

AK. RAILROAD

Proposals

- Correspondence

Alaska State Legislature

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House of Representatives

MILO FRITZ

ALASKA RAILROAD PURCHASE

By Representative Milo H. Fritz

The possible purchase of the Alaska Railroad from the Federal Government by the State of Alaska represents the most important and expensive piece of legislation that the second session of the 13th State Legislature will undertake. There is some question as to whether or not the state should purchase the railroad and in this article I intend making observations on the basis of conversations with certain individuals who have been successful in running railroads.

One consideration is the reason for the Federal Government wanting to sell an operation if it is a profitable one. If it is not profitable I see no reason for the state to undertake its purchase. It also is a consideration that the Federal Government spends hundreds of millions of dollars in foreign aid, has spent 30 billion dollars in loans to Poland which may never repay the money and contributes hundreds of millions of dollars to the International Monetary Fund which makes loans to Third World countries many of which have little possibility of ever repaying the loans. Under these circumstances it seems to me that the purchase price offered to Alaska of 22 million dollars is unrealistic and that a realistic purchase price would be a token value of one dollar in making the transfer.

Early in November it occurred to me that it would be a good idea if such a railroad existed, that I should try to make contact with someone who ran an intra-state railroad at a profit and who had had long experience in managing such an enterprise. Then on December 6 I was thought in answer to a prayer, I received the 28 November number of Barron's Financial weekly. In it there was the biography of Mr. Win Thornton, President of the Florida East Coast Railway, which was run at a profit, but which went through many very difficult periods owing to early bankruptcy and later labor difficulties involving strikes. The Barron's article explained how the railroad was run at a profit. Its right of way is between Jacksonville and Miami approximately the same distance between Seward and Fairbanks. The difference between the railroads, apart from climatic considerations, lies in the profitability of FEC and the Alaska

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Railroad which excepting for five years since it began operations in the early 1920's, has run at a loss. It ran at a profit two years during pipeline construction and the past 3 years.

I went to St. Augustine, Florida, spent two days with Mr. Thornton and other officials of the FEC. I was given a very thorough briefing in its operations and past history which I believe should be of great value to the Alaska State House of Representatives in making its mind up to whether or not to vote in favor of purchasing the ARR from the Federal Government.

The people at FEC noted that the present labor contracts between the five labor unions involved in running the ARR, will be kept inviolate and intact for the first two years following the projected purchase. The FEC people said that the State of Alaska will lose all bargaining power unless contracts between the labor unions, who will be operating the railroad after the purchase, and the ARR are not brought to fruition before conveyance. They say that if the contracts are negotiated after the purchase all leverage for the State of Alaska will be lost and that if the state does not agree to what the labor unions want prolonged and expensive strikes will inevitably result.

They also recommended that the Board of Directors of the ARR after purchase and the manager of the railroad must be kept independent of any political pressure and that determinations regarding extension of the railroad through the North Slope, the Nome area, the Beluga coal fields and to the Canadian boarder must be dictated not on the basis of politics but on the basis of actual or potential profitability.

If the manager of the railroad is subject to political pressures and has not got his union contracts firmly in place before conveyance he might be unable to undertake such labor saving devices and operating procedures that would increase the efficiency of the railroad. The size of train crews should be determined on the basis of what is minimum for safety, for instance, and there must be permission granted for workers to cross craft lines according to the pressure of work. Such technical improvements as concrete cross ties, the electric sensor determination of individual journal temperatures, the shifting of loads, and the dragging of equipment are transmitted electronically. The dispatching office in the FEC is in contact with the two man crew that runs the trains between Miami and Jacksonville by means of a radio. The hot box, load shifting and dragging information is displayed in the dispatch office on rotating graphic drums that are similar to those familiar in electrocardiographic, electroencephalographic, and seismic determinations.

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The manager of the ARR whose labor relations will clearly delineated by pre-purchase agreements, will also be able to develop other research and development considerations that may come up from time to time. The decreasing use of box cars and the increase in the use of piggybacking operations, seem to be the trends at the FEC and other railroads in the south 48.

Mr. Thornton and the other officials also thought that the uncertain status of certain portions of the ARR rights of way, the Alaska Native land claims considerations, and certain vague agreements about the leasing and use of non-right-of-way properties also cast a cloud over the desirability of purchase. In answer to the direct question whether they would with the knowledge that they obtained about the ARR from the four documents that I had forwarded to them before my visit purchase the ARR the answer was no.

While I was in Florida I had the opportunity of watching the piggy back operation, the changing of wooden railroad ties to the concrete ties, the manufacture of concrete ties, the shifting of personnel from concrete work which was held in abeyance because of technical difficulties to other jobs, speaking to the men, watching the operation in the locomotive shop, and observing how the dispatching office worked while the trains were in motion. I have no doubt that the observation of certain ARR workers whom I have since met, is absolutely true; that the FEC is the state-of-the-art railroad far ahead of any other railroad of similar size any where in the south 48.

Next I went to Philadelphia and met Mr. Richard Hasselman, Executive Vice President of Conrail. I also had the opportunity in speaking to many of his officials. They also had studied the following documents before I got there: the Alaska Railroad Transfer Act, the Alaska Railroad Transfer legislation section by section analysis, the Alaska Railroad Transfer Report and the United States Railway Association Evaluation of The Alaska Railroad. The officials of Conrail who also ran their railroad at a profit, immediately noted the lack of contracts with the railroad unions that would be running the ARR after the purchase. A post conveyance set of agreements would be negotiated at great disadvantage to the State of Alaska. Again, in direct answer to the question regarding whether they would purchase the ARR under the present circumstances the answer was a unanimous no. They were familiar with the FEC operation and described it as the most enlightened and most brilliantly run railroad in the entire nation.

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Mr. Hasselman asked whether I had been in contact with any lawyer who specialized in railroad labor relations. I replied that I never knew there was such a legal subspecialty. Accordingly Mr. Hasselman called up Mr. Henry H. Perritt, Jr. who is Professor of Law at Villanova University just outside of Philadelphia and who is a triple threat man in that he has a degree in Economics, one in Aeronautical Engineering, and one in Law. He had spent a good many years as counsel for Conrail in their negotiations between Conrail management and the labor unions. The Conrail people also pointed out that the five unions involved in running the ARR under the Federal Government, might not be the same ones who would be running the railroad under state auspices. They also pointed out the difficulties caused by clouding of the title of right-of-way lands and the difficulties that would ensue regarding the leasing or renting of non-right-of-way ARR properties. They suggested that passenger operations have been given up by almost all the privately owned railroads in the United States and that Amtrak was a federally funded means by which passenger traffic, even though it was run at a loss, was undertaken by the Federal Government.

After almost a day in conference with the officials of Conrail I took the train out to Villanova and had over an hours conference with Mr. Perritt, who had not had the advantage of reading the documents listed above. He subjected me to searching questions suggesting that the legislature should have a lawyer skilled in railroad labor negotiations to investigate the present and possible future relations between ARR management and railroad unions before the purchase and therefore be able to advise the legislature as to the type of legislation it should pass in either accepting or rejecting, modifying or amending pending legislation.

Before leaving on this trip it was my good fortune to have a forty minute conversation by long distance phone with Mr. D. W. Brosnan who is the recently retired Chief Executive officer of the Southern Railway which also runs at a profit. His conclusions were very little different from what the officials at Conrail, and FEC had arrived at. He had been sent copies of the above documents so that he had a chance to look over the situation before I phoned him. Since returning from Florida I have at hand a letter that he was kind enough to forward here presenting his attitude toward the possible purchase of the ARR from the Federal Government.

Upon returning to Juneau, and again quite by accident, as though some outside influence were guiding the destinies of the state, I received a call from Anchorage from Mr. Bradford W. Coupe who is a friend of Mr. Perritt and a member of the prestigious law firm of Morgan, Lewis & Bockius of Philadelphia which specializes in the type of law that has been discussed. At no expense to the State

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he was willing to come down here and talk with me, the President of the Senate and the Speaker of the House, regarding the importance of investigation of present and possible future contracts with railroad unions in order to protect the state as well as the workers and the people of the state in the purchase of a railroad that would be run, if not at a profit, at least at the smallest possible loss.

Mr. Coupe came to Juneau and had an extensive conference with Speaker Hayes and a brief one with President Kerttula of the Senate. It was my recommendation and Mr. Coupe's that he with ten years experience in Alaska pipeline legislation be retained in order to permit the legislature to proceed on this important project with the greatest possible knowledge at hand for the consummation or rejection of the purchase before the deadline which appears in the ARR transfer legislation.

At the present time there seems to be some reluctance on the part of the Senate to join in an investigation at this time or retaining a specially skilled lawyer to protect the legislature's interest. However, Speaker Hayes is still interested and it is my hope that if the Senate does not care to become a party to this investigation, that the House undertake the investigation on its own.

I have no axe to grind. I very strongly feel that the legislature cannot intelligently make up its mind about this most important legislation unless it gets guidance from people who are experts in the complicated field of railroad labor legislation and in the running of a railroad, similar in size and scope to the one we consider purchasing. I think great consideration should be given to the unanimous opinion expressed by people who have the right to have one, that the purchase of the ARR has contemplated at this time is not in the interests in the State of Alaska or its people. I hope that the matters brought up in this paper will be made available to the people of Alaska through the medium of the newspapers.

4/26/84

Amendments to CS HB 512 (Finance)
Second Bill

Page 1, line 6, Use Senate Title to the Bill

Use Findings from House Bill.

Page 3, line 15-16, Insert a new paragraph (g) to read "(G) preserve the integrity of the railroad corridor for transportation, transmission, and communication purposes"

Page 3, line 9, delete "Transportation and Public Facilities" and insert "Commerce and Economic Development".

Page 3, line 13, delete (b) in its entirety.

Page 3, line 27, insert "Except for the member appointed under (3) of this section, " and continue with the rest of the sentence.

Page 5, line 24. after "MANAGEMENT BY THE BOARD. delete "Subject to AS. 42.40.280, "

Page 6, line 22, insert a new (9) to read "(9) apply to the legislature for an appropriation to be used to provide a service that is not otherwise self-sustaining if a subsidy is required to maintain that service."

Page 7, line 23, after "(2) insert "mortgaging or " pledging assets.
Page 8, line 23, amend (.) after "mortgaging" and delete rest of sentence.
Page 9, line 4, after "determined", insert "in accordance with AS. 42.40.160" and delete the rest of the sentence.

Page 11, line 7, Change the cite from "AS 42.40.180" to "AS 42.40.175"

Page 14, line 10, after "donate", ^{delete "convey"} insert "delay"
Page 15, line 19 after "railroad" insert consistent with 45 USC 1201-1211 (ARTA 82)
Page 16, line 1-2, after "pledge", insert "mortgage"
after "property", delete the rest of the sentence.

Page 17, line 20 Use House Transportation "STATE OVERSIGHT REPORTS" language

Page 20, line 19, after "AS 42.40.400", delete "or pledge the land as security"

Page 20, line 28 after "AS 42.40.400" delete "or pledge the land as security".

Page 22, line 11, delete "physical" and insert: "emergency".

Page 23, line 11, after "of", insert "an interest"

Page 23, line 16, delete "RIGHTS-OF-WAY" and insert "USE OF RAILROAD LAND".

Page 28, line 22, delete "(b)" in its entirety.

Page 29, line 15, insert a new section and renumber accordingly "PLEDGE OF THE STATE. The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency which loans or contributes funds in respect to a project, that the state will not limit or alter the rights and powers vested in the corporation by this chapter to fulfill the terms of a contract made by the corporation with the holders or federal agency, or in any way impair the rights and remedies of the holders until the bonds together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the corporation, in a contract with the holders and insofar as it relates to a federal agency, in a contract with the federal agency." (This is found in AS 44.88.130)

Page 38, line 4, After "Award" Insert "He/she deems"

Page 38, line 5, insert a new (d) to read "(d) Notwithstanding the provisions of (a)-(c) of this section, the parties to a dispute may mutually agree to submit the dispute to binding arbitration at any time."

Page 39, line 16 insert a new section "Sec 42.40.885

PROHIBITED ACTS. (a) The corporation or an employee may not directly or indirectly:

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

(2) require or coerce an employee to make any report concerning an activity or undertaking of the employee's activities or undertakings unless the activity or undertaking is related to the performance of official duties;

(3) except as directly related to the performance of official duties, require or coerce an employee to submit to an interrogation, examination or psychological test that is designed to elicit information concerning

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

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

(C) sexual matters,

(D) the employee's political affiliation or philosophy;

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

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

(b) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of employees suspected of being involved in criminal

activity, *OR to investigate other activities directly related to official railroad business.*

Page 40, line 28, insert a new section to read

"42.40.905 Legal Action. (a) The corporation shall notify the Department of Law 15 days prior to initiating legal action except when special circumstances exist which require immediate action to protect the corporation assets or to continue existing service.

(b) If notice of legal action is not given under (a) of this section within 7 days of taking action the board shall notify the Department of Law of the action taken and of the special circumstances which exempted the action from the requirements of (a) of this section."

Insert new sections as appropriate for Constitutional Amendment and effective dates.

* Sec. 6 AS 42.40.010 is amended to read:

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state [WITHIN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. 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. 7. AS 42.40.020(a) is amended to read:

(1) The powers of the corporation are vested in the board of directors. The board consists of [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation, and eight [SEVEN] members appointed by the governor. At least six [FIVE] of the eight [SEVEN] appointed members must be registered voters in the state. No more than two appointed members may be from

1
2 ARTICLE 9. GENERAL PROVISIONS.

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

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

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

15 (d) The corporation is not subject to the provisions of AS 44.-
16 80.010, regarding the state as a party to an action.

17 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
18 the powers granted by this chapter shall be in all respects for the
19 benefit of the people of the state, for their well-being and prosper-
20 ity, and for the improvement of their social and economic conditions.
21 Subject to (b) of this section, the real and personal property of the
22 corporation and its assets, income, and receipts are exempt from all
23 taxes and special assessments of the state or a political subdivision
24 of the state.

25 (b) Bonds and notes issued under this chapter are issued by a
26 body corporate and public of the state and for an essential public and
27 governmental purpose. Therefore, the bonds and notes, the interest
28 and income from them, and all fees, charges, funds, revenue, income
29 and other money pledged or available to pay or secure the payment of

any one of the four judicial districts in the state. The appointed members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including transportation, business, and finance. Except for [THE COMMISSIONER,] the chief executive officer [,] and the member appointed under (d) of this section, a member may not be a state officer or employee.

* Sec. 8. AS 42.40.020(e) is amended to read:

(e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief executive officer of the corporation, the members of the board shall be confirmed by a majority of the members of each house of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member until the member is rejected by the legislature.

* Sec. 9. AS 42.40.030 is amended to read:

Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief executive officer of the corporation, members of the board serve for staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

* Sec. 10. AS 42.40.030 is amended by adding a new subsection to read:

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

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

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

(3) conviction of a felony; or

(4) any conduct that was intended to harm the corporation, even if it does not constitute a crime.

* Sec. 11. AS 42.40.040(a) is amended to read:

(a) Except for the [COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND THE] chief executive officer, a vacancy on the board is filled by appointment by the governor, and the appointment must be confirmed by the members of each house of the legislature in joint session. A member appointed to fill a vacancy holds office for the balance of the term for which the member's predecessor was appointed.

* Sec. 12. ~~Sections 6-11 of~~ this Act take effect on the effective date of an amendment to the Constitution of the State of Alaska relating to the Alaska Railroad.

page 20, line 28 - Insert a new (d) as follows: "Leases to a party other than the State will be made at fair market value as determined either by appraisal or by competitive bid."

page 43, line 4 - Insert a new definition "Rule" as used in this chapter means every standard of general application or the amendment supplement or revision of a standard adopted by the corporation to implement, interpret, or make specific the law enforced or administered by it, to govern its procedure except one which: (1) relates only to the internal management of the corporation, (2) relates to specific rates, tariffs, divisions, and contract rate agreements; (3) relates to service schedules of the railroad (4) is directed to a specifically named person or to a group of persons and does not apply to the general public; or (5) relates to the use of public works under the jurisdiction of the corporation if the effect of the order is indicated to the public by means of signs or signals.

Alaska State Legislature



APR 10 1984

POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

April 9, 1984

Rep. Betty Cato
Capitol, Room 128

Dear Rep. Cato:

Attached is a private sector approach that would make it possible for private enterprise to eventually own and operate the Alaska Railroad. The attached amendment is one that I offered to the Alaska Railroad operation bill, CS HB 512 (trans), this morning in House Finance Subcommittee.

The House Finance Subcommittee began work on the railroad bill this morning. We will meet every Monday, Wednesday and Friday at 8 a.m. until we have completely gone through CS HB 512.

Now. Back to my amendment. At first glance, many people like the idea of the railroad operating in the private arena, but they don't think it is possible. Too many people seem comfortable in letting the State take over ownership and management with a hope and a prayer that the system won't become entrenched as another State bureaucracy that needs yearly injections of operating dollars.

There has been a lot of lip service about putting the railroad into a private enterprise scheme, but nobody is coming up with anything concrete.

I believe my amendment, which allows private (individual) Alaskans to invest in the railroad and to eventually own it, is absolutely workable, sensible, and economic.

Sincerely,

A handwritten signature in cursive that reads "Bob B".

Rep. Bob Bettisworth
RHB/kmd

A M E N D M E N T

Offered in the HOUSE

By Bettisworth

TO: CSHB 512(Trsp)

Page 41, lines 6 - 11:

Delete all material and renumber following sections accordingly.

Page 42, after line 11, insert new bill sections to read:

"* Sec. 11. ALASKA RAILROAD PURCHASE FUND. (a) The Department of Revenue shall establish a trust fund to be known as the Alaska Railroad purchase fund. Each permanent fund dividend designated for payment to the Alaska Railroad purchase fund under sec. 15 of this Act shall be deposited in the trust fund for the credit of the individual for whom the dividend was paid. Interest earned from the dividend shall also be credited to the individual.

(b) At any time before the board of directors of the Alaska Railroad Corporation forms a successor private corporation under sec. 12 of this Act, an individual may elect to withdraw a dividend deposited in the Alaska Railroad purchase fund together with interest earned on it by applying to the Department of Revenue in writing.

* Sec. 12. FORMATION OF SUCCESSOR CORPORATION. (a) When the Department of Revenue determines that the Alaska Railroad purchase fund contains \$75,000,000, it shall notify the board of directors of the Alaska Railroad Corporation. The board shall determine the net book value of the corporation and direct the department to transfer that amount from the Alaska

Railroad purchase fund into the general fund in payment for the Alaska Railroad Corporation. The balance of the fund shall be transferred to the corporation by the department. For purposes of this subsection "net book value" means the amount paid by the state to the federal government for the Alaska Railroad, plus the amount of state money and value of state property transferred to the Alaska Railroad Corporation after the date of transfer of the railroad to the state, minus the amount of operating losses suffered or plus the amount of operating gains realized by the corporation from the date of transfer of the railroad to the date of the most recent audit conducted under AS 42.40.270.

(b) Within 120 days after all money is transferred from the Alaska Railroad purchase fund, the board of directors of the Alaska Railroad Corporation shall reincorporate the corporation under AS 10.05. The board shall enter into an agreement with the state on behalf of the successor private corporation not to convert, for 10 years after the date of transfer of the railroad to the state, all or part of the real property transferred to the state under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982), except that portion of property that lies within the Denali National Park and Preserve, to a use that would prevent the railroad from continuing to operate. Upon entering into this agreement, the state shall designate the private successor corporation as the entity to own, operate, and manage the Alaska Railroad and all assets and liabilities of the Alaska Railroad Corporation shall be transferred to the successor private corporation.

(c) Violation of the agreement entered into under (b) of this section shall result in the reversion to the state of all assets transferred by the state to the private successor corporation.

* Sec. 13. ISSUANCE OF STOCK. The board of directors shall issue stock in the successor private corporation formed under sec. 12 of this Act to each individual who elected under sec. 15 of this Act to deposit a permanent fund dividend into the Alaska Railroad purchase fund. Stock issued under this section shall represent the entire value of the corporation, and the amount of stock issued to each individual shall be based upon the amount credited to that individual in the Alaska Railroad purchase fund.

* Sec. 14. STOCKHOLDERS' MEETING. (a) At the time of issuing stock under sec. 13 of this Act, the board of directors shall notify each stockholder of the time and place of the first stockholders' meeting. The meeting shall be held within 90 days after the stock is issued.

(b) At the stockholders' meeting the board of directors shall resign and the stockholders shall elect nine individuals to serve as the new board of directors of the successor private corporation.

* Sec. 15. PERMANENT FUND DIVIDENDS. Beginning in 1984 and until the board of directors of the Alaska Railroad Corporation forms a successor private corporation under sec. 12 of this Act, the permanent fund dividend application form shall be prepared to allow an applicant to indicate whether the dividend payment should be paid to the applicant or to the Alaska Railroad purchase fund. The Department of Revenue shall pay the dividend as directed on the form. If an applicant does not indicate a preference for the payment of the permanent fund dividend on the application form, the dividend shall be paid to the applicant.

* Sec. 16. AS 42.40 is repealed."

Renumber following sections accordingly.

Page 42, after line 14, insert a new bill section to read:

"* Sec. 18. Section 16 of this Act takes effect on the date the Alaska Railroad Corporation is reincorporated under sec. 12 of this Act."

Renumber following section accordingly.

Page 42, line 15:

Delete "9 - 11" and insert "9 - 15"

SUMMARY: Proposed Amendment to CSHB 512(Trans) by Bettisworth:

Intent: The Alaska Railroad Corporation established in CSHB 512(Trans) remains in effect until the accrual of \$75 million in the ARR Purchase Fund. The State is paid the NET BOOK VALUE of the Railroad with the remaining balance in the fund transferred to the Alaska Railroad Corporation. The Corporation reincorporates as a private corporation. Upon reincorporation of the ARR Corporation, the entire Chapter 42.40 created in CSHB 512(Trans) is repealed. The private Corporation is then fully responsible for the ownership and operation of the Alaska Railroad.

I. Section 11. Alaska Railroad Purchase Fund

- a). Dept. of Rev. to establish trust fund
- 1). Optional PF Dividends deposited to individual credit
 - 2). Interest earned on deposits credited to individuals
 - 3). Individual may elect to withdraw dividend + earnings upon written request

II. Section 12. Formation of Successor Corporation

- a). Dept. of Rev. notification of accrual of \$75 million in fund to ARR Corp. Board and determine Net Book Value of ARR Corp.
- 1). Transfer Net Book Value to general fund as payment of ARR Corp. with balance of fund transferred to Private Successor Corp.
 - 2). Net Book Value defined: (audit per 42.40.270)
\$ _____ Amount paid by State to Federal Gov't
+ \$ _____ Approp. or transfer of property to Railroad
- \$ _____ Operating losses or
+ \$ _____ Operating gains
= \$ _____ NET BOOK VALUE
- b). ARR Corp. to reincorporate under AS 10.05(Ak. Business Corp. Act) within 120 days after money transfer.
- 1). Agreement between ARRC Board (on behalf of private successor corp) and State:
 - a). Uphold 10 year Federal reversi mary clause to prevent loss of real property to Federal Gov't.
 - b). State designation of private successor corporation as entity to own, operate, and manage ARR.
 - c). ARR Corp. assets and liabilities transferred to private corp.
 - 2). Violation of Agreement transfers assets back to state.

III. Section 13. Issuance of Stock

- a). ARR Corp. Board will issue stock to each individual who elected to deposit their permanent fund dividend into the Purchase Fund.
- 1). Individual's stock will be based on amount credited in Fund.

IV. Section 14. Stockholders Meeting

- a). 90 days after issuance of stock
- b). ARR Corp. Board Resigns
- c). Stockholder Election: 9 individuals to serve as new board of private corp.

V. Section 15. Permanent Fund Dividend Application

- a). 1984 addendum to Applications to provide option of payment to individual or ARR Purchase Fund.

VI. Section 16 & 18. Effective Date

- a). Effective on the date the Alaska Railroad Corporation is reincorporated under Section 12 of this amendment.

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1984

SUBJECT: Alaska Railroad (amendment
to CSHB 512(Trsp))

TO: Representative Robert Bettisworth

FROM: Tamara Brandt Cook
Deputy Director *TBC*

You have asked for an explanation of the provisions dealing with reversion of Alaska Railroad property from the state to the federal government contained in the Alaska Railroad Transfer Act. 45. U.S.C. 1209 contains several provisions on reversion of property in certain situations.

Under (a) if, within ten years after the date of acquisition of the railroad by the state, all or part of the real property transferred by the federal government is converted to a use that would prevent the state-owned railroad from continuing to operate, that property shall revert to the federal government or the state may pay the market value of the property to the federal government. This does not apply to property within the Denali National Park and Preserve. State-owned railroad is defined under 45 U.S.C. 1202(14) to mean:

. . .the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operate or manage the rail properties of the Alaska Railroad . . .

Section 12(b) of this amendment requires the board of directors of the newly formed private corporation that is the successor to the Alaska Railroad Corporation to enter into an agreement with the state not to convert, for 10 years after the railroad is acquired by the state, all or part of the real property transferred by the federal government to a use that would prevent the railroad from continuing to operate. The state will designate the successor corporation as the entity to own, operate and manage the Alaska Railroad, in conformity with the requirement of federal law. If the

agreement is violated, all assets transferred by to the state to the successor corporation revert back to the state, so that the state will have an opportunity to correct the situation and avoid the reversion of property to the federal government.

Under (b) of the federal provision if the state discontinues use of land within the railroad right-of-way, the state's interest in the land reverts to the federal government. The provision goes on to describe ways in which it can be determined that the state has discontinued use of a right-of-way. This amendment does not address this provision, so discontinuing the use of a right-of-way by either the public or private successor corporation will result in the reversion. The federal government will not, however, retain an interest acquired through reversion of a right-of-way. Instead, the federal government will convey the interest to the abutting landowners under (c) of the federal provision.

Under (d) if use is discontinued of property transferred to the state that is within the Denali National Park and Preserve or the Chugach National Forest, the property will revert to the federal government. Upon reversion, the land will become part of the national park or forest. This amendment does not address this provision, so discontinuing the use of land in the national park or forest by either the public or private successor corporation will result in the reversion.

Under (e) if, within five years after the state acquires the railroad, the state in turn transfers all or substantially all of the state-owned railroad to an entity other than an instrumentality of the state, the proceeds from the transfer that exceed the cost of improvements made by the state for the railroad and any net liabilities incurred by the state for the railroad shall be paid to the federal government. Since the language used in the federal law is not limited to outstanding liabilities of the state on the date of transfer but rather, seems to include all liabilities incurred by the state, even those incurred in the past and paid off, it appears that under this provision the state would have to turn over any profit it made in transferring the railroad after deducting money it had invested in the railroad and expenses it had incurred through the operation of the railroad. This amendment does not directly address this provision. However, under section 12(a) the state is to receive for the railroad only the amount paid by the state to the federal government.

The Alaska Railroad: A Response to "Obstacles"
Preventing Private Ownership

By
Representative Robert Bettisworth

Private ownership of the Alaska Railroad has been down-played. The private ownership concept has not been thoroughly examined. It is necessary to respond to some of the statements by those who say too many obstacles stand in the way.

The approach taken in both the House and Senate bills is to establish a state owned "instrumentality" or corporation to operate the Alaska Railroad. The apparent assumption is that independence from state government can be achieved with this kind of operational vehicle.

An attempt at independence is indeed a laudable goal. However, neither CSHB 512 or CSSB 352 will accomplish this goal.

As a state owned corporation the railroad would be subject to undue political influence regardless of the attempt at separation. Under a plan for state ownership the Railroad would become a costly drain on the state's treasury if operating subsidies are necessary and investment decisions are made on a political rather than strictly economic basis.

The ammendment offered by Rep. Bettisworth would allow all Alaskans to participate in the ownership and control of the Alaska Railroad as private stockholders. As a private corporation it would have the managerial flexibility necessary to operate in an efficient manner. More importantly the railroad would have an incentive, namely the profit motive, to operate in an efficient manner while providing the level of service that the users of the Alaska Railroad are willing to pay for.

Following below are the obstacles most often raised by opponents of privatization of the railroad and responses to those arguments.

1. Tax exempt financing would not be possible if the railroad was privately owned. This statment is false. Tax exempt industrial revenue bonding is available to private corporations through the Alaska Industrial Development Authority, and would also be available through the Regional Resource Development Authorities authorized by the Alaska Legislature in 1983. It should also be noted that in addition to the initial capitalization of \$75 million additional equity capital could be attracted to the corporation. That equity capital would have to come from State appropriations if the State owned the railroad.

(over)

2. Exemption from municipal taxes would be lost requiring higher freight rates. This statement implies that local taxes are not levied on Railroad lands. Taxes are in fact currently paid on the value of the leasehold interest and on the leasehold improvements of parcels leased to private concerns. It is true that some of the value is presently exempted however a basic theorem of the amendment is that private sector operating efficiencies will translate into lower freight rates even with any added burden of local property taxes. Further research is being done to quantify the increase in local property taxes which the private railroad would face.

3. Exemption from Federal income taxes would be lost. This is true. All private corporations which make a profit are expected to pay Federal taxes. This is simply a cost of doing business to a profitable corporation. It should be noted that if no profits are made, no corporate income taxes will be due.

4. Exemption from The Railroad Retirement act of 1974, the Railroad Retirement Tax act, the Federal Employers Liability Act, the Railway Labor Act, and the Railroad Unemployment Insurance Act would be lost under private ownership. If these are such expensive laws to comply with, why is the Alaska Railroad labor cost per employee nearly 150% of the national average for railroad employees? It would appear that private railroads experience much lower labor costs and that by "going private" labor costs would likely go down, not up as suggested by opponents of the ammendment. Furthermore, the appraisal of the Railroad by the United States Railway Association, which is the official document establishing the price, states that "there would be no significant changes in cash flow if the labor related statutes were applied".

5. Concern has been expressed over the fact that the Railroad would not be able to use the power of eminent domain for future expansion. This concern is not valid because the power of eminent domain is available to private corporations for the purposes of transportation and communication.

6. There has also been concern expressed that the Alaska Railroad Transfer Act (ARTA) would not allow transfer to a private corporation. This is simply not the case. Nothing in ARTA prevents transfer to a private corporation. Furthermore, all reversionary clauses in ARTA have been considered in drafting the proposed amendment, and they have been addressed by the drafter of CSHB 512, Tamara Brandt Cook, in the attached memo from her to Rep. Bettisworth dated April 7, 1984.

Representative Bettisworth

page 3

April 7, 1984

plus the amount of state assets transferred to the railroad after it is acquired, minus the amount of operating losses suffered or plus the amount of operating gains realized by the railroad after the date it is acquired by the state. Under this formula, it appears that only the amount of operating gains realized by the state, if any, would go to the federal government should the state transfer the railroad to the private successor corporation during the five year period. Since the railroad has not had a history of operating at a gain, the money that would go to the federal government might be insignificant.

TBC:csh

C2/142

PRESS RELEASE
April 9, 1984

Rep. Bob Bettisworth
House of Representatives
Juneau, Alaska
465-4984, 465-4967

The Alaska Railroad could be transformed into a private corporation wholly owned by Alaskans in a matter of two or three years under a stock purchase plan devised by Rep. Bob Bettisworth, a Republican legislator from Fairbanks.

Bettisworth introduced an amendment to CS, House Bill 512 (trans), the bill that sets up the operating corporation created when the State of Alaska takes over the Alaska Railroad from the federal government. That legislation is presently in House Finance Committee for review before it goes to the full body for action.

The amendment offered by Bettisworth would allow Alaskans to invest their Permanent Fund Dividends - on a wholly voluntary basis - in a stock ownership plan which would pay interest while that money was invested in a trust account.

"The idea is to eventually transform the Alaska Railroad, a government owned operation, into a private corporation owned by its stockholders who would be Alaskan residents," Bettisworth said.

"They would be allowed to invest their Permanent Fund Dividends in a trust fund for eventual conversion into stock in the New Alaska Railroad Corporation."

He added, "It's my assumption that most Alaskans will want to receive their checks and spend them or invest them as they individually chose, but there will be some who will want to invest in the railroad."

Last year's individual checks of approximately \$385 went to every Alaskan woman, man and child who was a resident of the state for a year or more.

(more)

"If only 15% or 20% of Alaskans chose to put their dividends into the railroad corporation investment, that would raise close to \$25 million in one year. At that rate, " he continued, "it would take two or three years to raise the \$75 million that my amendment calls for as the purchase price for the New Alaska Railroad Corporation."

The "new" corporation, under Bettisworth's suggested plan, would be directed by its own board of directors who would be elected by the stockholders. Only those Alaskans who want to invest would be obliged to do so. Each Alaskan would be allowed this option on an annual basis through the dividend distribution period. After the new corporation was formed, stock then could be transferred or sold.

If an investor wanted to withdraw his dividends from the trust, he would be allowed to do so - with interest - up until the time the new corporation is formed.

Bettisworth's amendment to the railroad transfer bill will not alter the bill's current thrust, that is, to take over State ownership and operation of the Alaska Railroad from the federal government.

"I want to see Alaskans own the railroad without the state government or any state bureaucracy running its day-to-day business. If the bureaucrats in Alaska get their hands on it on a long term basis, that will guarantee that it will not be economically independent and economically healthy," Bettisworth said.

"Private enterprise is the route to take with an investment of such significance to our state," he added.

GROSS & BURKE


A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

February 22, 1984

MEMORANDUM

TO: Senate Transportation Committee
FROM: Gross & Burke 
RE: Organization of Public Corporation to
Operate the Alaska Railroad

At your request, we have reviewed the drafts of SB 10 and SB 352, with a view toward determining the extent to which those bills create a valid legal structure to operate the Alaska Railroad after its proposed purchase. Initially, we were asked whether the legislature had the power to require that gubernatorial appointments to the governing authority^{1/} of the railroad be confirmed by the legislature. Both SB 352 and SB 10 presently require confirmation of executive appointments. At a second committee hearing we were requested to advise you of the minimum number of executive branch controls which must be placed on any entity created by law to operate the railroad to insure that the entity would be a part of the executive branch and, therefore, constitutionally sound. We shall answer the question in the order posed.

SB 10 and SB 352 both provide that appointments made by the Governor be confirmed by the legislature in joint session.

^{1/} SB 10 speaks of an "Authority" while SB 352 creates a similar organization but describes it as the "Railroad Corporation." Purely for the purposes of simplicity, we will refer to the basic organizational structure at issue here as an "Authority."

We assume that if a similar section remains in a bill, which passes the legislature, the Governor will probably choose to submit the names of his appointees for confirmation just as he submits his appointees to a host of other boards and commissions in state government. It is our opinion, however, that should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

Our conclusion is based both on the words of the Alaska Constitution and a decision of the Alaska Supreme Court.

The constitution provides in Art. III, sec. 25 that:

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session . . .

Sec. 26 of the same article states that:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the Governor subject to confirmation by a majority of the members of the legislature in joint session . . .

The wording of the constitution is clear on its face. The legislature may confirm the heads of all departments, whether they are single executive officers or a board. The legislature may also confirm boards or commissions which are "regulatory or quasi-judicial" agencies. A regulatory authority is, as it implies, one whose basic function is to regulate a particular public activity. The Fish and Game Board is a classic example of such a regulatory board. A quasi-judicial

agency is one in which individual rights are adjudicated. An example of such a board would be the Public Utilities Commission, where contested proceedings determine rates.

The Railroad Authority as established in SB 352 or SB 10 fits under none of these definitions. It is not at the head of a department^{2/} nor is it a quasi-judicial or regulatory agency. Under the constitution, then, the legislature has no power to confirm executive appointments to the Authority, unless the legislature can add to the powers of confirmation which are granted in the constitution.

The legislature attempted to do just that in 1975 when it passed a statute authorizing confirmation of a whole list of lesser executive branch officials, including deputy commissioners and certain division directors. The Alaska Supreme Court held that the statute granting the legislature the additional confirmation power was unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Ak. 1976) In the Supreme Court's view, the power to appoint to positions in the executive branch is a power reserved to the Governor under the doctrine of separation of power, except as the constitution permits the legislature to participate in the process through confirmation. If the constitution does not specifically

^{2/} We recognize that SB 352 provides, "The corporation shall be considered a principal department only for the purposes of Art. III, sec. 26, Constitution of the State of Alaska." (emphasis added) In our view, however, the courts would almost certainly view this purely nominal designation as one purely of form, since the bill does not actually establish a new department with the kinds of gubernatorial controls normally associated with a principal department of state government. This issue of gubernatorial controls is addressed in detail later in this memorandum.

authorize confirmation, there is no legal power to do so and the Governor's power of appointment can not be subjected to confirmation by the legislature. Put another way, the Bradner case holds that the constitution states the outer limits of legislative powers of confirmation; the legislature may not expand that power by statute. While neither SB 10 or SB 352, as presently structured, would withstand constitutional challenge on the issue of confirmation, there are options available to the legislature which would provide a valid legal basis for the confirmation of appointments. We will set these options out briefly for your consideration.

The first and most obvious manner for the legislature to obtain confirmation power is to pass a joint resolution placing before the voters a constitutional amendment that would specifically authorize the legislature to confirm appointments to the Railroad Authority. This amendment could be placed before the voters during this year's election. If the amendment passed, the first appointees of the Governor to the authority or commission would be constitutionally subject to confirmation; if it did not pass, the situation would remain as it is today -- confirmation if and when the Governor chooses to submit the names. We should note that following the Bradner case a constitutional amendment granting broad additional confirmation powers to the legislature was put before the voters and failed, but whether that would be the fate of a more narrowly drawn provision would be difficult to predict.

The second option to insure confirmation would be to create an entirely new department of state government, which would be headed by the Railroad Authority. The sole purpose that new department would be to the railroad. In such an instance, the Authority would be at the head of a department and under Art. III, sec. 26 of the Alaska Constitution, the members of the Authority, would be subject to confirmation. There are, however, certain serious problems which might result from this approach. One of the basic purposes of the present bills creating an independent public corporation or authority (located nominally within a department) is to permit the Railroad Authority to raise money for operations without involving the general credit of the state. If, however, the authority which manages the railroad is a full department of state government there is some real question about its ability to successfully perform this fundraising activity without the involvement of state credit. Art. IX, sec. 8 of the constitution provides that no state debt may be incurred unless (1) it is authorized by law; (2) is for capital improvements; and (3) is ratified by the voters. Sec. XI of the same article provides that the restrictions of sec. 8 do not apply to debts incurred through revenue bonds issued by public corporations or public enterprises of the state when the only security is the revenue of the enterprise or the corporation. Whether or not an entire department of state government can be made a "public corporation" or whether

or not the entire activity of a department of state government would qualify as a "public enterprise" are questions that have never been decided in this state by any court. While the committee can certainly receive advice from legal counsel as to the possible or probable outcome of litigation on these subjects, it would at best be an educated guess. The result might well be that in order to obtain confirmation powers the committee would create a department which, in the end, might be subject to the same bonding restrictions applicable to all other departments of state government. I gather there is no disagreement within the committee that such a result would be highly undesirable. We cannot recommend this method of insuring confirmation powers because the risks are simply too great -- the legislature would be in totally uncharted waters and the magnitude of the questions involved is simply too great to accept that degree of risk.

Having discussed the issue of confirmation, we now move to the second issue posed by the committee. Specifically, that question involves the extent to which a public corporation may be established independently of the authority of executive branch and yet be a part of that branch of government. Art. III, sec. 22 of our constitution requires that all agencies of state government and their respective functions shall be allocated within no more than 20 principal departments.

The only exceptions provided are for "regulatory, quasi-judicial, and temporary agencies." As we view the functions of the operation of the Railroad -- whatever form of entity is chosen -- those functions are not primarily "regulatory" or "quasi-judicial." Further, the railroad operation would not necessarily be "temporary." Although conceivably the railroad could be sold or leased at some point in the future to a private corporation, the existence of the operating entity could well be permanent.

We think it is clear that the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions and would, therefore, require that the Authority be either a separate principal department or located within one of the already established principal departments. We have already reviewed the problems that would be created if the Railroad Authority would be made the head of an entirely separate principal department. Therefore, we are left with the conclusion that the only other constitutionally sound option is to place the governing board or authority within an existing department of state government.

Simply stated, then, the legal issue you have asked reduces itself to this. On the one hand, the legislature seeks to create an "independent" authority -- one which has financial and political autonomy and is not subject to direct gubernatorial control. On the other hand, the constitution

requires that all executive or managerial functions be a part of the executive branch, which, in turn, is under the supervision and control of the Governor. What then are the limits -- how much gubernatorial control is required to make the "independent" authority a constitutionally valid part of state government?

The cases that the Alaska Supreme Court has reviewed concerning the requirements of Art. III, sec. 22 make it clear that more than mere nomin^{al} placement of an independent corporate entity within a department in the executive branch is required. For example, in De Armond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962), it was claimed that the legislation creating the Alaska State Development Corporation was unconstitutional because it sought to create an independent agency that was nominally within the Department of Commerce, but which the challengers claimed was not in actuality within that department. The Alaska Supreme Court rejected this contention and upheld the constitutionality of the Development Corporation. In doing so, the court enumerated a number of features contained in the enabling legislation for the corporation, which demonstrated sufficient ties with the Department of Commerce to justify the conclusion that the corporation was (at least for constitutional purposes) truly within the Department of Commerce.

The factors that the court cited were as follows:

(1) the Commissioner of Commerce had a permanent seat on the board of directors and thus had "considerable influence" on the board;

(2) the other six members of the board were appointed by the Governor, and served at his pleasure;

(3) the board was required to submit comprehensive annual reports to the Governor and legislature;

(4) the financial records were to be audited annually by the legislative auditor; and

(5) the state's bank examiner was required to examine the corporation's records each year.

Additionally, although the court did not make clear what significance this fact had, it noted that the corporation was "temporary" and could be dissolved by a majority vote of the board subject to legislative approval.

Four years later, the court reviewed a similar challenge to the constitutionality of the Alaska State Mortgage Association; i.e. that it was only a nominal rather than a legitimate part of the department of state government in which it had been placed. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The court, however, noted that the mortgage association legislation contained most of the same features which it had cited in De Armond to support its conclusion that the development corporation was properly established within a department of state government. Like

the development corporation in De Armond, the mortgage association members were appointed by the Governor and served at his pleasure. The commissioner of Commerce had a permanent seat on the board of the association. Additionally, the court noted that as further evidence of gubernatorial control, the mortgage association was required to submit detailed annual reports to the Governor and legislature, the financial records were subject to an annual legislative audit, and certified copies of the minutes of every meeting of the association were required to be sent to the Governor.

Neither of these decisions, unfortunately, provide any guidance on the question of the minimum number of factors that will be required in order to meet the constitutional requirements of executive supervision or control. In both cases, however, the court seemed to emphasize two factors over and above all the others. The first was that board members served at the pleasure of the Governor. The second was that the Commissioner of the department within which these independent entities were located served on the board and was a full voting member. These two features were emphasized by the court to demonstrate that the Governor exercised at least partial control over the activities of the board. The court, for instance, noted that while the commissioner was only a single member of a multi-member board his position as a cabinet member would give him

substantial influence. The court further emphasized that the Governor was in a position to exercise influence on an otherwise independent board through the fact if there were a real disagreement in policy, he could exert control over the board members through his ultimate power to reeve them. The court, in Walker, cited with approval language from the Superior Court decision in the case to this effect:

If the Governor is dissatisfied with the executive director in either his capacity as a member of the Alaska State Housing Authority or the Alaska State Mortgage Association, he can assert his authority over the board members to effect the director's removal, and should they disregard his wishes, his alternative is to appoint members to the board who will appoint an executive director satisfactory to the Governor.

Walker, at 250 n.19.

At the same time, the court recognized that there may be important and legitimate reasons for the legislature to insulate a board or authority from direct gubernatorial influence over particular decisions. In the courts words:

It is true that the Commissioner of Commerce can not dictate the decisions of the Board. Nor can any other state official It is quite apparent that the legislature intended the board to be free from outside control in making decisions on particular loans.

De Armond, at 724 (emphasis added).

Nonetheless, it is clear from the decisions that there are limits to the degree of insulation that the court will

tolerate and still uphold the constitutionality of the placement of the independent corporation nominally within a department of state government.

Accordingly, it is our view that to insure constitutionality of this bill the legislature should, at an absolute minimum:

1. create an independent authority which is part of an enumerated department of state government;

2. provide that the board for the public corporation or authority be comprised of persons appointed by the Governor and who serve at his pleasure;^{3/} and

3. that the commissioner of the department in which the authority is placed serve as a voting member of the board.

^{3/} There is a secondary, but perhaps no less important, reason why the appointees to the governing body of the railroad should serve at the Governor's pleasure. As a constitutional matter, there is a serious question as to whether any appointee of the executive branch with the exception of those who serve in regulatory or quasi-judicial positions can be subject to any other restrictions but that they serve at the Governor's pleasure. The U.S. Supreme Court has interpreted that under the federal constitution, if an office is "executive" in nature, legislative efforts to restrict the president's power to remove an official are invalid. Myers v. United States, 272 U.S. 178. That opinion has been modified slightly in Humphries Executor v. United States, 295 U.S. 602, as the court held that a member of the Federal Trade Commission could have his term set by Congress and be insulated from removal by the president, but the court was clear to limit its opinion to quasi-legislative or judicial agencies, i.e. those that were actually passing regulations or resolving legal disputes as their prime function. The Railroad Authority would fall in neither of these categories, but would be within a traditional executive agency structure.

We raise this issue because we can be reasonably sure that the content of this bill will be litigated in the courts, if there is any reasonable basis to do so. The appointment of commissioners to the Railroad Authority who serve at the Governor's pleasure would reduce the possibility of legal attack on yet another basis.

It would be advisable, as well, to include at least some of the kinds of provisions (such as the annual reports to the Governor and legislative audits) which the court in De Armond cited as significant, although these may not be essential. Beyond that, the legislature may, in our view, limit the application of acts such as the Executive Budget Act, Administrative Procedures Act and others which impact most executive branch agencies, but are not, in our view, critical to upholding the constitutionality of this public corporation structure.

AMG/SAB/yw

GROSS-BURKE OPINION KEY POINTS

1. SB 10 and SB 352 both provide that appointments made by Governor and confirmed by legislature in joint session. Should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

2. The Railroad Authority established under SB 10 and SB 352 does not fit the definitions for the head of a department nor quasi-judicial or regulatory agency. Under the constitution, the legislature has no power to confirm executive appointments to the Authority unless the legislature can add to the powers of confirmation which are granted in the constitution. In Supreme Court's view, the power to appoint positions in the executive branch is a power reserved for the Governor, except as the Constitution permits the Legislature to participate in the process through confirmation.

Therefore, the first and most obvious manner the legislature can obtain confirmation power is to pass a constitutional amendment to specifically authorize the legislature to confirm appointments to the Railroad Authority.

The second option would be to create an entirely new department of state government, headed by Railroad Authority. Constitutional problems with that if Railroad is to raise money for operations without involving general credit of state.

3. Question of extent to which a public corporation may be established independently of the authority of the executive branch and yet be a part of that branch of government. Alaska Constitution requires all agencies of state government allocated within no more than 20 principal departments. Only exceptions are for regulatory, quasi-judicial and temporary agencies-which the Railroad Authority does not fit into.

Believe the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions. Other than placing Authority in separate department, the only other option is to place governing body or authority within an existing department of state government.

Summarization: The major question presented is, What are the limits-how much gubernatorial control is required to make an independent authority a constitutionally valid part of state government?

In reviewing other cases decided by the Alaska Supreme Court, the Court cited the following factors to insure the constitutionality of the placement of an independent corporate entity within a department in the executive branch:

- (1) Commissioner has a permanent seat on the Board of Directors
- (2) Board members appointed by Governor and serve at his pleasure
- (3) Board required to submit annual reports to Governor and Legislature
- (4) Financial records audited annually by legislative auditor
- (5) State's bank examiner required to examine Corporation's records each year

The Gross-Burke opinion's for insuring the constitutionality of the bill is that the legislature should:

- (1) Create an independent authority which is part of a department in state government
- (2) Board appointed by Governor who serve at his pleasure
- (3) Commissioner of department where authority placed serves as voting member of board.

January 26, 1984

Alaska Railroad Operating Entity
Sheffield Administration - Policy Statement

The Alaska Railroad is a fundamental link in Alaska's overall transportation system. Ensuring the continuation and development of this rail system as Alaska's transportation needs grow should be a major public policy objective in the years ahead.

Along with most Alaskans, I share this objective. I hope to see the Alaska Railroad provide the maximum benefit to our residents with minimum involvement by State government for regulatory oversight and public funding.

I support the development of the Alaska Railroad from its present status of a federally owned and operated agency to one which is funded and operated to the maximum extent possible by the private sector through a private company management contract or similar form of lease arrangement. I believe it will take a period of time to reach this goal. Consequently, it is important that any legislation provide adequate and specific provisions mandating that these alternatives be addressed.

It is important to keep in mind one essential fact: as long as the Alaska Railroad receives public funding, there must be comparable public oversight and accountability for its operation and management. If we accept anything less, we will be shirking our responsibility to all Alaskans to prudently and properly manage public funds.

I commend the members of our Legislature for the extensive interest they have demonstrated in the Alaska Railroad transfer issue. I know that many legislators have worked hard to develop acceptable transfer legislation which addresses a wide range of State policy concerns and interests over the past several years. Rather than introduce legislation of my own, I look forward to working with the legislation already in preparation provided that it is consistent with my following basic policy considerations:

- (1) Railroad operations should be insulated from political interference but remain responsive to the public interest. The public entity selected should be one best able to accomplish this goal.
- (2) The railroad entity should be constituted so that it has broad latitude in its operation and financing subject to public interest safeguards in existing state law, including the Executive Budget Act, Fiscal Procedures Act, and Administrative Procedures Act. I realize that certain sections of these laws may not be entirely applicable, and therefore limited exemptions may be necessary.

- (3) All revenues generated by the railroad should only be expended for railroad and related purposes.
- (4) The railroad should be able to incur bonded indebtedness to an extent consistent with its ability to repay the indebtedness from its own revenues.
- (5) The railroad should hold title to the surface estate of all lands received in the purchase and enjoy access to subsurface material necessary for actual rail operations. Specific arrangements should be included to ensure consistency with general state land policies, and to provide that sale of real property cannot occur without the approval of the Department of Natural Resources.
- (6) To minimize the State's exposure to railroad liabilities and to lower administrative costs, the railroad should take advantage of the economies of scale afforded by participation in the State's insurance and risk management plans. The Department of Administration should have primary responsibility for the negotiation of collective bargaining agreements with railroad employees.
- (7) The railroad should prepare and implement operating and capital plans, and explore long-range expansion needs. No later than three years after acquisition, the railroad must prepare a report for the Governor and the Legislature recommending a method for obtaining private sector participation in railroad operations.

COMMONWEALTH NORTH RECOMMENDATIONS

Richard F. Barnes

RECOMMENDATIONS FOR THE ALASKA RAILROAD CORPORATION

1. The corporation should have full control over the surface and subsurface railroad lands.

The purchase of the Alaska Railroad is often referred to as "a real estate deal" because of the value of land included in the transfer package.

Some private leaseholders and municipal governments with railroad-owned waterfronts or city centers would like to see the land transferred to themselves. The corporation, as a matter of policy, should not sell revenue producing property because it is in the interest of the entire state that the railroad hold these properties for its own needs.

2. The corporation and its union employees should cooperate in modernizing existing labor agreements during the two-year transitional period mandated in the federal transfer legislation.

Particular attention should be given to any archaic work rules that inhibit efficiency. The goal should be to increase productivity rather than diminish compensation to employees.

Efficient utilization of railroad employees is essential for a self-sufficient operation.

3. The corporation should not be mandated to propose or conduct feasibility studies for cross-country track extensions or sale of the railroad.

Major rail extensions and sale issues are not operating issues. The mission of the railroad corporation should be closely focused on matters that affect economics and service to shippers and passengers on existing routes. Fea-

sibility studies are expensive, require extensive staff time, and could drain the limited funds of the railroad.

Extensions and sale proposals have broad policy implications that can best be considered by the executive and legislative branches of state government or private entities.

4. Passenger operations should be modified to take advantage of revenue opportunities and re-evaluate uneconomic services; a system should be devised to accurately identify passenger service costs.

Just as land leasing by the railroad is projected to be profitable, passenger service will likely remain a loss operation if all related expenses and capital costs are considered. To control these costs, however, it is important to account for them accurately.

Reliable cost information is crucial in considering service levels, pricing issues, and capital expenditure decisions.

5. The Board of Directors of the Alaska Railroad Corporation should consist of five to seven voting members representing the interest of the entire public; no board member should be appointed to represent a special interest.

Directors should be chosen for their professional judgment rather than their representations of special interests or home town. Similarly, non-voting membership is inappropriate.

Board members should be limited to two five-year terms of service and with staggered terms to mix continuity of experience with new ideas.

Alaska State Legislature

OFFICIAL BUSINESS

CHAIRMAN
RULES COMMITTEE

MAR 19 1984



JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

MEMORANDUM

DATE: March 9, 1984

TO: All Members
Senate Transportation Committee
House Transportation Committee

FROM: Senator Jan Faiks

SUBJECT: How other State owned railroads are operated

NOTE: The following notes were gathered by my staff about how railroads in other states are run. I thought it might be interesting to you.

SOUTH DAKOTA

There are 433 miles of core track in SD that are in operation. The state owns more mileage that is not in use. There are also 316 miles of main line track that is part of the line running to the west coast. The state owns the track and contracts out the operation. There is no annual appropriation or subsidy from the Legislature. There is no report required to the Legislature. The operator (Burlington Northern RR) is responsible for all facets of running the railroad. The State purchased the track for \$18 million with money raised by a special dedicated sales tax. The state provided the money for the original rehabilitation from a federal program for the rehabilitation of railroads. Burlington Northern runs the railroad as part of their own system and is run on a schedule that traffic demands. The state gets no percentage of the profits and is not liable for any of the debt of the RR. Their only interest is in having the railroad operated to provide the service needed by the shippers.

Information provided by Chris Randall Deputy Secretary of the Department of Transportation 605-773-3265.

VERMONT

In Vermont the state owns the track and the ROW. They lease it to an operator and the state receives a percentage of the gross profits based on a complicated formula. The state owns 4 rail

lines. Only one is operated at a deficit. The state will subsidize it only if it can be shown that it is in the best interests of the public to do so. Last year the subsidies amounted to \$200,000. There are about 300 miles of track and the money was raised to purchase the railroad with a special bond issue. The operator has basically paid the state back for the purchase price through lease payments. There is an annual report required to be submitted to the Dept. and is available to the Legislature upon request.

NEW YORK

The state bought the Long Island Railroad in the 1960s and put it under the jurisdiction of the Metropolitan Transportation Authority. The state also owns a 100 mile branch line that it operates from Utica to Lake Placid. The revenues do not finance the service and money is appropriated each year from the Legislature. The railroad workers are employees of the Long Island Railroad.

Information obtained from John Connor 518-457-2320.

GEORGIA

Georgia owns 150 miles of mainline track. The track was built 125 years ago by the state. The oversight is by the State Properties Commission—they also oversee other state properties. Georgia leases the operation of the railroad to the CSX Corporation. They are required to submit an annual report to the Legislature. The state gets a percentage of the gross profits of the railroad. Last year this amounted to \$3½ million dollars. The railroad has an obligation to maintain the railroad to the standards required of a class IV railroad. The contract was negotiated in the 1960s and will be renegotiated in 1992. The railroad workers are employees of Seaboard Railroad.

Information provided by Jim Statton.

WISCONSIN

The state purchased the branch lines from other major railroads. The state retains ownership of the line and provides to the operator 80% of the value of the track. Twenty percent comes from other sources. The railroad is on its own financially and nothing comes back to the state. The railroad pays very little in taxes and the state does not subsidize the railroad or cover any deficits. The Legislature felt that subsidies would not solve any problems, but only perpetuate the current problems. The Wisconsin Constitution prohibits the state from running a railroad. There are 500 miles of track. The oversight issue is very sensitive politically right now. There is a dispute now about how much access the state should have to the records of the railroad. When the state bought the

railroad, they purchased the land and the track but not the labor agreement.

Information provided by Keith Plasterer at 608-267-7347. Suggested we talk to the City of Belfast Maine 207-338-2330 and the City of Pineville, Oregon 503-447-6251.

Also suggested we read Small Railroads put out by the Association of American Railroads 1220 L street N.W. Washington D.C. 20036. 202-835-9100. \$20.00 and Starting a Shortline by the American Association of Shortline Railroads 2000 Massachusetts Ave. N.W. 20036 202 785-2250.

and British Columbia-a Railroad Derailed by the University of B.C. Press

WEST VIRGINIA

The state owns and operates 51 miles of shortline. The state owns the ROW, track, and rolling stock. In 1978 when the railroad was abandoned, the state looked at three options for running the railroad and decided that running it themselves would be the most cost effective way. The state secured locomotives and engines from government surplus. The employees of the state are non-union because state employees are not organized under state law. They are now in the process of putting the employees under state civil service system. The railroad is a state agency and is subject to state law. They must go through the Department of Finance and Administration for all purchasing and payment of bills. Every purchase over \$200,000 goes through a bidding procedure. Every item less than \$200,000 must be purchased from a list of approved vendors. This causes a lot of paperwork and delay. The railroad is forced to anticipate the time lag. Their budget must be approved by the Legislature. For FY 85 they requested \$812,379 from the Legislature and anticipate revenues of \$315,000. The W. Virginia Maintenance Authority keeps all revenues (that is they are not returned to the general fund). The railroad has 30 employees. The railroad has the authority to issue their own bonds but they have never done so. The former executive director, John Killoran, is now the Director of Strategic Planning for the Alaska Railroad. The people who were involved with the railroad in 1978 now regret their decision to have the railroad run by the state. They feel the railroad is forced to compete with other railroads yet is hamstrung because they are forced to comply with state laws. The budget is overinflated and there are too many employees. They are trying to reduce the number by attrition.

Information provided by Donald J. Baker, Jr. Executive Director of the West Virginia Maintenance Authority at 304-538-2305.

MICHIGAN

Currently, the state owns the right of way for 879 miles of track however, only 670 miles are currently being used. The state holds title to the land but leases out the operation of the railroad to the private sector, therefore, none of the workers are considered employees of the state. All the systems serve mainly rural areas and were taken over by the state because each was in imminent danger of bankruptcy. They are managed by the Michigan Dept. of Transportation, Rail Freight Division. They were purchased by the sale of bonds that were financed from dedicated funds. In Michigan, there is a 13¢ per gallon gas tax levied and mass transit/railroads receive a portion of that income. The first rail system was purchased in 1976 for \$11.9 million and at the time, the Legislature considered setting up a separate agency that would own and operate the railroad. This was opposed by the Chamber of Commerce because they felt it was akin to nationalization of the rails. After a long battle, the Legislature opted to put the system under their DOT and lease out the operation. The state has been subsidizing each of the systems but that financial assistance is being reduced every year and will be completely eliminated by September of 85.

This information was obtained from Don Riel (517) 373-6494.

ALABAMA

There are 75 miles of track in and around the Mobile area which serve the port. The railroad was built in 1929 by the Army Corps of Engineers and taken over by the state shortly thereafter. It has only 5 employees who work for the State of Alabama. The system is run by the Port Authority, Docks Dept. and according to the director, "it's not a very big deal. Usually only runs once a day, carrying some cargo from the port into town." It pays for its own way, ie. there is no state subsidy.

NEW HAMPSHIRE

The state owns the right of way for 2 systems, one which is 72 miles long and the other which is 23 miles long. The larger one serves a sawmill and the other a furniture factory. Both were going bankrupt but the state stepped in and purchased both to ensure that the sawmill and furniture factory would remain open. The state owns the locomotives but none of the other rolling stock. They also lease out the operation to the private sector so the employees do not work for the state. Originally, the state created a separate agency to administer the railroad but they encountered many problems ie. no control so both systems are now administered by the Highway Department.

Bette:

Here are questions regarding the Cook Inlet Amendments. Please call when you have had a chance to look them over in relation to the copy of the actual amendments. I can give you some of the answers. I have used page numbers for easier understanding. Some general comments should be made at the beginning of the call:

- o The amendments, if they are clarifying language, ~~are~~ sure confusing! From one version to the next, citations do not matchup and I am concerned that a section means two different things in different areas. (there are several sections to get into later)
- o I am concerned that this language is expanding and making substantive changes to either the lands bill and/or to the Cook Inlet Agreement. I realize that some of these are outside our focus on the railroad issue, but as a state representative, and as they appear on the railroad transfer bill, I feel responsible to understand their content. (are there substantive changes?)
- o It has been the states position, as I understand it to allow technical amendments that do not make substantive changes but this latest set appears to go far beyond that. (any comments?)

Questions

1. What has been the Departments involvement in these amendments?
2. What is the Departments current responsibility in them?
3. What are the general effects of these amendments to the Railroad Transfer? (we will go into more detail later with specifics)
4. Do these amendments alter or expand either state or federal obligations to Cook Inlet Native Corporation. (could they set a precedent for other regional corporations) Is there any effect to Village Corporations
5. Comment: I see part of the problem in Washington D.C. is these amendments open up the lands bill, (ANILCA) or ANSCA. Isn't this a real danger to the transfer question with congress. Wouldn't it be easier for Sen. Stevens to deal with this elsewhere. I think the state should strongly urge him to not cloud the transfer with this.
6. Are these amendments, dated August 17, 1982, the final offering? Are they complete? and by that I mean if these go in to S. 1500 will the existing language come out?

7. In your opinion, what will Stevens do if the state issues a statement of strong opposition to these amendments" (with the timeline for the bill to come before the Senate, we had better make our determination very soon!!!)

8. What process, if any, are altered from existing lands legislation, or the Cook Inlet Agreement such as in or out of region selection abilities or increased entitlement?

9. Isn't the state giving up partial veto power on page 9 (c)? It seems as though "unless the state expressly" says no within a certain time period, lands go into the selection pool.

10. How is the state of Alaska's veto over native selections altered by these amendments? (the words "public purpose" should come out here. If they do: "how is the state to prove that lands "in the smallest practicable tract are necessary for a public purpose"? ** these are words in the 3E determination process**

**Interior has said that the 3E determination should be sufficient. Isn't it? then why do we need these amendments?

11. Department of Interior seems to get a lot more duties and authority under these amendments. What is their position on this set of amendments?

12. On page 6 (3) (A,B,C,D,E,F,G,), What is the effect of these?

13. What is going on at page 10 (D) I thought C.I.N.A. waived the right to select Railroad Lands? If the Railroad does not transfer to the state, (or if the state does not accept the terms and conditions), and it stays in federal ownership, doesn't this effect the federal governments ability to continue to operate the railroad? This seems real awkward. Again the question arises of how the state or a municipality will prove "public purpose".

14. On page 13 (B) it talks about the "unfulfilled entitlement as valued in subsection 12 (b) (7) (iv). On page 6 this subsection is amended. Does this expand or change entitlement? This looks like the section 6 (d) (3) in the S. 1500 as reported by Sen. Packwood. What is the effect of this?

15. I get really suspicious of repealers like page 14 (e). Also isn't there a provision in the lands bill, ANCSA or the Cook Inlet Agreement that says the courts are to give Cook Inlet the "benefit of the doubt"

when disputes arise. How will this "play" if these amendments are adopted and eventually end up in court?

16. Page 16, 12 (b) (11) (i) and (ii) are any lands being contemplated at this time? In the near future? Can you speculate as to what are they after?

(Optional) 17. Can you give me a time line sequence on how the transfer with these amendment "triggers" will take place? Perhaps Mark Hickey can help on this.

** This should give you some insight as to what is occurring. You may want to call Katz personally after this is over and urge him to oppose these amendments on everything beyond:

- (1) Extension of the deadline for the "in-region" selection
- (2) Updating the list of properties excluded from the out of region selection pool.

Use 3E

Preamble

To: Steve Hillard From: Mark Wittow, 9/3

WHEREAS, the State of Alaska, the United States Government and Cook Inlet Region, Inc. entered into an Agreement entitled The Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area on December 10, 1975, as clarified on August 31, 1976 (hereinafter Terms and Conditions);

WHEREAS, the Terms and Conditions was ratified by the Alaska Legislature in Chapter 19, SLA 1976 and by the United States Congress in Public Law 94-204, Section 12, January 2, 1976, 81 Stat. 1150, as amended by Public Law 94-456, Section 3, October 4, 1976, 90 Stat. 1935; Public Law 95-178, Section 3(a), November 15, 1977, 91 Stat. 1369; Public Law 96-55. Section 2, August 14, 1979, 93 Stat. 386; Public Law 96-311, July 17, 1980, 94 Stat. 947; Public Law 96-487, Title XIV, Section 1435, December 2, 1980, 94 Stat. 2545;

WHEREAS, Congress is considering further amendment of the Terms and Conditions by the CIRI Alaska Railroad Waiver Amendments (copy attached);

WHEREAS, the purpose of the present Agreement is to implement the Terms and Conditions as amended by Congress, including the proposed CIRI Alaska Railroad Waiver Amendments.

B. Miracle
8/31

5 reg History - no presumption on favor of CIRI

in agreement preamble

AGREEMENT CONCERNING IMPLEMENTATION OF ALASKA RAILROAD WAIVER AMENDMENTS OF COOK INLET REGION, INCORPORATED

① Wherein
② MAJ limitation
③ #4
④ State, not APD

This Agreement is made this ____ day of _____, 1982, between Cook Inlet Region, Incorporated (hereinafter CIRI) and the State of Alaska (hereinafter State).

In consideration for the mutual terms, conditions and covenants contained in this Agreement, the parties agree as follows:

A

1. In the event that CIRI intends to negotiate a sale pursuant to subsections 12(b)(7)(ii) (A) or (B) of the CIRI Alaska Railroad Waiver Amendments (copy attached), CIRI shall notify the Commissioner of the Department of Natural Resources of the State with respect to real properties located within the State of which CIRI has received notice pursuant to the above subsections. The State shall immediately send a copy of the notice to any municipality in which all or part of said property is located. CIRI shall not accept title pursuant to a negotiated sale of such real property under the authority of the above subsections without the approval of the State. The State will make a good faith effort to provide a written response to CIRI within twenty-five (25) days of receipt of notice from CIRI. If, regarding improved properties, a written response is not received from the State within sixty (60) days of receipt of notice from CIRI, the approval of the State shall be deemed obtained. If, regarding unimproved properties, a written response is not received by CIRI within sixty (60) days of receipt of notice from CIRI, the approval of the State shall be deemed not obtained, subject to the possibility of subsequent approval by the State. The notice provided by CIRI to the Commissioner of the Department of Natural Resources shall designate the status of the property as improved or unimproved, shall specify whether all or part of the property is located within a municipality and shall recite the deadlines for a written response as defined by this paragraph.

2. The purpose of subsections 12(b)(7)(ii) (A) and (B) of the CIRI Alaska Railroad Waiver Amendments (copy attached), which allows CIRI the opportunity to obtain federal excess property as well as federal surplus property, is, among other things, to give CIRI additional notice that surplus property is available. CIRI has had difficulty obtaining information about available federal surplus property. The amendment allowing CIRI to obtain excess property does not broaden the kind of property CIRI could obtain under the surplus property procedures of 12(b)(7)(i). The phrase "excess property" in the amendments has the same definition as "excess property" at 40 U.S.C. § 472 (c) and (e) which state as follows:

(d) The term "property" means any interest in property except (1) in the public domain; lands reserved or dedicated for national forest or national park purposes; minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws; and lands withdrawn or reserved from the public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general public-land laws because such lands are substantially changed in character by improvements or otherwise; (2) naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines; and (3) records of the Federal Government.

(e) The term "excess property" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

3. If legal title is hereafter acquired by CIRI contrary to the provisions of this agreement, CIRI shall seek a rescission of the conveyance from the United States. If the United States does not grant rescission of the conveyance, CIRI shall forthwith convey title to the property to the State, but in no event later than one hundred and eighty (180) days of conveyance of title to CIRI from the United States.

4. The parties agree that "other federal lands", as described in Paragraph I.C.(2)(a)(vi) of the Terms and Conditions, unless otherwise agreed to by the State, does not include federal lands upon which there exists a valid State selection, provided however, that the State may not utilize the authority of Section 6 of the Statehood Act ^{as amended} to exclude or achieve a priority over a CIRI selection pursuant to Paragraph I.C.(2)(a)(vi) of the Terms and Conditions, of D-1 lands which were previously unperfected or abandoned public land entries, unless the State selection on lands within the exterior boundaries of CIRI was made before the effective date of the Terms and Conditions, or the State selection on lands from without the exterior boundaries of CIRI was made prior to the effective date of the CIRI Alaska Railroad Waiver Amendments.

5. The parties recognize that the CIRI Alaska Railroad Waiver Amendments do not alter the priorities established under the Terms and Conditions by paragraph I.C.(1) of the Terms and Conditions with respect to Statehood Act selections made subsequent to July 18, 1975.

6. CIRI shall enter into an agreement with the Secretary of the Interior, pursuant to subsection 12(b)(8)(ii) of the CIRI Alaska Railroad Waiver Amendments, to limit the I.C.(2)(a)(v) review process to the following properties:

- (a) FAA
 - (1) Homer VOR
 - (2) Kenai VOR and airport (including PLO 2585 and ANS No. 11)
 - (3) Talkeetna VOR, NDB and airport
 - (4) Fire Island VOR
 - (5) Skwentna NDB

- (b) Coast Guard
 - (1) Fire Island Race Pt.
 - (2) Fire Island West Pt.
 - (3) Kalgin Island
 - (4) Two undeveloped lots on Government Hill, Anchorage

unless the state

(d) FERC

(1) Power Project 395 (Chackachama), provided, however, that the review is to be limited to T. 12 and 13 N., R. 15 W., Seward Meridian, and that a two hundred foot (200') right of way corridor for transmission lines and road access may be reserved to the State at a location to be specified by the ~~Alaska Power Authority~~ at a subsequent time not to exceed twenty years from receipt of conveyance by CIRI. CIRI will acknowledge this right of way covenant in a recordable instrument on the date of receipt of conveyance. Exercise of the reserved right of way by the ~~Alaska Power Authority~~ will not result in liability for destruction of improvements. CIRI may negotiate a limitation upon this reserved right of way with the State ~~or its Alaska Power Authority~~ at any time.

State

State

(e) Alaska Railroad properties, in the event such properties become available for selection pursuant to subsection 12(b)(8)(i)(D).

The parties hereby agree that the identification of the above properties does not indicate a decision or view by the State regarding the facts to be determined in such a review. The parties further agree that designation of the above properties does not indicate agreement by the State, now or in the future, that any of the lands contained in these federal installations necessarily constitute public lands within the meaning of ANCSA Section 3(e) or Paragraph I.C.(2)(a)(v) of the Terms and Conditions, nor does it indicate a position by the State regarding a public purpose, if any, for which the property is used or might be contemplated for use in the future.

7. On or before September 27, 1982, CIRI shall provide to the Commissioner of the Department of Natural Resources a resolution from its Board of Directors authorizing this Agreement. This provision does not affect the validity of this Agreement.

Add: Neutrality

Dated: _____

Dated: _____

STATE OF ALASKA

COOK INLET REGION, INC.

John W. Katz,
Commissioner of the
Department of Natural Resources

Roy M. Huhndorf,
President

Approved as to form this _____ day of _____, 1982

Barbara Miracle, Esq.
Assistant Attorney General
State of Alaska

STATE OF ALASKA)
) ss.
_____ JUDICIAL DISTRICT)
)

THIS IS TO CERTIFY that on the _____ day of _____, 198____, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Roy M. Huhndorf, President of Cook Inlet Region, Inc., a Native Corporation existing by virtue of the laws of the State of Alaska, known to me to be the person who executed the above instrument and who acknowledged that the said instrument was signed on behalf of said corporation by authority of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first hereinabove written.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
_____ JUDICIAL DISTRICT) ss.
)

THIS IS TO CERTIFY that on the ____ day of _____, 198__, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared John W. Katz, the Commissioner, Department of Natural Resources, State of Alaska, known to me to be the person who executed the above instrument and who acknowledged that the said instrument was signed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first hereinabove written.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

by CIRI
8/31

Key Elements of CIRI/State Agreement:

I. Values to the State:

A. Waiver by CIRI of claims under the Terms and Conditions to the Alaska Railroad upon transfer to the State.

B. Additional limitations and waivers of claims by CIRI to federal lands (including military lands) under the "excess public lands" provision [§1(C)(2)(a)(v)] of the Terms and Conditions.

C. Substantially enhanced ability of CIRI to fulfill its entitlement outside the State of Alaska.

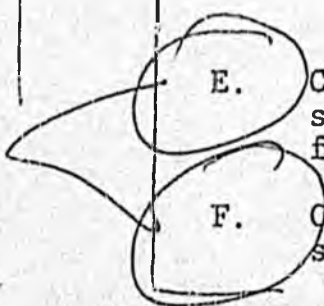
D. Creation of a "Red Line Pool" for CIRI out-of-region selection rights, which will provide to the State the opportunity for orderly and unclouded selection, prioritization and conveyance of its remaining Statehood entitlement. The Red Line Pool is subject to the following conditions:

1. limitation of CIRI selection rights to 30 pre-screened and state approved townships.
2. limitation of time for CIRI selections from the above pool to July 1985.
3. a schedule for prioritization of lands within the above pool.
4. an agreement of exchange for five townships of state patented lands at Illinois Creek in return for recoupment of state selection rights and waiver of remaining CIRI selection rights in the TAPS pipeline corridor as made available by BLM.
 - (a) the lands are subject to mining claims by Anaconda, which supports the exchange and with which CIRI has an existent relationship, and
 - (b) if required by law, the exchange will be subject to legislative approval.

E. Creation of federal "recoupment" provision for state selection rights for state-TA'd or patented lands transferred to CIRI.

F. Clarification and uniformity of state vetoes on CIRI selections within the state.

waiver
OKA



II. Values to CIRI:

- A. In return for waiver by CIRI of claims to the Alaska Railroad and other claims, as noted above, CIRI receives an enhanced ability to acquire surplus federal properties outside Alaska in order to fulfill its entitlement.
1. In response to concerns raised by the Federal Property Review Board and GSA regarding the federal surplus property disposal program outside Alaska, CIRI has agreed to limit its ability to acquire surplus federal property outside Alaska in two respects:
- (a) to limit the value of the CIRI surplus property account to ten townships less than the remaining entitlement (i.e. CIRI must take ten townships from the out-of-region pool).
 - (b) to defer use of certain portions of the CIRI surplus account until 1984 and 1985.
- B. Revision of federal out-of-region selection pool to reflect post-ANILCA land status.
- C. In addition to the above, the legislation embodies certain extensions to the present CIRI deadlines as previously and independently assured by Senator Stevens.

✓ The above elements represent key components of a seamless web of positions, compromises and concessions woven by numerous parties regarding the Alaska Railroad during the past year. These include CIRI, other Native interests, the Property Review Board, GSA, the Department of the Interior, Senator Stevens and the State of Alaska (as represented by DNR, DOT and at least four assistant AG's).

CIRI
9/14

Outline of Portion of CIRI Amendments

1. Time line regarding authority/obligation

(a) In-region

1. the obligation of the Secretary expires at the time of fulfillment of the minimum 138,240 acres after July 15, 1984
2. the discretionary authority of the Secretary begins at the time of fulfillment of the obligation and continues until fulfillment of the entire CIRI entitlement
3. the residual unfulfilled obligation is approximately 96,000 acres

(b) Out-of-region (surplus, etc. property)

1. there is no obligation of the Secretary to place out-of-region surplus, etc. properties into the in-region pool
2. the discretionary authority of the Secretary to place out-of-region surplus, etc. properties into the in-region pool expires as follows:
 - a) on July 15, 1984, if the in-region obligation is fulfilled
 - b) after July 15, 1984, upon fulfillment of the in-region obligation
 - c) in any case, no later than July 15, 1987

2. Public purpose vetoes

- (a) immediately as to ARR properties and out-of-region surplus, etc. property
- (b) on July 15, 1984, as to military properties in region
- (c) on July 15, 1987, as to all categories (a full generic veto on CIRI rights)

3. Original T&C vetoes

- (a) in addition to the above, the original, ^{limited} in-region veto powers of the State under the T&C remain intact until July 15, 1987

A M E N D M E N T

Offered in the HOUSE

By Bettisworth

TO: CSHB 512(Trsp)

Page 41, lines 6 - 11:

Delete all material and renumber following sections accordingly.

Page 42, after line 11, insert new bill sections to read:

"* Sec. 11. PERMANENT FUND DIVIDENDS. Until the board of directors of the Alaska Railroad Corporation issues stock under sec. 13 of this Act, the permanent fund dividend application form shall be prepared to allow an applicant to indicate whether the dividend payment should be paid to the applicant or to the Alaska Railroad purchase fund. The Department of Revenue shall pay the dividend as directed on the form. If an applicant does not indicate a preference for the payment of the permanent fund dividend on the application form, the dividend shall be paid to the applicant.

* Sec. 12. ALASKA RAILROAD PURCHASE FUND. (a) The board of directors of the Alaska Railroad Corporation shall establish a trust fund to be known as the Alaska Railroad purchase fund. Each permanent fund dividend received from the Department of Revenue shall be deposited in the account for the credit of the individual for whom the dividend was paid. Interest earned from the dividend shall also be credited to the individual.

(b) At any time before the board of directors of the Alaska Railroad Corporation issues stock under sec. 13 of this Act, an individual may elect to withdraw a dividend deposited in the Alaska Railroad purchase fund

together with interest earned on it by applying to the board in writing.

* Sec. 13. ISSUANCE OF STOCK. (a) When the board of directors of the Alaska Railroad Corporation determines that the Alaska Railroad purchase fund contains \$75,000,000, the board shall pay the net book value of the corporation into the general fund in payment for the Alaska Railroad Corporation. Within 120 days after making the payment, the board shall reincorporate the Alaska Railroad Corporation under AS 10.05. All assets and liabilities of the Alaska Railroad Corporation shall be transferred to the successor private corporation. The board shall issue stock in the new private corporation to each individual who elected to deposit a permanent fund dividend into the Alaska Railroad purchase fund. Stock issued under this section shall represent the entire value of the corporation, and the amount of stock issued to each individual shall be based upon the amount credited to that individual in the Alaska Railroad purchase fund.

(b) For purposes of this section "net book value" means the amount paid by the state to the federal government for the Alaska Railroad, plus the amount of state money and value of state property transferred to the Alaska Railroad Corporation after the date of transfer of the railroad to the state, minus the amount of operating losses suffered or plus the amount of operating gains realized by the corporation from the date of transfer of the railroad to the date of the most recent audit conducted under AS 42.-40.270.

* Sec. 14. STOCKHOLDERS' MEETING. (a) At the time of issuing stock under sec. 13 of this Act, the board of directors shall notify each stockholder of the time and place of the first stockholders' meeting. The meeting shall be held within 90 days after the stock is issued.

(b) At the stockholders' meeting the board of directors of the Alaska Railroad Corporation shall resign and the stockholders shall elect nine individuals to serve as the new board of directors.

* Sec. 15. AS 42.40 is repealed."

Re-number following sections accordingly.

Page 42, after line 14, insert a new bill section to read:

"* Sec. 17. Section 15 of this Act takes effect on the date the Alaska Railroad Corporation is reincorporated under sec. 13 of this Act."

Re-number following section accordingly.

Page 42, line 15:

Delete "9 - 11" and insert "9 - 14"

Alaska State Legislature



COMMITTEES
OIL & GAS—(CO-CHAIR)
STATE OF AFFAIRS—(VICE-CHAIR)
LABOR & COMMERCE
RESOURCES

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

ANCHORAGE

P.O. BOX 10-1623
ANCHORAGE, AK 99511
(907) 344-0950

JUNEAU

POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

To: Bette Cato, Representative, District 6
Fr: John Cowdery, Representative, District 8
Re: The Alaska Railroad

March 14, 1984

I have been made aware of some problems with the Alaska Railroad passing by the downtown Anchorage area. Even though the Bootleggers Cove, Turnagin Arm and Oceanview areas are not in my district, I have lived in Anchorage for 30 years and have concerns other than those in district 8. Please take the time to read my letter to the Governor and the resolution from the South Addition Community Council.

If you have questions please contact me.

Thank you.

A handwritten signature in cursive script, appearing to read "John J. Cowdery".

Alaska State Legislature



ANCHORAGE

P.O. BOX 101623
ANCHORAGE AK 99511
(907) 344-0950

JUNEAU

POUCH V
JUNEAU, AK 99811
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465-4906

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

COMMITTEES
OIL & GAS--(CO CHAIR)
STATE OF AFFAIRS--(VICE CHAIR)
LABOR & COMMERCE
RESOURCES

March 12, 1984

Honorable Bill Sheffield
Governor
State of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

The Legislature has been debating purchase and operation of the Alaska Railroad during this session and, I believe, will soon reach a resolution. However, many residents in Anchorage have expressed concern about a serious problem which has been occurring. Since you have been such a strong advocate of the railroad purchase, I am sure you have discussed the problem I am about to outline.

Many residents and businesses, particularly in the Boatlegger's Cove area of Anchorage, have become increasingly annoyed by the vibrations caused by train cars carrying heavy industrial products. In fact, these vibrations are becoming progressively worse and may cause structural damage as well if allowed to continue over a period of time. With coal exports planned for the future, and transportation to tidewater being a necessary step in that process, this problem will only escalate. Residents have expressed not only an annoyance with the cars, but a fear for health and safety concerns.

Governor, we both witnessed the devastation caused by the 1964 earthquake. We saw the clay formation just below the surface of the soil slide down the hill when it failed to withstand the geotechnic pressure placed on it. The hill below the Holiday Inn had to be reinforced to prevent further slides. Presently, the ARCO building is experiencing vibrations that have been traced to a water extractor at a nearby commercial laundry establishment. This further demonstrates the extreme sensitivity of the soils in the area.

For quite some time after the quake, the Army Corps of Engineers placed restrictions on building in certain areas of the downtown area. The Municipal Assembly is still sensitive to construction in some downtown areas and has, in fact, rejected proposed projects in recent years because of the concern of land stability. I understand the Municipality has restricted several downtown projects unless some type of ground stabilization is included in any project. Clearly, there is a continuing demonstration of concern about the stability of the downtown area.

I am concerned about the continued effect of heavy vibrations on structures present in the downtown area and in areas adjacent to the railway corridor. The potential for these heavy vibrations to further erode the stability of the land should be of extreme concern. I think several questions must be answered.

What does the state plan to do to lessen the effect of these vibrations?

Has there been any stabilization done to the area?

Are there plans to stabilize land and structures in the area to prevent potential damage? If so, what are the cost estimates for such stabilization?

Are you aware of any studies by the Corps of Engineers relating to what effect vibrations may have on buildings in the affected area or the effect of vibrations increasing the potential for soil sliding activity?

Have you given any consideration to an industrial bypass railroad route which would avoid travel through this sensitive area? If so, what cost might we anticipate for right of way acquisition, and what area might such a bypass impact?

I am sure these issues must be of concern to you as well, and I trust, in all the debate regarding state takeover and operation of the railroad, you have discussed these very issues with Mayor Tony Knowles. Certainly, it would be shortsighted if your administration, the Municipality or the Legislature ignored this serious concern in deliberations of the Alaska Railroad. Citizens in the South Addition area of Anchorage have signed a petition, which I have enclosed, urging state consideration of these concerns. To date, these citizens have apparently received little assistance from the Knowles administration towards solving this problem.

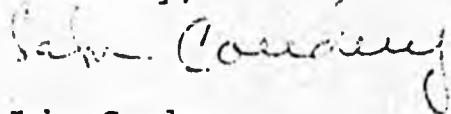
In summary, I am asking what your administration plans to do about this problem. Has consideration been given to rerouting the railroad to avoid the downtown areas?

Governor Sheffield
Page 3

Has consideration been given, for example, to a spur line through other areas where land is much more stable? And if such a spur line has been considered, do we need to progress at this time with railroad overpasses, which are estimated to cost millions of dollars, over major arterials? Perhaps, a spur line would not only eliminate the problems being caused by vibrations but would also eliminate the need to spend large sums simply to build massive train crossings. As I understand it, these intended crossings are being requested to accommodate increased heavy industrial commerce which will tend to interfere with commuter traffic. Yet a spur line might re-route such train traffic and make the need for these overpasses moot.

None of these questions should be considered as a stand against state takeover and operation of the Alaska Railroad. And, since state takeover and operation appears eventual, I think these are serious public concerns which should be addressed prior to state operation. They have potential for creating even greater life threatening and costly problems down the track, so to speak. I look forward to your reply knowing that you must share these concerns for the health and safety of Anchorage residents.

Sincerely,



John Cowdery
Representative-Anchorage

RESOLUTION

A RESOLUTION OF THE SOUTH ADDITION COMMUNITY COUNCIL PLACING THE STATE OF ALASKA ON NOTICE THAT OPERATIONAL PROBLEMS CURRENTLY EXIST RELATING TO THE TRAIN OPERATIONS OF THE ALASKA RAILROAD. THESE PROBLEMS AND THE COST TO SOLVE THEM SHOULD BE CONSIDERED WHEN THE STATE LEGISLATURE ADDRESSES THE TRANSFER OF THE ALASKA RAILROAD FROM FEDERAL CONTROL TO STATE OWNERSHIP.

THE SOUTH ADDITION COMMUNITY COUNCIL RESOLVES:

WE, the members of the South Addition Community Council are hereby putting the State of Alaska on notice that there are a number of problems involving the Alaska Railroad which will require solutions in the future. At present, various train operations of the Alaska Railroad) for example, south-yard switching operations, gravel hauling, etc.) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life for the residents of the Bootleggers Cove and the South Addition. Additionally, these same problems are expected to increase with the beginning of the coal haul from Healy to Seward.

PASSED AND APPROVED by the steering committee of the South Addition Community Council; Anchorage, Alaska this 8th day of MARCH, 1984.

Cirrus C. Starn
PRESIDENT

ATTEST:

Lynn Benson
COUNCIL SECRETARY OR
MEMBER AT LARGE

PETITION

WE, the undersigned residents of Bootleggers Cove and the South Addition, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which will require solutions in the future. At present various operations of the ALASKA RAILROAD (for example, southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes.

signed:

<u>Date</u>	<u>Address</u>	<u>Name</u>
<u>3/5/84</u>	<u>938 P. St.</u>	<u>Reuben Dungen</u>
<u>3/5/84</u>	<u>905 "S" Street</u>	<u>Flora J. LaLonde 279-</u>
<u>3/5/84</u>	<u>905 "S" STREET</u>	<u>Max N. LaLonde 0221</u>
<u>3-5/84</u>	<u>938 David Place</u>	<u>Lynne Plork</u>
<u>3/5/84</u>	<u>938 David Place</u>	<u>L. Bradley</u>
<u>3/5/84</u>	<u>938 David Place</u>	<u>Jimmy Bradley</u>
<u>3-84</u>	<u>943 S. ST. 277</u>	<u>Ed W. Rutz</u>
<u>3-84</u>	<u>943 S. St.</u>	<u>Mary Jo's Party 2702</u>
<u>3/5/84</u>	<u>1010 S' ST</u>	<u>Ann M. Cady</u>
<u>3/5/84</u>	<u>1010 'S' ST 99501</u>	<u>Don M. Cady</u>
<u>3/5/84</u>	<u>936 David Place 99501</u>	<u>R. P. Augburger 277-0928</u>

PETITION

WE, the undersigned residents of Footleggers Cove and the South Addition, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which will require solutions in the future. At present various operations of the ALASKA RAILROAD (for example, southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes.

signed:

<u>Date</u>	<u>Address</u>	<u>Name</u>
<u>3/8/84</u>	<u>522 N Street</u>	<u>Martha Beckwith</u>
<u>3/8/84</u>	<u>500 N ✓</u>	<u>Ed M. Elliott</u>
<u>"</u>	<u>" "</u>	<u>Esther McFinnitt</u>
<u>3/8/84</u>	<u>629 O. St. #207</u>	<u>Charles A. Wilbur</u>
<u>3/8/84</u>	<u>644 W. 13th Avenue</u>	<u>D. J. Jolley</u>
<u>3/9/84</u>	<u>1437 N 9th Ave.</u>	<u>Mary Louise Letter</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

PETITION

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signed:

<u>Date</u>	<u>Address</u>	<u>Name</u>
<u>3-5-84</u>	<u>936 David Place 99501</u>	<u>Joyce H. Anglemeyer</u> 277-0928
<u>3-5-84</u>	<u>804 P St #9 99501</u>	<u>Michelle (Ed) Lee</u>
<u>3-5-84</u>	<u>804 P St #6 99501</u>	<u>Jean Smith</u> 277-6013 office
<u>3-5-84</u>	<u>530 N St. 99501</u>	<u>[Signature]</u>
<u>3/5/84</u>	<u>526 M St. 99501</u>	<u>Robert E. Baker</u>
<u>3/6/84</u>	<u>433 M St.</u>	<u>Dorothy D. Wilhoop</u>
<u>3-7-84</u>	<u>333 M St #209</u>	<u>Robert M. Piazza</u>
<u>3/8/84</u>	<u>375 M Street</u>	<u>Bill Brodeur</u>
<u>3/8/84</u>	<u>520 N St</u>	<u>D. E. Rasmussen</u>
<u>3/8/84</u>	<u>520 N St</u>	<u>Lewis Kornelsen</u>
<u>3/8/84</u>	<u>500 N St</u>	<u>Kenneth Fisher</u> FERMIT E. BAKER

PETITION

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signed:

<u>Date</u>	<u>Address</u>	<u>Name</u>
<u>7 March 1984</u>	<u>804 P Street #4</u>	<u>Robert Muelap</u>
<u>3-7-84</u>	<u>804 P. Street #4</u>	<u>Virginia Muelap</u>
<u>3-7-84</u>	<u>804 P STREET #11</u>	<u>Sam P. Hilson</u>
<u>3--84</u>	<u>804 P. ST. #11</u>	<u>Nancy K. Hilson</u>
<u>3/7/84</u>	<u>804 P ST, #10</u>	<u>Harry J. Porter</u>
<u>3-8-84</u>	<u>804 "P" ST #3</u>	<u>Charles H. Hoff</u>
<u>3/8/84</u>	<u>804 P. ST. #3</u>	<u>Alice L. Hoff</u>
<u>3/8/84</u>	<u>538 M St.</u>	<u>Fredley Robatt</u>
<u>3/8/84</u>	<u>1224 U St.</u>	<u>Lynn Bannon</u>

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S LOCAL 60 Seward, Alaska UNION

PRESIDENT H.E. Rickard

March, 12, 1982

SECRETARY R.E. Morgan

Frank L Jones General Manager
Alaska Railroad
Box 7-2111
Anchorage, Ak. 99510

Dear Sir:

The membership of our local has watched with interest the course, developments, & problems which have come to light on Seward being established as a coal port.

As you are aware we are vitally interested in any thing that delays, or obstructs the shipment of coal thru Seward. We do not understand the State of Alaskas reluctance to participate in using the dredge presently in Seward to assist you in a minor, job of deepening the Railroad Dock. The cost savings alone should be incentive enough for them. We do realize the City of Seward would much prefer forcing a marriage of SUN ELL and Pullman-Torkelson which would make a coal facility at the 4th of July industrial site much more viable. This of course would assist them mightly in keeping the R.R. dock usage minimal. Then using the tack private enterprise is much better than Government competition of their docks.

We are further concerned also that the funds being used are State Funds to dredge 4th of July. We are also aware that legislation has been introduced to have the Alaska Railroad become an Alaska State identity. Therefore it would seem to us that it is in the BEST interests of all Alaskans that anything which could be done to increase or speed up the establishment of the Seward Port would be monies well spent.

We here in the I.L.W.U.-I.B.U. wish to extend to you an offer to assist you in your quest for help, and expediting the COAL, Grain, or whatever facilities of Seward's Railroad dock.

Please advise us of how, when or anyway we can be of help to you in your quest. We are presently poling our statewide membership to muster our political & Lobbying strenght on Seward's behalf.

Sincerely

H.E. Rickard

H.E. Rickard President

cc/rm/ file
ILWU, Intml



Railroad vibrations

VIBRATIONS that shake Anchorage neighborhoods along the line of the Alaska Railroad have become a subject of public concern now that the South Addition and Bootleggers Cove Community Council has taken formal action and Rep. John Cowdery has referred the matter to Gov. Bill Sheffield.

The vibrations occur with each gravel train en route from the Matanuska Valley to the gravel plant south of town. Some residents claim the shake is equivalent to an earthquake nearing 6 on the Richter scale. Last summer there were as many as eight trains each 24 hours.

The vibration problem stands to become more acute if and when trainloads of coal start moving from the Usibelli mine to Seward.

A SPOKESMAN for the railroad has brushed off the subject, suggesting that the vibrations may be caused by excavating and development work in the area. However, the spokesman also said the railroad is trying to reduce the vibrations by replacing short rail sections with long ones to reduce the number of joints.

There have been reports that the railroad has been concerned in the past year. Besides planning for the longer rails, the ballast beneath the tracks has been strengthened.

Residents have no doubt that the railroad is the cause

because vibrations occur only when a train passes. They stop when gravel hauls end for the winter season.

When the gravel trains first went into operation, the trains held their speed through Anchorage down to 10 miles a hour. This was increased to 15 miles an hour as a safety measure after it was discovered that people were trying to hop the slow-moving trains. It was after the speed-up that the objectionable vibrations started.

REP. COWDERY said in a letter to the governor that the legislature is now considering appropriations of some \$60 million to construct overhead crossings at the Northern Lights and Dimond Boulevard crossings.

He pointed out that an early solution is desirable before those appropriations are made. If, he said, it proves necessary to reroute the railroad line to avoid the sensitive soils along the inlet, the overhead crossings will not be needed.

A major portion of the west side of Anchorage is involved. The track runs from Ship Creek to Turnagain Heights and thence through Spenard to the Seward Highway area and southward through Ocean View.

It would be wise for the state to get a clear definition of the liability it might be inheriting when the railroad becomes state property.

TELEGRAM SENT 3/8/84 10:00 a.m.

TO: Elizabeth Doie
Secretary of Transportation
U.S. Dept. of Transportation
Washington D.C.

The economic recovery of the City of Seward depends in a great measure upon the concept of an open dock at the Alaska Railroad facilities in Seward.

We have just been informed that Alaska Railroad has reversed it's stated position of an "open dock" concept and intends to sole source the Seward dock without hearing or competitive bid.

I strongly object to such unilateral decisions and respectfully request a meeting with you to fully discuss all aspects.

John F. Gillespie
Vice Mayor
City of Seward

cc: Alaska Delegation in Congress
Senator Ted Stevens
Senator Frank H. Murkowski
Representative Donald E. Young

Alaska State Legislature



COMMITTEES
OIL & GAS—(CO-CHAIR)
STATE OF AFFAIRS—(VICE-CHAIR)
LABOR & COMMERCE
RESOURCES

MAR 23 1984

ANCHORAGE
P.O. BOX 10-1523
ANCHORAGE, AK 99511
(907) 344-0950

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

JUNEAU
POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

To: Representative Bette Cato, Chairperson, House Transportation
Fr: Representative John Cowdery *J.C.*
Re: Alaska Railroad
March 22, 1984

I thought you should be made aware of a problem in Anchorage concerning the Alaska Railroad. At the expense of repeating myself, I think you can deduce the problem I am speaking of by reading the letter to the Governor and the memo to the Attorney General. Neither the Governor Sheffield or Mr. Corsuch has replied to me.

I am also enclosing copies of petitions, signed by residents of the Bootleggers Cove, Turnagin Arm and Oceanview areas of Anchorage, to give you an idea of how many people view this situation as a problem that should be resolved before the state decides to purchase the railroad.

Thank you for your consideration of this serious problem.

Alaska State Legislature



COMMITTEES
OIL & GAS—ICE CHAIR
STATE OF AFFAIRS—(VICE CHAIR)
LABOR & COMMERCIAL
RESOURCES

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

MAIL ROOM
P.O. BOX 101623
ANCHORAGE, AK 99511
(907) 344-0950

JUNEAU
POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

March 12, 1984

Honorable Bill Sheffield
Governor
State of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

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Governor, we both witnessed the devastation caused by the 1964 earthquake. We saw the clay formation just below the surface of the soil slide down the hill when it failed to withstand the geotechnic pressure placed on it. The hill below the Holiday Inn had to be reinforced to prevent further slides. Presently, the ARCO building is experiencing vibrations that have been traced to a water extractor at a nearby commercial laundry establishment. This further demonstrates the extreme sensitivity of the soils in the area.

Governor Sheffield

Page 2

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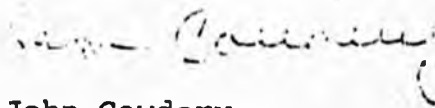
Governor Sheffield

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Sincerely,



John Cowdery
Representative-Anchorage

Mrs. Edith R. Bullock
510 L Street # 1005
Anchorage, Alaska 99501
March 14, 1984

Representative John Cowdery
State Legislature
Juneau, Alaska 99801

Dear Representative Cowdery:

I read in the Times last night about your questions on excessive railway vibrations.

For your information, our building is also effected. My apartment, on the top floor, facing the city and mountains, has a definite tremor when trains are passing heavily loaded.

I am sure all residential areas close to the railroad tracks are effected in the same manner. Anything you can do to correct this serious problem will be greatly appreciated.

Sincerely,

Edith R. Bullock
Edith R. Bullock

RECEIVED MAR 16 1984

RESOLUTION

A RESOLUTION OF THE SOUTH ADDITION COMMUNITY COUNCIL PLACING THE STATE OF ALASKA ON NOTICE THAT OPERATIONAL PROBLEMS CURRENTLY EXIST RELATING TO THE TRAIN OPERATIONS OF THE ALASKA RAILROAD. THESE PROBLEMS AND THE COST TO SOLVE THEM SHOULD BE CONSIDERED WHEN THE STATE LEGISLATURE ADDRESSES THE TRANSFER OF THE ALASKA RAILROAD FROM FEDERAL CONTROL TO STATE OWNERSHIP.

THE SOUTH ADDITION COMMUNITY COUNCIL RESOLVES:

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PASSED AND APPROVED by the steering committee of the South Addition Community Council; Anchorage, Alaska this 8th day of MARCH, 1984.

Crane C. Stern
PRESIDENT

ATTEST:

Lynn Banner

COUNCIL SECRETARY OR
MEMBER AT LARGE

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signed:

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<u>3/5/84</u>	<u>938 P. St.</u>	<u>Reuben Dungen</u>
<u>3/5/84</u>	<u>905 "S" Street</u>	<u>Phyllis J. LaLonde 279</u>
<u>3/5/84</u>	<u>905 "S" STREET</u>	<u>Max J. LaLonde 022</u>
<u>3-5/84</u>	<u>938 David Place</u>	<u>Lynne Florin</u>
<u>3/5/84</u>	<u>938 David Place</u>	<u>Ed Bradley</u>
<u>3/5/84</u>	<u>943 S ST. 277</u>	<u>Ted W. Rutz</u>
<u>3-84</u>	<u>943 S st. 270</u>	<u>Mary Jo's Rutz</u>
<u>3/5/84</u>	<u>1010 S' ST</u>	<u>Ann McCarley</u>
<u>3/5/84</u>	<u>1010 S' ST 99501</u>	<u>Ann McCarley</u>
<u>3/5/84</u>	<u>936 David Place 99501</u>	<u>R. P. Anglemo 277-0928</u>

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signed:

<u>Date</u>	<u>Address</u>	<u>Name</u>
<u>7 March 1984</u>	<u>804 P Street #4</u>	<u>Robert M. Murphy</u>
<u>3-7-84</u>	<u>804 P. Street #4</u>	<u>Virginia Villwald</u>
<u>3-7-84</u>	<u>804 P STREET #11</u>	<u>Sam P. [Signature]</u>
<u>3-7-84</u>	<u>804 P ST. #11</u>	<u>Dorothy K. Nelson</u>
<u>3/7/84</u>	<u>804 P ST, #10</u>	<u>Harry J. Forten</u>
<u>3/8-84</u>	<u>804 'P' ST #3</u>	<u>Charles H. [Signature]</u>
<u>3/8/84</u>	<u>804 P ST. #3</u>	<u>Alice L. [Signature]</u>
<u>3/8/84</u>	<u>538 M St.</u>	<u>Fridley Robatt.</u>
<u>3/8/84</u>	<u>1224 U st.</u>	<u>Lynn Bannon</u>

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<u>3-5-84</u>	<u>804 P St. #6 99501</u>	<u>Jan Smith</u>	277-6013 off
<u>3-5-84</u>	<u>530 N St. 99501</u>	<u>(Signature)</u>	
<u>3/5/84</u>	<u>526 M St. 99501</u>	<u>Balena E. Baker</u>	
<u>3/6/84</u>	<u>433 M St.</u>	<u>Dorothy D. Wilcox</u>	
<u>3-7-84</u>	<u>333 M St #209</u>	<u>Robert M. Piazza</u>	
<u>3/8/84</u>	<u>375 M Street</u>	<u>Bill Buckman</u>	
<u>3/8/84</u>	<u>520 N St</u>	<u>D. E. Rasmussen</u>	
<u>3/8/84</u>	<u>520 N St</u>	<u>Laurie Kinnaman</u>	
<u>3/8/84</u>	<u>500 N St</u>	<u>Ken W. Fisher</u>	
		<u>FORNIT E. BRILLER</u>	

PETITION

WE, the undersigned residents of Bootleggers Cove and the South Addition, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which will require solutions in the future. At present various operations of the ALASKA RAILROAD (for example, southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes.

signed:

<u>Date</u>	<u>Address</u>	<u>Name</u>
<u>3/8/84</u>	<u>527 N Street</u>	<u>Martha Beckwith</u>
<u>3/8/84</u>	<u>500 N ✓</u>	<u>E. M. Elliott</u>
<u>"</u>	<u>" "</u>	<u>Esther MacInnis</u>
<u>3/8/84</u>	<u>629 O. St. #207</u>	<u>Charles A. Uhl</u>
<u>3/8/84</u>	<u>644 W. 13th Anchorage</u>	<u>D. Foley</u>

PETITION

WE, the undersigned residents of the Anchorage Railroad Corridor, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which require immediate solutions. At present various operations of the ALASKA RAILROAD (for example - southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes. In addition, the soil conditions of this area are rated as high hazard earthquake zone with the clay underlayment subject to shifting with the continuous vibration action which is hazardous to properties and life.

<u>DATE</u>	<u>ADDRESS</u>	<u>NAME</u>
<u>3-14-84</u>	<u>2515 Resolution Drive</u>	<u>Erica D. Silberman</u>
<u>3-18-84</u>	<u>2515 Resolution Drive</u>	<u>Richard L. Silberman</u>
<u>3-18-84</u>	<u>2457 Resolution Dr.</u>	<u>Tom C. Gillman</u>
<u>3-18-84</u>	<u>2457 Resolution Dr.</u>	<u>Matthew R. Gillman</u>
<u>3-18-84</u>	<u>2457 Resolution Dr.</u>	<u>Anne C. Gillman</u>
<u>3-18-84</u>	<u>2456 Resolution Dr.</u>	<u>Henry E. Elledge</u>
<u>3-18-84</u>	<u>2456 Resolution Dr.</u>	<u>Carol H. E. Elledge</u>
<u>3-18-84</u>	<u>2504 Resolution Dr.</u>	<u>Robert R. Hagley</u>
<u>3-18-84</u>	<u>2520 Resolution Drive</u>	<u>John W. Nelson</u>
<u>3-18-84</u>	<u>2520 Resolution Dr.</u>	<u>Shonda M. Nelson</u>
<u>3-18-84</u>	<u>2516 Discovery Court</u>	<u>John W. Nelson</u>
<u>3-18-84</u>	<u>2516 Discovery Court</u>	<u>May D. Nelson</u>
<u>3-18-84</u>	<u>2547 Discovery Ct.</u>	<u>Michael J. Nelson</u>
<u>3-18-84</u>	<u>2547 Discovery Ct.</u>	<u>Alan Nelson</u>
<u>3-18-84</u>	<u>2517 Kariissa Dr.</u>	<u>John P. Hattala</u>

PETITION

16.

WE, the undersigned residents of the Anchorage Railroad Corridor, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which require immediate solutions. At present various operations of the ALASKA RAILROAD (for example - southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes. In addition, the soil conditions of this area are rated as high hazard earthquake zone with the clay underlayment subject to shifting with the continuous vibration action which is hazardous to properties and life.

<u>DATE</u>	<u>ADDRESS</u>	<u>NAME</u>
7 Feb 16 1984	2503 Resolution Drive	Betty A. Suelok
16 Feb 1984	2503 Resolution Drive	Ellen Ruffalo
16 Mar 1984	3781 Lebron Ct	Storia Skerini
MAR 16 1984	2503 RESOLUTION DR	John A. [unclear]
Mar 16 1984	920 Bering Ct	Sigmon Buechlich
Mar 16 84	2301 McKee Anch. AK	Xabentol Meyer
3/16/84	2711 [unclear] [unclear]	Will C. Herten
Mar 18 1984	2135 WAPER DR. ANCH. AK	John S. [unclear]
3-18-84	2613 Draper Dr.	Lindley Nixon
3-18-84	2613 Draper Dr.	Leslie Nixon
3/18/84	2600 Draper Drive	Lea, K. [unclear]
3/18/84	2601 W 27th	Charles R. [unclear]
3/18/84	300 Danville Cir	[unclear]
3/18/84	4001 Country Dr.	Andrea [unclear]
3-18-84	300 Danville	Kelly Lewis
3-18-84	201 E 16th	Renton A. Miller

PETITION

WE, the undersigned residents of the Anchorage Railroad Corridor, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which require immediate solutions. At present various operations of the ALASKA RAILROAD (for example - southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes. In addition, the soil conditions of this area are rated as high hazard earthquake zone with the clay underlayment subject to shifting with the continuous vibration action which is hazardous to properties and life.

<u>DATE</u>	<u>ADDRESS</u>	<u>NAME</u>
3/18/84	2504 Loussac Dr.	Orlander
3/18/84	2432 Loussac Dr.	James J. Jensen
3/18/84	2432 Loussac Dr.	Sandra S. Terrell
3/18/84	2408 Loussac Dr.	Margaret H. Burns
3/18/84	2408 LOUSSAC DR	K. J. King
3-18-84	2378 LOUSSAC DR	W. E. Ed
3-18-84	2546 Loussac Dr.	Maria
3/18/84	2324 Loussac Dr.	John
3/18/84	2312 Loussac Dr.	William J. Ellis
3-18-84	2260 LOUSSAC	Bill Potts
3-18-84	2260 Loussac Dr.	Barbara Potts
3/18/84	2371 Loussac Dr.	Robert J. Anderson
3/18/84	2407 Loussac Dr.	Janette Heenan
3/18/84	2431 Loussac Dr.	William J. King
3-18-84	244 Loussac Dr.	John B. Thomas
3-18-84	2447 Loussac Dr.	Richard F. Vores

PETITION

WE, the undersigned residents of the Anchorage Railroad Corridor, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which require immediate solutions. At present various operations of the ALASKA RAILROAD (for example - southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes. In addition, the soil conditions of this area are rated as high hazard earthquake zone with the clay underlayment subject to shifting with the continuous vibration action which is hazardous to properties and life.

<u>DATE</u>	<u>ADDRESS</u>	<u>NAME</u>
3/16/84	2531 La Honda Dr.	Paul M. Richards
3/16/84	2531 La Honda Dr.	Bonnie E. Richards
3/16/84	2543 LA HONDA DRIVE	Mabel C. Palle
3/16/84	2553 La Honda	Walter Palle
3/16/84	2553 LA HONDA	Edna Palle
3-15-84	2511 LA HONDA	Wm. B.
3/15/84	2513 La Honda Dr.	Linda E. Fadden
3/15/84	2601 La Honda Dr.	Charlene C. Fadden
3/15/84	2603 La Honda Dr.	Patricia H. Victor
3/15/84	2603 LA HONDA DR	
3/17/84	2531 La Honda Dr.	Sylvia Singleton

PETITION

WE, the undersigned residents of the Anchorage Railroad Corridor, are hereby putting the State of Alaska on notice that there are a number of problems involving the ALASKA RAILROAD which require immediate solutions. At present various operations of the ALASKA RAILROAD (for example - southyard switching operation, gravel hauling) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life of the residents of the community through which the railroad passes. In addition, the soil conditions of this area are rated as high hazard earthquake zone with the clay underlayment subject to shifting with the continuous vibration action which is hazardous to properties and life.

<u>DATE</u>	<u>ADDRESS</u>	<u>NAME</u>
3-15-84	2441 La Honda	Richard Parrish
3-15-84	"	Page Hoode
3-15-84	2443 La Honda Dr	Bobby J. Wilson
3-15-84	3927 Gardner #3 Anch 99508	Kristina Johnson
3/15/84	2401 La Honda Dr	Krista Tiel
3/15/84	2401 La Honda Dr	Paul (Suz)
3/17/84	2463 La Honda Dr. 99503	Michael Bush
3/18/84	148 W. 53rd 99503	Tommy
3/17/84	2400 La Honda Dr 99503	John
3/18/84	2450 La Honda Dr 99503	John
3/18/84	1403 P	Rev. J. L. ...
3/18/84	1403 P	...



101 Benson Suite 303
Anchorage, Alaska 99503
907-561-5259

BUILDING MANAGEMENT SERVICES CORPORATION

March 20, 1984

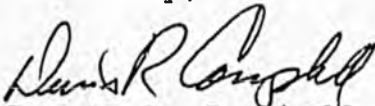
Representative John Cowdery
State Capitol
Pouch V
Juneau, Alaska 99811
c/o Room 409

Dear Mr. Cowdery:

Our firm is the current property manager of 510 L Street, Anchorage, Alaska 99501. As you may know, there are eighteen (18) residential condominiums on the top three floors of the building. I feel impeded to inform you, that many of the owners of these units have expressed concern over the vibration they have experienced when the train is passing.

We appreciate your efforts on informing the Governor of the area, concerning the problem.

Sincerely,


Dennis R. Campbell
Building Manager

DRC/te

Alaska State Legislature



COMMITTEES
OIL & GAS—(CO-CHAIR)
STATE OF AFFAIRS—(VICE-CHAIR)
LABOR & COMMERCE
RESOURCES

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

ANCHORAGE
P.O. BOX 10-1623
ANCHORAGE, AK 99511
(907) 344-0950

JUNEAU
POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

March 21, 1984

Mr. Norm Gorsuch, Attorney General
Department of Law
Capital Room 412
Juneau, Alaska 99801

Dear Norm,

With increasing awareness about problems in Anchorage caused by vibrations from heavy trains, I have a legal question that I would like you to answer.

As you know, there are several residents in the Bootleggers Cove, Turnagin Arm, and Oceanview areas of Anchorage that are expressing their concern about vibrations caused by these heavy trains. Residents in the downtown area are especially worried since most of the building there has been on geotechnically weak clay soil.

Before the legislature decides whether or not to acquire the railroad I think it would be wise for us to have a clear definition of the state's liability in the event that these vibrations continue to cause damage to structures in the vicinity of the railroad corridor.

Because the legislature is dealing with the railroad issue at the present time I would appreciate your timely response to this inquiry.

Thank you,

John J. Cowdery

A handwritten signature in cursive script that reads "John J. Cowdery".

Representative, District 8

Tue 5/15 meeting

House Transportation
Subcommittee

3/5/84

Railroad Work Order
HB 512

010 Miller-Chair
Meeting to order - aboard, Miller, Flood
+ Davis

Changes

- Pg 1 line 13 will to may
- Pg 1 line 21 ~~necessary for transport infrastructure~~
achievement of

446 - side 2 Tape 1

1 Commissioner + 6 voting members - fix later in next amend?

{ West Virginia's statute used in putting together SB 10 } - Healey -
{ So Dakota

* that many states that have own RR

Re SB 10 - language pg 7 - language

886 - Pg 4 - Subsection ~~do~~ - SB 10 pg 7 - crew's work draft copy

894 Tape 2 side 1/3

~~XXXXXXXXXXXXXXXXXXXX~~

1213 - put in some language from SB 10 &
* happens only under next amend.

1236 add in language Pg 5 - work draft (line 7-10 area)
- check on daily rate of Perm Fund board + use instead
of \$250.00

Work
draft
copy
changes

Pg 5 line 28 - five net 4

Pg 6 line 1 - five net 4

Subcommittee - Work Session 3/6/84 8:40am

Miller, Akshil, Flood, Davis, McBride

Wren, Mark, Clyde

Topic 1 - Side 1

pg 6 - Senate version j #3, #4 language

pg 6 - work draft use Senate 3⁺ in work draft
3,4,5,6

#4 Senate WD - notify agency supply to leg for subcommittee

will notify the leg of any pending applic

for state support of subcommittee for any service not self-sustaining?

redundant

work
pg
27

Topic 1 - Side 2 #448

Exec Office Secm.

to 695 adjourned break till 3:15 pm

Subcommittee HB 512 3/6/84

Miller, Albert, Davis, Floyd / Gurr, Clyde, Mark, David

#001...

pg 7 leave @ 150 days - 1st meeting

quorum on bonding pg 7 line 10 comma (1) - latest w/copy 3/6/84

authorization vs concurrence pg 7 line 19 -

• Specific board approval... pg 7 line 19 - 2 wording

42,40,700 - Art 7 Personnel

leave conflict of interest as is

664 Tape 2 Side 2/4

- The bill shall be rule provided for a ^{bill} procedure
for its meeting

- adopted Rules Section from HB pg 10

- pg 10 - line 15 - ~~shall~~ substitute Senate language

4 330 - Tape 3 Side 1/5

- annual ^{Report and} ~~audit~~ - last sentence of Senate version to 512 pg 10 line 22
to pg 11 line 8

- leave as is - annual audit

adjourns 5:00 - out of Art 4

Thurs 8:30 AM - Subcommittee

Target Date - Monday

Subcommittee 3/8/14 RR-512

Abel, Miller, Fenn, Davis, Szymanski / Clark, Rogers

art 4 powers + duties

396 (15) tie in w/14

400 the key - could, or - sen. thought about

488 ABOVE ANOTHER RR come in and compete w/ARR?

CLARIFICATION OF

16 Applied to approp. agencies

430

17 RATES TO BE CHARGED

- Corp. sets the rates

- clause in SB ref. Fed. bill section ICC be consistent w/ICC regs...

- clarifies situation - doesn't hurt to add reference

- be consistent w/ Sen. language

pg 13 see Senate # 10 Jan 19?

Obligations of 45 USC 1201-1214 - what are they pg 14 line 1 3/6 draft
↓ spell out in bill

Terry Carter?

650 Tape 1 - Sect 2

Sony -

840 - ~~line~~ pg 14 line 5.5 - ^{insert} (July 14 language...)

900 - end 4:30 see 25 pg 14 3:30 today

Subcomm HB 512 - Afternoon - 3/8/84

Mullen, Akert, Flood, Davis,
Sims, Darr, Mark

pg 14 subsection 25 - starting point
(Work Draft 6 from Senate)

Akert - move + let unanimous consent we adopt all
changes made thus far

Flood - object to leave room for further change

Mullen - OK -

303 ~~280~~ - pg 15 line 10 a interface to connect with affected state agencies

387 pg 15 line 22 - (when) reports due / consolidate w/ annual report etc

419 cross reference ^(sub) section (b) ~~on pg 14~~ ~~write~~ for pg 16 line ~~3, 100~~

508 Rail Properties -

659 - Tape 2 Side 2
Subsurface nt's discussion

792 Working Draft 6

910 Replace line 5, 6, 7, 8 ~~of~~ HB 512 w/ SB 10 . . .

Rail Prop: after ⁽⁵⁻²⁾ end - deleted all lang to Corp (pg 16) +
+ inserted language from SB 10

8:1106 Adapt Senate language ~~for~~ pg 19 (Draft 6) section (d).

1310 Add subsection d . . . - (end Tape 2 - Side 2)
Recess 8:30 Friday

RR Subcommittee HB 512 3/16/14 8:30 am Attorney General
Miller, Harris, Flood, Abbott Mark, David.

026 pg 16 - 512 pg 19 - Senate - Sec 42.40.420

329 adapt language Senate draft 7 pg 19 Sec 42.40.420 Class, Reg, Use
of State land for RR purposes

- Such lands left.

- DNR - how they will request/use of land;

- diff departmental order vs written finding

544 7. pg 17 - 512 - adapt: pg 20 Senate ~~to~~ to replace in C + 2

pg 17/19 - checking in lateral support of surface/sub sts

662 Tape 1 side 2

cut iff eminent domain

72720 2:30 here pg 20/pg 18

House transportation - ~~unavailable~~ 11/17/84 - 11/18/84

Flood, Miller, Abbott, Davis, Rogers, Hickey, Soerksen

was messy - OOA

Jack Burton of RR people
Jack Vallenty

- review of Amest Domain

- adding Municipal RT-of-Way section from Senate Bill

661 Tape 1 Side 2

760 - subsection c, pg 34 - Senate draft adopted

↓
we need it

pg 34 Agreement (a) - flagged

binding arbitration --

1033 Recess 11:15 am break

1380 Tape 2 Side 1

(560?) 12:35 break

1:50 pm return

660? (655?) Tape 2 Side 2

1320 Tape 3 Side 1 1:40 pm

Miller - amendments by Miller adopted

363 8:30 Monday

HO 92 Submittal RE 3/12/04 Abbot, Floyd, ~~Miller~~ Miller, Crocker
Dawson, Hekey, Rogers, Clyde

190 End--- meet @ 3:15 pm

Wed 3:15 PM
Subcommittee
Meeting

Subcommittee - RR 3/13/84 3:20 PM

Mullen, Flood, Board, Coenker, Rogers, Hickey, Clyde
Terry Valinsky, Karen Jose?

Part 7 - Personnel

CB agreements

pg 29 Senate draft - CB rights

- ① - drop subject d in pg 33 House bill
adopt 42.40.760 in lieu of that - pg 29 Senate Draft #8 - latest version
- ② - Hickey Amendment for sec 42.40.770 ~~amendment~~ for HB 512
 - ↓ adopt (a) - Hickey's w/ changes - pick up Board's amendment
 - ↓ adopt (b) - Senate pg 29 under 42.40.770
- ③ - Sec 42.40.780 - adopt from Senate 29, 30 to House
- ④ - adopt pg 30 42.40.790 - (a) in all CB units (Senate for House 512)

664 - Side 2 Tap 1

binding arbitration discussion - if needed,
Steve - existing law concerning strikes. - Steve

- ⑤ adopted 42.40.880 - Hickey's amendment
- ⑥ sec 42.40.910 Senate bill pg 32 adopt for our bill

Areas to Cover:

- Financial Section not covered -
- strikes / CB / labor relations
- 2 tier system in regard to RR pg 16 of our Draft 512 pg 16 line 24 - end of sec 8(d)
- 1281 adjourned -

Subcommittee - 3/15/84 - HB 512 + RR -

Miller, ~~Abraham~~, Coakley, Rogers, Hickey,



443 side 2/Tape 1

1 more meeting 8:30 Monday Morning

Subcommittee HB 512 3/14/84

Miller, Aburd, Davis, Soerksen, Rogers, Hickey, Clyde

NLRB influence/role with ACLR

advisory arbitration } definition
~~binding~~ binding arbitration }
mediation }

- go to strike - no arbitration unless both parties agree to it - preserve &
~~mediation~~ mediation

2- advisory arbitration

3- strike or binding arbitration

660 Tape 01 Side 2

Adjourn 4:15 pm

3:15 tomorrow

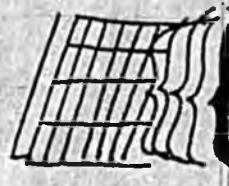
Miller, Flood, Abard Sorenson, Hekey, Rye, Elaine Andrews



put it's in class 2 position * all that pertains

Mediated Arbitration: } 23.40 class 2 - limited rt to strike
same period for } until ~~withholding of funds~~ ⁱⁿ ~~regards to~~
mediation + arbitration for disputes

- emp can ask it to ask 3rd party to enjoin strike
- both parties can submit to binding arb. as a right



FHCS - Fed Med - Conciliation Svc

FSIP - Fed Svc Impasse Panel

CERTIFICATIONS REQUIRED IN 543 ARE CONTAINED IN RAILROAD TRANSFER ACT
SEC 604

38,000 ARR ACRES

3800 CLAIMED ORIGINALLY

NOW 1600-1800 ACRES STILL CLAIMED

ECLWTNA

CLAIMS ARE GOING WELL

TEST IS ACTUAL USE, IF THE RAILROAD CAN

SHOW ACTUAL USE THE CLAIM WILL BE INVALID

CLAIMS WILL BE SETTLED BEFORE ARR IS TRANSFERRED

ANSCA IS FEDERAL LEGISLATION DEALING WITH

FEDERAL LANDS AND DOES NOT AFFECT AK STATE

LANDS

ESTABLISHED IN 1914

AUTHORIZED 1000 MILES OF RAILWAY RIGHT OF WAY

NO CONSIDERATION HAS BEEN GIVEN TO EXTENSION LANDS BECAUSE
THOSE LANDS HAD NEVER BEEN DESIGNATED.

DEADLINE JULY 14, 1984

1 million FOR OSHA UPGRADE

Pension OPM

AT FIRST THEY SHOWED THE UNFUNDED LIABILITY REQUIRED
28-40% CONTRIBUTION (OF WAGES PAID)

NOW 7% PAYMENT IS REQUIRED THE REST WILL BE MADE UP
BY THE FEDERAL GOVT.

ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

Sec. 42.40.700 PERSONNEL. Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation [except that the provisions of AS 39.50.010-39.50.200 shall apply to the members of the board and all appointed executive officers.]

Sec. 42.40.710. COLLECTIVE BARGAINING RIGHTS. The provisions of the Public Employee Relations Act (AS 23.40.070-23.40.260) do not apply to the corporation or to its employees. However, employees of the corporation, except the chief executive officer and other executive officers appointed by the chief executive officer, may self organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 42.40.720. RAILROAD LABOR RELATIONS AGENCY. (a) There is established a railroad labor relations agency which consists of three members appointed by the governor. One member shall be a member of the state labor relations agency (AS 23.40). Members serve at the pleasure of the governor.

(b) The railroad labor relations agency shall perform the functions described in AS 42.40.700-42.40.990 to carry out the provisions of this article.

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

Sec. 42.40.730. COLLECTIVE BARGAINING UNIT. The railroad labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS. 42.40.700-

42.40.990 the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

Sec. 42.40.740. REPRESENTATIVES AND ELECTIONS. (a) The railroad labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

(1) by an employee or group of employees or an organization acting in their behalf alleging that 30 per cent of the employees of a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the corporation as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

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

(b) If the railroad labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the railroad labor relations agency finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which organization the employees desire to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the

railroad labor relations agency or an election in a bargaining unit agreed upon by the parties. The railroad labor relations agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election it shall be certified by the railroad labor relations agency as exclusive representative of all the employees in the bargaining unit.

(c) An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding 12 months.

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by the corporation by mutual consent.

(3) No election may be directed by the railroad labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

Sec. 42.40.750. UNFAIR LABOR PRACTICES. (a) The corporation or its agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in AS 42.40.710;

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

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under AS 42.40.010-42.40.990;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this article prohibits the corporation from making an agreement with an organization to require as a condition of employment

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

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

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 42.40.710
or

(B) the corporation in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with the corporation,

if it has been designated in accordance with the provision of AS 42.40.700-42.40.990 as the exclusive representative of employees in an appropriate unit.

Sec. 42.40.760. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 42.40.750 or a written accusation that a person subject to AS 42.40.700-42.40.990 has engaged in a prohibited practice, is filed with the railroad labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probably cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding.

Sec. 42.40.770. COMPLAINT AND ACCUSATION. If the railroad labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 42.40.700-42.40.990, or before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62).

Sec 42.40.780. ORDERS AND DECISIONS. If the railroad labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the railroad labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of AS 42.40.700-42.40.990. If the railroad labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the railroad labor

relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

Sec. 42.40.790. ENFORCEMENT BY INJUNCTION. The railroad labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the railroad labor relations agency. Upon a showing by the railroad labor relations agency that the person has engaged or is about to engage in the practice, an injunction restraining order, or other order which is appropriate may be granted by the court and shall be without bond.

Sec. 42.40.800. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For the purpose of the investigations, proceedings, or hearings which the railroad labor relations agency considers necessary to carry out the provisions of AS 42.40.700-42.40.990, the railroad labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

(d) If a person refuses to obey a subpoena issued under AS 42.40.700-42.40.990, the superior court in the district in which the person resides or is found may, upon application by the railroad labor relations agency, issue an order requiring him to comply with the subpoena.

Sec. 42.40.810. REGULATIONS. The railroad labor relations agency shall adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of AS 42.40.700-42.40.990.

Sec. 42.40.820. PENALTY FOR VIOLATION OF ORDER OR DECISION. A person who violates a provision of an order or decision of the railroad labor relations agency is guilty of a misdemeanor and is punishable by fine of not more than \$500.

Sec. 42.40.830. MEDIATION. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between the corporation and an organization, the railroad labor relations agency shall appoint a competent, impartial, disinterested person to act as mediator in any dispute on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the railroad labor relations agency has any power of compulsion in mediation proceedings.

*Revised (1)
class?*

Sec. 42.40.840. STRIKES. Ninety days following the mediation process proscribed in Sec. 42.40.830 of this Act, employees of a collective bargaining unit may engage in a strike if a majority of the employees in that collective bargaining unit vote by secret ballot to do so.

Sec. 42.40.850. AGREEMENT. (a) Upon the completion of negotiations between an organization and the corporation, if a settlement is reached, the corporation shall reduce it to writing in the form of an agreement. The agreement shall include a term for which it will remain in effect, not to exceed three years. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency.

(b) The Department of Administration shall participate in labor negotiations between the corporation and an employee organization. The corporation

shall seek advice of the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, and other terms and conditions of employment. However, the final decision regarding collective bargaining agreements, shall be made by the board.

Sec. 42.40.860. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of a corporation employee within a bargaining unit, the corporation shall deduct from the payroll of the employee the monthly amount of dues, fees and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative.

Sec. 42.40.870. EXEMPTION FROM ARTICLE 7. Notwithstanding the provisions of AS 42.40.8⁶0, a collective bargaining settlement reached, or agreement entered into, under AS 42.40.8⁵0 that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the railroad labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The receiving union or association shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor or employee organization. The union or association shall submit proof of contribution to the railroad labor relations agency.

Sec. 42.40.880. DEFINITIONS. In AS 42.40.700-AS 42.40.880,

(1) "railroad labor relations agency" means railroad employee labor relations agency with regard to the corporation and employees of the corporation.

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 42.40.700-42.40.990.

(3) "organization" means a labor or employee organization of any kind in which employees participate and which exists for the primary purpose of dealing with the corporation concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment.

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

(5) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of the corporation.

**HB 512
ARTICLE 7**

**COMPARISON OF 3/15/84 WORK DRAFT
WITH PROPOSED DRAFT**

Sec. 42.40.700 PERSONNEL. (a) Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation.

Our draft is identical, except that we have made the "conflict of interest" provisions of AS 39 apply to the board and all appointed executive officers.

(b) The collective bargaining agreements in effect on the date of transfer between the corporation and its employees shall remain in effect until they expire by their terms or, as required under 45 U.S.C. 1206 (Alaska Railroad Transfer Act of 1982), they are renegotiated, subject to the approval of the board.

This language is not included in our draft because similar language is already included in the "temporary law" section of the bill.

(c) Subject to the provisions of 45 U.S.C. 1206 (Alaska Railroad Transfer Act) within 180 days of the first meeting of the board, the board and representatives of employee bargaining units shall implement ground rules for the re-negotiation of collective bargaining agreements.

This language is not included in our draft, but could be included in the "temporary law" section of the bill.

Sec. 42.40.710 COLLECTIVE BARGAINING (a) The provisions of AS 23.40.010 - 23.40.080, AS 23.40.110, AS 23.40.200 - 23.40.260 (Public Employee Relations Act) do not apply to the corporation or to its employees. However, employees that are not executive officers may

organize, and form, join, or assist an organization to engage in collective bargaining with respect to wages, hours and other terms and conditions of employment.

This language provides that selected sections of the Public Employees ~~Relat~~ Act (PERA) apply to the railroad corporation, ^{Relat 1045} and exempts them from other sections. The language in our draft exempts them from all of the provisions of PERA, and incorporates language from appropriate provisions of PERA as part of the railroad bill.

(b) The Department of Administration may participate in labor negotiations between the corporation and an employee organization. The corporation shall seek advice of the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, and other terms and conditions of employment. However, the final decision regarding collective bargaining agreements shall be made by the board.

This language is not consistent with the position of the Administration. But, to be consistent with the Committee's draft we have included the same language in Sec. 42.40.850 (b) of our draft (except that we have changed may participate to shall participate).

(c) An agreement executed between the corporation and an employee organization shall provide for a grievance procedure in which the final step is binding arbitration. The agreement shall define "grievance" for purposes of this section.

Our draft includes comparable language in Sec. 42.40.850 (a).

Sec. 42.40.720 RAILROAD EMPLOYEES LABOR RELATIONS AGENCY (a)
There is established a railroad employees labor relations agency that consists of three members appointed by the governor. One member shall be a member of the state personnel board. Members serve at the pleasure

of the governor.

Our draft includes similiar langauge in Sec. 42.40.720

(b) The railroad labor relations agency shall perform the functions described in AS 23.40.090 - 23.40.100, and AS 23.40.120 - 23.40.190.

Our draft contains similiar language. But, some of the sections of AS 23.40 referenced in this language are incorporated into the language of our draft.

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

Our draft contains the same language.

Sec. 42.40.730 ADVISORY ARBITRATION (a) If efforts at mediation under AS 23.40.190 fail to resolve a dispute, the dispute shall be submitted to advisory arbitration. The corporation shall choose one of the arbitrators, and the railroad employees labor relations board shall choose one of the arbitrators.

(b) Arbitration of the dispute shall be conducted under AS 09.43.100 to the extent that the sections do not conflict with this section. A decision reached by the arbitrators shall not be binding upon the parties.

Our draft substitutes Sec. 42.40.830 (MEDIATION) for this section.

Sec. 42.40.740 STRIKES (a) After submitting a dispute to advisory arbitration, employees may engage in a strike of a majority of all employees in collective bargaining units vote by secret ballot to do so.

We include a strike section in Sec. 42.40.840 but have added a provision for a 90 day "cooling off" period, and have revised the language to assure equal representation for each employee.

(b) Notwithstanding the provisions of (a) of this section, the employees of the corporation may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

We have deleted this section, because it is redundant. Sec. 23.40.710 (c) of the House draft and Sec. 42.40.850 (a) of our draft already provide for this.

Sec. 42.40.750 POLITICAL ACTIVITIES (a) Money, assets, or property of the corporation may not be used for political activity. However, board members and employees of the corporation may communicate with and appear before committees of Congress, the State legislature, and municipal governing bodies in connection with matters directly affecting the corporation.

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

This section is not in our draft, but there is no objection to including it.

Sec. 42.40.760 PROHIBITED ACTS (a) The railroad chief executive officer, or any person employed by the corporation may not directly or indirectly:

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

(2) require or coerce any employee of the corporation to make any report concerning any of his/her activities or undertakings unless the activity or undertaking is related to the performance of his official duties.

(3) except as directly related to the performance of his/her official duties, require or coerce any employee of the corporation to submit to any interrogation or examination or psychological test which is designed to elicit from him information concerning

(A) his personal relationship with any person connected with him

by blood or marriage,

(B) his/her religious beliefs or practices,

(C) sexual matters

(D) his/her political affiliation or philosophy

(4) coerce any employee of the corporation to invest or contribute his earnings in any manner or for any purpose;

(5) restrict or attempt to restrict after-working-hour statements, pronouncements or other activities, not otherwise prohibited by law or personnel rule, of any employee of the corporation, if the employee does not purport to speak or act in an official activity.

(b) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of corporation employees suspected of being involved in criminal activity.

This section is not included in our draft because we assume that these provisions would be included in the personnel rules of the corporation. There is no objection to including the language in the law.

Page 2

Line 20

(E) the corporation will provide necessary and desirable freight and passenger rail transportation services to residents, businesses, visitors, and military installations in the state;

(F) the corporation will provide safe, economical, and efficient transportation to residents, businesses, visitors, and military insdtallations in the state;

(G) the corporation will develop and implement plans for a transportation network. 2

Subsection (E) is deleted and subsections (F) and (G) are renumbered (H) and (I), respectively.

The board consists of (five) the commissioner of the Department of Transportation and Public Facilities and six voting members appointed by the governor. These (five) six 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. Except for the commissioner of the Department of Transportation and Public Facilities, (A) a voting member may not be a state officer or employee.

(c) Unless prohibited by law, one voting member shall be or have been an executive official of an American railroad that is not now or was never a connecting carrier of the Alaska railroad.

member of the board is entitled to compensation at a rate of (\$200) \$250 for

ARTICLE 2. MANAGEMENT.

Sec. 42.40.090. MANAGEMENT BY THE BOARD. The board is responsible for the management of the corporation but shall delegate certain powers and duties to the chief executive officer in accordance with AS 42.40.110. In carrying out its responsibilities under this section the board shall, subject to AS 42.40.110,

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

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

(3) Generally manage the corporation on a self-sustaining basis;

(4) apply to the legislature for a subsidy if it is required to maintain a service which is not otherwise self-sustaining;

(5) provide for safe, efficient, and economical transportation to meet the overall needs of the state;

(6) raise needed capital by issuing obligations of the corporations while insuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity.

(c) (General or particular) Specific board authorization or concurrence is required for the following:

(12) the exercise of the power of eminent domain; and

(13) collective bargaining agreements as provided by 42.40.700.

adopted

Sec 42.40.220. MINUTES AND NOTICES OF MEETINGS. The board shall keep minutes of each meeting. Reasonable notice of the meetings shall be provided to the public.

Sec. 42.40.230. RULES. The board shall establish a procedure for adopting rules to carry out its functions and the purposes of this chapter. Within 90 days after its first meeting the board shall adopt rules establishing a procedure for giving advance public notice and an opportunity for the public to comment on proposed ^{rules} regulations of the authority that, in the determination of the board, will have a substantial impact on the public or be used in the authority's dealings with a significant segment of the public.

(b) The rules shall also include a procedure for the adoption of emergency rules when the adoption of an emergency rule is essential to continue or to reinstate the orderly operation of the corporation's facilities or program.

*replace with rules
strike out rules
section in 512*

Page 9 Line 3

(2) adopt rules;

Page 11 Line 27

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

Page 13 Line 18

(1) railroad rights-of-way or easements transferred under the federal act or otherwise acquired shall be (classified) reserved as railroad land or (utility) railroad corridors;

Further work on lands

delete exclusive / subsurface

90/180 days

Sec. 42.40.530. INSURANCE. (a) The corporation shall protect its assets, services, and personnel by partially self-insuring its risks, and by maintaining Excess Casualty, Property, Business Interruption, Marine, Boiler and Machinery, Pollution Liability, .. and Miscellaneous Insurances in amounts reasonably calculated to cover potential claims for bodily injury, death or disability, consequential and property damage that may arise or be related to its operations and activities, naming the State as an additional insured.

(b) The Corporation may contract with the Department of Administration, Division of Risk Management for the provision of all or part of the requirements in subsection (a).

replace with

19 Sec. 42.40.710. COLLECTIVE BARGAINING RIGHTS. (a) The
20 provisions of the Public Employee Relations Act (AS 23.40) do not
21 apply to the corporation or to its employees. However, employees of
22 the corporation, except the chief executive official and other execu-
23 tive officials appointed by the chief executive official, may self
24 organize and form, join, or assist an organization to engage in col-
25 lective bargaining with respect to wages, hours and other terms and
26 conditions of employment.

27 (b) The collective bargaining agreements between the
corporation and its employees shall remain in effect consistent
with 45 U.S.C. 1206 (Alaska Railroad Transfer Act of 1982).

 Sec. 42.40.720. AGREEMENT. (a) The Department of
Administration shall participate in the negotiations between the
corporation and an employee organization. The corporation may
not enter into a collective bargaining agreement concerning
wages, hours, or other terms and conditions of employment unless
the proposed contract terms are approved by the Department of
Administration.

 (b) An agreement executed between the corporation and an
employee organization shall define "grievances." The agreement
shall provide for a grievance procedure in which the final step
in the procedure is binding arbitration.

continued

Sec. 42.40.730. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY.

(a) There is established a railroad employees labor relations agency which consists of three members appointed by the governor. One member shall be a member of the labor relations agency (AS 23.40). Members serve at the pleasure of the governor.

(b) The railroad labor relations agency shall perform the functions described in AS 23.40.090 -- 23.40.190 to carry out the provisions of the article.

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

Sec. 42.40.740. STRIKES. (a) Employees of the corporation may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(b) Notwithstanding the provisions of subsection (a), the employees and the corporation may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

A M E N D M E N T

Offered in the HOUSE

By Clocksin

TO: HB 512

Page 16, after line 10, insert a new section to read:

"Sec. 42.40.460. MUNICIPAL RIGHT-OF-WAYS. Upon request of a municipality the corporation shall grant to the municipality a right-of-way in a railroad utility corridor or in land owned by the corporation to be used for a pedestrian walkway or trail. Before granting a right-of-way under this section the board may require the municipality to agree to hold the corporation harmless for any use made of the right-of-way and to execute the agreement in a form approved by the board."



1/19/84

1 Sec. 42.40.230. Rules. (a) The board shall establish in its bylaws
2 a procedure for adopting rules to carry out its functions and the purposes of
3 this chapter.

4 (1) The corporation shall make available to members of the public
5 copies of the rules adopted under this section.

6 (2) Within 45 days after adoption, the chairman of th board shall
7 submit a rule adopted under this section to the chairman of the Administrative
8 Regulation.Review Committee under AS 24.20.400 - 24.20.460.

9 (b) Except as provided in (c) of this section, at least 15 days before the
10 adoption, amendment, or repeal of a rule, the board shall give public notice of
11 the proposed action by publishing the notice in at least three newspapers of
12 general circulation in the state and by mailing a copy of the notice to every
13 person who has filed a request for notice of proposes rules with the board or
14 the corporation. The public notice must include a statement of the time, place,
15 and nature of the proceedings for the adoption, amendment, or repeal of the rule
16 and must include and informative summary of the proposed subject of the rule.
17 On the date and at the time and place designated in the notice, the board shall
18 give each interested person or his authorized representative , or both, the
19 opportunity to present statements, arguments or contentions in writing, and
20 shall give members of the public an opportunity to present statements, argu-
21 ments, or contentions in writing, and shall give members of the public an
22 opportunity to present oral statements, arguments, or contentions for a total
23 period of at least one hour. The board shall consider all relevant matter
24 presented to it before adopting, amending, or repealing a rule which is adopted,
25 or its amendment or repeal, may vary in content from the informative summary
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1 specified in this subsection if the subject matter of the rule, or its amendment
2 or repeal, remains the same and the original notice was written so as to assure
3 that members of the public are reasonably notified of the proposed subject of
4 the board's action in order for them to determine whether their interests could
5 be affected by the board's action on that subject.

6 (c) The board shall in its bylaws establish a procedure for adoption of
7 emergency rules when the adoption of an emergency rule is essential to continue
8 or to reinstate the orderly operation of the corporation's facilities or pro-
9 grams. The requirements of (b) of this section do not apply to the initial
10 adoption of an emergency regulation; however, upon adoption of an emergency
11 regulation, the board shall, within 10 days after adoption, give notice of the
12 adoption in accordance with (b) of this section. No emergency regulation
13 adopted under this subsection remains in effect more than 120 days unless the
14 board complies with (b) of this section during the 120-day period.

15 (d) A rule adopted under this section becomes effective immediately upon
16 its adoption by the board, unless otherwise specifically provided by order of
17 the adoption.
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1 (9) generally applicable, comprehensive increases and de-
2 creases in rates other than those periodically approved by the United
3 States Interstate Commerce Commission for application to rail carriers
4 generally;

5 (10) diversification and major expansion or reduction of
6 services beyond those provided on the date of transfer or as provided
7 under this chapter;

8 (11) the exercise of the power of eminent domain;

9 (12) expansion of main or branch lines, other than routine
10 track realignment as necessary to maintain service levels in effect on
11 the date of transfer; and

12 (13) selection of independent auditors and accountants.

13 ARTICLE 2. ADMINISTRATIVE PROVISIONS.

14 Sec. 42.40.200. CONFLICTS OF INTEREST. (a) Except as provided
15 in this section, a board member or employee of the authority may not
16 participate in a decision of the authority in which that person or a
17 member of that person's immediate family has a direct or indirect
18 financial interest unless the financial interest is a remote financial
19 interest and participation is approved under (b) of this section. For
20 purposes of this section, "participate in a decision" includes all
21 discussions, deliberations, preliminary negotiations, and votes con-
22 cerning a matter that is the subject of formal action by the board.

23 (b) A board member or employee may participate in a decision if
24 that person or a member of that person's immediate family has only a
25 remote interest and if the fact and extent of the interest is dis-
26 closed to the board in a public meeting and is noted in the minutes of
27 the board before any participation by the member or employee in the
28 decision, and thereafter in a public meeting the board authorizes or
29 approves the participation by a vote of its membership excluding the

1 interested member or employee. As used in this subsection, "remote
2 interest" means

3 (1) that of a nonsalaried officer of a nonprofit corpora-
4 tion;

5 (2) that of an employee or agent of a contracting party
6 when the compensation of the employee or agent consists entirely of
7 fixed wages or salary and the contract is awarded by bid or by other
8 competitive process;

9 (3) that of a landlord or tenant of a contracting party,
10 except when the property subject to the lease or sublease is owned or
11 managed by the authority;

12 (4) that of a holder of less than one percent of the shares
13 of the corporation or cooperative that is the contracting party;

14 (5) that of an owner of a savings and loan account or bank
15 savings or share account or credit union deposit account if the inter-
16 est represented by the account is less than two percent of the total
17 deposits held by the institution; or

18 (6) other interests that in good faith are defined as
19 remote by rules or regulations adopted by the authority.

20 (c) A board member or employee is not considered to be finan-
21 cially interested in a decision when the decision could not affect
22 that person in a manner different from its effect on the public or
23 community.

24 (d) An action, including the award of a contract, in which a
25 board member or employee participates in violation of this section or
26 AS 39.50.090 is void if the board member's vote or employee's partici-
27 pation was necessary to the decision. If a board member votes or an
28 employee participates in a decision in violation of this section or
29 AS 39.50.090 and that vote or participation is not necessary to the

1 decision, the board may ratify the action after disclosure of the
2 violation in a public meeting of the board and without participation
3 by the interested member or employee in the decision to ratify. A
4 board member or employee who violates a prohibition contained in this
5 section or in AS 39.50 forfeits office upon a determination by the
6 board in a public meeting that the violation was intentional.

7 (e) The executive officials and board members of the authority
8 are subject to AS 39.50.

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

16 Sec. 42.40.210. PUBLIC BOARD MEETINGS. (a) The meetings of the
17 board are public, with the exception of executive sessions permitted
18 by AS 44.62.310 and (b) of this section.

19 (b) In addition to those subjects which may be discussed in
20 executive session under AS 44.62.310, the board may consider in execu-
21 tive session matters that pertain to personnel, the authority's legal
22 position, land acquisition or disposal, or proprietary information, as
23 defined in a manner consistent with the standards and practices of the
24 United States Interstate Commerce Commission for protection of the
25 information including but not limited to proprietary information
26 associated with specific shippers, divisions, and contract rate agree-
27 ments.

28 Sec. 42.40.220. MINUTES OF MEETINGS. The board shall keep
29 minutes of each meeting and shall send a certified copy of the minutes

1 employee of the authority is not subject to personal liability or ac-
2 countability for executing bonds or notes or because of their issu-
3 ance.

4 Sec. 42.40.550. REVENUES. Revenues generated by the authority
5 do not become part of the general fund of the state but are kept and
6 managed by the authority for purposes authorized by this chapter.

7 Sec. 42.40.555. INSURANCE. The authority shall keep in force
8 public liability insurance in an amount reasonably calculated to cover
9 potential claims for bodily injury, death or disability, and property
10 damage that may arise from or be related to its operations and activi-
11 ties, naming the state as an additional insured.

12 Sec. 42.40.560. SAFEGUARDING OF MONEY. The authority shall
13 maximize revenues from and deposit all money in depositories accept-
14 able to the governor and otherwise safeguard the money under instruc-
15 tions as the governor may from time to time issue.

16 Sec. 42.40.565. FIDELITY BOND. The authority shall obtain a
17 fidelity bond in an amount determined by the board for its members and
18 any official responsible for accounts and finances. A bond must be in
19 effect for the tenure in office of the bonded person.

20 Sec. 42.40.570. REVERSION OF ASSETS. If the authority ceases to
21 exist, for whatever reason, its assets revert to the state.

22 ARTICLE 6. STATE OVERSIGHT.

23 Sec. 42.40.600. STATE REVIEW. (a) The board shall notify the
24 governor and the leadership of the legislature before undertaking

25 (1) expansion, reduction, or diversification of services
26 provided by the railroad upon the date of transfer to the authority or
27 as provided under this chapter that the board determines would repre-
28 sent a significant and permanent change in the level and nature of
29 services provided;

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

5 (3) the issuance of securities, notes, bonds or contracts
6 for other borrowings with a term in excess of one year and in an
7 amount exceeding \$5,000,000.

8 (b) The notice required by (a) of this section must be in writ-
9 ing and describe the proposed undertaking in detail, specifying

10 (1) its financial impact on the authority;

11 (2) its impact on the level and nature of services provided
12 by the authority;

13 (3) why the project is necessary or desirable to achieve
14 the purposes of this chapter; and

15 (4) whether and when the undertaking will be self-sustain-
16 ing financially.

17 (c) The notice required by (a) of this section shall be pub-
18 lished and given in the same manner as notice required under AS 42.-
19 40.060.

20 (d) Within 45 days after receipt of the notice required by (a)
21 of this section, the governor may

22 (1) disapprove the proposed undertaking;

23 (2) suspend the proposed undertaking and direct that it not
24 be implemented until the legislature has reviewed it under (f) of this
25 section; or

26 (3) approve the proposed undertaking, in which case the
27 authority may proceed with the undertaking.

28 (e) A decision by the governor disapproving the proposed under-
29 taking under (d) of this section is binding on the authority, unless
the authority is directed by the legislature under AS 42.40.610 to

1 proceed with the proposed undertaking. If the governor suspends the
2 proposed undertaking under (d) of this section, the governor shall
3 promptly transmit a decision to the board and the leadership of the
4 legislature in the form of a recommendation that the legislature
5 acquiesce in the proposed undertaking or that the legislature reject
6 the proposed undertaking. The authority's proposed undertaking is
7 considered approved if the governor fails to act under (d) of this
8 section within the prescribed time.

9 (f) During a legislative session, within 60 days after receipt
10 of the governor's recommendation the legislature may, by law, reject
11 the proposed undertaking. The legislation is binding on the authori-
12 ty. The proposed undertaking is considered approved if the legisla-
13 ture fails to pass legislation rejecting it within the prescribed
14 time.

15 (g) Notwithstanding the provisions of (a) - (f) of this section,
16 a proposed extension of main or branch lines by more than 50 percent
17 of the railroad's total track mileage and requiring the issuance of
18 securities, notes, bonds, or contracts for other borrowings of an
19 amount in excess of \$50,000,000 or provision for the management and
20 operation of the railroad by a third-party contractor must be specif-
21 ically authorized by law.

22 (h) An undertaking described in (a) or (g) of this section is
23 considered approved or rejected for purposes of this section if

24 (1) the authority has been directed to act or refrain from
25 acting in accordance with AS 42.40.610; or

26 (2) the legislature by law has specifically approved the
27 undertaking by authorizing, appropriating financing for, or guarantee-
28 ing the authority's borrowing for the proposed undertaking.

29 Sec. 42.40.610. ACTION-FORCING MECHANISM. (a) The governor or

2 the legislature, by resolution, may request that the authority exer-
3 cise or refrain from exercising its powers and authorities. Notice of
4 a request shall be given to the legislature by the governor and to the
5 governor by the legislature.

6 (b) To the greatest extent practicable within 30 days after
7 receipt of a request the board shall respond to both the governor and
8 the leadership of the legislature in writing specifying

9 (1) the manner in which it proposes to take the requested
10 action or any modification to the requested action sought by the
11 authority; or

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

14 (c) At the request of the governor or on its own initiative, the
15 legislature by law may then direct the authority to take the requested
16 action or the legislature may act to cure the problem precluding the
17 authority from taking the requested action. If the authority is
18 unable to take the requested action for financial reasons, it is
19 obligated to do so, even if directed, only upon provision by the
20 legislature of sufficient money to plan and implement the action.

21 Sec. 42.40.615. INTERVENTION. (a) When authorized by law, the
22 governor as provided in the legislation shall intervene and exercise
23 such control over the authority as is necessary and appropriate to
24 correct a deficiency or to assure that the purposes of this chapter
25 may be reasonably accomplished, including directing affirmative action
26 when

27 (1) the board has requested intervention by resolution;

28 (2) the authority has represented to the public or to
29 creditors that recourse may be had to the assets, property, or credit
of the state on account of acts or omissions of the authority, unless

1 the secondary or direct liability has been expressly assumed by the
2 state;

3 (3) the authority has failed to file an annual report as
4 required by AS 42.40.310 within 120 days after receipt of formal
5 notice of the omission or has filed an annual report that is false or
6 misleading on a material matter;

7 (4) a deadlock has occurred in the board, or the membership
8 of the board is insufficient to constitute a quorum for conduct of
9 affairs so that the authority is unable to conduct its operations or
10 perform its activities; or

11 (5) the assets of the authority have been or are committed
12 to be misapplied or wasted or illegally expended, or the authority has
13 committed or is about to commit a material violation of this chapter.

14 (b) The governor may take actions necessary to achieve the
15 object of the intervention stated in the legislation and make ancil-
16 lary corrections, and shall accomplish the purposes of the interven-
17 tion as expeditiously as reasonable. Board members and employees may
18 not be displaced nor the conduct of their duties impaired more than
19 necessary to accomplish the purposes of the intervention and the
20 intervention must cease as soon as the objective stated in the legis-
21 lation and ancillary corrections have been accomplished.

22 Sec. 42.40.620. TRUSTEESHIP. (a) When authorized by law, the
23 governor may petition the superior court of the State of Alaska for
24 the Third Judicial District at Anchorage to impose a trusteeship over
25 the authority and appoint the trustees if

26 (1) the board has requested imposition of the trusteeship
27 by resolution;

28 (2) the authority has become insolvent or otherwise unable
29 to carry out its contractual obligations to creditors and other

1 persons;

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

4 (4) the authority has become incompetent or ineligible to
5 carry out the public purposes for which it was established;

6 (5) the authority has misused, abused, or continuously ex-
7 ceeded the power or authority conferred by this chapter or committed
8 repeated violations of this chapter;

9 (6) the assets of the authority have been or are committed
10 to be misapplied or wasted, or illegally expended, or a material
11 violation of this chapter has been committed or is about to be commit-
12 ted and the governor has determined that intervention as provided in
13 AS 42.40.615 would not be feasible under the circumstances; or

14 (7) the credit-worthiness of the state has been directly or
15 indirectly substantially impaired by actions of the authority.

16 (b) The trustees appointed by the superior court shall take rea-
17 sonable actions necessary during the trusteeship to achieve its ob-
18 ject. The trustees have the power and authority to reorganize the
19 authority and amend its rules and regulations; suspend or remove board
20 members and executive officials; manage the assets and affairs of the
21 authority; and exercise all powers necessary or appropriate to fulfill
22 outstanding agreements, to restore the capability of the authority to
23 perform the functions and activities for which it was established, to
24 reinstate its credit or credibility with its creditors or obligees or
25 the credit of the state or its credibility with its creditors or
26 obligees to the extent impaired by authority actions.

27 ARTICLE 7. MISCELLANEOUS PROVISIONS.

28 Sec. 42.40.700. PERSONNEL. (a) All personnel employed by the
29 Alaska Railroad are personnel of the authority, and not of the state.

QUESTIONS/CONCERNS OF COMMITTEE

Railroad Land

- . Surface and subsurface rights -- gravel deposits
- . Classification of lands by DNR -- who has power of eminent domain?
- . Legal requirements/restraints for land disposal by Railroad
- . Revenues from managing subsurface resource development
- . Open dock facility in Seward

Constitutional Questions

- . Dedication of funds
- . Is it constitutional to set-up separate department or corporation-independent Railroad authority or state-owned
- . Governor appointed Board of Directors with legislative confirmation-constitutional amendment
- . Oversight for Railroad-Executive Budget Act, Admin Procedures Act, Fiscal Procedures Act--and, who administers

Miscellaneous

- . Value of non-operating properties
- . Ultimate liability for Railroad
- . Bond rating-default by Railroad, Borrowing level from State-bond selling power-state's credit rating
- . Do we want labor contracts as part of transfer bill-who is responsible for negotiation of collective bargaining agreements-state or corporation?
- . Consistency in bill wording-as long as Railroad gets public money must get public oversight
- . OSHA and FRA requirements-how do we want to handle them-waivers of compliance for the state
- . ICC exemption for state
- . Number of states that own Railroad and the type of authorities set-up



united transportation union

ARTICLE 7. PERSONNEL AND LABOR RELATIONS

1. Sec. 42.40.840. STRIKES

1. Delete and Replace with the Following:

Sec. 42.40.840. BINDING ARBITRATION. 30 days after mediation if the dispute is not resolved, then the issue or issues shall be submitted to binding arbitration using the Federal Mediation Conciliation Service (F.M.C.S.) list of arbitrators.

2. Adopt Sec. 23.40.200. Classes of public employees; arbitration

(a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

(1) those services which may not be given up for even the shortest period of time.

2. Sec. 42.40.850. AGREEMENT. Delete (a) Not to exceed three years and adopt the concept of the Railway Labor Act, Part 2, Sec. 6.

(b) The Department of Administration may participate in the negotiations between the corporation and an employee organization.

Delete the following: The corporation may not enter into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment unless the proposed contract terms are approved by the Department of Administration.

Gerald D. Valinske
Legislative Representative
Local 1626
Anchorage, Alaska



united transportation union

STRIKES: (a) Employees may engage in a strike if a majority of the employees in all collective bargaining units vote by secret ballot to do so.

(b) Employees may engage in a strike after mediation, ^{or arbitration} subject to the voting requirements of (a) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The Alaska Railroad Corporation may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public, but also the extent to which employee organization and The Alaska Railroad Corporation have met their statutory obligations. **If an impasse or deadlock** still exists after the issuance of an injunction, the parties shall submit to arbitration.

(c) Notwithstanding ^{the} provisions of (a) ^{and} (b) of this section the employees with the concurrence of the employer may agree in writing to submit a dispute of a collective bargaining agreement to arbitration.

Gerald D. Valinske
Legislative Representative
Local 1626
Anchorage, Alaska

Karen Hutton
Vice President
A.F.G.E., Local 183
Anchorage, Alaska

American Federation of Government Employees

LOCAL 183

AFFILIATED WITH THE AFL-CIO

WASHINGTON, D.C.



LOCAL 183
POST OFFICE BOX 35
ANCHORAGE, ALASKA 99510
TELEPHONE 272-8316

REFER TO FILE:

February 2, 1984

Following is a list of changes and additions we would like made to Senate Bill Number 352:

1. Page 3, line 26, change to read as follows: an employee of the corporation represented the bargaining units, appointed by the governor to represent the employees.

2. Page 26, line 11 through 14: delete

3. Page 26, line 9, insert the following:

d. Employees who are not part of an employees organization bargaining unit on the day before transfer, are not executive officials on the day after transfer, and are protected under the Federal Transfer Law for the two-year period shall become a subdivision of the existing white collar bargaining unit representing The Alaska Railroad Corporation for the purpose of collective bargaining.

e. Employees who are not protected under the transfer act for two years and are classified as temporary at the time of transfer will be protected based on their seniority date.

4. Page 27, line 22, insert the following:

(8) Executive officers are the employees occupying the following positions at The Alaska Railroad as of the day before the date of transfer: General Manager, Assistant General Manager, Assistant to the General Manager, Chief of Administration, and Chief Counsel.

(9) Collective bargaining is defined as negotiating with an employees organization, representing the employees of The Alaska Railroad Corporation on any matters pertaining to conditions of employment.

5. Alaska Statute Section 39.26.010, Prohibited Acts be adopted with the following modifications:

(a) The word "State" be replaced with "Alaska Railroad Corporation."

(b) Paragraph 5b. The heads of the administrative departments of the State may adopt internal management regulations for their respective departments, specifying exception to (a)(5) of this section. These regulations shall be submitted for approval to the personnel board provided for in AS 39.25.060. Replace as follows:

"The executive officials of The Alaska Railroad Corporation may adopt internal management regulations for their respective departments. These regulations shall be submitted for approval to the Board of Directors of The Alaska Railroad Corporation."

6. The State of Alaska's primary concern over including the current Alaska Railroad employees under PERS is over back year unfunded years. Why not modify the State statute for those employees of The Alaska Railroad who remain under the Civil Service Retirement to be eligible for coverage under the supplemental benefits system? *at the moment*

Your consideration of the above request will be greatly appreciated. Also, we would appreciate receiving copies of any amendments that are issued to this bill. If you have any questions, please do not hesitate to contact us.

Sincerely yours,

Jack F. Burton
President

Karen Hutton
Vice President

A M E N D M E N T

Offered in the HOUSE

By *Miller*

TO: HB 512

Page 16, after line 10, insert a new section to read:

"Sec. 42.40.460. MUNICIPAL RIGHT-OF-WAYS. Upon request of a municipality the corporation shall grant to the municipality a right-of-way in a railroad utility corridor or in land owned by the corporation to be used for a pedestrian walkway or trail. Before granting a right-of-way under this section the board may require the municipality to agree to hold the corporation harmless for any use made of the right-of-way and to execute the agreement in a form approved by the board."

board shall keep minutes of each meeting. Reasonable notice of the meetings shall be provided to the public.

Sec. 42.40.230. RULES. The board shall establish a procedure for adopting rules to carry out its functions and the purposes of this chapter. Within 90 days after its first meeting the board shall adopt rules establishing a procedure for giving advance public notice and an opportunity for the public to comment on proposed
^{rules}regulations of the authority that, in the determination of the board, will have a substantial impact on the public or be used in the authority's dealings with a significant segment of the public.

(b) The rules shall also include a procedure for the adoption of emergency rules when the adoption of an emergency rule is essential to continue or to reinstate the orderly operation of the corporation's facilities or program.

*adopted
3/6/84*

*replace with rules
strike out rules
section in 512*

3/1/84
Senate change today

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1 Sec. 42.40.230. Rules. (a) The board shall establish in its bylaws
2 a procedure for adopting rules to carry out its functions and the purposes of
3 this chapter.

4 (1) The corporation shall make available to members of the public
5 copies of the rules adopted under this section.

6 (2) Within 45 days after adoption, the chairman of th board shall
7 submit a rule adopted under this section to the chairman of the Administrative
8 Regulation Review Committee under AS 24.20.400 - 24.20.460.

9 (b) Except as provided in (c) of this section, at least 15 days before the
10 adoption, amendment, or repeal of a rule, the board shall give public notice of
11 the proposed action by publishing the notice in at least three newspapers of
12 general circulation in the state and by mailing a copy of the notice to every
13 person who has filed a request for notice of proposes rules with the board or
14 the corporation. The public notice must include a statement of the time, place,
15 and nature of the proceedings for the adoption, amendment, or repeal of the rule
16 and must include and informative summary of the proposed subject of the rule.
17 On the date and at the time and place designated in the notice, the board shall
18 give each interested person or his authorized representative , or both, the
19 opportunity to present statements, arguments or contentions in writing, and
20 shall give members of the public an opportunity to present statements, argu-
21 ments, or contentions in writing, and shall give members of the public an
22 opportunity to present oral statements, arguments, or contentions for a total
23 period of at least one hour. The board shall consider all relevant matter
24 presented to it before adopting, amending, or repealing a rule which is adopted,
25 or its amendment or repeal, may vary in content from the informative summary
26
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1 specified in this subsection if the subject matter of the rule, or its amendment
2 or repeal, remains the same and the original notice was written so as to assure
3 that members of the public are reasonably notified of the proposed subject of
4 the board's action in order for them to determine whether their interests could
5 be affected by the board's action on that subject.

6 (c) The board shall in its bylaws establish a procedure for adoption of
7 emergency rules when the adoption of an emergency rule is essential to continue
8 or to reinstate the orderly operation of the corporation's facilities or pro-
9 grams. The requirements of (b) of this section do not apply to the initial
10 adoption of an emergency regulation; however, upon adoption of an emergency
11 regulation, the board shall, within 10 days after adoption, give notice of the
12 adoption in accordance with (b) of this section. No emergency regulation
13 adopted under this subsection remains in effect more than 120 days unless the
14 board complies with (b) of this section during the 120-day period.

15 (d) A rule adopted under this section becomes effective immediately upon
16 its adoption by the board, unless otherwise specifically provided by order of
17 the adoption.
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MAR 20 1984

Anchorage

CHAMBER of COMMERCE

Representative Bette Cato
State Capitol
Pouch V
Juneau, Alaska 99811

Crossroads of the Air World

Dear Representative Cato,

For several years the Anchorage Chamber of Commerce has been closely following the transfer and operation issue of the Alaska Railroad. The Anchorage Chamber has expressed its support of a strong independent railroad which operates as a business entity.


We feel our objectives, and the citizens of the state, are best achieved through passage of HB 512. The major elements in this legislation which we support are as follows:

1. Specific reference under the legislative purpose of the eventual transfer of the railroad to the private sector.
2. The independent status of the Corporation as an entity of the State.
3. The strength of the Corporation Board of Directors identified by its powers and duties.
4. The establishment of the Executive Officers of the railroad to manage the day-to-day activities of the railroad.
5. We strongly support the Railroad Corporation right to hold and manage its lands including the right of eminent domain, and the right to request additional lands for railroad purposes.
6. We support the inclusion of the strong bonding authority of the Alaska Railroad Corporation.
7. We support the railroad generated revenues staying within the Corporation for future railroad purposes.
8. And finally, we support the Alaska Railroad employees being employees of the Corporation.

We would like to propose one addition to Article 4, Section 42.40.300 General Powers. We recommend that the Corporation be permitted to lease a portion or all of the operation of the railroad to a private entity. We feel this addition should be granted to the Corporation as an option to their management prerogatives and is within the overall intent of the proposed legislation.

We recommend your support of this legislation.

Sincerely,


Al Fleetwood, President
Anchorage Chamber of Commerce

FEB 27 1984

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 622
SEATTLE, WASHINGTON 98119

February 22, 1984

H. L. SCHUYLER
Director Public Affairs
Alaska Division

TELEPHONE:
(206) 938-8349

Honorable Bette Cato
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Cato:

Attached to this letter are a few suggested amendments which we believe to be in the best interest of the State, the citizens, and various modes of the transportation industry in the State of Alaska.

We do not feel that our suggestions are so restrictive that the Alaska Railroad will not be able to carry on with an economical/operational program and keep the Alaska Railroad a viable institution. The Authority, composed of astute businessmen and a General Manager who knows how to operate and market his railroad as a free enterprise business, will succeed. After all, we are all working for our share of the Alaska freight "pie." The only difference is that the private sector pays taxes to City, State, and Federal Governments, and pays the commercial interest rate for his capital.

Trust these suggestions are accepted and reviewed in an unbiased manner.

Thank you for your consideration and taking the time to review. All we, in the private sector, are asking for is to be able to compete on an equal basis.

Sincerely,



HLS:kt
Attachment

SENATE BILL NO. 352

Suggested amendments that should make for a better bill:

1. Page 2, Section 1, Line 17. Add: "and to apply for any Federal monies to which the State would be entitled, or may be available;" §605 of ARTA.
2. Page 2, Section 1, Line 21. Add the word "rail" between "economical" and "transportation" in the middle of the sentence.
3. Page 2, Section 1, Line 28. Add: Paragraph "(H) The Corporation will not use State investments, subsidy money, non-taxable property and chattles in considering the pricing of the property services of the railroad."
4. Page 7, Article 1, Section 42.40.110, Delegation, Line 7. Add: "(12) Applying for subsidies, grants and endowments available from Federal, State or Private entities."
5. Page 8, Article 3, Administrative Provisions, Line 19. Add: "This shall be a public document."
6. Article 8, General Provisions, Page 27, Line 26. Prior to "Where possible," add: "The Corporation shall comply with and be subject to, all provisions of the Antitrust Laws." If this sentence cannot be added, strike out "Where possible."

Adopted for HB 512

3/13/84 HB 512 additions

Sec. 42.40.280 PERFORMANCE AUDIT. The board shall have an annual performance audit conducted by a qualified professional performance auditing firm to assure that the railroad is being managed and operated effectively and efficiently in accordance with the requirements of this Act.

Sec. 42.40.470. AGREEMENT (a) The Department of Administration may participate in labor negotiations between the corporation and an employee organization. ^{the corp} The corporation ~~shall consult~~ ^{shall notify} with the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment. The Department of Administration ^{will} ~~shall~~ notify the Governor and the Legislature if any proposed contract provisions conflict with State labor management policy.

The Bd shall notify DOA of time & place of labor neg & DOA shall be able to attend those neg and DOA may ~~attend~~ participate @ request of Bd.

Sec. 42.40.280 PERFORMANCE AUDIT. The board shall have an annual performance audit conducted by a qualified professional performance auditing firm to assure that the railroad is being managed and operated effectively and efficiently in accordance with the requirements of this Act.

Sec. 42.40.470. AGREEMENT (a) The Department of Administration may participate in labor negotiations between the corporation and an employee organization. The corporation shall consult with the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment. The Department of Administration shall notify the Governor and the Legislature if any proposed contract provisions conflict with State labor management policy.

January 26, 1984

Alaska Railroad Operating Entity
Sheffield Administration - Policy Statement

The Alaska Railroad is a fundamental link in Alaska's overall transportation system. Ensuring the continuation and development of this rail system as Alaska's transportation needs grow should be a major public policy objective in the years ahead.

Along with most Alaskans, I share this objective. I hope to see the Alaska Railroad provide the maximum benefit to our residents with minimum involvement by State government for regulatory oversight and public funding.

I support the development of the Alaska Railroad from its present status of a federally owned and operated agency to one which is funded and operated to the maximum extent possible by the private sector through a private company management contract or similar form of lease arrangement. I believe it will take a period of time to reach this goal. Consequently, it is important that any legislation provide adequate and specific provisions mandating that these alternatives be addressed.

It is important to keep in mind one essential fact: as long as the Alaska Railroad receives public funding, there must be comparable public oversight and accountability for its operation and management. If we accept anything less, we will be shirking our responsibility to all Alaskans to prudently and properly manage public funds.

I commend the members of our Legislature for the extensive interest they have demonstrated in the Alaska Railroad transfer issue. I know that many legislators have worked hard to develop acceptable transfer legislation which addresses a wide range of State policy concerns and interests over the past several years. Rather than introduce legislation of my own, I look forward to working with the legislation already in preparation provided that it is consistent with my following basic policy considerations:

- (1) Railroad operations should be insulated from political interference but remain responsive to the public interest. The public entity selected should be one best able to accomplish this goal.
- (2) The railroad entity should be constituted so that it has broad latitude in its operation and financing subject to public interest safeguards in existing state law, including the Executive Budget Act, Fiscal Procedures Act, and Administrative Procedures Act. I realize that certain sections of these laws may not be entirely applicable, and therefore limited exemptions may be necessary.

- (3) All revenues generated by the railroad should only be expended for railroad and related purposes.
- (4) The railroad should be able to incur bonded indebtedness to an extent consistent with its ability to repay the indebtedness from its own revenues.
- (5) The railroad should hold title to the surface estate of all lands received in the purchase and enjoy access to subsurface material necessary for actual rail operations. Specific arrangements should be included to ensure consistency with general state land policies, and to provide that sale of real property cannot occur without the approval of the Department of Natural Resources.
- (6) To minimize the State's exposure to railroad liabilities and to lower administrative costs, the railroad should take advantage of the economies of scale afforded by participation in the State's insurance and risk management plans. The Department of Administration should have primary responsibility for the negotiation of collective bargaining agreements with railroad employees.
- (7) The railroad should prepare and implement operating and capital plans, and explore long-range expansion needs. No later than three years after acquisition, the railroad must prepare a report for the Governor and the Legislature recommending a method for obtaining private sector participation in railroad operations.

SUGGESTED AMENDMENT TO HB 512

Page 19, lines 5 -- 29; page 20; and page 21, lines 1 -- 21

Delete all material and insert the following new material:

(f) In the discretion of the board, an issue of bonds may be secured by a trust indenture or trust agreement between the authority and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee by means of which the corporation may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the corporation may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the ~~authority~~ ^{CORPORATION} or of money or other property of the corporation or in which it has an interest;

(B) the fixing and collection of rentals, charges, fees or other consideration for, and the other terms to be incorporated in, contracts with respect to the use of any of the corporation's property;

(C) the fixing and collection of tariffs, fees, charges or other consideration for the use of the ~~Alaska Railroad~~ ^{OR SERVICE} by passengers, ~~and~~ other users, ~~and~~ ^{AND FREIGHT;}

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

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

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

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

FEB 27 1984

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 622
SEATTLE, WASHINGTON 98119

February 22, 1984

H. L. SCHUYLER
Director Public Affairs
Alaska Division

TELEPHONE:
(206) 938-8349

Honorable Bette Cato
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

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Sincerely,



HLS:kt
Attachment

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Suggested amendments that should make for a better bill:

1. Page 2, Section 1, Line 17. Add: "and to apply for any Federal monies to which the State would be entitled, or may be available;" §605 of ARTA.
2. Page 2, Section 1, Line 21. Add the word "rail" between "economical" and "transportation" in the middle of the sentence.
3. Page 2, Section 1, Line 28. Add: Paragraph "(H) The Corporation will not use State investments, subsidy money, non-taxable property and chattels in considering the pricing of the property services of the railroad."
4. Page 7, Article 1, Section 42.40.110, Delegation, Line 7. Add: "(12) Applying for subsidies, grants and endowments available from Federal, State or Private entities."
5. Page 8, Article 3, Administrative Provisions, Line 19. Add: "This shall be a public document."
6. Article 8, General Provisions, Page 27, Line 26. Prior to "Where possible," add: "The Corporation shall comply with and be subject to, all provisions of the Antitrust Laws." If this sentence cannot be added, strike out "Where possible."

INTERSTATE COMMERCE COMMISSION

Memorandum

TO : Louis E. Gitomer

DATE: February 27, 1984

FROM :

~~REDACTED~~

SUBJECT :

Commission Jurisdiction over
the Alaska Railroad

At this time
~~Currently,~~ the Interstate Commerce Commission ~~holds~~ ^{has} no
statutory authority over the Alaska Railroad (ARR). Exclusive
authority over the operations of the railroad was granted to the
President under the Alaska Railroad Act of 1914, ~~this authority~~
~~was~~ delegated to the Secretary of the Interior in 1915, and ~~then~~
~~subsequently transferred to~~ the Secretary of Transportation in
1966.

~~While the Commission holds no statutory authority to~~
~~regulate ARR,~~ in 1963 the Commission was delegated certain rate
review authority by the President ^{by} Executive Order No. 11107
(codified at 49 U.S.C. 240). ~~this~~ ^{and that} executive order was recently
superceded by ^{an order} Executive Order No. 12434 issued by President
Reagan in August 1983. [(Copies of 49 C.F.R. 240 and Executive Order No.
12434 are attached).] The new executive order clarified the ~~fact~~
~~that the Commission has final~~ ratemaking authority over ARR.

(rather than merely offering advisory opinions to the DOT). See *the*

Attached copy

Sealand Service, Inc. v. I.C.C., 697 F.2d 1166 (1983). It also
expressly incorporated certain revisions to the rates provisions

^{Act}
~~made to the Interstate Commerce~~ Act since the first executive order was issued in 1963.^{1/}

Thus, Executive Order No. 12434 subjects ARR to the ^{major} ~~major~~ rate provisions of the Interstate Commerce Act including the changes made by the Staggers Act of 1980.

In general, the Staggers Act, ^{which was a major regulatory step,} assures railroads ^{substantially} ~~substantially~~ more rate freedom than was afforded under prior law. It continues the policy started under the Railroad Revitalization and Regulation Reform ^{by} Act of 1976, substantially eliminating rate regulation of railroads where there is effective competition. Specifically, the Staggers Act:

1. ~~It~~ Establishes a specific 14-point rail transportation policy to guide the Commission in its regulation of the railroad industry.

^{1/} Executive Order No. 12434 provides that with respect to rates filed by the Secretary, the Commission may act in the same manner as though the ARR were subject to the following Sections of Title 49 of the U.S. Code: §10101a (Rail Transportation Policy); subchapter I of Chapter 105 (Rail, Rail Water Express and Pipeline Carrier Transportation Jurisdiction); Chapter 107 (Rates, Tariffs and Valuations) [with modifications to the contract rates provisions and except subchapter V (governing valuations of property), §10723 (charitable purposes), §10724 (emergency rates), §10746 (commodities manufactured or produced by a rail carrier), and §10751 (business entertainment expenses)]; Chapter 111 (Operations of Carriers) except subchapter III ^{and IV} (Railroad Cost Accounting; and Chapter 117 (Enforcement, Investigations, Rights and Remedies) except §11703 (enforcement by the Attorney General) and §11704 (~~actions~~ by a private individual, to enjoin abandonments).

2. Provides the Commission with jurisdiction to determine rate reasonableness only when a rail carrier ^{is serving a captive shipper.} ~~has~~ market dominance and the rate exceeds the applicable revenue to variable cost percentage threshold. ~~When determining reasonableness, the Commission is directed to consider the policy that carriers earn adequate revenues.~~

3. Provides that a rate may not be set below a reasonable minimum, ~~that is predatory pricing - pricing below directly variable costs - is prohibited.~~ ^{for inflation losses}

~~4. Provides a formula which allows carriers to increase any rate to reflect increases in the Index of Railroad Costs and limits Commission jurisdiction over rate increases that are within the zone.~~

5. Permits the Commission, ^{to} ~~on a quarterly basis,~~ the prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases.

6. Requires the Commission to use its ~~suspension~~ powers ^{To suspend} ~~under limited circumstances~~ ^{a proposed rate only upon protest,} and requires the Commission to complete a proceeding within 5 months of the suspension (unless extended). If there is no timely decision the rate will go into effect. ^{Expand}

A - Rate change filed - before rate effective
- protested

- ICC decides to ICS or I³

- If no 5 then rate goes into effect

B. After rate effective

- file complaint alleging unreasonableness

- ICC hearing

- Decision by ACJ

- Appeal to employee board

- Discretionary appeal to EC

- Court appeal

7. Authorizes one or more rail carriers to enter into contract rates with one or more shippers.^{2/}

8. Provides standards and procedures for surcharging an existing joint rate or for canceling the application of a joint rate for a particular route.

9. Requires carriers to reduce and maintain rates on non-ferrous recyclables at specified levels.

10. Provides shippers and railroads greater service options by permitting the establishment of lesser liability requirements.

11. Exempts certain services from the rate discrimination provisions of current law.

12. Eliminates demand sensitive rates.

13. Phases out capital incentive rates.

14. Repels^a incentive per diem provisions.

15. Encourages more efficient car utilization by permitting carriers to charge for special services or special levels of service not otherwise included in any tariff applicable to the movement.

16. Encourages competitive pricing by modifying the activity that a rate bureau may permit its members to engage in if it is

^{however,}
^{2/} The executive order modifies the contract rates provisions of the Staggers Act. ~~by (1) allowing carriers to participate in ARR's contract rate agreements and (2) by making any contract available to any other shipper for rates and service for transportation of the same type of commodity under similar conditions to the contract on file if the shipper is able to enter the contract at a time essentially contemporaneous to the contract period.~~

See page 6.

to be approved by the Commission and immune from the antitrust laws. *Only allow direct connectors to discuss rates.*

~~17. Eliminates §10726(e) of the act which dealt with situations where a rail carrier reduces rates due to competition with a water carrier.~~

18. Permits tariffs be effective with a shorter notice periods

19. Permits the Commission to exempt a person, class of persons, or transaction or service from regulation under specified circumstances.^{3/}

After the date of transfer of the ARR, Section 608 of the Alaska ~~Railroad Transit~~ ^{Railroad Transfer} Act of 1982 ^(ART) provides AAR "shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under Chapter 105 of subtitle IV of title 49, United States Code and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States..."^{4/}

follow up the transfer, in my opinion
Thus, the AAR will be subject to the whole gambit of Commission regulation. As far as rate matters are concerned, the change from regulation under delegated authority to statutory authority will have limited impact except in *the area of contracts.* ~~one major area.~~

^{3/} The Staggers Act also clarifies the application of the Elkins Act to business expenses by rail carriers. ~~It is not included in the executive order.~~ ^{see 49 USC 1075} ~~The executive order, however, did not make MR subject to our jurisdiction under this provision.~~
^{4/} ~~This does not include~~ certain designated acts affecting employee interests. ^{MR is not subject}

Encourages creation of short line railroads by private enterprise or state governments where class I railroads have or are seeking to withdraw from the market.

As noted in ~~footnote 2~~, the executive order modified the contract rate provisions of 49 U.S.C. 10713 in ^{two} ~~two~~ ways: First, it stated that any contract filed with the Commission shall be available to any other shipper for rates and service ^{for} transportation of the same type of commodity under similar conditions to the contract on file, if the other shipper is able to enter into such contract at a time essentially contemporaneous with the period during which the contract in file is offered. Second, it provides that connecting water carriers may participate in ARR contract rate agreements. While ^{water carriers'} the ability to participate in contract rate agreements is ^{specifically} maintained in section 608(a)(2), neither the ART nor the Interstate Commerce Act give a shipper the right to force a carrier to enter into a contract merely because contract with similar terms is on file with another shipper.^{5/}

There will be several additional minor changes to rate regulation of ARR after transfer. Executive Order No. 12434 does not permit the Commission to act as if ARR were subject to the following provisions of Chapter 107:

5/ If the Commission, however, determines that grounds for a complaint have been established under 49 U.S.C. 10713(d)(2)(B)(i) [governing allegations that a rail carrier who has entered a contract for the transportation of certain agricultural commodities has unreasonably discriminated by refusing to enter into a similar agreement with a similarly situated shipper], the Commission can order the carrier to provide rates and services substantially similar to the contract at issue.

← §10723 (permitting free transportation for →
charitable purposes); §10724 (permitting free or
← reduced rate transportation in emergencies);
§10746 (prohibiting the carrier from transporting
← commodities manufactured or produced by the →
← carrier); §10751 (concerning the propriety of
← business entertainment expenses) and subchapter V
(requiring Commission inventory, valuation and
classification of rail property). Following
transfer, ARR will be subject to all of these
provisions. (However, no inventory, valuation, or →
classification of property owned or used by the
state-owned railroad will be required under
subchapter 107 during the two years after the
transfer. See §608(b) of ART.

In addition to ^{these} rate matter, ARR will also become subject to
a number of additional provisions of the Interstate Commerce
Act. These include (1) Chapter 109 licensing procedures
governing the acquisition, construction and operation of rail
lines; ^(c) the abandonment and ^{discontinuance} of operations over
rail lines, the financial assistance procedures and the feeder,
line development program; ^e (2) Chapter 111 provisions governing ^{carriage obligations,}
rail cost accounting principles, and reporting and records ^{car review,}
requirements; (3) Chapter 113 governing finance procedures
including the issuance of carriers' securities, equipment trust

- 7 -
[e] Pursuant to §608(b) of ART, the Commission has issued a
~~decision~~ certificate and decision ~~to be effective on the date of~~
~~transfer~~ which finds that the present and future public convenience
and necessity require the acquisition and operation of the Alaska
Railroad by the Alaska State-owned railroad. The certificate and
decision will be effective on the date of transfer. Alaska Railroad

and other securities interests, limitations on ownership, restrictions ^{on} of officers and directors, limitations on pooling and division of earnings, the consolidation, mergers and acquisition of control of carriers, and changes in financial structure; (4) Chapter 115 provisions governing Federal-State relations including Commission Authority over intrastate transportation; (5) Chapter 117 to the extent that enforcement remedies were excluded by Executive Order 12434; and (6) Chapter 119 governing civil and criminal penalties.

~~It is stated~~ Alaska has not been authorized to exercise state-related jurisdiction over intrastate transportation provided by the ARR, under 49 U.S.C. 11501. See State Intrastate Rail Rule Authority, 564 I.C.C. 381 (1981)

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 and for the purposes of art. III, sec. 22, Constitution of the State of Alaska, is an instrumentality of the state within the Department of _____. [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 the commissioner of _____ and four [FIVE] voting members appointed by the governor. These four [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. Except for the commissioner of _____, a voting member may not be a state officer or employee.

(b) One person who is not a resident of or registered voter in this 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.

1 (c) In addition to the voting members, the following
2 nonvoting members shall serve on the board:

3 (1) an employee of the corporation appointed by
4 the governor to represent the employees;

5 (2) the chief executive officer of the corporation.

6 (d) The voting members of the board shall be confirmed
7 by a majority of the membership of the legislature in joint
8 session. A member appointed by the governor has the full
9 powers and responsibilities of a confirmed board member
10 unless and until the member has been rejected by the legisla-
11 ture.

12 (e) The board shall elect from its membership a chair-
13 person and vice-chairperson and prescribe their specific
14 duties by rule.

15 (f) The board shall appoint a secretary and prescribe
16 the specific duties of the secretary.

17 (g) The chairperson shall call meetings of the board at
18 least once every three months. The chairperson may call
19 other meetings of the board as the chairperson considers
20 necessary. The chairperson shall preside at meetings of the
21 board.

22 [(h) THE GOVERNOR MAY, BY WRITTEN NOTICE TO THE MEMBER,
23 REMOVE A MEMBER FROM THE BOARD FOR

24 (1) INCAPACITATION CAUSED BY INJURY OR SICKNESS
25 THAT LEAVES THE MEMBER UNABLE TO PERFORM DUTIES UNDER THIS
26 CHAPTER;

27 (2) CONTINUED REFUSAL OR INABILITY TO ATTEND
28 MEETINGS OF THE BOARD;

29 (3) CONVICTION OF A FELONY; OR

30 (4) CONVICTION OF A MISDEMEANOR INVOLVING MORAL
31 TURPITUDE.]

32

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Sec. 42.40.030. TERM OF OFFICE; REMOVAL. Except
for the commissioner of _____, the voting
members of the board serve for staggered terms of five years
each, and serve at the pleasure of the governor during
their terms.

QUESTIONS/CONCERNS OF COMMITTEE

Railroad Land

- . Surface and subsurface rights -- gravel deposits
- . Classification of lands by DNR -- who has power of eminent domain?
- . Legal requirements/restraints for land disposal by Railroad
- . Revenues from managing subsurface resource development
- . Open dock facility in Seward

Constitutional Questions

- . Dedication of funds
- . Is it constitutional to set-up separate department or corporation-independent Railroad authority or state-owned
- . Governor appointed Board of Directors with legislative confirmation-constitutional amendment
- . Oversight for Railroad-Executive Budget Act, Admin Procedures Act, Fiscal Procedures Act--and, who administers

Miscellaneous

- . Value of non-operating properties
- . Ultimate liability for Railroad
- . Bond rating-default by Railroad, Borrowing level from State-bond selling power-state's credit rating
- . Do we want labor contracts as part of transfer bill-who is responsible for negotiation of collective bargaining agreements-state or corporation?
- . Consistency in bill wording-as long as Railroad gets public money must get public oversight
- . OSHA and FRA requirements-how do we want to handle them-waivers of compliance for the state
- . ICC exemption for state
- . Number of states that own Railroad and the type of authorities set-up

(c) Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 604(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Any employee who transfers to the State-owned railroad under this title shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the State with the unused annual leave balance at the time of transfer.

STATE OPERATION

Sec. 608. (a)(1) After the date of transfer to the State pursuant to section 604 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this title shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 604 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of title 49, United States Code, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 202(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirements of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6XA) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the

Bette
Question - factor

45 U.S.C. 1207.
What does this mean?
What other Acts?
Antitrust
If Railroad is transferred to the Private Sector, the these description Don't Apply?
Which Exemptions are Available?

① What business opportunities are available to comparable Railroads?
What are Contract Rate Agreements?
What does this Mean?
This is important

Planned Question
① ② ③ ④
Most important

Bette

State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 115(a)(1)). Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 103(a)(1)), but not obligations within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(b)(2)).

(B) Nothing in this title shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) As soon as practicable after the date of enactment of this Act, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.) shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code.

(d) After the date of transfer to the State pursuant to section 604 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this title.

FUTURE RIGHTS-OF-WAY

49 USC 1209

Sec. 609. (a) After the date of enactment of this Act, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the

What does this mean regarding to the Railroads Rule Policy?

What sort of assistance is available.

Very important

Other We have water carriers concerned about subsidy and the State competing with private carriers. Inasmuch as the Railroad is an ICC carrier

How water carriers are EAC. Is there competition here? EAC Rates compare with ICC Rates?

were you were involved in the Section 609 study required in the Staggers Act? What were the findings.

(4) The important public purposes to be served by the railroad authority require the authority to have all of the powers and duties granted to it by this chapter; the Legislature intends that the authority exercise such powers and duties as a public service on behalf of the State of Alaska and recognizes that the exercise of the powers and duties granted by this chapter will require the authority to engage in a wide variety of different kinds of conduct; the Legislature further intends that in engaging in types of conduct related to the exercise of its powers and performance of its duties under this chapter, the authority shall not be subject to either the federal or state antitrust laws nor any other limitation that could hinder the effective exercise of the powers and duties granted by this chapter to the Authority.

Finding

ARTICLE 4. 2. CREATION AND ORGANIZATION

Sec. 42.40-010.200. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established as a public corporation of the

deemed by the ~~Board~~ Council to be necessary for the operation of a railroad."

~~Section 3-~~ 42.40.710. Except as may be specifically provided otherwise, the provisions of this Act take effect upon enactment.

ARTICLE 8 APPLICATION OF OTHER LAWS

Sec. 42.40.800. CONFLICTING LAWS

INAPPLICABLE. Insofar as the provisions of this Act are in conflict with the provisions of any other law, or parts thereof, the provisions of this Act shall prevail.

Specifically, and without otherwise limiting the generality of the foregoing, it is intended by this Act that the federal and state antitrust laws shall not be applicable to any action of the Alaska Railroad Authority taken pursuant to the provisions of this Act. The Legislature of the State of Alaska by this Act expressly authorizes the Authority to engage in all types of conduct related to pursuit of the purposes, exercise of the powers, and performance of the duties granted to the Authority by this Act and expressly intends to displace the antitrust laws from applying to

all such conduct and activities of the authority. It is similarly intended that the antitrust laws shall not be applicable to any action or conduct engaged in by the Alaska Railroad Authority Council and its individual members pursuant to the provisions of this Act.

Sec. 42.40.810. REPEAL AND AMENDMENT OF EXISTING STATUTES.

(1) A.S. Title 19 shall not apply to the operations of the Alaska Railroad.

[Title 19 sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways. Some of its provisions regarding construction, public bids, etc. arguably apply to other activities of Public Facilities, to which the railroad will be nominally assigned.]

(2) A.S. 23.10.420 shall not apply to the operations of the Alaska Railroad.

[Full-crew law]

(3) A.S. 30.15 shall not apply to the operations of the Alaska Railroad.

[Procedures for state grants for construction of local port facilities.]

A M E N D M E N T

Offered in the SENATE

By V.Fischer

TO: SB 352

Page 16, after line 10, insert a new section to read:

"Sec. 42.40.460. MUNICIPAL RIGHTS-OF-WAY. Upon request of a municipality the corporation shall grant to the municipality a right-of-way in a railroad utility corridor or in land owned by the corporation to be used for a pedestrian walkway or trail. Before granting a right-of-way under this section the board may require the municipality to execute an agreement in a form approved by the board to

(1) hold the corporation harmless for any use made of the right-of-way; and

(2) vacate the right-of-way upon request of the corporation if the right-of-way interferes with expansion or replacement of railroad facilities."

GUIDELINES FOR STATE OVERSIGHT OF RAILROAD FISCAL PROCEDURES

Because the railroad will be a public entity there must be public oversight and accountability. The entity statute should assure that this oversight be provided in a manner that:

- gives railroad management the flexibility needed to operate in the competitive business environment, and
- facilitates the transfer of the railroad to a private sector operator.

These goals can be achieved with oversight based on the following principles:

1. The responsibility for establishing and maintaining the railroad's accounting and procurement systems will be delegated from the Commissioner of Administration to the Board of Directors of the Alaska Railroad Corporation.
2. Delegation will be made after the Commissioner of Administration and the Legislative Auditor have assured that the railroad's accounting and procurement systems comply with accepted standards.
3. This delegation may be revoked if the railroad does not annually receive acceptable financial and performance audit reports.

D R A F T

Suggested language for Article 7 (Collective Bargaining)

You have requested that we draft preliminary language which establishes a mechanism for collective bargaining for employees of the Alaska Railroad. In accordance with your request, our preliminary proposal is intended to establish procedures which are substantially identical to the procedures established under the Public Employee Relations Act (PERA) (AS 23.40). To assure the independence of the corporation for purposes of collective bargaining, however, the corporation is specifically exempted from PERA.

Sec. _____. COLLECTIVE BARGAINING RIGHTS. The provisions of the Public Employee Relations Act (AS 23.40) do not apply to the corporation or to its employees. However, employees of the corporation, except the chief executive official and other executive officials appointed by the chief executive official, may self-organize and form, join or assist an organization to engage in collective bargaining with respect to wages, hours and other terms and conditions of employment.

Sec. _____. AGREEMENT. (a) ^{The Corporation may request} The Department of Administration shall participate in the negotiations between the corporation and an employee organization. The corporation may

not enter into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment unless the proposed contract terms are approved by the Department of Administration.

(b) An agreement executed between the corporation and an employee organization shall define "grievances." The agreement shall provide for a grievance procedure in which the final step in the procedure is binding arbitration.

*NLRB Board - District
Sullivan and P.C.C. - Chicago
Above mentioned Board*

Sec. _____. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY.

(a) There is established a railroad employees labor relations agency which consists of three members appointed by the governor. One member shall be a member of the labor relations agency (AS 23.40). Members serve at the pleasure of the governor.

(b) The railroad labor relations agency shall perform the functions described in AS 23.40.090 -- 23.40.190 to carry out the provisions of the article.

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

Sec. _____. STRIKES. (a) Employees of the corporation

*Safety Class 1
Class 2
Class 3 Employees*

may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(b) Notwithstanding the provisions of subsection (a), the employees and the corporation may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

Introduced: 1/13/84
Referred: Transportation and
Finance

Eric Wohlfarth
Frank Conroy Ref.
Wohlfarth & Flint Aich
Proposed Board Council
900w. 5th 276-6401
Tim Middleton → Ken Vassar

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 vast 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

Wohlfarth & Flint
Proposed Board Council

Operational
Self-sufficient
Possible

Self-sustaining
Self-sufficient
operating entity

Wohlfarth
Frank Conroy

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.

*What does
Buzz word
mean.*

*Public Utility and
Subfactor*

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

1
2 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
3 established the Alaska Railroad Corporation. The corporation is a
4 public corporation for the purposes of art. III, sec. 22, Constitution
5 of the State of Alaska. The corporation shall be considered a princi-
6 pal department only for the purposes of art. III, sec. 26, Constitu-
7 tion of the State of Alaska.) The corporation has a legal existence
8 independent of and separate from the state. The exercise by the
9 corporation of the powers provided in this chapter is considered an
10 essential government function of the state.

table?

*Policy
not vs. Inhabit
8/10/60
Hoyen*

11 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
12 corporation are vested in the board of directors. The board consists
13 of five voting members appointed by the governor. These five members
14 must be residents of and registered voters in the state except as
15 provided in (b) of this section. *Members shall have demonstrated business or professional experience*
16 may be from any one of the four judicial districts in the state. Two
17 of the voting members must have at least five years experience as
18 owners or managers of a business in the state. A voting member may
19 not be a state officer or employee.

*Business or
Professional
Expense*

20 (b) One person who is not a resident of or registered voter in
21 the state may be appointed by the governor to be a voting member of
22 the board, if, at the time of appointment, the person has at least 10
23 years of experience in management of railroads.

24 (c) In addition to the voting members, the following nonvoting
25 members shall serve on the board:

26 (1) an employee of the corporation appointed by the gover-
27 nor to represent the employees;

28 (2) the chief executive officer of the corporation.

29 (d) The voting members of the board shall be confirmed by a

Tax
*(3) No. voting members may be
excluded by the board meeting
Executive Session*

- ? -

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. *Remove the ^{full} term.*

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 ^{fully} 12 ^{days}
6 each day the member is engaged in the actual performance of duties as ^{SECRET}
7 a member of the board.

8 (b) In addition to compensation under ^a (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 TO MEETINGS. ^{Four} 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 compensat'ou 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;

HB 512

*Certify of Collective Barg agreements with labor
Agreements with labor organization*

Ernest Davis

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 ^{except that the board may conduct} ~~with the exception of~~ an executive session ^{As the purposes} ~~conducted~~ ^{decided}
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 exe-
13 cutive 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 *Temporary Section* → 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. *Deanna District Council*

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

*Corp. Sets Policy
For RR
Directors are held
Accountable*

- 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);

→ *Editorial Collective Bargaining **

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

NOT PART OF ASSETS

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 ^{original easements for} portions of the
26 utility corridor for other transportation services. ~~public or other purposes~~

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

*Use from
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2-21-84*

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 ^{Foundation (RDC)} the lands
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. *Look at this*

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.

*See note
Self-insurance*

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. *Subject to Fiscal Procedures* 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

*Include from SB 10
Opposite page
for loan*

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 assu-
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 *Conf stop 2-22-84*
11 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
12 its political subdivisions are not liable for the debts of the corpo-
13 ration. Bonds and notes issued under this chapter are payable solely
14 from the revenue or assets of the corporation and do not constitute a

15 (1) debt, liability, or obligation of the state or of a
16 political subdivision of the state; or

17 (2) pledge of the faith and credit of the state or of a
18 political subdivision of the state.

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

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

24 (2) neither the faith and credit nor the taxing power of
25 the state or of a political subdivision of the state is pledged to the
26 payment of it.

27 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
28 the corporation is not subject to personal liability or accountability
29 because of the execution or issuance of bonds or notes.

30 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

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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.

*those referred to as in ARTA-82
(A2) (c)*

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 ~~not~~
12 ~~not~~ 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.

*AT in
Union Support
Relation*

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; ^{(A2)(4)} *Executive Official & Collective Bargain*
20 ~~Employees - Define~~ (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).

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature



Senate

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

MEMORANDUM

March 1, 1984

TO: All Members of the Legislature

FROM: Senator Arliss Sturgulewski ^(A)
Senate District F, Seat A

RE: The Experiences of the Alaska Renewable Resources Corporation
(Or the Rise and Fall of ARC)

Dean F. Olson, Adjunct Associate Professor, School of Business & Public Affairs, University of Alaska-Anchorage, a former trustee of the Alaska Renewable Resources Corporation, has written an excellent analysis of the Alaska Renewable Resources Corporation which was created by the legislature in 1978. After numerous legislative changes, the now-named Alaska Resources Corporation will be dissolved on July 1, 1989 if HB 685 introduced by the Sheffield administration becomes law.

Dean Olson has described what happened to an organization created with interest and enthusiasm to broaden economic opportunities in renewable resources. He makes specific recommendations as to why it is important to create political independence for a public corporate structure and yet retain certain legislative and executive prerogatives. His analysis can be of value while considering various proposed structures currently before the legislature.

Enclosure

Venture Capital for Development:

The Experiences of the

Alaska Renewable Resources Corporation

January 1984
Dean F. Olson
Adjunct Associate Professor
School of Business &
Public Affairs
University of Alaska-Anchorage
(Former Trustee - The Alaska
Renewable Resource Corporation)

I. Introduction

This paper describes the experiences of the Alaska Renewable Resources Corporation (ARRC) during the period from 1979 to 1982. The paper begins with a brief description of the founding legislation and the policy making environment which existed at the time the ARRC was established. The paper then traces the operating experiences of the agency over the three years period ending in June 1982. Finally, certain conclusions are drawn from the ARRC experience in the hope that other governments contemplating similar organizations can avoid making the same public policy errors.

The use of federal funds to broaden and strengthen the private sector through equity investment into privately owned businesses has been accepted public policy for nearly thirty years. Since the mid 1950's federal programs have supported privately owned venture investment firms known as Small Business Investment Corporations (SBIC's) and Minority Small Business Investment Corporations (MESBICS). In the 1960's a number of Community Development Organization (CDC's) were established to further assist the business development efforts of selected target groups.

State support of equity investment into private business is a more recent development. Since the early 1970's State support for venture investment into private enterprises has lead to the initiation of development institutions in Massachussetts, Connecticut, Maine and Kentucky. While these organizations differ considerably they share the broad goal of enhancing private business development through the placement of various types of risk capital.

In Alaska, the State Legislature established (in 1978) and funded (in 1979) the Alaska Renewable Resources Corporation. The Alaska Renewable Resources Corporation (ARRC) was to be funded in yearly intervals at 2.5% of the State's oil and gas royalty receipts. ARRC's goal in general terms was to create a broadened economy based more upon renewable resource businesses. The ARRC was to accomplish this goal through venture capital placement into private businesses owned in the majority by Alaskan residents.

Managed initially by a board of three full time trustees appointed by the Governor, the ARRC could make equity investments for up to 49% of an investee's outstanding common stock and could make loans on any terms which accommodated the needs of the new or expanding business. Any single investment was limited to \$1.5 million unless 'follow-up' investment was regarded as necessary to preserve the initial placement.

In 1982, after three years of operation, discontent with the ARRC resulted in legislation which made significant changes in the scope of the agency's investment policies; the size of investments it could make, and how the agency was funded and organized. Further legislation is being planned in 1984 to terminate the agency.

II. Founding Legislation and Public Policy Issues

By any objective measure the legislation establishing the ARRC was creative public policy. Prompted by the realization that oil and gas royalty income to the State would begin 'playing out' in the early 1990's, certain legislators and Alaska's Governor (Jay Hammond) promoted the

creation of several institutions. The Alaska Industrial Development Authority (AIDA) was created to 'package' small business loans into larger tax exempt bond issues for public sale. The Alaska Commercial Fish and Agricultural Bank (CFAB) was created as a cooperative lending institution to make loans to farmers, fishermen, fish processors and timber producers. The Alaska Permanent Fund (APF) was created to serve as a savings account into which a proportion of royalty receipts was to be placed as a hedge against the future downturn in revenues. Additional institutions were created to enhance hydroelectric power generation (the Alaska Power Authority) and to support the residential construction market (the Alaska Housing Finance Corporation).

The ARRC was intended to 'balance out' the above rainbow of development institutions by providing a source of equity financing to new and expanding businesses engaged in the production of renewable resources (Fishing and fish processing, Agriculture, Forest products, and Alternative energy). The agency was empowered to own up to 49% of the outstanding common stock of target enterprises. Further, the ARRC could make loans at any interest rate for a term of less than 30 years. The ARRC also had granting powers which it could employ to stimulate inquiry into new technology which might enhance renewable resources. Finally, the ARRC could provide technical assistance funds for business development. Total loans and investment into a single business was limited to \$1.5 million.

The initial legislation provided that the ARRC was to receive 2.5% of State lease bonuses, rentals and royalty income. In practice, the agency

approached the legislature each year for operating and investment capital budgets. Over the three year period ending in June, 1982, the ARRC received below 1% of State receipts.

The ARRC was governed by a full time board of three trustee appointed by the Governor for four year terms. The trustees (and all other ARRC employees) were employees of the State of Alaska. There were no professional qualifications for trustees provided for in the legislation. The three trustees were to have equal authority and responsibility for agency decisions.

The ARRC was designed to work in concert with private businesses to:

- (1) rehabilitate, enhance and develop renewable resources by providing maximum opportunities for employment and a higher standard of living for its citizens; and
- (2) further the development of renewable resources that would contribute to a stable self sustaining state economy, employment and life style alternations for citizens (AS 37.12.010).

The legislature agreed, when passing the ARRC legislation, that achievement of the above public policy objectives was being retarded by a cyclical, narrowly based economy. The ARRC was directed to remove barriers to achieving a broadened economy by assisting in research and development and by providing venture capital to renewable resource businesses owned by Alaskan citizens.

The enabling legislation permitted considerable financing flexibility by the ARRC. No income or minimum yield requirements were placed upon the

agency. Grants could not exceed 10% of ARRC capital, but this was never a serious constraint. Because operating funds were appropriated each year, the agency did not have to live within budgets bounded by its investment income.

In sum, the ARRC was created as a part of an array, a 'rainbow', of institutions designed to increase economic opportunities for Alaskans. The ARRC's role was to provide high risk capital to start-up and expanding businesses in renewable resource industries. An agency of State government, the ARRC was managed by a tripartite board of trustees of equal authority and was given substantial flexibility in the selection of alternative investment structure to employ in placing its investments.

III. Operating Experiences 1979-82

The ARRC attracted immediate interest from Alaskans with business ideas. Within six months from its beginning the agency had received several hundred proposals. Many proposals were not well developed, while others were complete business plans. Over the three year period the ARRC received an average of 400 proposals per year.

The ARRC loaned or made investments into about 3% of the proposals reviewed. An immense amount of staff energy was devoted to screening proposals and investigating business plans nearing completion. ~~In the prospect~~

~~for each of the years in turn-downs and 100-1000~~
~~of the ARRC's total investment~~

Due to its political origins and the widespread perception that the ARRC was a "State loan program" (a source of soft money) it was difficult to make turndowns stick. Applicants whose proposals had been turned down would often protest to legislators and succeed in getting their proposal reviewed a second time. While their tactic did not result in an investment it did consume an inordinate amount of energy. Turndowns were particularly difficult to enforce when the proposing business was a major factor in the economy of a small Alaskan community. In these instances local and State politicians would join forces in seeking a favorable review.

By early 1980 the ARRC had acquired the reputation for being slow to reach decisions and for being harsh in its evaluation of proposals. Legislators assailed the agency for 'not getting the money on the street' fast enough. Review of business plans did require three to four months. Investigation and 'due diligence' on the plan and the background of management personnel often requires this length of time; a fact little appreciated by most applicants and legislators accustomed to dealing with collateral lenders.

In May 1980, one year from the operational beginnings of the ARRC, the legislature directed the agency to help seafood processors prepare for a salmon harvest of historically large proportions. Prompted by concerns that domestic processing capacity would fall short of the harvest the legislature appropriated \$15 million for the ARRC and directed the agency to suspend normal business planning and investment criterion, as well as the \$1.5 million investment limit, and move to aid the industry in its

attempts to finance the expansion necessary to process the 1980 salmon harvest.

In addition, in May 1980, the legislature directed ARRC to move to assist timber processors in Southeast Alaska build wood-fired electrical generation plants so as to conform to EPA pollution standards. Again, the emergency legislation suspended the ARRC's normal screening criteria and the \$1.5 million investment limit. Some \$5.2 million was allocated to this special purpose.

The effect of the emergency legislation for fish and timber processors was to redirect the ARRC's strategic focus away from new business development and toward the 'fast tract' restructuring and refinancing of existing businesses. The table below shows the magnitude of this type of activity in relation to the total portfolio on June 30, 1981 and 1982. Refinancing activity accounted for about three quarters of the portfolio in each year and about one quarter of the number of transactions.

Table I
Alaska Renewable Resources Corporation

Portfolio by Type
of Transaction

June 30

(\$'000)

	<u>\$</u>		<u>#</u>	
	<u>1981</u>	<u>1982</u>	<u>1981</u>	<u>1982</u>
Refinancing	\$17,212	\$21,448	6	7
Expansions	1,425	1,711	5	6
Start-ups	3,699	4,762	9	11
R & D and Demonstration	1,088	646	7	5
Totals	<u>\$23,424</u>	<u>\$28,567</u>	<u>27</u>	<u>29</u>

The strategic redirection of the ARRC, from business developer to business savior, is in retrospect the single most important factor in understanding the agency's short and confusing history. The emergency redirection of effort served to cloud the strategic role intended for the ARRC. The ARRC never recovered from the confusion.

Another element of importance in understanding the ARRC's experience is the organizational structure created in the initial legislation. The tripartite board of full time trustees of equal responsibility and authority produced incredible confusion in the internal operation of the

ARRC and in the external environment of the agency. The concept simply could not be made to work. It is hard to imagine any combination of executive personalities which could function effectively in this context.

The dependency of the ARRC upon annual legislative appropriations for operating and investment budgets produced several operational impediments. First, ARRC personnel could never be sure that the agency could participate in second or third round financings of start-up companies. Follow-up financing of this type is common in more than one-half of all new businesses. The initial venture investor is usually a player in these subsequent 'trips to the well' by the venture. The ARRC could provide no assurance to prospective co-investors that it would be in existence to help with any future financings. Second, the ARRC emerged as a political football each year. Legislative supporters of the ARRC and the public policy issues underlying its creation found it increasingly difficult to convince legislators with disappointed constituents. Furthermore, as more legislators became aware that the ARRC could and did take equity positions in private businesses, philosophical concerns about the basic public policy issues became more pronounced. Philosophical support for the agency was never strong and began to erode fairly quickly with a few well publicized turn-downs and an equally well publicized bankruptcy in which the ARRC took control of the enterprise.

The ARRC invested in over 30 businesses over the three year period under review. Table II shows that from its beginning in 1979 to June 30, 1982, the agency placed \$23.3 million in loans and \$7.2 million in equity

investments. The preponderant role played by the two 'assistance funds' is again quite evident.

Table II

Alaska Renewable Resources Corporation

Total Loans & Equity Investments

Fiscal Year Ending

June 30,

(\$'000)

Loans	1980	1981	1982	1983
Agriculture	\$37.6	\$273.9	\$790.1	\$261.9
Fisheries	2,310.2	5,965.0	7,557.3	4,129.2
Fisheries Assistance Fund ¹	5,023.6	10,748.8	11,129.0	8,398.4
Forest Products	201.0	531.7	2,228.5	351.4
Forest Assistance Fund ²		164.3	1,600.0	3,470.2
Manufacturing ³				370.0
sub-total	\$7,572.4	\$17,683.7	\$23,304.9	\$16,981.1
<u>Equity Investments</u>				
Agriculture		\$50.0	\$50.0	
Fisheries	\$375.1	735.5	871.5	\$666.5
Fisheries Assistance Fund ¹	500.0	4,513.6	4,091.1	3,741.3
Forest Products	150.0	350.0	433.1	433.1
Forest Assistance Fund ²			1,800.0	1,800.0
Manufacturing				
sub-total	\$1,025.1	\$5,679.1	\$7,245.7	\$6,640.9
Total	\$8,597.5	\$23,362.8	\$30,550.6	\$23,622.0

¹Special legislation passed in May 1980 directed the agency to provide emergency refinancing to fish processors.

²Special legislation passed in May 1980 directed the agency to provide emergencing financing to forest product producers.

³Legislation passed in May 1982 permitted the agency to invest in manufacturing and mining.

While the volume of transaction activity grew quickly, the full time staff remained small. The first professional employee was hired in March 1980. By the end of that year four investment officers had been retained. As Table III reveals, operating expenses were relatively low in relation to the volume of funds invested and the volume of proposals reviewed. Operating expenses were about 8% of portfolio volume in 1980 and declined to 3.6% in 1982. Operating costs include expert help retained to review specific proposals as well as all full time staff expenses. Table III also reveals that the technical assistance and granting powers that the agency enjoyed were never a major dimension of the ARRC's activities. Finally, provisions for the 'write down' of loans and investments are depicted. Some 20.9% of the portfolio was reserved for loss in 1982. The actual write down of portfolio assets amounted to 22.7% over the fiscal year ending June 30, 1983.

Table III

Alaska Renewable Resources CorporationProvisions for Losses,Operating Expenses, TechnicalAssistance and Development Grants

Fiscal Year Ending

June 30,

(\$'000)

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>Totals</u>
Technical Assistance	\$295.3	\$94.6	\$66.6	-	\$456.5
Development Grants	51.1	167.4	5.0	-	223.5
Provision for:					
Loan Losses	-	261.1	4,712.9	3,420.1	8,394.1
Equity Losses	-	-	1,671.6	259.9	1,931.5
Operating Expenses	687.5	1,111.0	1,096.7	627.4	3,522.6

Each portfolio company is unique. The investment structure employed by the ARRC in each transaction was tailored to investor requirements. The following descriptive examples of the types of transactions the ARRC completed illustrate the diversity of the investment structures employed by the agency.

Portfolio Company A A major fish processing company operating in several fishing communities through out Alaska had grown rapidly since its inception in the mid 1960's.

The company's commercial bankers were requiring a major refinancing which would improve working capital balances and bring better balance to the company's debt to equity ratio. The company was closely held by Alaskan fishermen. The refinancing could not be accomplished within the resources of the existing owners. Financial performance of the company, the condition of the new issues market, and uncertain industry forecasts combined to render a public offering of equity unattractive. The ARRC and another venture capital investor invested a total of \$6.5 million. Certain assets were purchased by the investors and leased back to the company under a lease purchase agreement. The ARRC also acquired a minority equity position in the company through a purchase of common stock and a convertible debenture. A stock repurchase formula was negotiated which would enable the company to purchase the ARRC's stock position over several years. The

company later exercised its option to repurchase the property and has begun to purchase ARRC held stock.

Portfolio Company B A large Pacific Coast firm had gone bankrupt and the trustee was liquidating assets, some of which were in Alaska. A group of Alaskan entrepreneurs and the ARRC acquired a fish processing plant from the bankruptcy court with the intention of converting the plant to process 'bottom fish', an underutilized resource. The plant was purchased with a \$3.5 million loan and investment by the ARRC. The structure consisted of a \$2 million note secured by plant and equipment; a \$1 million subordinated convertible note, and a \$.5 million purchase of 47% of the new company's outstanding common stock. The ARRC later provided substantial additional funds to finance conversion and provide working capital. The new company went bankrupt in 1982. The ARRC owns the facility.

Portfolio Company C A group of Alaskan entrepreneurs had acquired the west coast license for a patented enzyme for conversion of fish waste into a high protein concentrate. The new company needed funds to build a prototype processing plant in hopes of confirming the feasibility of the enzyme when employed under actual production conditions. The ARRC provided \$535,000 in initial financing through a \$335,000 subordinated note with deferred payments of interest and principle and a \$200,000 purchase of 30% of outstanding common stock in the new company.

Portfolio Company D A group of 30 Eskimo fishermen in western Alaska desired to enter a commercial herring fishery which had begun the year before along the coast near their villages. The fishermen needed materials and technical assistance in building the herring skiffs, purchase of the outboard motors and other gear, and to organize a producers cooperative. The ARRC provided loan funds direct to each fishermen to build his own boat and buy the gear. The ARRC also paid for technical assistance to get the project underway.

Portfolio Company E A successful commercial crab and halibut fisherman needed financial help to convert his vessel to a 'long liner' for the harvest of bottom fish. As a demonstration project, the ARRC financed the conversion costs and, through the purchase of common stock in a newly formed company, provided start-up working capital. The initial investment consisted of \$175,000 in a subordinated deferred payment loan and \$175,000 in equity.

Portfolio Company F A successful ship repair facility needed funds to expand docking and plant facilities and to purchase a major item of equipment. The owners could not finance the equity portion of expansion costs and bank lending was not suitable for the young firm in terms of interest rates or repayment schedule. The ARRC provided \$350,000 in subordinated deferred payment debt and \$150,000 in equity in exchange for 22% of outstanding common stock.

The common elements in each of these examples is the assumption of high risk by the ARRC and other investors. Conventional lending sources

were either not available or inappropriate for the situation. The equity capital requirements were well beyond the capacity of the existing owners. Frequently, the ARRC's investment structure employed a combination of loan and equity capital. Restructuring of the investment a year or two later was required in many cases.

In May 1982, in response to encouragement from the Board of Trustees and testimony from others, legislation was passed which dramatically changed the ARRC. The tripartite board was replaced by a part time board of five persons. The maximum investment per transaction was reduced to \$500,000. Manufacturing and mining were included among eligible industries.

Importantly, the newly named agency 'the Alaska Resources Corporation' (ARC), was endowed with the portfolio then in existence and about \$12 million in uncommitted investment capital it held at that point in time. This reduced the political sensitivity of the agency but did not remove it from political supervision in that the Governor retained appointive powers.

Since May 1982, the ARC has been essentially inactive as regards new investments. The present governor is reportedly drafting legislation which would terminate the agency in 1984, thus bringing to a close a noble attempt to implement creative public policy.

IV. Conclusions from the ARRC Experience

Certain conclusions can be drawn from the three year period the ARRC existed. While the Alaskan experience need not be a forecast of outcomes

from similar programs to harness venture capital to public policy, the ARRC experience does suggest that any such attempt be attentive to the following factors.

(1) Discussion of proposed legislation establishing a State financed venture capital investment organization should be open and well publicized. Many Alaskan legislators and the public in general had a very poor understanding of venture (equity) investment and little appreciation of the public policy issues raised by government ownership of private companies;

(2) Do not depart from fully tested organizational structures in use by successful businesses. Full-time boards are not an effective organization for this purpose.

(3) Establish the organization with a definitive endowment of paid in capital. Earnings should be retained by the organization.

(4) Require the organization to attain self-supporting operations within a specified period of years; provide for the organization to issue its own securities without the guarantee of the State.

(5) Establish a certain minimum experiential and professional qualification for appointments to the board of directors.

(6) Provide for separation of employees from State employment. Permit salary and compensation structures analagous to those in private industry; and,

(7) Provide clear strategic focus to the organization in the enabling legislation.

These conclusions underscore the importance of providing for the political independence of the organization except for the ultimate power of the legislature to terminate and the power of the executive to appoint. The Alaskan experience suggests that measures which fall short of providing for such independence are too prone to political abuse to become effective agents of economic change.

3/8/84, SHIRLEE ANC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL MEMBERS
ALASKA LEGISLATURE

FROM: JEFFREY N. JOHNS
1102 WILD ROSE COURT
ANCHORAGE, AK 99502

SUBJ: SB 346 "(INCREASING THE POWERS OF PSYCHIATRISTS)"

IT IS VERY DANGEROUS TO GIVE PSYCHIATRISTS POLICE POWERS. PSYCHIATRISTS HAVE A SUICIDE RATE 7 TIMES HIGHER THAN THE GENERAL POPULATION (FREEMAN, AMERICAN JOURNAL OF PSYCHIATRY). ELECTRIC SHOCK, PSYCHOSURGERY AND DRUGS CAUSE MEMORY LOSS, KILL BRAIN CELLS AND OTHER WISE HARM INDIVIDUALS. THESE FACTS ARE WELL DOCUMENTED. PLEASE OPPOSE THIS LEGISLATION.

/S/ JEFFREY N. JOHNS

3/8/84, SHIRLEE ANC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL LEGISLATORS

FROM: SHERWIN A. START
320 MCCARREY STREET, 'C'
ANCHORAGE, AK 99504
(H) 337-8988

SUBJ: ALASKA RAILROAD

*BEING AN RAILROAD TRANSPORTATION PLANNER, THE LEGISLATURE IS DOING A MONUMENTAL DISSERVICE TO BOTH THE LEGISLATURE AND THE FUTURE GENERATIONS OF RESIDENTS OF THIS STATE BY PURCHASING THE ALASKA RAILROAD AS IT WILL NEVER OPERATE IN THE BLACK!!! THE FEDS HAVE WITHHELD OR ALTERED THE INFORMATION AS TO COST OF TAKEOVER BY SUBSTANTIAL AMOUNTS (UNDERESTIMATED-ESTIMATED). I FURTHER BELIEVE THAT THE VOTERS OF THE STATE SHOULD HAVE A CHANCE TO VOTE WHETHER WE SHOULD BUY IT OR NOT!!!

/S/ SHERWIN A START

RR plan receives support

By TOM KIZZIA
Daily News reporter

A new survey of Wasilla and Palmer commuters shows that most would consider taking the train to Anchorage each day — provided there is reasonably frequent service and buses to carry them to work from the Alaska Railroad station downtown.

The survey was taken for a task force of municipal, state and railroad officials now looking into creation of a test commuter train. The task force is expected to make recommendations in the next few weeks based on the new marketing survey.

Planning for a commuter train to the Matanuska-Susitna Valley ground to a halt in 1979 after a consultant's study concluded traffic wouldn't justify the cost of additional rail investment. The 1979 study recommended increased bus service.

But unexpected population growth in the valley and increasing congestion on the Glenn Highway have encouraged officials to take another look at rail.

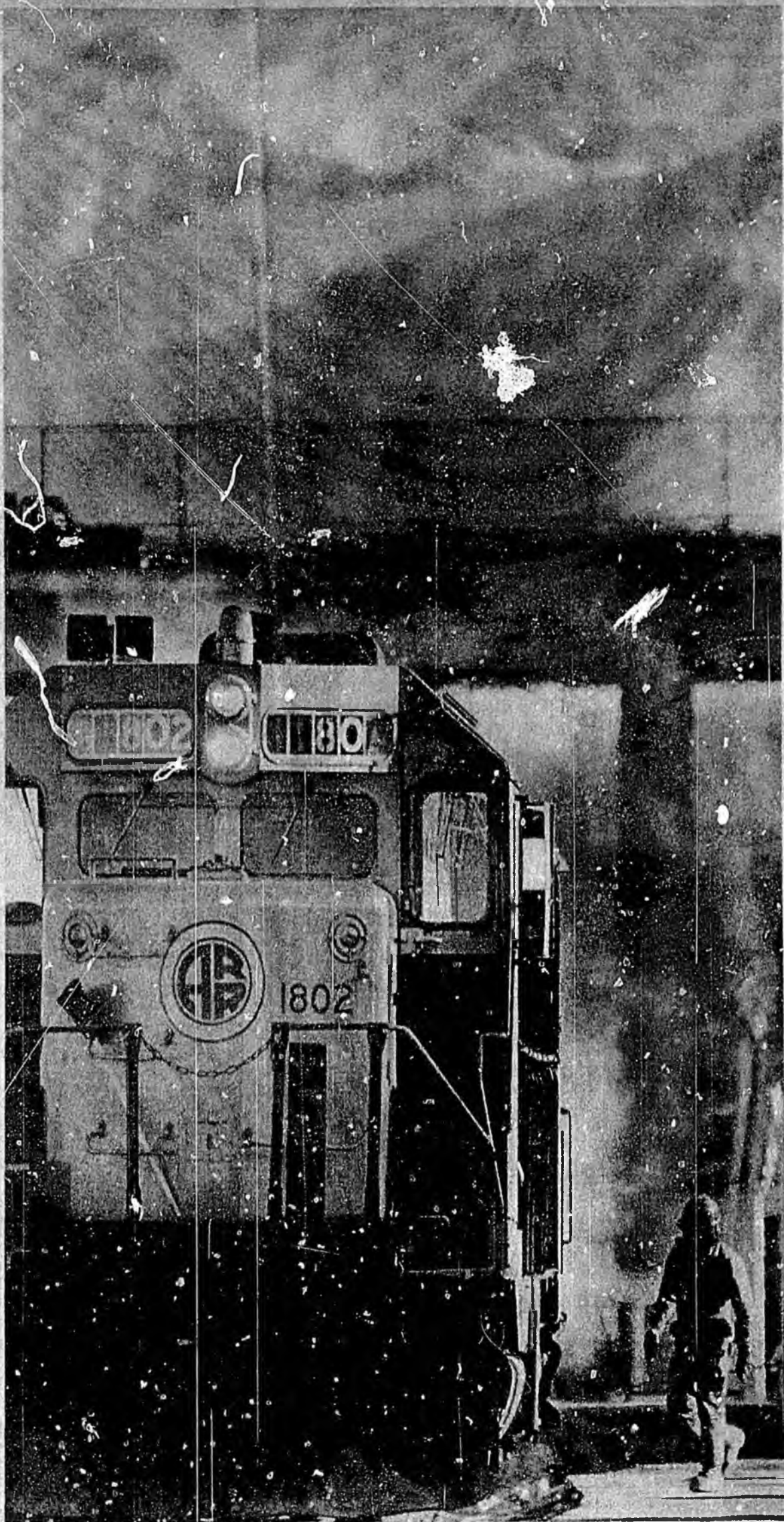
"We're really asking the question, whether the Glenn Highway corridor?" said Tom Brigham, transit director for the municipality of Anchorage. "The rail costs may be high, but they're not prohibitive compared to what they sink into roads."

Brigham said rail service to downtown Anchorage could strengthen the downtown area and help reduce automobile congestion city-wide.

The commuter rail possibility was revived last summer in a meeting between Mayor Tony Knowles, Alaska Railroad general manager Frank Jones and U.S. Secretary of Transportation Elizabeth Dole, Brigham said.

The study group includes representatives of the Matanuska-Susitna Borough, the state Department of Transportation and Public Facilities, the municipality and the railroad.

A key question before the task force is whether a



See Page B-2, RAILROAD

Alaska Railroad may make commuter runs to the Mat-Su Valley in the future.

Anchorage Daily News/Jim Lavrakas

Railroad plan gains support

Continued from Page B-1

single commuter test train would draw enough ridership to prove that more extensive service could be cost-effective.

"We don't want to try it and fall flat," said Bill Coghill, director of planning for the Alaska Railroad. "If that happens then the whole idea is gone for three or four years."

The new marketing survey, completed in January by Transcom Inc. of Seattle, found that 85 percent of the 200 commuters interviewed said they would consider taking the train in winter.

But they rated downtown distribution and flexibility of schedule as very important — and officials say these may be hard to satisfy, especially in a test.

"There isn't going to be a train coming along every 10 or 15 minutes," said Coghill.

"We support the concept, but the borough is not pushing to do it until it can be done right," said Matanuska-Susitna Borough planning director Robert Stickle.

Rated only slightly less important in the survey were ticket cost and travel time.

Officials said the train trip from a possible park-and-ride station at the Glenn and Parks Highway junction

would be about one hour, roughly comparable with driving time. Investments of some \$25 million to straighten track between Eagle River and Anchorage could cut 15 minutes off the journey, they said.

Respondents to the survey said they would be willing to pay \$5 to \$6 for a round trip ticket. Officials said operating costs for the trip would be about twice as much per seat.

Capital costs would push the overall subsidy higher, particularly if commuter service is run in summer, when all existing passenger cars are in use by the railroad.

"The subsidy is going to have to come from the state Department of Transportation," Stickle said.

Detailed cost studies of commuter service have not yet been done, the officials stressed.

The state does not have money in next year's budget to subsidize a test of commuter service, said Roger Maggard, who represents the Department of Transportation and Public Facilities on the committee.

Brigham said the availability of federal funds, which tends to favor highway projects, could affect the long-range decision regarding the Glenn Highway corridor.

TO: REPS DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER
SENS BENNETT, FAHRENKAMP, MOSS
HOUSE TRANSPORTATION -- REPS CATO, ABOOD, FLOOD, HERRMANN,
SYZNIANSKI, MCBRIDE, BETTISWORTH,

FROM: ROBERT GROVE
BOX 91550
FAIRBANKS, AK, 99708
479-6691-H & W

RE: HB 512, ESTABLISH AK RAILROAD

MSG: I ENCOURAGE PASSAGE OF THIS BILL, BUT CAUTION THE CORP. FROM MAKING THE
SAME ERRORS AS THE AK RAILROAD UNDER FEDERAL CONTROL. IE. REMEMBER THE LOCAL
PASSENGER NEEDS (THE FOLKS THAT LIVE NORTH OF TALKEETNA & SOUTH OF HURRICANE)
WITH NO ROADS. THESE PEOPLE ARE DEPENDENT ON THE RAILROAD AND WERE DISCOURAGED
FROM USING THE TRAIN IN THE PAST. IE HIGH FARES FOR SHORT DISTANCES.

-----EOM

MAR 20 1984

Anchorage

CHAMBER of COMMERCE

Representative Bette Cato
State Capitol
Pouch V
Juneau, Alaska 99811

Crossroads of the Air World

Dear Representative Cato,

For several years the Anchorage Chamber of Commerce has been closely following the transfer and operation issue of the Alaska Railroad. The Anchorage Chamber has expressed its support of a strong independent railroad which operates as a business entity.

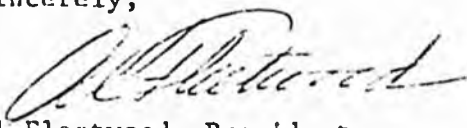
We feel our objectives, and the citizens of the state, are best achieved through passage of HB 512. The major elements in this legislation which we support are as follows:

1. Specific reference under the legislative purpose of the eventual transfer of the railroad to the private sector.
2. The independent status of the Corporation as an entity of the State.
3. The strength of the Corporation Board of Directors identified by its powers and duties.
4. The establishment of the Executive Officers of the railroad to manage the day-to-day activities of the railroad.
5. We strongly support the Railroad Corporation right to hold and manage its lands including the right of eminent domain, and the right to request additional lands for railroad purposes.
6. We support the inclusion of the strong bonding authority of the Alaska Railroad Corporation.
7. We support the railroad generated revenues staying within the Corporation for future railroad purposes.
8. And finally, we support the Alaska Railroad employees being employees of the Corporation.

We would like to propose one addition to Article 4, Section 42.40.300 General Powers. We recommend that the Corporation be permitted to lease a portion or all of the operation of the railroad to a private entity. We feel this addition should be granted to the Corporation as an option to their management prerogatives and is within the overall intent of the proposed legislation.

We recommend your support of this legislation.

Sincerely,


Al Fleetwood, President
Anchorage Chamber of Commerce

MAR 20 1984

Anchorage

CHAMBER of COMMERCE

Representative Bette Cato
State Capitol
Pouch V
Juneau, Alaska 99811

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We recommend your support of this legislation.

Sincerely,



Al Fleetwood, President
Anchorage Chamber of Commerce



Greater Fairbanks

Chamber

of Commerce

First National Center

P.O. Box 74446

100 Cushman Street

(907) 452-1105

Fairbanks, Alaska 99707

February 24, 1984

Representative Bette M. Cato
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

The Alaska Railroad is an important asset to the state and vital to the economy of Fairbanks. For this reason, the Greater Fairbanks Chamber of Commerce and particularly its Transportation Committee has devoted a great deal of attention to the details of the pending acquisition and proposed plans for operation. This has been reflected in our annual Interior Transportation Needs Report published for the past three years and substantial input provided at various public and private meetings.

We have carefully reviewed legislation pending for railroad management and operation. It is apparent that the authors of HB 512 and SB 352 wished to establish a state owned entity to manage the railroad that was as close to a private sector entity as possible given the transfer constraints. We highly support this philosophy and offer the following comments and suggestions to further strengthen this concept.

- * We noted that the preamble of HB 512 and SB 352 contains the basic intent and powers of the legislation, but the intent and powers are not repeated in the body of proposed AS 42, Chapter 40. Would it not strengthen this intent by setting it in State Statute also?
- * SB 352 and HB 512 offer the most attractive organization to operate the railroad within the state government. We believe it is preferable to have the railroad as an operating entity separate from the Department of Transportation and Public Facilities (DOTPF) or any other state department provided that DOTPF is substantially involved in railroad expansion efforts.
- * All legislation is similar in that the governor appoints a board of directors to provide overall railroad direction; however, SB 10 establishes a stronger criteria for membership selection. The composition of the board will determine if the railroad is to be

operated successfully as a prudent state investment. For this reason, we believe it important to consider that the appointed board members will have a vastly different responsibility than most other state boards, commissions and advisory groups.

The board of directors for the railroad will direct a megacorporation which will be dependent upon the expertise of the directors for profit and growth. The talents and expertise of the board members will be utilized for profit and their obligations are similar to those of directors of corporations in the private sector. For these reasons, we believe their selection and remuneration should be similar. While SB 10 provides better criteria for board membership selection, neither bill addresses the question of remuneration adequately. We suggest that perhaps remuneration should be similar to that of a legislator. This could ensure the incentive necessary for full commitment by the board members.

- * Neither bill ensures that Interior Alaska (or any other area) is represented on the board. This is of utmost importance to the position of the Chamber of Commerce. We are not prepared to endorse any legislation unless we are assured that Interior Alaska has proper representation on the board of directors.
- * It is our interpretation that HB 512 (SB 352), as they are now written, would not allow railroad expansion into other modes of transportation other than contractual arrangements. We concur with this wording as long as the railroad remains in controlling state ownership.
- * The most significant difference between SB 10 and HB 512 (SB 352) lies in state overview of railroad operations. This is an extremely sensitive issue. SB 10 provides a close overview by the administration and the legislature; while HB 512 reflects almost no overview. This lack of overview extends to other state assets made available to the railroad. It appears that the authors of SB 512 tried to incorporate mechanisms to insure prompt and economically sensitive attention from other state agencies based upon frustrations experienced in the past when dealing with these agencies. While we are sympathetic to these frustrations, we do not believe it wise to attempt to cure ills of other state agencies through the "Department of Railroads." They should be addressed in a more direct manner. In our opinion departments within the state should not have their primary responsibility compromised by overriding authority from another department.

State land and funds used for railroad operation demand some overview, yet the railroad should not be subject to constant review and approval by the administration and/or legislature. We offer the following suggestions to deal with this sensitive issue:

1. A distinction be made between railroad operation and railroad expansion. Railroad operation would be defined as operating the railroad as received from the federal government, the initial operating budget as set by the legislature and future subsidies as requested by the governor and/or provided by the legislature. The board of directors would have complete authority over railroad operation. Subsequent subsidies would have automatic state overview since they would be at the discretion of the legislature. Land ownership, as received from the federal government, should be transferred to the railroad corporation in fee simple (both surface and subsurface rights). Bonding for the railroad operation (new equipment, upgrading track, etc.) would be limited to railroad revenue bonds and would not obligate any other state asset. Since these bonds would reflect only the railroad's financial strength, the board of directors should have complete authority to obtain such bonding.
2. Expansion or certain railroad services (such as passenger service) may be desirable for reasons other than profit motive, and the state may wish to provide services or extensions to guide and promote the state's development. State land, funding and/or bonding based upon other state assets will be necessary. A board with a profit mandate would be reluctant to embrace these measures if they would adversely affect the profitability of the railroad, and the state government should share in this responsibility and authority. Therefore, it is suggested that action requiring state assets (land, funding or bonding) receive close overview. State land used for railroad purposes should be surface rights only (excluding gravel and possibly coal extraction). Future rights-of-way should be by permit within a state-owned transportation corridor established for all modes and utilities.

The above described concept provides for complete board authority and responsibility for current railroad operation and profitability and limits liability to railroad assets. State overview would be assured when assets other than the railroad's were pledged and when expansion or services were deemed in the state's best overall interest even though adversely affecting the railroad's economy.

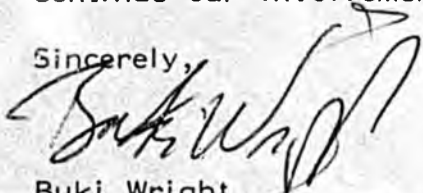
- * Neither bill adequately addresses private ownership. One method which might be considered is that the railroad corporation create stock and schedule its sale to private investors at market value. Such a schedule must reflect the state's best interest and as a minimum include 51 percent ownership for ten years and perhaps longer to meet the federal criteria for continued operation. A sunset requirement for a percentage of state ownership might be

February 24, 1984

the best vehicle to use. If the legislature did not extend the minimum percent of state ownership at the end of any time increment, then an increased share of ownership would be made available to private investors.

We appreciate the opportunity to provide our thoughts and wish to continue our involvement in developing this legislation.

Sincerely,



Buki Wright
President

CITY OF SEWARD
POSITION PAPER ON STATE ACQUISITION AND MANAGEMENT
OF THE ALASKA RAILROAD

As the community from which the Alaska Railroad had its beginning, Seward has been closely tied to the railroad for its lifeblood, for all of its 90 year history. The acquisition and management of the railroad by the State of Alaska is of vital concern to the citizens of this community.

The present Alaska Railroad operation, despite some physical plant problems, is basically a sound operation. Clearly there is a need for plant improvements and it needs the ability to extend rail to the resource rich areas of our state. Any new proposal for management must seek to maintain those parts of the railroad that are operating effectively, and to cure, when possible, the liabilities of the present system. The City of Seward is concerned that without this analysis, the railroad could become less of a rail service. We should improve its physical plant, allow it to function under professional management. If this becomes the case, the City of Seward would fully support the railroad transfer even if a price has to be paid. We would not, however, support such a transfer if the rail system is not improved, and acquiring the Railroad requires a cash outlay by the State.

MANAGEMENT:

As an integral part of the State's long term economic development policy, the Alaska Railroad must be managed in such a way as to minimize the influences of political cycles resulting from our election process. It must be operated with the fiscal strength necessary to overcome the short term changes in government, inflation rates, commodity prices and operating cost.

It is our desire that any Authority created to manage the Alaska Railroad be as professional, efficient and aggressive as possible. We feel that the Authority should operate as similar as possible to private enterprise and if possible, should have the option of contracting for the operation of the railroad with a private company.

To achieve these goals, the Railroad Authority should not be a Department of the State government, but a separate entity. The Board should represent professionals in the business and service areas allied to railroad operations. The Board should be appointed by the governor, and serve terms of six years. The board members should delegate a significant percentage of the management of the railroad to the railroad's chief executive. The chief executive must be the best person available and possess railroad operating experience, and be compensated accordingly.

The Railroad Authority should have the ability to bond or otherwise obtain funds for upgrading and expansion. The railroad will initially require an investment underwritten by the State.

It is important that the revenues generated by the Alaska Railroad do not become part of the General Fund of the State of Alaska, but be put back into the Railroad's General Fund for operation of the railroad. Equally important is the need for all of the assets, including land to be in the control of the Railroad Authority, not under the Department of Natural Resources. As part of the

transfer agreement, the Federal Government must allow the State clear title to all Alaska Railroad lands. The Alaska Railroad Authority should also possess the right of eminent domain.

DEVELOPMENT OF ALASKA RESOURCES:

Because of Alaska's size of land area, small population centers, and frontier transportation infrastructure, Alaskans are particularly dependent upon the Alaska Railroad for the growth and development of interior resources.

The City of Seward feels the railroad should be expanded and utilized as the primary tool in developing the resources within the State of Alaska. Careful expansion of the railroad will improve the overall business climate in Alaska. We feel it is a legitimate use of State funds for the State to use its railroad to assist in opening up the undeveloped areas of the state.

PORTS:

Most Alaskan ports are operated by local governments. Recognizing that, it is probable that with transfer of the railroad and its associated ports, the State will find itself competing with local ports. Every effort should be made, if possible to transfer railroad port operations to willing local governments.

IN SUMMARY, we stress that:

The Alaska Railroad be used to promote development and that the transfer and enabling legislation promote that philosophy.

In conjunction with railroad expansion, the impact of a long lead time necessary for railroad extension be recognized and shortened where possible.

Any State acquisition of the railroad be predicated upon the State's commitment to provide funding to upgrade the capital and rolling stock facilities of the existing system.

If the State acquires the Alaska Railroad, it should explore the option of contracting the railroad's operation to a qualified private contractor rather than running it as a State enterprise.

If a State Constitution change is necessary to accomplish the creation of an independent authority, we would support legislation to place the issue on the ballot.

FEB 27 1984

City of Soldotna

BOX 409

PHONE 262-9107

SOLDOTNA, ALASKA 99669



CITY OF OPPORTUNITY

February 21, 1984

The Honorable Bette M. Cato
Chairman
House Transportation Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

As a follow-up to the public hearing held by the Transportation Committee on Saturday, February 18, 1984 at the Borough Building, Soldotna, Alaska, please enter the following comments concerning House Bill No. 512, "An Act establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; and providing for an effective date".

I, personally, am in favor of the transfer of the Alaska Railroad from the Federal Government to the State of Alaska for 23 million dollars. The plan to establish the Alaska Railroad Corporation to manage and operate the railroad is a good one, and similar plans have been used successfully many times.

The assets of the railroad in the Anchorage area alone far outweigh the purchase price.

Were the State of Alaska to consider continued economic activity and growth in minerals and agriculture, respectively, the acquisition of the railroad becomes a critical and essential first move. The mining and exportation of coal, and the production and transportation of barley may determine the economic health of at least three large regions of Alaska. One has to visualize the movement of gravel from areas of abundance to urban sections to appreciate the ability of a railroad to move freight cheaply and safely.

The acquisition of the railroad presents problems as well as benefits. The problems are not beyond resolution.

Mr. Tatsuya Ishikara, Managing Director, Market Survey, Japan Railway Technical Service Association, Tokyo, gave a fine report on the benefits of a railroad system at the International Conference on Alaska's Resources that was sponsored by the Resource Development Council for Alaska, Inc. and the State of Alaska. The conference was held February 15 -16, 1984.

This is not a burning issue on the west side of the Kenai Peninsula, but one feels that with not too much effort, a great amount of support for the railroad purchase could be located.

Sincerely,

Justin G. Maile

Justin G. Maile
Mayor

A M E N D M E N T

Offered in the HOUSE

By *Miller*

TO: HB 512

Page 16, after line 10, insert a new section to read:

"Sec. 42.40.460. MUNICIPAL RIGHT-OF-WAYS. Upon request of a municipality the corporation shall grant to the municipality a right-of-way in a railroad utility corridor or in land owned by the corporation to be used for a pedestrian walkway or trail. Before granting a right-of-way under this section the board may require the municipality to agree to hold the corporation harmless for any use made of the right-of-way and to execute the agreement in a form approved by the board."