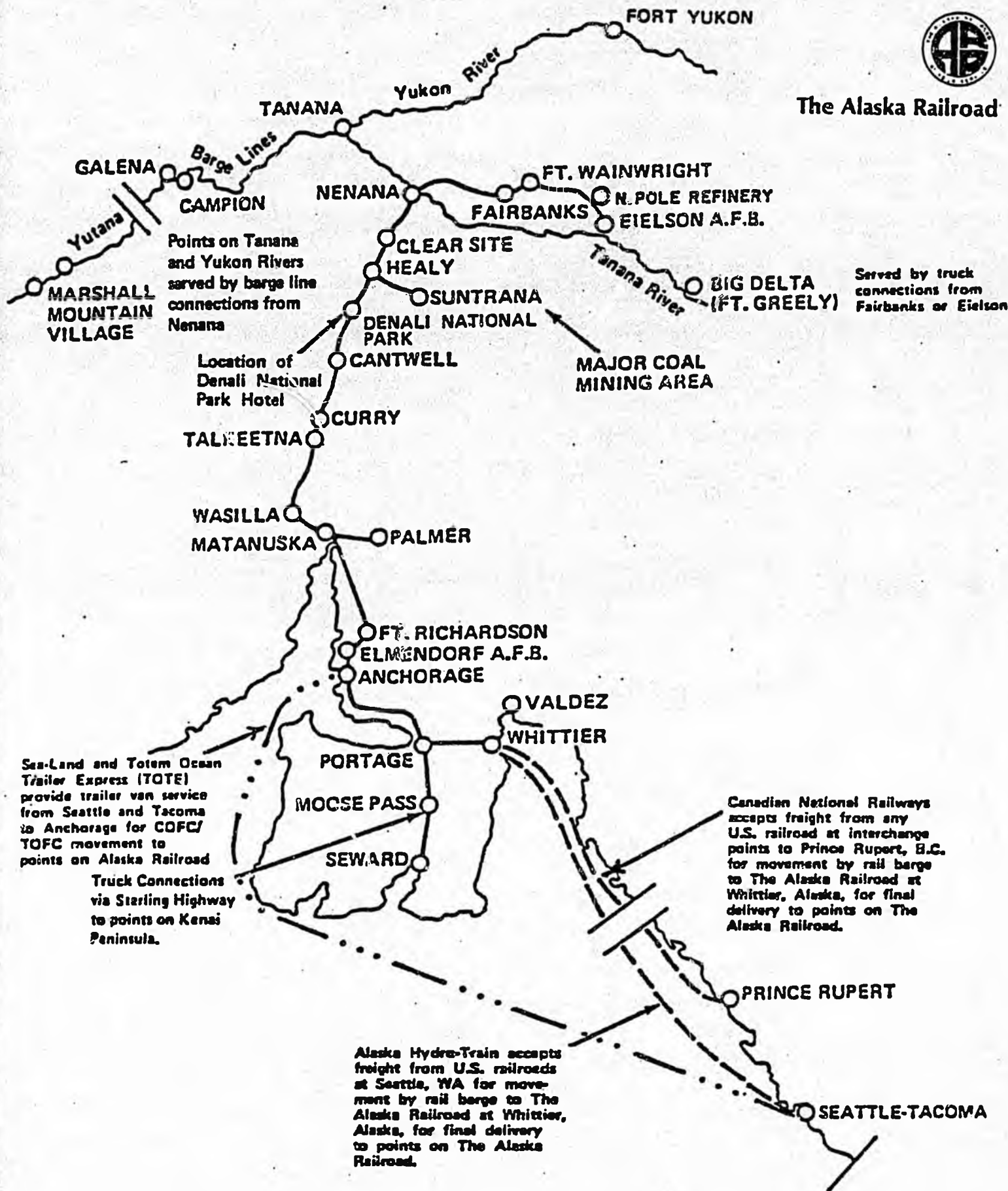
The approval and release of this report is an act of the Board of Directors of the Association. Not every member of the Board necessarily concurs in every statement or determination made in the report.

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The Alaska Railroad



ALASKA RAILROAD ROUTE MAP

Showing connecting carriers

FOREWORD

Description of the Alaska Railroad

In 1914, Congress authorized construction of the Alaska Railroad to open up Alaska's interior and to facilitate commerce through Alaska's ports. After the arduous job of building a railroad through the wilderness was completed in 1923, President Harding dedicated the railroad and a new era began in Alaska's history. The railroad went on to play a significant role in the development of Alaska's interior and as an armed forces supply link during World War II.

It has been operated by the Federal government since its inception, and today it is administered by the Federal Railroad Administration as part of the Department of Transportation. It currently operates over 525 route miles serving the principal Alaska cities of Anchorage and Fairbanks, the ports of Whittier and Seward, and natural attractions such as Denali National Park. Both freight and passenger service is offered year round. Interline rail freight traffic is interchanged at Whittier with barge lines linking the railroad with Seattle and Prince Rupert, B.C. Principal freight commodities carried include gravel, coal, aviation fuel, pipe, building materials and piggyback.

While the Alaska Railroad performs an important function within the State of Alaska, its operations and patronage are modest when compared with railroads in the lower 48 where it would be classified as a medium-sized "short-line" carrier with below average freight traffic density. Historically, the

railroad has been subsidized by Congressional appropriations. Since 1939, the appropriations have been used almost exclusively for capital and maintenance projects. Since 1975, appropriations have ranged from a low of \$3.0 million in 1978 to a high of \$12.6 million in 1981.

In fiscal year 1983, which ends September 30, it is estimated that the railroad will have carried 82,000 carloads and 204,000 passengers. Projected fiscal year 1983 revenues are \$55.5 million with operating expenses estimated at \$50.8 million. As shown in Table 1, this continues a trend begun in fiscal year 1981, the first time since the Alaska pipeline construction years that the railroad's operating revenues exceeded expenses.

Table 1

THE ALASKA RAILROAD
Financial Results

<u>Fiscal Year (1)</u>	<u>Revenue Millions</u>	<u>Expenses (Inc. Dep.) \$ Millions</u>	<u>Surplus (Shortfall) \$ Millions</u>	<u>Expense/ Revenue Ratio</u>	<u>Federal Appro- priations \$ Million</u>
1973	17.7	20.7	(3.0)	117	-
1974	21.5	22.6	(1.1)	105	-
1975	42.3	36.5	5.8	86	6.0
1976 (1)	53.7	49.6	4.1	92	9.0
1977	35.0	36.0	(1.0)	103	6.0
1978	29.1	33.6	(4.5)	115	3.0
1979	25.2	31.8	(6.6)	126	9.3
1980	28.9	34.7	(5.8)	120	6.5
1981	43.9	40.6	3.3	92	12.6
1982	58.8	49.2	9.6	84	6.2
1983	55.5	50.8 (2)	4.7	92	7.6 (3)

1) Year end changed from June to September in 1976. Transition quarter ignored.

2) For comparison with previous years, excludes \$2.3 million of engineering expense previously treated as capital.

3) \$7.6 million was appropriated in the continuing resolution, Public Law 97-377 in December 1982. The DOT appropriations bill for fiscal year 1983 contained no funding for the Alaska Railroad.

INTRODUCTION AND SUMMARY

The Alaska Railroad Transfer Act of 1982, P.L. 97-468 (ARTA) was signed into law on January 14, 1983. In that Act, Congress found that while continuation of the Alaska Railroad is necessary to achieve Federal, State and private objectives, continued Federal control and financial support are no longer required to accomplish those objectives. Congress further found that the Alaska Railroad was primarily benefitting Alaska residents and businesses and concluded that the Federal government should offer to transfer the Railroad to the State of Alaska.

ARTA establishes the terms and conditions for transferring the Railroad, sets forth the timetable and procedures for accomplishing the transfer, and authorizes the Secretary of Transportation to effect the transfer upon certification that the State has complied with the Act's terms and conditions. As part of the transfer process, ARTA Section 605(d)(1) directs the United States Railway Association (USRA) to determine the Railroad's fair market value. This report fulfills that requirement.

On July 15, 1983, pursuant to ARTA Section 605(a), the United States Department of Transportation and the State of Alaska submitted a Joint Report (605(a) Report) describing the assets and liabilities to be transferred. As directed by ARTA, USRA has used information contained in that report to the extent relevant to determining the Railroad's fair market value.

In directing USRA to value the Alaska Railroad, ARTA provides three specific instructions concerning that valuation. First, Section 605(d)(1) states that USRA

"shall determine the fair market value of the Alaska Railroad under the terms and conditions of this title, applying such procedures, methods and standards as are generally accepted as normal and common practice."

Second, the Act provides that

"[s]uch determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this title. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential future value if used in whole or in part for other purposes."

Finally, the Act requires that

"[t]he Association shall take into account all obligations imposed by this title and other applicable law upon operation and ownership of the State-owned railroad."

In reaching its determination of value, USRA used the normally accepted definition that fair market value is "what a willing buyer would pay . . . to a willing seller."* In the appraisal field, the valuation of property at fair market value "means merely an attempt to estimate the price for which the

*United States v. Miller, 317 U.S. 369, 374 (1943); United States v. 564.54 Acres of Land, 441 U.S. 506, 511 (1979). While the willing buyer/willing seller definition of fair market value ordinarily focuses on the loss to the seller (i.e., the loss to the United States in disposition of the railroad), ARTA Section 605(d)(1) mandates a focus on the obligations imposed by the buyer under ARTA (i.e., "obligations imposed by this title . . . upon operation and ownership of the State-owned railroad"). Consequently, to be consistent with ARTA's direction, the valuation concentrates on the present value of the property rights to be received by the purchaser under ARTA.

property could be sold by some stipulated seller to anyone else,
... "★

Thus, fair market value is based on economic value in the marketplace. It assumes that both buyers and sellers act rationally. It ignores the special desire of any particular buyer for the property and any unique value which the property may have to that particular buyer.

This means that the fair market value of the Alaska Railroad properties is not the subjective or special value of those assets to the State of Alaska. The price which the State would have to pay to acquire the rail properties should be based upon how much it would have to pay to outbid any other potential purchaser, subject to ARTA's terms and conditions.

Consistent with ARTA's direction that USRA apply "standards as are generally accepted as normal and common practice", USRA has determined the amount which a rational buyer might pay in the marketplace for the properties to be transferred to the State of Alaska considering both (1) the "terms and conditions" of ARTA that will apply to the State's acquisition of the Alaska Railroad, and (2) all obligations imposed by ARTA and other applicable law upon operation and ownership of the State-owned railroad.

*1 Bonbright, Valuation of Property, p. 65 (1937); accord, American Institute of Real Estate Appraisers, The Appraisal of Real Estate, pp. 23-24 (7th ed. 1978); 1 Orgel, Valuation Under Eminent Domain, Section 20, pp. 90-96 (2nd ed., 1953).

Since ARTA's terms and conditions require the State to operate the Railroad for at least ten years (or railroad properties would revert to the United States under ARTA Section 610(a)), determining the Railroad's fair market value begins with estimating the present value of continuing railroad operations for ten years, including the present value of the Railroad's non-operating real estate.* The next step is to estimate and compare

- (1) the present value of continuing rail operations beyond ten years in perpetuity, with
- (2) the present value of putting the Railroad's assets in whole or in part to other uses after ten years.

These alternative estimates of fair market value require analyses of the Railroad's operations, its physical plant and equipment, its real estate assets, the costs which the buyer will incur incident to the transfer, and the proceeds and costs that would be incurred if the Railroad's assets were converted to other uses.**

These analyses are described in the sections which follow. They were assembled to determine the Railroad's present fair market value under two alternative hypotheses -- (1) continued rail operations in perpetuity, and (2) rail operations for ten

*Any losses from continued operations could be offset by rents from the non-operating real estate, since ARTA Section 608(a)(5) requires that all railroad revenue "be retained and managed . . . for railroad and related purposes." The term "related purposes" is considered broad enough that this condition would not so restrict the State's use of railroad revenues as to materially affect fair market value.

**USRA was assisted in determining the scope and nature of its analysis under ARTA by the law firm of Nossaman, Guthner, Knox & Elliott.

years followed by putting the Railroad's assets to their highest and best alternative uses. Results of these two scenarios are summarized in Table 2.

Table 2

ARR VALUATION
as of 10/1/83

(in 000)

	<u>Continued Rail Operations Scenario</u>	<u>Alternative Use Scenario</u>
Real Estate	\$ 47,800*1	\$ 54,800*2
Rail Operations	<u>(25,529)*3</u>	<u>(35,430)*4</u>
	\$ <u>22,271</u>	\$ <u>19,370</u>

*1) Present value of the Railroad's non-operating real estate.

*2) Present value of the Railroad's non-operating real estate plus present value from alternate use of Railroad's operating real estate after 10 years.

*3) Includes all start-up costs.

*4) Includes all costs associated with rail operations during the first 10 years including start-up costs, plus labor protection costs associated with discontinuing rail operations. Also includes net proceeds from assumed liquidation of facilities and equipment.

The fair market value of both the continued rail operations scenario and the alternative use scenario consists of two components: a real estate component and a rail operations component. The fair market value of the Alaska Railroad under these two valuation scenarios was determined by reducing the cash flows from each of these two components to a present value as of October 1, 1983.

Continued Rail Operations Scenario

The real estate component of value was derived by projecting future lease income from the non-operating real property. The Alaska Railroad's historical practice has been to lease to others the property not required for rail operations, and an investor would likely continue this practice. Accordingly, it was assumed that the property presently under lease would continue to be leased and that other property would be leased to the extent possible. The net cash flows were discounted to produce a present value of \$47,800,000. This amount does not include the real estate which has been selected by Native corporations. However, for the reasons discussed in Appendix A, Native Claim Selection Analysis, USRA concluded that a prudent buyer would pay nothing for the possibility that significant portions of the lands subject to Native claims might eventually be conveyed.

The value of the rail operations was derived from a forecast provided by the Alaska Railroad and adjusted by USRA. The 605(a) Report was used as a beginning point for the derivation of start-up costs, and estimates of capital requirements were made by

consultants to USRA. These constant dollar cash flows were then discounted to produce a negative value of \$25,529,000,* which was then subtracted from the \$47,800,000 value of the non-operating real estate to yield an October 1, 1983 fair market value of \$22,271,000.

Alternative Use Scenario

In the alternative use scenario, the Railroad is assumed to cease operations at the end of the tenth year, the facilities and equipment removed and sold, and the operating real estate made available for leasing and development in the same fashion as the non-operating real estate. The cash flows generated by this additional real estate were valued in the same manner as the non-operating real estate and increased the 1983 present value of the real estate by \$7,000,000 to \$54,800,000.**

The value of the rail operations in this scenario is (1) the present value of the cash flow from rail operations for ten years (2) plus the present value of the net proceeds that would be received from dismantling and selling the Railroad's facilities.

*It was necessary to estimate the value of the cash flows after the tenth year (the last year of the USRA projection). This was done by calculating a normal year cash flow that could be expected after the tenth year and capitalizing that amount by 16 percent and then discounting the capitalized flows back to present value.

**While the \$7 million value may seem small in relation to the real estate involved, it must be kept in mind that the cash flows from alternative use of the operating real estate do not begin until the eleventh year (1994) which causes the present value to be relatively small.

and equipment starting in the eleventh year, (3) less the present value of labor protection payments attendant to discontinuing rail operations. These cash flows, which were all stated in constant dollars, were discounted at the same rate as was used to discount the cash flows in the continued rail scenario. The present value of these flows was a negative \$35,430,000 and was deducted from the \$54,800,000 real estate value to yield an October 1, 1983 fair market value of \$19,370,000 for the alternative use scenario.

Based on these valuation studies, USRA concluded that there was no persuasive evidence that a buyer would be willing to pay more than the present value of continued railroad operations for the speculative possibility that an eventual conversion of some or all of the Railroad's assets to alternative uses would produce greater value. Therefore, USRA determined that the fair market value of the Alaska Railroad pursuant to Section 605(d)(1) of ARTA is \$22,271,000.

CONTINUED EARNINGS VALUATION

The purpose of this analysis was to examine the earnings which could reasonably be expected to flow from a continuation of rail service. It was based on revenue and expense forecasts developed by the Alaska Railroad along with a projection of capital requirements to support that level of operations.

These forecasts were reviewed and validated by USRA staff, and adjustments were made as necessary. The validation process included an examination of historic performance levels and trends, field inspections, interviews with railroad and other knowledgeable personnel, and a review of proposed capital projects.

In general, the forecasts made by the Railroad were accepted as presented. As discussed later in this section, adjustments were made to projected operating expenses for some additional maintenance of way expenses. Adjustments were also made to forecasted productivity improvements, since it was USRA's judgment that a potential investor would be unwilling to pay for as yet undemonstrated cost reductions. The projected capital program was modified as well.

Other cost increases resulting from the transfer of the Railroad, identified in detail in the 605(a) report, were also reviewed and adjusted. These items include legal and administrative expenses, tort claims, working capital and employee retirement obligations. Additionally, the cost of compliance with Federal OSHA requirements and State or local

building codes not now applicable to the Railroad were estimated and included, as well as one-time transfer costs.

The resulting modified revenue, expenses, and capital requirements from operations were reduced to a single present value as of October 1, 1983.

Revenue

Revenue is based on an Alaska Railroad passenger and freight traffic forecast for the fiscal years 1984 through 1989 (see Table 3). Passenger revenue is projected to increase 59 percent from fiscal 1984 to 1989, with freight revenue rising 34 percent. Most commodities show a gain over the period with only petroleum products declining. Gravel traffic, which has been increasing over the past several years, is expected to remain at 1983 levels as is coal moving to local Alaska destinations. The commodity showing the largest increase is pipe because of renewed activity on the North Slope and a greater need for replacement pipe.

Of particular importance is the projection of an export coal movement beginning with a test shipment in 1984. This coal would be moved in unit trains from Healy to the port of Seward for shipment to Korea. It would be handled in shipper-owned equipment and would represent a significant addition to the Railroad's traffic base. Planning for this movement has been going on for some time. However, recognizing that the necessary port facilities have not yet been built, the uncertainty of current world coal markets and the possibility of increased costs, USRA modified the Railroad's forecast by delaying the

estimated start-up date by one year. We believe that a prospective purchaser would view the uncertainties associated with the projected export coal movement as being significantly higher than the uncertainty inherent in other elements of the Railroad's forecast.

Neither the Railroad nor USRA has forecast any traffic improvements that are purely speculative. For example, there are major mineral reserves in the area which are a source of potential new traffic. However, additional facilities would be required, probably including substantial extensions of the Railroad's lines.

All elements of revenue are stated in constant 1983 dollars. This means that the average revenue per carload changes only as traffic (commodity) mix or length of haul changes. It was assumed that rate increases will be made in a timely fashion in response to cost increases. To the extent that the Railroad should prove unable to do this, operating margins would be reduced from forecasted levels.

Expenses

USRA adopted most of the Railroad's forecast of operating expenses. The most important modifications were additional maintenance of way expenses, the previously discussed adjustment to projected productivity improvements, and additional legal and administrative expenses attributable to the transfer itself.

Asset Condition and Maintenance Expenses

Since the condition of the Railroad's plant and equipment has been of major concern in the past and could be responsible for major shifts in expense levels, USRA physically inspected facilities and equipment as necessary to make a careful assessment of future requirements.*

Maintenance of Way. The Railroad consists of approximately 650 active track miles in main and branch lines, yards and sidings. The main lines from Seward to Fairbanks and from Portage to Whittier consist of 115 pound rail on wood ties. The branch line and yard rail generally varies from 70 to 90 pounds. New rail was installed on the main line from 1948 to 1952 to overcome deterioration from heavy traffic during the war. Although precise numbers are not known, major tie renewals were also done at that time. The extremely large rebuilding effort during that five-year period and the relatively low traffic levels since have reduced the subsequent need for large program expenditures for tie and rail renewal.

In order to evaluate the Railroad's condition and estimated future needs, the property was inspected by observing the track structure and ride qualities from trains, hi-rail vehicles and selected walking inspections. Some tie renewal and surfacing work was observed in progress, and records for defective rails, derailments, slow orders and other engineering data were

*USRA was assisted in this analysis by Frank S. King and Jackson R. Bell, experts in railway engineering and equipment.

reviewed. This review clearly showed that the Railroad is currently in satisfactory condition to handle present and projected traffic levels. In 1982, the Railroad's highest traffic density was 8 million gross tons (MGT) on the 40-mile segment between Anchorage and Matanuska. The balance of the main line handled less than 4 MGT for the year. These statistics reflect a low-density railroad as compared with other railroads where density may often be over 40 MGT per year for single track lines.

Over the past three years 1981-83, the Railroad will have replaced an average of about 21,000 ties and renewed about 2.75 track miles of rail per year. The Railroad has projected some increases in program levels predicated on increased traffic, but future expense increases are partly offset by projected cost reductions due to greater efficiency.

In its analysis, USRA determined that the maintenance of way costs projected by the Railroad should be increased to assure a track structure adequate for the expected traffic. The magnitude of this adjustment varies from about \$800,000 annually to nearly \$1.5 million annually, or a total \$10.8 million for the ten years, 1984-93. This funding will provide for tie replacements of 35,000 in 1984 rising to 50,000 by 1990. Rail renewal will similarly increase from about 4.5 track miles in 1984 to 10 track miles in 1993. These program increases reflect not only traffic growth but also the age of many ties and much of the rail. Ties and rail installed in the post-war period, 1948-52, will have provided forty years of service within the next ten years, and

this should require increased replacement rates from current levels.

Maintenance of Equipment. The Railroad currently owns 62 locomotives, 46 passenger cars and 1,642 freight cars. In addition, various vehicles, maintenance and shop equipment are also maintained. The demand for equipment is high throughout the summer due to tourism and the construction season. During the winter, demand is low, providing time for programmed equipment repair. Total expenses in this category were about \$9.5 million last year, and they are projected to remain at about that level through 1984. After that, consistent with traffic growth, expenses are projected to increase each year, reaching \$11.5 million in 1989.

This projected spending should be adequate to provide the necessary level of locomotive overhauls and heavy repairs as well as running and heavy repair to freight cars. Maintenance of passenger equipment has also been provided for, premised on the current scheduled level of trains.

A part of the locomotive fleet is old and expensive to maintain, and much of the freight car fleet is or soon will be over 40 years old. However, the overall condition of the fleet should improve over the ten-year period due to the projected acquisition of new or good used locomotives and freight equipment as provided for in the capital plan.

The need for additional or replacement freight cars will have to be continually re-evaluated as traffic develops. The Railroad

has had some success in getting shippers of bulk commodities to obtain and finance needed equipment. Currently one of the major gravel shippers provides hopper cars for regular unit train moves, and the potential coal exporter has agreed to provide not only the necessary cars, but also the locomotives.

The opportunity for additional shipper equipment agreements will depend on future traffic developments. Surplus freight equipment in the lower forty-eight states may provide an economical source for some of the Railroad's future needs. In summary, based on the projected traffic and expected equipment acquisitions, the expense levels projected should be adequate not only to maintain the current fleet condition but to permit some improvement.

Forecasted Capital Requirements

Historically, capital spending has varied widely, and government appropriations have been required to permit any reasonable capital program. According to data provided by the Railroad, since 1975, capital spending has ranged from a low of \$2.8 million to a high of \$11.8 million.* Uncertain funding and resulting wide swings from year to year made effective capital planning difficult, often leading to last-minute decisions on project approvals.

*Alaska Railroad annual reports have reported capital expenditure totals that included the cost of major track work such as tie replacement, rail renewal, track surfacing, bridge repairs, etc. Under ICC accounting, these costs properly belong in operating expenses. The spending totals shown reflect this adjustment.

The Railroad provided USRA with a capital plan averaging \$14 million annually from 1984 to 1988 funded by the Railroad's cash flow. After reviewing that plan and a proposed project list, discussions with management and on-site inspections, a yearly allocation of \$12 million was considered adequate to continue operations and to handle forecasted traffic growth.

Approximately half of this amount is allocated for acquiring and upgrading locomotives, cars and other equipment. The remaining amounts provide for rehabilitation of bridges and tunnels, track construction to serve new and existing customers, stabilization of the roadbed in the Healy Canyon and elsewhere, realignment work to reduce curvature, and other plant requirements.

Start-up Costs

In Appendix L of the 605(a) Report, the State of Alaska and the Department of Transportation identified 15 items which they considered to be potential start-up obligations under the Act. The Report characterized these as "'start-up' responsibilities, because they are new undertakings by the railroad, not previously imposed on the railroad because of its Federal status." For the most part, these responsibilities are not "one-time"; rather, they affect ongoing expenses and result from various changes in access to Federal government resources. USRA treated these issues as follows.

(1) Vehicle Leasing. Under Federal ownership, the General Services Administration assigns vehicles to the Railroad for a

monthly lease payment which includes maintenance. The State, the Department of Transportation, and the General Services Administration have not yet resolved whether the existing leased vehicles will be transferred. In the event the Railroad acquires the existing fleet of older leased vehicles, it will be required to make other arrangements for maintenance. USRA determined that the Railroad could most likely continue to lease vehicles at terms and conditions equivalent to those currently in effect. Regardless of the final outcome, there would be no significant change in net costs to the Railroad for vehicles, and USRA's analysis includes no adjustment to the Railroad's projected expenses for this item.

(2) Supplies and Materials. After transfer, the Alaska Railroad can no longer acquire supplies through Federal government supply depots. However, USRA's valuation assumes that the purchasing power of the State-owned railroad will offset the loss of the ability to purchase through the Federal government. USRA did include increased administrative costs associated with an additional purchasing agent.

(3) Legal Fees. Currently, much of the Railroad's legal work is performed by United States government attorneys. After transfer, this will no longer be the case, and the Railroad will have to do more of its own legal work as well as retain outside counsel. After consultation with the Alaska Railroad and with others, USRA concluded that an additional \$600,000 per year is an appropriate additional cost to factor into the valuation.

(4) Additional Administrative Expense. USRA has assumed that, as a result of the loss of certain administrative support currently provided by various Federal agencies, the Railroad will incur an additional annual expense of \$108,000 representing three person years to handle this work.

(5) Tort Claims. Currently, all tort settlements or awards in excess of \$2,500 are paid by the Federal treasury. After transfer, these will all be the responsibility of the Railroad. Over the four-year period 1980-83, the Federal treasury paid a total of \$288,000, an average of \$72,000 a year. From this experience, USRA assumed an additional average cost of \$75,000 per year.

(6) Working Capital. As with all businesses, the Railroad will require working capital. USRA assumed that none of the revolving fund will be transferred to the State because pre-conveyance claims and contingent liabilities that must be paid are likely to consume the entire fund. After reviewing the working capital requirements of other railroads, it was USRA's judgment that one month's worth of operating expenses would be adequate working capital for the Alaska Railroad. This amounts to approximately \$4.4 million in the first year, varying over the forecast period as operating expenses vary.

(7) Lack of Access to Federal Surplus Equipment. After transfer, the Railroad's access to excess Federal equipment will be greatly diminished. In our judgment, this should not increase the Railroad's costs.

(8) ARTA Section 604(d)(3) Employee Protection Obligations.

Section 604(d)(3) requires the Secretary of Transportation to certify that the State-owned railroad has established arrangements to protect the employees of the railroad for the two years immediately following the transfer. This provision requires continuation of current labor agreements, retention for two years of all employees (other than certain officers) who elect to transfer to the Railroad, continuation of compensation at current levels, re-employment priority, and maintenance of benefit programs, as well as other items. The essence of these provisions is to continue the employees' current status. Since the forecast calls for maintaining rail operations at current levels, USRA assumed that all present employees would be offered jobs by and would transfer to the State-owned railroad. Since USRA's forecast of cash flows also assumes the continuation of current compensation levels, no protection payments would be required under these assumptions.*

(9) Section 607 Retirement Obligations. ARTA Section 607 requires that, after transfer to the State, the Railroad must provide retirement benefits substantially equivalent to current levels for all employees who elect to transfer. As stated in the 605(a) Report, the Department of Transportation asked the Office of Personnel Management (OPM) "to calculate retirement costs and

*If, in fact, there are large numbers of employees who elect not to transfer, then this could cause significant disruptions to the smooth operation of the railroad which could prove to be costly. USRA has no way of directly quantifying either the likelihood of this occurring or its cost.

benefits for existing employees who participate in the Federal retirement system and to prepare an estimate of the financial consequences if all of those employees transferred to the State-owned railroad at this time" (605(a) Report, pp. 69-70). The 605(a) Report further states (at page 70) that:

"[i]n preparing its calculations, OPM assumed that if transferred employees remain in the Federal retirement system pursuant to Section 607(a)(1), the language of that provision governing the amount of the State-owned railroad's employer contributions . . . would require the State-owned railroad to pay, as the employer contribution, 29.06 percent of basic payroll for those transferred employees into the Federal retirement fund to fully fund retirement benefits that accrue for those employees after transfer. OPM's calculation assumes the current seven percent employee contribution would remain unchanged.

This is an increase of 22.06 percent over the amount the Alaska Railroad has contributed as a Federal agency and reflects the manner in which the Federal retirement system is normally funded, which for Federal agencies includes other payments from the U.S. Treasury."

The ultimate resolution of this issue will not occur until after the date of this report. Indeed, in the 605(a) Report, the Department of Transportation and the State of Alaska acknowledge that an "accurate estimate of the retirement obligations that would be imposed on the State-owned railroad pursuant to Section 607(a) cannot be calculated at this time." However, for purposes of completing this valuation in a timely manner, USRA has been required to make assumptions as to the cost of this provision to the Railroad.

USRA's analysis assumes that all permanent employees would transfer to the State-owned railroad and would be included in a plan that will have an annual cost to the Railroad equivalent to the cost that OPM has suggested -- that is, a 22.06 percent

additional contribution over and above the 7 percent contribution which the Railroad is currently paying. USRA assumed all new employees hired after the date of the transfer would be covered under a new pension plan that would require the Railroad to contribute 12 percent of the new employees' base salary.

USRA's analysis of the additional pension costs used the actuarial base developed by OPM which listed current employees, by sex, for each year until the last Railroad employee currently in the Federal retirement system has left the payroll. These data were costed using the 1983 average wage levels to yield the total wage base for each year. This wage base was multiplied by an additional 22.06 percent to arrive at the additional pension costs.

As each current employee leaves the payroll, USRA assumed a replacement would be added, but that the replacement's pension expense would be only 5 percent in addition to the current 7 percent contribution. This approximates the contribution now required for employees of the State. These cash flows were then included with all other expenses, and the first 10 years of additional pension expense is shown on Table 3.

The Department of Transportation and the State acknowledge that "the exact number of employees who will transfer and the value of their retirement benefits will not be known until the date of Transfer". Thus, the assumptions which USRA has made could be significantly different from the actual outcome. However, we believe the estimates provided by our assumptions are

reasonable and fair to both the Federal government and the State, as well as to any other buyer.

(10) Section 607 Severance Obligations. The severance obligations imposed upon the Railroad by Section 607 of the Act require the Railroad to pay certain compensation to employees whose employment is terminated without cause during the first two years after transfer. Because of the activity levels forecasted, we have assumed that no employees will fall into this category and, therefore, no upward adjustment to the Railroad's projected operating expenses is necessary.

(11) Non-Availability of Statutory Exemptions if the Railroad Ceases to be a State Instrumentality. If, after transfer, the Railroad ceases to be an instrumentality of the State, then the Railroad would lose its exemption from Federal income taxes, the Railroad Retirement Act, the Railway Labor Act, and the Federal Employer's Liability Act. Because of the nature of the projected cash flows, no tax liability would accrue even if a private purchaser, and not the State, acquired the Railroad. USRA also assumed that there would be no significant changes in cash flow if the labor related statutes were applied. Therefore, we have made no adjustments for these provisions.

(12) Section 608(a)(1) Antitrust Applicability. After transfer, the exemption which the Railroad enjoys from certain antitrust laws will be lost. While this may become an issue in the future that could adversely affect the Railroad's revenues, USRA has no way of quantifying what the long-range effect might be.

(13) ICC Regulation. Currently the Railroad is subject only to partial regulation by the ICC under Executive Order 12434. After transfer, ARTA Section 608(a) provides that the Railroad will be fully regulated by the ICC in a manner similar to other railroads of the same class (most likely Class II). While there will be some additional costs, they are not significant enough to quantify separately. However, as previously stated, upward adjustments were made to both legal and other administrative costs to cover these as well as other contingencies.

(14) Compliance With Various Safety Statutes and Regulations. USRA considered three separate categories of potential expenses -- OSHA, State and local building codes, and facility condition.

* OSHA. Based on an updated study provided by the Alaska Railroad, which indicates approximately \$2.5 million additional funding will be required to eliminate the remaining deficiencies, we have included \$500,000 per year for five years. These funds will be utilized to correct problems associated with buildings, facilities and equipment beyond expenditures budgeted elsewhere.

* State and Local Building Codes and Existing Condition of Facilities. A recent report prepared for the State estimated the total cost to correct building deficiencies to be about \$85 million. Condition problems accounted for about 62 percent or \$53 million with the balance of \$32 million being related to code violations. Repairs, additions or replacement costs

were based on bringing the existing buildings into compliance, regardless of current use.

In the future, the Railroad will have to correct some code violations and improve the condition of some buildings. However, the Railroad will certainly conduct a careful review of current and future railroad operating needs before any large expenditures are made. Some buildings are no longer required, and some consolidations may be possible. If replacement is necessary, a much smaller and more efficient facility might be adequate. The Railroad currently has an on-going program to correct some of these deficiencies. In addition, there is some overlap with the funding required to correct OSHA deficiencies reported earlier. After consideration of these factors, discussions with the Railroad and the State, and on-site inspections, the following future needs were considered reasonable and are reflected in USRA's analysis:

- Building code deficiencies -- an allocation of \$1.5 million per year for ten years for a total of \$15 million. This allows for items such as fire separation, fire resistance in wall coverings, ventilation, lighting, electrical deficiencies, handicapped access, and other code related items.
- Condition discrepancies -- Justified projects in this category would be funded under the Railroad's normal capital budgeting process. As discussed

previously in this section, this total budget is forecast at \$12 million per year for ten years.

(15) Transition Expenses. Upon transfer to the State, there will be certain one-time costs that will have to be incurred. These would include such things as legal costs, filing fees, consulting fees and administrative costs as well as costs to the Railroad ranging from remarking equipment to indicate the new ownership to printing stationery. We estimate these one-time costs to be \$1,750,000.

Table 3

ALASKA RAILROAD ADJUSTED CASH FLOW FORECAST FOR RAIL OPERATIONS
1984-1993
(\$ IN 000)
CONSTANT 1983 \$

ITEM	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
RR FORECAST REV. *	56746	64106	65446	67806	70186	72656	72656	72656	72656	72656
RR FORECAST EXP.	46590	50130	50790	51390	51990	52610	52610	52610	52610	52610
NET CASH	10156	13976	14656	16416	18196	20046	20046	20046	20046	20046
ADJUST RR FORECAST										
EXPORT COAL	0	-1750	-250	0	0	0	0	0	0	0
PRODUCTIVITY	-580	-624	-632	-639	-647	-654	-654	-654	-654	-654
MOW ADJUSTMENT	-1220	-810	-850	-870	-1010	-1050	-1150	-1110	-1270	-1440
CAPITAL EXPENDED	-12000	-12000	-12000	-12000	-12000	-12000	-12000	-12000	-12000	-12000
ADJ. RR FORECAST	-3644	-1208	924	2907	4539	6342	6242	6282	6122	5952
STARTUP COSTS										
PENSIONS	-4514	-4316	-4145	-3967	-3821	-3675	-3524	-3377	-3225	-3079
CODE CONFORMITY	-1500	-1500	-1500	-1500	-1500	-1500	-1500	-1500	-1500	-1500
ADD'L LEGAL FEES	-600	-600	-600	-600	-600	-600	-600	-600	-600	-600
OSHA	-500	-500	-500	-500	-500	0	0	0	0	0
TORT CLAIMS	-75	-75	-75	-75	-75	-75	-75	-75	-75	-75
OTHER EXPENSES	-108	-108	-108	-108	-108	-108	-108	-108	-108	-108
WORKING CAPITAL	-4377	-95	-168	-57	-49	-42	4	16	-1	-2
ONE TIME STARTUP	-1750	0	0	0	0	0	0	0	0	0
TOTAL STARTUP	-13424	-7194	-7096	-6807	-6653	-6000	-5803	-5644	-5509	-5364
ADJUSTED CASH	-17068	-8402	-6172	-3900	-2114	342	439	638	613	588

* DOES NOT INCLUDE REAL ESTATE LEASES, DOES INCLUDE MISCELLANEOUS LEASES SUCH AS WIRE AND PIPE EASEMENTS OF \$296. REAL ESTATE LEASES ARE TREATED SEPERATELY.

Present Value of Future Cash Flows

As previously discussed, the fair market value of the Alaska Railroad is the amount which the State would have to pay to outbid (e.g., by one dollar) any competing potential purchaser. To determine the maximum bid of a competing non-government purchaser, the estimated future cash flows must be discounted to present values at a rate equal to the cost of capital that the private purchaser would employ in valuing this railroad.

In arriving at a weighted average cost of capital to use as the discount rate in this valuation, numerous factors were considered. Among these were railroad debt-equity ratios, the cost of debt, the average real return on equities, and risk premiums used in other rail valuations. The resulting constant dollar discount rate was then compared to discount rates used in various other railroad related valuations as well as to the cost of capital for the nation's railroads as found by the ICC in Ex Parte 436. These comparisons served as a check on the reasonableness of the rate used in the Alaska Railroad valuation.

USRA determined that the appropriate constant dollar discount rate to use in this analysis was 16 percent as applied to the projected cash flows expressed in constant dollars.* The

*This discount rate is not comparable to the rate used in the real estate analyses for two reasons: (1) As noted above, the continued earnings valuation was performed in constant dollars. In contrast, the real estate analysis considered the effects of appreciation in value of the real property, and was performed in inflated dollars. (2) Different special considerations were relevant to the real estate analysis than to the continued earnings valuation.

development of this discount rate required weighing the special considerations attendant to the Alaska Railroad. Elements of these special considerations include:

- * The possibility of not realizing cash flows that, in turn, are based on estimates, not on historical evidence,
- * The change from Federal ownership,
- * The onset of full regulation by the ICC upon the change in ownership, and
- * The uncertainties on the world energy markets.

Measuring Potential Alternative Use Value

To measure the possible alternative use value of the Alaska Railroad's assets under the terms and conditions of ARTA, USRA hypothesized that, beginning in the eleventh year, there would be an immediate cessation of all rail operations to permit the Railroad's operating assets to be placed in their highest and best alternative uses.* To assess the effect of such an option on value, USRA performed the following analyses.

*In determining possible alternate uses for the Railroad's real estate, it was USRA's judgment that it would be highly speculative to assume that any operating real estate could be otherwise developed under a continued operations scenario, particularly during the early years following transfer to the State. Not only would such development require relocation of existing yards or other facilities, but it is also uncertain that any major redevelopment plan could easily obtain the required approvals of various disparate interests. Further, any assembling of operating and non-operating real estate would most likely be affected by existing leases. In light of these factors which would affect both the timing and costs of any partial alternative development of the operating real estate, USRA concluded that its consideration of the alternate use value of these parcels in a liquidation scenario after ten years was a fair method of measuring their value for other purposes.

Rail Operations

If the Alaska Railroad were planning to totally cease operations, it might well cut back dramatically on all its expenses before the eleventh year. It is also true that shippers would begin to find alternative modes of transportation; consequently, the Railroad's revenues would also drop dramatically. For purposes of this analysis, we have assumed that revenues would drop by the same dollar amount per year as expenses. We have used the cash flows generated by the Railroad for the continued operations scenario (as adjusted by USRA) as being representative of the cash flows that the Railroad would generate in the liquidation scenario.

Labor Protection

As a result of discontinuing rail operations, USRA has assumed that there would be imposed on the owners of the Alaska Railroad labor protection conditions similar to those commonly known as "New York Dock". These conditions essentially require employees (depending on seniority) to be paid their full salary and benefits for six years, unless they find other jobs. In the case where an employee finds another job at a lower rate of pay than the one he had on the railroad, that employee is entitled to the difference in pay between his new job and what he received on his old job. Protected employees also have the option of taking a one-time lump sum payment equivalent to one year's pay.

In order to calculate the cost to the State of these labor protection conditions, USRA assumed that all permanent employees

would be eligible to receive labor protection payments. Of these employees, based on the current age profile of the Railroad's employees, USRA assumed that (1) all those 55 and older would choose to retire, (2) 25 percent of the eligible employees would take the lump sum settlement, and (3) 25 percent of the remaining work force would find new employment each year.

FACILITIES AND EQUIPMENT ASSETS

USRA selected Frank S. King and Jackson R. Bell, experts in railway engineering and equipment, to assist in determining the alternative use value of the Railroad's facilities and equipment; they determined the net value that could be realized from disposition of these assets taking into consideration all of ARTA's terms and conditions. Their analysis is described in greater detail in their report to USRA.

USRA first assembled and validated the Railroad's inventories of track, equipment, and other facilities. These assets include approximately 650 track miles,* yards and port facilities, shops, buildings, bridges, communications facilities, 1,642 freight cars, 46 passenger cars and 62 locomotives, as well as maintenance and shop machinery. Physical inspections were made as required to determine the condition of the assets,** and a determination was made as to which asset categories would be sold as scrap and which could be sold to others for re-use.

*This figure represents the total of all the Railroad's track including not only its 460-mile main line from Seward to Fairbanks, but also its branch lines as well as passing tracks and yard tracks.

**USRA also relied on this condition assessment to determine the Railroad's maintenance and capital requirements for use in determining the Railroad's continued operations value, previously discussed.

USRA estimated the range of market prices for resale and for scrap, dismantling costs, shipping costs from Alaska, and costs to comply with environmental or other regulations.* In making these estimates, USRA considered various market data such as the demand for scrap and the supply and demand for used railroad equipment and used rail.

Since ARTA requires that the State must continue to operate the railroad for at least ten years or suffer reversion, the state could not realize any alternate value from liquidating these assets until ten years after transfer.** USRA estimated that an orderly dismantling and liquidation program would require 2 1/2 years, beginning in 1994 and finishing in 1996.

USRA determined that the net proceeds from sale of the Railroad's track and facilities plus its equipment would be \$11.6 million in 1983 constant dollars.

*USRA was assisted in these areas by Mr. Michael V. Cody.

**Indeed, based on the Railroad's forecast, the positive earnings projected for 1994 and later years, if realized, would prevent the Railroad from obtaining authority to abandon under the applicable provisions of the Interstate Commerce Act. This represents a major uncertainty that any purchaser would weigh heavily before paying a price based in part on asset values to be received many years in the future and only if rail operations could be discontinued.

REAL ESTATE ASSETS

USRA selected Jackson-Cross Company, a nationwide real estate appraisal firm, to assist in valuing the Alaska Railroad's real estate assets. Jackson-Cross determined the present value, as of October 1, 1983, of the Railroad's real estate taking into consideration all of ARTA's terms and conditions. Their analysis is described in greater detail in their appraisal report to USRA.

To consider the ARTA Section 610(a) requirement that the State must continue to operate the railroad for at least ten years or suffer reversion, USRA instructed Jackson-Cross to consider the Alaska Railroad's real estate assets in two categories:

- * "Non-operating" property -- land which is not necessary for the railroad's operations. This is essentially real estate which is leased to third parties, or which is available for development.
- * "Operating" property -- all other property, such as the right-of-way, yards and other facilities, including the port facilities at Whittier and Seward.

Because the Railroad's "non-operating" property is not required for rail operations, it is not affected by the continued rail operation requirement. However, because of ARTA's restrictions, USRA assumed that no value could be realized from alternate use of the Railroad's operating real estate until ten years after transfer to the State.* Jackson-Cross was instructed to determine

*In some locations, the Railroad is presently earning income from easements or permits on operating property which do not interfere with rail operations. This income was considered in USRA's

(Continued)

(1) the present value of the cash flow which can reasonably be projected from continued development of the Railroad's non-operating real estate, and (2) the present value of the cash flow which could reasonably be projected from alternate use of the Railroad's operating real estate beginning ten years after transfer.

Most of the Alaska Railroad's real property not required for rail operations is currently leased to others, and there was no reason to assume that a purchaser of the property would change this practice. Jackson-Cross, therefore, based its appraisal upon the assumption that the Railroad's real estate would be leased rather than sold. To the extent that any current rents are below market levels, the lease assumption explicitly considers that fact. USRA assumed that the State will be required to honor the terms and conditions of these leases. They were thoroughly reviewed and analyzed, and USRA has considered their effect in determining the value of the Railroad's real estate.

Jackson-Cross then assumed that, except as prevented by existing leases, rents would be set at market levels. It

(Continued)

continued operations valuation. As discussed later, the Railroad lacks clear title to much of the right-of-way so that it would no longer be entitled to income from such property upon conversion to alternate uses. As to right-of-way properties where the State will acquire clear title under ARTA, it was not considered feasible to attempt to ascribe any separate value to this potential income, since the highest and best alternate use might well either (1) preclude the continuance of the easement or permit or (2) result in the lessee, rather than the fee owner, collecting such easement or permit income.

estimated the net revenues that most likely would be realized from a normal leasing and management program as well as the period of time an investor would perceive as necessary to realize those net revenues. Jackson-Cross then discounted these projected net revenues to consider the cost of money over time and the risk of uncertainty that those projected net revenues would, in fact, be realized.*

USRA classified the Railroad's real estate into "non-operating" and "operating" based on current railroad operational requirements with reasonable estimates for operational expansion. All land presently leased to others was classified as non-operating, including lands leased to tenants who are also shippers on the railroad.

There is no definitive inventory available of exactly what constitutes the property of the Alaska Railroad. USRA compiled maps from the Railroad's records to correspond with an inventory estimate which had been prepared by the Department of Transportation in 1981. Additional inventory information was contained in the 605(a) Report. However, despite the best efforts of all parties involved to assemble whatever inventory data are available, substantial questions still remain.

*In practice, the lease assumption produces the same value as an assumption that the real estate would have been sold over a period of years, subject to the existing leases. This is because the prices investor(s) would be willing to pay are a function of the rental income that could be earned, taking into consideration both present rents and projected future rent increases.

Most notable of these questions is the definition of exactly what rights will ultimately be conveyed to the State of Alaska. Depending on future adjudication or negotiation, there are many instances where the State may receive less than fee title to portions of the Alaska Railroad's real estate, particularly its right-of-way. Exhibit 1 to the 605(a) Report summarizes existing claims against the property. According to that exhibit, prepared by the Anchorage office of the Bureau of Land Management, more than half of the Alaska Railroad's right-of-way passes through lands which were patented to private parties or to the State without a specific reservation for the Railroad's right-of-way.* In a limited number of areas, mining claims have also been filed which are near to or encroach upon the right-of-way. Further, in other locations, ARTA provides that the State will only receive an "exclusive use easement" to certain portions of the right-of-way.

Therefore, in an alternative use scenario, the Railroad would have no legal interest to transfer in considerable portions of its right-of-way. Accordingly, in determining the value of the Railroad's operating real estate for alternate uses after ten years, Jackson-Cross was instructed not to include value for any parcels where ownership would disappear upon cessation of rail

*Of a total of 619.11 miles of right-of-way, 142.34 miles have been patented to individuals; 137.87 miles have been patented to the State; and 91.25 miles have been tentatively approved for patent to the State upon survey. An additional 85.92 miles have been selected by the State, and another 1.3 miles appear to have been patented to both private parties and to the State.

operations. Further, because clear title existed for very little of the right-of-way, Jackson-Cross was also instructed not to consider "corridor value" for the Alaska Railroad's right-of-way in its alternate use determination.

Additionally, significant portions of the right-of-way, as well as certain parcels of land adjacent to or away from the right-of-way, are subject to claims under the Alaska Native Claims Settlement Act of 1971 (ANCSA) and the 1906 Native Allotment Act. These claims will not have been settled prior to the issuance of this report. It is not possible for USRA to know the final outcome with respect to these parcels. Therefore, as further discussed in Appendix A, USRA has analyzed the value of these parcels separately and has evaluated their impact on the Railroad's fair market value.

Jackson-Cross determined the present value of the Railroad's non-operating real estate to be \$47.8 million. Jackson-Cross determined that the present value resulting from alternate use of the Railroad's operating real estate after a hypothetical discontinuance of rail operations is \$7 million.

NATIVE CLAIM SELECTION ANALYSIS

The Alaska Railroad's real estate inventory includes certain parcels which are subject to claims under the Alaska Native Claims Settlement Act of 1971 (ANCSA) and the 1906 Native Allotment Act. Section 606(b)(1)(A) of ARTA directs that "[d]uring the ten months following the date of enactment of this Act, . . . the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims as possible." Failing settlement, ARTA Section 606(b)(2) further directs that the "Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after the date of enactment of this Act."

According to data furnished by the Alaska Railroad and the Anchorage Office of the Bureau of Land Management, Native claims have been filed for the following ten parcels.

<u>LOCATION</u>	<u>ACRES</u>	<u>GRAVEL RESERVE</u>	<u>ROCK RESERVE</u>
EAGLE RIVER	1596	Yes	No
BIRCHWOOD	978	Yes	No
EKLUTNA	605	Yes	Yes
MATANUSKA	238	No	No
PITTMAN	140	Yes	No
BROAD PASS	561	Yes	No
HEALY	123	No	No
NENANA	231	No	No
HOLY CROSS	60	No	No
MOOSE CREEK	89	No	No

No negotiated settlements have been reached, and the ultimate disposition of these parcels cannot be known at this time. However, despite these unresolved issues affecting the basic inventory to be valued, ARTA directs that USRA report one number representing the Railroad's fair market value.

At this time, there are considerable uncertainties as to whether any of these parcels will ultimately be conveyed to the State. The possibilities range from conveyance of all or a substantial portion of these parcels, which would suggest an upward adjustment to value of as much as \$3.2 million,* to conveyance of only operating real estate and the loss of access to currently used rock and gravel reserves, in which case a reduction in value approximating \$1.8 million** would be appropriate. If the status quo was maintained -- that is, if the Railroad was conveyed lands underlying rights-of-way and facilities and the continued right to withdraw rock and gravel as needed from currently utilized reserves -- no adjustment to value would be appropriate. Moreover, some parcels may be conveyed

*Jackson-Cross estimated the fair market value of the Railroad's total real estate inventory with and without the parcels subject to Native claim selection. From this analysis, USRA determined that the Railroad's fair market value would be increased by \$3.2 million if all parcels subject to Native claim selection were conveyed to the State. This estimate assumes all the previously described ARTA terms and conditions.

**USRA also considered the impact on value if the Railroad were to lose all of its present rights to withdraw gravel or rock from these parcels. While precise estimates are not available, increased costs for using alternate sources of rock and gravel would reduce the Railroad's fair market value by about \$1.8 million.

only if, in subsequent negotiations, the State agrees to exchange other State lands for such parcels.

In light of this broad spectrum of unknown and virtually unpredictable future events, USRA can find no basis for assuming that a prudent investor would pay for the speculative possibility that significant portions of the Native claim parcels would be conveyed in the future. Therefore, we consider that it is inappropriate for our fair market value determination to include any amount ascribed to these parcels. We feel that this conclusion is a fair balancing of both the downside risk that the Railroad might lose access to the gravel and rock reserves and the upside possibility that at least some of these parcels beyond those directly utilized in support of current rail operations might ultimately be conveyed to the Railroad in fee.

Offered: 3/23/84
Referred: Finance

Original sponsors: Hayes, Ringstad,
Shultz, et al

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
2 CS FOR HOUSE BILL NO. 512 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and pro-
8 viding for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
11 finds that
12 (1) it is the policy of the state to
13 (A) provide safe, economical, and efficient transportation
14 to residents, businesses, visitors, and military installations in the
15 state;
16 (B) foster and promote the long-term economic growth and
17 development of the state;
18 (C) develop and implement plans for a transportation net-
19 work;
20 (D) foster and promote the development of the state's land
21 and natural resources;
22 (2) the Alaska Railroad is an essential part of the state trans-
23 portation network that may, unless preserved by state action, cease to be a
24 transportation option in Alaska;
25 (3) the federal government has offered to the state the option
26 of taking over the Alaska Railroad to ensure its continued existence;
27 (4) it is in the state's best interest to accept the railroad
28 under the terms and conditions offered by the United States government; and
29 (5) there is vast potential in Alaska's natural resource areas

1 and extension of the Alaska Railroad into natural resource areas is neces-
2 sary for long-term economic growth.

3 (b) It is the purpose of this Act to

4 (1) create a viable economic entity with the powers and duties
5 necessary to operate and manage the Alaska Railroad pending eventual trans-
6 fer of the railroad to the private sector for its ownership or operation or
7 both consistent with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
8 1982);

9 (2) provide for the level of service that best satisfies the
10 needs of the people of the state;

11 (3) create a public corporation with the powers, duties, and
12 functions needed to operate the Alaska Railroad and manage its rail, indus-
13 trial, port and other properties in the best interest of the people of the
14 state by ensuring that the corporation will

15 (A) be exclusively responsible for the management of the
16 financial and legal obligations of the Alaska Railroad rather than the
17 state;

18 (B) operate the railroad as a common carrier subject to the
19 jurisdiction of the United States Interstate Commerce Commission
20 consistent with 45 U.S.C. 1207;

21 (C) have the ability to raise capital by issuing obliga-
22 tions exempt from federal and state taxation;

23 (D) generally carry out its responsibilities on a self-
24 sustaining basis;

25 (E) provide the best possible combination of types and
26 levels of safe, efficient, and economical transportation to meet the
27 overall needs of the state, supported when necessary by state invest-
28 ment;

29 (F) provide for the prudent operation of the railroad

1 according to sound business management practices;

2 (4) ensure that borrowing by the corporation does not directly
3 or indirectly endanger the state's own borrowing capacity.

4 * Sec. 2. AS 42 is amended by adding a new chapter to read:

5 CHAPTER 40. ALASKA RAILROAD CORPORATION.

6 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

7 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
8 established the Alaska Railroad Corporation. The corporation is a
9 public corporation and is an instrumentality of the state within the
10 Department of Commerce and Economic Development. The corporation has
11 a legal existence independent of and separate from the state. The
12 exercise by the corporation of the powers provided in this chapter is
13 considered an essential government function of the state.

14 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
15 corporation are vested in the board of directors. The board consists
16 of the commissioner of commerce and economic development, the chief
17 executive officer of the corporation, and seven members appointed by
18 the governor. At least five of the seven appointed members must be
19 registered voters in the state. No more than two appointed members
20 may be from any one of the four judicial districts in the state. The
21 appointed members must have substantial experience or professional
22 training and expertise in fields relevant to the purposes of this
23 chapter, including transportation, business, and finance. Except for
24 the commissioner, the chief executive officer, and the member ap-
25 pointed under (d) of this section, a member may not be a state officer
26 or employee.

27 (b) One member of the board may be a person who has at least 10
28 years of experience in railroad management.

29 (c) One member of the board may be or have been an executive

1 official of a United States railroad that is not now and never was a
2 connecting carrier of the Alaska Railroad.

3 (d) One member shall be an employee who is a member of a bar-
4 gaining unit representing employees of the corporation.

5 (e) Except for the commissioner of commerce and economic devel-
6 opment and the chief executive officer of the corporation, the members
7 of the board shall be confirmed by a majority of the members of each
8 house of the legislature in joint session. A member appointed by the
9 governor has the full powers and responsibilities of a confirmed board
10 member until the member is rejected by the legislature.

11 Sec. 42.40.030. TERM OF OFFICE. Except for the commissioner of
12 commerce and economic development and the chief executive officer of
13 the corporation, members of the board serve for staggered terms of
14 five years each at the pleasure of the governor.

15 Sec. 42.40.040. VACANCIES. (a) Except for the commissioner of
16 commerce and economic development and the chief executive officer, a
17 vacancy on the board is filled by appointment by the governor, and the
18 appointment must be confirmed by the members of each house of the
19 legislature in joint session. A member appointed to fill a vacancy
20 holds office for the balance of the term for which the member's prede-
21 cessor was appointed.

22 (b) A vacancy on the board does not impair the authority of a
23 quorum of members to exercise the powers and perform the duties of the
24 board.

25 (c) A member of the board whose term has expired shall serve
26 until a successor has been appointed.

27 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
28 member of the board is entitled to compensation at a rate of \$400 for
29 each day the member is engaged in the actual performance of duties as

1 a member of the board. The board may provide by rule for compensation
2 for partial days during which an appointed member is engaged in actual
3 performance of duties as a member of the board.

4 (b) In addition to compensation under (a) of this section, an
5 appointed member of the board is entitled to per diem and travel
6 expenses authorized by law for state boards and commissions.

7 Sec. 42.40.060. BOARD OFFICERS. (a) The board shall elect from
8 its membership a chairman and vice-chairman and prescribe their duties
9 by rule.

10 (b) The board shall appoint a secretary and prescribe the duties
11 of the secretary.

12 ARTICLE 2. MANAGEMENT.

13 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is responsi-
14 ble for the management of the corporation but shall delegate certain
15 powers and duties to the chief executive officer in accordance with
16 AS 42.40.120. In managing the corporation the board shall

17 (1) be responsible for the management of the financial and
18 legal obligations of the Alaska Railroad;

19 (2) operate the Alaska Railroad as a common carrier subject
20 to the jurisdiction of the United States Interstate Commerce Commis-
21 sion consistent with 45 U.S.C. 1207;

22 (3) generally manage the corporation on a self-sustaining
23 basis;

24 (4) provide for safe, efficient, and economical transporta-
25 tion to meet the overall needs of the state;

26 (5) raise needed capital by issuing obligations of the
27 corporation while ensuring that borrowing by the corporation does not
28 directly or indirectly endanger the state's own borrowing capacity;

29 (6) review state and other land disposal proposals to aid

1 in planning for future development or expansion of transportation ser-
2 vices;

3 (7) ensure that the accounting and procurement procedures
4 of the corporation meet accepted railroad industry standards.

5 Sec. 42.40.110. EXECUTIVE OFFICERS. (a) The board shall ap-
6 point the chief executive officer of the corporation who serves at the
7 pleasure of the board. The board shall fix compensation for the chief
8 executive officer.

9 (b) The chief executive officer of the corporation shall appoint
10 and fix the compensation for other executive officers. The appoint-
11 ment of other executive officers and their compensation are subject to
12 board approval.

13 Sec. 42.40.120. DELEGATION. (a) The board shall by rule dele-
14 gate to the chief executive officer powers and duties necessary or
15 appropriate for the management of the daily affairs and operations of
16 the corporation.

17 (b) Within 60 days after its first meeting, the board shall by
18 rule delegate the following powers and duties of the corporation to
19 the chief executive officer or other executive officers designated by
20 the board:

21 (1) leasing, granting easements in, issuing permits for the
22 use of, or conveying other interests in property;

23 (2) establishing specific rates, tariffs, divisions, and
24 contract rate agreements;

25 (3) making routine changes in service levels;

26 (4) establishing procurement and accounting procedures for
27 the corporation; and

28 (5) performing procurement activities.

29 (c) The board may by rule require the exercise of a power or

1 duty delegated under (a) or (b) of this section to be subject to board
2 approval. Specific board approval is required for the following:

3 (1) except for executing a release of a mortgage or other
4 lien after payment is received, conveying the corporation's entire
5 interest in land;

6 (2) issuing notes, debentures, and bonds;

7 (3) mortgaging or pledging corporation assets;

8 (4) donating property or other assets belonging to the
9 corporation;

10 (5) acting as a surety or guarantor;

11 (6) adopting a long-range program or capital improvement
12 plan;

13 (7) certifying annual reports;

14 (8) effecting generally applicable increases and decreases
15 in rates other than those periodically approved by the United States
16 Interstate Commerce Commission;

17 (9) diversifying, expanding, or reducing services provided
18 on the date of transfer;

19 (10) expanding the main or branch rail lines, other than
20 performing routine track alignment as necessary to maintain service
21 levels in effect on the date of transfer;

22 (11) selecting independent auditors and accountants;

23 (12) exercising the power of eminent domain;

24 (13) entering into collective bargaining agreements;

25 (14) adopting annual budgets; and

26 (15) beginning capital projects with an estimated completion
27 cost of more than \$500,000 or an estimated completion time of more
28 than one year.

29 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

1 Sec. 42.40.150. MEETINGS OF THE BOARD. (a) The chairman of the
2 board shall call meetings of the board at least once every three
3 months and may call other meetings of the board as necessary. The
4 chairman shall preside at meetings.

5 (b) Except for executive sessions, the meetings of the board are
6 public. The board shall provide by rule for a method of providing
7 notice to the public of its meetings.

8 (c) The board shall keep minutes of each meeting and shall send
9 a certified copy of the public portion of each meeting to the governor
10 and the legislature.

11 Sec. 42.40.160. QUORUM AND VOTING. (a) Five members of the
12 board constitutes a quorum for the transaction of business.

13 (b) Five affirmative votes are required for board action. The
14 board shall provide by rule for the manner of voting, except that the
15 board may not provide for voting by proxy. The rules may provide for
16 voting and conferring by telecommunication devices.

17 Sec. 42.40.170. EXECUTIVE SESSIONS. The board may consider in
18 an executive session matters that pertain to personnel, the corpora-
19 tion's legal position, land acquisition or disposal, or proprietary or
20 other information of a type treated as confidential under the stan-
21 dards and practices of the United States Interstate Commerce Commis-
22 sion, including practices that protect information associated with
23 specific shippers, divisions, and contract rate agreements.

24 Sec. 42.40.180. RULES. (a) The board may adopt rules
25 (1) governing the business of the corporation; and
26 (2) designed to safeguard property owned, managed, or
27 transported by the corporation and to protect employees and persons
28 using the corporation's property or services.

29 (b) Within 90 days after its first meeting, the board shall

1 establish a procedure for adopting, amending, and repealing rules to
2 carry out the functions and the purposes of this chapter. The proce-
3 dures shall provide for advance public notice and opportunity for
4 public comment on proposed rules or changes to rules that, in the
5 determination of the board, will have a substantial impact on the
6 public or be used in the corporation's dealings with a significant
7 segment of the public.

8 (c) The board shall establish a procedure for the adoption,
9 amendment, or repeal of a rule on an emergency basis when essential
10 for the orderly operation of the corporation's facilities or programs.

11 Sec. 42.40.190. PREVIOUSLY ADOPTED RULES AND ORDERS. The board
12 may provide by resolution that rules and orders in effect on the date
13 of transfer that are not inconsistent with this chapter or other state
14 law remain in effect until amended or repealed by the board. The
15 board may adopt the substance of former federal rules or orders relat-
16 ing to the Alaska Railroad and this may not be considered a continua-
17 tion of the federal rules or orders if adopted by the board in accor-
18 dance with procedural requirements of this chapter or other law.

19 Sec. 42.40.200. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
20 as provided under (b) of this section, information in the possession
21 of the corporation is public and is open to public inspection at
22 reasonable times.

23 (b) The corporation may by rule designate as confidential and
24 withhold public disclosure of matters of a nonpublic, privileged, or
25 proprietary nature. Those matters include personnel records, communi-
26 cations with and work product of legal counsel, and, consistent with
27 the standards and practices of the United States Interstate Commerce
28 Commission for the protection of these matters, other information
29 including proprietary information associated with specific shippers,

1 divisions and contract rate agreements.

2 Sec. 42.40.210. CONFLICTS OF INTEREST. (a) Except as provided
3 in this section, a board member or executive officer of the corpora-
4 tion may not participate in a decision of the corporation in which
5 that person or a member of that person's immediate family has a direct
6 or indirect financial interest unless the financial interest is a
7 remote financial interest and participation is approved under (b) of
8 this section.

9 (b) A board member or executive officer may participate in a
10 decision if that person or a member of that person's immediate family
11 has only a remote interest, the fact and extent of the interest is
12 disclosed to the board in a public meeting and is noted in the minutes
13 of the board before any participation by the member or in the deci-
14 sion, and thereafter in a public meeting the board by vote authorizes
15 or approves the participation. If the person whose participation is
16 under consideration is a board member, that person may not vote under
17 this subsection. For purposes of this subsection, "remote interest"
18 means an interest that in good faith is defined as remote by rules
19 adopted by the corporation.

20 (c) A board member or executive officer is not considered to be
21 financially interested in a decision when the decision could not
22 affect that person in a manner different from its effect on the public
23 or community.

24 (d) Within 120 days of the first meeting of the board, the board
25 shall adopt and may subsequently amend rules implementing this sec-
26 tion, providing additional conflict of interest and ethical rules it
27 considers appropriate, and providing for the removal by the board of a
28 board member or executive officer who intentionally violates a prohi-
29 bition contained in this section.

1 (e) For purposes of this section "participate in a decision"
2 includes all discussions, deliberations, preliminary negotiations, and
3 votes concerning a matter that is the subject of formal action by the
4 board.

5 ARTICLE 4. POWERS AND DUTIES.

6 Sec. 42.40.250. GENERAL POWERS. In addition to the exercise of
7 other powers authorized by law, the corporation may

- 8 (1) adopt a seal;
- 9 (2) adopt bylaws governing the business of the corporation;
- 10 (3) sue and be sued;
- 11 (4) appoint trustees and agents of the corporation and
12 prescribe their powers and duties;
- 13 (5) hire legal counsel to represent the corporation;
- 14 (6) make contracts and execute instruments necessary or
15 convenient in the exercise of its powers and duties;
- 16 (7) acquire by purchase, lease, bequest, devise, gift,
17 exchange, the satisfaction of debts, the foreclosure of mortgages, or
18 otherwise, personal property, rights, rights-of-way, franchises,
19 easements, and other interest in land, and acquire by appropriation
20 water rights that are located in the state, taking title to the prop-
21 erty in the name of the corporation;
- 22 (8) hold, maintain, use, operate, lease, exchange, donate,
23 improve, convey, alienate, dispose of, mortgage, encumber, and other-
24 wise grant security interests in or transfer land or personal prop-
25 erty, subject to other provisions of this chapter;
- 26 (9) contract with and accept transfers, gifts, grants or
27 loans of funds or property from the United States and the state or its
28 political subdivisions, subject to other provisions of federal or
29 state law or municipal ordinances;

1 (10) undertake and provide for the management, operation,
2 maintenance, use, and control of all of the property of the corpo-
3 ration, including tracks, equipment and other property transferred to
4 the corporation by the federal government or any person;

5 (11) recommend to the legislature and the governor any tax,
6 financing, or financial arrangement the corporation considers appro-
7 priate to carry out the duties under this chapter;

8 (12) maintain offices and facilities at places it desig-
9 nates;

10 (13) apply to the state, the United States, and foreign
11 countries or other proper agencies for the permits, licenses, or
12 approvals necessary to construct, maintain, and operate railroad
13 transportation services, and obtain, hold, and reuse the licenses and
14 permits in the same manner as other railroad operators;

15 (14) prescribe rates to be charged for services provided by
16 the Alaska Railroad consistent with 45 U.S.C. 1201 - 1214 (Alaska
17 Railroad Transfer Act of 1982);

18 (15) determine the routes, schedules, and types of service
19 to be provided by the Alaska Railroad;

20 (16) enter into contracts, leases, and other agreements
21 with connecting carriers, shippers, and other persons concerning the
22 services, activities, operations, property, and facilities of the
23 railroad, including agreements that contain provisions to preserve and
24 expand the railroad's traffic base;

25 (17) plan for and undertake expansion of the railroad and
26 railroad activities, including extension of the rail system, and
27 contract with other modes of transportation service connecting to the
28 rail system;

29 (18) hire and discharge railroad personnel and determine

1 benefits and other terms of employment, in accordance with 45 U.S.C.
2 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

3 (19) assume and satisfy liabilities of the United States in
4 accordance with 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
5 1982);

6 (20) maintain or provide for a security force to enforce
7 state law and the corporation's rules with respect to violations that
8 occur on or to property owned, managed or transported by the corpo-
9 ration;

10 (21) issue its bonds or notes and provide for and secure
11 their payment, provide for the rights of their holders and hold or
12 dispose of them;

13 (22) purchase the corporation's bonds at a price not more
14 than the principal amount of them plus interest;

15 (23) cancel bonds of the corporation purchased by the corpo-
16 ration;

17 (24) secure the payment of its obligations by pledge, mort-
18 gage, or other lien on its contracts, revenues, income, or property;

19 (25) consent to the modification of the rate of interest,
20 time of payment of an installment of principal or interest, or other
21 term of a loan, contract, or agreement to which the corporation is a
22 party;

23 (26) borrow money, including the amounts necessary to estab-
24 lish reasonable reserves, and pay financing charges and interest on
25 the obligations for a reasonable period after which the corporation
26 estimates other money will be available to pay the interest, consul-
27 tant, advisory, and legal fees, and other expenses necessary or inci-
28 dent to borrowing;

29 (27) include in any borrowing the amounts necessary to

1 establish reasonable reserves and pay financing charges and interest
2 on the obligations for a reasonable period after which the corporation
3 estimates funds will be otherwise available to pay the interest,
4 consultant, advisory, and legal fees, and other expenses necessary or
5 incident to borrowing;

6 (28) acquire, hold, and dispose of stocks, memberships,
7 contracts, bonds, general or limited partnership interests or other
8 interests in another corporation, association, partnership, joint
9 venture, or other legal entity, and exercise the powers or rights in
10 connection with these interests that are provided in contracts or
11 agreements and that are allowed by law concerning the satisfaction of
12 debts;

13 (29) undertake and provide for the acquisition, construc-
14 tion, maintenance, equipping, and operation of connecting, switching,
15 terminal, or other railroads and railroad facilities in the state;

16 (30) do all things necessary or desirable to carry out the
17 powers and duties of the corporation granted or necessarily implied in
18 this chapter or other laws of the state or the laws or regulations of
19 the federal government.

20 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
21 of the fiscal year of the Alaska Railroad the board shall direct
22 preparation of, certify and distribute to the governor and to the
23 legislature a report describing the operations and financial condition
24 of the corporation during the preceding fiscal year. The report may
25 include suggestions for legislation relating to the structure, powers
26 or duties of the corporation or to operation facilities of the corpo-
27 ration. The report shall itemize the cost of providing each category
28 of service offered by the railroad and the income generated by each
29 category.

1 Sec. 42.40.270. AUDITS. (a) The board shall have the financial
2 records of the corporation audited annually by an independent cer-
3 tified public accountant experienced in railroad accounting. The
4 board shall have an annual performance audit conducted by a qualified
5 professional performance auditing firm to assure that the railroad is
6 being managed and operated effectively and efficiently in accordance
7 with the requirements of this chapter.

8 (b) The corporation shall make all of its financial records
9 available to an auditor appointed by the governor and to the legisla-
10 tive audit division for examination. Disclosure to the public by the
11 auditor or legislative audit division of this information is subject
12 to AS 42.40.200 and rules implementing that section.

13 Sec. 42.40.280. STATE OVERSIGHT REPORTS. (a) The board shall
14 provide a state oversight report to the governor and the legislature
15 before undertaking

16 (1) expansion, reduction, or diversification of services
17 provided by the railroad upon the date of transfer or as provided
18 under this chapter that the board determines would represent a signif-
19 icant and permanent change in the level and nature of services pro-
20 vided;

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

24 (3) the issuance of securities, notes, bonds or contracts
25 with a term in excess of one year and in an amount exceeding
26 \$5,000,000;

27 (4) an application for an appropriation to be used for
28 providing any service that is not self-sustaining.

29 (b) The report under (a) of this section shall be in writing,

1 describe the proposed undertaking in detail, and specify

2 (1) its financial impact on the corporation;

3 (2) its impact on the level and nature of services provided
4 by the corporation;

5 (3) the reasons the action is necessary or desirable to
6 achieve the purposes of this chapter; and

7 (4) whether and when the undertaking is expected to be
8 self-sustaining financially.

9 Sec. 42.40.290. LONG RANGE PROGRAM AND CAPITAL IMPROVEMENT
10 PLANS. (a) The corporation shall prepare and the board shall adopt a
11 long range program plan and a capital improvement plan. The board
12 shall consult with affected state agencies in preparing the plans.
13 The long range program plan shall explain the manner in which the
14 corporation intends to accomplish the purposes of this chapter during
15 each of the five years after the plan is adopted. The capital im-
16 provement plan shall present and explain the corporation's anticipated
17 capital improvements for each of the five years after the plan is
18 adopted and shall reflect efforts to upgrade the railroad and develop
19 safer, more cost-effective rail operations.

20 (b) The board shall annually review and update the long range
21 program and capital improvement plans. The board shall provide copies
22 of the updated plans to the governor and the legislature by December 1
23 of each year.

24 Sec. 42.40.300. USE OF CORPORATION ASSETS. The corporation
25 shall apply all money, property, other assets, and credit of the
26 corporation toward activities authorized by this chapter. The corpo-
27 ration may not issue shares of stock, pay dividends, make private
28 distributions of assets, make loans to board members or employees, or
29 engage in business for private benefit. The use of money, property,

1 other assets, or credit of the corporation for a purpose not author-
2 ized by law by a person having the possession or control of it is
3 prohibited.

4 Sec. 42.40.310. INDEMNIFICATION. (a) The corporation may
5 defend and indemnify a current or former member of the board, em-
6 ployee, or agent of the corporation against all costs, expenses, judg-
7 ments, and liabilities, including attorney's fees, incurred by or
8 imposed upon that person in connection with a civil or criminal action
9 in which the person is involved by affiliation with the corporation,
10 if the person acted in good faith on behalf of the corporation and
11 within the scope of official duties or powers.

12 (b) The corporation may purchase insurance to protect and hold
13 personally harmless its employees, agents, and board members from an
14 action, claim, or proceeding arising out of the performance, purported
15 performance, or failure of performance, in good faith, of duties for,
16 or employment with, the corporation and to hold them harmless from
17 expenses connected with the defense, settlement, or monetary judgments
18 from that action, claim, or proceeding. The purchase of insurance is
19 discretionary with the board and insurance is not considered to be
20 compensation to the insured person.

21 ARTICLE 5. CORPORATION PROPERTY.

22 Sec. 42.40.350. LAND. (a) All land transferred under 45 U.S.C.
23 1201 - 1214 (Alaska Railroad Transfer Act of 1982) or otherwise ac-
24 quired by the corporation is under the control of the corporation.
25 All land that is transferred or acquired by the corporation is des-
26 ignated as follows:

- 27 (1) railroad rights-of-way or easements are railroad util-
28 ity corridors;
29 (2) land other than railroad rights-of-way or easements is

1 rail land.

2 (b) Railroad utility corridors shall be of a width at least 100
3 feet on both sides of the centerline of the extended main or branch
4 line, or may be of lesser width if the adjoining land is not rail
5 land, and may be surveyed by the metes and bounds method. The corpo-
6 ration may not convey land within a utility corridor. Except as
7 provided in AS 42.40.420, the corporation may lease, grant easements
8 or permits, or otherwise authorize use of portions of a utility corri-
9 dor for transportation, communication, and transmission purposes and
10 support functions associated with those purposes if the use does not
11 restrict other parallel uses of the utility corridor.

12 (c) The corporation may convey, lease, grant easements or per-
13 mits, or otherwise authorize use of portions of rail land. However,
14 sale of rail land is subject to approval by the legislature.

15 Sec. 42.40.360. REQUEST FOR LAND. (a) The board may nominate
16 federal land for railroad purposes and request the commissioner of
17 natural resources to select the land for the state through the federal
18 land selection process.

19 (b) The board may identify and request the commissioner of
20 natural resources to convey land necessary or useful for present or
21 future railroad purposes owned by or tentatively approved for transfer
22 to the state, including land not adjacent to a railroad utility corri-
23 dor. The request must include a statement of and justification for
24 the present or future railroad use. Upon receipt of a request, the
25 commissioner shall temporarily reserve the land identified in the
26 request for railroad purposes and delay disposal or lease of that land
27 under other laws to a party other than the corporation. The temporary
28 reservation of land is subject to valid existing rights and remains in
29 effect for 180 days.

1 Sec. 42.40.370. CONVEYANCE OF LAND. (a) Within 90 days after
2 receiving a request under AS 42.40.350(b) the commissioner of natural
3 resource: shall by written decision

4 (1) designate the identified land for railroad purposes
5 and, subject to valid existing rights, convey the state's interests in
6 the land to the corporation;

7 (2) notify the corporation of reasons for refusal to desig-
8 nate the identified land for railroad purposes; or

9 (3) approve in part and deny in part the request for desig-
10 nation of the identified land and convey as appropriate.

11 (b) In the absence of a reservation to the contrary, a convey-
12 ance of land under this section vests in the corporation ownership,
13 control of the surface and subsurface, and the exclusive right to
14 extract or use timber and other construction materials, sand, gravel,
15 rock, and the right to tunnel, ditch, recontour, excavate, or other-
16 wise use the land for railroad, transportation, transmission, or
17 communication services without regard to the classification of the
18 resources as part of the surface or subsurface estate.

19 (c) The corporation may reconvey to the state land received
20 under this section or under 49 U.S.C. 1201 - 1214 (Alaska Railroad
21 Transfer Act of 1982) that the corporation and the commissioner of
22 natural resources jointly identify as unnecessary or unsuitable for
23 the corporation's purposes.

24 Sec. 42.40.380. USE OF STATE LAND. When physical conditions
25 require that track or other right-of-way fixtures of the corporation
26 be moved from the existing location and relocated on state land adja-
27 cent to or in the vicinity of the existing right-of-way and the chief
28 executive officer determines that relocation is necessary to maintain
29 safe and adequate rail operations, the corporation may effect the

1 relocation with the concurrence of the Department of Natural Re-
2 sources. The relocation must affect only the amount of state land
3 necessary to adequately restore or continue safe rail operations at a
4 normal level.

5 Sec. 42.40.397. EMINENT DOMAIN. (a) The corporation may exer-
6 cise the power of eminent domain under AS 09.55.240 - 09.55.460 to
7 acquire land for railroad purposes consistent with this chapter. The
8 corporation may acquire a fee simple title whenever, in the judgment
9 of the board, ownership of a fee simple title is necessary to carry
10 out the purposes of this chapter.

11 (b) The corporation may file a declaration of taking in the
12 manner provided for the state under AS 09.55.420.

13 (c) The power of eminent domain conferred under this section
14 includes the power to obtain clay, gravel, sand, timber, rock, or
15 other material for railroad use, the land necessary to obtain the
16 material, and access to the land and material.

17 Sec. 42.40.400. VACATION OF LAND. The corporation may vacate
18 land acquired for railroad purposes by executing and filing a deed in
19 the appropriate recording district. Upon filing the deed the state
20 shall acquire title to the land.

21 Sec. 42.40.410. FEDERAL LAND. The corporation may submit appli-
22 cations on its own behalf as an instrumentality of the state for
23 acquisition of federal land available under federal law that will
24 enhance the operations of the corporation. The corporation may re-
25 ceive in its own name conveyances of all interests in federal land.

26 Sec. 42.40.420. MUNICIPAL RIGHTS-OF-WAY. Upon request of a
27 municipality the corporation may grant to the municipality a right-
28 of-way in a railroad utility corridor or in rail land to be used for a
29 pedestrian walkway or trail. Before granting a right-of-way unde

1 this section the board shall require the municipality to execute an
2 agreement in a form approved by the board to

3 (1) hold the corporation harmless and indemnify the corpo-
4 ration for any use made of the right-of-way includi:

5 (A) defending the corporation in a cause of action
6 brought against the corporation as a result of the use, and

7 (B) indemnifying the corporation for the amount of a
8 judgment rendered against the corporation including prejudgment
9 interest, costs, and attorney's fees; and

10 (2) vacate the right-of-way upon request of the corporation
11 if the right-of-way interferes with expansion or replacement of rail-
12 road facilities.

13 Sec. 42.40.430. ACQUISITION OF GOVERNMENT PROPERTY. The corpor-
14 ation, as an instrumentality of the state, may acquire in its own name
15 from the United States under 50 App U.S.C. 1622 et seq. (Surplus
16 Property Act of 1944), 40 U.S.C. 471 et seq. (Federal Property and
17 Administrative Services Act of 1949), or other law, property under the
18 control of a federal department or agency that is useful for the
19 corporation's purposes. The corporation may acquire from the Depart-
20 ment of Administration property of the state made available under
21 AS 44.71.010 - 44.71.040.

22 Sec. 42.40.440. USE OF PESTICIDES AND HERBICIDES. Vegetation
23 control involving the use of pesticides or herbicides on land owned or
24 managed by the corporation may be conducted only in compliance with
25 state requirements applicable to other state pesticide or herbicide
26 use.

27 ARTICLE 6. FINANCIAL PROVISIONS.

28 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
29 by the corporation shall be satisfied exclusively from the assets or

1 revenue of the corporation and no creditor or other person has a right
2 of action against the state because of a debt, obligation, or liability
3 of the corporation.

4 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
5 fidelity bond in an amount determined by the board for board members
6 and each officer of the corporation responsible for accounts and
7 finances. A bond must be in effect during the entire tenure in office
8 of the bonded person.

9 Sec. 42.40.520. INSURANCE. The corporation shall keep in force
10 public liability insurance in an amount reasonably calculated to cover
11 potential claims against the corporation or state for bodily injury,
12 death or disability and property damage that may arise from or be
13 related to corporation operations and activities.

14 Sec. 42.40.530. REVENUE. Revenue generated by or appropriated
15 to the corporation shall be retained and managed by the corporation
16 for railroad and related purposes in accordance with 45 U.S.C. 1207-
17 (a)(5) (Alaska Railroad Transfer Act of 1982).

18 Sec. 42.40.540. APPROPRIATIONS. The corporation may request,
19 with the concurrence of the governor, a direct appropriation or grant
20 from the legislature to assist in carrying out the provisions of this
21 chapter.

22 ARTICLE 7. BONDS AND NOTES.

23 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
24 resolution may issue bonds and notes to provide money to carry out its
25 purposes.

26 (b) Bonds and notes may be issued in one or more series and
27 shall, as provided by the resolution of the board,

28 (1) be dated;

29 (2) bear interest at a required rate or rates per year or

1 within a maximum rate;

- 2 (3) be in a required denomination;
- 3 (4) be in a coupon or registered form;
- 4 (5) carry conversion or registration provisions;
- 5 (6) have a required rank or priority;
- 6 (7) be executed in the required manner and form;
- 7 (8) be payable as required from the sources, in the medium
- 8 of payment, and place or places inside or outside the state;
- 9 (9) be subject to authentication by a trustee or fiscal
- 10 agent; and
- 11 (10) be subject to terms of redemption with or without
- 12 premium.

13 (c) Bonds and notes may be sold in the manner, on the terms, and

14 at the price the board determines. Notes shall mature at the time or

15 times determined by the board. Bonds shall mature at the time, not

16 exceeding 50 years from their date, determined by the board.

17 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds and notes issued

18 under this chapter and interest coupons attached to them are nego-

19 tiable instruments under the laws of this state, subject only to

20 applicable provisions for registration.

21 Sec. 42.40.620. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds

22 and notes issued under this chapter are securities in which all public

23 officers and public bodies of the state and its political subdivi-

24 sions, all insurance companies, trust companies, banking associations,

25 investment companies, executors, administrators, trustees and other

26 fiduciaries may properly and legally invest funds, including capital

27 in their control or belonging to them. These bonds and notes may be

28 deposited with a state or municipal officer of an agency or political

29 subdivision of the state for any purpose for which the deposit of

1 bonds or notes of the state is authorized by law.

2 Sec. 42.40.630. PAYMENT OF BONDS AND NOTES. The principal and
3 interest on bonds or notes of the corporation is payable from corpo-
4 ration money or assets. Bonds or notes may be additionally secured by
5 a pledge of a grant or contribution from the federal, state, or munic-
6 ipal government or a corporation, association, institution or person,
7 or a pledge of money, income, or revenue of the corporation from any
8 source.

9 Sec. 42.40.640. SECURITY FOR BONDS. In the discretion of the
10 board, an issue of bonds may be secured by a trust indenture, which
11 may be a trust company, bank or national banking association, with
12 corporate trust powers, located inside or outside the state, or by a
13 secured loan agreement or other instrument or under resolution giving
14 powers to a corporate trustee by means of which the corporation may

15 (1) make and enter into any and all the covenants and
16 agreements with the trustees or the holders of the bonds that the
17 corporation may determine to be necessary or desirable, including
18 covenants, provisions, limitations and agreements as to

19 (A) the application, investment, deposit, use and
20 disposition of the proceeds of bonds of the corporation or of
21 money or other property of the corporation or in which it has an
22 interest;

23 (B) the fixing and collection of rentals, charges,
24 fees or other consideration for, and the other terms to be incor-
25 porated in, contracts with respect to the use of any of the
26 corporation's property;

27 (C) the fixing and collection of tariffs, fees,
28 charges or other consideration for the use or service of the
29 Alaska Railroad by passengers, and other users and freight;

1 (D) the terms and conditions upon which additional
2 bonds of the corporation may be issued;

3 (E) the vesting in the trustee of rights and remedies
4 exercisable by the trustee for the protection of the holders of
5 bonds of the corporation and not otherwise in violation of law
6 and the restriction of the rights of an individual holder of
7 bonds of the corporation;

8 (2) pledge, mortgage or assign money, leases, agreements,
9 property, or other assets of the corporation either presently in hand
10 or to be received in the future, or both; and

11 (3) provide for any other matters of like or different
12 character that in any way affect the security or protection of the
13 bonds.

14 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating
15 the private or public sale of bonds or notes to an underwriter, the
16 board shall retain a financial advisor who is independent from the
17 underwriter.

18 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the
19 corporation whose signature or a facsimile of whose signature appears
20 on bonds, notes, or coupons attached to them ceases to be an officer
21 before the delivery of the bond, note, or coupon, the signature or
22 facsimile is valid the same as if the person had remained in office
23 until delivery.

24 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets
25 or revenue of the corporation to the payment of the principal or
26 interest on bonds or notes of the corporation is valid and binding
27 from the time the pledge is made and the assets or revenue are immedi-
28 ately subject to the lien of the pledge without physical delivery or
29 further act. The lien of a pledge is valid and binding against all

1 parties having claims of any kind against the corporation, irrespec-
2 tive of whether those parties have notice of the lien of the pledge.

3 (b) Nothing in this section prohibits the corporation from
4 selling assets subject to a pledge, except that a sale may be re-
5 stricted by the trust agreement or resolution providing for the issu-
6 ance of the bonds or notes.

7 Sec. 42.40.680. REMEDIES. A holder of bonds or notes issued
8 under this chapter or of coupons attached to them, and a trustee under
9 a trust agreement or resolution authorizing the issuance of the bonds
10 or notes, except as restricted by a trust agreement or resolution,
11 either at law or in equity, may

12 (1) enforce all rights granted under this chapter, the
13 trust agreement or resolution, or any other contract executed by the
14 corporation under this chapter; and

15 (2) compel the performance of all duties of the corporation
16 required by this chapter or by the trust agreement or resolution.

17 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
18 its political subdivisions are not liable for the debts of the corpo-
19 ration. Bonds and notes issued under this chapter are payable solely
20 from the revenue or assets of the corporation and do not constitute a

21 (1) debt, liability, or obligation of the state or of a
22 political subdivision of the state; or

23 (2) pledge of the faith and credit of the state or of a
24 political subdivision of the state.

25 (b) The corporation may not pledge the credit or the taxing
26 power of the state or its political subdivisions. Each bond and note
27 issued under this chapter shall contain on its face a statement that

28 (1) the corporation is not obligated to pay it or the
29 interest on it except from the revenue or assets pledged for it; and

1 (2) neither the faith and credit nor the taxing power of
2 the state or of a political subdivision of the state is pledged to the
3 payment of it.

4 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
5 member or employee of the corporation is not subject to personal
6 liability or accountability because of the execution or issuance of
7 bonds or notes.

8 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

9 Sec. 42.40.710 CORPORATION EMPLOYEES. (a) Employees of the
10 Alaska Railroad are employees of the corporation and not of the state.
11 The provisions of AS 39 do not apply to employees of the corporation.

12 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
13 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
14 employees. However, employees who are not executive officers may
15 organize and form, join, or assist an organization to engage in
16 collective bargaining through representatives of their own choosing
17 and engage in concerted activities for the purpose of collective
18 bargaining or other mutual aid or protection.

19 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
20 established a railroad labor relations agency that consists of three
21 members appointed by the governor. One member shall be a member of
22 the state personnel board. Members serve at the pleasure of the
23 governor.

24 (b) The railroad labor relations agency shall carry out the
25 provisions of AS 42.40.710 - 42.40.890.

26 (c) Members of the railroad labor relations agency receive no
27 compensation for their services, but are entitled to per diem and
28 travel expenses authorized for boards and commissions.

29 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor

1 relations agency shall decide in each case, in order to ensure employ-
2 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
3 40.710 - 42.40.890 the unit appropriate for the purposes of collective
4 bargaining, based on such factors as community of interest, wages,
5 hours and other working conditions of the employees involved, the
6 history of collective bargaining, and the desires of the employees.
7 Bargaining units shall be as large as is reasonable, and unnecessary
8 fragmenting shall be avoided.

9 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
10 road labor relations agency shall investigate a petition if it is
11 submitted in a manner prescribed by the labor relations agency by

12 (1) an employee or group of employees or an organization
13 acting in their behalf alleging that 30 percent of the employees of a
14 proposed bargaining unit

15 (A) want to be represented for collective bargaining
16 by a labor or employee organization as exclusive representative;
17 or

18 (B) assert that the organization that has been certi-
19 fied or is currently being recognized by the corporation as
20 bargaining representative is no longer the representative of the
21 majority of employees in an appropriate unit; or

22 (2) the corporation alleging that one or more organizations
23 have presented to it a claim to be recognized as a representative of a
24 majority of employees in an appropriate unit.

25 (b) If the railroad labor relations agency has reasonable cause
26 to believe that a question of representation exists, it shall provide
27 for a hearing upon due notice. If the railroad labor relations agency
28 finds that there is a question of representation, it shall direct an
29 election by secret ballot to determine whether or by which

1 organization the employees desire to be represented and shall certify
2 the results of the election. Nothing in this subsection prohibits the
3 waiving of hearings by stipulation for the purpose of a consent elec-
4 tion in conformity with the regulations of the railroad labor rela-
5 tions agency or an election in a bargaining unit agreed upon by the
6 parties.

7 (c) The railroad labor relations agency shall determine who is
8 eligible to vote in an election held under this section and shall
9 establish rules governing the election. In an election in which none
10 of the choices on the ballot receives a majority of the votes cast, a
11 runoff election shall be conducted, the ballot providing for selection
12 between the two choices receiving the largest number of valid votes
13 cast in the election. If an organization receives the majority of the
14 votes cast in the election it shall be certified by the railroad labor
15 relations agency as exclusive representative of all the employees in
16 the bargaining unit. An election may not be held in a bargaining unit
17 or in a subdivision of a bargaining unit if a valid election has been
18 held within the preceding 12 months.

19 (d) Nothing in this chapter prohibits recognition of an
20 organization as the exclusive representative by the corporation by
21 mutual consent.

22 (e) An election may not be directed by the railroad labor
23 relations agency in a bargaining unit in which there is in force a
24 valid collective bargaining agreement, except during a 90-day period
25 preceding the expiration date. However, no collective bargaining
26 agreement may bar an election upon petition of employees in the
27 bargaining unit but not parties to the agreement if more than three
28 years have elapsed since the execution of the agreement or the last
29 timely renewal, whichever was later.

1 Sec. 42.40.760. UNFAIR LABOR PRACTICES. (a) The corporation or
2 its agent may not

3 (1) interfere, restrain, or coerce an employee in the
4 exercise of the rights guaranteed in AS 42.40.720;

5 (2) dominate or interfere with the formation, existence, or
6 administration of an organization;

7 (3) discriminate in regard to hire or tenure of employment
8 or a term or condition of employment to encourage or discourage
9 membership in an organization;

10 (4) discharge or discriminate against an employee because
11 the employee has signed or filed an affidavit, petition or complaint
12 or given testimony under AS 42.40.710 - 42.40.890;

13 (5) refuse to bargain collectively in good faith with an
14 organization that is the exclusive representative of employees in an
15 appropriate unit, including the discussing of grievances with the
16 exclusive representative.

17 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the
18 corporation from making an agreement with an organization to require
19 as a condition of employment

20 (1) membership in the organization that represents the unit
21 on or after the 30th day following the beginning of employment or on
22 the effective date of the agreement, whichever is later; or

23 (2) payment by the employee to the exclusive bargaining
24 agent of a service fee to reimburse the exclusive bargaining agency
25 for the expense of representing the members of the bargaining unit.

26 (c) An organization or its agents may not

27 (1) restrain or coerce

28 (A) an employee in the exercise of the rights
29 guaranteed in AS 42.40.720; or

1 (B) the corporation in the selection of a representa-
2 tive for the purposes of collective bargaining or the adjustment
3 of grievances;

4 (2) refuse to bargain collectively in good faith with the
5 corporation, if it has been designated in accordance with AS 42.40.-
6 710 - 42.40.890 as the exclusive representative of employees in an
7 appropriate unit.

8 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.
9 If a verified written complaint by or for a person claiming to be
10 aggrieved by a practice prohibited by AS 42.40.760 or a written
11 accusation that a person subject to AS 42.40.710 - 42.40.890 has
12 engaged in a prohibited practice, is filed with the railroad labor
13 relations agency, it shall investigate the complaint or accusation.
14 If it determines after a preliminary investigation that probable cause
15 exists in support of the complaint or accusation, it shall try to
16 eliminate the prohibited practice by informal methods of conference,
17 conciliation, and persuasion. Nothing said or done during this
18 endeavor may be used as evidence in a subsequent proceeding.

19 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
20 relations agency fails to eliminate the prohibited practice by
21 conciliation and to obtain voluntary compliance with AS 42.40.710 -
22 42.40.890 or before it attempts conciliation, it may serve a copy of
23 the complaint or accusation upon the respondent. The complaint or
24 accusation and the subsequent procedures shall be handled in accor-
25 dance with the administrative adjudication portion of the
26 Administrative Procedure Act (AS 44.62).

27 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
28 relations agency finds that a person named in the written complaint or
29 accusation has engaged in a prohibited practice, the railroad labor

1 relations agency shall issue and serve on the person an order or
2 decision requiring the person to cease and desist from the prohibited
3 practice and to take affirmative action that will carry out the
4 provisions of AS 42.40.710 - 42.40.890. If the railroad labor rela-
5 tions agency finds that a person named in the complaint or accusation
6 has not engaged or is not engaging in a prohibited practice, the
7 railroad labor relations agency shall state its findings of fact and
8 issue an order dismissing the complaint or accusation.

9 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
10 relations agency may apply to the superior court in the judicial
11 district in which the prohibited practice occurred for an order
12 enjoining the prohibited acts specified in the order or decision of
13 the railroad labor relations agency. Upon showing by the railroad
14 labor relations agency that the person has engaged or is about to
15 engage in the practice, an injunction, restraining order, or other
16 order that is appropriate may be granted by the court and shall be
17 without bond.

18 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
19 For the purpose of the investigations, proceedings, or hearings that
20 the railroad labor relations agency considers necessary to carry out
21 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
22 issue subpoenas requiring the attendance and testimony of witnesses
23 and the production of relevant evidence.

24 (b) The railroad labor relations agency may administer oaths,
25 examine witnesses, and receive evidence.

26 (c) The attendance of witnesses and the production of evidence
27 may be required from any place in the state at any designated place of
28 hearing.

29 (d) If a person refuses to obey a subpoena issued under

1 AS 42.40.710 - 42.40.890, the superior court in the district in which
2 the person resides or is found may, upon application by the railroad
3 labor relations agency, issue an order requiring the person to comply
4 with the subpoena.

5 Sec. 42.40.820. REGULATIONS. The railroad labor relations
6 agency shall adopt regulations under the Administrative Procedure Act
7 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

8 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
9 person who violates a provision of an order or decision of the
10 railroad labor relations agency is guilty of a misdemeanor and is
11 punishable by a fine of not more than \$500.

12 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
13 of negotiation over the terms of a collective bargaining agreement, an
14 impasse as determined by the railroad labor relations agency exists
15 between the corporation and an organization, the railroad labor
16 relations agency shall appoint a person mutually agreeable to the
17 parties from a list of seven qualified mediators/arbitrators
18 knowledgeable in railway labor agreements to act as mediator in the
19 dispute.

20 (b) Before the determination of an impasse under this section,
21 the parties may also select a mediator by agreement or mutual consent.

22 (c) It shall be the function of the mediator to bring the
23 parties together to effectuate a settlement of the dispute, but
24 neither the mediator nor the railroad labor relations agency has any
25 power of compulsion in mediation proceedings.

26 Sec. 42.40.850. STRIKES. (a) Following a decision by the
27 mediator to end the mediation proceedings, employees of a collective
28 bargaining unit may engage in a strike for a limited time if a
29 majority of the employees in that collective bargaining unit vote by

1 secret ballot to do so. The limit of the strike is determined by the
2 interest of the health, safety, or welfare of the public.

3 (b) The corporation may apply to the superior court in the
4 judicial district in which the strike is occurring for an order
5 enjoining the strike. A strike may not be enjoined unless it can be
6 shown that it has begun to threaten, or is about to threaten, the
7 health, safety, or welfare of the public. A court, in deciding
8 whether to enjoin the strike, shall consider the total equities in the
9 particular case, including the impact of a strike on the public and
10 the extent to which an employee organization and the corporation have
11 met their statutory obligations.

12 (c) If an impasse or deadlock still exists after the issuance of
13 an injunction, the parties shall submit the dispute to binding arbi-
14 tration. The arbitrator shall be the same person selected under
15 AS 42.40.840 and shall fashion the award considered equitable.

16 (d) Notwithstanding the provisions of (a) - (c) of this section,
17 the parties to the dispute may mutually agree to submit the dispute to
18 binding arbitration at any time.

19 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-
20 tion may participate in labor negotiations between the corporation and
21 an organization. The corporation shall seek advice of the Department
22 of Administration before entering into a collective bargaining
23 agreement concerning wages, hours, and other terms and conditions of
24 employment. However, the final decision regarding collective
25 bargaining agreements, shall be made by the board.

26 (b) Upon the completion of negotiations between an organization
27 and the corporation, if a settlement is reached, the corporation shall
28 reduce it to writing in the form of an agreement. The agreement shall
29 include a grievance procedure that shall have binding arbitration as

1 its final step. Either party to the agreement has a right of action
2 to enforce the agreement by petition to the railroad labor relations
3 agency.

4 (c) The parties to an agreement under this section may agree to
5 terms that specify an expiration date for the agreement.

6 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
7 TION AND AUTHORIZATION. Upon written authorization of an employee
8 within a bargaining unit, the corporation shall deduct from the
9 payroll of the employee the monthly amount of dues, fees, and other
10 employee benefits as certified by the secretary of the exclusive
11 bargaining representative and shall deliver it to the chief fiscal
12 officer of the exclusive bargaining representative.

13 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of
14 AS 42.40.870, a collective bargaining settlement reached, or agreement
15 entered into, under AS 42.40.860 that incorporates union security
16 provisions, including a union shop or agency shop provision or agree-
17 ment, shall safeguard the rights of nonassociation of employees having
18 bona fide religious convictions based on tenets or teachings of a
19 church or religious body of which an employee is a member. Upon
20 submission of proper proof of religious conviction to the railroad
21 labor relations agency, the agency shall declare the employee exempt
22 from becoming a member of an organization. The employee shall pay an
23 amount of money equivalent to regular organization dues, initiation
24 fees, and assessments to the organization. Nonpayment of this money
25 subjects the employee to the same penalty as if it were nonpayment of
26 dues. The receiving organization shall contribute an equivalent
27 amount of money to a charity of its choice not affiliated with a
28 religious, labor, or employee organization. The organization shall
29 submit to the railroad labor relations agency proof of contribution.

1 Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

2 (1) "collective bargaining" means the performance of the
3 mutual obligation of the corporation or its designated representatives
4 and the representatives of the employees to meet at reasonable times,
5 including meetings in advance of the budget making process, and
6 negotiating in good faith with respect to wages, hours, and other
7 terms and conditions of employment, or the negotiation of an agree-
8 ment, or negotiation of a question arising under an agreement and the
9 execution of a written contract incorporating an agreement reached if
10 requested by either party, but these obligations do not compel either
11 party to agree to a proposal or require the making of a concession;

12 (2) "election" means a proceeding conducted by the labor
13 relations agency in which the employees in a collective bargaining
14 unit cast a secret ballot for collective bargaining representatives,
15 or for any other purpose specified in AS 42.40.710 - 42.40.890;

16 (3) "organization" means a labor or employee organization
17 of any kind in which employees participate and that exists for the
18 primary purpose of dealing with the corporation concerning grievances,
19 labor disputes, wages, rates of pay, hours of employment and condi-
20 tions of employment.

21 ARTICLE 9. GENERAL PROVISIONS.

22 Sec. 42.40.900. CLAIMS. (a) All claims and lawsuits involving
23 activities of the railroad, including suits in contract, quasi-con-
24 tract, or tort, shall be brought against the corporation and not
25 against the state.

26 (b) For the purposes of actionable claims, undertakings, pay-
27 ments of judgments, execution, interest, punitive damages, statutes of
28 limitations, bonds, costs, and similar matters related to the pres-
29 entation and prosecution of claims by and against the corporation, the

1 corporation and its board members and employees enjoy the same rights,
2 privileges, and immunities as the state and state officers under
3 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

4 (c) Claims against the corporation are not subject to the pro-
5 visions of AS 44.77 regarding claims against the state.

6 (d) The corporation is not subject to the provisions of AS 44.-
7 80.010, regarding the state as a party to an action.

8 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
9 the powers granted by this chapter shall be in all respects for the
10 benefit of the people of the state, for their well-being and prosper-
11 ity, and for the improvement of their social and economic conditions.
12 Subject to (b) of this section, the real and personal property of the
13 corporation and its assets, income, and receipts are exempt from all
14 taxes and special assessments of the state or a political subdivision
15 of the state.

16 (b) Bonds and notes issued under this chapter are issued by a
17 body corporate and public of the state and for an essential public and
18 governmental purpose. Therefore, the bonds and notes, the interest
19 and income from them, and all fees, charges, funds, revenue, income
20 and other money pledged or available to pay or secure the payment of
21 the bonds and notes or interest on them, are exempt from taxation
22 except for inheritance, transfer, and estate taxes.

23 (c) This section does not affect or limit an exemption from
24 license fees, property taxes, excise taxes, income taxes, or other
25 taxes, provided under any other law, nor does it create a tax
26 exemption with respect to the interest of any business enterprise or
27 other person, other than the corporation.

28 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
29 ration is not subject to the jurisdiction of the Alaska Transportation

1 Commission.

2 (b) Unless specifically provided otherwise in this chapter, the
3 following laws do not apply to the operations of the corporation:

- 4 (1) AS 19;
- 5 (2) AS 30.15;
- 6 (3) AS 35;
- 7 (4) AS 37.05;
- 8 (5) AS 37.07;
- 9 (6) AS 37 10.010 - 37.10.060;
- 10 (7) AS 37.10.085;
- 11 (8) AS 37.20;
- 12 (9) AS 37.25;
- 13 (10) AS 38;
- 14 (11) AS 44.62.040 - 44.62.320.

15 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
16 this chapter conflict with the provisions of other state law, the pro-
17 visions of this chapter prevail. Provisions of this chapter shall be
18 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
19 (Alaska Railroad Transfer Act of 1982).

20 Sec. 42.40.940. REVERSION OF ASSETS. If the corporation ceases
21 to exist, for whatever reason, its assets revert to the state.

22 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the
23 context otherwise requires,

24 (1) "board" means the board of directors of the Alaska
25 Railroad Corporation;

26 (2) "corporation" means the Alaska Railroad Corporation;

27 (3) "date of transfer" means the date on which the United
28 States Secretary of Transportation delivers the transfer documents
29 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

1 (4) "employees" means all persons employed by the corpo-
2 ration including executive officers;

3 (5) "executive officer" means the corporation's chief
4 executive officer, an employee who fulfills management functions and
5 is so designated by the board, and employees occupying the following
6 positions on the date of transfer: general manager, assistant general
7 manager, assistant to the general manager, chief of administration,
8 and general counsel;

9 (6) "land" means any interest in real property, including
10 tide and submerged land.

11 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
12 the Alaska Railroad Corporation Act.

13 * Sec. 3. AS 42.40.010 is amended to read:

14 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
15 established the Alaska Railroad Corporation. The corporation is a
16 public corporation and is an instrumentality of the state [WITHIN THE
17 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
18 a legal existence independent of and separate from the state. The
19 exercise by the corporation of the powers provided in this chapter is
20 considered an essential government function of the state.

21 * Sec. 4. AS 42.40.020(a) is amended to read:

22 (a) The powers of the corporation are vested in the board of
23 directors. The board consists of [THE COMMISSIONER OF COMMERCE AND
24 ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation,
25 and eight [SEVEN] members appointed by the governor. At least six
26 [FIVE] of the eight [SEVEN] appointed members must be registered
27 voters in the state. No more than two appointed members may be from
28 any one of the four judicial districts in the state. The appointed
29 members must have substantial experience or professional training and

1 expertise in fields relevant to the purposes of this chapter, in-
2 cluding transportation, business, and finance. Except for [THE COM-
3 MISSIONER,] the chief executive officer [,] and the member appointed
4 under (d) of this section, a member may not be a state officer or
5 employee.

6 * Sec. 5. AS 42.40.020(e) is amended to read:

7 (e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVEL-
8 OPMENT AND] the chief executive officer of the corporation, the mem-
9 bers of the board shall be confirmed by a majority of the members of
10 each house of the legislature in joint session. A member appointed by
11 the governor has the full powers and responsibilities of a confirmed
12 board member until the member is rejected by the legislature.

13 * Sec. 6. AS 42.40.030 is amended to read:

14 Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE
15 COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief
16 executive officer of the corporation, members of the board serve for
17 staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

18 * Sec. 7. AS 42.40.030 is amended by adding a new subsection to read:

19 (b) The governor may, by written notice to the member, remove a
20 member from the board for

21 (1) incapacitation caused by injury or sickness that leaves
22 the member unable to perform duties under this chapter;

23 (2) continued refusal or inability to attend meetings of
24 the board;

25 (3) conviction of a felony; or

26 (4) any conduct that was intended to harm the corporation,
27 even if it does not constitute a crime.

28 * Sec. 8. AS 42.40.040(a) is amended to read:

29 (a) Except for the [COMMISSIONER OF COMMERCE AND ECONOMIC

1 DEVELOPMENT AND THE] chief executive officer, a vacancy on the board
2 is filled by appointment by the governor, and the appointment must be
3 confirmed by the members of each house of the legislature in joint
4 session. A member appointed to fill a vacancy holds office for the
5 balance of the term for which the member's predecessor was appointed.

6 * Sec. 9. SPECIAL REPORT. The corporation shall prepare a report for
7 the governor and the legislature on the long-term operations of the Alaska
8 Railroad that are in the best interest of the state. The report shall be
9 submitted by January 1, 1988. It shall contain specific recommendations on
10 operational alternatives and the transfer of all or part of the railroad's
11 operation's is to the private sector.

12 * Sec. 10. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
13 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
14 the terms of the appointed members of the first board of directors of the
15 Alaska Railroad Corporation are as follows:

- 16 (1) one shall serve a term of two years;
- 17 (2) two shall serve a term of three years;
- 18 (3) two shall serve a term of four years; and
- 19 (4) two shall serve a term of five years.

20 * Sec. 11. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
21 cable after establishment of the Alaska Railroad Corporation and before
22 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
23 tion and its employees shall adopt collective bargaining agreements that
24 continue the provisions of the agreements in effect between the Alaska
25 Railroad and its employees on the date of transfer of the railroad. The
26 collective bargaining agreements adopted under this section between the
27 corporation and its employees shall remain in effect to the extent required
28 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

29 (b) The board of directors of the Alaska Railroad Corporation shall

1 on or before the date of transfer of the Alaska Railroad to the state adopt
2 personnel rules necessary to prevent an interruption of services of the
3 railroad.

4 (c) Subject to 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
5 1982), within 180 days after the first meeting of the board of directors of
6 the Alaska Railroad Corporation, the board and representatives of employee
7 bargaining units shall establish procedures for the renegotiation of
8 collective bargaining agreements adopted under (a) of this section. The
9 board shall renegotiate all agreements adopted under (a) of this section
10 within two years after the date of transfer of the Alaska Railroad to the
11 state unless the parties agree to the contrary.

12 * Sec. 12. Sections 3 - 8 of this Act take effect on the effective date
13 of an amendment to the Constitution of the State of Alaska relating to the
14 Alaska Railroad.

15 * Sec. 13. Sections 1, 2, and 9 - 11 of this Act take effect imme-
16 diately in accordance with AS 01.10.070(c).

Introduced: 1/13/84
Referred: Transportation and
Finance

BY HAYES, RINGSTAD, SHULTZ, ABOOD,
FRITZ, FURNACE, CATO, FULLER,
UEHLING, BETTISWORTH AND TISCHER

1 IN THE HOUSE

2 HOUSE BILL NO. 512

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and pro-
8 viding for an effective date."

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

10 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
11 finds that

12 (1) The Alaska Railroad is an essential part of the state trans-
13 portation network that without state action will cease to be a transpor-
14 tation option available within Alaska. The federal government has offered to
15 the state the option of taking over the Alaska Railroad to ensure its
16 continued existence. It is in the state's best interest to accept the
17 railroad under the terms and conditions offered by the United States gov-
18 ernment.

19 (2) There is great potential in Alaska's natural resource areas
20 and that extension of the Alaska Railroad into natural resource areas is
21 necessary for the achievement of the goals of lower freight cost and long-
22 term economic growth.

23 (b) It is the purpose of this Act to create an entity and to provide
24 that entity with the powers and duties necessary to operate and manage the
25 Alaska Railroad as a viable independent entity pending the eventual trans-
26 fer of the railroad to the private sector for its ownership or operation or
27 both consistent with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
28 1982).

29 (c) The legislature declares that

1 (1) the exercise of the powers of the state in the interest of
2 the people of the state is necessary to accomplish the policy set out in
3 (a) of this section by authorizing the creation of a public corporation
4 with the powers, duties, and functions as provided in this Act to operate
5 the Alaska Railroad and to manage its rail, industrial, port and other
6 properties;

7 (2) it is in the best interests of the people of the state for
8 the public corporation that will operate and manage the Alaska Railroad to
9 be created in such a way that

10 (A) the corporation will be exclusively responsible for the
11 management of the financial and legal obligations of the Alaska Rail-
12 road;

13 (B) the corporation, and not the state, will constitute a
14 common carrier subject to the jurisdiction of the United States Inter-
15 state Commerce Commission;

16 (C) the corporation will have the ability to raise capital
17 by issuing obligations exempt from federal and state taxation;

18 (D) the corporation may carry out its responsibilities on a
19 self-sustaining basis;

20 (E) the best possible combination of types and levels of
21 safe, efficient, and economical transportation can be provided that is
22 necessary to meet the overall needs of the state, supported when
23 necessary by state investment;

24 (F) the railroad may be operated prudently and according to
25 sound business management practices; and

26 (G) borrowing by the corporation does not directly or
27 indirectly endanger the state's own borrowing capacity.

28 * Sec. 2. AS 42 is amended by adding a new chapter to read:

29 CHAPTER 40. ALASKA RAILROAD CORPORATION.

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ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation for the purposes of art. III, sec. 22, Constitution of the State of Alaska. The corporation shall be considered a principal department only for the purposes of art. III, sec. 26, Constitution of the State of Alaska. The corporation has a legal existence independent of and separate from the state. The exercise by the corporation of the powers provided in this chapter is considered an essential government function of the state.

Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of five voting members appointed by the governor. These five members must be residents of and registered voters in the state except as provided in (b) of this section. No more than two of these members may be from any one of the four judicial districts in the state. Two of the voting members must have at least five years experience as owners or managers of a business in the state. A voting member may not be a state officer or employee.

(b) One person who is not a resident of or registered voter in the state may be appointed by the governor to be a voting member of the board, if, at the time of appointment, the person has at least 10 years of experience in management of railroads.

(c) In addition to the voting members, the following nonvoting members shall serve on the board:

(1) an employee of the corporation appointed by the governor to represent the employees;

(2) the chief executive officer of the corporation.

(d) The voting members of the board shall be confirmed by a

1 majority of the membership of the legislature in joint session. A
2 member appointed by the governor has the full powers and responsibili-
3 ties of a confirmed board member unless and until the member has been
4 rejected by the legislature.

5 (e) The board shall elect from its membership a chairperson and
6 vice-chairperson and prescribe their specific duties by rule.

7 (f) The board shall appoint a secretary and prescribe the spe-
8 cific duties of the secretary.

9 (g) The chairperson shall call meetings of the board at least
10 once every three months. The chairperson may call other meetings of
11 the board as the chairperson considers necessary. The chairperson
12 shall preside at meetings of the board.

13 (h) The governor may, by written notice to the member, remove a
14 member from the board for

15 (1) incapacitation caused by injury or sickness that leaves
16 the member unable to perform duties under this chapter;

17 (2) continued refusal or inability to attend meetings of
18 the board;

19 (3) conviction of a felony; or

20 (4) conviction of a misdemeanor involving moral turpitude.

21 Sec. 42.40.030. TERM OF OFFICE. The appointed members of the
22 board serve for staggered terms of five years each.

23 Sec. 42.40.040. VACANCIES. (a) A vacancy on the board is
24 filled by appointment by the governor, and the appointment must be
25 confirmed by the legislature in joint session. A member selected to
26 fill a vacancy holds office for the balance of the term for which the
27 member's predecessor is appointed.

28 (b) A vacancy on the board does not impair the authority of a
29 quorum of members to exercise the powers and perform the duties of the

1 board.

2 (c) A member whose term has expired shall serve until a succes-
3 sor has been appointed.

4 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
5 member of the board is entitled to compensation at a rate of \$200 for
6 each day the member is engaged in the actual performance of duties as
7 a member of the board.

8 (b) In addition to compensation under (a) of this section, an
9 appointed member of the board is entitled to per diem and travel
10 expenses authorized by law for state boards and commissions.

11 Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. Three voting
12 members of the board constitute a quorum for the transaction of busi-
13 ness.

14 Sec. 42.40.070. VOTING. The board shall provide by rule for the
15 manner of voting and representation of persons absent from meetings.
16 The rules may provide for voting and conferring by means of telecommu-
17 nication devices or by mail or for voting as directed in a written
18 proxy taking a position on a particular issue.

19 ARTICLE 2. MANAGEMENT.

20 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall ap-
21 point and fix compensation for the chief executive officer of the
22 corporation. The chief executive officer serves at the pleasure of
23 the board.

24 (b) The chief executive officer of the corporation shall appoint
25 and fix the compensation for other executive officers. The appoint-
26 ment of other executive officers and their compensation are subject to
27 board approval.

28 Sec. 42.40.110. DELEGATION. (a) The board shall by rule dele-
29 gate powers and duties necessary and appropriate for the management of

1 the daily affairs and operations of the corporation to the chief
2 executive officer, subject to a requirement of board concurrence or
3 authorization imposed by the rules.

4 (b) Within 60 days of its establishment, the board shall by rule
5 delegate the following activities of the corporation to the chief
6 executive officer or other executive officers designated by the board:

7 (1) leasing, granting easements in, issuing permits for the
8 use of, or conveying other interests that do not constitute a transfer
9 of the corporation's entire interest in real property of the corpora-
10 tion;

11 (2) establishing specific rates, tariffs, divisions, and
12 contract rate agreements;

13 (3) making routine changes in service levels; and

14 (4) performing procurement activities.

15 (c) General or particular board authorization or concurrence is
16 required for the following:

17 (1) transferring the corporation's entire interest in real
18 property;

19 (2) issuing notes, debentures, and bonds;

20 (3) mortgaging or pledging authority assets;

21 (4) donating property, or other assets belonging to the
22 corporation;

23 (5) acting as a surety or guarantee;

24 (6) adopting a long-range expansion and capital improvement
25 plan;

26 (7) certifying annual reports;

27 (8) effecting generally applicable increases and decreases
28 in rates other than those periodically approved by the United States
29 Interstate Commerce Commission;

1 (9) expanding or reducing services in a major way as pro-
2 vided under this chapter;

3 (10) expanding the main or branch lines, other than perform-
4 ing routine track alignment as necessary to maintain service levels in
5 effect on the date of transfer; and

6 (11) selecting independent auditors and accountants.

7 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

8 Sec. 42.40.200. PUBLIC BOARD MEETINGS. (a) The meetings of the
9 board are public with the exception of an executive session conducted
10 under AS 44.62.310 and (b) of this section.

11 (b) In addition to those subjects that may be discussed in
12 executive session under AS 44.62.310, the board may consider in execu-
13 tive session matters that pertain to personnel, the corporation's
14 legal position, land acquisition or disposal, or proprietary informa-
15 tion, as defined in a manner consistent with the standards and prac-
16 tices of the United States Interstate Commerce Commission for protec-
17 tion of information associated with specific shippers, divisions, and
18 contract rate agreements.

19 Sec 42.40.220. MINUTES OF MEETINGS. The board shall keep
20 minutes of each meeting.

21 Sec. 42.40.230. RULES. The board shall establish a procedure
22 for adopting rules to carry out its functions and the purposes of this
23 chapter. The rules shall include a procedure for the adoption of
24 emergency rules when the adoption of an emergency rule is essential to
25 continue or to reinstate the orderly operation of the corporation's
26 facilities or program.

27 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
28 as provided by rule of the corporation under (b) of this section,
29 information in the possession of the corporation is public and is open

1 to public inspection at reasonable times.

2 (b) Except as provided in AS 42.40.270, the corporation may by
3 rule designate and withhold disclosure of matters of a nonpublic,
4 privileged, or proprietary nature. Those matters include personnel
5 records, communications with and work product of counsel consistent
6 with the standards and practices of the United States Interstate
7 Commerce Commission, and information associated with specific ship-
8 pers, divisions, and contract rate agreements.

9 Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
10 gate and prepare a report for the governor and the legislature on the
11 long-term operations of the railroad that are in the best interest of
12 the state. The report shall be due January 1, 1988. It shall make
13 specific recommendations on operational alternatives and the transfer
14 of all or part of the railroads operations to the private sector.

15 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
16 of the fiscal year of the railroad the board shall direct preparation
17 of, certify and distribute to the governor and to the legislature a
18 report describing the operations and financial condition of the corpo-
19 ration during the preceding fiscal year.

20 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
21 cial records of the corporation audited annually by an independent
22 certified public accountant experienced in railroad accounting. The
23 corporation shall make all of its financial records available to an
24 auditor appointed by the governor or to the legislative audit division
25 for examination. Disclosure to the public by the auditor or legisla-
26 tive audit division of this information is subject to AS 42.40.240 and
27 rules implementing that section.

28 ARTICLE 4. POWERS AND DUTIES.

29 Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of

- 1 other powers authorized by law, the corporation may
- 2 (1) adopt a seal;
- 3 (2) adopt bylaws governing the business of the corporation;
- 4 (3) sue and be sued;
- 5 (4) appoint trustees and agents of the corporation and
- 6 prescribe their powers and duties;
- 7 (5) hire legal counsel to represent the corporation;
- 8 (6) make contracts and execute instruments necessary or
- 9 convenient in the exercise of its powers and duties;
- 10 (7) acquire by purchase, lease, bequest, devise, gift,
- 11 exchange, the satisfaction of debts, the foreclosure of mortgages, or
- 12 otherwise, real or personal property, rights, rights-of-way, fran-
- 13 chises, easements, and other interest in land, including land lying
- 14 under water and appropriation of water rights that are located in the
- 15 state, taking title to the property in the name of the corporation;
- 16 (8) acquire property by eminent domain in accordance with
- 17 AS 42.40.430;
- 18 (9) hold, maintain, use, operate, lease, exchange, donate,
- 19 improve, convey, alienate, dispose of, or transfer any real or person-
- 20 al property including facilities and equipment;
- 21 (10) contract with and accept transfers, gifts, grants or
- 22 loans of funds or property from the United States and the state or its
- 23 political subdivisions, subject to the provisions of federal, state,
- 24 or local programs;
- 25 (11) undertake and provide for the management, operation,
- 26 maintenance, use, and control of all of the properties of the corpo-
- 27 ration including, the tracks, equipment and other property transferred
- 28 to it by the federal government or by any person;
- 29 (12) recommend to the legislature and the governor any tax,

1 financing, or financial arrangement the corporation considers appro-
2 priate for expansion or extension and operation of the Alaska Rail-
3 road;

4 (13) maintain offices and facilities at places it desig-
5 nates;

6 (14) apply to the appropriate agencies of the state, the
7 United States, and a foreign country or other proper agencies for the
8 permits, licenses, or approvals necessary to construct, maintain, and
9 operate railroad transportation services, and to obtain, hold, and
10 reuse the licenses and permits in the same manner as other operating
11 units or persons;

12 (15) prescribe rates to be charged for services provided by
13 the Alaska Railroad on a competitive basis;

14 (16) determine the routes, schedules, and types of service
15 to be provided by the Alaska Railroad;

16 (17) enter into contracts and leases with connecting carri-
17 ers and shippers, that contain provisions to preserve and expand the
18 railroad's traffic base;

19 (18) plan for and undertake expansion of the railroad and
20 railroad activities, including extension of the Alaska Railroad's rail
21 system, and contract with other modes of transportation service con-
22 necting to the railroad's rail services;

23 (19) adopt rules that are designed to safeguard property
24 owned, managed, or transported by the corporation and to protect
25 employees and persons using the corporation's property or services;

26 (20) hire and discharge railroad personnel and determine
27 benefits and other terms and conditions of employment established in
28 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
29 Railroad Transfer Act of 1982);

1 (21) assume and satisfy liabilities of the United States or
2 its agencies as provided by the federal transfer legislation and the
3 closing report or its substantive equivalent as accepted by the legis-
4 lature;

5 (22) maintain a security force to enforce state law and the
6 corporations rules with respect to violations that occur on or to
7 property owned, managed or transported by the corporation;

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

11 (24) secure the payment of its obligations by pledge or
12 mortgage or other lien on its contracts, revenues, income, or proper-
13 ty;

14 (25) consent to the modification of the rate of interest,
15 time of payment of an installment of principal or interest, or other
16 term of a loan, contract, or agreement to which the corporation is a
17 party;

18 (26) include in any borrowing the amounts necessary to
19 establish reasonable reserves and pay financing charges and interest
20 on the obligations for a reasonable period after which the corporation
21 estimates funds will be otherwise available to pay the interest,
22 consultant, advisory, and legal fees, and other expenses necessary or
23 incident to borrowing;

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

26 (28) cancel bonds purchased under (21) of this section.

27 Sec. 42.40.310. LONG-RANGE EXPANSION AND CAPITAL IMPROVEMENT
28 PLANS. (a) The corporation shall prepare and the board shall adopt a
29 long-range expansion plan and a capital improvement plan. The long-

1 range expansion plan shall delineate the manner in which the corpora-
2 tion intends to accomplish the purposes of this chapter during each of
3 the five years after the plan is adopted. The capital improvement
4 plan shall present and explain the corporation's anticipated capital
5 improvements for each of the five years after the plan is adopted.

6 (b) The board shall annually review and update the plans re-
7 quired under (a) of this section. The board may not contract for the
8 preparation or revision of either the long-range expansion plan or the
9 capital improvement plan, but shall require their preparation and
10 revision by employees of the corporation.

11 (c) The board shall provide copies of its updated plans to the
12 governor and the legislature by December 1 of each year.

13 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
14 shall apply all money, property, other assets, and credit of the
15 corporation toward activities authorized by this chapter. The corpo-
16 ration may not issue shares of stock, pay dividends, make private
17 distributions of assets, make loans to board members or employees, or
18 engage in business for private benefit. The use of money, property,
19 other assets, or credit of the corporation for purposes not authorized
20 by law by persons having the possession or control of it is prohibi-
21 ted.

22 (b) Notwithstanding the provisions of this section, the corpo-
23 ration may

24 (1) defend and indemnify a current or former employee,
25 agent, or board member of the corporation and their successors against
26 all costs, expenses, judgments, and liabilities, including attorney
27 fees, incurred by or imposed upon that person in connection with a
28 civil or criminal action in which the person is involved by affilia-
29 tion with the corporation, if the person acted in good faith on behalf

1 of the corporation and within the scope of official duties or powers;
2 and

3 (2) purchase insurance to protect and hold personally
4 harmless its employees, agents, and board members from an action,
5 claim, or proceeding instituted against these individuals arising out
6 of the performance, purported performance, or failure of performance,
7 in good faith, of duties for, or employment with, the corporation and
8 to hold these individuals harmless from expenses connected with the
9 defense, settlement, or monetary judgments from that action, claim, or
10 proceeding; the purchase of insurance and its policy limits are dis-
11 cretionary with the board and insurance is not considered to be com-
12 pensation to the insured individual.

13 ARTICLE 5. RAIL PROPERTIES.

14 Sec. 42.40.400. LAND. All land among the rail properties trans-
15 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
16 1982) or otherwise acquired by the corporation is under the control of
17 the corporation. As to all land that is transferred or acquired

18 (1) railroad rights-of-way or easements transferred under
19 the federal act or otherwise acquired shall be classified as railroad
20 utility corridors;

21 (2) future railroad utility corridors shall be of a width
22 at least 100 feet on both sides of the centerline of the extended main
23 or branch line, or may be of other width as designated by the corpo-
24 ration, and may be surveyed by the metes and bounds method; and

25 (3) the corporation may lease or rent portions of the
26 utility corridor for other transportation services.

27 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
28 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and
29 request conveyance of land owned by or subject to selection by the

1 state, including tide and submerged land and land not adjacent to a
2 railroad corridor, as necessary or useful for present, future or
3 intended railroad purposes. The request must include a statement of
4 and justification for the present, future or intended railroad use.
5 Upon submission of a request for classification and conveyance to the
6 commissioner of natural resources, the commissioner shall temporarily
7 classify and reserve the land identified in the request for railroad
8 purposes and shall temporarily vacate a classification allowing dis-
9 posal or lease of that land under laws or programs of the state. A
10 temporary classification and vacation is subject to valid existing
11 rights and remains in effect for 180 days.

12 (b) Within 90 days after receiving a request under (a) of this
13 section, the commissioner of natural resources by departmental order
14 shall;

15 (1) classify that land for railroad purposes and, subject
16 to valid existing rights, convey the state's interests to the corpo-
17 ration; or

18 (2) notify the corporation of reasons for refusal to clas-
19 sify the land for railroad purposes.

20 (c) A conveyance under (b)(1) of this section vests in the
21 corporation the exclusive right to extract and use for its purposes
22 sand, gravel, rock, timber and other construction materials the land
23 conveyed without regard to the classification of the resources as part
24 of the surface or subsurface estate.

25 (d) The corporation may reconvey to the state land received
26 under this section that the corporation and the commissioner of natu-
27 ral resources jointly identify as unnecessary or unsuitable for the
28 corporation's purposes.

29 (e) The corporation's ownership of state land entitles it to

1 exclusive use and control of the surface, subsurface, complete sub-
2 jacent and lateral support of the surface, subsurface, and the right
3 to tunnel, ditch, recontour, excavate or otherwise use the subsurface
4 for railroad, transportation, transmission, and related purposes.

5 (f) When physical conditions require that track or other right-
6 of-way fixtures of the corporation be moved from the existing location
7 and relocated on state-owned land adjacent to or in the vicinity of
8 the existing right-of-way, and the chief executive officer determines
9 that relocation is necessary to maintain safe and adequate rail op-
10 erations, the corporation may effect the relocation with concurrence
11 of the Department of Natural Resources. The relocation must be limi-
12 ted to land adequate to restore or continue safe rail operations at a
13 normal level.

14 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
15 MATERIALS. (a) The corporation may exercise the power of eminent
16 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
17 in land for lawful purposes consistent with this chapter.

18 (b) The corporation may acquire a fee simple title whenever, in
19 the judgment of the board, ownership of a fee simple is necessary to
20 carry out the state's lawful purposes in condemning property.

21 (c) The corporation may file a declaration of taking in the
22 manner provided for the state under AS 09.55.420.

23 (d) The power of eminent domain conferred under this section
24 includes the power to obtain material, including clay, gravel, sand,
25 timber, or rock for railroad use, the land necessary to obtain the
26 material, and access to the land and material.

27 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
28 applications on its own behalf as an instrumentality of the state for
29 acquisition of interests in federal land available under federal law

1 that will enhance the operations of the corporation and may receive
2 conveyances of all interests in its own name.

3 (b) The corporation, as an agency of the state, may acquire in
4 its own name from the United States under 50 App U.S.C. 1622 et seq
5 (the Surplus Property Act of 1944), 40 U.S.C. 471 et seq as amended
6 (the Federal Property and Administrative Services Act of 1949), or
7 other law, property under the control of a federal department or
8 agency that is useful for the corporation's purposes and may acquire
9 from the Department of Administration property of the state made
10 available under AS 44.71.010 - 44.71.040.

11 ARTICLE 6. FINANCIAL PROVISIONS.

12 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
13 by the corporation shall be satisfied exclusively from the assets or
14 revenue of the corporation and no creditor or other person has a right
15 of action against the state because of a debt, obligation, or
16 liability of the corporation.

17 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
18 fidelity bond in an amount determined by the board for its members and
19 any officer responsible for accounts and finances. A bond must be in
20 effect during the entire tenure in office of the bonded person.

21 Sec. 42.40.530. INSURANCE. The corporation shall keep in force
22 public liability insurance in an amount reasonably calculated to cover
23 potential claims for bodily injury, death or disability and property
24 damage that may arise from or be related to its operations and activi-
25 ties, naming the state as an additional insured.

26 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
27 activities of the railroad, including suits in contract, quasi-con-
28 tract, or tort, shall be brought against the corporation, and not
29 against the state.

1 (b) In a claim or other legal action against the corporation
2 involving its activities, including the expansion, extension and
3 construction of the railroad, in which the corporation is the
4 prevailing party, the party or parties that maintained the action
5 shall be liable to the corporation for its full costs and legal fees
6 in defending the action and for the financial losses to the
7 corporation that are directly attributable to the maintenance of that
8 action.

9 (c) For the purposes of actionable claims, undertakings, pay-
10 ments of judgments, execution, interest, punitive damages, statutes of
11 limitations, bonds, costs, and similar matters related to the pres-
12 entation and prosecution of claims by and against the corporation, the
13 corporation and its board members and employees enjoy the same rights,
14 privileges, and immunities as the state and state officers as provided
15 in AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

16 (d) Claims against the corporation are not subject to the
17 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
18 state.

19 (e) The corporation is not subject to the provisions of AS 44.-
20 80.010, regarding the state as a party to an action.

21 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
22 to the corporation shall be retained and managed by the corporation
23 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
24 (Alaska Railroad Transfer Act of 1982).

25 Sec. 42.40.560. APPROPRIATIONS. The corporation may request,
26 with the concurrence of the governor, a direct appropriation or grant
27 from the legislature to assist in carrying out the provisions of
28 AS 42.40.300 and 42.40.310.

29 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by

1 resolution may issue bonds and bond anticipation notes to provide
2 money to carry out its purposes.

3 (b) The principal and interest on bonds or notes of the corpo-
4 ration is payable from corporation money or assets. Bonds or notes
5 may be additionally secured by a pledge of a grant or contribution
6 from the federal government or a corporation, association, institution
7 or person, or a pledge of money, income, or revenue of the corporation
8 from any source.

9 (c) Bond anticipation notes may be payable from the proceeds of
10 the sale of bonds or other bond anticipation notes, or, if bond or
11 bond anticipation note proceeds are not available, from other money or
12 assets of the corporation.

13 (d) Bonds or bond anticipation notes may be issued in one or
14 more series and shall, as provided by the resolution of the board,

15 (1) be dated;

16 (2) bear interest at a required rate or rates per year or
17 within a maximum rate;

18 (3) be in a required denomination;

19 (4) be in a coupon or registered form;

20 (5) carry conversion or registration provisions;

21 (6) have a required rank or priority;

22 (7) be executed in the required manner and form;

23 (8) be payable as required from the sources, in the medium
24 of payment, and place or places inside or outside the state;

25 (9) be subject to authentication by a trustee or fiscal
26 agent; and

27 (10) be subject to terms of redemption with or without
28 premium.

29 (e) Bonds or bond anticipation notes may be sold in the manner,

1 on the terms, and at the price the board determines. Bond anticipa-
2 tion notes shall mature at the time or times determined by the board.
3 Bonds shall mature at the time, not exceeding 50 years from their
4 date, determined by the board.

5 (f) The corporation may by provisions in a resolution authoriz-
6 ing or relating to the issuance of bonds or bond anticipation notes
7 enter into the following agreements with the holders of the bonds or
8 bond anticipation notes:

9 (1) pledge all or part of its revenue to which its right
10 then exists or may thereafter exist, the money derived from the reve-
11 nue, and the proceeds of its bonds or notes;

12 (2) covenant against pledging all or part of its revenue,
13 or against permitting or suffering a lien on its revenue or property;

14 (3) covenant as to establishment of reserves or sinking
15 funds and provide for, regulate, and dispose of the reserves or sink-
16 ing funds;

17 (4) covenant regarding limitations on a right to sell or
18 otherwise dispose of property of any kind;

19 (5) covenant as to bonds and notes to be issued, their
20 limitations, terms and conditions, the custody, application and dispo-
21 sition of the proceeds of the bonds and notes;

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

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

29 (8) provide for the replacement of lost, stolen, destroyed

1 or mutilated bonds or notes;

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

4 (10) covenant as to the redemption of bonds or notes and
5 privileges of their exchange for other bonds or notes of the corpo-
6 ration;

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

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

17 (13) covenant as to the custody of any of its properties or
18 investments, their safekeeping and insurance, and the use and disposi-
19 tion of insurance money;

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

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

1 or notes;

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

11 (17) appoint and provide for the duties and obligations of a
12 paying agent or other fiduciary inside or outside the state;

13 (18) limit the rights of the holders of bonds or notes of
14 the corporation to enforce a pledge or covenant securing the bonds or
15 notes; and

16 (19) make covenants other than and in addition to the cove-
17 nants expressly authorized in this section, of like or different
18 character, and make covenants to do or refrain from doing acts in
19 order to better secure bonds or notes or that, in the absolute
20 discretion of the board, will tend to make bonds or notes more
21 marketable.

22 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
23 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
24 or bond anticipation notes, the corporation may issue interim receipts
25 or temporary bonds or bond anticipation notes, with or without cou-
26 pons, exchangeable for bonds or bond anticipation notes when these
27 definitive bonds or bond anticipation notes have been executed and are
28 available for delivery.

29 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose

1 signature or a facsimile of whose signature appears on bonds, notes,
2 or coupons attached to them ceases to be an officer before the de-
3 livery of the bond, note, or coupon, the signature or facsimile is
4 valid the same as if the person had remained in office until delivery.

5 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
6 the private sale of bonds or bond anticipation notes to an under-
7 writer, the board shall retain a financial advisor who is independent
8 from the underwriter.

9 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
10 or revenue of the corporation to the payment of the principal or
11 interest on bonds or notes of the corporation is valid and binding
12 from the time the pledge is made and the assets or revenue are immedi-
13 ately subject to the lien of the pledge without physical delivery or
14 further act. The lien of a pledge is valid and binding against all
15 parties having claims of any kind against the corporation, irrespec-
16 tive of whether those parties have notice of the lien of the pledge.

17 (b) Nothing in this section prohibits the corporation from
18 selling assets subject to a pledge, except that a sale may be re-
19 stricted by the trust agreement or resolution providing for the issu-
20 ance of the bonds or notes.

21 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
22 under this chapter or of coupons attached to them, and a trustee under
23 a trust agreement or resolution authorizing the issuance of the bonds
24 or notes, except as restricted by a trust agreement or resolution,
25 either at law or in equity, may

26 (1) enforce all rights granted under this chapter, the
27 trust agreement or resolution, or any other contract executed by the
28 corporation under this chapter; and

29 (2) compel the performance of all duties of the corporation

1 required by this chapter or by the trust agreement or resolution.

2 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
3 under this chapter and interest coupons attached to them are nego-
4 tiable instruments under the laws of this state, subject only to
5 applicable provisions for registration.

6 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
7 and notes issued under this chapter are securities in which all public
8 officers and public bodies of the state and its political subdivi-
9 sions, all insurance companies, trust companies, banking associations,
10 investment companies, executors, administrators, trustees and other
11 fiduciaries may properly and legally invest funds, including capital
12 in their control or belonging to them. These bonds and notes may be
13 deposited with a state or municipal officer of an agency or political
14 subdivision of the state for any purpose for which the deposit of
15 bonds or notes of the state is authorized by law.

16 Sec. 42.40.650. REFUNDING BONDS. (a) The corporation may
17 provide for the issuance of refunding bonds for the purpose of refund-
18 ing bonds then outstanding that have been issued under this chapter,
19 including the payment of a redemption premium on them and interest
20 that accrues to the date of redemption of the bonds. Refunding bonds
21 shall be issued in accordance with provisions of this chapter that
22 relate to the issuance of bonds to the extent those provisions are
23 appropriate.

24 (b) Refunding bonds may be sold or exchanged for outstanding
25 bonds issued under this chapter and the proceeds may be applied to the
26 purchase, redemption or payment of the outstanding bonds in addition
27 to other authorized purposes. Pending the application of the proceeds
28 of refunding bonds to the payment of the principal, accrued interest
29 and redemption premium on the bonds being refunded, and, if permitted

1 in the resolution authorizing the issuance of the refunding bonds or
2 in the trust agreement securing them, to the payment of interest on
3 the refunding bonds and expenses in connection with the refunding, the
4 proceeds may be invested in direct obligations of the United States or
5 obligations the principal of and the interest on which are uncondi-
6 tionally guaranteed by the United States that mature or may be re-
7 deemed not later than the date the proceeds of the refunding bonds,
8 together with the interest accruing on them, will be required for the
9 purposes intended.

10 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
11 its political subdivisions are not liable for the debts of the corpo-
12 ration. Bonds and notes issued under this chapter are payable solely
13 from the revenue or assets of the corporation and do not constitute a

14 (1) debt, liability, or obligation of the state or of a
15 political subdivision of the state; or

16 (2) pledge of the faith and credit of the state or of a
17 political subdivision of the state.

18 (b) The corporation may not pledge the credit or the taxing
19 power of the state or its political subdivisions. Each bond and note
20 issued under this chapter shall contain on its face a statement that

21 (1) the corporation is not obligated to pay it or the
22 interest on it except from the revenue or assets pledged for it; and

23 (2) neither the faith and credit nor the taxing power of
24 the state or of a political subdivision of the state is pledged to the
25 payment of it.

26 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
27 the corporation is not subject to personal liability or accountability
28 because of the execution or issuance of bonds or notes.

29 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and

1 personal property of the corporation and its assets, income, and
2 receipts are exempt from all taxes and special assessments of the
3 state or a political subdivision of the state.

4 (b) This section does not affect or limit an exemption from
5 license fees, property taxes, or excise, income or other taxes,
6 provided under any other law, nor does it create a tax exemption with
7 respect to the interest of any business enterprise or other person,
8 other than the corporation.

9 (c) The exercise of the powers granted by this chapter shall be
10 in all respects for the benefit of the people of the state, for their
11 well-being and prosperity, and for the improvement of their social and
12 economic conditions. Therefore, the corporation is not required to
13 pay a tax or assessment on property owned by the corporation under the
14 provisions of this chapter or on the income from the property.

15 (d) Bonds and notes issued under this chapter are issued by a
16 body corporate and public of the state and for an essential public and
17 governmental purpose. Therefore, the bonds and notes, the interest
18 and income from them, and all fees, charges, funds, revenue, income
19 and other money pledged or available to pay or secure the payment of
20 the bonds and notes or interest on them, are exempt from taxation
21 except for inheritance, transfer, and estate taxes.

22 Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases
23 to exist, for whatever reason, its assets revert to the state.

24 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

25 Sec. 42.40.700 PERSONNEL. (a) Employees of the Alaska Railroad
26 are employees of the corporation and not of the state. The provisions
27 of AS 39 do not apply to employees of the corporation.

28 (b) The collective bargaining agreements between the corporation
29 and its employees shall remain in effect until they expire by their

1 terms or, as required under 45 U.S.C. 1206 (Alaska Railroad Transfer
2 Act of 1982), they are renegotiated, subject to the approval of the
3 board.

4 (c) The corporation may not enter into a collective bargaining
5 agreement concerning wages, hours, working conditions or other
6 employment terms, conditions and benefits with an organization
7 representing the corporation's chief executive official or executive
8 officials appointed by the chief executive official.

9 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
10 property of the corporation may not be used for political activity.
11 However, board members and employees of the corporation may upon
12 request communicate with and appear before committees of Congress, the
13 state legislature, and municipal governing bodies in connection with
14 matters directly affecting the corporation.

15 (b) A board member or employee who violates the provisions of
16 this section is personally subject to a civil penalty assessed by a
17 judge of the superior court in an amount not to exceed \$5,000. An
18 action to enforce this section may be brought by any person.

19 ARTICLE 8. GENERAL PROVISIONS.

20 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
21 Railroad Corporation is not subject to the jurisdiction of the Alaska
22 Transportation Commission. The following laws do not apply to the
23 operations of the Alaska Railroad Corporation:

- 24 (1) AS 19;
25 (2) AS 30.15;
26 (3) AS 35;
27 (4) AS 37.05;
28 (5) AS 37.07;
29 (6) AS 37.10.010 - 37.10.060;

1 (7) AS 37.10.085;

2 (8) AS 37.20;

3 (9) AS 37.25;

4 (10) AS 44.62.040 - 44.62.320.

5 Sec. 42.40.950. DEFINITIONS. In this chapter,

6 (1) "board" means the board of directors of the Alaska
7 Railroad Corporation;

8 (2) "corporation" means the Alaska Railroad Corporation;

9 (3) "date of transfer" means the date on which the United
10 States Secretary of Transportation delivers the deed of conveyance for
11 the properties of the Alaska Railroad under 45 U.S.C. 1201-1214
12 (Alaska Railroad Transfer Act of 1982);

13 (4) "employees" means all persons employed by the
14 corporation including executive officials;

15 (5) "railroad utility corridor" means a right-of-way for
16 railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska
17 Railroad Transfer Act of 1982).

18 (6) "land" means all real property, including tide and
19 submerged land;

20 (7) "rail properties" means all real and personal property,
21 tangible and intangible, of the corporation.

22 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
23 the Alaska Railroad Corporation Act.

24 * Sec. 3. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are
25 in conflict with the provisions of other law, the provisions of this Act
26 prevail. Where possible, provisions of this Act shall be construed so that
27 they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act
28 of 1982).

29 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD

1 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
2 the governor shall designate the terms of the appointed members of the
3 first board of directors of the Alaska Railroad Corporation as follows:

- 4 (1) one shall serve a term of two years;
- 5 (2) one shall serve a term of three years;
- 6 (3) one shall serve a term of four years; and
- 7 (4) two shall serve a term of five years.

8 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
9 accordance with AS 01.10.070(c).