

HB

512

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COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

1/14/88

Date: 3/23/84

The Committee on TRANSPORTATION has had HB 512

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

under consideration and recommends:

do pass [] do not pass

[] do pass with attached amendments(s)

replace with CS for HB 512 [] same title [] new title

and recommends _____

[] AND attaches a "Letter of Intent" New Fiscal Note
[] Zero Fiscal Note Attached

[] rep : it back without recommendation

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
Adelheid Hennemann
[Signature]
M.W. Miller
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Jackie McBacke no
[Signature] RF
[Signature]

[Signature]
CHAIRMAN

BILL HB0512
 PAGE 02255
 DATE 01/13/84
 CHAMBER HOUSE
 TEXT HOUSE BILL NO. 512 by Hayes, Ringstad, Shultz, Abood, Fritz, Furnace, Cato, Fuller, Gehling, Bettisworth and Tischer, entitled:

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

was read the first time and referred to the Transportation and Finance Committees.

BILL HB0512
 PAGE 03033
 DATE 03/23/84
 CHAMBER HOUSE
 TEXT

The Transportation Committee has had HOUSE BILL NO. 512 (establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; effective date) under consideration, recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 512 (Transportation) (same title) and reports it back as follows: Cato (Chairman), Abood, Herrmann, Bettisworth, M.W. Miller and Flood recommend do pass; McBride and Davis have no recommendation. A fiscal note was attached.

HB 512 was referred to the Finance Committee.
 The fiscal note appears in House Journal Supplement No. 113.

TEXT The Finance Committee has had HOUSE BILL NO. 512 (establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; effective date) under consideration, recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 512 (Finance)(same title) and reports it back as follows: Fritz and Bettisworth recommend do pass; Adams (Chairman), Grussendorf, Hurlbert, Ward, Martin, Duncan and Lindauer have no recommendation; Zharoff signed do not pass; Furnace signed "Bad Bill". A new fiscal note was attached.
 HB 512 was referred to the Rules Committee for placement on the calendar.
 The new fiscal note appears in House Journal Supplement No. 138.

BILL HB0512
PAGE 03627
DATE 05/03/84
CHAMBER HOUSE
TEXT

Representative Barnes moved and asked unanimous consent that HOUSE BILL NO. 512 (establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; effective date) and pending amendments be returned to the Rules Committee.

Representative Clocksin objected and withdrew his objection. There being no further objection, HB 512 was taken from the calendar and returned to the Rules Committee.

AK Railroad Corporation
(establishment)

HOUSE BILL NO. 512, by Reps. Hayes, Rixstad, Shultz, Abood, Fritz, Furnace, Cato, Fuller, Uehling, Bettisworth and Tischer. See Senate Bill No. 352, page 17, identical.

Introduced January 13 and referred to Transportation, Finance.

Alaska Railroad Corp.
(establishing)

SENATE BILL NO. 352, by Senators Kerttula, Faiks & Halford.

Establishes the Alaska Railroad Corporation as a public corporation with a separate legal existence from the state. The corporation will operate and manage the Alaska Railroad after its eventual transfer to the state. Legislative "Findings & Purpose" state that it is in the best interests of the state to accept the railroad under the terms and conditions offered by the U.S. government. Cites Alaska's vast natural resource potential and the possibility of extending the Railroad into natural resource areas, thereby lowering freight costs and stimulating long-term economic growth.

Declares that it is in the best interests of Alaskans for the corporation to be created in such a way that "(A) [it] ... will be exclusively responsible for the management of the financial and legal obligations of the Alaska Railroad; (B) the corporation, and not the state, will constitute a common carrier subject to the jurisdiction of the United States Interstate Commerce Commission; (C) [it] ... will have the ability to raise capital by issuing obligations exempt from federal and state taxation; (D) [it] ... may carry out its responsibilities on a self-sustaining basis; (E) the best possible combination of types and levels of safe, efficient, and economical transportation can be provided that is necessary to meet the overall needs of the state, supported when necessary by state investment; (F) the railroad may be operated prudently and according to sound business management practices; and (G) borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity."

Laws establishing the Corporation are added to AS 42 under new Ch. 40, "Alaska Railroad Corporation." Includes Art. 1, Establishment and Organization (Establishment of the Corporation, Board of Directors, Term of Office, Vacancies, Compensation and Expenses, Quorum and Notice of Meetings, Voting); Art. 2, Management (Executive Officers, Delegation); Art. 3, Administrative Provisions (Public Board Meetings, Minutes of Meetings, Rules, Public Disclosure of Information, Special Report, Annual Report, Annual Audit); Art. 4, Powers and Duties (General Powers, Long-Range Expansion and Capital Improvement Plans, Use of Corporation Assets); Art. 5, Rail Properties (Land, Classification, Acquisition, and Use of State Land for Railroad Purposes, Eminent Domain and Acquisition of Property and Materials, Other Assets); Art. 6, Financial Provisions (Limitation of Liability, Fidelity Bond, Insurance, Claims, Revenue, Appropriations, Bonds and Notes, Interim Receipts, Temporary Bonds, and Temporary Bond Anticipation Notes, Validity of Signatures, Independent Finance Advisor, Validity of Pledge, Remedies, Negotiable Instruments, Bonds and Notes Eligible for Investment, Refunding Bonds, Credit of the State Not Pledged, Officers Not Liable, Exemption from Taxation, Reversion of Assets); Art. 7, Personnel and Labor Relations (Personnel, Political Activities); Art. 8, General Provisions (Application of Existing Standards, Definitions, Short Title).

Effective immediately. Identical to HB 512, page 54.

AK Railroad Corporation
(establishing)

HOUSE BILL NO. 512, (see page 54). Reported back to the House March 23 by Transportation recommending it be replaced with a Transportation substitute and that it do pass. Concurring: Cato (Chair), Abood, Herrmann, Bettisworth, M. W. Miller and Flood. Not concurring: McBride and Davis had no recommendation. To Finance.

The Transportation version of the bill was not available, due to errors in the bill. The substitute bill should be printed on Monday, March 26, according to a Committee aide.

The following is a staff analysis prepared by the Senate Transportation Committee on CS for Senate Bill No. 352 (Trsp), establishing the Alaska Railroad Corporation. Contains italicized references to the major differences between CSSB 352 (Trsp) and CSHB 512 (Trsp), offered last week.

Title

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

The statutes are:

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

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

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

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

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

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

and 42.40.280.

AS 37.10.010 - 17.10.060 - Give the Department of Administration duties related to Public Funds.

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

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

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

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

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

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

Analysis, HB 512 & SB 352, (cont'd)

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

Section 2 Section 42.40.010

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

Section 42.40.020

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

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

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

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

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

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

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

The House Bill, (CSHB 512(Rep)), provides for a 340 per day compensation rate.

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

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

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

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

The House Bill, (CSHB 512(Rep)), says that the board approves all executive officers appointed by the Chief Executive Officer.

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

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

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

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

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

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

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

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

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

The House Bill, (CSHB 512(Rep)), leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 30 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 30 day rule does not apply to the development of this procedure.

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

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

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

The House Bill, (CSHB 512(Rep)), has no similar provision.

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

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

Analysis, HB 512 & SB 352, (cont'd)

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

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

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

Special Note: The House Bill, (CSB 512 (Trsp)), contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.230, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.

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

In addition to slight drafting changes found in numbers (20), (21), (22) and (23) the House Bill, (CSB 512 (Trsp)), contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

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

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

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

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

No comparable provisions in the House Bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

Analysis, HB 512 & SB 352, (cont'd)

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

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

Section 42.40.510 Bonds and notes issued by the corporation are negotiable instruments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The House Bill has a substantial rewrite of this section. Specifically the House has the employees comprise senior class

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

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

The House Bill, (CSHB 512(Trep)), has no similar provision.

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

The House Bill, (CSHB 512(Trep)) has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.120 under the Senate Bill. 42.40.880 provides for a religious exemption from the payment of union dues.

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

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

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

The statutes are:

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

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

Analysis, HB 512 & SB 352, (cont'd)

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

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

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

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

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

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

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

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

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

AS 39 - Title 39 is the public officer and employer statute. See sections 42.40.010; 42.40.030; 42.40.040; (see also Sections 3, 4, 5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.100 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

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

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

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, (CSB 512/352), has a substantially different list of positions under executive officer.

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH 2
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER
Alaska Railroad Transfer Team

March 23, 1984

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

Dear Representative Cato:

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

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

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

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

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

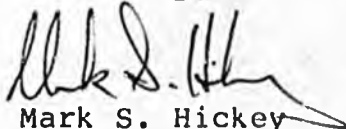
The FY 85 estimate is based on an assumption that actual transfer will occur somewhere between November and January of that fiscal year. Accordingly, most of the figures (e.g., revenues) are merely prorated for a seven month fiscal year ending in July 1985.

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

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

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

Sincerely,



Mark S. Hickey
State Railroad Coordinator

Enclosure

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

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 512
Title: Alaska Railroad Corporation Act of 1984
Sponsor: Hayes, et. al.
Requestor: Representative Cato
Date of Request: 3/22/84

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

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

ANALYSIS: Attach a separate page for analysis

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

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

Distribution (by Agency preparing fiscal note):

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

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION

FISCAL NOTE

Bill/Resolution No.: HB 512

Title: Alaska Railroad Corporation Act of 1984

BILL ANALYSIS

Overview:

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

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

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

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

Assumptions:

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

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

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

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

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

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

Operating Expenditures:

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

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

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

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

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

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

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

Capital Expenditures:

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

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

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

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

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

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

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

Revenue:

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

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

Funding Source:

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

Positions:

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

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

Summary:

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

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

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

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

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

ATTACHMENT A

Operating Budget - FY85

In Thousands (000) of Dollars

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

<u>Category</u>	<u>Amount</u>	<u>Explanation</u>
100 Personal Services	\$24,350.0	This funding level is based upon current work force of 478 permanent full-time, 38 part-time and 64 temporary positions. Of this amount salary comprises \$19,980 and benefits comprise \$4,370. Also included in this estimate are the Board of Directors' compensation expenses.
200 Travel	300.0	This funding level is the estimate of travel funding needs, including the Board of Directors' travel expenses.
300 Contractual	4,100.0	This funding level includes coverage of the following areas: continuation of Transfer Team activities for FY 85 - \$1,750.0 (see Attachment B); Transfer Financial Audit - \$200.0; \$200.0 for initiation of the Special Report required in Section 9 of the bill; Department of Administration - \$80.0 for archives preservation and labor relations coordination; costs for the labor relations agency under Article 8 of the bill - \$35.0; Department of Natural Resources - \$35.0 for land designation activities under Article 5 of the bill. The remainder of these funds are for the railroad's general contractual needs resulting from capital improvement, operations and financial planning activities.

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

ALASKA RAILROAD TRANSFER PROJECT

FY 85 PROJECT BUDGET

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

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

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

Work Component #1 - Alaska Railroad Transfer Team Staff

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

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

Work Component #2 - Department of Natural Resources Assistance

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

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

Work Component #3 - Department of Labor Assistance

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

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

Work Component #4 - Department of Administration Assistance

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

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

Work Component #5 - Department of Law Assistance

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

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

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

Work efforts under this component will consist of the following: (1) initiation of planning work necessary to file the appropriate valuation studies before the ICC for purposes of rate-making justification; and (2) performance of ongoing capital planning analysis. This second task will be a continuation of efforts performed under task #7 in Attachment B. It will be coordinated with the initiation of the ICC valuation studies to maximize generation of a data base useful to both efforts. Funding in this area is needed for contractual assistance, which will be directly managed by the Transfer Team Staff.

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

ALASKA RAILROAD TRANSFER PROJECT BUDGET

PROJECT BUDGET

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

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

ATTACHMENT C

Capital Improvement Program - FY85

In Thousands (000) of Dollars

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

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

Supplement to Item #3, Attachment C

Track & Roadbed - \$6,185,000

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

Bridges - \$883,000

Replace stringers, bents, and spans
Repl. bearings, piles, and abutments

Tunnels - \$1,060,200

Line with multi-plate
Excavate rock fall areas

Docks - \$706,800

Preliminary work to rebuild barge slip #1 at Whittier

Communications - \$570,000

Complete microwave system
Remove pole lines
Acquire equipment

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

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

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

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TABLE IX: BALANCE SHEET
SEPTEMBER 1982-83
(Thousand dollars)

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

Notes follow Table XI

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

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

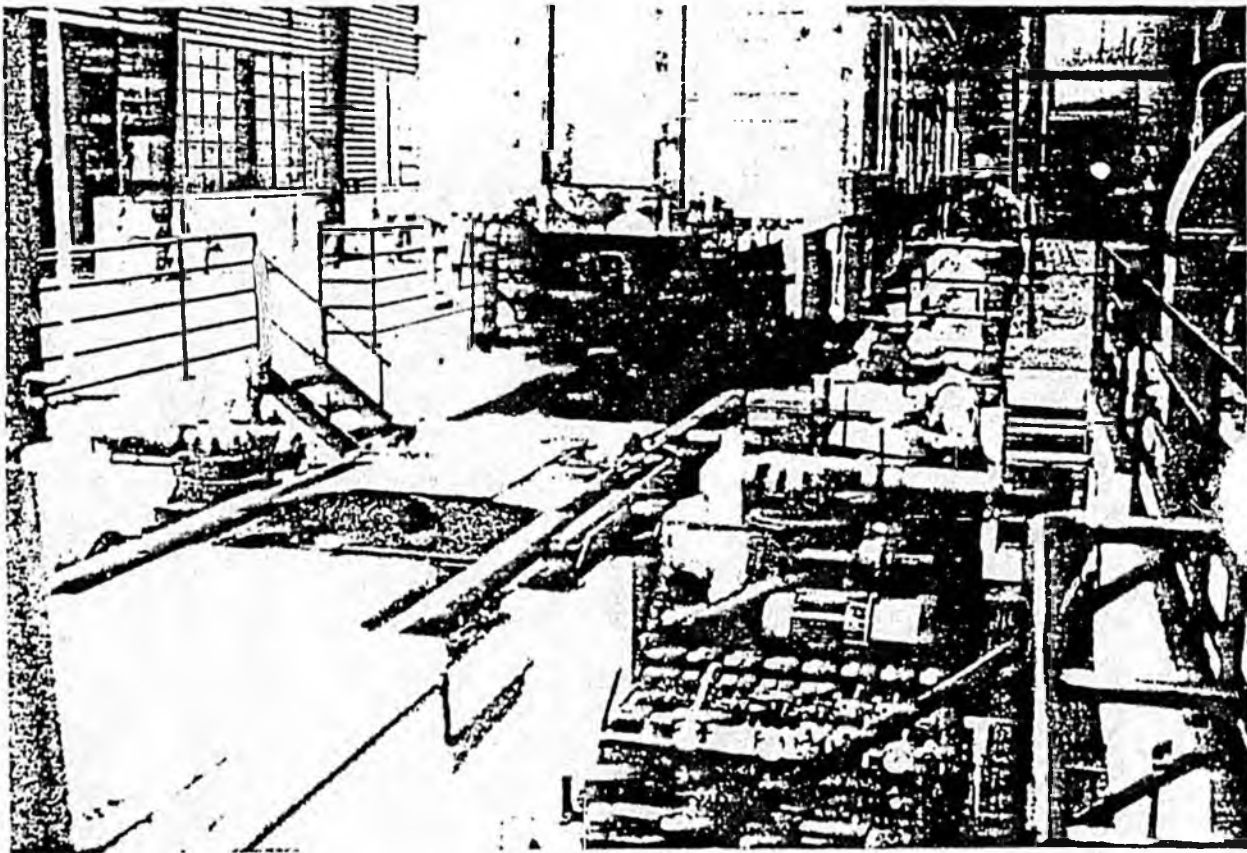
Notes follow Table XI

DRAFT

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

CATEGORY	1983	1982	1981	1980	1979
REVENUES:					
Operating	\$52,397	\$55,445	\$40,782	\$26,737	\$23,200
Non-Operating (Note 16)	<u>3,697</u>	<u>3,352</u>	<u>3,159</u>	<u>2,155</u>	<u>2,081</u>
Total Revenues	\$56,094	\$58,797	\$43,941	\$28,892	\$25,181
EXPENSES:					
Operating	\$52,993	\$48,978	\$40,358	\$34,380	\$31,285
Non-Operating (Note 17)	<u>277</u>	<u>258</u>	<u>273</u>	<u>344</u>	<u>204</u>
Total Expenses	\$53,270	\$49,236	\$40,631	\$34,724	\$31,489
NET PROFIT (LOSS)	\$2,824	\$9,561	\$3,310	(\$5,832)	(\$6,308)
Less Extraordinary Items (Note 6)	<u>(\$5,646)</u>	<u>(\$4,154)</u>	<u>(\$204)</u>	<u>(\$69)</u>	<u>(\$319)</u>
Annual Retained Earnings	(\$2,822)	\$5,407	\$3,106	(\$6,524)	(\$6,627)
Expense/Revenue Ratio	94.97%	83.74%	92.47%	120.19%	125.05%

Notes follow Table XI



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

NOTES TO FINANCIAL STATEMENTS

1. SUMMARY OF ACCOUNTING POLICIES

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

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

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

The Railroad is financed from a revolving fund.

2. REVENUES

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

3. EXPENSES

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

4. MAINTENANCE OF WAY AND STRUCTURES

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

5. GENERAL AND ADMINISTRATION

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

6. EXTRAORDINARY ITEMS

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

7. DEPRECIATION

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

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

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

8. CASH

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

9. TRUST AND DEPOSIT FUNDS

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

10. MATERIALS AND SUPPLIES

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

11. LAND

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

12. ADDITIONS AND BETTERMENTS IN PROGRESS

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

13. PROPRIETARY INTEREST OF THE U.S. GOVERNMENT

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

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

14. CONGRESSIONAL APPROPRIATIONS

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

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

15. OTHER OPERATING REVENUES

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

	(Thousand dollars)
Reimbursable services	\$2,036
Sale of non-invested property	1,301
Reimbursements - real estate, utilities, and equipment	541
Whittier shuttle - vehicles	533
Wharfage and handling	148
Mail	145
Switching	116
Equipment rentals	90
All other	<u>395</u>
 Total	 \$5,505

16. NON-OPERATING REVENUES

Non-operating revenues in FY 1983 were:

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

17. NON-OPERATING EXPENSES

Non-operating expenses in FY 1983 were:

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



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

TRAFFIC

DRAFT

FREIGHT

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

TABLE II: FREIGHT TRAFFIC BY COMMODITY

COMMODITY	1983 FY	1982 FY	% CHANGE
REVENUE TONS CARRIED (000's)			
Sand and Gravel	4,397.7	2,753.8	+ 59.7
Coal	625.8	653.6	- 4.2
Petroleum, Oil, Lubricants	462.2	459.4	+ 5.2
Manufacturers and Misc.	323.1	449.9	- 28.2
TOFC/COFC (Piggyback)	98.0	122.4	- 19.9
Products of Forests	105.1	77.0	+ 36.5
Products of Agriculture	<u>6.1</u>	<u>6.8</u>	- 10.3
Total Tonnage	6,018.0	4,502.9	+ 33.7
REVENUE DOLLARS (000's)			
Sand & Gravel	6,647	4,556	+ 45.9
Coal	5,007	5,072	- 1.3
Petroleum, Oil, Lubricants	9,723	8,376	+ 16.1
Manufacturers and Misc.	15,704	22,512	- 30.2
TOFC/COFC (Piggyback)	3,625	4,915	- 26.2
Products of Forests	2,955	2,301	+ 28.4
Products of Agriculture	<u>126</u>	<u>145</u>	- 13.1
Total Revenue	43,787	47,877	- 8.5

PASSENGER

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

TABLE III: PASSENGERS HANDLED

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

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

TARRIFS

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

TABLE IV: FY 1983 TARIFF CHANGES

TYPE	DATE	% INCREASE
Interline	1-17-83	5
Intrastate:		
General Commodities	2-12-82	5
Gravel	4-19-83	3
Passenger:		
Anchorage - Fairbanks	1-01-83	10
Whittier Shuttle	7-01-83	10

Attachment E
3/14/84

ALASKA RAILROAD OPERATIONS SUMMARY
(Dollar Amounts in Thousands)
Fiscal Years 1973-1982*

	<u>FY 1973</u>	<u>FY 1974</u>	<u>FY 1975</u>	<u>FY 1976</u>	<u>FY 1977</u>	<u>FY 1978</u>	<u>FY 1979</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Operating Revenue	\$16,996	\$20,783	\$41,416	\$52,517	\$33,376	\$27,440	\$23,100	\$26,737	\$40,782	\$55,445
Non-Operating Revenue	681	703	871	1,161	1,646	1,651	2,081	2,155	3,159	3,352
<u>Total Revenues</u>	<u>17,677</u>	<u>21,486</u>	<u>42,287</u>	<u>53,678</u>	<u>35,022</u>	<u>29,091</u>	<u>25,181</u>	<u>28,892</u>	<u>43,941</u>	<u>58,797</u>
Operating Expenses	\$20,057	\$21,389	\$35,883	\$49,387	\$35,703	\$33,301	\$31,285	\$34,380	\$40,358	\$48,978
Non-Operating Expenses	153	158	272	191	255	213	204	344	273	258
<u>Total Expenses</u>	<u>20,210</u>	<u>22,547</u>	<u>36,155</u>	<u>49,578</u>	<u>35,958</u>	<u>33,514</u>	<u>31,489</u>	<u>34,724</u>	<u>40,631</u>	<u>49,236</u>
<u>Gain (Loss)</u>										
Before depreciation - cash flow (\$ 7)	\$ 7	\$ 1,300	\$ 8,513	\$ 6,628	\$ 2,186	(\$ 1,227)	(\$ 3,089)	(\$ 2,306)	\$ 6,567	\$13,274
After depreciation	(\$ 2,533)	(\$ 1,061)	\$ 6,132	\$ 4,100	(\$ 936)	(\$ 4,423)	(\$ 6,308)	(\$ 5,832)	\$ 3,310	\$ 9,561
<u>Capital Expenditures</u>	<u>\$ 1,260</u>	<u>\$ 313</u>	<u>\$ 2,772</u>	<u>\$ 8,602</u>	<u>\$ 8,316</u>	<u>\$ 5,823</u>	<u>\$ 8,181</u>	<u>\$ 6,893</u>	<u>\$11,409</u>	<u>\$11,821</u>
<u>Revenue Tons of Major Commodities</u> (in thousands of tons)										
Sand and Gravel	2	1	1	104	700	727	637	596	1,797	2,754
Bulk Petroleum	363	414	557	624	532	374	220	252	379	439
Coal	565	563	584	607	550	593	524	590	653	654
Iron & Steel Pipe & Fittings	11	15	107	174	16	28	33	37	83	165
Piggyback	48	57	95	114	100	100	89	92	113	122
Forest Products	49	56	120	124	82	68	55	109	101	77
Manufactured Iron & Steel	18	37	60	89	19	12	12	10	8	19
Cement	15	14	25	32	42	33	33	32	43	51
Machinery and Machines	12	21	60	31	47	47	24	16	28	24
Mfrs. & Misc. NOS	32	34	44	29	17	13	25	26	11	**
Other	216	165	209	260	200	183	156	181	146	198
<u>TOTAL</u>	<u>1,331</u>	<u>1,337</u>	<u>1,862</u>	<u>2,188</u>	<u>2,305</u>	<u>2,178</u>	<u>1,808</u>	<u>1,741</u>	<u>3,362</u>	<u>4,503</u>
<u>Passengers</u>	<u>74,000</u>	<u>84,000</u>	<u>81,000</u>	<u>84,500</u>	<u>103,632</u>	<u>126,277</u>	<u>151,045</u>	<u>150,678</u>	<u>161,068</u>	<u>175,116</u>

* The Federal Government changed its fiscal year from July 1-June 30 to October 1-September 30 beginning in FY 1977, resulting in a transition quarter in 1976. To avoid a 15-month fiscal year for comparisons, these statistics use July 1, 1975 through June 30, 1976 as FY 1976, and October 1, 1976 through September 30, 1977 as FY 1977, dropping the transition quarter.

**Mfrs. & Misc. NOS. (not otherwise specified) discontinued, now included in specific categories.

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.

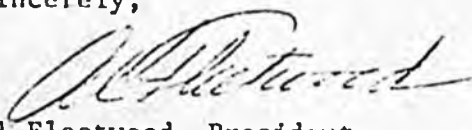
We feel our objectives, and the citizens of the state, are best achieved through passage of HB 512. The major elements in this legislation which we support are as follows:

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

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

FEB 27 1984

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 522
SEATTLE, WASHINGTON 98119

February 22, 1984

H. L. SCHUYLER
Director Public Affairs
Alaska Division

TELEPHONE:
(206) 938-8340

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."

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,

A handwritten signature in cursive script that reads "Justin G. Maile". The signature is written in dark ink and is positioned above the typed name.

Justin G. Maile
Mayor



Greater Fairbanks

Chamber

of Commerce

First National Center

100 Cushman Street

(907) 452-1105

P.O. Box 74446

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 should 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.

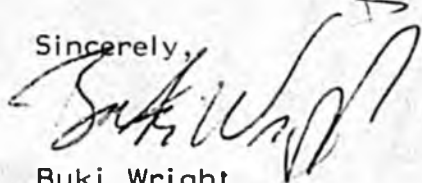
- * Neither bill adequately addresses private ownership. One method which might be considered is that the railroad corporation create stock and schedule its sale to private investors at market value. Such a schedule must reflect the state's best interest and as a minimum include 51 percent ownership for ten years and perhaps longer to meet the federal criteria for continued operation. A sunset requirement for . . . 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,

A handwritten signature in dark ink, appearing to read "Buki Wright". The signature is written in a cursive style with a large, sweeping initial "B".

Buki Wright
President

LAW OFFICES
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 ~~AGB~~ JAB
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 questions 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 nominal 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

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.

CITY OF SEWARD AND SEWARD CHAMBER OF COMMERCE JOINT
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 80 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 still 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.

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."

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.

THE FOLLOWING INFORMATION HAS BEEN PREPARED FOR YOU:

1. List of questions/concerns expressed by committee members during meetings
2. Committee Minutes:
 - 2/7/84
 - 2/9/84
 - 2/15/84 - HB 543 passed out of committee as CS
 - 2/16/84
 - 2/18/84 - Soldotna Hearings - Amendments offered-AFGE
 - 2/21/84
 - 2/22/84
 - 2/23/84 - Anchorage Hearings - Suggestions
3. Seward City Position Paper
4. Amendment offered by Mike Miller
5. Commonwealth North Recommendations



Alaska State Legislature

House of Representatives

Committee on Transportation

HEARING DATE: 2-25-84

BILLS: HB 512

AK RR

FAIRBANKS

PLEASE SIGN IN

AS A WITNESS OR AN OBSERVER. YOUR ADDRESS AND PHONE NUMBER MUST BE INCLUDED IN THE DESIGNATED BLOCK

NAME (PLEASE PRINT)	ADDRESS, CITY, STATE, ZIP	REPRESENTING	PHONE	WITNESS/OBSERVER
ROBERT L. CROWE	42 GOLD RUSH FAIRBANKS, AK 99701	ARR	479-5654	OBSERVER
J.B. JACK COGHILL	P.O. Box 268 NENANA-ALASKA 99760	SELF	837-5471	WITNESS ✓
SUSAN S. KHAPMAN	1/2 mile Copper Rd Fairbanks AK	Alaska Visitors Ass. Fairbanks	488-2649	Witness ✓
Earl Beistline	P.O. Box 80148 Fbks 99708	self	452-5358	Observer
Joseph E. Usibelli	Pouch 1, Healy, Ak 99743	Usibelli Coal Mine, Inc	683-2226	Witness ✓
Jay Olanduff	110 GLACIER FAIRBANKS.	ARR	4567736	OBSERVER
SUSAN FISHER	DAILY NEWS-MINER		432-6661	OBSERVER
JERRY RANSON	1600 UNIVERSITY AVE FBX	DOT/PE	479-4281	OBSERVER
BOB THOMAS	Box 20783 Fairbanks AK	Chamber of Commerce	479-4972	witness ✓
KAREN HUTTON	3329 E. 16 th Anch., AK 99508	ATGE	279-7088	Witness ✓
GODOLINSKI	807 W 57 th ANCH AK 99502	UTU	562 0857	OBSERVER
Steve Hansen	Pouch V; Capital; Juneau, AK 99901	Rep. Hayes	465-2720	Observer



Alaska State Legislature

House of Representatives

Committee on Transportation

HEARING DATE: 2/17/84

BILLS: HB 512

Seward

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NAME (PLEASE PRINT)	ADDRESS, CITY, STATE, ZIP	REPRESENTING	PHONE	WITNESS/OBSERVER
MICHAEL James	PO Box 405 SEWARD	KRIA	224-3456	X
John F. Gillespie	Box 1115 Seward 99664	City of Seward	224-3446	X
GENE C. Kingrea	Box 1652 SEWARD	SLAC	224-525	X
NANCY M. BLAEDORN	Box 511, SEWARD, AK 99664	SEWARD Police Dept	224-3338	X
Alice C. Pickett	Box 632, Seward, AK 99664	Seward Police Dept	224-3338	X
T. J. Throsher	3443 Minnesota Anch. AK 99503	Alaska Trucking Assoc	276-114	X
Robert P.P. Valdatta	Box 1267 Seward AK 99664	Assoc Alaska Backhaulers	224-5256	X
Bessley Durham	Box 37, Seward	GR transfer Comm + self	224-5623	X
Mark J. Pattera	SR. Box 465 Seward, AK 99664	P+B Custom Homes Seward	288-3181	X
Connie Bencardino	Box 1431 Seward AK, 99664	Paule's Nat Realty Comm + self		X
Annetta Gillespie	Box 1225 Seward AK 99664		224-5765	X
Louis Bencardino	Box 167 Seward, AK 99664	City of Seward	224-3338	X
JACK WERNER	156 Seward AK 99664	Merchant	224-3044	X
RON GARZINI	Box 167 Seward Alaska 99664	City of Seward	224-3331	X

