

ALASKA

RAILROAD

SYMPOSIUM

My name is Richard Ramsey. I'm a Legislative Assistant to Senator Kerttula. He apologizes that he is unable to be here. He is delayed in route to Juneau because of weather.

Senator Kerttula has worked on the Alaska Railroad Transfer and acceptance legislation for over 3 years. The concepts of an independent public authority, as would be created by Senate bill 10, are as old and the same as those embodied in the Erie Canal and the Kings Highway.

The Senator has been extremely active in the last 2 years of the previous administration and worked with that governor on developing an acceptance and to form a railroad management other than a line agency of the state.

He will have a formal statement shortly to incorporate into the minutes of this teleconference if the Chairman will hold the minutes open.

Thank you.

POSITION OF TOTEM OCEAN TRAILER EXPRESS, INC.
ON TRANSFER OF ALASKA RAILROAD TO STATE OWNERSHIP

INTRODUCTION

Totem Ocean Trailer Express, Inc. is the operator of two, modern deep-water ro-ro vessels between Tacoma, Washington and Anchorage, Alaska. Totem services all points within the Alaska rail belt area via connecting motor carriers and interline agreements with the Alaska Railroad. Totem is vitally interested in the transfer of the Alaska Railroad to state ownership for the following reasons:

1. The Alaska railroad is a major interline carrier for Totem. Over half of the freight which Totem moves north of Anchorage is carried in "piggyback" service by the Alaska Railroad. Our tenderings of freight to the Alaska Railroad places us, we believe, within the top five customers of the railroad.
2. A healthy, viable railroad contributes to a healthy economic climate in Alaska. A healthy economic climate generates demand for Totem's services and, should the Alaska railroad be used to further develop the state's mining industries, this would significantly increase the demand for the movement of finished goods and capital equipment which are Totem's primary markets.
3. The Alaska Railroad is also a major competitor to Totem via its interline agreements with rail-barge and ro-ro barge operators, and as such its pricing and operations policies are part of the overall competitive mix which Totem must face.

TOTEM'S CONCERNS ON TRANSFER TO STATE OWNERSHIP OF THE ALASKA RAILROAD

Totem supports the transfer of ownership of the Alaska Railroad to the State of Alaska. We support a transfer which will result in a financially strong, competitive, railroad. We recognize, however, that state ownership, in which the "profit motive" is normally lacking, can create specific problems where the railroad competes with privately-owned transportation companies. We feel that the legislation which "sets up" the method of operation of the Alaska Railroad should address these specific problems to ensure that all carriers can compete on an "equal basis."

Specifically, we feel that the following areas should be addressed:

- i. Entry by the Railroad into the Water Carrier or Motor Carrier Business:

TOTEM desires legislation which will prohibit entry by a state-owned railroad into the water-carrier or motor-carrier business without prior approval by the state legislature.

We feel quite strongly that the Alaska Railroad, which has enjoyed an average subsidy of 17.5 percent of revenue for the past several years, should direct all of its energies towards operating the most efficient rail service possible. Utilization of either their direct or indirect subsidies (indirect subsidies are those the railroad enjoys by virtue of public ownership: examples would be significantly lowered interest rates due to tax-exempt bonds; elimination of need to earn a profit; lack of any requirement that they pay interest on their working capital; freedom from taxation; elimination of the requirement that they pay for licenses, permits, etc) to enter the water or motor-carrier fields should be prohibited. Currently the water-carrier field is served by all four major modes, ro-ro container, rail-barge and break-bulk barge, and we see no long-term shortfall in available capacity (recent press reports indicate there will be two major new entrants using state-of-the-art ro-ro barges this year). Within the motor-carrier field there are a multitude of motor carriers available in the state, and this industry has been severely depressed for several years, i.e., there has been significant overcapacity available.

2. Antitrust:

TOTEM desires legislative amendments which would place a state-owned railroad under both the federal and state antitrust laws.

All of the privately-owned water carriers and motor carriers are subject to the federal and state antitrust laws. It is our belief that the railroad should be subjected to the same laws as the private carriers are. In short, we should all play by the same rules.

3. Ratemaking Policy:

TOTEM desires specific legislative amendments which would prohibit a state-owned railroad from charging rates which are below those charged by privately-owned carriers, for freight on which both carriers are cross-competitive, where the rates do not recover the full cost of the service offered (to include any direct or indirect subsidy).

The railroad, by virtue of state ownership, will in all probability enjoy some form of direct subsidy as well as indirect subsidization (as discussed earlier, by virtue of state ownership the railroad is not faced with all of the expenses which a privately-owned and operated corporation is).

We believe that on all traffic where the railroad is cross-competitive with privately-owned and operated

carriers, the railroad should not be permitted to utilize its direct or indirect subsidies to set rates below those established in the private marketplace. This, we feel is simply "fair play" inasmuch as Totem does not have available the railroad's direct or indirect subsidies and we have no desire to become involved in any subsidy schemes. Certainly, if the railroad, without using either direct or indirect subsidies, can price their services below that of the privately-owned and operated carriers, they should be allowed to do so.

ANSWERS TO QUESTIONS WE HAVE BEEN ASKED:

In making our feelings known, we have been asked the following questions by many individuals:

1. Why isn't ICC regulation of the Alaska Railroad's rates sufficient to eliminate any problems the private carriers might have with the railroad utilizing subsidies to compete with the private carriers?

TOTEM feels quite strongly that the ICC is not set up to regulate a state-owned railroad. Commission cost accounting procedures have no method of taking into account either direct or indirect subsidization which the state-owned railroad may receive. It should further be noted that a primary component of commission regulation of railroads is the fact that the railroad must face the "test of the marketplace" in terms of its ability to earn a profit. A primary component of the Staggers Act, which significantly changed the reasonableness test for railroad rates, was the feeling that in the "long run" the railroads would not price their services below cost because they would have to eventually earn a profit on the provision of those services.

A state-owned railroad would have no need to earn a profit. Additionally, the ICC has no method of factoring in to any cost analysis (assuming that they utilize their current cost formulas) the value of direct and indirect subsidies which would be received by the railroad. Thus, commission regulation is not a viable method of ensuring that the economic advantages enjoyed by a state-owned railroad are not utilized unfairly against the railroad's privately-owned competitors.

2. Doesn't the desire of the private carriers to establish a "rate floor" in reality "tie the hands" of the Alaska Railroad?

The privately-owned carriers have absolutely no desire to establish anything akin to a "rate floor" or to "tie the hands" of the Alaska Railroad. What we desire is simply that the railroad "play by the same rules" as privately-owned carriers. Our sole concern regards the railroad's rate practices on movements of commodities which are cross-competitive between the railroad and

the privately-owned carriers. We have absolutely no desire to have any impact on the railroad's rate policies for the movement of such bulk commodities as coal, gravel and other historic rail bulk commodities.

Within that area of commodities which are cross-competitive all we ask is that the railroad not be allowed to use its direct or indirect subsidies when it sets prices which are below those which have been set between private carriers in a free and competitive marketplace. It should be noted that our position allows the railroad to meet any rates set by the private carriers irrespective of whether or not the railroad can earn a profit by so doing -- all we ask is that the railroad not be allowed to artificially depress the rates of the private carriers through the use of either direct or indirect subsidies -- if the railroad can price below the private carriers and still earn a profit, they should certainly be allowed to do this.

3. What is the position of TOTEM on the expansion of the railroad?

TOTEM feels the railroad should be expanded and utilized as the primary tool in developing the mineral deposits within the State of Alaska. Any expansion of the railroad will improve the overall business climate in Alaska and such improvement will automatically mean there will be more business available for all carriers. We feel it is a legitimate use of state power for the state to use the railroad to assist in opening up undeveloped areas of the state, and private carriers will certainly support the Alaska Railroad in these efforts.

4. TOTEM is also beneficiary of public subsidy in that we use public docks (those owned by the municipalities of Anchorage and Tacoma) as well as channels and navigation aids maintained by the U.S. Corps of Engineers and the U.S. Coast Guard

All of the above is true; however, competing rail-barge carriers use the same channels and navigation aids and thus all carriers operate on an equal basis. In the case of port facilities, the private carriers who use municipally-owned docks operate under "full pay-out leases" which are publicly filed with the Federal Maritime Commission. Indeed, if the lease arrangements which the private carriers make with municipally-owned docks do not fully cover the cost of these facilities, they are subject to being found "unreasonable" by the Federal Maritime Commission and disallowed. Carriers operating from Alaska Railroad-owned docks at Whittier and Seward do so pursuant to "secret" agreements between the Alaska Railroad and themselves. There is no requirement that the railroad recover their costs for providing these facilities and because these agreements are "secret", the privately-owned carriers have no way of knowing if the railroad has in fact charged "full cost" for these facilities.

10/27-28

THE ALASKA RAILROAD - A STATUS REPORT
GIVEN AT THE ASCC ANNUAL CONVENTION
IN SITKA, ALASKA, OCTOBER 1, 1983

BY JIM HARLE

GOOD MORNING:

I AM VERY PLEASED TO HAVE THIS OPPORTUNITY TO SPEAK TO MY FELLOW MEMBERS OF THE ALASKA STATE CHAMBER OF COMMERCE AND GUESTS. THIS MORNING I WOULD LIKE TO SHARE WITH YOU MY PERSONAL VIEWS ON AN ISSUE WHICH I BELIEVE WILL PLAY AN CONTINUING IMPORTANT ROLE IN THE DEVELOPMENT OF OUR GREAT STATE. THIS ISSUE IS THE TRANSFER AND OPERATION OF THE ALASKA RAILROAD.

THERE ARE THREE KEY CURRENT ELEMENTS INTERTWINED IN THIS ALASKA RAILROAD ISSUE WHICH I WOULD LIKE TO HIGHLIGHT FOR YOU TODAY. THESE ELEMENTS ARE AS FOLLOWS:

1. THE ALASKA RAILROAD TRANSFER ACT OF 1982
2. THE USRA RAILROAD CLOSING REPORT
3. THE STATE PURCHASE AND OPERATION OF THE ALASKA RAILROAD

THE ALASKA RAILROAD ACT OF 1982 IS THE FEDERAL LEGISLATION WHICH CREATES THE PROVISIONS OF THE TRANSFER OF THE RAILROAD FROM THE FEDERAL GOVERNMENT TO THE STATE OF ALASKA. THE KEY PROVISION OF THIS ACT, OF COURSE, IS THAT A FAIR MARKET VALUE IS TO BE ESTABLISHED FOR THE SALE OF THE RAILROAD NO LATER THAN OCTOBER 14, 1983. THIS VALUE IS TO BE DETERMINED BY THE U.S. RAILWAY ASSOCIATION, THE ARBITRATER SELECTED BY THE FEDERAL GOVERNMENT.

THE OTHER KEY PROVISION OF THE ACT IS THE PREPARATION OF THE CLOSING REPORT OR INVENTORY OF ALL ASSETS, PHYSICAL PLANT AND OBLIGATIONS OF THE RAILROAD. THIS CLOSING REPORT, WHICH WAS ISSUED ON JULY 14 OF THIS YEAR, WILL BE DISCUSSED IN MORE DETAIL A LITTLE LATER IN MY TALK.

AFTER ISSUANCE OF THE CLOSING REPORT, THE SECRETARY OF TRANSPORTATION HAS 12 MONTHS OR UNTIL JULY 14, 1984 TO CERTIFY ALASKA'S AGREEMENT TO ALL CONDITIONS REQUIRED IN THE ACT. FIVE OF THE CONDITIONS OF THE ACT THAT ARE REQUIRED ARE HIGHLIGHTED AS FOLLOWS:

1. THE STATE MUST OPERATE THE RAILROAD AS A RAIL CARRIER UNDER ICC RULES.
2. THE STATE WILL PROVIDE FOR A TWO YEAR EMPLOYEE PROTECTION PROGRAM INCLUDING HEALTH AND LIFE INSURANCE AND REEMPLOYMENT RIGHTS.
3. PROVIDE FOR A ONE YEAR MANAGEMENT PROTECTION PROGRAM.
4. CONTINUE ALL COLLECTIVE BARGAINING AGREEMENTS FOR TWO YEARS.
5. PAY THE APPRAISED VALUE ESTABLISHED BY U.S.P.A.

SHOULD THE STATE NOT SATISFY THE CONDITIONS OF THE ACT, THE SECRETARY IS AUTHORIZED TO OTHERWISE DISPOSE OF THE RAILROAD IF SHE SO CHOOSES, GIVING PRIORITY TO A PURCHASER WHO WILL OPERATE THE RAILROAD.

IT IS INTERESTING TO THIS SPEAKER THAT THE FEDERAL LAW PROVIDES FOR LITTLE GUIDANCE SHOULD THE STATE LEGISLATURE DECIDE THAT THE VALUATION PRICE OF THE RAILROAD IS TOO LARGE. IN MY OPINION THIS IS AN ALL TOO REALISTIC POSSIBILITY.

SEVERAL STATE LEGISLATORS HAVE ALREADY BEEN HEARD TO SAY THAT "ANY PRICE FOR THE RAILROAD IS TOO HIGH". HOWEVER, I CAN JUST IMAGINE WHAT OUR FRIENDLY FEDERAL SENATOR FROM OHIO WILL SAY.

I WOULD PROPOSE THAT THE VALUATION OF \$22.3 MILLION ANNOUNCED ON SEPTEMBER 21 BY U.S.R.A. IS AN EXTREMELY ATTRACTIVE PRICE WHICH SHOULD BE ACCEPTED BY GOVERNOR SHEFFIELD AND THE STATE LEGISLATURE.

THE SECOND ELEMENT, OF THIS RAILROAD ISSUE, IS THE CLOSING REPORT PREPARED BY THE U.S.R.A. AND JOINTLY SIGNED BY SECRETARY ELIZABETH DOLE AND GOVERNOR SHEFFIELD ON JULY 14, 1983. THE CLOSING REPORT IS ACUTALLY AN INVENTORY OF RAILROAD PROPERTY, ROLLING STOCK, AND LIABILITIES. TWO OF THE MOST OUTSTANDING ASSETS OF THE RAILROAD ARE ITS 700 EXPERIENCED EMPLOYEES AND ITS 41,000 ACRES OF LAND. THE 700 EMPLOYEES ARE MADE UP OF OVER 500 PERMANENT POSITIONS AND APPROXIMATELY 200 SEASONAL PERSONNEL WHO RECEIVED OVER \$29 MILLION IN PAYROLL OUT OF TOTAL REVENUES OF \$59 MILLION (49%). OR TO PUT THIS IN SIMPLER TERMS, THIS PAYROLL IS 49% OF REVENUE. THESE WAGES AND SALARIES ACTIVELY PARTICIPATE IN THE ALASKAN ECONOMY.

THE RAILROAD LANDS COMPRISE 41,000 ACRES OF LAND DISTRIBUTED THROUGHOUT THE RAILBELT AREA. THIS ACREAGE IS COMPRISED OF:

12,000 ACRES OF RIGHT-OF-WAY WHICH IS GENERALLY 200' WIDE.
29,000 ACRES OF MARINE AND RAIL TERMINALS, GRAVEL RESOURCES,
INDUSTRIAL LEASES, MATERIAL AND ROCK RESERVES,
ADMINISTRATION AREAS AND LAND FOR FUTURE DEVELOPMENT
AND FACILITY EXPANSION.

1,000 ACREAS ARE UNDER LEASE TO BUSINESS PROVIDING \$3 MILLION
EACH YEAR IN REVENUES.

11,000 ACRES ARE ACTIVE GRAVEL AND ROCK QUARRIES.

10,000 ACRES DESIGNATED FOR FUTURE USE AND WATER SHED.

4,000 ACRES OR ABOUT 10% ARE SUBJECT TO CLAIMS BY NATIVE VILLAGES

THE LARGEST CLAIM UNDER THESE 4,000 ACRES IS AN 1,800 ACRE TRACT AT EAGLE RIVER.

THERE ARE THREE PRINCIPAL LIABILITIES OF THE RAILROAD:

FIRST, THE LONG TERM EMPLOYEE PENSION LIABILITIES WHICH ARE ESTIMATED AT \$142 MILLION DOLLARS. THIS IS THE PRESENT VALUE OF THE TOTAL COSTS TO THE STATE-OWNED RAILROAD TO PAY BOTH THE PAST UNFUNDED RETIREMENT LIABILITIES AND TO PAY FUTURE RETIREMENT OBLIGATIONS. THIS LIABILITY WOULD EXIST EVEN IF THE RAILROAD WERE NOT TRANSFERRED TO THE STATE.

A SECOND PRINCIPAL LIABILITY IS THE AGE OF THE RAILROAD'S ROLLING STOCK. THE AVERAGE AGE OF THE FREIGHT CAR FLEET IS 30 YEARS AND THIS FLEET NUMBERS APPROXIMATELY 1,650 UNITS. THE LOCOMOTIVES, WHICH NUMBER 62 UNITS HAVE AN AVERAGE LIFE OF 14 YEARS, 15 OF THOSE LOCOMOTIVES ARE 3,000 HP UNITS BUILT BY GENERAL MOTORS BETWEEN 1975 AND 1978. ON THE OTHER HAND, LAST YEAR, 5 REBUILT UNITS WERE PURCHASED AND 4 NEW GENERAL MOTORS SUPER SERIES LOCOMOTIVES WERE TO ARRIVE BY THE END OF SEPTEMBER. THESE NEW ACQUISITIONS ARE COMPARABLE TO THE MOST MODERN EQUIPMENT ON ANY RAILROAD.

THE THIRD AND LAST PRINCIPAL LIABILITY IS THE AGE AND CONDITION OF THE RAILROAD'S BUILDINGS. MORE THAN 90% OF THE BUILDINGS ARE LOCATED AT ANCHORAGE, FAIRBANKS, WHITTIER, SEWARD AND HEALY. THESE STRUCTURES ARE USED FOR MAINTENANCE AND REPAIR OF EQUIPMENT; ADMINISTRATION; WAREHOUSING; SECTION HOUSES AND LIVING QUARTERS; TRANSIT SHEDS; AND TERMINAL FACILITIES. THESE FACILITIES ARE FROM 20 TO 25 YEARS OLD. AS YOU MIGHT IMAGINE, THE ALASKA RAILROAD, AS A FEDERAL AGENCY, HAS NOT BEEN SUBJECTED TO THE SAME HEALTH, SAFETY AND LOCAL BUILDING CODES THAT MIGHT APPLY TO NON-FEDERAL BUSINESS. TO BRING THESE

FACILITIES UP TO OSHA STANDARDS WOULD COST APPROXIMATELY \$9.4 MILLION AND IT IS ESTIMATED TO BRING THESE STRUCTURES UP TO LOCAL BUILDING CODES MAY COST AS HIGH AS \$50 MILLION DOLLARS.

IN A BUSINESS CASH FLOW SENSE, IT IS SOMEWHAT SATISFYING TO REALIZE THAT EACH OF THESE LIABILITIES IS A LONG TERM OBLIGATION. FOR INSTANCE, THERE IS NO IMMEDIATE NEED TO COMPLETELY REPLACE ALL RAIL FREIGHT UNITS, NOR WOULD IT BE PRUDENT TO INVEST \$50 MILLION INTO UPGRADING THE EXISTING RAILROAD BUILDINGS. A WELL PLANNED CAPITAL IMPROVEMENT PROGRAM OVER A 10 TO 15 YEAR TERM SHOULD SATISFY ALL DEFICIENCIES.

THE PENSION OBLIGATION OF \$142 MILLION IS A VERY LONG TERM OBLIGATION, BUT TO PUT THIS LIABILITY INTO PERSPECTIVE LET ME POINT OUT THAT IN 1982 THE ALASKA RAILROAD EMPLOYEES CONTRIBUTED \$1-1/2 MILLION AS THEIR 7% CONTRIBUTION WHICH WAS MATCHED BY THEIR EMPLOYER CONTRIBUTING AN EQUAL 7% OF 1-1/2 MILLION DOLLARS. AS A POINT OF REFERENCE, EMPLOYEES OF THE STATE OF ALASKA CURRENTLY CONTRIBUTE 5% OF THEIR SALARIES TO RETIREMENT WHILE THE STATE TAXPAYERS CONTRIBUTE ANOTHER 12% TO THE STATE EMPLOYEE PENSION ACCOUNT.

MY ESTIMATE FOR THE ANNUAL CAPITAL REQUIRED TO SATISFY THESE THREE PRINCIPAL LIABILITIES SHOULD NOT EXCEED \$18 MILLION.

LET ME GIVE YOU MY SNAPSHOT VIEW OF THE OVERWHELMING PLUSES OF THE ALASKA RAILROAD: THE RAILROAD IS A 520 MILE STANDARD GAUGE RAILROAD THAT OPERATES FROM TWO ICE FREE PORTS ON THE SOUTH, TO EIELSON AIR FORCE BASE ON THE EAST TO NENANA, WITH ITS ACCESS TO THE TANANA AND YUKON RIVERS ON THE WEST.

THE RAILROAD SERVICED 175,000 PASSENGERS IN 1983 AND EXPECTS TO SERVICE OVER 200,000 IN 1984. WHAT THE RAILROAD DOES BEST IS HAUL LARGE BULK QUANTITIES SUCH AS COAL, GRAVEL, HEAVY FREIGHT AND PIGGYBACKS. IN 1983 THE RAILROAD WILL HAVE HAULED 4 1/2 MILLION TONS OF GRAVEL, 650,000 TONS OF COAL AND HANDLED OVER 12,000 CARLOADS OF INTERLINE FREIGHT. THE BIGGEST PLUS IN FREIGHT HANDLING WILL BE ADDED NEXT YEAR WITH A 15 YEAR COAL HAULING CONTRACT WITH SUN-EEL. THIS CONTRACT WILL CALL FOR SHIPMENT OF 800,000 TONS OF COAL FROM HEALY TO SEWARD ADLING MORE THAN \$10 MILLION OF REVENUE ANNUALLY AS WELL AS 40 TO 50 EMPLOYEES TO THE RAILROAD PAYROLL. THE WORLD CLASS COAL PORT AT SEWARD WILL BE ABLE TO HANDLE 4 MILLION TONS EACH YEAR FROM A LOCATION WHICH IS 1,100 MILES CLOSER THAN VANCOUVER, B.C. AND 1,850 MILES CLOSER THAN LONG BEACH TO FAR EAST MARKETS. I WOULD EXPECT THAT OTHER FOREIGN PURCHASERS WILL BE WATCHING THE SUCCESS OF THIS ENTERPRISE CLOSELY.

FOR THOSE PESSIMISTS WHO NEED FURTHER ENTICEMENT TO REALIZE A BARGAIN, THE RAILROAD OWNS 600 ACRES OF LAND BETWEEN GOVERNMENT HILL AND FIRST AVENUE IN ANCHORAGE, CONSERVATIVELY ESTIMATED TO BE WORTH 1 1/2 TO 2 MILLION DOLLARS PER ACRE. IN FAIRBANKS THE RAILROAD OWNS 300 ACRES OF SIMILARLY LOCATED LAND VALUED AT 1 MILLION DOLLARS PER ACRE.

THIS MARKETABLE LAND WOULD BE WORTH IN EXCESS OF 1.5 BILLION DOLLARS AFTER THE 5 YEAR WAITING PERIOD WHICH IS REQUIRED BY THE FEDERAL TRANSFER ACT. AND AS MY LAST OFFER TO THOSE INDIVIDUALS WHO BELIEVE WE PAY TOO MUCH ALREADY TO THE FEDERAL GOVERNMENT; I SUBMIT THESE ARGUMENTS:

1. THE FEDERAL TRANSFER ACT LANGUAGE ALLOWS FOR THE SALE OF TAX FREE BONDS TO FINANCE THE RAILROAD, AND,
2. THE RAILROAD HAS ABSOLUTELY NO DEBT.

BEFORE I CLOSE, I WANT TO TELL YOU WHAT NEEDS TO BE ADDRESSED AFTER THE TRANSFER OF THE RAILROAD TO THE STATE. THE TREATMENT OF THIS ACTION WILL HAVE A MUCH MORE COST IMPACT THAN THE SALE OF THE RAILROAD. THE CRITICAL ACTION TO BE DETERMINED IN THE NEXT SESSION OF THE LEGISLATURE WILL BE HOW THE RAILROAD IS OPERATED AND WHO WILL MANAGE THE OPERATIONS.

THE ALASKA STATE CHAMBER OF COMMERCE IS ON RECORD IN BOTH PUBLIC TESTIMONY AND AT HEARINGS BEFORE VARIOUS LEGISLATIVE BODIES FOR THE CREATION OF AN ALASKAN RAILROAD AUTHORITY MADE UP OF 7 PUBLIC MEMBERS WHO WOULD DEVELOP THE POLICY UNDER WHICH THE RAILROAD WOULD OPERATE.

IT HAS BEEN PROPOSED THAT THIS RAILROAD AUTHORITY WOULD CONTRACT THE DAY-TO-DAY OPERATIONS OF RAILROAD, TO A PRIVATE OPERATOR WHO WOULD MANAGE THE RAILROAD ON A PROFIT INCENTIVE BASIS. YOUR CHAMBER HAS FURTHER PROPOSED THAT THE EXPANSION ACTIVITIES FOR RAILROAD GROWTH, BE RETAINED BY THE STATE DEPARTMENT OF TRANSPORTATION WHO WOULD BE RESPONSIBLE FOR THE PLANNING, DESIGN, CONSTRUCTION OF ALL NEW ROUTES. ONCE THESE ROUTES WERE COMPLETED THEY WOULD BE TURNED OVER TO THE CONTRACT OPERATOR FOR PUBLIC USE. WE FEEL THIS PROPOSAL IS MOST RESPONSIBLE TO THE PUBLIC GOOD AND WILL PREVENT BUREAUCRATIC STAGNATION AND PREVENT AN IMMEDIATE LARGE GROWTH OF STATE EMPLOYEES ON THE STATE'S BUDGET.

I BELIEVE IT IS VERY AUSPICIOUS THAT WE GATHERED HERE IN SITKA, TO DISCUSS THE PENDING TRANSFER AND SALE OF THE ALASKA RAILROAD. SITKA WAS THE CAPITAL AT THE TIME OF THE SALE OF ALASKA TO THE UNITED STATES FOR A PURCHASE PRICE OF \$7.2 MILLION. SO FOR THOSE OF YOU WHO SEE THE FUTURE OF OUR GREAT STATE AS WILLIAM SEWARD ONCE DARED, I URGE YOU TO SPEAK YOUR OPINION AND LET YOUR VOICE BE HEARD IN SUPPORT OF YOUR STATE CHAMBER'S PROPOSAL ON THE TRANSFER AND OPERATION OF THE ALASKA RAILROAD.

THANK YOU.

Minutes and Testimony
of the
Railroad Symposium

January 26-27, 1984

Prepared by:

Senate Transportation
Committee Staff

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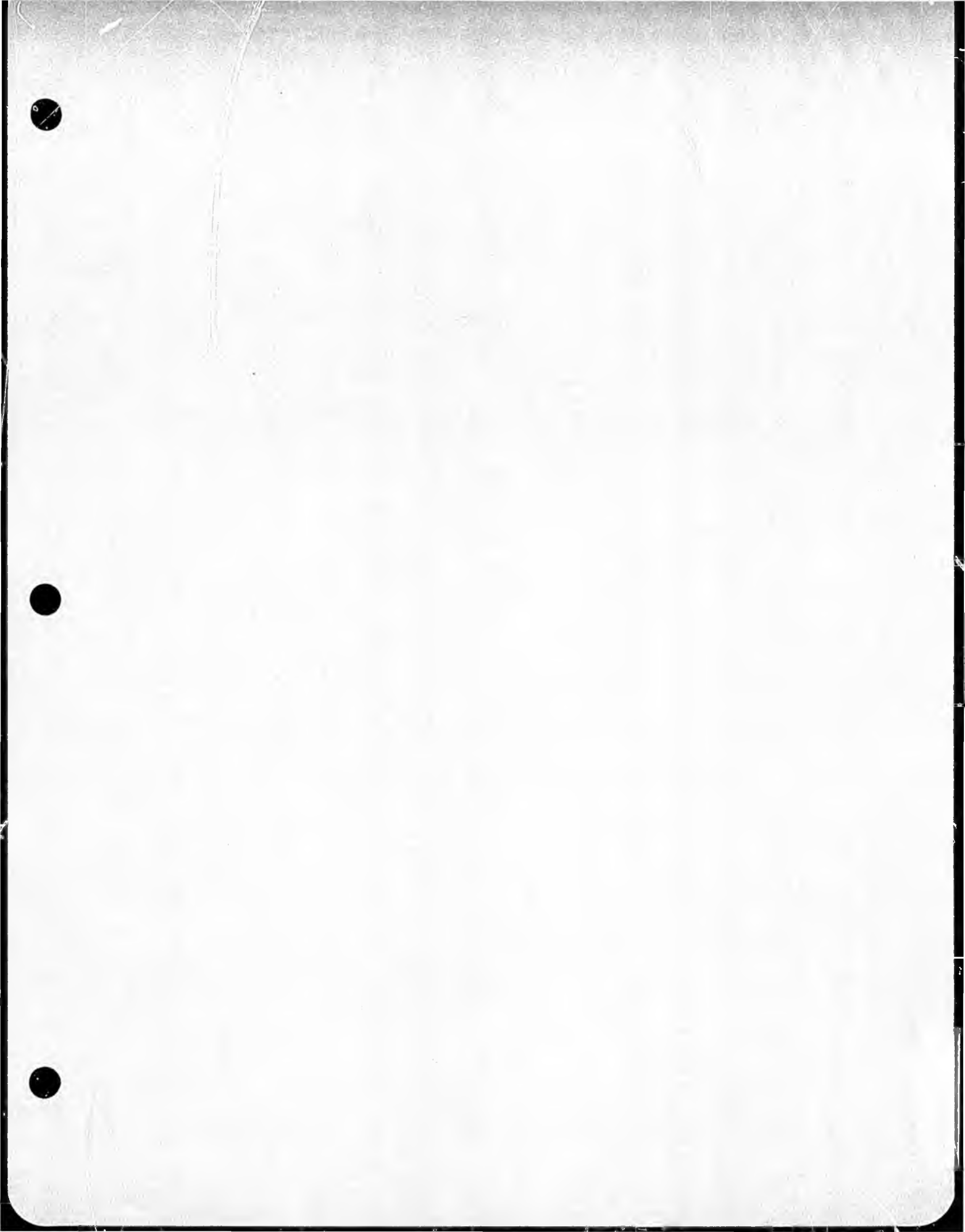
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Teleconference Proceedings

Appendices:

- 1) Commonwealth North Action Paper
- 2) Totem Ocean Trailer Express Position Paper
- 3) Interstate Commerce Commission
Exemption From Regulation - Boxcar Traffic
- 4) Initial Position Statement of the Alaska Trucking Association,
Inc.
- 5) Sea-Land Service, Inc. testimony
- 6) Resource Development Council for Alaska, Inc. testimony
- 7) Alaska Railroad Operating Entity
Sheffield Administration Policy Statement



SENATE TRANSPORTATION COMMITTEE
RAILROAD SYMPOSIUM

January 26 & 27, 1984
11:00 a.m.

January 26, 1984

PANEL PARTICIPANTS

Senator Pappy Moss, Chairman, Senate Transportation Committee
Representative Bob Bettisworth, Vice-Chairman, House Finance Committee
Representative Mike Davis, Member, House Transportation Committee
Senator Bettye Fahrenkamp, Vice-Chairman, Senate Transportation
Committee
Senator Jan Faiks, Member, Senate Finance Committee
Representative Joe Flood, Member, House Transportation Committee
Senator Don Gilman, Member, Senate Transportation Committee
Senator Rick Halford
Senator John Sackett, Co-Chairman, Senate Finance Committee
Dave Walsh, Alaska Railroad Transfer Team

COMMITTEE CALENDAR

Railroad Symposium

WITNESS REGISTER

Richard Barnes, Chairman, Commonwealth North Railroad Committee
Anchorage, Alaska

Leonard Shapiro, Vice President, Pricing
Totem Ocean Trailer Express, Inc.
Seattle, Washington

T.J. Thrasher, Managing Director
Alaska Trucking Association
Anchorage, Alaska

Hal Schuyler, Director, Public Affairs, Alaska Division
Sea-Land Service, Inc.
Seattle, Washington

ACTION NARRATIVE

Tape 52, Side A
Recording
Number
009

Chairman Moss brought the meeting to order at 11:34 a.m.,
apologizing for the late start. He introduced the panel and

explained the reason for the Symposium.

- 067 Chairman Moss introduced Richard Barnes of Commonwealth North, the first witness. Mr. Barnes told the panel some background information about himself, and named the Commonwealth North Railroad Committee members and their backgrounds.
- 107 Mr. Barnes named three reasons why Commonwealth North would have recommended against buying the Railroad: If it would be a never ending drain on the State treasury; if the State government cannot operate it effectively; and if the purchase price wasn't reasonable. Commonwealth North decided that buying the Railroad was a good idea for these reasons: Because the Alaska Railroad is important to the State's economy; because the purchase price is reasonable; because the Alaska Railroad Transfer Act contains provisions that may not be achievable again; because the Alaska Railroad has the capability of being self-supporting.
- 136 Mr. Barnes stated that three changes can make the difference between the Railroad's past subsidized performance and its capability for self supporting future performance: Deregulation of the railroad industry makes it possible for railroads to compete with other carriers on an equal basis; projected new markets in Alaska will increase the Railroad's cash flow picture; the transfer to State control offers the opportunity for tighter cost control and productivity gains if it's effectively managed. Commonwealth's suggestions for how the State should manage the Railroad were as follows: Set up an independent railroad and turn it loose; set it up to be self supporting and cut it loose from the Legislative purse-strings. There are three conditions that must be met for a self-supporting railroad: The Railroad must be allowed to become fully competitive; the Railroad must be organized as an independent corporation; the cost of transferring the Railroad to the State must be recognized and fully funded by the State rather than the Railroad Corporation.
- 276 Mr. Barnes explained to the panel that the State must pay for for the transfer related costs, and he listed what those costs would be: State and OSHA compliance - \$16 million, maintenance of way and capital expenditure needs - \$15.3 million, start-up costs - \$1.7 million, and adequate working capital to cover the cash timing requirements - \$4.7 million.
- 298 Mr. Barnes stated that Commonwealth North strongly recommends that the Legislature appropriate \$37.7 million to the Alaska Railroad Corporation for the purpose of meeting transfer related liabilities in addition to the \$22.3 million payable to the Federal Treasury. The total of \$60 million can be thought of as the real cost of the Railroad.
- 345 Chairman Moss thanked Mr. Barnes for his testimony and asked

the panel members if anyone had any questions.

348 Senator Faiks asked Mr. Barnes for the provisions of the ICC regulations and the Staggers Act regulations. Barnes agreed. Senator Faiks had to leave the hearing to go to another meeting.

360 Representative Flood asked Mr. Barnes if he thought the Railroad would be a continuous drain on the State budget.

370 Mr. Barnes said no, if it was they would not have recommended the purchase.

379 Senator Gilman asked Mr. Barnes if he felt that there was any legislative oversight that needed to be built into the legislation.

Mr. Barnes answered that he was uncomfortable with unlimited bonding, but that covenants could be put in that would be self-policing.

Senator Gilman restated Mr. Barnes answer.

Mr. Barnes replied that their committee did not go into detail about how to limit the Corporation's independence, because their desire is for the Railroad Corporation to be as independent as possible.

423 Senator Sackett asked Mr. Barnes about the question of accountability of the Railroad. He stated that if public funds are going to be used, it's important to decide who the Corporation is going to be accountable to, because independent public corporations can become a problem.

479 Mr. Barnes answered that this entity is different from others in one respect, that it's a commercial business. It doesn't belong under government ownership, this is just a transition period before the railroad becomes a private entity. The more oversight there is, the less independent the organization will be, and it will become more political.

513 Dave Walsh congratulated Mr. Barnes for his fine paper. He asked not only what accountability to the State would mean, but what would a private lender require in this situation.

563 Mr. Barnes replied that if the goal is a self-sustaining railroad, that the General Manager will make decisions like any other businessman, not make social decisions. The only problem is the original \$60 million needed to acquire the asset.

500 Chairman Moss thanked Mr. Barnes for his testimony. He introduced the next witness, Leonard Shapiro, Vice President of Pricing, Totem Ocean Trailer Express, Seattle.

624 Mr. Shapiro explained his company's interest in the transfer: The Alaska Railroad is a major interlying carrier for Totem; a healthy railroad can only benefit Totem; the railroad is also a competitor of Totem's. Totem is not afraid of the new competition, they only ask that all competitors compete on the same basis.

736 Shapiro stated that there are three areas of the legislation that need to be looked at: Entry by the railroad into either the water carrier or the motor carrier business should be prohibited; the Federal and State Anti-Trust Laws must be applied; and unfair ratemaking by the Alaska Railroad must be prohibited.

Tap 52, Side B
Recording
Number

000 Shapiro asked only that the Alaska Railroad compete on an equal basis with other carriers, which he said would not happen, because the Alaska Railroad enjoys certain direct and indirect subsidies which are not available to private carriers.

141 Mr. Shapiro stated that compromise is a must if the railroad is to compete on the same basis.

153 Mr. Walsh thanked Mr. Shapiro for his testimony, and asked Mr. Shapiro for clarification of a statement in Shapiro's testimony that mentioned the fact that motor carriers pay for road construction by paying highway and gas taxes. Shapiro answered no. Walsh then asked Shapiro if he would agree that at least half of the surface transportation of Totem's materials is being subsidized indirectly by the Legislature. Shapiro disagreed, saying "the question becomes one of would the highway system be there anyway? It is arguable that the motor carriers are defraying a cost, a portion of a cost, that would be present anyway. Now if it's argued that we wouldn't build the highways if it weren't for the motor carriers, you'd probably be correct."

Walsh: "So then, given the fact that there's been a commitment by the Legislature and by the Administration to continue passenger service, any calculation of subsidy by the State of rail operations should be discounted for that portion that's used for passenger service."

Shapiro: "I would agree."

Walsh: "You are not saying that all the various waterway subsidies are being paid for on a dollar for dollar basis by TOTE."

Shapiro: "That is correct, but we are saying that to the

extent they exist, they are also dollar for dollar available to the railroad's interlying carriers."

Walsh: "Okay, but you have taken the position that all indirect subsidy must be put into State's, to the Railroad's rate-making business."

Shapiro: "Into the rate base. That is correct sir."

Walsh: "But, if I understand what you're saying, you're not saying that all should, just (A), that portion of any subsidy that does not have to do with passenger service on the railroad, and (B) only those indirect costs which are not shared equally by TOTE, Sea-Land, and the Railroad."

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Shapiro: "And I would say (C), a third and perhaps very important one that need not be in. we are only addressing traffic which is cross-competitive. My personal feeling, to open up the coal fields to extend the Railroads to that point, will not be initially a profitable operation, and we are not saying in any way, shape, or form that that shouldn't be subsidized. We're only talking about cross competitive traffic."

Walsh: "Okay. So then you would also back out from any calculation, gravel, coal, hard rock, mineral.

Shapiro: "That is correct sir."

190

Chairman Moss recessed the hearing until 2:00 p.m.

January 26, 2:11 p.m.

194

Chairman Moss called the meeting to order, calling on Dave Walsh to continue his questioning of Mr. Shapiro.

Walsh: "Where we were, if I might recap, is we explored the statement that all indirect subsidies should be built into the rate base, and Mr. Shapiro and I in our exchange had essentially modified that in two respects, and please correct me if I don't state them correctly. Number One, that it should not apply to, that that percentage of the subsidy that would go to non-competitive operations, like bulk hauling of gravel and passenger service should not be included as an indirect subsidy in determining the rate base for those items where the Railroad competes with Totem and the other carriers, and secondly, that the kind of indirect subsidies which all carriers receive, such as Coast Guard protection of the waterways, and those kinds of things, should also not be included. Is that correct, Mr. Shapiro?"

Shapiro: "That is correct, sir."

Walsh: "Okay. And your point was, that even though there

is a subsidy of the motor carriers, the highways would be there anyway, because the motor carriers provide a relatively small amount of traffic that goes over the highways"

Shapiro: "No, I did make that point sir. It's my belief that the motor carriers, through the various taxes that they pay, be they the gas tax, vehicle registration tax, licensing taxes. It can be argued do they pay their fair share, or don't they pay their fair share, that may be an arguable point. I tend to feel that they do pay their fair share of the use of that common asset."

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Walsh: "Would you have any data, I don't say this for purposes of confrontation, but for the Committee's benefit and my own, do you have any data that would suggest that that's true?"

Shapiro: "I have no specific statistical data insofar as the State of Alaska's concerned, it's just general economic reading that I've done on the controversy which I understand has gone on for about thirty years."

Walsh: "If it could be established that the subsidy which the Railroad has received, and then I think, arguably, by extrapolation, will receive, does not go to any degree to subsidize the competitive aspect, then I would assume that the point that you raises earlier would be satisfied."

Shapiro: "That is correct sir, but I would hasten to add, having worked for a railroad, and having worked in the subsidy allocation issue, that unfortunately it's probably not a possible thing. Much of the subsidy the Railroad receives, for instance, the railroad goes out, and using subsidy buys passenger cars. Well what that does is it frees up capital to buy boxcars."

Walsh: "But nonetheless, if it could be established, it that general principle could be established, then your concern would be satisfied."

Shapiro: "Correct, but what I am saying is I believe we may be chasing a phantom here. The issue of subsidy allocation is an extremely complex one, and that in the end, just because, I'll give the example of a passenger car, one cannot say, well we got a million dollars, we got a passenger car, what it did was it freed up other capital, and so there is an indirect is, given the fact that (A) that system appears to be working, and that (B) with regard to the rate predation issue, there's a ruling that is being appealed, why should fools rush in where angels dare to tread?"

Shapiro: "For several reasons. Number one: The case you're discussing is not a rate predation issue. The case you're

discussing is one in which the Commission is attempting to deregulate all boxcar traffic, so what TOTE and Sea-Land are arguing is no, the Alaska Railroad is a special case. Do not deregulate it. That's the case you're referring to. So it's not rate predation, we're simply arguing the Alaska Railroad should continue under Commission regulation. We may not feel it's the best regulation, but at least it's some regulation. That's the case you're referring to, it's not rate predation, that's number one. Number two: We are arguing that even under Commission regulation, assuming that we retain it for boxcars, that the Interstate Commerce Commission, if you talk to their technical staff, is not set up to handle the cost accounting necessary where you have a state owned railroad. The Commission regulates bases on rate basis, and under the Staggers Act, the rate base test is a very simple test, does it contribute to going concern value? That test, when applied to a railroad, which receives either direct or indirect subsidy would allow the railroad to apply, let us say they do not pay tax on the real estate they use, or a sales tax when they buy locomotives. TOTE pays sales tax when we buy trailers. All of those indirect subsidies do not enter the rate base under the Commission test, so you would have a TOTE or a Sea-Land or a Lynden or a Weaver Brothers Trucking Co. competing with a railroad, one company doesn't get the direct and indirect subsidy, the other does, but as far as the Interstate Commerce Commission is concerned, and what they use to regulate, is that if you've got a subsidy, good, your rate base is lower. That's the Staggers Act test, so we're saying two things: We're saying certainly we want to retain Commission regulation, that's what they're arguing in the Boxcar Case. We argued the same thing in the Piggyback case and won, we won in Court, not before the Commission. Now we're arguing a second thing, or what we're asking for here, is that please hold us equal with the Railroad. If I don't get, if I have to pay taxes, and that's in part of my rate base, that there should be some mechanism by which the Railroad, where they're cross-competitive, where they're setting rates below those established by the private carriers, we're not trying to stop their freedom of ratemaking, cannot use that direct and indirect subsidy, that somehow it's got to be put in the rate base.

Walsh: Mr. Chairman, if I might continue. I want to get back to that, but then would you also agree then to give the railroad and it's ratemaking base, assuming we went along with your proposal, some kind of discount or similar factoring in for the tax advantages that a private corporation would otherwise have. Yes you pay sales tax, but you deduct that, and that also increases your profitability, you wouldn't have any problem with that.

Shapiro: Correct. I would say in a nutshell that the accounting be set up such that they basically would account for their expenditures as a private business.

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Walsh: "Okay. Back to the main point, I understand that this is on appeal, but it speaks real loudly to me and to the Transfer Team because one thing upon which we would agree with you a hundred percent is this is a very complex issue, and we tend to rely on people like the ICC, who do this for a living and have done it for many years, but in terms of the predation, and the Anti-Trust kind of protections that you need, I'd also like to read a second section if I might from this opinion, Mr. Chairman, and I have copies, I don't have enough for everyone, we can make some, but I do have a couple copies for the record. This starts on Page 750 (See Appendix 3). Now, Mr. Shapiro that's kind of the situation that we have here, isn't it, and I guess the question is, is the issue you raise really an issue? There seems to be (A) a federal system in the ICC that has been working very well, I mean, you won. You had to go to court, but you won, and number two, as the ICC pointed out, any attempt to drive Sea-Land and TOTE out of business or to be unfair would be of major concern to the ladies and gentlemen to my right. Given those, why are additional matters necessary?"

Shapiro: "Okay. Two reasons: Number one, the first Commission finding that even if the rate's below cost, perhaps the federal government or the state had a good reason for doing it. As I argued earlier, we fully support that, that if the State of Alaska desires to use that subsidy for the social welfare of the State, that is a state decision, not a railroad decision, that it should not in this transfer legislation be abrogated or passed off to the professional management of the railroad. That is exactly what we're asking for, we're saying do not let the professional manager of the railroad make that decision. The men and women in this room ought to make this decision, that's not the railroad's job. That's our first statement so we concur with the Commission finding so long as it's not the railroad making the decision. Second issue, which is, has the system worked? The system has worked after a fashion both TOTE and Sea-Land are still in business, Sea-Land has announced plans to add to vessel capacity, but on the other hand would the system continue to work? Up to this point, Totem at least has become used to working within the federal system, and yes, there are times when we have lobbied at the federal level, when we have not been happy with rail decisions, but frankly, under federal ownership, we had a policy if I may be so bold as to say it, benign neglect. The federal government was not overly active. Under State ownership where things are much, much closer to the folks that are actually using and paying for the Railroad, I think you would see much more aggressiveness. We at TOTE would prefer to see this whole thing out in the competitive marketplace. We would rather compete with a good railroad with the same ground rules and never have to go to the Legislature and cry foul and say they did this nasty thing to us. All we're saying is, put us on the same basis. They get a subsidy, maybe the answer is, we should be subsidized, I don't know,

I'd prefer not to be".

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Walsh: "Okay, one final thing and then I've got one other area that I want to get to, but I really think this is important, because I understand your concern, and I'm not saying that it's a non-legitimate concern, or a non-important one, but I, as I mentioned before, I think that without further legislative action, without further tightening of the Legislature of controls on the railroad, that the protections that you seek is there, and again I refer to the ICC opinion, on page 752 it says, and I think this goes to the scope of authority that the State, both the Legislature and the Administration should look to. The ICC found (See Appendix 3). Now what the ICC seems to have said after their investigation is that the existing system is working, and under the existing system as they say, no further protection is needed, and that any further protection compromises the Railroad's ability to be, as they said, a more effective competitor in the normal course of business, and so the ratemaking and Anti-Trust points that you brought up, as I said, I think are very legitimate, and I'm certainly not dismissing them, but all evidence seems to indicate that the situation that exists provides sufficient protection for Sea-Land and Totem, and would provide a sufficiently competitive edge if you will, sufficiently competitive situation for the Railroad. I don't understand, given what I consider to be quite a bit of impartial evidence on it, where more regulation is necessary."

Shapiro: "Again, the answer is two parts. Number one, the particular case you're citing is a case in which the Railroad is saying, don't regulate us anymore. That's exemption from regulation. What TOTE and Sea-Land are saying is, wait a second, we're regulated, we are. They're not deregulating TOTE Sea-Land, they're deregulating the Alaska Railroad. So the guy that walks out with the edge any way you cut the cake is the Railroad. Now the case has been argued twice, the first time was for piggyback freight via the Alaska Railroad. The Commission had exactly those findings. The Courts found that the Commission was wrong, they reversed them, the Commission lost on appeal. Piggyback rates to Alaska continue to be regulated. This case is now going the same way, and while you're quoting from the

Commission findings you're not quoting from the opposing briefs filed by both TOTE and Sea-Land which were very extensive. I'll forward you those briefs for review, but I think we made very good arguments, that's number one. Number two, we say it's been working, yet there are some observers of transportation in the State of Alaska that say about four years ago, a major rate war was set off by rate actions by the Alaska Railroad, the so-called incentive rate series."

Walsh: "Who would those observers be, so we can contact them?"

Shapiro: "Folks like Fred Toland, you can discuss the incentive rate fight with him. But rail ratemaking policy has a very direct competitive effect on the mix faced by the private carriers. They do not operate in a vacuum. That is my business, as they say. Every time the Railroad files a rate I examine it very closely, I listen to the sales representatives of the company, what their reaction is, and we respond to it. That's competition, that's good."

Walsh: "I don't think there's anyone up here who would disagree with that. Thank you Mr. Shapiro, thank you Mr. Chairman."

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Chairman Moss recognized Senator Faiks.

Senator Faiks: "If I could, a couple comments. One, I think the reason that Mr. Walsh is saying the system is working is that the ICC had its findings, you didn't like them, you were able to go to court. That's the process that's working. Now I'm not going to sit up here and say that just because they lost once, they're going to lose again. That's what the Courts do, and that's why I think the system is working and that's why I don't think I want to change it, I don't think it's broken. If you've won once, hats off to you, maybe you'll win again. My other point is, I really don't like generalized statements that you pay your fair share on the roads for instance. I'd like some hard numbers on that. I know what the cost of repairing and building highways are in this state, and I'd like to see some hard figures where your fair share, so to speak is paid for in that subsidy. I think that's an indirect subsidy there that you're getting, and I think it's unfair to say you've paid for it, without showing us some hard figures to show that."

Shapiro: "I think ma'am that to the first issue I would respond again that the case that's being referred to is a deregulation case, not a rate case. It's a case in which you're arguing that the railroad should be regulated like TOTE."

Faiks: "Yes, but you already have a process. When you object to something big that the ICC does, there is a process in place for you to follow through on that. What we're saying is why do we need more regulation? The process is working, it's there it's in place, you follow it one-two-three-four."

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Shapiro: "And my response is because the process, which arguably if the definition the process has worked, because TOTE and Sea-Land are still in business, you are correct, the process has worked, we've not been driven out. But if the question is will the process continue to work in the future, assuming the railroad becomes more aggressive in its pricing, then I'm saying that the Staggers Act Test, which is the one

the Railroad has on that business which is still regulated, which if we lose this case boxcars will not be regulated so there is no ICC, if we lose this case, regulation of boxcar rates. So the balance of the Railroad's traffic the Staggers Act Test is a very limited test, it says it must contribute to the going concern. The Staggers Act Test relies on two subtests: First, Anti-Trust, that if we're driven to the wall, we can invoke the Anti-Trust Laws. While we've said that's a good test, we just want to make sure we can sue the railroad under the Anti-Trust Statutes, we've asked for that. The second part of the test is that no railroad would price below cost because in the long run it will go bankrupt, and that's where we get concerned, because one, the railroad's cost structure is different from ours, if it has direct and indirect subsidies, and two, there's no requirement that the railroad owner profit. And so we're saying that fundamentally this railroad, the Alaska Railroad is different from privately owned railroads."

Faiks: "Okay, I would like to make another comment Mr. Chairman if I could that I would like your - Were you here this morning when the gentlemen from Commonwealth North gave his presentation?"

Shapiro: "Yes ma'am."

Faiks: "That we fund the \$23.2 million and then an additional \$37.7 million for a total of \$60 million then cut the string and say bye-bye have at it? That would be your approach then wouldn't it? Then there would be no yearly subsidies, there would be no looking back, it would be out there in the private sector by itself, and it would be a sink or swim situation?"

Shapiro: "I would like to see it happen that way, do I think it can, I don't believe it can, I think you'll be subsidizing the passenger service forever.:"

Faiks: "You'd rather that we would solve your problems, your problem with rates and regulations, and subsidies and all of this stuff that you've recommended here, we'd solve it by going that approach, wouldn't we?"

Shapiro: "You'd partially solve it. You would solve it to the extent that there was no ongoing direct subsidy, to the extent that it continued to be owned by the State and the tax payment structure was different, the cost of capital was different, the profit motive was different. No, our problem would not be totally solved. It would be helped an awful lot, I agree, but I again don't want to see a railroad put in a position in which it cannot operate economically, it's to darn important to the State."

Faiks: "I hate for you to be in a position where every year you had to come to the Legislature and it was you or the

Railroad."

Shapiro: "I could not agree more ma'am. I could not agree more."

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Fahrenkamp: "Mr. Chairman, there was just a mention made that's of interest to me. I think you stated that passenger service would have to be subsidized."

Shapiro: "That is correct ma'am."

Fahrenkamp: "In your objections to subsidy, is that objection inclusive of passenger service, does Totem feel that passenger service, if it has to be subsidized should be discontinued?"

Shapiro: "No ma'am. The passenger service issue for us is we would like to see accounting which separated out the passenger subsidies, separated out any subsidies for extension of line, separated out subsidies for historic bulk traffic. Our concern is only or are only those subsidies on cross-competitive traffic. If the state feels that it wants to maintain passenger service, that's a function of the State, and if the State wants to subsidize it, that's a function of the State, not a function of TOTE."

Fahrenkamp: "The when you state that you don't want subsidies or you want the railroad to stand on it's own, you're speaking strictly from handling freight, and not inclusive of passenger service?"

Shapiro: "That is correct ma'am."

Chairman Moss recognized Senator Gilman.

613

Gilman: "Then I'm totally confused because I thought you said way back when that subsidies freed up capital for something else."

Shapiro: "That is correct sir."

Gilman: "And that you were opposes to subsidies."

Shapiro" "No, I'm opposed to the notion, having done passenger subsidy for the Old New York Central Railroad. I'm opposed to the notion that what very often happens in subsidy allocation is let's say we go out and replace a series of ties to improve the roadbed, which is done very often on passenger lines to keep them smooth enough for people. Now that has a direct benefit, of course, for the freight service, in that somehow, and it's a very complex task, you have to work out subsidy allocation formulas, that it is not an easy matter to separate out passenger subsidy from freight subsidy."

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Chairman Moss recognized Mr. Walsh.

Walsh: "Two things. But fixing a pothole in a road over which passenger cars are going to go and over which motor carriers are going to go is the same principle."

Shapiro: "Agreed."

Walsh: "Okay. Now, just for your information, freight traffic, competitive freight traffic amounts for 12% of the traffic on the Alaska Railroad, and it seems to me that if you take the fact that we're talking about a relative small amount of the railroad's traffic, and by your own admission an absolutely difficult, at best job of separating what is an indirect subsidy, what isn't an indirect subsidy, what is allowable, what isn't allowable, how much of a tie goes for passenger, how much of a tie goes for freight, and how much of a tie goes for competitive freight. Aren't you really burdening the Alaska Railroad with an accounting system which in and of itself is going to make them non-competitive. You'd have to hire not only Philadelphia accountants by Philadelphia lawyers to figure out who that would work."

Shapiro: "I don't agree sir. The accounting formulas in that case are pretty standard accounting formulas. That's what we're speaking to, is how specific does the legislature get in defining that versus how...do you want to leave it up to the "experts" whoever they are?"

Walsh: "So then if we put an industry wide standard for the transportation industry of this kind of accounting method to take into account indirect subsidies, it would not be a burden?"

Shapiro: "I don't believe it would be any burden at all with the railroad under computerized accounting system. None whatsoever."

634 Walsh: "So then if we put the same system on Sea-Land and TOTE, you would have no objection to that."

Shapiro: "None."

669 Walsh: "Okay. Then the other thing is, about ratemaking, didn't, as a result of congressional action, with the Section 709 rate studies, weren't they done, and didn't they determine that the Railroad's rates were in fact fair?"

Shapiro: "They determined, sir, under the Staggers Act test that those rates made a contribution to going concern, to the value of the going concern. They did not, as we said in our briefs, ever address the issue of subsidy, which was our complaint with the study, and that's what we need to argue. I think you need to bear in mind that the Commission constituency in this case is the railroads. The railroads are the

folks that are in trouble in this country right now, and the legislation is being designed to do something, somehow, for the railroads because some of them are not in good shape."

Walsh: "Weren't those 709 studies conducted at least in part because of information and lobbying efforts that the motor carriers brought to Congress? Pardon me, water carriers." You went to Congress and asked for a rate study and got it, and they found the rate study was comparable, and you don't like the rate study. You went to the ICC, and the ICC made findings, and you went to Court and appealed and won and now I understand that's being appealed, and now you're appealing this. Again, to go back to what Senator Faiks mentioned earlier, there appears to have been a lot of activity in the past and a whole system that's been set up that has found that the kind of rate problems that you're going to and your second and third points, the Anti-Trust and the ratemaking things are legitimate concerns but that they've been answered. Now perhaps not to your complete and total satisfaction, but to the satisfaction of Congress, to the satisfaction of the ICC, not to the satisfaction of the courts, but I understand that this was a Louisiana case that this was added to, but nonetheless it gets back to what Senator Faiks said, it isn't broke, don't fix it. It sounds to me like there's been a lot of give and take, there's been a lot of questions, and those questions have been answered, and why should we burden the railroad, or conversely burden state government with additional oversight requirements, that by all accounts that I've heard today and at the previous hearings don't appear to be necessary."

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(new
tape)

Shapiro: "I guess that all we're saying is that we would hope that the legislation would include somehow some language that directs the railroad to recognize their unique position, unique in that they are state-owned, competing with in some cases, privately owned businesses, and somehow philosophically say to them "hey compete, compete hard but don't use your position as state-owned, and whatever benefits you derive from that...railroad can by the way, and we've never complained about that. The railroads historically maintain much lower rates than we do on drilling mud, but darn it, there economics justify it."

Tape 53, Side A
Recording
Number
000

Walsh: "So essentially what you're saying is, be fair."

Shapiro: "Right. That's what my testimony asked for. No unfair competition, whatever that is."

Walsh: "Thank you Mr. Shapiro."

Chairman Moss recognized Senator Fahrenkamp.

008 Senator Fahrenkamp: "Just a minute. I remember something from last time and I'm sorry, but I'm still a little confused on the subsidy issue. If I remember correctly you stated last time we discussed this that like extending the railroad to other areas, increasing the length of it or something like that, you did not consider as a part of your objection, is that right?"

016 Shapiro: "That is correct, ma'am."

Chairman Moss thanked Mr. Shapiro for his testimony. He then introduced Ms. T.J. Thrasher, Managing Director of the Alaska Trucking Association.

023 Ms. Thrasher made some opening comments about the Alaska Trucking Association, and about how trucking companies pay their fair share of highway taxes, admitting that these taxes did not pay the full cost of road construction and maintenance.

054 Thrasher emphasized two important concerns of the ATA:
The first major concern is that a state owned railroad will not enter into the other modes of transportation. She asked for language to be put in the legislation to ensure this.
074 The other major concern is accountability. ATA feels that there is no room for public input and scrutiny in the railroad legislation.

ATA wants to remain both a customer and a competitor of the railroad. They want reasonable rates based on real cost, and don't want to be priced out of business with public funds.

(See Appendix 4)

104 Chairman Moss recognized Senator Faiks.
Faiks: "You want the railroad to be a viable economic entity?"

Thrasher: "Yes we do."

Faiks: "You want it to be able to make money?"

Thrasher: "Yes."

Faiks: "Okay. Do you feel that if it makes money and it's charged with the idea of making money then its rates will have to be fair because it's not going to be able to make low rates if it's breaking even or is allowed to operate not making money?"

Thrasher: "Absolutely. And we think that the rates should be to made a revenue rather than to conquer the market, quite

frankly."

Faiks: "Then I'll ask you the same question I asked the previous gentleman?" Were you here when Mr. Barnes from Commonwealth North made his presentation on how to purchase the Railroad?"

Thrasher: "I got some of it. I did not get a copy of the report until I came in just this morning. No I did not hear it entirely."

Faiks: "He suggested that the State pay the \$23 million to the federal government and then write the Railroad Corporation a check for \$37 million for start-up costs, OSHA requirements, working capital, that kind of thing that would be the start-up costs in any business because of what kinds of things they avoided through the federal government, and cut the string, and say you're on your own." So that they couldn't come back to the Legislature year after year after year and they would not be getting a yearly subsidy, they would get one time capitalization subsidy and that's it."

122

Thrasher: "I cannot comment on that. You know we're in business. We think, from all we've read that there is going to be considerable costs, and we're not objecting to those costs, and as far as saying that this is a one time shot, you go with it and run with it, I'm not prepared to say that that is reasonable."

Faiks: "Your testimony said that according to the newspapers in Anchorage it's looking like funding would be over \$100 million in the next 10 years for the railroad, right?"

Thrasher: "That was, I believe, I think the new Senate bill."

Faiks: "Okay. And they believe that too, Commonwealth North, I believe, believes that if it has to come back year after year after year there is going to be additional subsidy year after year. This kind of testimony would go on year after year after year, and it would eventually cost the people of the state of Alaska more money, not less money and you would create a real umbilical cord between the railroad and public financing and it would never go out on its own and make money. That's why they took the approach that cut it loose at once, make it a public corporation, give it some working capital, and then make it go make money."

Thrasher: "Senator Faiks, I believe the point I was trying to make in that, and beginning on page two, the point I was trying to make as representing the Alaska Trucking Association is that the language in the both bills does say competitive. We were questioning whether to underwrite then an entity and tell as I say and tell that entity to be competitive, and

then tell the private enterprise that somehow this is fair competition. And what the point I'm trying to make is that we believe rather than a competitive rate that is should be a realistic rate, a real cost rate, and that's the point we were trying to make. We were not addressing the issue of continued subsidy, or coming back for my funds. That's the point I was attempting to make."

151 Walsh: "Thank you Mr. Chairman. Just a short comment, Mrs. Thrasher, thank you for your testimony. In the helpful exchange between Mr. Shapiro and I the motor carriers were kind of buffeted around and neither one of us by our remarks meant anything of a derogatory nature or anything else toward to motor carriers, we were just using it as an example."

Thrasher: "None was taken, we understand that."

159 Chairman Moss recognized Senator Gilman.

Gilman: "Thank you. Both SB 352 and the House Bill calls for a public corporation to be created that is and it calls for little, if any, legislative oversight. What's the position of the Trucking Association?"

169 Thrasher: "We want some oversight. Now if that is through the Legislature then certainly that is the most effective. We have said, and I perhaps should have read it, but we want accountability. We do not believe that this railroad corporation should be able to operate in secret, so to speak, and in silence from the public. We want accountability, and if that is legislative accountability, then yes, if that's the most effective, and we believe that would be the most effective."

Gilman: "You want it to run on a business making basis, with business principles used and still come to the Legislature?"

Thrasher: "If that is the means. The point we were trying to make is that, you know the motor carriers are required to file their rates and that is filing publicly, and to file their tariff. There is no provision in here that that's going to happen, and it allows for public input and scrutiny."

Gilman: "You're not asking for any more public input into the operation of the railroad than for public input into the operation of the trucking industry."

Thrasher: "No, absolutely. We want to all play from the same sheet of music."

185 Chairman Moss recognized Representative. Flood.

Flood: "Thank you Mr. Chairman. You said earlier that you'd like it if the rates were based on real costs and that the advantage to that were lower rates for the railroad."

Thrasher: "Absolutely."

Flood: "If that were the case would you lower your rates?"

Thrasher: "We do all the time. Yes."

Flood: "What if it came out that the rates using real cost that the rates were to be higher?"

233

Thrasher: "If when the cost goes up of our service, certainly we increase our rate. We go through the normal filing period, we have to prove that this rate is reasonable, and we have that requirement, and yes we do raise, and we do lower our rates, and the railroad should have that, but someone should determine that that is reasonable, and that it's not done to capture the market so to speak. Well probably the ICC apparently is now doing it, I think it's pretty clear that perhaps the Legislature or particularly each of these bills do not want intra-state regulation, we are dealing with interstate movement of freight, so it would possibly be the ICC. Now again you recognize that the ICC itself as a Commission, as an enforcement and regulatory body, may disappear by '85 or '87, that's a possibility. So I'm not locking that in and saying that the ICC has to regulate this, I'm saying that we do believe, and we do feel that a regulated transportation industry provides stability."

Flood: "Sounds like your choice would be..." (inaudible).

Thrasher: "Well I don't think we would have a choice, we are dealing again with interstate freight for the most part, and 80, 90% of the freight moving over there is interstate. So if it is regulated then that is probably the body, the agency."

Chairman Moss recognized Senator Halford.

249

Halford: "Thank you Mr. Chairman. You said basically you think it's probably effective to restrict the ongoing subsidy, or you feel that if they have an umbilical cord back to the Legislature the ongoing subsidy might be less or there'd be at least more public input. I would suggest that that's probably just the opposite of what would happen. When we passed the sunset laws we passed a law that said everything would come back for review with the thought of reducing regulation. In fact, everything has come back for review, and we have done almost nothing in reducing regulation, however we've substantially upgraded enforcement powers and a lot of powers in the regulatory structure, and produced more and not less. I would suggest that coming back to the Legislature from your perspective of less subsidy, coming back to the Legislature on a continuous basis may be just the opposite of what you really want. It might be much more appropriate if we took the

Commonwealth North model with one exception that completed the circle, and that is that we gave them the purchase price, we gave them the initial money, and then we offered an interest free period, but beyond that initial interest free period for start-up, the money had to come back to the State so that the cost of capital which is your real loss in the competitive side also has to come back to the State. And they're truly competitive."

268

Thrasher: "I don't want to, perhaps I am confusing you. Now, when we are saying oversight or public input we are talking mostly about when you establish a rate, not when you get the subsidy, when you should get it. We are saying that rate needs to be reasonable. We need to have some access for input. You are giving a railroad, you are setting up a railroad corporation, and you are saying go for it, operate this system. Within that operation, and within that directive then they're going to have to establish a rate. We are saying that when happens, somewhere along the road, you need to have public input into that, and not make it secret. If you have a rate, and if it costs this to haul a certain commodity over a certain route, that system. Within that operation, and within that directive then they're going to have to establish a rate. We are saying that when that happens, somewhere along the road, you need to have public input into that, and not make it secret. If you have a rate, and if it costs this to haul a certain commodity over a certain route, then that should be published, that should be made public so that a small shipper or a large shipper can look at this and they can say this is the price, as long as that is the price, and we can all take advantage of that."

Halford: "But that will never include the cost of the interest or the cost of capital component in any private sector comparison unless there's a payback."

Thrasher: "Well, we think there is a way of establishing a reasonable rate, and we are not saying that you look around you, and you see what everybody else is charging, but we say that perhaps you start from that, and if that has been a reasonable rate, we are not trying to lock the railroad into the same rate that we have now or had yesterday or intend to have tomorrow. And I know that sounds confusing. We want the ability to know what the rate is, and how they establish that rate, and we think that the public has the right to know that. We have to establish a rate that is reasonable, and it has to be proved reasonable. So that's what we're asking."

Halford: "Their established rate based on cost of service is going to be lower than yours even in places where the railroad couldn't traditionally compete with trucking because of the cost of capital component, and how do you intend to deal with that, just through the political process?"

Thrasher: "Again, let me tell you that we take advantage of that rate. You see, we are shippers, we are customers, as well as being on some rates, some parallel routes, a competitor. What we really want to say is do not allow the state when you buy the railroad and no matter what system you put it in don't allow that system to put private industry. Maybe we're not sophisticated enough to tell you what that language should be, we can tell you that that is our concern. We compete now with the railroad, and it's generally at a lower rate, but we compete."

Chairman Moss recognized Senator Faiks.

278

Faiks: "Thank you. Both you and the previous speaker mentioned to add amendments to the bill, either bill, prohibiting the railroad from going into the water carrier business or the motor carrier business or whatever. In SB 352 that was the intent, that this was a railroad business only, and it was never the intent to give the railroad the authority to expand beyond running on its little track, and if that's not clear in the bill, I as one of the authors of the bill, will see that that's clear. It was never the intent for the railroad to do anything but be in the railroad business."

Thrasher: "We appreciate that, and it certainly does address our concern. I believe that is in on Page 10 of House bill, Page 10 of Senate bill. Our particular concern was that we didn't know when you said "plan for and undertake expansion of the railroad and railroad activities.""

Faiks: "That was just railroad, extending into resource districts and to the Canadian border on its track, not into motor or water transportation."

Thrasher: "That certainly addresses our concern."

Halford: "There was in fact a specific provision in there that said other modes that was deleted for that purpose before the bill was introduced."

Faiks: "But we will make it more clear if that's what you want."

Thrasher: "That is our concern, and I appreciate that."

301

Chairman Moss: "Mrs. Thrasher, one question I'd like to ask you. I believe I heard you say that the railroad should not be allowed to deliver their shipments to off-side customers. I might add a comment there that if I remember correctly the Alaska Railroad now owns local delivery trucks and trailers that will be transferred with the Railroad. Should they be not allowed to continue on as they have in the past with their delivery, and so forth?"

Thrasher: "We don't want local distribution, no. We want to be able to go the end of that railway or to that railway and distribute it locally, and local and line haul, we want that, yes. We want to stay in business, that's what we're saying."

Chairman Moss recognized Senator Fahrenkamp.

314 Fahrenkamp: "I'm confused. Your answer was that you want line haul, then what your answer really is that you want the railroad to stop using their trucks and stuff?"

Thrasher: "At this point, although they own some equipment they're not active, the federal government did not, now they had that capability, you know that, right now the federal government could have gone into the trucking, into the water, into the carrier - they have that capability. They did not exercise that, and yes, they may have purchased a few trucks, I don't know the number they have. They are not though, competing, they are not going out and hustling to sell that service. We don't want them to do that."

Fahrenkamp: "They do use that service on occasion?"

Thrasher: "Yes they do, occasionally, yes."

Fahrenkamp: "You know, as people testify and say, make it competitive, let it stand on its own, leave out the subsidies, it that competitiveness means do away with some of the abilities they've got already then that's all right, though they may or may not be using it?"

Thrasher: "I think that whether they own trucks right now the fact is that they are not picking up and doing a tremendous volume of delivery on the local or the long haul portions and that's what we like."

341 Chairman Moss thanked Ms. Thrasher for her testimony, and introduced Harold Schuyler, Director of Public Affairs for Sea-Land Service, Inc.'s Alaska Division.

353 Mr. Schuyler stated that Sea-Land does not oppose the purchase of the Alaska Railroad from the federal government. They too feel that is necessary for economic development in Alaska.

465 (See Appendix 5)

477 Faiks: "You say everybody is regulated but the Railroad?"

Schuyler: "And the water transportation and the trucking."

Faiks: "You say this gives and advantage to the Railroad, not to be regulated?"

Schuyler: "Yes, it would."

Faiks: "Do you support the ATC?"

Schuyler: "We're a member of it, yes."

Faiks: "That regulates, doesn't it?"

Schuyler: "Yes, it does."

Faiks: "You bet it does. So you can't have it both ways?"

Schuyler: "What do you mean now?"

Faiks: "If everybody is regulated and you get advantages, or you say the advantages to the railroad is not to be regulated, but the ATC, the Alaska Transportation Commission is giving certain advantages to certain carriers who are regulated."

Schuyler: "You mean advantages, truckers have more advantages than...?"

Faiks: "Well, air carriers, mainly".

Chairman Moss recognized Senator Halford.

499

Senator Halford: "I guess the question is, if this being non-regulated is an advantage in a competitive market place, then why do all the trucking organizations and major permit holders in the state support the continuation of the regulatory agencies Alaska Transportation Commission?"

Schuyler: "I had a testimony for that last year and I've forgotten what I said, but I'll get it and send it to you."

Chairman Moss recognized Mr. Walsh.

510

Walsh: "We got to point number 7, Mr. Schuyler, and that is the ratemaking authority and the ability to compete, and we turn to the same thing I discussed with Mr. Shapiro. The section 709 studies by Congress found that the rates were comparable, that they were justifiable."

Schuyler: "Yes, a Congressional committee did, yes, find that."

Walsh: "Again, as Senator Faiks said earlier, if it ain't broke, don't fix it, and it doesn't look like it's broke."

Schuyler: "No, and what happens the ICC goes under, and there's no ICC anymore, what regulates the Railroad?"

Walsh: "At this point, the ICC hasn't gone under, and what happens if there's another earthquake? Well, when there's

another earthquake, we'll deal with it. I see what you're saying, if the ICC does go under, these folks are undoubtedly faced with a major issue. But until that happens, based upon the 709 and the other things that you are undoubtedly aware of that we've discussed this afternoon, I'm not sure I understand the need for additional regulation."

Schuyler: "Well we've seen the railroads. Representative Bettisworth hasn't been around Fairbanks long enough to remember the days when Alaska Railroad used to charge a dollar and a half more in the winter time to haul the freight to the customers and drop the rate a dollar and a half summertimes when the truckers start operating."

543 Walsh: "You're not saying that kind of thing takes place now?"

Schuyler: "No, I'm just giving an example that it could, maybe."

Walsh: "Point Number 9, the disclosing of information, all rates, rules, practices, divisions of revenue, contracts, and cost data open to public inspection. If we're all going to play by the same set of rules would Sea-Land be willing to do the same thing?"

Schuyler: "I think we make most of our, we have up until recently...in the maritime we have to on the ICC, that I think they're going to do away with. But under maritime administration we have to.

Walsh: "To the same extent that you have listed here that you want the Railroad to?"

Schuyler: "Yes."

Walsh: "All the rates and rules and everything, contracts?"

Schuyler: "Yes."

559 Walsh: "The final thing that I have, and you may not be able to respond to this, because you may not have been party to it, but I have a letter here, May 6, 1982 from Tom Allison, who's an attorney in private practice in Seattle, but who has as one of his clients the FRA to Mr. Greg Lawler, Committee on Energy and Commerce: Dear Greg; In accordance with your request I'm forwarding to you the text of the agreement recently reached between Sea-Land Industries and Crowley Maritime. This agreement has been extensively discussed with officials and representatives in the State of Alaska, etc., etc. But it goes on to state that this agreement only to federal legislation, doesn't necessarily bind anybody on State legislation. But there are two points to it: Subject of legislative

provisions necessary to our agreement are as follows: and there's an amendment to the Anti-Trust Section, which says, which strikes language that says the Interstate Commerce Commission may after notice and opportunity for hearing exempt the State, etc., etc. That was struck, and with Sea-Land's agreement, along with the State, Crowley and others, language was added that's in the final bill that says nothing in this Act precludes the State from explicitly invoking any exemption from the Anti-Trust Laws as may otherwise be available. So this was included in the federal legislation giving the Legislature the option, because Sea-Land agreed to it. And the second point is, protections against predatory pricing, and again I quote from the letter: The existing language of Section 6A explicitly provides for the application of ICC Act state owned railroad in the same manner that applies to any other Railroad, etcetera. That is because, because of the agreement again, the ICC authority that's contained in the bill, and with which the Legislature is now grappling..."

595

Schuyler: "Have we got the same language in this bill, in this one...?"

Walsh: "In the federal bill, no. But see, in the federal bill, based upon agreement with the State, Sea-Land and others, the State was given some options, and now, your position is, that the state should not exercise those options."

Schuyler: "Now wait a minute, Mr. Walsh. I was in on that agreement, and I thought that had been changed. Is it still in the federal bill?"

Walsh: "That nothing in this Act precludes the State from explicitly invoking by law any exemption from the Anti-Trust Laws as may otherwise be available. That's the exact language."

Schuyler: "That's still in the federal bill. I was told by Senator Stevens office that was out, about a month ago."

Walsh: "Yes, it's Section 608A."

Schuyler: "It has not been taken out yet, and will not be?"

Walsh: "No, it doesn't look that way. The last sentence of 608A says "nothing in this title shall preclude the state from explicitly invoking by law any exemption from the Anti-Trust laws as may otherwise be available."

Schuyler: "I checked about two weeks ago and they told me it was negative. I'll double check it tomorrow."

Walsh: "And if we're wrong, let me know and let the Chairman know."

Schuyler: "No, we agreed to that. We still stand on that."

632

Faiks: "Two things. One again to reiterate there's nothing in the bill 352 ...to do anything but be a railroad.

Schuyler: "I heard you say that before but we were interpreting the..."

Faiks: "Okay, so if it's not clear we'll make it clearer, and the other thing is the bill has a statement that all provisions of the Federal Transfer Act, and all those stipulations will be adhered to be the State. The bill reinforces that and all those provisions in that Transfer Act.

Chairman Moss recognized Senator. Halford.

640

Halford: "I've got a question for Dave. It applies to one of his points. What would the effect be if we did require that rates set by the railroad number one, you couldn't have rate that wasn't on a long term basis self justifying on that route, and number two, that the rates had to reflect a true cost, and put a computation on there for what the cost of capital would be?"

Walsh: "Mark can you...Mark I think might be able to handle that better than I, because that's more his specific area of expertise."

656

Mark Hickey: "Senator I think the specific answer is that what goes on today under ICC regulation would apply to Railroad governing rules that railroads live by to do something additional would be a matter of (A) trying to figure out exactly how you've structured the set-up, how you get into this whole issue of taking rates apart and you'd be adding on again, another layer of something that already exists."

Halford: "Would we be adding a component that is missing because of public ownership, that component being the cost of capital?"

Hickey: "The 709 rate settings, for example, dealt with the issue of cost of capital and found that the interlying rates that were being analyzed were not only fully compensatory, but it did indeed include a return on top of capital. So you have that type of regulation today."

677

Halford: "And that requirement on a return on comparable cost of capital would apply through the ICC to the Railroad even if there was no cost of capital?"

Walsh: "No, Senator but it would, that would be only one component that the ICC would look at, and apparently, the ICC determined that, as can be seen from that opinion, that either

the fact that it was federally owned was of no consequence, or of such little consequence that it wasn't a major item in terms of rate setting and it was based on that that they found the rates to be comparable."

Halford: "If it isn't a major item, then it also wouldn't hurt to cover it."

Walsh: "Well, except, if I might Mr. Chairman, I wouldn't say right now that it would be a bad idea to do that, but I don't know because I don't know the specific components that went in there. Maybe that was offset by something else, and to bring that into the equation for all fairness, something else ought to be taken out of the equation, and I don't, as I said Senator, I don't have any heartburn necessarily with adding it from a conceptual point of view, but I would want to know more myself about the components A through Z, Alpha through Omega that the ICC used before I'd put in an additional component. So I guess the answer would be a definite maybe."

Halford: "I'd like to know that because I think that's key to a lot of their concerns."

Walsh: "I have one more point, I didn't mean to be to harsh with you in terms of the letter, I didn't see your testimony until it was handed out, and it wasn't a point of debate with me, it was a point of curiosity, it seems like the concerns may have been answered in the federal legislation and I did not mean to be overly critical or combative."

718 Schuyler: "That's all right. Sea-Land is still dedicated to Alaska, you might have read the other day we made a big announcement that ship construction program it said a hundred million it's about 250 million dollars we're going to spend in the next couple of years." Thank you."

Chairman Mcrs recognized Senator Gilman.

732 Gilman: "On your Item 6...(inaudible, end of side A)."

Tape #53, Side B
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000

Schuyler: "...refer to my competitor, yes..."

Gilman: "And then you make the point that because of that, the Alaska Railroad is practically totally unregulated in interstate rail service. And then you say while deregulation may be good in theory because Alaska is a microcosm, and that the transportation modes should be regulated. So what you're asking us to do is regulate a deregulated railroad?"

008 Schuyler: "No. What I'm saying is, Senator, if a commercial business, the Alaska Railroad and the rest of the modes of

transportation going after one group of businesses or the carriage of goods from the lower 48 to Alaska, and we have more regulation than the Alaska Railroad does in our modes of transportation because the FMC and the ICC."

Gilman: "But what if this Railroad was owned by Northern Pacific? According to the testimony the way I read it here, is they would continue to be deregulated."

016 Schuyler: "Yes, but in the Staggers Act and the way they make their contract carriage of goods, and correct me if I'm wrong, is that that law was put in so that they you, Gilman Railroad could protect your long time customers by giving them a year's contract, so if I came in with my railroad and I offered a lower rate, that gives you a chance to meet that rate or lose the business."

Gilman: "Didn't you say you challenged that?"

Schuyler: "We cannot do it."

024 Gilman: "No but you said you challenged that interpretation."

Schuyler: "Yes."

Gilman: "And you lost."

Schuyler: "Yes we did."

Gilman: "So it could apply to Pacific if we were to sell this or if it were being sold to Pacific Northern. My point is, are we being asked to do something on the Alaska Railroad, that if it were privately owned railroad, which we all would like to see, that would not be imposed on privately owned railroad. You follow my point?"

Schuyler: "Yes, I follow it. I'm not going to answer it though, Senator."

038 Chairman Moss: "I would like to say that I think perhaps you're right. The rules should apply to both sides of the fence. Thank you very much, Mr. Schuyler."

038 Chairman Moss declare' the hearing to be at ease at 3:25 p.m.

051 Chairman Moss asked if anyone wished to testify. No one did, so at 3:34 p.m. the hearing was recessed until 11:00 a.m. Friday.

Friday, January 27

PANEL PARTICIPANTS

Chairman Moss
Representative Mike Davis
Senator Jan Faiks
Senator Bettye Fahrenkamp
Representative Joe Flood
Senator Don Gilman
Representative Mike Miller-North Pole
Representative Mike Szymanski

COMMITTEE CALENDAR

Railroad Symposium

WITNESS REGISTER

Phil Holdsworth
Resource Development of Alaska

Leonard Shapiro, Vice President, Pricing
Totem Ocean Trailer Express, Inc.
Seattle, Washington

Milt Barker
Department of Revenue

Norman Stayton
Department of Revenue

J.P. Tangen
Alaska State Chamber of Commerce

Steve Soenksen
House Transportation Committee, Speaker's Office

Jay Nelson, Executive Director
Alaska Environmental Lobby

ACTION NARRATIVE

Tape 54, Side A
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- 000 Chairman Moss brought the hearing to order at 11:15 p.m.
- 016 Mr. Phil Holdsworth, member of the Board of Directors and the Executive Committee of the Resource Development Council testified in favor of SB 352. They urge passage of the bill as currently drafted, with one change. (See Appendix 6).
- 083 Chairman Moss thanked Mr. Holdsworth for his testimony and introduced Mr. Shapiro.

- 088 Mr. Shapiro clarified three items of his previous testimony: He doesn't believe that Commonwealth North's idea of capitalizing the Railroad and letting it go will work; the State must subject the Railroad to Anti-Trust Laws; there must be a method to get the Railroad and other modes of transportation on the same basis.
- 133 Senator Gilman asked Mr. Shapiro if the Alaska Railroad wouldn't be under the Anti-Trust laws if it wasn't specifically mentioned in the federal enabling legislation. Mr. Shapiro said no, it wouldn't be.
- 161 Mr. Walsh stated that he agreed with Mr. Shapiro that the legislation ought to address the exemption.
- 178 Senator. Gilman clarified Shapiro's and Walsh's positions: Mr. Shapiro feels that the Railroad should be subject to the Anti-Trust Laws, Mr. Walsh feels that the Railroad should be exempted from them, but they both feel that the legislation should specifically address the issue.
- 192 Senator Faiks asked Mr. Shapiro if the Railroad should have the option of going to the bank if they go broke. Mr. Shapiro said yes.
- 205 Chairman Moss thanked Mr. Shapiro and asked Mr. Walsh to explain the difference between a public corporation structure versus an authority structure. He explained that there really isn't much difference what it's called, but the difference depends on the kinds of powers that are given to it. Authorities can be very powerful, and the powers of public corporations can be limited.
- 230 Senator Faiks asked if there was a difference in the financial world.
- Mr. Walsh answered that it appears that there isn't a lot of difference in just the name, it depends on the power that's in the charter.
- 240 Senator Gilman asked what is generally the oversight function, and how does that tie to the corporate financing world?
- 252 Mr. Walsh responded that the extent of the powers that the corporation or authority has determines how the outside world will look at it. He referred to the Institute of Public Administration reports to the Legislature, which set out the parameters for public corporations and authorities, which are very broad.
- 295 Senator Gilman quoted from 7 points that the Governor wanted to be built into the bill: "Legislative oversight should not involve intervention in specific management applications of policy...if legislative judgement dominates these types of

administrative action, the advantages sought from using the corporate form in the first place are lost." He stated that if those items were built into the legislation, then what advantage would there be in creating a public corporation.

- 318 Mr. Walsh responded that if the railroad is just cut loose, with no public oversight, that there is an opportunity for inertia to set in, for people who run the railroad to continue with the status quo, and not turn it over to the private sector. Keeping some strings attached to the Legislature until a plan for the eventual turn over to the private sector is submitted will not allow this inertia to develop. Also, there is a lot of public money involved, and it makes sense that there would be some accountability to the Legislature just like a bank would keep a close watch on a private business if it borrowed that much money. The important thing is to decide what kind of oversight criteria should be used.
- 403 Representative Flood asked if oversight wasn't a touchy area, because we wouldn't want legislative oversight to interfere with management policies.
- Mr. Walsh replied that legislative oversight would not interfere with day-to-day management, but with big things.
- 419 Senator Faiks commented that the Executive Budget Act and Administrative Procedures Act spell out total, 100% oversight.
- 452 Mr. Walsh responded that certain sections of the law may not be applicable.
- 470 Senator Fahrenkamp commented that we should see where the three Acts fit, not where they don't fit.
- 476 Mr. Walsh said that this would not be a bad thing to do.
- 499 Senator Gilman commented that they should decide conceptually what oversight functions they want the State to have, and put those things that already are in existence into law.
- 508 Mr. Walsh added that those Acts in themselves form a roadmap or checklist of the kind of technical points that can be missed.
- 528 Senator Gilman remarked that the worst possible thing would be to make a vague reference to the Acts.
- 536 Chairman Moss thanked Mr. Walsh and introduced Norm Stayton and Milt Barker from the Department of Revenue.
- 552 Mr. Barker: "Mr. Chairman, I'm Milt Barker with the Treasury Division, of the Department of Revenue, and this is Norm Stayton, special assistant to the Commissioner, Department of Revenue, and we were here to talk to you just a bit about the

possibilities for tax exempt bonding and revenue bonding. First let me say that on the subject of tax exempt bonding that the Railroad Transfer Act did contain an exemption specifically for the Railroad, so that possibility does exist in law right now. However, as you may know, HR 4170 is a bill that has not passed the Congress, but it is somewhat alive and it contains provisions that would negate the possibility of tax exempt bonding for the Railroad under this specific exemption, so that creates I guess a practical problem in issuing debt. Now the Railroad would not be, as a practical matter in operation I suppose, or at least ready to issue debt, prior to the adjournment of this Congress, so it really depends on what happens with that bill as to whether or not the tax exemption is there. Aside from this specific exemption there may be some possibilities for tax exempt financing, but that gets into some rather arcane areas of the tax code regarding tax exempt financing."

587 Chairman Moss: "Milt, can I ask you a question right at this point? HR 4170 is a bill that would repeal a tax exemption on our bonding capability?"

Barker: "Yes sir, on the IDP bonds."

593 Fahrenkamp: "Are our Congressional delegation aware of this?"

Barker: "Yes, and they have been working considerably to try to block it. What it would do is that, I'm not totally familiar with all the specifics of it, but it would base the bonding capacity upon population, which, we would get devastated at, we just wouldn't have any capacity."

Fahrenkamp: "They can always think of a way, can't they?"

626 Barker: "As I was saying there, Mr. Chairman, that there might be some other possibilities under the Tax Code which generally would allow for tax exempt financing by government entities where the facilities or the project funded by the financing is not used in the trade or business. That is problematical with the Railroad and gets into some rather arcane of the tax code, and it's something that Bond Council could take a more definitive look at, if you like, and I think we will be doing that, in any event. There is, I guess also one other exemption under the tax code, a small issue exemption and that's what AIDA does the bulk of its financing in the way of small business, but that would be at most \$10 million, so it's not on the scale of financing that I think you're looking for as far as tax exemption financing goes. Now just to say a little bit about revenue bonding, we are looking at the acquisition assessment report which does contain some cash flow projections for the Railroad, and we would hope to have for you within a week or so some rough ideas of what the debt capacity of the Railroad might be for revenue bonding. There are some adjustments that need to be

made to those schedules, and so it's going to take a little bit of work but we plan to do that. I might just go ahead and say a little bit about it. Revenue bonding as the name implies is dependent upon the revenues generated by the operation of the Railroad, in this case. The fact that there are properties that the Railroad has means that those properties can be included in the bond indenture or the bond agreement as additional security, but that's not sufficient basis on which to issue a revenue bond. It's just like your home mortgage, the house serves as security in the event there's a default or a problem but basically the loan is based on your income and ability to service your loan payment."

655

Stayton: "If I may add to that, from the Report that we've been reading, the USRA report, was stating that the real property value was \$54 million and the rolling stock, after 10 years of use, was \$11 million, so this is the kind of numbers we're just trying to get a handle on if we except those numbers you could say that they had \$65 million of assets. Now that wouldn't be anything really good to bond upon, because in '81 and '82 I think the federal government appropriated or subsidized the Railroad to \$12 million and \$6 million for those years. The Transfer Report is recommending that we, that the State will probably have to put in \$10, \$11 million for 8 years, so all that shows that the revenue strength would not be sufficient in and of itself to give it some bonding capacity, and that if you were to look at just its assets as a basis for relying upon bonding, normally Bonds Council would not accept that, and even that is questionable given the amount of loss or additional subsidy or appropriation. But again looking at the numbers, Price Waterhouse did an audit on '81, '82 and '83 at the operating expenses and what they have, and there was a difference between what the Railroad said and what Price Waterhouse said and we're just trying to get to those numbers before we can give you some idea of what they really mean."

732

Barker: "Just to point out some of the features that can go into revenue bond, and would, you would have to show coverage of debt service, in other words you would have to have a revenue stream that is more than equal to the debt service that is expected on the bonds. Normally it would be one and a quarter to one and a half times your debt service. Now you could of course pledge your gross revenues, and that would give you a greater revenue stream, but you would really not be able to market the bonds unless the bond buyer was assured that there was still going to be funds available for operations and maintenance if it did not come from revenues of the Railroad because the gross revenues went entirely for funding debt service, there is going to have to be some showing of where the money is coming from to operate the Railroad, so pledging gross revenues would not get you out of the possible problem railroad that is not earning money. So normally you would be pledging net revenues in enterprise type

operation, you would need maybe one and a half times your debt service, and you would have a reserve fund ordinarily equal to the highest debt service expected in any one year, and then you would also have rate covenants ordinarily, that would require the Railroad to maintain rates sufficient to provide the level of coverage that is established in the bond covenants.

End of Side A

Tape #54, Side B
Recording
Number

000 Fahrenkamp - Question not on record.

003 Barker: "Well, Senator, that's what we're going to try and answer for you within a week here is, take a look at the actual numbers, take a look at these ratios required for coverage for a reserve fund, and the net revenues that are available and just see what that would be."

005 Fahrenkamp: "What would your best guess be right now?"

Barker: "Well I can't really give you a figure right now, we haven't worked through the analysis, but I do think it's likely that the bonding capability would not be much greater, at best, than the Capital needs that have been projected in the assessment report to meet the needs of the system as it now exists."

009 Mcss: "\$70 million?"

Barker: "Until we run through it, I really just can't give you an idea, but would we should have it for you shortly."

Chairman Moss recognized Representative Szymanski.

012 Szymanski: "You're touching on precisely the area in which I've had a lot of questions about in the past relating to running this thing like a railroad from Day 1, and the ability for it to generate revenues to offset debt, so forth and so on. Part of that gets back to this whole competitiveness by which the Railroad is going to operate. What I hear you saying is that the ability for the Railroad to pay off bond indebtedness, even other indebtedness, I mean obviously, what you didn't say is that...you may have \$60 million in assets over here, or you may not be able to use those to generate bond revenues, you can also just go out and borrow money against them right soon, I mean if you want to go out and mortgage. But that's a debt too that has to be retired against revenues plus operating costs, depreciation, and that ultimately gets cranked into a tariff at some point in time. The policy question that many people have before us, and that I particularly have a concern with, is that we don't want to

leave open the, unless we do want to do it consciously, leave open the State continually to artificially sustain that or supplant the revenues that would not normally be brought in by tariff or a rate schedule for hauling passengers, cargo, whatever. So it's going to be very important, at least from my perspective, that whatever the information you come back is going to tell us whether or not the thing's going to basically stand on its own, and if it's not, what's it going to take for it to stand on its own over some period of time, isn't that the bottom line?"

036 Barker: "Yes sir, Mr. Chairman, that's basically what we'd like to give you a rough idea of based on the economic analysis that's contained in the acquisition assessment report that you have. That report assumes the capital project needs are met through cash expenditures, so we need to back that out and figure what sort of bonding can be done and compare that to the capital projects that are projected and we can give you some idea, rough at this point, I'm sure you all recognize, but something on which to make a decision."³

Chairman Moss recognized Representative Davis.

043 Davis: "It doesn't sound like we use revenue bonds on the ferries. I have a question on some of the railroads outside - do they use revenue bonds (inaudible) I'm sure there's some publicly owned railroads outside, and I was wondering how they get their money, do they use revenue bonds?"

Barker: "Mr. Chairman, I really am not aware of any specifics of railroads, I'm non-expert in railroad operations or financing. Generally though, I would say that most railroads absent Amtrak and ConRail are private corporations and they for the most part probably finance debt, they issue debt as general obligations of their corporations, in other words it's not project financing, there are no specific pledges of particular revenue streams, it's based on the net worth and earnings capability of the corporation as a whole, and many of these railroad corporations probably have other activities other than rail operations, too, so that has to be factored into the picture. If it's truly just a railroad company in the final analysis it is based on the revenues but there's not a revenue debt obligation that specific revenues are pledged, I expect is the ordinary situation.

059 Davis: "So if we took these, paid off the railroad, the \$60 million or whatever it's going to cost, so they are financially solvent and you say that the net worth of the Railroad will be around, say \$65 million so that would be about approximately (inaudible)."

Barker: "Not under a revenue bond. You'd be pledging your assets there and not an income stream of revenue. Revenue would be coming from some money that you have coming into your

operating and you wouldn't have that, you'd be using your assets, clarify that as I say, a wasting asset. If you didn't, if you couldn't pay for them and you were essentially having to sell off your assets to pay off your bonds, because your operating income stream isn't enough to pay off the bonds."

074 Representative Flood: "Maybe I can help here. Basically what you said earlier is that the revenue stream has to be equal to or above the amount you're going for."

077 Stayton: "Basically what we're going to come back to you with is some numbers, and we can't stress strong enough how soft our estimations would be as far as bonding capacity because it all depends upon projections of income that the railroad will have in the future. We hope to give you a worse case scenario and a best case scenario, but that's about all we're really going to go to, because it cannot be firm."

084 Szymanski: "But in that scenario that your drawing you are going to assume that no state revenues will be used to support or retire the debts, revenues, or anything else, it's going to strictly be revenue, retirement or bond debt, operating costs, and so forth that you're going to crank it in just that way, there's not going to be anything additional added?"

Barker: "That's correct."

090 Fahrenkamp: "Excuse me. That bothers me. You mean there won't be any suggestion of so much state revenue would help this, that or the other, you're just leaving that out entirely. There won't be any options?"

Barker: "Mr. Chairman, if I may, we're going to do the analysis assuming there is no additional contributions from the State, for one reason or the other, no basis for estimating what that might be, and show you sort of the deficit, if there is a deficit, relative to their capital needs and presume that that's how much the State might have to kick in to make the thing go."

098 Szymanski: "What I was going to say, Bettye, in coming back on the thing, is that what they could do is once they see that point, when they crank out that model they could say okay, what's it going to take us in the form of State assistance or whatever in order to allow more additional capital development within the Railroad and so forth, and they can roll it all the way through in their model."

103 Stayton: "Mr. Chairman, if I may add to that, from what the transfer team's report had said was that the Railroad was going to need 10 to 12 million dollars for 8 years just to keep it above board on its operating expenses, so from that alone you can see that would have a definite impact upon its

revenue bondability if it had that amount of money to keep itself up there, to being equal. Then whatever money they got for revenue bonds, with the expansion of the railroad, whatever they were going to do with it, then they could have a positive income stream to pay for those. But I think you should also keep in mind that the numbers that we've also seen is showing that it's about \$2 million a mile to extend the railroad, and maybe those are hard/soft numbers as well, but you're not going to get very far for a heck of a lot of money."

114 Walsh: "To point out a couple of things. The work that you gentlemen are doing is first of all based upon the historical financial record of the railroad as a federal entity, and I think that everybody hopes that there's some economies that we can have but in any event there's going to be certainly a different accounting system when we take over than was used before, and so the only thing that revenue can give the Legislature, the Administration now, is an estimate and a projection and a range as they said at the beginning of their statement and not hard numbers that any of us would really want to take to the bank."

123 Gilman: "This is a little bit off the track, that's a pun. If there were to be an extension of the line, a branch line, or something, could under the revenue bonding mechanism, could the railroad issue bonds similar to what the communities call industrial revenue bonds for that portion of the track and have a company issue a pledge on it, or are those two separate things?"

134 Barker: "Mr. Chairman. There would be no legal problem with doing that. I think, you know, it just might be a question of practically how you segregate the operation or revenue stream from off that expansion, and there are probably ways to do that so I suspect it could be done."

Gilman: "Do you understand what I'm trying to say? There's Coal Field X over here, and it takes 35 miles of track to get to Coal Field X but the company that owns that has a market and they pledge their full faith and credit behind to pay off that revenue bond, and that's a different type of situation than what we were talking about before."

Stayton: "In addressing that, Mr. Chairman is, what would happen if you were a bond holder, and you were saying, I only want to buy these bonds for this section of the track? Now if the rest of the Railroad fails, that section of your track isn't going to be any good to you. If the other part of the railroad goes bankrupt, you're going to have a hard time marketing those bonds."

Gilman: "But if Exxon underwrites those bonds at their full faith and credit, what I'm talking about is the type of

financing, that say Valdez did for the pipeline. Is it possible for the railroad to issue those types of bonds under the Act?"

Stayton: "I have to say we haven't looked at that."

154 Moss: "Suppose we wanted to go into, say, the Ambler district up there and we wanted that mining outfit that's got minerals up there to help us build that railroad. I think this is where Senator Gilman's coming from, and I think perhaps, that's one of the things we've got to look at, whether or not we're going to have enough capital money to build these extensions into these areas where our resources are located. Perhaps, don't the Canadians do something similar to that? Is that a bonding deal, or do they just do some outright contracting?"

Stayton: "Again, you're talking to us, and we're not railroad financial experts."

Chairman Moss recessed the hearing until 1:15.

160 Chairman Moss called the meeting to order at 1:40 p.m., and introduced J.P. Tangen, Chairman of the Board of Directors of the Alaska State Chamber of Commerce.

173 Mr. Tangen testified that the Board of Directors of the State Chamber of Commerce passed a resolution in support of SB 352 and HB 512. They feel that specific strengths of the bills are: the eventual transfer of the Railroad to the private sector, the concept that the entity that will manage the corporation will be an independent corporation, that the powers and duties of the Board of Directors are well defined, the establishment of the Executive Officers of the Railroad to manage the day-to-day activities is good. They support the right of the railroad corporation to hold and manage lands, including eminent domain, and the right to request additional land for railroad purposes. They support the inclusion of a strong bonding authority for the Corporation, and the concept that railroad generated revenues will remain within the Corporation for railroad purposes. They support the idea that present employees of the Alaska Railroad will become employees of the Corporation. They also propose one addition to Article 4, Section 42.40.300 under the General Powers: the corporation be permitted to lease a portion of or all of the operation of the Railroad to a private entity.

232 Senator Faiks informed Mr. Tangen that this amendment has been drafted already.

238 Tangen again stated that the State Chamber supports passage of these bills, and would like to see that Railroad become a private competitive entity for surface transportation.

- 252 Senator Gilman asked for an example of a "portion" that could be leased to a private concern.
- Mr. Walsh, Mr. Tangen, and Senator Faiks named these examples: the Whittier Spur, passenger service, the Dock at Seward.
- 268 Mr. Walsh asked Mr. Tangen how the State Chamber feels about state oversight.
- Mr. Tangen responded that it ought to be pared back as far as reasonable. They feel that the Railroad should be as independent as possible.
- 304 Senator Faiks named two examples of public corporations with no legislative oversight: CFAB, and the Permanent Fund Corporation, neither of which depend on the State for funding.
- 358 Chairman Moss called on Dave Walsh to present the Administration Position Paper.
- Chairman Moss asked Mr. Walsh to explain the seven points in the Administration Position Paper (Appendix 7).
- Mr. Walsh began with Point 1, explaining that a balance must be met between public accountability and giving the Railroad Corporation enough autonomy.
- 397 Chairman Moss commented that he doesn't want to see the Department of Transportation involved with the Railroad, whether or not it's considered to be the public entity best able to accomplish the goal of insulating railroad operations from political interference.
- Mr. Walsh responded that there a number of options which would be acceptable to the Administration as far as the public entity to which the Railroad would be tied to goes.
- 422 Senator Gilman brought up the analogy of CFAB as a successful public corporation. A discussion ensued between Senator Gilman and Mr. Walsh about the similarities and differences of CFAB and the Railroad.
- 460 Senator Faiks commented that in the Railroad oversight, you also have the Staggers Act, the ICC, and other regulatory agencies that oversee Railroads. Also, Both the Permanent Fund Corporation and CFAB have changed since they were started.
- 484 Senator Gilman pointed out that the Legislature laid out guidelines for the Permanent Fund Corporation and CFAB when they came to it, so they really haven't been cut loose.
- 492 Mr. Walsh responded that the ICC and other types of oversight

have nothing to do with the kind of oversight that the Administration is suggesting - bonding and sale of land, etc. "The Administration's concept is that you set up some oversight provisions that may need to be fine-tuned and released in a couple of years...it's much easier to do that than it is not to have enough oversight and try to drag somebody in kicking and screaming to get the oversight in a couple of years."

524 Senator Faiks commented that once you put the oversight on, State government will not allow them to be released. Inertia will set in, and State government will not allow the Railroad to be sold to the private sector.

Mr. Walsh responded that it's important to strike the right balance, because State government let the Permanent Fund and CFAB go. You can't put the screws in too tight, but it's easier to have the oversight now and loosen up later than try to gain more oversight later.

547 Senator Gilman commented that there will be continuing oversight of the the Railroad whether it's written into the law or not. We need to conceptually agree on what legitimate areas of oversight are, then decide how to get there.

Mr. Walsh agreed with Senator Gilman, but stressed that the important thing is where to draw the line in terms of the legislation. He stated that he felt there is more common ground than controversy between the Legislature and the Administration.

595 Chairman Moss asked about the involvement of the Department of Natural Resources in the land business.

Walsh: "That Senator goes over to Point 5...Senator, and members, there are three components, really, to Point #5. We've touched, both this morning and this afternoon on a couple of them. The third, and it's easier to stop at the bottom and work up, the third one, sale of real property, as I mentioned in response to Senator. Faiks' comment a few moments ago, never has the State given State land over to private individuals and told them to just go and sell it if they want, without any kind of oversight, without any kind of public process. That's number one. Number two, if we're going to get the Railroad in a position where it's viable for private industry, it would be, at least as a general principle extremely unwise to dispose of its land by sale, and there may be some reasons to do that, and if in the Board of Directors' determination there are some good reasons to do that, that's fine, but we again feel that there's a public accountability there that's required. There's nothing that's going to make the Railroad unattractive to private industry any quicker than to have nothing left but the mainline track right of way, because where railroads make their money is not only by

hauling people and cargo, but on those leased lands, and their enterprise land. Disposal of those is a major, major change in course of how the railroad would be run and operated, and we feel that there's a very legitimate reason for some public accountability if that happens, number one because it's public money, number two, because if we're ever going to get the Railroad in a position where private industry would be interested in it, it's unlikely we're going to do that by selling title to the land. There's a third reason also, and it's one that we touched on this morning. What would, you know, everybody talks about running the Railroad as a business, I talk about that too. What would the business of the Railroad have to provide to a lien holder before it would get \$22 million of private funds. It certainly would not be able to dispose of it's only hard, tangible asset, land, without the approval of that lien holder, and if we're going to apply business principles across the board, then we apply them across the board. That's something on which the Administration feels very, very strongly. The second part of Paragraph #5 is the subsurface material necessary for actual rail operations, the access to the subsurface materials, that also assumes of course the title to the subsurface remains with the State. I understand that for many, quite candidly myself included, that is a provision with some philosophical problems. However, to alter that, to transfer all right title and interest to subsurface estate to the Railroad, is going to be contrary to what has been the established policy that was really established in the Statehood Act, where, the State retains title to oil and gas. To be candid, because you will undoubtedly discover it as we have, there is an argument to be made that that prohibition would only apply to lands received under the Statehood Act, and not to federal lands received pursuant to other legislation. I think that we would have a reasonable argument to be made if we wanted to litigate that, but our position is that, number one, the general state land policy has been to follow the Statehood Act, and number two, there is no reason to embroil the Railroad in litigation that is really not necessary from an operational point of view. Nobody particularly wants us to get the Railroad into the oil and gas business. Railroads have not traditionally done that, and as Commonwealth North stated, the Railroad Authorities ought to run the Railroad and title to the subsurface remaining in the State is not going to compromise that as long as the Railroad has all the access it needs to gravel and hard rock and all the other subsurface items that are necessary to run the Railroad. The first point of Paragraph #5 is probably the easiest and on which there would be very little disagreement, and that is that the Railroad would hold title to the surface estate of all lands received in the Transfer. And again, to point one technical thing that I know DNR is going to bring out later. The State already has claims, if it were, to some rail land. I don't know the exact description, or where it is, but the reason that this is put in the way it is is that of all lands received in the purchase as opposed to

other State lands which through various adjudication processes we might receive. The Legislature might want to take that step, to put those lands in with the rail properties, but that's an entirely different issue, so I bring that up because I know that's a noodle somebody's going to present to you, and I'd like to answer the question before it comes up."

728 Gilman - (Question not on record)

End of Tape

Tape #55, Side A
Recording
Number

000 Walsh: "...is if you will a savings clause, because, as the Legislature is working through this process, so is the Administration and so is DNR, and I'm not going to tell you that there are things that the Railroad would do with its land that would not be consistent with land policy."

004 Gilman: "What I don't want us to get into is the same running gun battle that we had with the University of Alaska for almost since statehood. They took us to Court and won, they took the State to Court and won, now that's a different issue there because that was an interpretation of what was their charge under the Constitutional arrangement, but it's very similar, and I think we should be very specific when we start talking about if we're going to make restrictions on the Railroad use of that land, we should be very specific, again it's almost like a catchall when you refer to the general state land policies because the State can't lease land without going through sixteen different hoops, and if a customer comes along and is consistent with policies of the Railroad Board of Directors that they've set out, and the reason for the land is to generate revenue, they have to have the flexibility to sit down in the business arms-length type business arrangement and agree on a fixed policy and go ahead with the show. They cannot go through all the hoops of the general land policies."

020 Walsh: "I don't believe that what DNR, what the Administration, is saying here would do that. As I said, I think it's a savings clause that says we're still working through our land policy, there may be some things we want to apply, essentially we'll get back to you later with the specifics. I'm not sitting here saying that we want a provision in 352 c. SB 10 or whatever the vehicle is saying general state land policies apply across the board. I understand your frustration with the wording, it's meant to be a general policy statement and not a punch list or a bullet list."

Senator Gilman stated that he'd like to see that in writing. Mr. Walsh agreed to do that.

- 030 Representative Flood asked if it would be better to say that general land policies would not apply rather than some would apply.
- Mr. Walsh replied that DNR's position would be that the Railroad shouldn't do anything with its land that would go against the general land use policy of the State, such as the siting of a hazardous waste dump.
- 050 Senator Gilman asked if the sale of gravel would be under the third point, sale of real property.
- 058 Mr. Walsh answered that the Railroad probably wouldn't sell gravel anyway.
- 067 Walsh: "Number two we've discussed this morning and then particularly in the context of number one we've discussed that this afternoon, and that reads (refer to Exhibit G). The exchange that we had this morning I think pretty much outlined where we are on that. It's essentially a balancing, the same problem that we were grappling with all along, between what is legitimate state oversight and how do we get there, and there are really two parallel approaches. One, suggested by Senator Gilman which is something we highly agree with and would recommend without reservation, and that is without getting into specific acts A, B, C, D, E, that a determination be made of what kind of oversight is necessary, and then essentially almost as a checklist to make certain that nothing was left out and that all things were considered, whether they were finally accepted or not to use the existing state law, particularly these three Acts, because that's where state oversight comes, to go down the checklist in there and say, in addition to the five things that we wanted, here's one technical thing that we picked up, or here are no technical things that we picked up. And again, I don't believe that Item #2 is, none of these, are lines drawn in the sand, but the Administration does feel, as I've stated before, that based upon what a prudent investor would do, and based upon public policy considerations that there really does need to be some oversight and that, and this is, we're kind of damned if we do and damned if we don't. The general state land policy in #5, I understand why that wording is extremely uncomfortable, uncomfortable for me to sit here and talk about it because I don't have specifics. In #2 we attempted to get specific, and then the specifics tend to cloud the point, you know in preparing something that is neither fish nor fowl we attempt to draw a fine line too."
- 099 Senator Gilman commented that the second sentence in Item #2 is contradictory, saying that the Railroad should have broad latitude, and then includes the Acts which don't give anybody broad latitude.

Mr. Walsh commented that some departments feel that the

Railroad would have broad latitude even with the Acts.

Mr. Walsh read Item #3, which states that all revenue generated by the Railroad will be spent only for Railroad and related purposes.

119 Senator Gilman asked where Item #3 is accomplished in SB 352. He stated that in public corporations there is always a problem with dedication of funds and revenues. "How does the Board's Executive Officer of the Railroad run this thing on a day-to-day business basis out of the revenues that he takes in and the Revolving Account, and get around the constitutional dedication of funds issue?"

130 Mr. Walsh answered that the only exception would be one as provided by federal law, and ARTA requires that railroad money be used for railroad purposes.

Senator Gilman asked if that was what Section 42.40.550 is trying to accomplish.

143 Chairman Moss said it could be found in the comparison, on page 49, where it provides that railroad money shall be retained for railroad purposes.

153 Gilman: "I guess my question maybe would go to the mechanics of it, then. We have a lot of revolving accounts that are identified in the revenue as revolving account, the money is to be, but that always has to be appropriated every year and there is no legal dedication of those funds unless it's appropriated. If the railroad hauls 10 tons of coal and company X gives them a check for hauling 10 tons of coal they will not have to submit that to the Department of Revenue, will they?"

Walsh: "No. Under the authority in the federal statute, and the specific thing is in Section 6024, the transfer of the Alaska Railroad and provisions for its operation by the State in the manner contemplated by this title is made pursuant to the federal goal and ongoing program of transferring appropriate activities to the State. That was written with some care, and the buzz words there, we think, trigger, we're very confident, we think we're real confident, that they trigger the constitutional exception, and that by setting up an authority in this kind of a situation, they would not have to turn that coal check or any other revenue over to the state for reappropriation by the Legislature in the next budget session."

172 Mr. Walsh began his explanation of #4. He stated that there needs to be bonding restrictions, so that the railroad can't bond beyond they're ability to pay."

189 Senator Gilman asked if this would be something like the

airport fund, where the money is held in a fund and the Legislature says that so much debt can be incurred.

Mr. Walsh said this would not be that severe, but there has to be some contact with the State regarding bonding.

212 Representative Flood asked if the Railroad would be governed by the revenue stream that it creates.

Mr. Walsh answered yes.

219 Mr. Walsh explained the State's position on Item #6.

Walsh: "The first part of that is, in fact, all of 5, is predicated really on Paragraph #6, and that is that within a finite period of time, three years, the Railroad has to come back and provide the State with a plan for going into private industry. Given that is essentially a medium range goal that simply has to be met. The line of reasoning that led us to propose Paragraph #6 developed. There is no question that when the Railroad goes into private industry that the State would be insulated from any tort or contract liability. It's much less clear that we could insulate ourselves from ultimate tort or contract liability during that interim period of time while the Railroad is a public authority, when they were specifically charge sunsetted if you will, with the requirement to come back to the Legislature. The economies of scale in insurance and risk management at first blush bring the State in directly in tort and contract liability. A good argument can be made for that. We feel that because of the State's expertise in that, and particularly in the risk management program, that if we're going to be on the line anyway, or most likely be on the line anyway, it's best to be in on the development of the risk management and insurance programs from the very beginning, and have those people who are going to be on the line ultimately, and that is the State and the Department of Administration be responsible along with the Railroad, I mean we're obviously not talking about no Railroad function here, but to have the folks that are eventually going to pay the tab if it's put together wrongly, have the opportunity, be the primary movers, in terms of how it's put together. In the federal system now, the insurance, risk management, most of those things are all done not by the Railroad, itself, but by the umbrella agency. Because there's an excellent argument to be made that during this interim period we're going to be on the line, and because we already have all of those kinds of things in place, all of the structure in place to do that, that we can save money, and we can wind up with a better program that will ultimately cost the Railroad and the State less money by having the Department of Administration have some jurisdiction over that. The collective bargaining agreements with the Railroad employees, one of the reasons that that is in there again is predicated on Paragraph #6. During the period of time between now and

when the authority would be mandated to come back to us with a private sector component, all of the collective bargaining agreements would be up for negotiation. Now as the ultimate owners of the Railroad, the State, the Administration feels that it's important to have a good strong hand in those, because how those bargaining agreements are put together may wind up being a primary component of the salability of the Railroad to private industry. It is not an expression of lack of confidence in the current railroad management or the railroad management that would be put in, they may be the same people when the State takes over, nor is it any attempt to take a run at or diminish employee benefits, but again it goes back to the philosophical point that this is going to be a major component in the sale, because labor costs are very, very high in the railroad business. Because we are eventually going to be looking for a return on the 22 or 60 million dollar investment, and because this is going to be a major, major item, that the State ought to have a major role when those collective bargaining agreements come up for renewal in two years. That is the rationale behind Paragraph #6, and if there are any questions I'd be glad to try to answer them."

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Gilman: "Mr. Chairman, I don't mean to sound like I'm trying to put myself in an adversarial position with the Administration, but to what degree is the State of Alaska self-insuring? I understood that we were almost totally in the self-insurance program, I mean that was my understanding, I haven't delved into that, I haven't served on the particular committees that cover that."

Mr. Walsh asked Evan McKinney if he knew the answer to that, and Mr. McKinney said it was a combination.

Gilman: "There is a combination though. Suppose, and I suspect, that it's like a lot of other self-insurance programs, it goes to a certain point and then if the liability is beyond that, insurance kicks in, and if it's below that, it's taken out of some kind of a fund that belongs. If it were below that minimum, and there was some claim that had to be paid, isn't that a direct subsidy of the Railroad, wouldn't that be a direct subsidy of the Railroad, if they were not paying into that?"

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Mark Hickey: "Senator, the way I understand the fund works, agencies are billed on a pro-rated basis in accordance with their actual record, their audit, or their loss record. The Railroad will be charged as it is today in the federal system for its losses and the general self-insured (inaudible) will be done on a pro-rated basis in terms of its actual losses."

Gilman: "If there was a, let's just use a hypothetical case, a million dollar claim that had to be paid, they determined that it had to be paid, and the Railroad, we're talking only two or three years here until it kicks in something, the

Railroad had paid a hundred thousand dollars into it, wouldn't that actually end up being an indirect subsidy of the Railroad?"

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Walsh: "Sure. That's exactly the point, because if the Railroad gets hit with a major claim, say a million dollar claim, that goes beyond their cash reserves that are set aside, there are really only two choices: if they have insured themselves, they're deductible, if you will, is going to be lower, and the insurance is going to kick in, but there's a cost for that, the cost is you pay more, because you're buying more insurance."

Gilman: "Who pays for it?"

Walsh: "The Railroad pays for it. But if you get, what you're talking about is a really disaster situation. If you get into a disaster situation, that is beyond those kind of policy limits, it's going to be beyond the state limits too. If you get beyond the policy limits, it's still going to have to come back into the Railroad, you see what I mean?"

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Gilman: "No."

Walsh: "If you have insurance for 300 thousand dollars, and you wind up with a million dollar judgement against you, the insurance company picks up three hundred, they can come back on you for the rest. If we got into that kind of a disaster situation anyway, if the Railroad got, let's say the Railroad was insured for a million dollars, got hit with a two and a half million dollar judgement that was beyond the level of their reserves, how are they going to pay that. It was beyond policy limits, beyond the level of reserves, and they've got somebody standing there with a judgement. Where they're going to execute that judgement, where the plaintiff with the judgement is going to come, is right here, they're going to come with the State of Alaska, and the chances are reasonably good that we're going to be on line for that anyway, because the public corporation is an independent public corporation, but it is also an instrumentality of the State. If the railroad gets popped over their policy limits, we're going to pay for it anyway."

Gilman: "Okay, but my point is somewhere along the line you still haven't convinced me that I'm incorrect, that is a subsidy to the railroad, an indirect subsidy to the railroad."

Walsh: "In that situation? Sure."

Gilman: "You know, we've heard the testimony about we want it to run as a business, we want it to be competitive in the marketplace, but we want the subsidies to show up in the rate."

Walsh: "To the extent that, okay there really, there are two issues. The first one is the one that Mr. Barnes mentioned earlier, and that is, morally, in a disaster situation, what's the state going to do, well that State is going to come in. In this particular situation, probably going to be brought in by the Court, but in terms of is it a subsidy or isn't it, we get back to where my friend Mr. Shapiro and I were yesterday afternoon, and that is, you would have to take a look at the specific contractor toward liability. It had nothing to do with freight, it had nothing to do with competitive freight, then it wouldn't be a problem, because it would not have anything to do with competitive rate-making."

Gilman: "I'll drop that. Mr. Chairman, I may want to pursue that in the future."

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Gilman: "The collective bargaining, I think we could use the same argument that you have used to keep the Department of Administration, you use the rationale that the State wants to keep a handle on what might be negotiated because it may be one of the determining factors of whether there could be a sale or not. I think that was your point. I think we can flip that back the other direction, that it may be, I'm not trying to throw stones, but I'm not convinced the Department of Administration's track record has been very good on negotiations with say, ferry system, other transportation items, and I think it's a real red flag in all these seven points."

397

Walsh: "One thing that I should have mentioned before that I really need to come back to on that specific item is, we are not saying that the Department of Administration comes in, determines how it should be negotiated, and all that business. That is going to be in our view, the Board's responsibility. We feel that the Department of Administration, since the negotiators are already there, should not set the policy, should not set the management parameters of where the contracts ought to go, but ought to be primarily responsible for seeing that they get there. Without that caveat in there, I can see where you said, flip it over, if I would have been clear in my first explanation we are much closer to what you just said, Senator, and that is that the Board itself has the primary responsibility for, you know, employee relations. But at the time when those contracts are negotiated, the Department of Administration through their negotiators ought to work with the Board, ought to be cooperative in consulting."

420

Gilman: "I was reacting to the sentence, maybe out of context which says they should have primary responsibility for negotiations. You were saying to me that is non-policy setting, then I would back off of any objections, but as long as we're going to have a Board, and they're going to set policy, what policy's going to include personnel policy, they

have to set policy as far as negotiating."

Walsh: "We wouldn't have any heartburn with that, Senator."

428 Moss: "Senator Gilman, right along with what you're saying, I suspect we're going to have some difficulty there, because we will discuss that particular one I'm sure at some length when we get into the details of the bill itself. I also suspect that on this particular part, any Board or any group of people that's going to try to make money with something, make something go, they're going to want to have better control of their negotiations than what they would have under these circumstances."

Chair: Moss asked if Mr. Walsh had any comments on Item #7.

441 Mr. Walsh read Item #7, and called it the bottom line from which all the other items flow.

449 Chairman Moss introduced Steve Soenksen, representing Speaker Hayes and the House Transportation Committee.

459 Mr. Soenksen stated that Speaker Hayes supports the concepts in the HB 512. Some of Speaker Hayes' priorities are: that the State accepts the Railroad subject to the terms and conditions of the Railroad Transfer Act, and the bill should conform to that piece of federal legislation; that there is a corporation established to manage and operate the Railroad until the transfer to the private sector; that the Railroad Corporation has broad powers and flexibility to maximize the opportunities that would be afforded to the Railroad under State ownership; and to be able to use the assets that would transfer with the Railroad to the Corporation to be able to function as a transportation option in the State of Alaska.
505 Chairman Moss asked Mr. Soenksen if there were any major differences between SB 352 and HB 512 at this point.

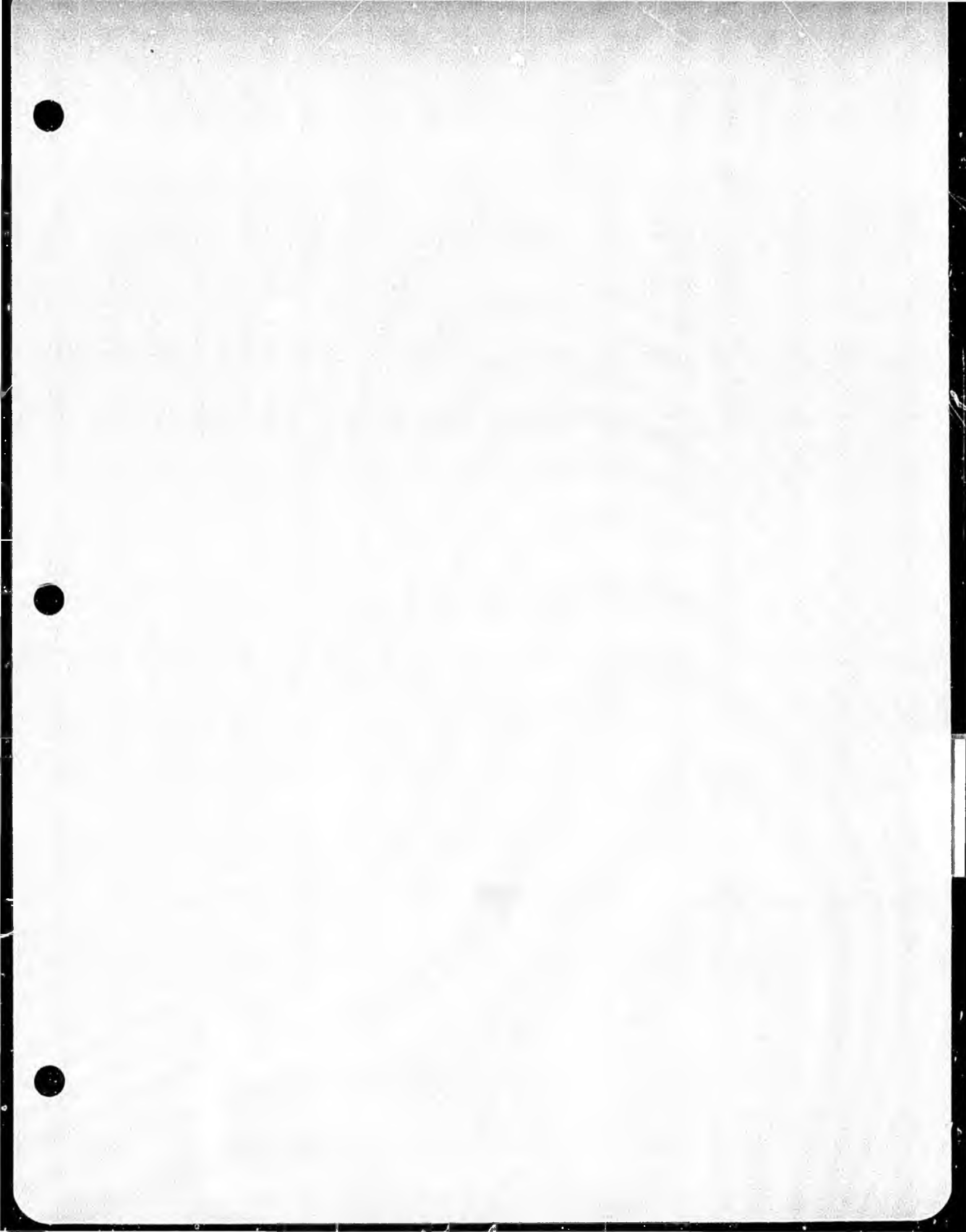
Mr. Soenksen said there weren't.

526 Chairman Moss recessed the panel for a 10 minute break until the teleconference.

Teleconference

548 Chairman Moss brought the meeting back to order at 3:19 p.m. Prior to the teleconference he briefly recapped the proceedings of the Symposium for the benefit of teleconference participants.

Chairman Moss, Representative Flood, Senator Faiks, Senator Gilman, and Dave Walsh were the panel participants for the teleconference.



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697 Chairman Moss recognized Dave Ring, Anchorage, representing himself.

Mr. Ring expressed concern that the federal government take care of it's own obligations, such as personnel obligations. Present employees should be transferred to the State, with a priority to the job, and treated like other State employees. The land should be put up for public auction, and the present landholder should be given the opportunity to match high bids.

(end of Side A)

Tape #55, Side B

Recording

Number

000

(Dave Ring, cont.) The state should only take care of repairs as necessary for public safety. It's a wonderful opportunity, but the State can't accept an overburdening of obligations.

Mr. Walsh responded to Mr. Ring's concerns.

Chairman Moss recognized Mr. Russell Painter, Anchorage

022 Mr. Painter stated that he had nothing to say since the Alaska Trucking Association's testimony was given by T.J. Thrasher.

Chairman Moss recognized Mr. W. Meehan, Anchorage, representing himself.

Mr. Meehan stated that his concerns were satisfied by the recap of what has transpired so far and with the actions the legislature has taken on this issue.

035 Chairman Moss recognized Al Swalling, Anchorage

044 Mr. Swalling voiced his support HB 352 and SB 512. He expressed concern regarding the matter of compensation for the appointed members of the Board. He feels that it will be difficult to get qualified people for these positions if they are not more adequately compensated.

059 Senator Gilman asked Mr. Swalling about what he felt was the appropriate state oversight level.

- 075 Mr. Swalling replied that he felt that it would be a matter of trial and error, which will take place over time.
- 094 Senator Faiks asked Mr. Swalling what his ideas were for compensation for the Board.
- 103 Mr. Swalling responded to the effect that there are wide variations of how much to pay people who serve in this capacity, but there must be better compensation that is provided for in the legislation in order to attract more highly qualified individuals.
- Chairman Moss recognized Mr. Bob Thomas, Fairbanks Chamber of Commerce.
- 136 Mr. Thomas stated that the Fairbanks Chamber of Commerce has not taken a formal position on the legislation, however at this point HB 512 and SB 352 look good to them. They have some important points to stress: Whatever entity ends up operating the railroad should run it as efficiently as if it were under private ownership so it won't become a burden on the taxpayer, or create an unfair competition to other carriers; and the Interior of Alaska should be well represented on that Board.
- 158 Senator Faiks explained how they decided on what the composition of the board members should be, they want well qualified people, not just necessarily people from up and down the railroad.
- 168 Mr. Thomas asked Senator Faiks if they would reconsider that.
- Mr. Walsh asked Mr. Thomas what he thought about the Railroad being under D.O.T.
- 192 Mr. Thomas responded that it should not be under D.O.T., but that D.O.T. should have input into railroad expansion planning, but not in day to day operations.
- Mr. Walsh asked Mr. Thomas if they had given any thought to a vehicle for communities so they could have input and affect the operations and policies on the Railroad.
- Mr. Thomas said the Chamber had not given any more thought to that idea.
- Chairman Moss recognized Jay Nelson, Executive Director of the Alaska Environmental Lobby, present at the hearing to testify.
- 213 Mr. Nelson commented that the long-term implications of the railroad transfer would be environmental issues. They want to see the Railroad under state control, and are interested in how the state will manages the railroad. He mentioned some concerns that they have with the Railroad: Pesticides being

used along the railroad for weed control; and using land, rather than cash, for purchase of the railroad.

255 Chairman Moss recognized Leo Land, Haines

267 Mr. Land stated that he agreed with Mr. Swalling about compensation for the Board of Directors, that it must be considerably higher. He doesn't want the State to get any of the property that comes with the railroad, and he wants to see that whoever manages the railroad is audited.

Chairman Moss recognized Mr. R.W. McKenzie, Soldotna, representing Tachick Freight Lines

322 Mr. McKenzie expressed his concern about open-end rates that have been expressed for the railroad, which would require a subsidy. He feels that there would be too great of a demand for revenue which the state really does not have in order to run; that purchase of the railroad would cause damage to the State, due to the fact that the state has no people, or no basic economy; that the State is not prepared for the huge deficits that buying the railroad would cause. He stated that the Railroad will not be regulated, so the trucking industry should be deregulated too, and stated that the overhead costs attached to the Railroad are way too high compared to its earning power.

388 Mr. Walsh commented that the Railroad will not be deregulated, and that the railroad should pay for itself operationally within about seven years.

425 Chairman Moss thanked the observers for their interest in the teleconference, and recognized Jim Harle, Anchorage, representing the Anchorage Chamber of Commerce.

448 Mr. Harle stated that the Board of Directors of the Anchorage Chamber of Commerce passed a resolution supporting the passage of SB 352 and HB 512. They feel that there are eight major strengths of this legislation: the eventual transfer of the railroad to the private sector; the independent status of the corporation; the strength of the Board of Directors; the establishment of the executive officers of the railroad who manage to day-to-day activities; the Railroad Corporation's right to own and manage land; the inclusion of a strong bonding authority; the railroad generated revenues staying within the corporation; and the railroad employees being employees of the Corporation.

498 Mr. Harle proposed one addition to Article 4, Section 42.40.300 under the General Powers, the ability for the corporation to be able to lease a portion of all of the operation of the railroad to a private entity.

540 Chairman Moss thanked Mr. Harle for his testimony and

recognized Robert Scavron, Sirkka, representing himself.

550 Mr. Scavron spoke of his background with the ICC, and expressed approval for SB 352 and HB 512. However, he stated that the Railroad would not be profitable, and that the Railroad would not get the chance to be an independent body.

621 Mr. Scavron stated that the Railroad would not be able to make money because it cannot compete across the board. He feels that a substantial number of subsidies will have to come from the State to the Railroad that could be better spent on other programs, and that the Railroad will cost the State millions of dollars from the beginning to the end.

End of tape

Tape #56, Side A

Recording

Number

000 Mr. Scavron pointed out that the Railroad can be thought of as a necessary item for economic development in Alaska, even though it will not make money itself. He stated that the major competitors to the Railroad - Tote, Sea-Land, and Lynden Transport are all out of State, so in light of the capital investment the State will be making we should be careful about how much we give away as far as ability to compete and ability to be free.

069 Chairman Moss thanked Mr. Scavron for his testimony, and recognized Jacqueline Thompson, Anchorage, representing a small freight company, and herself as an Alaskan resident.

081 Ms. Thompson stated that her company has three major concerns: that the Railroad does not become involved with other modes of transportation; that the rates charged by the Railroad will be reasonable and based on real costs; and that the Corporation be accountable to the people.

117 Chairman Moss thanked Ms. Thompson for her testimony and recognized Beverly Dunham, Seward, a member of the Alaska Railroad Transfer Advisory Commission and long time Seward resident.

Ms. Dunham stated that they were concerned with the salary of the General Manager of the Railroad, feeling that it will have to be very high in order to get the best qualified person. They feel that competition is necessary for expansion of the Railroad, which is vital to economic development.

Chairman Moss thanked Ms. Dunham for her testimony and participation with the Advisory Board, and recognized Don Taylor of Glennallen.

186 Mr. Taylor stated the importance of opening up new areas of

the State, as the development of the State has been suppressed too long. He feels that the Railroad should compete with the truckers. He feels that the Railroad will help the growth of the State, and that the Railroad complements the trucking and barge system.

- 237 Senator Faiks commented that the Railroad can and is competing, and that kind of competition is good and will lower the freight rates for Alaskans.
- 249 Mr. Taylor commented that competition is needed, and has been needed in Alaska for a long time.
- 268 Senator Moss thanked Mr. Taylor for his testimony and recognized Herman Lierer, Seward.
- 284 Mr. Lierer commented that the Railroad should keep intact all of its real estate property. He asked about the \$27 million needed for OSHA and updating and improvements.
- 297 Mr. Walsh replied as to how that figure was arrived at, and said that that amount probably would not be necessary, that the cost would more likely be around \$16 million.
- 322 Mr. Lierer commented that the Board members ought to be appointed from different areas and not all from one area.
- 330 Senator Gilman explained to Mr. Lierer that that issue is already taken care of in the bill.
- 342 Chairman Moss thanked Mr. Lierer for his comments, and recognized Glen Oliver from Anchorage.
- 347 Mr. Oliver commented that he thinks SB 352 and HB 512 are excellent pieces of legislation. He would like to see an amendment to 4240 which would stipulate the date that the Alaska Railroad would come under private ownership. He stated that he would be in favor of an amendment to Statute 42.40.570, which would allow the Permanent Fund to write a first refusal in the purchase of any and all of new debentures of the Alaska Railroad. He also proposed an amendment to 42.40.700 to the effect that new employees of the Railroad should have benefits equivalent to the federal employees.
- 372 Mr. Walsh responded that it would be impossible to pin down an exact date for the transfer to the private sector.
- 405 Mr. Oliver commented that he didn't think the Alaska Railroad should be a more complicated issue than the Native Land Claims Settlement Act.
- 417 Senator Faiks responded by asking Mr. Oliver what he thought about adding a paragraph in the section of the bill that talks about long range plan of development that must come back to

the Legislature in 1988 that says "if at any time there is a viable buyer who wishes to negotiate the purchase of the Alaska Railroad, the State will entertain that."

435 Mr. Oliver responded by saying that he agreed with that, but mentioned some federal and state laws which may not allow that.

440 Senator Faiks stated that there were some problems with this, but that the negotiation process could begin, which would assure that the Railroad would eventually go into the private sector.

Mr. Oliver said he agreed with that.

457 Chairman Moss thanked Mr. Oliver for his testimony, and recognized Russell Painter, Anchorage, representing Lynden Transport.

477 Mr. Painter stated that they welcome competition, but they want it to be fair.

520 Chairman Moss thanked Mr. Painter for his comments and recognized Dave Walsh.

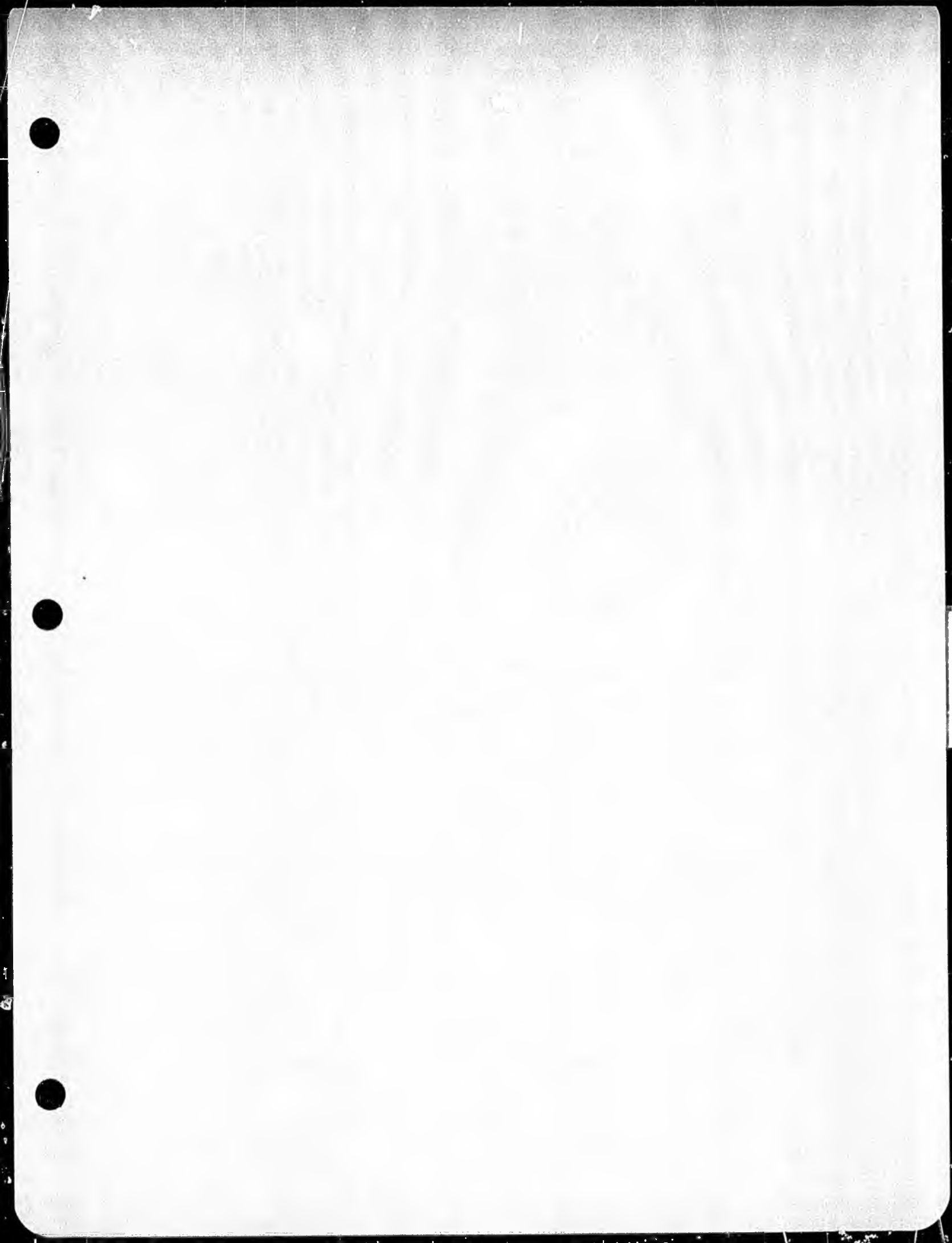
521 Mr. Walsh thanked Chairman Moss on behalf of the Administration and the Transfer Team for including them on the panel.

539 Chairman Moss thanked Mr. Walsh and the rest of the panel for their participation in the Symposium.

Chairman Moss recognized Paul Edwards, Sitka.

558 Mr. Edwards expressed support for the purchase of the Railroad.

Chairman Moss thanked everyone on the teleconference network for participating, and adjourned the teleconference at 4:57 p.m.



**THE NEW
ALASKA
RAILROAD**

AN ACTION PAPER
BY THE
COMMONWEALTH NORTH
RAILROAD COMMITTEE

January 1984

CONCLUSIONS AND RECOMMENDATIONS

1. The state should buy the Alaska Railroad.
 - it is vital to our economy;
 - the Alaska Railroad Transfer Act provides prenegotiated arrangements on contract rights, liabilities, land rights, and benefits that may not be achievable again;
 - the Alaska Railroad has the capability of being financially self-sufficient.
2. The railroad can be self-sufficient if it is allowed to be fully competitive; is organized as an independent corporation; and the cost of transferring the railroad is funded by the state rather than the railroad.
3. The potential for "making it on its own" is critical to the mission and future of the new Alaska Railroad.
4. A streamlined public purpose goal of self-sufficiency provides a clear measurement of success and makes it known that the railroad is to be run like a business.
5. The faster the railroad shows itself capable of self-sufficiency, the sooner it will be attractive to a private buyer.
6. Even though state-owned, the railroad should be operated like a private business and be allowed to compete in the marketplace without artificial restraints.
7. Adequate safeguards exist within the Interstate Commerce Commission (ICC) and federal antitrust laws to protect competing private carriers from predatory railroad pricing of unfair advantage.
8. The legislature should refuse special interests that propose to limit the railroad's scope of operations; such limits to competition would act to the detriment of the people of Alaska.

9. The organization of the new railroad must meet the requirements of federal transfer legislation and support the railroad's potential to be self-sustaining.
10. A public corporation provides the best opportunity for success of the new Alaska Railroad, allowing both semi-autonomous management and adequate control by the state.
11. If the state funds the equivalent of the first five years' transfer liabilities in advance -- \$37.7 million -- the railroad will not require further appropriations and can pay remaining transfer liabilities from internally generated funds.
12. The legislature should appropriate \$37.7 million to the Alaska Railroad Corporation for the purpose of meeting transfer-related liabilities and \$22.3 million to the federal government for the purchase of the Alaska Railroad.
13. Transfer-related funding should be made to the Alaska Railroad Corporation immediately upon acceptance of the railroad to give the Corporation a clean start.

SHOULD THE STATE BUY THE ALASKA RAILROAD?

For almost six years Alaskans have been debating the pros and cons of taking over the Alaska Railroad from the federal government. In the beginning of the move to transfer the railroad, the question was simply whether Alaska would accept the railroad — no price tag attached.

The final question, which the state must decide during the first seven months of 1984, is whether Alaska will accept the price and conditions mandated in the Alaska Railroad Transfer Act of 1982.

The Price: \$22.3 million

Interestingly, public debate over whether or not to accept the purchase price of the railroad has focused on the same two concerns expressed when no purchase price was involved:

- First, will the railroad be a continuing, long-term drain on the state?

- Second, is it appropriate or even possible for the state government to operate a commercial enterprise like the Alaska Railroad?

The particular issues related to the transfer price are:

- Is the valuation fair?

- How much more, over and above the purchase price, will the transfer cost the state?

All of these concerns are debated against a background of conjecture as to what would happen if the state does not accept the railroad.

Commonwealth North first focused on the importance of the railroad transfer when draft legislation was introduced in 1981. We issued an interim report in January 1982 suggesting provisions that should be part of any transfer legislation passed by Congress.

In 1983, it became apparent to the Commonwealth North Board of Directors that further investigation of the railroad issues was required. Besides the immediate question of whether the transfer proposal was fair, the corollary questions of how the railroad should be operated under state control, and to what purpose, became increasingly important.

This report summarizes the conclusions reached after six months of independent work by the Commonwealth North Railroad Committee.

The committee examined the purchase of the Alaska Railroad on an "as is/where is" basis. While many Alaskans believe the only reason to accept the railroad is for purposes of extension, we concluded that today's railroad, with its capabilities and limitations, is what is being offered, and it is today's railroad that must meet the test of purchase.

**The committee
examined the Alaska
Railroad on an "as
is/where is" basis.**

**YES! THE STATE
SHOULD BUY
THE RAILROAD**

**The Alaska Railroad
is vital to Alaska's economy.**

The railroad is central to the state's extremely limited land transportation system. It fosters movement of bulk freight that would otherwise be impossible to move long distance; offers an important transportation alternative and balance to the competitive pricing structure in Alaska; and offers the only economical method of moving mineral resources to markets.

The purchase price is reasonable. *

The committee was intensely involved in monitoring the valuation process. Overall, we are satisfied that the state's interests were accounted for and that there is no "hidden" information.

There was particular concern that the state have a true picture of the physical condition of the railroad. There is a spread between the United States Railway Association (USRA) assessment of condition and the state's engineering experts. Because this area is so critical, we used the state's higher forecasted costs in our analysis.

* See Appendix for breakdown of the transfer package.

The Railroad Transfer Act provides prenegotiated arrangements on contract rights, liabilities, and land rights that may not be achievable again.

These include statutory protection of the railroad's rights-of-way; tax exempt status, which permits tax-free industrial revenue bond use for capital improvements; exemption from certain federal railway employee-related laws; and a guarantee that the survey of lands to be conveyed to the state will be finished within a five-year time period.

The Alaska Railroad has the capability of being financially self-sufficient.

This conclusion is based on published and proprietary financial reports of USRA, the state transfer team, and the railroad. In analyzing future revenue projections, the committee learned it could not rely entirely upon historical perspective.

Since 1980, there have been three critical changes that can make the difference between the railroad's past subsidized performance and the capability for self-sustaining future performance:

- Deregulation of the railroad industry nationwide positions the Alaska Railroad to benefit in the more competitive and less regulated marketplace that is evolving.

- Projected market changes in Alaska, particularly in products like coal, gravel, and pipe which are especially suited to railroad transportation.

- Opportunity for tighter management performance and cost control as a result of the change from federal ownership to state ownership.

THE NEW ALASKA RAILROAD

The most unexpected and encouraging conclusion reached by the committee is that the railroad has the potential of being financially self-sufficient from the time of purchase, and of operating without continuing appropriations from the state.

This will only happen, however, if the legislature is willing to meet three conditions necessary for a self-supporting railroad:

- The railroad must be allowed to be fully competitive.

- It must be organized as an independent corporation.

- The cost of transferring the railroad to the state must be recognized and funded by the state rather than the railroad.

**FULLY
COMPETITIVE**

**INDEPENDENT
CORPORATION**

**TRANSFER
COST FUNDED**

This potential for "making it on its own" is critical to the mission and future of the new Alaska Railroad.

As to the mission, if the legislature agrees that the railroad has the potential to provide efficient, competitively priced freight and passenger service on a self-sustaining basis, they should direct it to do so.

Too many public corporations in Alaska and elsewhere have worded policy goals in their enabling legislation that satisfy special interests but do not provide any means of measuring their success; or they have conflicting goals that are impossible to meet.

The concept of a streamlined public purpose goal of self-sufficiency provides a clear measurement of success and makes it known that the railroad is to be run like a business.

Under a legislative mandate to operate in a self-sufficient manner, all decisions related to such potentially political issues as level and purpose of capital expenditures, employee wage agreements, and level of debt are the direct function of revenue and the ability to pay.

Under a legislative requirement to operate in a self-sufficient manner, all special interests are on notice that if the railroad is required to undertake a service that is not economically viable, the state will have to fund that service.

As to the future, the committee believes that the faster the Alaska Railroad shows itself capable of self-sufficiency, the sooner it will be attractive to a private buyer. If the railroad is never attractive as a successful business enterprise, the state may own it forever.

If properly structured, the railroad promises to be financially self-sufficient.

A successful railroad will become attractive to private industry.



**FULLY
COMPETITIVE**

THE RAILROAD MUST BE FULLY COMPETITIVE

Railroads are capital intensive and as such, require large volumes of shipments to meet the cost of maintaining track, roadbed, and equipment. Market share and competition are the economic underpinning of any railroad.

Even though state owned, the railroad should be operated like a private business and be allowed to compete in the marketplace without artificial constraints.

Adequate safeguards exist within the Interstate Commerce Commission (ICC) and federal antitrust laws to protect competing private carriers from predatory railroad pricing or unfair advantage.

The legislature should refuse special interests that propose to limit the railroad's scope of operations; such limits to competition would act to the detriment of the people of Alaska.

Pricing and service decisions should be vested with the railroad; questions of private vs. public ownership in rate decision making must be left to experts who deal with these issues on a nationwide basis - the ICC and the courts.

The Staggers Act, passed in 1980 to allow railroads nationwide to become more competitive, requires the same rate-making methods, accounting requirements, and market dominance tests for publicly owned railroads as it does for privately owned railroads. The Act clearly requires all railroads to fix rates that cover at least 100 percent of

variable costs and to define maximum rate levels indicating a carrier is not exercising market dominance.

The Alaska Railroad has been partially subject to the ICC since 1963 and has been fully subject since July, 1983, as it will continue to be after the transfer. In addition, the transfer legislation makes the railroad subject to federal antitrust laws.

Finally, the committee concluded that it is doubtful that a lasting or meaningful compromise between competing carriers and the Alaska Railroad could be fashioned.

The railroad both competes with and cooperates with truck and water carriers; it would be impossible to determine where the railroad should offer special pricing without influencing the competitive advantage of one private carrier over another.

A competitive marketing philosophy has already resulted in the announcement of new private carriers serving Alaska in cooperation with the railroad.

Continued competition will encourage innovative marketing and use of technology to move goods at lower prices. The shipper and the Alaskan consumer will benefit and the revenues generated will strengthen the Alaska Railroad.

**The legislature should
refuse special
interests that try to
limit operations.**

THE RAILROAD MUST BE AN INDEPENDENT CORPORATION

In examining the form of organization to operate the railroad, the committee was guided by two basic criteria:

1. That the organizational format meet the requirements and restrictions of the federal transfer legislation.
2. That the format support the railroad's potential to be self-sustaining.

The intent is to recommend a format that will isolate railroad management from unreasonable political pressure to provide services that are neither economic nor in the state's best interest, and at the same time protect the public interest.

The dilemma is historic for publicly funded corporations: how to hold such corporations accountable while providing freedom to manage.

Four basic organizational formats were examined: a mixed private/public organization; a separate railroad department; a line agency of a state department; and an independent public corporation/public authority.*

The committee concludes that a public corporation provides the best opportunity for success for the new Alaska Railroad. It provides for

* The term public corporation and public authority are used interchangeably.

semi-autonomous management; allows for adequate control by the state; and clearly falls within the transfer legislation's offer of tax exempt status "to a public corporation, authority, or other agency of the state."

The mixed private/public ownership format was attractive because it allows for the easiest transition to wholly private ownership. Such organization could be either a private corporation formed under Alaska Statute AS 10.05, or a limited partnership.

The mixed private/public format was ultimately rejected because of numerous disadvantages, including the probability that the railroad would be unable to finance capital expenditures with tax-exempt bonds.

It was determined that the disadvantages of line agency status to the railroad--particularly the lack of management flexibility--were so obvious that the railroad would never be self-supporting under this format.

Consideration was also given to the concept of a separate, independent department. Article III, Section 22 of the Alaska Constitution provides for the formulation of up to 20 departments in the executive branch of government.

As there are 17 departments at present, it is possible to place the railroad in its own department, under the direction of a commissioner appointed by the governor and subject to confirmation by the legislature.

This form of organization was rejected principally on the basis that it offers few, if any, advantages over an independent corporation established pursuant to the Constitution.

Management must be isolated from undue political pressure.

A public corporation provides the best opportunity for the success of the railroad.

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.

COST OF TRANSFER MUST BE FUNDED BY THE STATE

The USRA valuation report on the Alaska Railroad describes the railroad's operations as "modest when compared with railroads in the lower 48 where it would be classified as a medium-sized 'short-line' carrier with below average freight traffic density."

Historically, operations of the railroad have ranged from modestly profitable years to periods of substantial losses.

While optimistic for improved performance of the new Alaska Railroad, the committee concludes that the minimal cash margins forecast for the first five years will be insufficient to meet the purchase or transfer-related costs on top of operating and capital expenditures.

Marginal railroads fail historically because of a combination of acquisition cost, rehabilitation cost, and debt service.

The Alaska Railroad comes to the state debt free; however, there are four substantial transfer-related liabilities (in addition to the purchase price) connected with acquisition and rehabilitation that have been identified by the USRA and state transfer teams.

These liabilities primarily result from the manner the federal government operated the railroad and were partially recognized in the appraisal process as deductions from the overall value of the railroad.

1. Under state ownership the railroad will be subject to Occupational Safety and Health Act (OSHA) standards

and from Alaska fire and building-related codes. Substantial funds are needed to correct deficiencies now existing.

2. Maintenance-of-way and capital expenditure needs result from facilities which have been allowed to deteriorate but are necessary for the ongoing use of the system. For example, the condition of cross ties, rail, and structures in certain areas has been allowed to slip behind prudent replacement schedules, according to some independent experts.

3. At the time of transfer there will be a number of legal, administrative and consulting costs to start-up under state control. This is part of the railroad purchase cost and should be funded as such.

4. The final category of start-up costs is adequate working capital to cover cash timing requirements of the railroad corporation.

Until very recently, the transfer liabilities included an extremely high employee retirement figure, generally referred to as the "unfunded pension liability." While this liability was considered in the valuation process, the committee strongly believed that the state should not have to pay for this federal problem. Fortunately, the federal Office of Personnel Management has rendered an opinion relieving the state of responsibility for the unfunded pension cost.

Resolution of this issue was critical to our recommendation to purchase the railroad.

USRA and the state transfer team "worst case" calculations for these four categories of liabilities alone may total \$64.8 million over the next ten years. This amount is in addition to the \$22.3 million purchase price payable to the federal treasury.

If the start-up liabilities were funded annually, the railroad would not

Resolution of the pension liability issue was critical to purchase.

show positive cash flow until 1990, according to these projections.

However, the committee's analysis shows that if the state funds the equivalent of the first five years' liabilities in advance -- \$37.7 million -- the railroad can be self-sufficient from the transfer date onward and not require further appropriations. (See Appendix.)

The cash required for funding the purchase and five years' transfer costs is as follows (\$ million):

Code and OSHA compliance	\$16.0
Deferred maintenance	15.3
Working capital	4.7
Start-up expense	<u>1.7</u>
Cash required by railroad corporation	\$37.7
Purchase price payable to federal treasury	<u>22.3</u>
Funding required for transfer	<u>\$60.0</u>

The legislature should appropriate \$37.7 million to the railroad corporation for transfer-related costs.

If the state pays all of these costs at transfer, the railroad projections show the capacity to fund the remaining \$27.0 million of liabilities from internally generated funds.

While \$37.7 million is a substantial cost, it ultimately cannot be avoided. The expenditure would represent approximately 1.1 percent of the proposed \$3.5 billion FY 85 state budget that would be in effect during the railroad transfer period. In consideration of the benefits derived, we believe this choice of funding would be well justified.

It is recommended that the legislature appropriate \$37.7 million dollars to the Alaska Railroad Corporation for the purpose of meeting transfer-related liabilities and \$22.3 million to the federal government.

Transfer-related funding should be made to the Alaska Railroad Corporation this legislative session to give the Corporation a clean start. By separating expenses generated as a result of transfer, the railroad management's success or failure in meeting a goal of self-sufficiency can be clearly measured.

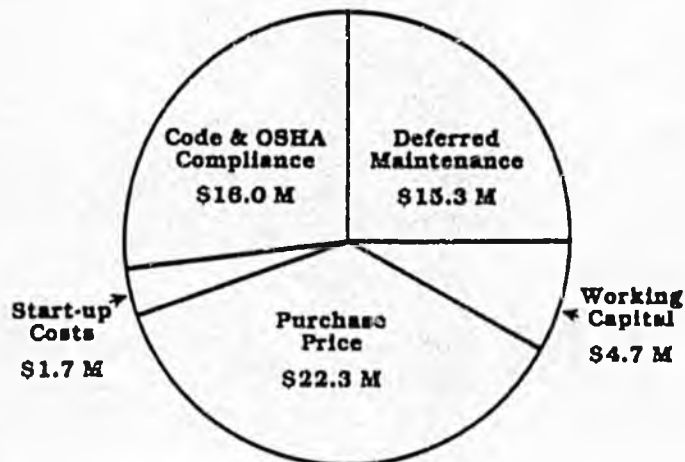
In determining whether a goal of financial self-sufficiency was possible, the committee found that the more conventional financial statement approach in analyzing profit and loss analysis fails in two respects when examining the railroad's financial statements.

Government accounting at the railroad allowed capitalizing certain track maintenance programs that otherwise would have been charged against profits currently. Therefore, in viewing historical performance of the railroad, it is more useful to calculate cash flow including capital expenditure programs, to measure the degree of self-sufficiency over time.

Capital expenditures historically and prospectively exceed depreciation charges, further supporting cash flow as the relevant measure in this analysis.

If the transfer-related liabilities are funded, the railroad will have four sources of revenue: the start-up monies from the legislature; operations; real estate; and borrowing capabilities.

While our cash flow analysis does not rely on debt, the transfer legislation provides for the tax-exempt status of the railroad and the ability to issue tax-exempt debt. However, to the extent possible, this source should only be



**The Alaska Railroad
Transfer-Related Costs:
\$60 million**

**The success of the
railroad may parallel
the fortunes of
Alaska.**

used for funding investments in equipment or facilities that will generate new revenues or reduce operating costs.

It is emphasized that the starting point in all of these analyses is revenue projections by current management. As noted in the discussion related to competition, revenues are all-important for economic success. High fixed costs will not drop significantly with reduced traffic. If major sustained shipments fail to materialize as expected, periods of negative cash flow could result. Management believes its base projections to be realistic, and, perhaps, conservative.

The Commonwealth North Railroad Committee is encouraged by the railroad's potential to be of even greater benefit to the State of Alaska. In many respects, the success of the railroad may parallel the future of Alaska's overall economy.

THE FUTURE OF THE ALASKA RAILROAD

The optimistic conclusion that the Alaska Railroad can be self-supporting on its existing system still must meet the test of fact.

But, for the first time in the Alaska Railroad's history, it will be Alaskans writing the legislation and making the decisions that will determine the railroad's future.

What about that future?

Two major policy questions concern extension of the track system and transfer of the railroad to private ownership.

The railroad has always held the potential of reaching out far beyond the "Railbelt" of Alaska. Even after 60 years of operation the railroad system remains short of its original charge to be a frontier development tool.

The problems will remain the same under state ownership: rail extension is expensive; feasibility studies of major route expansions by both public and private interests have not yet been positive.

But, if the problems remain the same, the decision makers will be different and so will the criteria of public need and public good.

Issues of project funding and operating cost coverage can be looked at on an ability-to-pay basis from a state perspective, and while economic returns must be real, they may not need to be so immediate.

Major track extension of the Alaska Railroad may be in the far future, but under state ownership, Alaskans will decide how far.

We will also have control over the question of whether or not it is in the public interest to sell the railroad to a private buyer.

This issue should be carefully explored. However, until a favorable operating record can be demonstrated, it is unlikely that a responsible private buyer would offer to purchase the railroad, unless it were to gain control of its valuable landholdings.

These questions do not need to be solved immediately.

The challenge right now is to set up a successful Alaska Railroad Corporation and build on the future from there.

APPENDIX

THE TRANSFER PACKAGE

THE PURCHASE PRICE OF \$22.3 MILLION BUYS THE STATE OF ALASKA THE FEDERAL ALASKA RAILROAD SYSTEM:

- 520 miles of single main and branch line track between Seward and Fairbanks--via Anchorage, Wasilla, Healy, and Nenana;
- 64 miles of branch track linking Fairbanks to Eielson Air Force Base, Healy to Suntrana, Matanuska Junction to Palmer, Portage to Seward, and an International Airport spur;
- 62 locomotives, 1653 freight cars, 46 passenger cars, and over 200 pieces of maintenance and emergency equipment;
- railroad yards, offices, maintenance buildings, storage, in Anchorage, Seward, Whittier, Healy, Nenana, and Fairbanks;
- 38,000 acres of land: 12,000 of right-of-way; 1,000 acres leased (for approximately \$3 million annual rental income); 11,000 used as actual or future gravel sources; 7,000 acres for terminal and yard areas;
- 539 employees: 455 full time permanent, 84 temporary, 51 special categories.

THE ALASKA RAILROAD TRANSFER ACT (ARTA):

- requires the state to agree to operate the railroad as a rail carrier in intrastate and interstate commerce;
- requires the state to protect retirement benefits and to negotiate employment arrangements during the first two years of ownership;
- places the state-owned railroad under full and formal regulation by the Interstate Commerce Commission and federal anti-trust laws;
- requires that all revenues generated by the state-owned railroads are to be maintained and managed by the railroad for railroad-related purposes;
- qualifies the railroad "as a public corporation, authority, or other agency of the state" for tax exempt status.
- guarantees that the state will receive nothing less than an exclusive-use easement on railroad rights-of-way for transportation, communication, and utility purposes in all areas (except Denali National Park where the easement is for rail purposes only).

APPENDIX

ALASKA RAILROAD

PRO FORMA CASH FLOW ADJUSTMENTS

(1983 \$000)

	(1) FY 84	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Adjusted Transfer Team Cash ("Worst Case")	(19267)	(11315)	(8830)	(5366)	(3048)	(66)	82	341	245	248
Pensions (2)	<u>3165</u>	<u>3044</u>	<u>2933</u>	<u>2830</u>	<u>2740</u>	<u>2651</u>	<u>2558</u>	<u>2468</u>	<u>2374</u>	<u>2285</u>
Cash Adjusted for Pension Issue	<u>(16102)</u>	<u>(8271)</u>	<u>(5891)</u>	<u>(2536)</u>	<u>(308)</u>	<u>2585</u>	<u>2640</u>	<u>2809</u>	<u>2619</u>	<u>2533</u>
State Adjustment Reversals:										
CODE/OSHA Compliance	1200	1200	1200	1200	1200(3)					
MCW/Capital Needs	2500	2500	2500	1500	1500					
USRA Adjustment Reversals:										
One-Time Startup	1750									
Working Capital	4377	95	168	57	49					
OSHA	500	500	500	500	500					
CODE	1500	1500	1500	1500	1500					
Maintenance-of-Way	1220	810	850	870	1010					
Total Adjustments Requiring Funding	<u>13047</u>	<u>6605</u>	<u>6718</u>	<u>5627</u>	<u>5759(4)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
C/N Adjusted Cash	<u>(3055)</u>	<u>(1666)</u>	<u>827</u>	<u>3091</u>	<u>5451</u>	<u>2585</u>	<u>2640</u>	<u>2809</u>	<u>2619</u>	<u>2533</u>

- Notes:
- (1) USRA and State used FY 84 as full-year transfer period. It is likely that transfer will occur in FY 85 and all adjustments should be moved one year forward.
 - (2) Pension adjustments for 10 years is due to funding requirement change. Includes USRA and State adjustments.
 - (3) Commonwealth North proposes adjustments only to fund first five years' costs of transfer.
 - (4) Total up-front funding proposed by Commonwealth North totals \$37,756,000.

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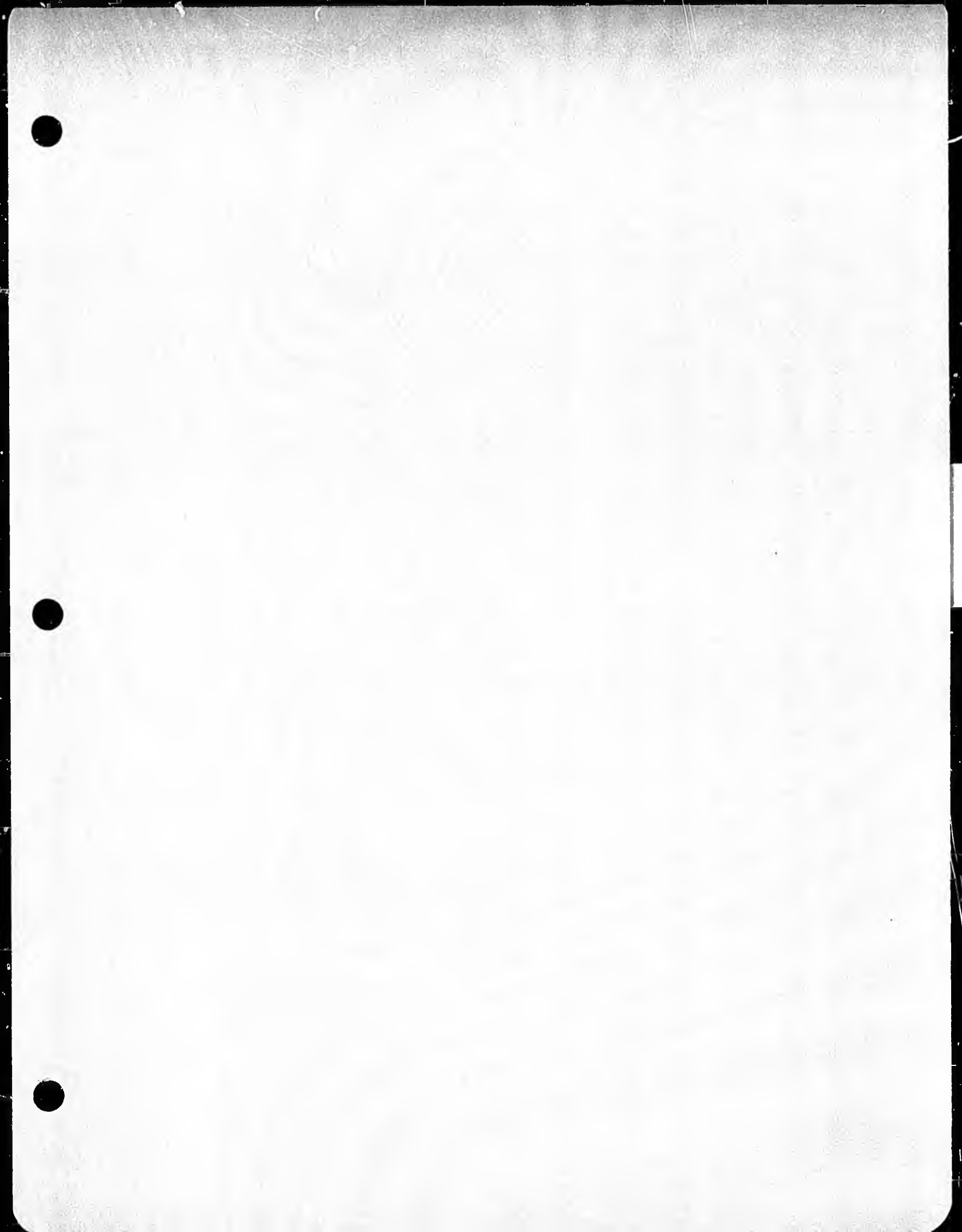
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Paul S. Wilcox
Attorney - Law Offices of Paul Wilcox



POSITION OF TOTEM OCEAN TRAILER EXPRESS, INC.
ON TRANSFER OF ALASKA RAILROAD TO STATE OWNERSHIP

INTRODUCTION

My name is Leonard H. Shapiro and I am Vice President of Pricing for Totem Ocean Trailer Express, Inc. We at Totem greatly appreciate this opportunity to make our views known on the transfer of the Alaska Railroad to state ownership.

Totem Ocean Trailer Express, Inc. is the operator of two, modern, deep-water, ro-ro vessels between Tacoma, Washington and Anchorage, Alaska. Totem services all points within the Alaska rail belt area via connecting motor carriers and the Alaska Railroad. Totem is vitally interested in the transfer of the Alaska Railroad to state ownership for the following reasons:

1. The Alaska Railroad is a major interline carrier for Totem. Over half of the freight which Totem moves north of Anchorage is carried in "piggyback" service by the Alaska Railroad. Our tenderings of freight to the Alaska Railroad places us, we believe, within the top five customers of the railroad.
2. A healthy, viable railroad contributes to a healthy economic climate in Alaska. A healthy economic climate generates demand for Totem's services, and should the Alaska Railroad be used to further develop the state's mining industries, this would significantly increase the demand for the movement of finished goods and capital equipment which are Totem's primary markets.
3. The Alaska Railroad is also a major competitor to Totem via its interline agreements with rail-barge and ro-ro barge operators, and as such its pricing and operations policies are part of the overall competitive mix which Totem must face.

SUMMARY OF TOTEM'S POSITION ON TRANSFER OF THE ALASKA RAILROAD TO THE STATE OF ALASKA

As discussed below, Totem has three major concerns with Senate Bill 352 and House Bill 512, as currently written. These concerns are:

1. Entry of the Alaska Railroad into the Water-Carrier or Motor-Carrier Business:

Totem desires specific amendments which would preclude the entry of the Alaska Railroad into either the water or motor-carrier business.

2. The Railroad Should be Subjected to Both the Federal and State Antitrust Laws:

Totem desires specific amendments to the proposed legislation which would subject the Alaska Railroad to both the state and the federal antitrust laws.

3. Prohibition Against Unfair Ratemaking by the Alaska Railroad

Totem desires a specific amendment to the proposed legislation which would prohibit the Alaska Railroad from using either its direct or indirect subsidies to institute rates which are below-cost if these rates are below those set by competing private carriers.

The balance of my testimony shall address itself to the three issues noted above. Totem feels strongly that a financially healthy and strongly competitive railroad will be an asset to both the State and all modes of carriers. What Totem desires with the amendments we are proposing is that all carriers compete on the same basis.

TOTEM'S CONCERNS ON TRANSFER TO STATE OWNERSHIP OF THE ALASKA RAILROAD

Totem supports the transfer of ownership of the Alaska Railroad to the State of Alaska. We support a transfer which will result in a financially strong, competitive railroad. We recognize, however, that state ownership, in which the "profit motive" is normally lacking, can create specific problems where the railroad competes with privately owned transportation companies. We feel that the legislation which "sets up" the method of operation of the Alaska Railroad should address these specific problems to ensure that all carriers can compete on an "equal basis."

Specifically, we feel that the following areas should be addressed:

1. Entry by the Railroad into the Water-Carrier or Motor-Carrier Business:

TOTEM desires legislation which will prohibit entry by a state-owned railroad into the water-carrier or motor-carrier business.

We feel quite strongly that the Alaska Railroad, which has enjoyed an average subsidy of 17.5 percent of revenue for the past several years, should direct all of its energies towards operating the most efficient rail service possible.

Utilization by the Alaska Railroad of either their direct or indirect subsidies to enter the water or motor-carrier fields should be prohibited. Indirect subsidies are those the railroad enjoys by virtue of public ownership. Examples (All of which are allowed under the proposed legislation now under consideration) would be: significantly lowered interest rates due to tax-exempt bonds; elimination of need to earn a profit; lack of any requirement that they pay interest on their working capital; freedom from taxation; elimination of the requirement that they pay for licenses, permits, etc.

Currently, the water-carrier field is served by all four major modes: ro-ro, container, rail-barge and break-bulk barge, and we see no long-term shortfall in available capacity (recent press reports indicate there will be two major new entrants using state-of-the-art, ro-ro barges this year).

Within the motor-carrier field there are a multitude of motor carriers available in the state, and this industry has been severely depressed for several years, i.e., there has been significant overcapacity available.

2. Antitrust:

TOTEM desires specific legislation which would place a state-owned railroad under both the federal and state antitrust laws.

All of the privately owned water and motor carriers are subject to the federal and state antitrust laws. It is our belief that the railroad should be subjected to the same laws as the private carriers are. In short, we should all play by the same rules.

3. Ratemaking Policy:

TOTEM desires specific legislation which would prohibit a state-owned railroad from practicing unfair rate making.

Specifically the practice of initiating rates which include direct and indirect subsidy and do not recover the full cost of service when such rates are below these in effect over private carriers.

The railroad, by virtue of state ownership, will in all probability enjoy some form of direct subsidy, as well as indirect subsidization (as discussed earlier, by virtue of state ownership, the railroad is not faced with all of the expenses which a privately owned and operated corporation is). We believe that on all traffic where the railroad is cross-competitive with privately owned and operated carriers, the railroad should not be permitted to utilize its direct or indirect subsidies to set rates below those established in the private marketplace. This, we feel, is simply "fair play" inasmuch as Totem does not have available the railroad's direct or indirect subsidies, and we have no desire to become involved in any subsidy schemes. Certainly, if the railroad, without using either direct or indirect subsidies, can price their services below that of the privately owned and operated carriers, they should be allowed to do so. The railroad should further be allowed to meet any rate set by a competitive carrier offering a similar service irregardless of whether it is above or below cost.

There may be specific instances in which the state feels that use of the railroads direct and indirect subsidies should be used to price below not only cost but the rates set by the private carriers. In these cases permission to set such specific rates should be granted by the legislature and not be the result of the unilateral action of the railroads management.

ANSWERS TO QUESTIONS WE HAVE BEEN ASKED

Questions which have been raised on positions Totem has taken, along with our response, are:

1. TOTEM's argument that the railroad would unfairly use its direct and indirect subsidies to compete with water and motor carriers ignores the fact that highway carriers are subsidized.

As discussed later in this section, any direct and indirect subsidies which Totem enjoys by virtue of using federally maintained waterways and ports is the same for Totem and the Alaska Railroad. The Alaska Railroad owns and operates two major port facilities within the State of Alaska; Seward and Whittier. I have been advised that the Alaska Motor Carriers Association will be responding in detail on the issue of subsidy to the motor carriers.

From Totem's perspective, the interline motor carriers we use receive NO subsidies which are not also available to the Alaska Railroad. We base this contention on the fact that for cross-competitive freight (that freight for which both Totem and the Alaska Railroad compete) many of the consignees in Alaska are not located on rail sidings, and thus both Totem and the Alaska Railroad must use motor carrier service to make final delivery of the freight. Inasmuch as both carriers are using motor carrier service, both carriers benefit equally from any subsidy which is present. Indeed, I would guess that the Alaska Railroad is one of the largest purchasers (via interline agreements with motor carriers) of motor-carrier service within the State of Alaska.

It should be noted further that motor carriers, through their purchase of license plates, trailer and tractor registration fees, and the payment of gasoline taxes, make a significant payment toward the cost of constructing and maintaining the Alaskan highway system. This cost is also shared by private automobiles which use this same system. Were it not for the payments made by the motor carrier industry, the cost of constructing and maintaining this highway system would, in our estimate, be solely borne by the operators of private automobiles and their fuel and license taxes would have to be increased by several orders of magnitude if the existing network were to remain.

Therefore, we at Totem do not feel that the motor carriers enjoy any subsidy which has a significant impact on their ability to compete with the Alaska Railroad.

2. If TOTEM uses the Alaska Railroad exclusively for overland delivery of our freight, we should be "indifferent" to the Alaska Railroad's rate policy:

As a practical matter, many of Totem's customers are not located on rail sidings, and thus use of the Alaska Railroad for all overland deliveries

is an impossibility. It should further be noted that many of our customers, who are located on rail sidings, desire a level of service which can only be obtained through the use of motor-carrier delivery. What Totem desires is a railroad which bases its prices on the cost of providing service as most all privately operated railroads and motor carriers do, and which does not use any direct or indirect subsidies to compete unfairly with these privately operated carriers.

3. Why isn't ICC regulation of the Alaska Railroad's rates sufficient to eliminate any problems the private carriers might have with the railroad utilizing subsidies to compete with the private carriers?

Totem feels quite strongly that the ICC is not set up to regulate a state owned railroad. Commission cost accounting procedures have no method of taking into account either direct or indirect subsidization which the state owned railroad may receive. It should further be noted that a primary component of commission regulation of railroads is the fact that the railroad must face the "test of the marketplace" in terms of its ability to earn a profit. A primary component of the Staggers Act, which significantly changed the reasonableness test for railroad rates, was the feeling that in the "long run" the railroads would not price their services below cost because they would have to eventually earn a profit on the provision of those services.

A state owned railroad would have no need to earn a profit. Additionally, the ICC has no method of factoring in to any cost analysis (assuming that they utilize their current cost formulas) the value of direct and indirect subsidies which would be received by the railroad. Thus, commission regulation is not a viable method of ensuring that the economic advantages enjoyed by a state owned railroad are not utilized unfairly against the railroad's privately owned competitors.

4. Doesn't the desire of the private carriers to establish a "rate floor" in reality "tie the hands" of the Alaska Railroad?

The privately owned carriers have absolutely no desire to establish anything akin to a "rate floor" or to "tie the hands" of the Alaska Railroad. What we desire is simply that the railroad "play by the same rules" as privately owned carriers. Our sole concern regards the railroad's rate practices on movements of commodities which are cross-competitive between the railroad and the privately owned carriers. We have absolutely no desire to have any impact on the railroad's rate policies for the movement of commodities such as coal, gravel and other historic rail bulk commodities.

Within that area of commodities which are cross-competitive, all we ask is that the railroad not be allowed to use its direct or indirect subsidies when it sets prices which are below those which have been set by private carriers in a free and competitive marketplace. It should be noted that our position allows the railroad to meet any rates set by the private

carriers irrespective of where or not the railroad can earn a profit by so doing — all we ask is that the railroad not be allowed to artificially depress the rates of the private carriers through the use of either direct or indirect subsidies — if the railroad can price below the private carriers and still earn a profit, they should certainly be allowed to do this.

5. What is the position of Totem on the expansion of the railroad?

Totem feels the railroad should be expanded and utilized as the primary tool in developing the mineral deposits within the State of Alaska. Any expansion of the railroad will improve the overall business climate in Alaska and such improvement will automatically mean there will be more business available for all carriers. We feel it is a legitimate use of state power for the state to use the railroad to assist in opening up undeveloped areas of the state, and private carriers will certainly support the Alaska Railroad in these efforts.

6. Totem is also beneficiary of public subsidy in that we use public docks (those owned by the municipalities of Anchorage and Tacoma) as well as channels and navigation aids maintained by the U.S. Corps of Engineers and the U.S. Coast Guard

All of the above is true; however, competing rail-barge carriers use the same channels and navigation aids and thus all carriers operate on an equal basis. In the case of port facilities, the private carriers who use municipally owned docks operate under "full payout leases" which are publicly filed with the Federal Maritime Commission. Indeed, if the lease arrangements which the private carriers make with municipally owned docks do not fully cover the cost of these facilities, they are subject to being found "unreasonable" by the Federal Maritime Commission and disallowed.

Carriers operating from Alaska Railroad owned docks at Whittier and Seward do so pursuant to "secret" agreements between the Alaska Railroad and themselves. There is no requirement that the railroad recover their costs for providing these facilities, and because these agreements are "secret," the privately owned carriers have no way of knowing if the railroad has in fact charged "full cost" for these facilities.

THE ALASKA RAILROAD WILL BE EXEMPT FROM THE ANTITRUST
LAWS UNLESS THE LEGISLATURE EXPLICITLY MAKES THE RAILROAD
SUBJECT TO THE ANTITRUST LAWS

The Federal antitrust laws generally do not apply to state action. This is because the Supreme Court has consistently held that the antitrust laws are not intended to interfere with action directed by a state legislature. This so-called state action exemption applies whenever the state's policy is to "displace competition" (for example by operating a motor or water carrier), even if the legislature does not pass a statute specifically claiming the exemption.

The federal transfer act permits the State of Alaska to invoke any exemption from the antitrust laws which is available. The state action exemption is available even if the bill says nothing about antitrust exemption. Because the state action exemption is automatic, therefore, the Alaska Railroad will be exempt unless the bill expressly provides that the Railroad is subject to the antitrust laws.

TOTE Suggested Committee Report Language

It is the policy of the State that the Alaska Railroad should be operated in a business like manner so as to foster the development of a strong and financially sound system of Interstate Commerce. Accordingly, the Railroad should not use public resources or the benefits of its public status to compete unfairly with private carriers. Subsection (d)(1) makes the Alaska Railroad fully subject to the federal antitrust laws. The bill declines to invoke the so-called State action exemption, or any other exemption from the antitrust laws. Subsection (d)(3) also explicitly limits the Railroad to acting as a rail carrier and prohibits it from entering the water carrier or motor carrier business in competition with privately owned carriers.

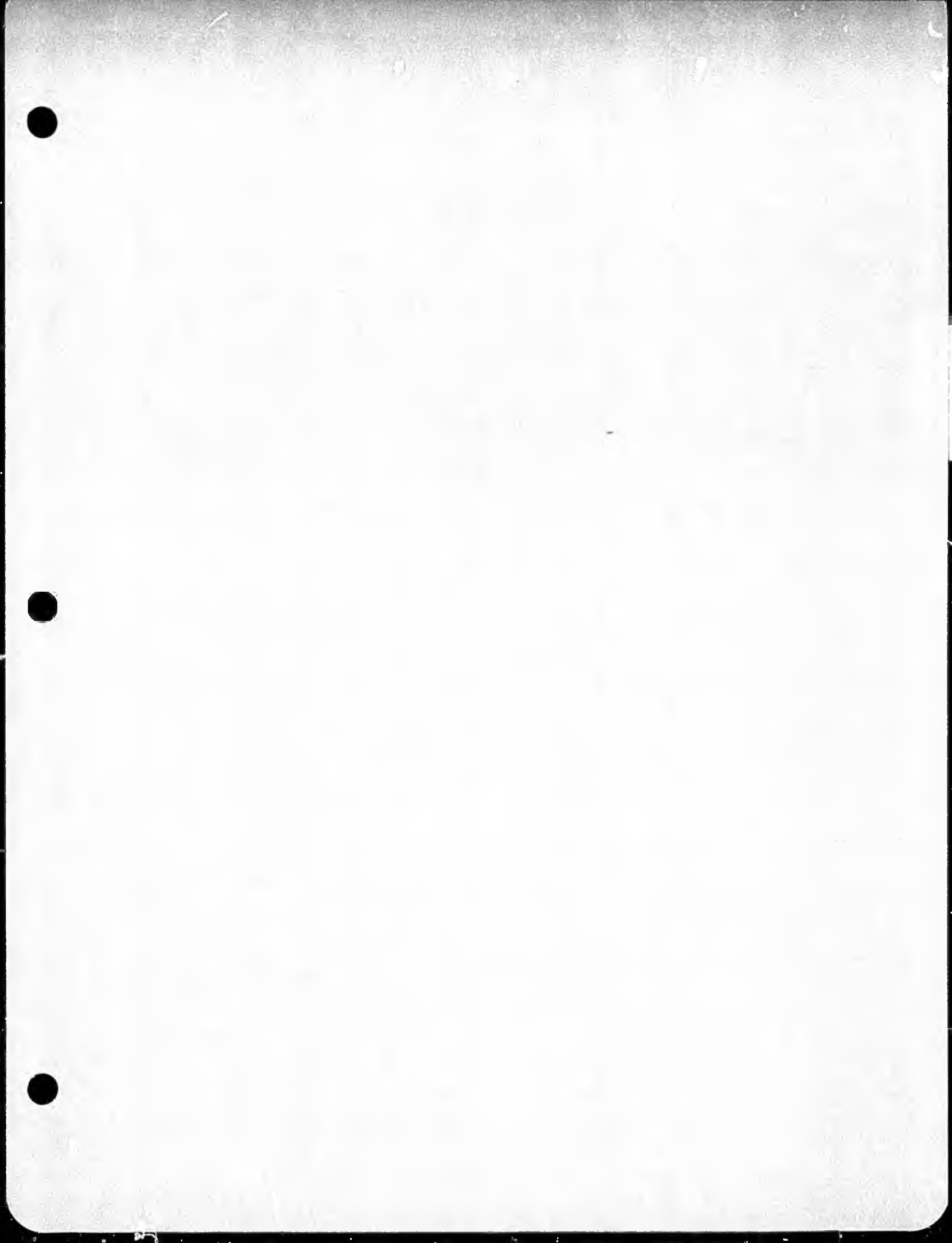
Subsection (d)(2) prevents the Railroad from utilizing the public benefits of direct or indirect subsidy (such as ability to issue tax-exempt bonds and freedom from taxation and license and permit fees) to undercut rates established in the competitive marketplace. This provision allows the Railroad to meet any rate for comparable service set by any privately owned and operated carrier irrespective of whether or not the Railroad can earn a profit by doing so. This section only prohibits the Railroad from using its subsidy to undercut the rates of the private carriers for comparable service. If the Railroad can price below the privately owned carriers and still earn a profit, it is certainly permitted to do this.

TOTE Proposed Amendments to Senate Bill No. 352

1. Add a new Subsection (d) to Section 1, as follows:

(d) It is the policy of the State of Alaska that the Alaska Railroad:

- (1) shall be subject to the antitrust laws of the State of Alaska, AS 45.50 471 - 45.50. 596, and to the antitrust laws of the United States, as defined in 15 U.S.C. 12, to the same extent as privately owned and operated railroads;
- (2) shall not use direct or indirect subsidy to compete unfairly with privately owned and operated carriers; and
- (3) shall not offer motor or water transportation services in competition with services offered on the date of transfer by privately owned and operated motor or water carriers.



Served November 3, 1983

31473

INTERSTATE COMMERCE COMMISSION

EX PARTE No. 346 (SUB-NO. 8)

EXEMPTION FROM REGULATION—BOXCAR TRAFFIC

is essential to restore the viability of this service. Although boxcars have been the mainstay of rail freight handling equipment, recent decades have seen a steady decline in their use. As competition from the trucking industry has become ever sterner, boxcar service has lost much of the truck compatible traffic and has lost varying amounts of the remainder of the traffic that historically moved by boxcar.⁴ This trend will not be arrested unless the railroads can enhance the attractiveness of boxcar service through cost reduction and more flexible pricing. The exemption will make these possible.

II. THE FREIGHT RATE EXEMPTION

We exempted virtually all boxcar service from freight rate regulation, finding, as required by 49 U.S.C. 10505(a), that continued regulation was not needed to carry out the rail transportation policy of 49 U.S.C. 10201 or to protect shippers from abuse of railroad market power.⁵ The major question raised on appeal concerns the applicability of the freight rate exemption to the ARR.

A. Exclusion of Alaska Railroad.—In exempting boxcar freight rates, we found, among other things, that continued regulation was not necessary to prevent predatory pricing (i.e., below-cost pricing aimed at elimination of competitors). We specifically found that predatory pricing on the part of the ARR was highly unlikely.⁶

Sea-Land Service, Inc. (Sea-Land) and Totem Ocean Trailer Express, Inc. (Totem) contend that they are potential victims of predation by ARR and seek its exclusion from the exemption. They offer transportation between the west coast and Alaska that competes, to some degree,⁷ with the service of ARR. Totem transports trailers in "Ro-Ro" (roll on/roll off) vessels and Sea-Land transports containers in container ships. They connect with Alaskan motor carriers or with ARR's TOFC/COFC service. ARR operates only within Alaska. It handles traffic from the west coast in conjunction with Alaska Hydrotrain, which transports rail cars on barges. ARR's water/rail service handles less than 25 percent of the Alaska trade. Sea-Land carries about 45 percent, and Totem about 25 percent. Sixty-five percent of ARR's traffic moves in boxcars.

Sea-Land's strongest argument is that the Commission is precluded from exempting ARR's boxcar service by a court decision which disap-

⁴ Some former boxcar traffic has migrated to other types of rail equipment, such as covered hopper cars (in the case of grain) or trailers and containers on flat cars (TOFC/COFC service).

⁵ *Boxcars* at pp. 426-46.

⁶ *Boxcars* at pp. 441-2.

⁷ The commodities carried by the ARR tend toward bulk while that of Sea-Land and Totem tend more toward time-sensitive shipments. They compete for traffic such as lumber, sheetrock, plywood, insulation, drilling muds, drill pipe, dry groceries, general machinery, fabricated and unfabricated iron and steel, canned foodstuffs, roofing material, soda pop, newsprint, animal feed, and fertilizer.

proved exemption of ARR's TOFC/COFC service.⁸ We have closely examined the factors that were cited by the court in light of additional facts and changed laws available on the present record. In our view, they do not show that continued regulation of ARR's boxcar service is necessary to prevent predatory pricing.

The first problem cited by the court in TOFC/COFC is that ARR is government-owned and subsidized. The court concluded that, even if deregulated, ARR's rates will not be controlled by competitive market forces. For clarity in discussing this point, we think that the market forces which control rate increases must be distinguished from those which control rate decreases. In a free market, rate increases are controlled by competition because a purchaser can refuse to pay an increased rate if a substitute service is available more cheaply from a competitor. We think there can be no doubt that ARR's power to impose rate increases is strictly controlled by the existence of competitors, regardless of government ownership or subsidies.

Rate decreases in a free market are limited, not by competitive forces, but by a firm's own costs. Government ownership and subsidies are certainly relevant in that they could enable a firm to price below its costs. Whether the subsidy of ARR warrants continued regulation, however, depends on the extent of the subsidy and the nature of our regulation. The subsidy ARR receives is not for freight operating costs, but for capital expenditures and passenger service costs. This subsidy would be unlikely to lead us to find that particular ARR rates are unlawful. We have no authority to find rates unreasonably low if they cover the costs that vary directly with the level of transportation provided under the involved rate.⁹ As we have defined the directly variable cost concept, it includes only the line-haul cost of the lading, applicable switching and station clerical costs, and other costs specifically shown to vary with the level of traffic.¹⁰ Capital costs that do not vary with the level of traffic under the involved rate would not be included.

Even rates below the presumptive cost floor are not necessarily unlawful.¹¹ ARR's government owners, whether Federal or State¹² could well have legitimate reasons for public policy for subsidizing its rates. As long

⁸ *American Trucking Association v. ICC*, 656 F.2d 1115 (5th Cir. 1981) (TOFC/COFC).

⁹ 49 U.S.C. 10701a(c)(4)(B).

¹⁰ *Cost Standards for Railroad Rates*, 364 I.C.C. 898 (1981).

¹¹ *Id.* at 902. The presumptive cost floor includes only the line-haul cost of the lading and applicable switching costs and station clerical costs.

¹² A transfer of ARR to the State of Alaska could occur in 1984 under the provisions of the Alaska Railroad Transfer Act (ARTA), Public Law 97-468, 96 Stat. 2577. The Commission has promulgated an expedited modified procedure for providing a certificate of public convenience and necessity on the date of transfer. Ex Parte No. 446, *Alaska Railroad Certification* (not printed), served June 17, 1983. As we (footnote continued on next page)

as this policy was not aimed at driving private transportation companies out of business, it would not be our place to interfere. We see no reason for the Federal government or Alaska to set out to destroy Sea-Land and Totem, since the transportation services provided by these companies are beneficial to the State of Alaska. Thus, in our view, even though ARR is government-owned and subsidized, that is an insufficient reason for continued regulation of ARR's boxcar rates.

The second factor cited by the court is that ARR is immune from anti-trust laws. The importance of this factor is greatly diminished, however, by the existence of other checks on ARR's abuse of pricing freedoms. At the present time, as a federally-owned railroad, ARR is subject to close scrutiny by Congress and by DOT. It cannot begin to engage in the kind of drastic price cutting that would undermine the viability of its competitors without arousing immediate reactions from those with ultimate control over it. The Commission, can readily revoke ARR's exemption and step in if ARR were to engage in a campaign of true predation against its competitors. Moreover, once the ownership of ARR is transferred to the State of Alaska, it will be subject to the antitrust laws.

The third factor, which understandably may have carried the most weight with the court, was Congress's then-recent direction that the Commission investigate whether ARR's rates were predatory. The court held that the Commission had included ARR in the TOFC/COFC exemption in the face of this congressional concern about possible predation. Even though the Commission had concluded a study¹³ showing that ARR's rates covered its costs of service, the court noted that Congress had not yet had time to respond to the study. The passage of time has placed this particular circumstance in a different light. Congress has accepted the Commission's rate study¹⁴ and has taken no action that would indicate dissatisfaction with its conclusions.

Beyond the factors that concerned the court, Sea-Land takes issue with our conclusion that, "since there would be no barrier to rapid reentry of competing water-motor service, ARR could not enjoy a sustained period of post-predation monopoly pricing." Our point was that ARR would never attempt to eliminate its competitors by below-cost pricing, because it could not later preserve a monopoly long enough to recoup its losses.

(footnote 12 continued)

there noted, the Commission's authority over the federally owned ARR is exercised under Executive Order No. 11107 (superseded July 19, 1981, by Executive Order No. 12434). After the date of transfer to the State of Alaska, we will have statutory jurisdiction as provided in section 601(a)(1) of the ARTA. In each case, we regulate ARR under the provisions of 49 U.S.C. Subtitle IV and other applicable laws. The applicability of certain provisions of the Alaska Railroad Act (ARA) is discussed later in this part of the decision.

¹³ Study of Alaska Railroad Water/Rail Contract Rates and Water/Rail Tariff Charge Rates, submitted to Congress June 15, 1981.

¹⁴ See S. Rep. 97-109, 97th Cong., 2d sess. 10 (1982).

Sea-Land argues that the high cost of ships and terminals would be a major barrier to reentry once competitors were eliminated. We grant that reestablishment of ocean transport operations would not be quite as easy as reentry of motor carriers, but we think Sea-Land overstates the obstacles. Even though ships and terminals are large investments, they would not have to be bought or constructed new by a fresh competitor. Present facilities would not be scrapped by a failing company, but simply sold or leased to other companies or closed down. These facilities would be available to new competitors if ARR attempted to set prices at monopolistic levels. We do not believe that ARR could hope to eliminate companies such as Sea-Land or Totem by predatory pricing before governmental forces would intervene.

Sea-Land next argues that the Commission has no power to exempt any service of the Alaska Railroad from regulation even if the criteria of section 10505(a) are satisfied. It bases this argument on a provision in the ARA that the rates fixed by the President for the ARA "shall be equal and uniform." Sea-Land considers exemptions to be inconsistent with that requirement because they would permit ARR to adopt unequal and nonuniform rates.

The requirement that DOT, through authority delegated by the President,¹⁵ establish "equal and uniform rates" for the ARR, does not create a standard to be enforced by the Commission. We regulate ARR's rates under portions of 49 U.S.C. Subtitle IV that are specified by Executive Order.¹⁶ Subtitle IV contains no requirement that rail rates be "equal and uniform."¹⁷ Moreover, even if the "equal and uniform" requirement were a mandate to the Commission, it would not require a regulatory program aimed at predatory pricing. Predation concerns rate levels in relation to costs, not rate uniformity.

As DOT correctly observes, if the "equal and uniform" language prohibited the Commission from exempting a service of the ARR, it would also prevent us from approving the use of contract rates by the ARR, since contract rates can be unequal and nonuniform. Yet Congress itself has acknowledged the existence of ARR contract rates and has not condemned them as inconsistent with the ARA.

Sea-Land also cites a provision in the ARA that the ARR shall "perform generally all the usual duties of a common carrier by railroad." We are unable to see how this provision could require exclusion of ARR

¹⁵ Executive Order No. 12434, section 1.

¹⁶ Executive Order No. 12434, section 3. We issued a notice of voluntary compliance with this new Executive order on July 25, 1981.

¹⁷ The prohibition against unreasonable discrimination in 49 U.S.C. 10741 permits rate discrepancies based on differences in service, traffic, or other circumstances. It does not apply to rail rates applicable over different routes, to contract rates, or to certain other rates.

from an exemption granted to other common carrier railroads. If Congress intended ARR to be subject to stricter Commission regulation than other railroads, it would have so stated explicitly.

In enacting the ARTA, Congress expressed its intention that the ARR shall be given "all business opportunities available to comparable railroads."¹⁸ Similarly, Executive Order No. 12434,¹⁹ under which the Commission now voluntarily regulates ARR rates, provides that "[s]uch rates shall be filed with the Interstate Commerce Commission to the same extent as rates are filed by comparable carriers subject to its jurisdiction." Thus, we see no basis for the view that we are powerless to give ARR the benefit of an exemption that will apply to all other railroads.²⁰

Continued regulation of ARR's boxcar operations would serve, not to protect Sea-Land and Totem from predation (for no protection is needed), but to foreclose ARR from efficiency gains that would make it a more effective competitor in the normal course of business. Certainly, we would not exclude ARR from the exemption to serve that objective. Neither transportation law nor Commission policy is offended by bona fide competition that is not predatory in nature. While Sea-Land and Totem may have to work harder to defend their present dominant share of the Alaska trade, we see no reason to fear that the exemption will lead to their disappearance from this market.

B. Other freight rate exemption issues.—One of the arguments made by several carriers in the initial comments was that the Commission should grant exemptions by specific commodities rather than granting a broad exemption for all traffic transported in boxcars. This point of view is reiterated without additional support by the Chicago and North Western Transportation Company. As we have previously explained, a major goal of the exemption is the competitive revitalization of boxcar service. This goal requires freedom from regulation for the entire field of service. It cannot be accomplished within a reasonable period of time by piecemeal commodity-by-commodity exemptions.

Canadian carriers²¹ assert that the exemption will be incompatible with the Canadian scheme of regulation, which requires tariff filings but does

¹⁸ Public Law 97-468, 96 Stat. 2577, section 608(a)(2).

¹⁹ Published July 21, 1983, at 48 F.R. 33229.

²⁰ It is clear for another reason that the Commission has the authority to relieve ARR from the requirements of the Interstate Commerce Act which were made applicable by Executive order. Section 3 of the order specifically subjects ARR to subchapter I of chapter 105 which includes the exemption authority (49 U.S.C. 10505).

²¹ The Canadian National Railway Company and Canadian Pacific Limited.

not regulate rate levels. Their specific complaints about the exemption are no different from those made by domestic carriers and have no special bearing on cross-border movements. We have retained jurisdiction over matters of car supply and mandatory interchange. The exemption does not relieve carriers of an obligation to provide contractual terms for loss and damage liability. Although tariffs will be required by the Canadian government and not by us, the two systems are merely different, not incompatible. Carriers should have no difficulty conforming to the applicable regulatory scheme of either country. They do this now in transporting other commodities that we have exempted. We note that the Canadian government itself has not objected to the exemption.

Finally, a few of the pleadings repeat earlier assertions that the exemption will lead large carriers to eliminate joint rates, to the detriment of small carriers. We considered this argument at length in *Boxcars*²² and concluded that it was without foundation. We observed that joint rates can generally be eliminated even under regulation, particularly on unprofitable traffic,²³ although litigation can make the process unnecessarily expensive and time consuming. Through traffic can continue to be handled even in the absence of joint rates. Most importantly, we saw no reason to expect major carriers to disrupt the movement of profitable traffic originated by small carriers, for they, too, benefit from the revenue earned on this traffic. Thus, where joint rates enhance the attractiveness of through rail service, we expect that they will continue to be offered even in the absence of regulation. Nothing said in the petitions leads us to doubt the correctness of these observations.

Several class III carriers have argued that the exemption is inconsistent with specific protections for class III carriers contained in 49 U.S.C. 10705a. In the absence of our use of the exemption power provided by 49 U.S.C. 10505, section 10705a would indeed place certain limits on the ability of carriers to impose surcharges or cancel joint rates. However, we believe that an exemption from section 10705a (along with other ratemaking provisions of chapter 107) would further the rail transportation policy of section 10101a without leading to abuse of market power.

The rail transportation policy of section 10101a strongly favors competitive ratemaking where competition is possible. As explained in our prior decision, boxcar traffic is especially subject to diversion to other

²² 367 I.C.C. at 443-44.

²³ Joint rate surcharges and cancellations on traffic that makes little or no contribution above variable cost are readily permitted under 49 U.S.C. 10705a. Other joint rate cancellations are governed by the public interest standard of 49 U.S.C. 10705(e). The Commission has indicated that this provision is not to be considered in a vacuum. It should be applied consistently with the overall policy of the Staggers Rail Act that the Commission intervene only when there are inadequate economic restraints on railroad market power. See Ex Parte No. 445, *Standards for Intramedal Rail Competition*, notice of denial of petition for rulemaking served July 7, 1983 (published July 11, 1983), at 48 F.R. 31672.

modes and consequently will not bear excessive rate increases. What matters to the shipper is the origin-to-destination rate, not the size of the connecting railroad of origin or destination. In other words, after excessive rate increases on boxcar traffic, diversion would take place regardless of whether the traffic moved jointly with a class III railroad or moved solely on a class I railroad. This gives long haul class I railroads an incentive to hold down rates that they would charge for transportation to junctions with class III carriers in the absence of joint (single factor) rates for the origin-to-destination movements. In fact, if the boxcar exemption experience even partially duplicates our experience with deregulation of TOFC/COFC service, traffic will be attracted back to boxcars, and some of the added traffic is bound to move over class III carriers.

Of course, if a joint movement of boxcar traffic with a class III carrier were inherently inefficient or unprofitable, then the larger carrier could be expected to use the exemption to remedy the situation rather than to tolerate an indefinite cross subsidy of the joint movement at the expense of other traffic or its ability to earn adequate revenues. This, however, would be entirely consistent with the rail transportation policy and with the policies of other sections of our governing statute.²⁴ Carriers cannot afford the luxury of preserving inefficient routes when competitive pressures force them to reduce costs as much as possible.²⁵ The very purpose of a section 10505 exemption is to eliminate unnecessary regulatory restraints on price and service changes which may be found in our governing statute. Given the pervasive competition for boxcar traffic, the rail transportation policy of section 10101a does not require retention of restrictions on ratemaking for through boxcar service involving class III carriers.

As already noted, we expect no loss of service on efficient routes.

No new arguments were raised in the petitions concerning other aspects of the freight rate exemption. Thus, we reaffirm our previous conclusions on this subject without further discussion.

²⁴See, e.g., 49 U.S.C. 10101a(10) and 10707a(e)(2)(C), both of which favor the elimination of non-compensatory rates.

²⁵The Commission has clearly stated that it does not favor rate equalization between efficient and inefficient routes, as follows:

Nor do we think it would be in the public interest for carriers to attempt to maintain equalized rates over competing joint routes. Obviously, some of the many routes between two points will be much more costly than others. If railroads are to compete effectively with other modes, a more efficient route must be permitted to carry a lower rate. It should not be priced at the same level as other joint rates between the points involved. The railroads, faced with a declining market share, must be free to make rate adjustments necessary to attract or retain traffic.

Traffic Protective Comm'n, 366 I.C.C. 112 at p. 122 (1982). See also *Guilford Transp. Industries, Inc. - Control - D&H Ry Co*, 366 I.C.C. 396, 408-09 (1982).

III. THE CAR HIRE EXEMPTION

A. *Background.*—Car hire regulation, like freight rate regulation, has been an obstacle to pricing flexibility and cost reduction in boxcar service. The rentals railroads pay for use of one another's cars are based on a formula prescribed by the Commission.²⁶ Each day that a car is on the lines of another carrier, the car's owner collects the prescribed rental charge, not only while the car is loaded, but even after it is unloaded, regardless of whether the car stands idle on the other carrier's lines, is reloaded for return movement, or returns empty.

A phenomenon caused by this system especially during periods of low traffic movement, such as the present, is the unnecessary cross hauling of empty cars. A carrier with a shipment to load for transport to a destination on another carrier's lines, and with an empty car of that carrier available, generally returns that carrier's car empty and loads the shipment in its own car. When the shipment is delivered and the other carrier has a shipment to load in the reverse direction, it too returns the available car empty, and loads the shipment in its own car. Under the present rules, each carrier often finds that it is a net benefit to load its own car and collect car hire from the other carrier, rather than to load the other carrier's returning car and collect only its share of the freight revenue.²⁷ Obviously, this unnecessary hauling of empty cars inflates each carrier's operating costs compared to costs that would be incurred in loading the returning foreign car and avoiding unnecessary movement of the orig-

²⁶The formula distributes the annual car ownership costs, including return on capital investment, over the number of days that a car is "active" (i.e., not stored on the owner's lines). Given the purchase price and age of a car, this formula produces the daily and per-mile rental charge that the car is entitled to earn. See *Car Service Compensation—Basic Per Diem Charges*, 358 I.C.C. 715 (1977) and 362 I.C.C. 884 (1980).

²⁷In each case the carrier must compare the following costs and benefits:

<i>Using a system car</i>	<i>Using a foreign car</i>
1. Car-hire cost of foreign car returned empty to gateway	Car-hire cost on foreign car returned loaded to gateway
2. Operating cost of moving foreign car empty to gateway	Operating cost of moving foreign car loaded to gateway
3. Operating cost of repositioning system car for loading	Operating cost of repositioning foreign car for loading
4.	Car-hire cost of holding and repositioning foreign car for loading
5. Operating cost of moving system car loaded to gateway	
6. Car hire revenue earned by system car while off line	

(footnote continued on next page)



INITIAL POSITION STATEMENT
OF THE ALASKA TRUCKING ASSOCIATION, INC.

Submitted by T. J. Thrasher,
Managing Director

The ALASKA TRUCKING ASSOCIATION, INC. (ATA) supports in full the continued existence of the Alaska Railroad as an essential part of the Alaskan transportation network. As a representative of the Alaska trucking industry, the ATA feels very strongly, however, that the bills have certain defects which should be legislatively corrected before adoption by the Legislature.

There are serious concerns regarding the impact that state ownership of the railroad could have on privately-owned transportation entities. The ATA feels that the future integrity of privately-owned shippers and carriers should be preserved in such a manner so as to allow the citizens of Alaska to enjoy the benefits of strong, vigorous and fair competition among all modes of freight service for the movement of cargo between the contiguous United States and Alaska and within Alaska.

The members of the ATA are also major shippers with the railroad. Our concerns are both as competitors and as shippers.

COMMENTS

1. On page 10 of House Bill 512 and page 10 of Senate Bill 352, reference is directed to Section 42.40.300, "General Powers." In addition to the exercise of other powers authorized by law, the corporation may:

(16) determine routes, schedules, and types of service to be provided by the Alaska Railroad; ...

(18) plan for and undertake expansion of the railroad and railroad activities, including extension of the Alaska Railroad's rail system, and contract with other modes of transportation service connecting to the railroad's rail services;
...

It is not clear whether the state-owned railroad would compete with the existing non-rail transportation system. For example, will the railroad be able to form a competing trucking company, freight forwarder or water carrier to compete with existing private modes of transportation? The ATA believes language should be inserted in the bill to prevent such competition. A state-owned railroad must not be allowed to expand its operations and service beyond the railway into other modes of transportation. The state-owned railroad must continue to utilize other private modes of transportation connected to the railway system.

2. On page 10 of House Bill 512 and page 10 of Senate Bill 352, reference is directed to Section 42.40.300, "General Powers." In addition to the exercise of other powers authorized by law, the corporation may "(15) prescribe rates to be charged for services provided by the Alaska Railroad on a competitive basis ..." The ATA does not object to fair competition. If the real costs of operating the railroad result in inherent cost advantages and hence lower rates, there is no objection.

However, the bill does not deal with two important issues which will confront every shipper. First, rates should not be discriminatory. There is no prohibition on discriminatory rates in the legislation. Second, rates should be based on the real cost of providing the service. Again, the only legislative command is that there be competitive rates. Thus, if the railroad sets its rate levels below the cost of providing the service, then the only way to makeup the resulting deficiency is through a legislative appropriation.

Apparently, up to \$100,000,000 of funding is contemplated over the next ten to twelve years according to news reports in Anchorage. The ATA believes that to underwrite an

entity, tell that entity to be competitive and then tell private enterprise that somehow this is fair competition is unsound public policy. It is essential that the state-owned railroad compete with air, water and motor freight carriers fairly, and that rates for railway service are non-discriminatory, reasonable and just and are established on a cost-based rate. That is, the rates must be based on the real cost of providing the service. The state-owned railroad must not be allowed to instigate pricing policies that would eliminate reasonable competition among the other modes of transportation.

3. The third major area of concern is that many significant financial arrangements entered into by the railroad such as certain shipper agreements are not subject to public disclosure. The specific references are to A.S. 42.40.200-42.40.270 found on pages 7 and 8 of the bills. The bill exempts several important areas from any public disclosure whatsoever. For example, rate agreements with shippers may be negotiated in executive session (see A.S. 42.40.200) and are not subject to public disclosure (A.S. 42.40.270(b)), and, in fact, cannot even be disclosed through legislative audit (A.S. 42.40.270). While appreciating the need for confidentiality for some of these arrangements, there should be some means for a competing shipper to have access to such information to insure that shippers with similar circumstances have equal rate treatment to further insure that the agreements are equitable and non-discriminatory.

4. Also, the ATA notes that none of the rulemaking by the Railroad Corporation is subject to the rulemaking provisions of the Administrative Procedures Act. See A.S. 42.40.900(a)(10), page 27 of the bills. Thus, there is no opportunity for public comment on what the Railroad Corporation will do.

CONCLUSION

These comments are only generalized at this time. As the bills progress through the Legislature, the ATA will have a further opportunity to review these bills and offer constructive comments. Further, the ATA, at the time of this writing, has been informed that the Rules Committee, by request of the Governor, has just introduced Senate Bill 370 which the ATA has only just received and has been unable to study. The ATA asks leave to make appropriate comments on this bill as well. Legislation that addresses the operation of the Alaska Railroad by the State must include safeguards that will encourage increased productivity within the private sector and less reliance on the State to provide services that can be provided by the private sector. The legislation must also recognize that the railroad is now a publicly-owned entity and some of the safeguards expected by the people of any publicly-owned entity should be included in the legislation.



TESTIMONY

BEFORE

THE ALASKA HOUSE AND SENATE TRANSPORTATION COMMITTEES

JANUARY 26, 1984

JUNEAU, ALASKA

H. L. SCHUYLER

SEA-LAND SERVICE, INC.

I AM HAROLD L. SCHUYLER, DIRECTOR OF PUBLIC AFFAIRS FOR SEA-LAND SERVICE, INC.'S ALASKA DIVISION.

WE, AT SEA-LAND, DO NOT OPPOSE THE TAKEOVER OF THE ALASKA RAILROAD BY THE STATE OF ALASKA FROM THE FEDERAL GOVERNMENT. THE RAILROAD IS NECESSARY FOR THE FUTURE GROWTH OF ALASKA RESOURCE DEVELOPMENT AREAS AND COMMUNITIES. COAL, MINERALS, AND FARMING PRODUCTS MUST HAVE AVENUES TO TIDEWATER PORTS IN ORDER TO BE EXPORTED TO WORLD MARKETS. THE MARKET FOR ALASKA'S MINERALS, WOOD PRODUCTS, AND GRAINS WILL BE FOREIGN, AND THE MOST ECONOMICAL METHOD TO MOVE BULK CARGOES TO TIDEWATER IS BY RAIL.

WE HAVE ANALYZED IN GREAT DETAIL SENATE BILL NO. 352 AND HOUSE BILL NO. 512 AND APPLAUD THEIR IMAGINATIVE AND FAR-REACHING PURPOSE; HOWEVER, WE, AT SEA-LAND, ARE CONCERNED ABOUT THE ADMINISTRATION, OPERATION, POLICIES, AND RULES AND REGULATIONS UNDER WHICH THE ALASKA RAILROAD AUTHORITY WILL BE OPERATING IN CARRYING OUT ITS MISSION.

AS PRESENTLY DRAFTED, THE LEGISLATION PROVIDES US THE FOLLOWING CONCERNS:

1. A STATE OWNED ENTITY WHICH IS EXEMPT FROM ALL FEDERAL, STATE, AND LOCAL TAXES HAS A GREAT ADVANTAGE OVER OTHER COMPETITIVE MODES OF TRANSPORTATION THAT ARE PAYING TAXES TO THE FEDERAL, STATE, AND LOCAL COMMUNITIES.
2. THE OPPORTUNITY FOR THE PROPOSED RAILROAD AUTHORITY TO SELL BONDS OR BOND ANTICIPATION NOTES AS TAX EXEMPT VEHICLES GIVES THE AUTHORITY ANOTHER DEFINITE EDGE IN OBTAINING CAPITAL FOR IMPROVEMENTS AS COMPARED TO PRIVATE TRANSPORTATION THAT MUST COMPETE FOR MONEY IN THE OPEN MARKET, PAYING CONSIDERABLY HIGHER INTEREST RATES THAN DOES THE STATE GOVERNMENT.

3. THE RAILROAD AUTHORITY IS VESTED WITH THE ABILITY TO ACQUIRE AND OPERATE OTHER MODES OF TRANSPORTATION SERVICE CONNECTING TO THE RAILROAD'S RAIL SERVICE IN DIRECT COMPETITION WITH PRIVATE TRANSPORTATION. THIS ALLOWS THE RAILROAD TO BUY TRUCK LINES, WATER CARRIERS, AND AIRLINES. THIS PART OF THE BILL IS PARTICULARLY WORRISOME AS THE ALASKA RAILROAD AUTHORITY COULD VERY WELL BECOME A STATE TRANSPORTATION SYSTEM WITH NO COMPETITION AS THE PRIVATE SECTOR WOULD NOT BE ABLE TO FINANCIALLY COMPETE WITH THE AUTHORITY. THERE IS ALSO THE FACT THAT THE STATE WOULD LOSE A CONSIDERABLE AMOUNT OF TAX BASE IF AND WHEN PRIVATE SECTOR TRANSPORTATION COMPANIES ARE FORCED OUT OF BUSINESS.

4. THE LEGISLATION LIBERALLY DISCUSSES RATE MAKING, AND RATE POLICY. THE ESTABLISHMENT OF RATES FOR ALASKA RAILROAD AUTHORITY'S REVENUES WILL EFFECT THE PRIVATE CARRIERS OF OTHER MODES OF TRANSPORTATION. WE ARE CERTAINLY NOT SUGGESTING THAT THE LEGISLATURE DICTATE THE AUTHORITY'S RATE POLICIES, HOWEVER, WE FEEL THAT ALL RATES PRESCRIBED BY THE AUTHORITY MUST BE AT A LEVEL SUFFICIENT TO RECOVER THE FULL COST OF PROVIDING THE PARTICULAR TRANSPORTATION CONCERNED, TAKING INTO FULL ACCOUNT THE LEVEL OF SUBSIDY AND THE COST OF BORROWED CAPITAL. SEA-LAND WOULD URGE SPECIFIC LEGISLATIVE AMENDMENTS WHICH WOULD PROHIBIT A STATE-OWNED RAILROAD FROM CHARGING RATES WHICH ARE BELOW THOSE CHARGED BY PRIVATELY-OWNED CARRIERS, FOR FREIGHT ON WHICH BOTH CARRIERS COMPETE, WHERE THE RATES DO NOT RECOVER THE FULL COST OF THE SERVICE OFFERED (TO INCLUDE ANY DIRECT OR INDIRECT SUBSIDY).

5. WE FEEL THE LEGISLATION NEEDS AN ANTITRUST PROVISION. THE LEGISLATION NEEDS TO BE AMENDED TO PLACE THE STATE-OWNED RAILROAD UNDER STATE ANTITRUST

LAWS. ALL OF THE PRIVATELY-OWNED WATER CARRIERS AND MOTOR CARRIERS ARE SUBJECT TO THE FEDERAL AND STATE ANTITRUST LAWS, AND WHILE THIS BODY CANNOT PLACE THE RAILROAD UNDER FEDERAL ANTITRUST LAWS, STILL IT IS OUR BELIEF THAT THE RAILROAD SHOULD BE SUBJECTED TO THE SAME LAWS AS ARE THE PRIVATE CARRIERS. IN SHORT, WE SHOULD ALL PLAY BY THE SAME RULES.

6. I AM SURE THIS COMMITTEE IS AWARE THAT THE STAGGERS RAIL ACT OF 1980 HAS VIRTUALLY DEREGULATED INTERSTATE RAIL SERVICE. AS A PRACTICAL MATTER, THE ALASKA RAILROAD AND ALL OTHER MAJOR RAIL LINES ARE TOTALLY UNREGULATED. WHILE DEREGULATION MAY BE GOOD IN THEORY, THE TRADE BETWEEN ALASKA AND THE LOWER 48 IS IN ESSENCE A MICROCOSM: ALL TRANSPORTATION MODES COMPETE DIRECTLY WITH EACH OTHER FOR THE SAME BASIC CONSUMABLES. WE READILY ACKNOWLEDGE THAT LARGE PORTIONS OF THE ALASKA RAILROAD'S FREIGHT ARE BULK COMMODITIES; STILL, ALL OF THE COMPETING MODES ARE REGULATED WHILE THE RAILROAD IS NOT, THUS GIVING THE RAILROAD A DISTINCT COMPETITIVE EDGE WHICH CAN BE SUBJECT TO ABUSE.

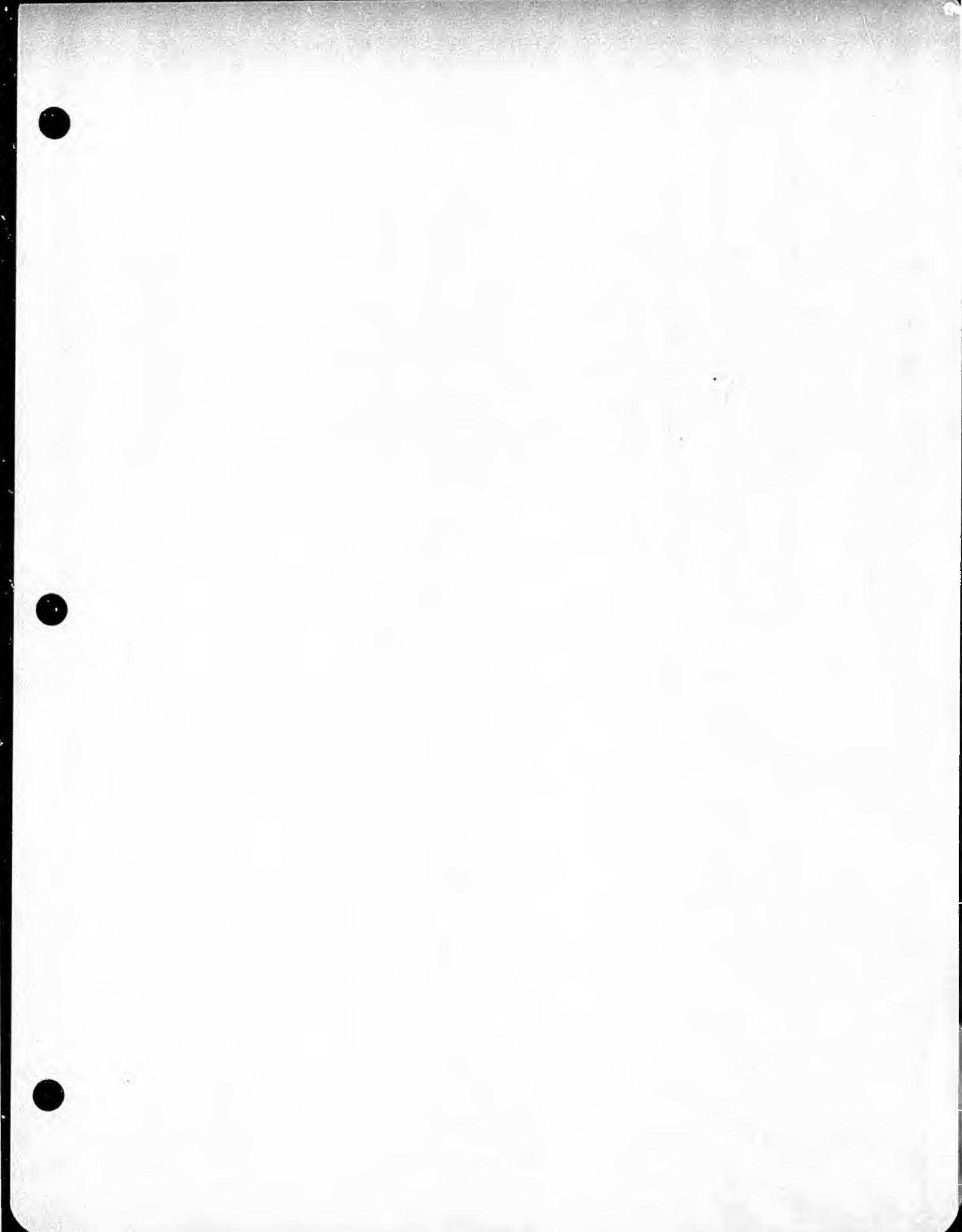
7. THE BILL PROVIDES FOR THE ESTABLISHMENT OF CONTRACT RATES BY THE RAILROAD. THE STAGGERS ACT ALLOWS CONTRACT RATES BUT THAT LAW CONTEMPLATED THE RAILROADS ENTERING INTO CONTRACTS WITH MAJOR SHIPPERS WHOSE CARGO THEY HAD HISTORICALLY HANDLED FOR THE BENEFIT OF BOTH. THAT CONTRACT ABILITY WAS NOT ENVISIONED TO BE USED AS A COMPETITIVE TOOL, AS IT HAS BEEN UTILIZED BY THE ALASKA RAILROAD. SEA-LAND HAS CHALLENGED THESE PRACTICES, BOTH BEFORE THE INTERSTATE COMMERCE COMMISSION AND IN THE COURTS, TO NO AVAIL BECAUSE THE RAILROAD IS UNREGULATED AND IMMUNE FROM SUIT WHILE OWNED BY THE FEDERAL GOVERNMENT. WE CANNOT LEGALLY ESTABLISH CONTRACT RATES AND, THEREFORE, CANNOT EFFECTIVELY COMPETE WITH SUCH RATES. WE URGE THIS BODY TO CRITICALLY SCRUTINIZE THAT PORTION OF THE BILL AND DELETE SUCH PROVISIONS FROM THE LEGISLATION.

8. ARTICLES 4 AND 5 OF THE LEGISLATION PROVIDE FOR THE AUTHORITY TO EXERCISE THE STATE'S POWER OF EMINENT DOMAIN/CONDEMNATION. SEA-LAND DOES NOT CHALLENGE THE STATE'S ABILITY IN THIS AREA, BUT WE STRONGLY FEEL THIS RIGHT SHOULD NOT BE LODGED WITHIN THE AUTHORITY BUT SHOULD BE RESERVED TO THE STATE TO PRECLUDE ANY COMPETITIVE USE OR ABUSE. IT IS A SIMPLE MATTER FOR THE RAILROAD AUTHORITY TO APPROACH THE STATE TO OBTAIN THE ABILITY TO ACQUIRE THE NECESSARY RIGHTS OF WAY.

9. SEA-LAND NOTES THAT THE AUTHORITY CAN DETERMINE WHAT INFORMATION IT KEEPS CONFIDENTIAL. WE URGE THAT THIS ABILITY IS SUBJECT TO POSSIBLE ABUSE. AT A MINIMUM, ALL RATES, RULES, PRACTICES, DIVISIONS OF REVENUE, CONTRACTS, IF ANY, AND COST DATA MUST BE OPEN TO PUBLIC INSPECTION.

WE, AT SEA-LAND, ARE NOT HERE MERELY TO TELL YOU WHAT IS WRONG WITH THIS PROPOSED LEGISLATION. WE WISH TO BE CONSTRUCTIVE AND ASSIST IN REACHING THE BEST POSSIBLE COMPROMISE WHICH WILL WORK TO THE BENEFIT OF THE STATE, ITS CITIZENS, AND THE TRANSPORTATION CARRIERS SERVING ALASKA, AS WELL AS TO SEE A VIABLE RAILROAD PAYING ITS WAY IN THE STATE OF ALASKA AND GROWING WITH THE RESOURCE DEVELOPMENT.

WE CERTAINLY WOULD LIKE TO THANK THE COMMITTEES FOR ALLOWING SEA-LAND SERVICE, INC. TO TESTIFY AND EXPLAIN OUR VIEWS. IT IS CERTAINLY NOT OUR INTENT TO HINDER THE RAILROAD'S OPERATION OR ITS DEVELOPMENT AND EXPANSION. THE RAILROAD IS A NECESSARY INGREDIENT FOR THE FUTURE OF THIS STATE. ALL WE ARE ASKING FOR IS FAIR COMPETITION FOR ALL MODES OF TRANSPORTATION IN THE ALASKA MARKET PLACE.



Testimony by the Resource Development Council for Alaska, Inc.
on Senate Bill 352 and House Bill 512 --
Purchase and Operation of the Alaska Railroad

The Resource Development Council for Alaska, Inc. is the state's largest private economic-development corporation. We are made up of individuals and organizations from throughout Alaska and the nation. We work together to influence decisions and policies to achieve a sound, diversified private-sector economic base for Alaska.

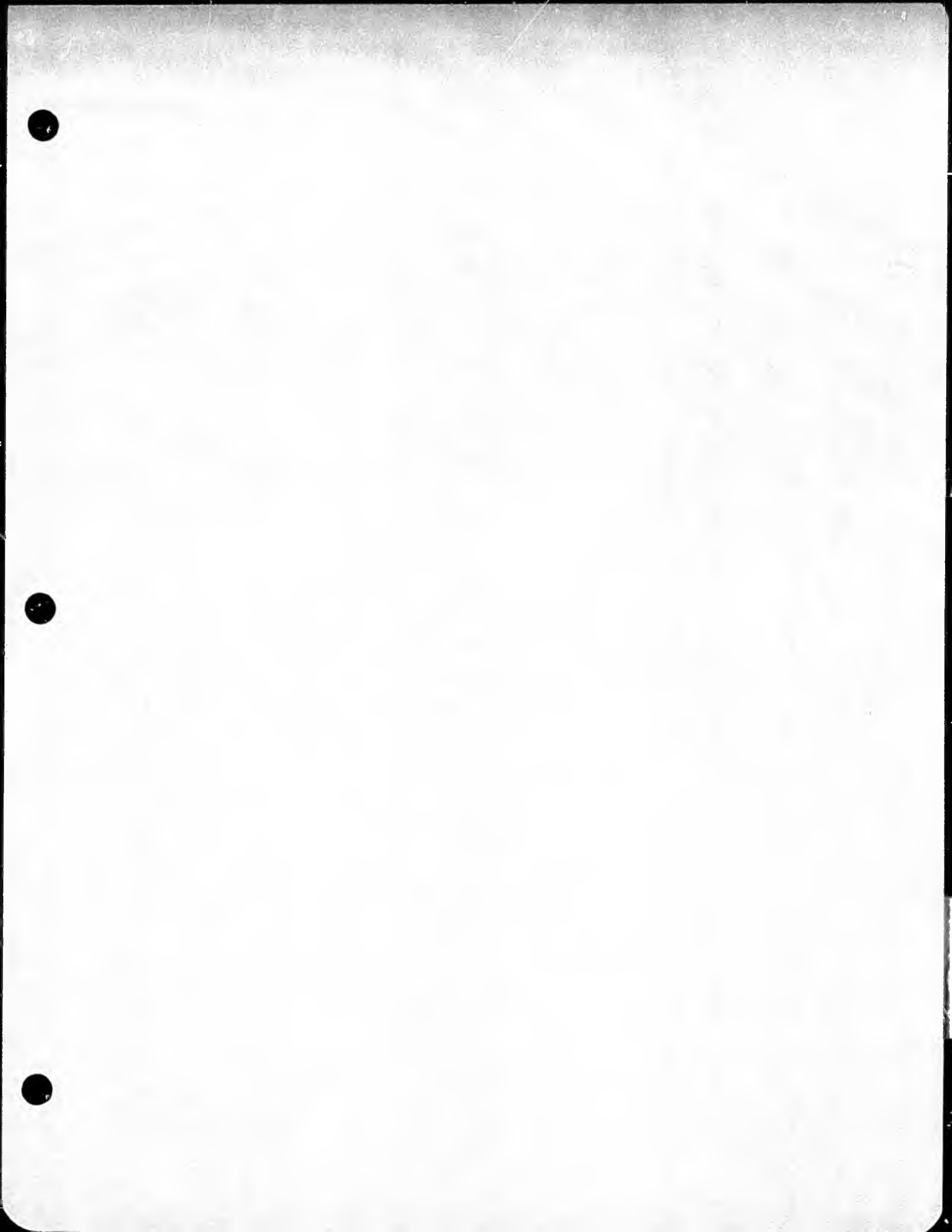
The Council has long supported the purchase of the Alaska Railroad and has urged that it be operated by the private sector. We have, therefore, a strong interest in Senate Bill 352 and House Bill 512.

Our Transportation Division has thoroughly analyzed the bills and compared them to our policy statements on transportation and the Alaska Railroad. We find the bills are compatible with and supportive of our stated policies.

The Alaska Railroad is the most viable alternative for accessing our vast resource potential and is essential to our economic security. All of Alaska can benefit from the purchase of the railroad and its use to provide our state with the goods and services that are taken for granted by the rest of the nation.

The Resource Development Council for Alaska wholeheartedly supports the passage of SB 352 and HB 512 as they are currently drafted. We urge that they be retained in their current form, except that we believe they would be strengthened if the last sentence of Section 42.40.250, Special Report, were changed to read: It shall make specific recommendations on ownership and operational alternatives and the transfer of all or part of the railroad to the private sector. The Council strongly urges that the powers given the Alaska Railroad Corporation be retained -- especially those given in Article 3, Rail Properties.

The Resource Development Council will work with all members of the legislature and the administration in addressing this critical issue.



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.