

S B

10

FILE No. 1

ALASKA RAILROAD TRANSFER PROJECT

WORK PLAN OUTLINE

The Alaska Railroad Transfer Act of 1982 was signed into law by President Reagan on January 14, 1983. This legislation establishes a detailed process for assembling the specific information necessary to a thorough consideration by the state of the transfer proposal, while also specifying the time framework for effecting an eventual transfer. Date of enactment serves as a trigger for several key provisions which involve a great deal of work activity in order to accomplish a thorough addressing of the transfer question. The following discussion highlights the major work tasks confronting the state, along with some explanation of the state's response to satisfy these requirements.

TASK #1 - TRANSFER TEAM ORGANIZATION.

A detailed organization is in the process of being established to direct all state activities pertaining to the railroad transfer. Because of the diverse nature of tasks involved and limited time available for work performance, an interdisciplinary team of state officials and outside expertise is necessary to accomplish the mission. Governor Sheffield has designated the Department of Transportation and Public Facilities to serve as the lead agency for all matters regarding the railroad transfer. As a result, Commissioner Dan Casey will serve as the state official responsible for the conduct of this project.

Commissioner Casey has appointed a transfer team of three individuals to direct all work activity regarding the proposed transfer. Mr. Mark Hickey of DOT/PF will serve as the staff coordinator and contact point for transfer team activities. Mr. Dave Walsh and Mr. Jack Day, who are in the process of being placed under contract to the state, will be working with Mr. Hickey to direct these efforts and will provide special outside expertise on certain specific aspects of the project. Mr. Jack McGee of the Attorney General's Office will also be working with this group, directing the legal research portions of the work. In this regard, the special services of the law firm of Wickwire, Lewis, Goldmark & Schorr will remain available to the state as needed. Additional state personnel from various agencies will be involved with specific aspects of individual tasks.

TASK #2 - FRA COOPERATIVE PROCEDURES/INFORMATION ACCESS.

Section 605(b) of the transfer legislation specifies the means by which the state can monitor railroad operations and inventory and evaluate rail properties prior to a decision to accept transfer. As part of this effort, the state will have to ascertain the position of the Federal Railroad Administration (FRA) regarding confidentiality limitations as also noted in Section 605(b). Additionally, there needs to be established a general framework for coordination of transfer duties and information access. Important in this area will be clear delineation of FRA liaison and contact personnel, along with explicit definition of current railroad management's role relative to

transfer proceedings. It is anticipated that FRA will respond to this project through some overview arrangement which includes an equivalent transfer team of federal personnel primarily dedicated to transfer activities. Assistance from other federal agencies, particularly the Department of the Interior, will also be important to the successful performance of transfer work.

Several steps have already been taken to address aspects of this task. FRA has appointed Mr. F. Colin Pease, Special Assistant to the Administrator, to serve as the responsible federal official for transfer matters. Mr. Pease is in process of appointing Mr. John Cikota of FRA to serve as the liaison contact on temporary duty at the railroad in Anchorage. Railroad personnel will serve as technical support staff for various transfer duties, but will not be directly involved in any of the policy aspects of the transfer. The Alaska State Office of the Bureau of Land Management has been designated as the lead DOI agency for transfer matters and has already established an Alaska Railroad Project Staff under the direction of Mr. Gary Bauer. Preliminary meetings have also occurred between the key state and federal personnel regarding coordination of transfer duties and information access procedures.

TASK #3 - STATE CONSENT FOR ARR ACTIONS.

During the period between date of enactment of the federal transfer legislation and the date of actual transfer, or an official negative response by the state to the transfer offer, certain specific types of actions and decisions by the Alaska Railroad (ARR) will require state consent. Section 605(b) specifies that the following actions fall into this category: (1) make or incur any individual capital expenditure in excess of \$300,000; (2) sell, exchange, give or otherwise transfer any real property; and (3) lease any rail property for a term in excess of five years.

Governor Sneffield has formally designated Commissioner Dan Casey to serve as the state official responsible for dealing with this matter. The transfer team is responsible for reviewing these items and forwarding recommendations to the commissioner for action. Mr. Hickey has been designated the responsible official for coordinating this activity. Information about specific items involving state consent is available through Mr. Hickey's office.

TASK #4 - CLOSING REPORT.

Section 605(a) requires the Secretary of Transportation and the Governor to prepare and deliver a report, commonly referred to as "the closing report", within six months from the date of enactment. It is envisioned that the Alaska State Legislature will have to review this report prior to authorizing final acceptance of the transfer. This document, which is intended to provide the state greater specificity regarding transfer particulars prior to final action on the offer, will describe all rail properties of the Alaska Railroad and the liabilities and obligations to be assumed by the state under the proposed transfer. Although the legislation contemplates that the federal and state governments will jointly prepare the closing report, the state has a greater

interest in its accuracy and completeness since since it will be the basis for subsequent transfer documents.

The following categories represent the major components which will be addressed within the closing report: (1) real property; (2) personnel obligations; (3) personal property; and (4) commercial/contractual/legal obligations. Each of these components will involve a process of identification and detailed description for inclusion within the closing report document. In the case of real and personal property, the parties will have to review systematically ARR records and conduct physical inventories where such records are considered inadequate or unreliable. There will also be a need to identify which of the real properties of the ARR are subject to claims of valid, existing rights and which are not. Finally, it will be necessary to offer some sense of personal property condition and the value of the railroad as going concern operation.

The state and the FRA have already discussed a procedure for agreeing jointly to the appropriate form and content of the closing report, as well as the actual process for drafting the various portions of the report. It is clearly understood that the FRA has the lead responsibility for the federal agencies involved with the transfer. Agencies of the DOI will support the FRA as a technical resource for matters pertaining to real properties, but they will not make any final decisions regarding policy questions. It is currently envisioned that a final draft of the closing report will be available for agency circulation by early June.

The following lists depict the specific resources being used by the state to address properly each component of this task. It should be added that these activities represent a line share of transition activities for the first six months following passage of the federal legislation.

ARR Real Property Team

Mark Hickey, Staff Coordinator
Dave Walsh, ARR Transfer Team Leader
Jack Day, ARR Transfer Team Leader
Jack McGee, Attorney General's Office
Sarah Kavasharov, Attorney General's Office
Tom Koester, Attorney General's Office
Jim Sandberg, DOT/PF - Right-of-Way
Ted Richards, DOT/PF - Right-of-Way
Bud May, DNR - Technical Services
Clyde Duren, DNR - DTS (Cadastral)
Carol Shobe, DNR - DTS
Tony Braden, DNR - DTS
John Hanley, Wickwire/Lewis
Greg O'Leary, Wickwire/Lewis

ARR Personnel Team

Mark Hickey, Staff Coordinator
Jack McGee, AG's Office
Tom Brewer, Wickwire/Lewis
DOA - Division of Personnel*
DOA - Div. of Ret. & Benefits*
DOA - Div. of Labor Relations*

ARR Personal Property Team

Mark Hickey, Staff Coordinator
Jack Day, ARR Transfer Team Leader
Jack McGee, AG's Office
Dave Zugsberger, OMB (Management)
Dick Wiggins, DOT/PF - Planning
Gary Cox, DOT/PF - Facilities
Dick Meyer, DOT/PF - Facilities
John Aiderson, DOT/PF - Facilities
John Hanley, Wickwire/Lewis

(* resource yet to be identified)

ARR Commercial/Contractual/Legal Obligations Team

Mark Hickey, Staff Coordinator
Dave Walsh, ARR Transfer Team Leader
Dick Wiggins, DOT/PF - Planning
Yale Lewis, Wickwire/Lewis
Tom Brewer, Wickwire/Lewis

Jack Day, ARR Transfer Team Leader
Jack McGee, AG's Office
Dave Zugsberger, OMB (Management)
Gerry Johnson, Wickwire/Lewis
DOA - Div. of Risk Management*

(* resource yet to be identified)

TASK #5 - USRA FAIR MARKET VALUE DETERMINATION.

Section 605(d) requires the United States Railway Association to determine the fair market value of the Alaska Railroad within nine months from the date of enactment. This value, if any, will then become the amount which the state would have to compensate the United States to receive the railroad under the transfer offer in Section 604. In performing this work, the USRA is instructed to perform an appraisal of all real and personal property with consideration for the current fair market value and potential future value if used in whole or in part for other purposes. The USRA is also to take into account all obligations imposed by the transfer legislation and other applicable law (e.g., Alaska Native Claims Settlement Act) upon the operation and ownership of the state-owned railroad. Finally, the USRA is directed to use all relevant data and information from the closing report document in making the fair market value determination.

Preliminary meetings between the transfer team and USRA officials have already occurred regarding project schedules and appraisal methodologies. The USRA intends to perform three types of assessment to reach their determination of the railroad's fair market value: (1) real estate appraisal; (2) facilities and equipment; and (3) continued operations valuation. A preliminary report on this activity is currently scheduled to be available in June. The USRA has agreed to keep the state apprised of ongoing activity and allow review of all draft products. Members of the state transfer team will also be available to research any information requests. Mr. Jack Day of the transfer team has been designated to serve as the point individual for staff activity under this task.

TASK #6 - NATIVE VILLAGE CLAIMS NEGOTIATION.

During the ten months following the date of enactment, there is a requirement for the state, the Department of the Interior, and all affected Native village corporations to enter into a good faith effort to negotiate settlements for as many outstanding claims as possible. Some 3,800 non-right-of-way acres of the ARR's total 38,000 acres are affected by village corporation filings under Section 3(e) of the Alaska Native Claims Settlement Act. Additionally, as many as 3,300 acres of right-of-way land may also be subject to similar filings. In the latter case, however, the transfer legislation structures a different procedure for this issue whereby the state will ultimately receive the railroad's right-of-way free and clear of any such encumbrances. With respect to the 3,800 acres of non-right-of-way land, the first step will be identification of the specific parcels involved, along with obtaining appropriate legal descriptions.

The state is in the process of organizing a negotiating team, while also determining an appropriate policy stance for each specific parcel. Information and recommendations is being collected from knowledgeable ARR officials regarding the railroad importance of each parcel. There is also the need to conduct some discussion and investigation with personnel from DNR and DOI regarding the availability of other state or federal land which might facilitate achievement of settlements. Mr. Dave Walsh has been assigned the role as point individual for staff activity for these negotiations. Mr. Walsh will have direct support from Mr. Hickey and members of the Attorney General's office.

TASK #7 - TRANSFER DOCUMENTS.

Section 604(b) details a series of legal documents which will effect the actual transfer assuming state acceptance. Specifically, the following four documents are required: (1) a bill of sale conveying title to all rail properties except real property; (2) an interim conveyance of real property of the Alaska Railroad not subject to unresolved claims of valid existing rights; (3) an exclusive license granting the state the right to use all real property not conveyed pending resolution in accordance with the review and settlement process or final administrative adjudication of claims of valid existing rights; and (4) an exclusive-use railroad easement for that portion of the railroad's right-of-way within Denali National Park and Preserve.

The content of these documents will require lengthy discussion and careful drafting by the state and FRA. Direct and extensive legal assistance will be needed to achieve this task. Mr. Hickey will direct these efforts with assistance from the Attorney General's Office and the state's special counsel, Wickwire, Lewis, Goldmark & Schorr. Actual completion of this work is contingent on state acceptance of the transfer offer. Preliminary work on this task should begin following completion of the closing report. The final documents do not have to be finished until after the Alaska State Legislature ratifies the transfer proposal and the Secretary of Transportation certifies the state has agreed to all of the required terms and conditions as specified in the transfer bill.

TASK #8 - ICC REQUIREMENTS.

Section 605(c) requires that prior to transfer the ARR's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to ICC jurisdiction. It will also be necessary to obtain an ICC certificate of public convenience and necessity to ensure continued operation of the railroad following transfer. As a result, it will be necessary to petition the ICC to promulgate proceedings to respond within the anticipated time period, along with preparing the necessary filings to provide for the operation of the state-owned railroad. A final ICC-related task involves rate-making authority for the new state entity. Although the transfer legislation provides a two-year hiatus, staff should probably engage in discussions with ICC officials regarding this matter, prepare preliminary filings, and direct background valuation work which will serve as the basis for future rate-making filings.

Efforts have already been initiated to accomplish some of these tasks. Work is in progress to review current accounting practices and systems in light of ICC requirements. Additionally, efforts are underway to petition the ICC for a promulgated proceeding for obtaining a certificate of public convenience and necessity. The remaining tasks, which are more substantive in nature, should be initiated within the next few months and will carry into the time period following transfer. Mr. Hickey will direct these efforts with assistance from the state's special counsel. Additional outside assistance will be needed from individuals knowledgeable with ICC procedures and railroad valuations.

TASK #9 - PRE-TRANSFER PREPARATIONS.

This task covers a range of duties related to ensuring an orderly and timely transfer. Much of this activity will be integrally tied to the creation and implementation of an appropriate entity to own and operate the railroad. The following list details the major task of this nature that can be identified: (1) legal research regarding appropriate state response to comply with the federal certification requirements under Section 604; (2) necessary state activity to allow assumption of current ARR collective bargaining agreements for the mandated two-year protection period; (3) further assessment of implications of anti-trust liabilities following transfer; (4) various planning activities related to required waivers of compliance with railroad safety laws and OSHA compliance requirements; (5) investigation of need for full-scale inventory and condition survey of ARR assets; (6) initiation of long-range capital planning effort for future railroad needs; and (7) anticipating and satisfying all other critical labor, administrative, regulatory, insurance and fiscal requirements prior to actual transfer.

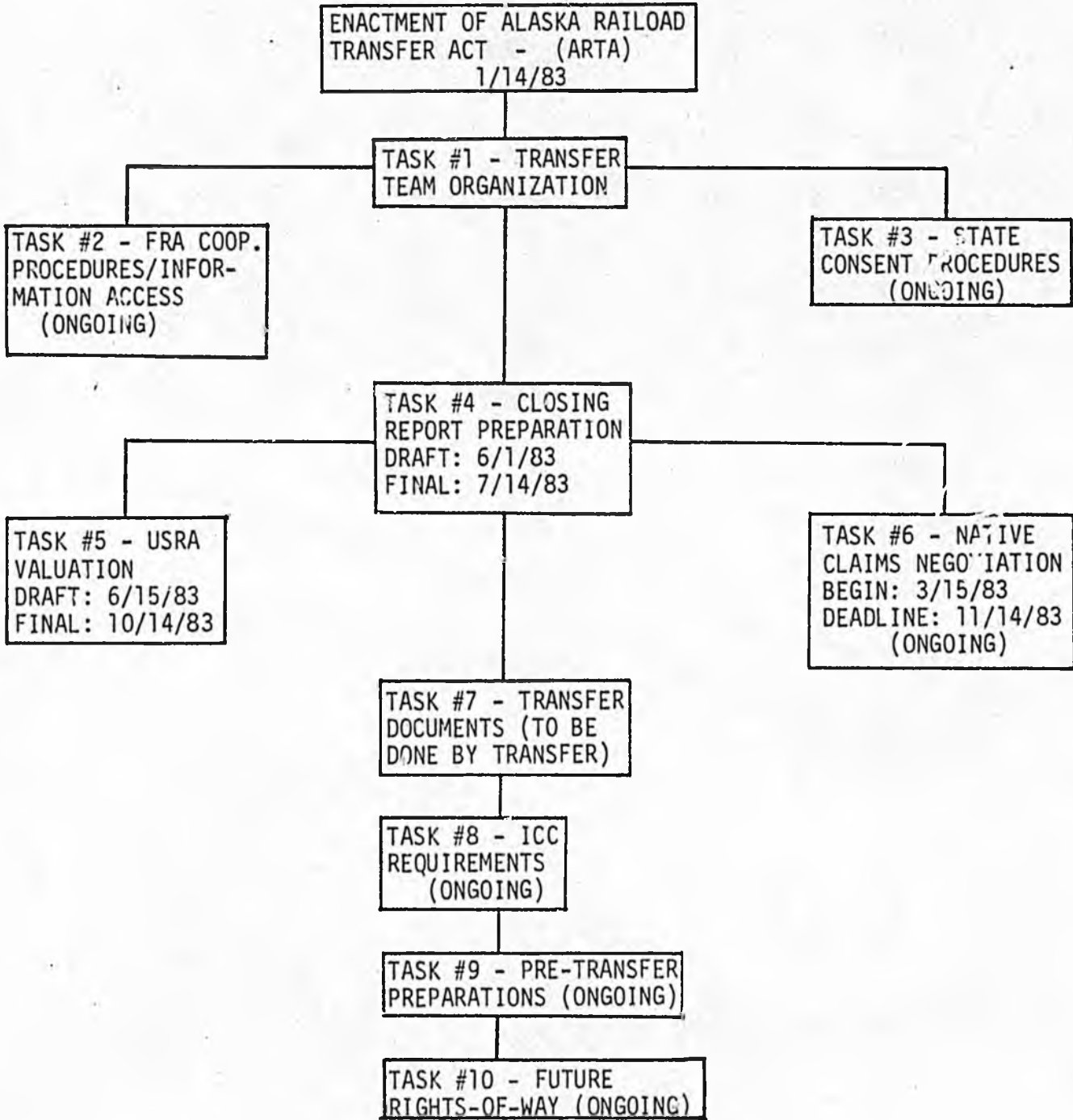
The time frame for the performance of these activities will span the entire period between enactment of the federal bill and formal completion of the transfer. Certain elements will be important in relation to the creation of a state entity to own and operate the railroad, which will be governed by the framework for action within the Alaska State Legislature. The state transfer team will be responsible for the performance of these tasks.

TASK #10 - FUTURE RIGHTS-OF-WAY.

Section 609 sets out the appropriate process whereby the state-owned railroad will be able to secure future rights-of-way across federal lands. In response to this provision, the state has initiated a process to develop an acceptable policy position for obtaining needed reservations in an intelligent and orderly manner. Once this activity is completed, work efforts will be undertaken to survey the selected routes and to prepare necessary application submittals for the federal and state portions. Additional funding will be needed to perform this effort.

ALASKA RAILROAD TRANSFER PROJECT

FLOW CHART



ALASKA RAILROAD TRANSFER PROJECT

SCHEDULE

TASKS

JAN. 14, 1983

JULY 14, 1983

OCT. 14, 1983

NOV. 14, 1983

JULY 14, 1984

CLOSING REPORT



FRAMEWORK FOR
STATE ACTION ON
TRANSFER OFFER



(TRANSFER TO OCCUR AS
SOON AS POSSIBLE AFTER
STATE ACTION)

U.S. RAILWAY
ASSOCIATION
VALUATION



NATIVE VILLAGE
CLAIMS NEGOTIATION



STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 10 Date on Bill: 1/18/83
 Title: An Act relating to the Alaska Railroad
 Sponsor: Kerttula
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			-0-	100.0	-0-	-0-		
Total			-0-	100.0	-0-	-0-		

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

Not identified by the sponsor.

3. Assumptions:

Given the railroad's recent revenue trends, operating revenues should be more than sufficient to cover operating expenses in the short-term (i.e., 2-3 years). It is difficult to predict beyond FY 86 whether this condition will continue to exist. It should be added that the issues of capital rehabilitation needs, ongoing capital reinvestment needs, long-term operating deficits and passenger service subsidies have not been directly addressed by the proposed authority legislation.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. I not represent the policy of the Sheffield Administration or the final estimate of impact.

Prepared By: Mark Hickey Phone: 364-2121
 Division: DOT/PF Date: 2/22/83

Approved by Commissioner: *[Signature]* Date: 2/22/83
 Department: Department of Transportation and Public Facilities

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

No direct fiscal impact is anticipated for FY 83 since the bill carries an effective date only triggered by subsequent legislative action to ratify the closing report or a proposed lease arrangement. Given the mandated time lines in the federal bill, this subsequent action will probably not occur until sometime next session.

The \$100,000 in requested funds for FY 84 is to cover various start-up costs for initiation of the Alaska Railroad Authority. These funds will cover the time period between creation of the entity and actual assumption of railroad operations.

SB 10 represents a very complex and thorough piece of legislation. A great deal of work and analysis has already gone into developing the current draft. SB 10 proposes to create an independent public authority responsible for operating the Alaska Railroad following transfer in accordance with sound business practices, while also balancing it with an appropriate, but not burdensome, level of oversight and monitoring by state government. Without attempting to evaluate at this point specific provisions of the proposed bill, it should be mentioned that there remains several unanswered policy questions such as those pointed out in the bill analysis section.

A great deal of current and hard data will be generated in the next few months during the preparation of the closing report and performance of the valuation determination by the United States Railway Association. Both of these efforts are mandated by provisions of the Alaska Railroad Transfer Act of 1982. It is our view that any attempt to resolve these unanswered questions and reach a consensus regarding the desired form of the state entity to accept and operate the railroad should await the completion of these tasks. Efforts should be initiated to provide for timely and thorough analysis of this information, which will result in an expeditious handling of the transfer issue at the appropriate time.

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
SB 10	09.10.120	REFERENCE
SB 10	09.50.250	REFERENCE
SB 10	09.50.260	REFERENCE
SB 10	09.50.270	REFERENCE
SB 10	09.50.280	REFERENCE
SB 10	09.50.290	REFERENCE
SB 10	09.55.310	AMENDED
SB 10	09.55.350	AMENDED
SB 10	09.55.420	REFERENCE
SB 10	09.55.430	REFERENCE
SB 10	09.55.440	REFERENCE
SB 10	09.55.450	REFERENCE
SB 10	09.55.460	REFERENCE
SB 10	09.65.040	REFERENCE
SB 10	14.17.009	REFERENCE
SB 10	14.17.250	REFERENCE
SB 10	19.00.000	REFERENCE
SB 10	23.10.055	REFERENCE
SB 10	23.10.420	REFERENCE

Code of Civil Procedure

Education Highway + Ferries

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 2310420
RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
SB 10	23.10.420	REFERENCE
SB 10	23.40.070	REFERENCE
SB 10	23.40.080	REFERENCE
SB 10	23.40.090	REFERENCE
SB 10	23.40.100	REFERENCE
SB 10	23.40.110	REFERENCE
SB 10	23.40.120	REFERENCE
SB 10	23.40.130	REFERENCE
SB 10	23.40.140	REFERENCE
SB 10	23.40.150	REFERENCE
SB 10	23.40.160	REFERENCE
SB 10	23.40.170	REFERENCE
SB 10	23.40.180	REFERENCE
SB 10	23.40.190	REFERENCE
SB 10	23.40.200	REFERENCE
SB 10	23.40.210	REFERENCE
SB 10	23.40.212	REFERENCE
SB 10	23.40.215	REFERENCE
SB 10	23.40.220	REFERENCE

Labor and workers' compensation

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 2340220
RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
SB 10	23.40.220	REFERENCE
SB 10	23.40.225	REFERENCE
SB 10	23.40.230	REFERENCE
SB 10	23.40.240	REFERENCE
SB 10	23.40.245	REFERENCE
SB 10	23.40.250	REFERENCE
SB 10	23.40.260	REFERENCE
SB 10	30.15.000	REFERENCE
SB 10	35.00.000	REFERENCE
SB 10	37.00.000	REFERENCE
SB 10	37.05.000	REFERENCE
SB 10	37.07.000	REFERENCE
SB 10	37.07.050	REFERENCE

Navigation, Harbors and Shipping

SB 10	Public Finance	37.10.020	REFERENCE
SB 10		37.10.030	REFERENCE
SB 10		37.10.040	REFERENCE
SB 10		37.10.050	REFERENCE
SB 10		37.10.060	REFERENCE

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 3710060
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER		STATUTE	ACTION
SB 10		37.10.060	REFERENCE
SB 10		37.10.085	REFERENCE
SB 10		37.20.000	REFERENCE
SB 10		37.25.000	REFERENCE
SB 10	Public lands	38.05.000	REFERENCE
SB 10		38.05.150	REFERENCE
SB 10		39.00.000	REFERENCE
SB 10		39.20.080	REFERENCE
SB 10		39.20.180	REFERENCE
SB 10	Public officers and	39.50.000	REFERENCE
SB 10	Employees	39.50.090	REFERENCE
SB 10		39.50.200	ADDED
SB 10		42.20.240	REFERENCE
SB 10		42.20.410	ADDED
SB 10		42.20.420	ADDED
SB 10	Public utilities	42.20.515	ADDED
SB 10	and carriers	42.20.535	ADDED
SB 10		42.20.555	ADDED
SB 10		42.20.600	ADDED

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 4220600
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER		STATUTE	ACTION
SB 10		42.20.600	ADDED
SB 10		42.20.620	ADDED
SB 10		42.20.720	ADDED
SB 10		42.20.770	ADDED
SB 10		42.20.900	ADDED
SB 10		42.40.010	ADDED
SB 10	Public utilities	42.40.020	ADDED
SB 10	and carriers	42.40.030	ADDED
SB 10		42.40.030	REFERENCE
SB 10		42.40.040	ADDED
SP 10		42.40.040	REFERENCE
SB 10		42.40.050	ADDED
SB 10		42.40.060	ADDED
SB 10		42.40.070	ADDED
SB 10		42.40.080	ADDED
SB 10		42.40.090	ADDED
SB 10		42.40.200	ADDED
SB 10		42.40.210	ADDED
SB 10		42.40.210	REFERENCE

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 4240210
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER		STATUTE	ACTION
SB 10		42.40.210	ADDED
SB 10		42.40.210	REFERENCE
SB 10		42.40.220	ADDED
SP 10		42.40.230	ADDED
SB 10		42.40.240	ADDED
SB 10	Public Utilities	42.40.300	ADDED
SB 10	and carriers	42.40.300	REFERENCE
SB 10		42.40.310	ADDED
SB 10		42.40.310	REFERENCE
SB 10		42.40.320	ADDED

SB	10	42.40.325	REFERENCE
SB	10	42.40.330	ADDED
SB	10	42.40.400	ADDED
SB	10	42.40.400	REFERENCE
SB	10	42.40.410	REFERENCE
SB	10	42.40.415	ADDED
SB	10	42.40.415	REFERENCE
SB	10	42.40.430	ADDED

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 4240430
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
SB 10	42.40.430	ADDED
SB 10	42.40.500	ADDED
SB 10	42.40.510	ADDED
SB 10	42.40.520	ADDED
SB 10	42.40.525	ADDED
SB 10	42.40.530	ADDED
SB 10	42.40.540	ADDED
SB 10	42.40.545	ADDED
SB 10	42.40.550	ADDED
SB 10	42.40.560	ADDED
SB 10	42.40.565	ADDED
SB 10	42.40.570	ADDED
SB 10	42.40.600	REFERENCE
SB 10	42.40.610	ADDED
SB 10	42.40.610	REFERENCE
SB 10	42.40.615	ADDED
SB 10	42.40.615	REFERENCE
SB 10	42.40.700	ADDED
SB 10	42.40.710	ADDED

*Public Utilities
and Carriers*

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 4240710
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
SB 10	42.40.710	ADDED
SB 10	42.40.730	ADDED
SB 10	42.40.740	ADDED
SB 10	42.40.755	ADDED
SB 10	42.40.870	ADDED
SB 10	42.40.880	ADDED
SB 10	42.40.890	ADDED
SB 10	44.62.000	REFERENCE
SB 10	44.62.310	REFERENCE
SB 10	44.62.640	REFERENCE
SB 10	44.71.010	REFERENCE
SB 10	44.71.020	REFERENCE
SB 10	44.71.030	REFERENCE
SB 10	44.71.040	REFERENCE
SB 10	44.77.010	REFERENCE
SB 10	44.77.020	REFERENCE
SB 10	44.77.030	REFERENCE
SB 10	44.77.040	REFERENCE
SB 10	44.77.050	REFERENCE

State Government

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER SB 10 STATUTE 4477050
 RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
SB 10	44.77.050	REFERENCE
SB 10	44.77.060	REFERENCE
SB 10	44.77.070	REFERENCE
SB 10	44.80.010	REFERENCE

DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Railroad; establishi
the Alaska Railroad Corporation; and providing for
effective date."

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

* Section 1. AS 42 is amended by adding a new chapter to read:

CHAPTER. 40. ALASKA RAILROAD ACT.

ARTICLE 1. CREATION AND ORGANIZATION.

Sec. 42.40.010. ALASKA RAILROAD CORPORATION. The Alaska Railro
Corporation is established as a public corporation of the state. Th
corporation is an instrumentality of the state in the Department of
Transportation and Public Facilities, but has a legal existence indep
dent of and separate from the state.

Sec. 42.40.020. GOVERNING BODY. The board of directors of th
corporation shall conduct the business of the corporation.

Sec. 42.40.030. APPOINTMENT AND COMPOSITION OF BOARD. (a) Th
board of directors of the corporation consists of the commissioner c
transportation and public facilities and five public members appoint
by the governor. The public members may not be public officers or
employees. Appointments to the board shall be made without regard t
political affiliation and shall represent the state's geographic inte
ests to the maximum extent possible.

(b) Public members appointed to the board must include at leas
one banker, one attorney, one economist, and one person engaged in pr
vate business.

2
3 Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public
4 members of the board serve for a term of four years.

5 (b) A vacancy on the board shall be filled by appointment by th
6 governor and the appointment must be confirmed by the legislature in
7 joint session. A member selected to fill a vacancy holds office for
8 the balance of the full term for which his predecessor on the board wa
9 appointed.

0 (c) A vacancy on the board does not impair the authority of a
1 quorum of members to exercise all the powers and perform all the dutie
2 of the board.

3 Sec. 42.40.050. CONFLICT OF INTERESTS. Upon appointment and
4 annually during his term of office, a board member shall declare pri-
5 vately in writing to the governor and the board any financial or busin
6 interest he has which might conflict with the public nature of his
7 membership on the board. If there is a conflict, the board may ask t
8 member to abstain from decisions resulting in a conflict or to resig
9 from the board.

0 * Sec. 42.40.060. COMPENSATION AND EXPENSES. Members of the boar
1 receive no salary, but are entitled to per diem and travel expenses
2 authorized by law for other state boards.

3 Sec. 42.40.070. QUORUM AND NOTICE OF MEETINGS. Four members ar
4 a quorum for the transaction of business unless the bylaws require a
5 larger number. Notice of a meeting of the board must be given to eac
6 member.

7 * Sec. 42.40.080. PUBLIC BOARD MEETINGS. The meetings of the bo
8 are public.

9 Sec. 42.40.090. MINUTES OF MEETINGS. The board shall keep minu

3 counsel for the corporation. He shall advise the corporation in leg
4 matters and represent it in suits.

5 Sec. 42.40.110. PRESIDENT. The board may employ a president
6 manage the corporation. The president must be professionally train
7 and experienced in the performance of his duties. His selection i
8 subject to the approval of the governor. The president may not ha
9 any financial or business interest that might conflict with the mana
10 ment of the corporation in the public interest. The board may deleg
11 powers and duties to the president.

12 ARTICLE 2. POWERS AND DUTIES.

13 Sec. 42.40.120. GENERAL POWERS. The corporation may

- 14 (1) exist continuously as a corporation;
15 (2) adopt a seal;
16 (3) adopt bylaws and regulations governing the business
17 the corporation;
18 (4) sue and be sued;
19 (5) appoint officers, employees, trustees, and agents, a
20 prescribe their powers and duties;
21 (6) make contracts and execute instruments necessary or c
22 venient in the exercise of its corporate powers and duties;
23 (7) acquire by purchase, lease, bequest, devise, gift, t
24 satisfaction of debts, the foreclosure of mortgages, or eminent doma
25 under AS 09.55.240 - 09.55.460, and hold, maintain, use, operate,
26 lease, alienate, dispose of, and convey real or personal property
27 (8) borrow money and issue its negotiable bonds or notes
28 provide for and secure their payment, provide for the rights of the
2 holders and purchase, hold, or dispose of any of its bonds or note

gage or other lien on its contracts, revenues, income, or property, except that it may not incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity, except endorsement of checks, bank drafts, or other commercial paper in the ordinary course of business;

(10) accept grants or loans from and contract with the Federal government, the state, or its political subdivisions, and to that end comply with the provisions of federal, state, or local program when necessary;

(11) acquire, hold and dispose of stocks, memberships, contracts, bonds, or other interests in another corporation or legal entity, and exercise the powers or rights in connection with these interests which are provided in contracts or agreements and which are allowed by law concerning the satisfaction of debts;

(12) operate, maintain, and control the tracks and equipment transferred to it by the federal government or by any person, and be governed by the rules and regulations of the Interstate Commerce Commission as a rail carrier;

(13) acquire, construct, maintain, equip and operate connecting, switching, terminal, or other railroads and railroad facilities in the state;

(14) do what is necessary to carry out its powers and duties under this chapter or other laws of the state, or the laws and regulations of the federal government.

Sec. 42.40.130. OPERATION OF ALASKA RAILROAD. The corporation shall operate the Alaska Railroad after it is transferred to the corporation by the federal government, and may extend the operations of the Alaska Railroad to the extent that the corporation considers desirable

3 in accordance with the Administrative Procedure Act (AS 44.62) to
4 implement this chapter.

5 Sec. 42.40.150. ANNUAL REPORT. The board shall prepare and dis-
6 tribute to the governor and to each legislator by December 30 of each
7 year a report describing the operations, financial condition, and
8 short- and long-term plans of the corporation. The board may include
9 in the report suggestions for legislation relating to the structure,
10 powers, or duties of the corporation or relating to the operation of
11 railroad facilities of the corporation.

12 Sec. 42.40.160. ANNUAL AUDITS. The board shall have the finan-
13 cial records of the corporation audited annually by the legislative
14 auditor. If an audit is conducted by a private certified public acco-
15 unt, the legislative auditor may accept that audit in satisfaction of
16 the requirements of this section. The legislative auditor may pre-
17 scribe the form and content of the financial records of the corporation
18 and may have access to those records at any time.

19 ARTICLE 3. FINANCIAL PROVISIONS.

20 Sec. 42.40.170. BONDS AND NOTES. (a) The corporation, by resolu-
21 tion, may issue bonds and bond anticipation notes to provide money
22 carry out its purposes.

23 (b) The principal and interest on the bonds or notes of the
24 corporation is payable from corporation money or assets. Bond antici-
25 pation notes may be payable from the proceeds of the sale of bonds or
26 from the proceeds of sale of other bond anticipation notes or, if bonds
27 or bond anticipation note proceeds are not available, the notes may be
28 paid from other money or assets of the corporation. Bonds or notes may
29 be additionally secured by a pledge of a grant or contribution from t

from any source.

(c) Bonds or bond anticipation notes may be issued in one or more series and shall be dated, bear interest at the rate or rates per year or within the maximum rate, be in the denomination, be in the form either coupon or registered, carry the conversion or registration provisions, have the rank or priority, be executed in the manner and form to be payable from the sources in the medium of payment and place or places inside or outside the state, be subject to authentication by trustee or fiscal agent, and be subject to the terms of redemption with or without premium, as the resolution of the board may provide. Bond anticipation notes shall mature at the time or times as may be determined by the board. Bonds shall mature at the time, not exceeding ten years from their date, as may be determined by the board. Before the preparation of definitive bonds or bond anticipation notes, the corporation may issue interim receipts or temporary bonds or bond anticipation notes, with or without coupons, exchangeable for bonds or bond anticipation notes when these definitive bonds or bond anticipation notes have been executed and are available for delivery.

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

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

(f) In a resolution of the corporation authorizing or relating to the issuance of bonds or bond anticipation notes, the corporation has

anticipation notes

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

8
9
0
1
(2) to covenant against pledging all or any part of its revenues, or against permitting or suffering a lien on the revenues or its property;

2
3
4
5
(3) to covenant as to establishment of reserves or sinking funds and the provision for and the regulation and disposition of the reserves or sinking funds;

6
7
8
9
(4) to covenant with respect to or against limitations on right to sell or otherwise dispose of property of any kind;

0
1
2
3
(5) to covenant as to bonds and notes to be issued, and their limitations, terms and conditions, and as to the custody, application and disposition of the proceeds of the bonds and notes;

4
5
6
7
(6) to covenant as to the issuance of additional bonds or notes, or as to limitations on the issuance of additional bonds or notes and the incurring of other debts;

8
9
0
1
2
3
4
5
(7) to covenant as to the payment of the principal of or interest on the bonds or notes, as to the sources and methods of payment as to the rank or priority of the bonds or notes with respect to a lien or security, or as to the acceleration of the maturity of the bonds or notes;

6
7
8
9
(8) to provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;

(9) to covenant against extending the time for the payment

privileges of their exchange for other bonds or notes of the corporation;

(11) to covenant to create or authorize the creation of special funds of money to be held in pledge or otherwise for operating expenses, payment or redemption of bonds or notes, reserves or other purposes, and as to the use and disposition of the money held in the funds;

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

(13) to covenant as to the custody of any of its property or investments, their safekeeping and insurance, and the use and disposition of insurance money;

(14) to vest in a trustee or trustees inside or outside the state property, rights, powers, and duties in trust as the corporation may determine, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of bonds or notes of the corporation, and to limit or abrogate the rights of the holders of bonds or notes of the corporation to appoint a trustee under this chapter or limit the rights, powers and duties of the trustee;

(15) to pay the costs or expenses incident to the enforcement of the bonds or notes or of the provisions of the resolution or of covenant or agreement of the corporation with the holders of its bonds or notes;

(16) to agree with a corporation trustee which may be

2 outside the state as to the pledging or assigning of revenues or fu
3 which or in which the corporation has any rights or interest; the
4 agreement may further provide for other rights and remedies exercis
5 by the trustee as may be proper for the protection of the holders
6 bonds or notes of the corporation and not otherwise in violation of
7 and may provide for the restriction of the rights of an individual
8 holder of bonds or notes of the corporation;

9 (17) to appoint and provide for the duties and obligations
10 a paying agent or paying agents, or other fiduciaries as the resolut
11 may provide inside or outside the state;

12 (18) to limit the rights of the holders of bonds or notes
13 the corporation to enforce a pledge or covenant securing the bonds
14 notes; and

15 (19) to make covenants other than and in addition to the
16 covenants expressly authorized in this section, of like or differen
17 character, and to make the covenants to do or refrain from doing th
18 acts and things as may be necessary, or convenient and desirable, i
19 order to better secure bonds or notes or which, in the absolute discr
20 tion of the board will tend to make bonds or notes more marketable,
21 notwithstanding that the covenants, acts or things may not be enumera
22 in this section.

23 Sec. 42.40.180. INDEPENDENT FINANCIAL ADVISOR. In negotiating
24 the private sale of bonds or bond anticipation notes to an underwrite
25 the board shall retain a financial advisor who is independent from th
26 underwriter.

27 Sec. 42.40.190. VALIDITY OF PLEDGE. The pledge of assets or
28 revenues of the corporation to the payment of the principal or intere:
29 on bonds or notes of the corporation is valid and binding from the tli

3 The lien of a pledge is valid and binding against all parties having
4 claims of any kind in tort, contract, or otherwise against the corporation,
5 irrespective of whether those parties have notice of the lien on
6 the pledge. Nothing in this section prohibits the corporation from
7 selling assets subject to a pledge, except that a sale may be restricted
8 by the trust agreement or resolution providing for the issuance of
9 the bonds or notes.

10 Sec. 42.40.200. REMEDIES. A holder of bonds or notes or of
11 coupons attached to them issued under this chapter, and a trustee under
12 a trust agreement or resolution authorizing the issuance of the bonds
13 or notes, except as restricted by a trust agreement or resolution
14 either at law or in equity, may enforce all rights granted under this
15 chapter or under the trust agreement or resolution, or under any other
16 contract executed by the corporation under this chapter, and may enforce
17 and compel the performance of all duties required by this chapter or
18 the trust agreement or resolution to be performed by the corporation
19 by an officer of it.

20 Sec. 42.40.210. NEGOTIABLE INSTRUMENTS. Bonds and notes and
21 interest coupons attached to them issued under this chapter are
22 negotiable instruments under the laws of this state, subject only to
23 applicable provisions for registration.

24 Sec. 42.40.220. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
25 and notes issued under this chapter are securities in which all public
26 officers and public bodies of the state and its political subdivisions,
27 all insurance companies, trust companies, banking associations, investment
28 companies, executors, administrators, trustees and other fiduciaries
29 may properly and legally invest funds, including capital in their

with a state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or notes of the state is authorized by law.

Sec. 42.40.230. REFUNDING BONDS. (a) The corporation may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under this chapter including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds. The issuance of the refunding bonds, the maturities and other details of them, the rights of the holders of them, and the rights, duties and obligations of the corporation in respect of them are governed by the provisions of this chapter which relate to the issuance of bonds, insofar as those provisions may be appropriate.

(b) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of the outstanding bonds. Pending the application of the proceeds of refunding bonds, with any other available money, to the payment of the principal, accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of the refunding bonds or in the trust agreement securing them, to the payment of any interest on the refunding bonds and any expenses in connection with the refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which mature or which will be subject to redemption, at the option of the holders of them, not later than the respective dates when the proceeds, together

4 may not pledge the credit or the taxing power of the state or its
5 political subdivisions. The state and its political subdivisions a
6 not liable for the debts of the corporation.

7 (b) Bonds and notes issued under this chapter do not constitut
8 debt, liability, or obligation of the state or of a political
9 subdivision of the state or a pledge of the faith and credit of th
10 state or of a political subdivision but are payable solely from th
11 revenues or assets of the corporation. Each bond and note issued un
12 this chapter shall contain on its face a statement that the corporat
13 is not obligated to pay it nor the interest on it except from the
14 revenues or assets pledged for it and that neither the faith and cre
15 nor the taxing power of the state or of a political subdivision of t
16 state is pledged to the payment of the principal of or the interest
17 the bond or note.

18 Sec. 42.40.250. OFFICERS NOT LIABLE. An officer or employee
19 the corporation is not subject to personal liability or accountabili
20 because of his execution of bonds or notes or the issuance of them

1 Sec. 42.40.260. TAX EXEMPTION. (a) The exercise of the powe
2 granted by this chapter will be in all respects for the benefit of t
3 people of the state, for their well-being and prosperity, and for th
4 improvement of their social and economic conditions, and the corpor.
5 tion is not required to pay a tax or assessment on any property own
6 by the corporation under the provisions of this chapter or on the
7 income from the property.

8 (b) Bonds and notes issued under this chapter are declared to
9 issued by a body corporate and public of the state and for an essent:

charges, funds, revenues, income and other money pledged or available to pay or secure the payment of the bonds and notes, or interest on the bonds and notes, are exempt from taxation except for inheritance, transfer and estate taxes.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 42.40.270. DISSOLUTION. After payment in full of its bonds and notes, or after depositing in a trust sufficient money to secure the payment of its bonds and notes, the board may dissolve the corporation by the majority vote of its directors. Dissolution is not effective until the legislature confirms it by law. The effective date of dissolution is the date the legislature confirms the dissolution or the date determined by the legislature at the time of confirmation. Assets remaining after satisfaction of liabilities and obligations of the corporation shall be deposited to the credit of the general fund of the state.

* Sec. 42.40.280. PERSONNEL EXEMPT FROM STATE PERSONNEL ACT. The personnel of the corporation are in the exempt state service under AS 39.25.110.

Sec. 42.40.990. DEFINITIONS. In this chapter, unless the context clearly indicates otherwise,

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

(2) "corporation" means the Alaska Railroad Corporation;

(3) "railroad and railroad facilities" includes, but is not limited to, tracks, spurs, switches, terminals, terminal facilities, road beds, rights-of-way, bridges, stations, railroad cars, locomotives or other vehicles constructed for operation over railroad tracks,

necessary for the operation of a railroad.

* Sec. 2. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD CORPORATION. The governor shall designate the terms of the members of the board of directors of the Alaska Railroad Corporation first appointed under AS 42.40.03D enacted in sec. 1 of this Act. Of the five members first appointed:

- (1) one shall serve a term of one year;
- (2) one shall serve a term of two years;
- (3) one shall serve a term of three years; and
- (4) two shall serve a term of four years.

* Sec. 3. NEGOTIATION FOR TRANSFER OF ALASKA RAILROAD. (a) The board of directors of the Alaska Railroad Corporation established in AS 42.40.03D enacted in sec. 1 of this Act shall enter into negotiations with the appropriate officers and agencies of the federal government at the earliest time practicable for the transfer of ownership of the Alaska Railroad to the corporation and may enter into agreements necessary to accomplish the transfer subject to money available from appropriations for the purpose.

(b) An agreement entered into under (a) of this section may include but is not limited to, provisions under which the Alaska Railroad Corporation agrees to

(1) accept all real and personal property transferred to it by the federal government;

(2) assume all rights and obligations of the Alaska Railroad at the time of the transfer of ownership;

(3) retain those Alaska Railroad employees who wish to remain employed by the Alaska Railroad Corporation after the transfer of ownership;

(4) pay salaries to the employees described in (3) of this sub-

(5) preserve the retirement, sick leave, annual leave, and other accrued benefits of the employees described in (3) of this subsection;

(6) in order to satisfy an agreement described in (5) of this subsection,

(A) enter into or adopt the same benefit programs in which the employees participated before the transfer of ownership or enter into or adopt other benefit programs which provide the same or similar benefits and which will recognize the accrued benefits of the employee and

(B) enter into negotiations with the collective bargaining representatives and the managerial representatives of the employees and submit any disagreements to arbitration under the Uniform Arbitration Act (AS 9.43).

(c) In this section, "Alaska Railroad" means the railroad and properties owned by the federal government under the authority of 43 U.S.C. secs. 975 - 975g.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.1070(c).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
DEPUTY COMMISSIONER - PLANNING AND PROGRAMMING

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

February 4, 1983

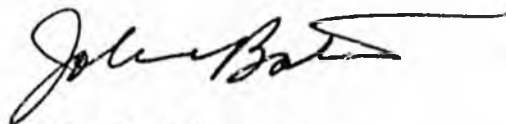
The Honorable Pappy Moss
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Moss:

Enclosed please find a copy of "An Assessment of the Alaska Railroad - Ownership and Operational Alternatives" as you requested. Unfortunately, this is the only copy available from our office although others may be available through the State Library.

If our office can be of further assistance to you, please call.

Sincerely,



John C. Bates
Deputy Commissioner

cc: Emil Notti
Office of the Governor

Enclosure

TESTIMONY

BEFORE

THE ALASKA SENATE TRANSPORTATION COMMITTEE

APRIL 6, 1982

JUNEAU, ALASKA

H. L. SCHUYLER

SEA-LAND SERVICE, INC.

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

WE, AT SEA-LAND, DO NOT OPPOSE THE TAKEOVER OF THE ALASKA RAILROAD BY THE STATE OF ALASKA FROM THE FEDERAL GOVERNMENT. THE RAILROAD IS NECESSARY FOR THE FUTURE GROWTH OF ALASKA RESOURCE DEVELOPMENT AREAS AND COMMUNITIES. COAL, MINERALS, AND FARMING PRODUCTS MUST HAVE AVENUES TO TIDEWATER PORTS IN ORDER TO BE EXPORTED TO WORLD MARKETS.

WE HAVE ANALYZED IN GREAT DETAIL SENATE BILL NO. 212 AND APPLAUD ITS IMAGINATIVE AND FAR-REACHING PURPOSE; HOWEVER, WE, AT SEA-LAND, ARE CONCERNED ABOUT THE ADMINISTRATION, OPERATION, POLICIES, AND RULES AND REGULATIONS UNDER WHICH THE ALASKA RAILROAD AUTHORITY WILL BE OPERATING IN CARRYING OUT ITS MISSION.

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

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

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

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

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

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

6. I AM SURE YOU GENTLEMEN ARE AWARE THAT THE STAGGERS RAIL ACT OF 1980 HAS VIRTUALLY DEREGULATED INTERSTATE RAIL SERVICE. AS A PRACTICAL MATTER, THE ALASKA RAILROAD AND ALL OTHER MAJOR RAIL LINES ARE TOTALLY UNREGULATED. WHILE DEREGULATION MAY BE GOOD IN THEORY, THE TRADE BETWEEN ALASKA AND THE LOWER 48 IS IN ESSENCE A MICROCOSM: ALL TRANSPORTATION MODES COMPETE DIRECTLY WITH EACH OTHER FOR THE SAME BASIC CONSUMABLES. WE READILY ACKNOWLEDGE THAT LARGE PORTIONS OF THE ALASKA RAILROAD'S FREIGHT ARE BULK COMMODITIES; STILL, ALL OF THE COMPETING MODES ARE REGULATED WHILE THE RAILROAD IS NOT, THUS GIVING THE RAILROAD A DISTINCT COMPETITIVE EDGE WHICH CAN BE SUBJECT TO ABUSE.
7. THE BILL PROVIDES FOR THE ESTABLISHMENT OF CONTRACT RATES BY THE RAILROAD. THE STAGGERS ACT ALLOWS CONTRACT RATES BUT THAT LAW CONTEMPLATED THE RAILROADS ENTERING INTO CONTRACTS WITH MAJOR SHIPPERS WHOSE CARGO THEY HAD HISTORICALLY HANDLED FOR THE BENEFIT OF BOTH. THAT CONTRACT ABILITY WAS NOT ENVISIONED TO BE USED AS A COMPETITIVE TOOL, AS IT HAS BEEN UTILIZED BY THE ALASKA RAILROAD. SEA-LAND HAS CHALLENGED THESE PRACTICES, BOTH BEFORE THE INTERSTATE COMMERCE COMMISSION AND IN THE COURTS, TO NO AVAIL BECAUSE THE RAILROAD IS UNREGULATED AND IMMUNE FROM SUIT. WE CANNOT LEGALLY

ESTABLISH CONTRACT RATES AND, THEREFORE, CANNOT EFFECTIVELY COMPETE WITH SUCH RATES. WE URGE THIS BODY TO CRITICALLY SCRUTINIZE THAT PORTION OF THE BILL AND DELETE SUCH PROVISIONS FROM THE LEGISLATION.

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

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

WE, AT SEA-LAND, ARE NOT HERE MERELY TO TELL YOU WHAT IS WRONG WITH THIS PROPOSED LEGISLATION. WE WISH TO BE CONSTRUCTIVE AND ASSIST YOU GENTLEMEN IN REACHING THE BEST POSSIBLE COMPROMISE WHICH WILL WORK TO THE BENEFIT OF THE STATE, ITS CITIZENS, AND THE TRANSPORTATION CARRIERS SERVING ALASKA. TO THIS END, I AM ENCLOSING AS AN APPENDIX HERETO, CERTAIN LANGUAGE AND PROPOSED AMENDMENTS TO THIS BILL WHICH WE FEEL WILL GO A LONG WAY TOWARD MEETING THE NEEDS OF ALL INTERESTED PARTIES, WHILE PROTECTING THE COMPETITIVE ENVIRONMENT IN THE ALASKA TRADE.

I AWAIT YOUR QUESTIONS.

THANK YOU.

STATE OF ALASKA TAKEOVER OF THE ALASKA RAILROAD:

SUPPORT FOR POSITION OF WATER CARRIERS AND MOTOR CARRIERS SERVING ALASKA.

THE ISSUE:

As you are undoubtedly aware, the federal government has indicated a desire to transfer ownership of the Alaska Railroad to the State of Alaska.

Current press reports indicate that, while the state is agreeable to taking over ownership and operation of the Alaska railroad, there are a host of problems with the transfer legislation. Most of these problems revolve around the transfer of rail lands as well as the ability of the State of Alaska to further expand the railroad.

In addition to the problems mentioned above, the existing water carriers and motor carriers who operate between the Lower 48 and the State of Alaska, are seriously concerned with the potential impact this transfer may have on the existing transportation system between the Lower 48 and various destinations in Alaska. It should be noted that currently Alaska enjoys one of the finest integrated transportation systems in the nation. Water service is provided between the Lower 48 and Alaska utilizing all major modes (ro-ro, container, rail barge and break bulk barge). Competition between the carriers providing this service has always been intense and the result has been very high levels of service as well as relatively low prices for the service. Indeed, price competition has been so severe that many observers have often equated this competition to that of a "rate war."

Within the State of Alaska the transportation system has become very well developed with a multitude of motor carriers, as well as the Alaska Railroad, serving intrastate needs. This system is well integrated with many of the highway carriers using rail piggyback service for a portion of their movement. Again, the marketplace has seen a very high degree of both service and price competition.

THE CONCERNS OF THE WATER CARRIERS AND MOTOR CARRIERS:

In assessing the impact the transfer from federal to state ownership will have on existing, privately-owned water carriers and motor carriers, we have three major concerns. All of these concerns revolve around the fact that the railroad would be owned by a state entity and thus not subjected to the normal "checks and balances" any privately-owned business is subjected to when that business is faced with the need to earn a profit to enable it to re-invest in its business, as well as pay a fair return to its stockholders. Our major concerns are:

1. Entry by the Railroad into the Water Carrier or Motor Carrier Business:
The private carriers desire legislation which will prohibit entry by a state-owned railroad into the water carrier or motor carrier business.

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

subsidies (indirect subsidies are those the railroad enjoys by virtue of public ownership: examples would be significantly lowered interest rates due to tax exempt bonds; elimination of need to earn a profit; lack of any requirement that they pay interest on their working capital; freedom from taxation; elimination of the requirement that they pay for licenses, permits, etc.) to enter the water or motor carrier fields. Currently, the water carrier field is served by all four major modes, ro-ro, container, rail barge and break bulk barge, and we see no long-term shortfall in available capacity. Within the motor carrier field, there are a multitude of motor carriers available in the state, and this industry has been severely depressed for several years, i.e., there has been significant overcapacity available.

2. Antitrust:

Private carriers desire legislative amendments which would place a state-owned railroad under both the federal and state antitrust laws.

All of the privately-owned water carriers and motor carriers are subject to the federal and state antitrust laws. It is our belief that the railroad should be subjected to the same laws as the private carriers are.

In short, we should all play by the same rules.

3. Ratemaking Policy:

Private carriers desire specific legislative amendments which would prohibit a state-owned railroad from charging rates which

are below those charged by privately-owned carriers, for freight on which both carriers are cross-competitive, that is, compete for the same traffic, where the rates do not recover the full cost of the service offered (to include any direct or indirect subsidy)

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

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

ANSWERS TO QUESTIONS WE HAVE BEEN ASKED:

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

1. Why Isn't ICC Regulation of the Alaska Railroad's Rates Sufficient to Eliminate any Problems the Private Carriers Might Have With the Railroad Utilizing Subsidies to Compete With the Private Carriers?

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

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

2. Doesn't the Desire of the Private Carriers to Establish a "Rate Floor" in Reality "Tie the Hands" of the Alaska Railroad?

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

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

3. What is the Position of the Private Carriers on the Expansion of the Railroad?

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

4. The Privately-Owned Carriers Proposed Amendments to the Current Transfer Legislation are Too Complex

While we admit that our proposed amendments to the current transfer legislation are somewhat complex, it must be realized that the issues we attempt to address are quite complex. Certainly, within the rate area any legislation which attempts to deal with this problem must include rigorous definitions of what both the intent and the method of implementation are if we are to avoid abuses by either side. The private carriers have no "pride of authorship" in this area and we stand ready to work with all members of the public sector to ensure that the state arrives at the fairest, and easiest-to-enforce legislation.

5. Isn't This Only a "Tempest in a Teapot" and in Fact Private Carriers Will "Continue to do Business As Usual" No Matter How the Transfer of the Railroad Occurs?

Certainly the private carriers have not suggested that "if we do not get what we want" we will close our doors. We also do not feel that this

would be the natural outcome if the private carriers are unsuccessful in obtaining the legislation we seek. What we do feel will occur, over time, is that the private carriers, if faced with competition from a state-owned railroad which uses its direct and indirect subsidies to either underprice them or operate a competing water or motor carriage service, will simply fail to reinvest the necessary dollars to maintain a viable privately-owned and operated service.

One needs only look at the existing services which are available in the water-carrier field to see that some of the vessels serving Alaska are extremely old (average age 40 years, in some cases). The ability of the private water carriers to generate the needed capital to replace overage equipment as well as to convince their stockholders that the necessary commitments of capital will be economic, is a function of the carrier's perception of the marketplace in the "long run." Certainly most business would find it difficult to authorize the commitment of almost \$100 million per vessel (the approximate construction cost of any new vessels which would be placed in operation in an Alaskan service) when faced with competition from a state-owned railroad which had access to both direct and indirect subsidies with no constraints on their use.

In the motor carrier field problems could "come on" much more quickly. Many of the motor carriers operating within the Alaska area are not now well capitalized or in the best financial health. Indeed, there have been several recent bankruptcies. Certainly investment in new trailers and tractors would slow down if these carriers were faced with unrestrained competition from a state-owned railroad which had access to both direct and indirect subsidies.

BRIEF SECTION-BY-SECTION ANALYSIS

INTRODUCTION

The Bill would add two new chapters to the Alaska Statutes to provide for: (1) establishment of a "State of Alaska Railroad Transfer Team" to negotiate, consider, and make recommendations with respect to the terms of any transfer, sale, or lease of the Alaska Railroad to the State and; (2) establishment of an "Alaska Railroad Authority" which would administer the Alaska Railroad and its properties subsequent to any transfer.

TRANSFER TEAM

Section 1 of the bill would add a new chapter to the Alaska Statutes which would establish the State of Alaska Railroad Transfer Team. The Team would be comprised of three members: one appointed by the Senate; one appointed by the House of Representatives; and one appointed by the Governor.

Establishment of the Team would accomplish two important objectives. It would be independent of the organization that would ultimately have responsibility for operating the Railroad. Thus, the team would be able to provide the legislature and the governor with advice as to the desirability of any proposed transfer, sale, or lease

of the Railroad to the State that would not be influenced by any interest in operating the Railroad subsequent to any transfer.

Second, this joint legislative-executive organization will provide the federal government with a focal point for its dealings with the State with respect to the Alaska Railroad. Thus, the establishment of the Team should facilitate effective presentation of a uniform position on behalf of the state.

The Team would serve as liaison with respect to federal legislative and administrative actions affecting the Alaska Railroad or the transfer of the Railroad, but could not bind the State to accept the Railroad. Binding acceptance of the Railroad would be subject to the state legislative process. Members of the team would serve at the pleasure of the organizations which appoint them and the team would be authorized to commence its activities as soon as two of its members are appointed.

To enable the Team to carry out its duties, the bill would also provide appropriations for the Team's operating expenses for the fiscal year ending June 30, 1983 and for the balance of the current fiscal year.

ALASKA RAILROAD AUTHORITY

Section 2 of the bill would add a new chapter to the Alaska Statutes which would establish the Alaska Railroad Authority, to operate and administer the Alaska Railroad subsequent to any transfer

to the State. The powers of the Authority would be vested in a Board of Directors which would have the authority to hire a President to manage day-to-day operations.

The Board of Directors would consist of the Commissioner of Transportation and Public Facilities and six public members to be appointed by the Governor, subject to confirmation by the legislature in joint session. Members of the Board shall receive no salary but would be compensated for expenses.

The Board would have full authority to undertake all of the actions necessary for the operation, maintenance, and expansion of the Railroad. It may hire staff, enter into contracts, issue bonds, and accept grants from the federal government and the state. The Board may delegate its powers to the President except for the powers to issue bonds and to undertake capital projects with an estimated completion cost greater than \$1 million.

The revenues generated by the Railroad would be placed in a revolving fund available for maintenance, operation, and expansion of the Railroad. Thus, the proposed bill would establish, in essence, a corporate organization, able to make day-to-day operating decisions without resort to the appropriations process.

From Bettisworth

DRAFT 12/31/81

Introduced:
Referred: Transportation and Finance

IN THE SENATE BY DANKWORTH AND KERTTULA
SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - SECOND SESSION
A BILL

For an Act entitled: "An Act relating to the Alaska Railroad."

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

* Section 1. AS 42 is amended by adding a new chapter to read:

"CHAPTER 41. TRANSFER OF ALASKA RAILROAD

Sec. 42.41.010. RAILROAD TRANSFER TEAM

(a) There is hereby established the "State Of Alaska Railroad Transfer Team", to be comprised of three members: one member to be appointed by the senate, one member to be appointed by the house of representatives, and one member to be appointed by the governor.

(b) The team shall have the following duties:

(1) to serve as the liaison of the State of Alaska to the United States Congress and federal agencies with



respect to any federal legislation or administrative actions to transfer, sell, or lease the Alaska Railroad or any of its properties to the state of Alaska, or with respect to any federal legislation or administrative actions affecting the nature or extent of the present or future properties of the Railroad, including matters with respect to future rights-of-way for the Railroad;

(2) to conduct investigations and gather facts and, on the basis of such information, recommend to the senate, house of representatives, and governor whether or not acceptance of any proposed transfer, sale, or lease of the Alaska Railroad or any of its properties from the federal government to the state of Alaska is in the best interest of the state; and

(3) to report periodically, and not less than semi-annually, to the legislature and the governor regarding its activities.

(c) The team shall have the following powers:

(1) to hire staff, legal counsel, or consultants as required to carry out its duties described in this section; and

(2) to take such other administrative actions as are necessary to carry out its duties under this section.

(d) The team shall be the sole body authorized to present the views of the state of Alaska to the federal government, and to negotiate with the federal government with respect to any proposal to transfer, lease, or sell the Alaska Railroad or any of its properties to the state.

(e) The team is not authorized to enter into any agreement binding on the State with respect to the transfer, sale, or lease of the Alaska Railroad or any of its properties to the state from the federal government except in accordance with the provisions of this section. Any recommendations made by the team with regard to the Alaska Railroad shall be binding upon the State of Alaska only upon enactment of appropriate enabling legislation.

(f) The authority of the team shall become effective as soon after enactment of this section as two members of the team are appointed.

(g) The team shall be disbanded and its authority shall expire upon the signing of a agreement effectuating the transfer or sale of the Alaska Railroad to the state.

(h) Members of the team shall receive no salary, but are entitled to per diem and travel expenses authorized by law for state boards and commissions under AS 39.20.180.

Members of the team serve at the pleasure of the organizations which appointed them.

(i) The sum of \$ _____ is appropriated from the general fund to the team for operating expenses for the fiscal year ending June 30, 1982; the sum of \$ _____ is appropriated from the general fund to the team for operating expenses for the fiscal year ending June 30, 1983.

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

"CHAPTER 40. ALASKA RAILROAD AUTHORITY

ARTICLE 1. CREATION AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established as a public corporation of the state.

Sec. 42.40.020. GOVERNING BODY. The powers of the authority are vested in the board of directors. However, the board may not exercise its powers until either: (1) the state enters into an agreement for the transfer, sale, or lease of the

Alaska Railroad to the State: or (2) an earlier time specified by the Governor with the approval of the legislature in joint session.

Sec. 42.40.020. APPOINTMENT AND COMPOSITION OF BOARD. (a) The board of directors of the authority consists of the commissioner of transportation and public facilities and six public members appointed by the governor. The public members may not be public officers or employees.

(b) The public members of the board must be confirmed by a majority of the membership of the legislature in joint session.

(c) The governor shall, in transmitting the names of appointees to the legislature for confirmation, state, in writing, why the nominee is expected to contribute to the effective resolution of the financial, transportation, and legal problems facing the authority, and why, in light of the identity of other appointees, the nominee will help effect a balance in the skills and experience of the board membership.

(d) The board shall elect one of its members to serve as chairman. The chairman is empowered to call meetings of the board and shall preside at the meetings.

Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public members of the board shall serve for a term of four

years, except that with respect to the six members first appointed, the governor shall designate two to serve a term of two years, two to serve a term of three years, and two to serve a term of four years.

(c) A vacancy on the board shall be filled by appointment by the governor and the appointment must be confirmed by the legislature in joint session. A member selected to fill a vacancy holds office for the balance of the full term for which his predecessor on the board was appointed.

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

Sec. 42.40.050. CONFLICT OF INTERESTS. Upon appointment, annually during his term of office, and upon a change in financial or business interests which generates a conflict such as described in this section, a board member shall declare privately in writing to the governor, the attorney general of the state, and the board, any financial or business interest he has which might conflict with the public nature of his membership on the board. The attorney general shall review such declarations and determine whether there is or would be a conflict. On the basis of the attorney general's determination, the governor shall direct

the member to abstain from voting with respect to decisions which would result in a conflict, and the governor shall advise the board of such directive. Further, if the governor believes the conflict is extensive or would seriously impair the ability of the member to serve impartially on the board, the governor may remove the member from the board.

Sec. 42.40.060. COMPENSATION AND EXPENSES. Members of the board shall receive no salary, but are entitled to per diem and travel expenses authorized by law for state boards and commissions under AS 39.20.180.

Sec. 42.40.070. QUORUM AND NOTICE OF MEETINGS. Four members are a quorum for the transaction of business unless the bylaws require a larger number. Notice of a meeting of the board, including an agenda for the meeting, must be given to each member and to the public.

Sec. 42.40.080. PUBLIC BOARD MEETINGS. The meetings of the board are public, with the exception of executive sessions as permitted by AS 44.62.310.

Sec. 42.40.090. MINUTES OF MEETINGS. The board shall keep minutes of each meeting and send a certified copy to the governor.

Sec. 42.40.100. PRESIDENT. The board may employ a president to manage the authority. His selection is subject to the approval of the governor. The president may not have any financial or business interest that might conflict with the management of the authority in the public interest. The board may delegate all powers and duties to the president except the power to:

- (a) issue bonds or notes; and
- (b) to commit the authority to individual capital projects with an estimated completion cost greater than \$1,000,000.

ARTICLE 2. POWERS AND DUTIES.

Sec. 42.40.110. GENERAL POWERS. The authority may

- (1) exist continuously as an authority;
- (2) adopt a seal;
- (3) adopt bylaws and regulations governing the business of the authority;
- (4) sue and be sued;
- (5) appoint officers, employees, trustees, and agents, and prescribe their powers and duties;
- (6) hire legal counsel to represent the authority;
- (7) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;

(8) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, the foreclosure of mortgages, or eminent domain under AS 09.55.240 - 09.55.460, and hold, maintain, use, operate, lease, alienate, dispose of, and convey real or personal property;

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

(10) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property, except that it may not incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity, except endorsement of checks, bank drafts, or other commercial paper in the ordinary course of business;

(11) accept grants or loans from and contract with the federal government, the state, or its political subdivisions, and to that end comply with the provisions of federal, state, or local programs when necessary;

(12) acquire, hold and dispose of stocks, memberships, contracts, bonds, or other interests in another corporation or legal entity, and exercise the powers or rights in connection

with these interests which are provided in contracts or agreements and which are allowed by law concerning the satisfaction of debts;

(13) provide for the operation, maintenance, and control of the tracks and equipment transferred to it by the federal government or by any person;

(14) acquire, construct, maintain, equip, and operate connecting, switching, terminal, or other railroads and railroad facilities in the state;

(15) do what is necessary to carry out its powers and duties under this chapter or other laws of the state, or the laws and regulations of the federal government.

Sec. 42.40.120. OPERATION OF ALASKA RAILROAD. The authority shall provide for the operation of the Alaska Railroad after it is transferred to the authority by the federal government, and may extend the operations of the Alaska Railroad to the extent that the authority considers desirable in order to promote economic growth and development in the state.

Sec. 42.40.130. REGULATIONS. The board shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) to implement this chapter.

Sec. 42.40.140. ANNUAL REPORT. The board shall prepare and distribute to the governor and to each legislator by December 30 of each year a report describing the operations, financial condition, and short- and long-term plans of the authority. The board may include in the report suggestions for legislation relating to the structure, powers, or duties of the authority or relating to the operation of railroad facilities of the authority.

Sec. 42.40.150. ANNUAL AUDITS. The board shall have the financial records of the authority audited annually by the legislative auditor. If an audit is conducted by a private certified public accountant, the legislative auditor may accept that audit in satisfaction of the requirements of this section. The legislative auditor may prescribe the form and content of the financial records of the authority and may have access to those records at any time.

ARTICLE 3. FINANCIAL PROVISIONS.

Sec. 42.40.160. BONDS AND NOTES: (a) The authority, by resolution of the board, may issue bonds and bond anticipation notes to provide money to carry out its purposes.

(b) The principal and interest on the bonds or notes of the authority is payable from money or assets of the authority.

Bond anticipation notes may be payable from the proceeds of the

sale of bonds or from the proceeds of sale of other bond anticipation notes or, if bond or bond anticipation note proceeds are not available, the notes may be paid from other money or assets of the authority. Bonds or notes may be additionally secured by a pledge of a grant or contribution from the federal government, or a corporation, association, institution or person, or a pledge of money, income, or revenues of the authority from any source.

(c) Bonds or bond anticipation notes may be issued in one or more series and shall be dated, bear interest at the rate or rates per year or within the maximum rate, be in the denomination, be in the form, either coupon or registered, carry the conversion or registration provisions, have the rank of priority, be executed in the manner and form, be payable from the sources in the medium of payment and place or places inside or outside the state, be subject to authentication by a trustee or fiscal agent, and be subject to the terms of redemption with or without premium, as the resolution of the board may provide. Bond anticipation notes shall mature at the time or times as may be determined by the board. Bonds shall mature at the time, not exceeding 50 years from their date, as may be determined by the board. Before the preparation of definitive bonds or bond

anticipation notes, the authority may issue interim receipts or temporary bonds or bond anticipation notes, with or without coupons, exchangeable for bonds or bond anticipation notes when these definitive bonds or bond anticipation notes have been executed and are available for delivery.

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

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

(f) In a resolution of the board authorizing or relating to the issuance of bonds or bond anticipation notes, the board has power by provisions in the resolution which will constitute covenants of the authority, and contracts with the holders of the bonds or bond anticipation notes:

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

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

(3) to covenant as to establishment of reserves or sinking funds and the provision for and the regulation and disposition of the reserves or sinking funds;

(4) to covenant with respect to or against limitations on a right to sell or otherwise dispose of property of any kind;

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

(6) to covenant as to the issuance of additional bonds or notes, or as to limitations on the issuance of additional bonds or notes and the incurring of other debts;

(7) to covenant as to the payment of the principal of or interest on the bonds or notes, as to the sources and methods of payment, as to the rank or priority of the bonds or notes with respect to a lien or security, or as to the acceleration of the maturity of the bonds or notes;

(8) to provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;

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

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

(11) to covenant to create or authorize the creation of special funds of money to be held in pledge or otherwise for operating expenses, payment or redemption of bonds or notes, reserves or other purposes, and as to the use and disposition of the money held in the funds;

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

(13) to covenant as to the custody of any of its properties or investments, their safekeeping and insurance, and the use and disposition of insurance money;

(14) to vest in a trustee or trustees inside or outside the state property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of bonds or notes of the authority, and to limit or abrogate the rights of the holders of the bonds or notes of the authority to appoint a trustee under this chapter or limit the rights, powers and duties of the trustee;

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

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

(17) to appoint and provide for the duties and obligations of a paying agent or paying agents, or other fiduciaries as the resolution may provide inside or outside the state;

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

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

Sec. 42.40.170. INDEPENDENT FINANCIAL ADVISOR. In negotiating the private sale of bonds or bond anticipation notes to an underwriter, the board shall retain a financial advisor who is independent from the underwriter.

Sec. 42.40.180. VALIDITY OF PLEDGE. The pledge of assets or revenues of the authority to the payment of the principal or interest on bonds or notes of the authority is valid and binding from the time the pledge is made and the assets or

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

Sec. 42.40.190. REMEDIES. A holder of bonds or notes or of coupons attached to them issued under this chapter, and a trustee under a trust agreement or resolution authorizing the issuance of the bonds or notes, except as restricted by a trust agreement or resolution, either at law or in equity, may enforce all rights granted under this chapter or under the trust agreement or resolution, or under any other contract executed by the authority under this chapter, and may enforce and compel the performance of all duties required by this chapter or by the trust agreement or resolution to be performed by the authority or by an officer of it.

Sec. 42.40.200. NEGOTIABLE INSTRUMENTS. Bonds and notes and interest coupons attached to them issued under this

chapter are negotiable instruments under the laws of this state, subject only to applicable provisions for registration.

Sec. 42.40.210. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds and notes issued under this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds and notes may be deposited with a state or municipal officer of any agency or political subdivision of the state for any purpose for which the deposit of bonds or notes of the state is authorized by law.

Sec. 42.40.220. REFUNDING BONDS. (a) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under this chapter, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds. The issuance of the refunding bonds, the maturities and other details of them, the rights of the holders of them, and the rights, duties and obligations of

the authority in respect of them are governed by the provisions of this chapter which relate to the issuance of bonds, insofar as those provisions may be appropriate.

(b) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of the outstanding bonds. Pending the application of the proceeds of refunding bonds, with any other available money, to the payment of the principal, accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of the refunding bonds or in the trust agreement securing them, to the payment of any interest on the refunding bonds and any expenses in connection with the refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which mature or which will be subject to redemption, at the option of the holders of them, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended.

Sec. 42.40.230. CREDIT OF STATE NOT PLEDGED. (a)

The authority may not pledge the credit or the taxing power of the state or its political subdivisions. The state and its political subdivisions are not liable for the debts of the authority.

(b) Bonds and notes issued under this chapter do not constitute a debt, liability, or obligation of the state or of a political subdivision of the state or a pledge of the faith and credit of the state or of a political subdivision but are payable solely from the revenues or assets of the authority. Each bond and note issued under this chapter shall contain on its face a statement that the authority is not obligated to pay it nor the interest on it except from the revenues or assets pledged for it and that neither the faith and credit nor the taxing power of the state or of a political subdivision of the state is pledged to the payment of the principal of or the interest on the bond or note.

Sec. 42.40.240. OFFICERS NOT LIABLE. An officer or employee of the authority is not subject to personal liability or accountability because of his execution of bonds or notes or the issuance of them.

Sec. 42.40.250. TAX EXEMPTION. (a) The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for their well-being and

provision, and for the improvement of their social and economic conditions, and the authority is not required to pay a tax or assessment on any property owned by the authority under the provisions of this chapter or on the income from the property.

(b) Bonds and notes issued under this chapter are declared to be issued by a body corporate and public of the state and for an essential public and governmental purpose, and the bonds and notes, and the interest and income on and from the bonds and notes, and all fees, charges, funds, revenues, income and other money pledged or available to pay or secure the payment of the bonds and notes, or interest on the bonds and notes, are exempt from taxation except for inheritance, transfer and estate taxes.

Sec. 42.40.260. REVENUES. Revenues generated by the Alaska Railroad Authority do not become part of the general fund of the state but shall be held in an independent fund available to the authority for railroad expenditures.

ARTICLE 4. GENERAL PROVISIONS

Sec. 42.40.280. PERSONNEL EXEMPT FROM STATE PERSONNEL ACT. The personnel of the authority are in the exempt state service under AS 39.25.110.

Sec. 42-40-990. DEFINITIONS. In this chapter, unless the context clearly indicates otherwise,

(1) "authority" means the Alaska Railroad Authority;

(2) "board" means the board of directors of the Alaska Railroad Authority;

(3) "railroad and railroad facilities" includes, but is not limited to, tracks, spurs, switches, terminals, terminal facilities, road beds, rights-of-way, bridges, stations, railroad cars, locomotives or other vehicles constructed for operation over railroad tracks, crossing signs, lights, signals, storage buildings, administration buildings, repair buildings, and all structures, materials and equipment which are deemed by the Board to be necessary for the operation of a railroad."

* Section 3. Except as may be specifically provided otherwise, the provisions of this Act take effect upon enactment.

Institute of Public Administration

ESTABLISHING PUBLIC CORPORATIONS IN ALASKA

A GUIDE FOR LEGISLATIVE DECISION MAKING

A REPORT TO
THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

BY ANNMARIE WALSH AND DAVID MAMMEN

DECEMBER 15, 1982

55 WEST 44 STREET
NEW YORK, N. Y. 10036

1717 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036

should the borrowing requirements generated by short term debt be reported and monitored? Are there adequate provisions for coordination with other capital programs?

How should legislative oversight be exercised?

*What procedures should the legislature use to monitor the agency's performance with respect to goals? Legislative performance audit? Periodic public hearings or committee investigations (special circumstances only)? Legislative veto of financial plans or budgets which will exceed spending ceilings?

Legislative oversight should not involve intervention in specific management applications of policy (e.g., approval of specific loan applications, personnel actions, contractor selections, detailed budget lines.) If legislative judgment dominates these types of administrative action, the advantages sought from using the corporate form in the first place are lost.

In order for legislative oversight to be effective, legislative staff reviewing and dealing with the corporations must be adequate to keep up with the material coming to it, to analyse, to summarize, and to help distill out the policy implications. Investment in the capacity to continue to evaluate the public corporations would be small in comparison to the state appropriations supporting them.

Legislative oversight tools that have been used Outside include public authority control boards, special investigations, assignment of a full-time performance auditor to individual corporations, and codified corporation control acts. In other states, recent initiatives concerning public corporations have been part of broader efforts to strengthen debt management policies generally.

4. Implications of the Guide for the Alaska Railroad

The framework described in this Guide has implications for proposals before the Legislature. This Guide suggests that no public corporation should be created without thorough consideration of the rationale for selecting the corporate form and consideration of government alternatives. For example, an assessment of organizational alternatives for state ownership of the Alaska Railroad was undertaken in July 1981 for the State Department of Transportation and Public Facilities (An Assessment of the Alaska Railroad: Ownership and Operational Alternatives, by John T. Gray and John A. Bivens), and concluded that the corporate form would be best. The analysis noted these 'disadvantages' to the railroad as a state line agency:

- lack of ability to obtain essential capital investment funds except by state appropriations;
- competitive issues related to marketing, management flexibility, state agency regulations and procedures;
- potential for even more direct political influence on operational decisions;
- the public service versus business orientation questions.

The report went on to note "[The state agency alternative] clearly does not meet most of the criteria established for a viable railroad organization. A state agency organizational structure is the least desirable of the three alternatives discussed."

That conclusion may be correct, but it should be noted that access to the bond market is possible through alternatives such as state transportation bond issues or departmental revenue bonds. In any case

orig. 2/1/83
u. Wayne Weeks
4060

the experience of the Alaska Railroad as a federal agency indicates that two attributes should be sought above all others: 1) flexible, concentrated, business-like management and 2) policy control by state government, exercised in the interests of Alaska.

Regarding the corporate form, the study of organizational alternatives noted:

The principal advantages of the authority or public corporation alternative are an ability to obtain access to required capital funds and freedom to manage and operate the railroad within policies established by a board. Management could be given flexibility and responsibility for its decisions and could also be held accountable for its decisions. Passenger service could be accounted for separately and not subsidized by freight service. The Alaska governmental leadership could determine the appropriate levels, locations, and other parameters of passenger train service. Thus, under this scheme, it might be possible to reach a compromise between the public service and business purposes of the railroad.

That discussion raises two issues that are not resolved in the bill to establish the Alaska Railroad Authority (CS SB 212 [Transportation]). First, what decisions should be made or reviewed by state officials to assure the public service purposes, and what decisions and prerogative should be left to management to assure efficient and effective running of the railroad enterprise? Second, what volume and purposes of subsidy should be planned for the railroad?

This Guide suggests that legislative authorizations and mechanisms for supervising the corporations should be based clearly on the premise that the corporations are wholly owned subsidiaries of government. CS SB 212 [Transportation] makes the status of the corporation as a state agency clear:

Sec.42.40.330(e): "the authority is an agency of the State of

Alaska for purposes of jurisdictional determinations and judicial review...." Sec.42.40.100(c)(4): the authority shall act "on behalf of the State of Alaska". Sec. 42.40.200: the authority is an "instrumentality of the state within the Department of Transportation...,with legal existence independent of and separate from the state."

This Guide suggests that legislative intent for the goals and mission of the corporation should be sufficiently clear to provide policy guidance, criteria for performance evaluation and financial planning. But fundamental issues are unresolved in CS SB 212 [Transportation], which provides only that the Alaska Railroad should be operated to: "carry out its responsibilities on a self sustaining basis" and to "provide the best possible combination of high quality and reasonably low cost transportation", but be "supported where necessary by state investment in railroad capital improvements."

Is it or is it not to be self supporting? Are both freight and passenger services to be self supporting? Or are operating expenses to be paid for from the fare box, while capital investment is publicly provided? Is public investment to be repaid? On what schedule and with what interest? If it is not repaid, does it have implications for the competitiveness of other components of the state's transportation system?

If these decisions are not to be made by the legislature at the time of the creation of the authority, what process is established by the statute to make these basic public policy decisions over time? The railroad's fare structure, mix of services, and collective bargaining agreements will each affect the degree to which subsidies will be needed. According to this Guide, a procedure for governmental participation in these decisions is essential, whether it be legislative

fiat, review by the Department of Transportation and Public Facilities, review by the governor, and/or regulation.

Because of the ambiguity in the bill, basic issues of fare structure, subsidy levels, state investment and pay back may be left to the authority management to resolve and bargain over, with little clear guidance from the Legislature. Some forms of capital subsidy will be necessary; some form of operating subsidy may be necessary. According to what criteria; what limits; what procedures?

The Guide recommends that there be an orderly and timely process for assessing and controlling the impact of the corporation on state budget and credit. CS SB 212 [Transportation] implicitly permits subsidy of the railroad authority by state capital investments or revenues "from whatever source" to secure authority notes, but it is not clear about state or executive participation in, or review of, rates and fares, collective bargaining agreements, service expansions or contractions or debt ceilings which are crucial decision making points that will determine the volume and the effect of subsidies in the future. These decisions, plus the control over land (albeit in conjunction with the Department of Natural Resources), place very important policy powers in the hands of a council of six citizens with staggered terms.

Article 7 of the bill concerning state oversight provides procedures for gubernatorial veto, action forcing and intervention which are thorough. But by the time the specific undertakings described would be formally proposed and subject to these procedures, many options could be closed. Therefore review and approval of long range program and capital plans will be the more important process for purposes of policy

guidance and oversight. Proposed service changes and credit transactions should be required to conform to the approved long range plan. The opinion of the Commissioner of Transportation should be required for state review under Section 7, as well as for annual approval of the long range plan. Service improvement and performance targets should be included in the annual plan and used as criteria for performance audit by the legislative auditor.

One procedure that might be provided for would call for the authority to include in the required financial plan a recommended fare structure that would completely cover costs and investment payback. Government decision not to approve such a fare structure would then have to be accompanied by either specific commitments to provide compensating subsidies or specific cost cutting proposals. The active involvement of the Department of Transportation would be needed to carry this out. The importance of some such arrangement can be underscored by the inefficiency of public rail systems elsewhere in the country where disorderly annual negotiations over fares and subsidies have left corporate managements without financial stability or the capability to plan for improvements. Moreover, if these issues are not resolved by orderly public decisionmaking processes, they may be resolved unilaterally by corporate management through bond resolutions that guarantee certain revenue levels be maintained and collective bargaining procedures that determine cost levels.

The Guide suggests that responsible executive officials should be able to influence the major decisions of the corporation in order to provide coordinated and coherent state policy. Yet, as CS SB 212

[Transportation] is written, the Commissioner of Transportation is in an uncertain position with respect to the authority. The Commissioner is one of seven board members; there is no requirement that the Commissioner be chairman. Alternatives should be considered. The manager of the railroad corporation might report to the Commissioner, making the council an advisory and review board rather than a governing board. Or, the Commissioner could be named chairman of the governing board, which might be expanded to represent a wider range of interests.

The Guide notes that fixed management responsibility and concentrated executive leadership are important parts of the business model that public corporations are set up to take advantage of. Yet the bill divides management authority (Section 42.40.250) in ways that may involve the governing council in too much detail (\$11,000 real estate transactions; incurrence of debt, however small, and all changes of services). This may divert the council from policy issues such as program and capital plans and the establishment of rates.

In addition, the bill's provisions for appointment of railroad authority executives involve the council in appointing and removing personnel other than the general manager. This may make it more difficult to recruit a topflight railroad chief operating officer who will want to bring in his or her own management team. Accountability may be better served by giving the manager clear authority to manage, within the parameters of government policy, and holding him or her directly responsible for the results. The Legislature may therefore wish to consider whether the general manager should appoint, and have unhindered powers to dismiss, executive officials. Council involvement through

other executive appointments and the provision that executives serve "at the pleasure of the council" merely divides management responsibilities.

The Guide suggests that corporations be exempted from standard administrative procedures only as required. CS SB 212 [Transportation] AS 42.40.330 provides blanket exemption from the Administrative Procedures Act, except for public meetings and legislative review. There appear to be no criteria or standards for corporate personnel, accounting, contracting or procurement systems. While management flexibility will be served by these exemptions, management quality is not assured by them. The characteristics of the personnel system might be specified. (Will civil service rights be superimposed over collective bargaining rules? Must recruitment and promotion be on a merit basis?) In addition, the legislature should require that the corporation's accounting system be approved by the legislative auditor or that it accord with Generally Accepted Accounting Practices (GAAP).

The Guide recommends that corporations develop systematic procedures for dealing with public interests and opinions concerning the distribution of benefits among groups and localities. The Legislature may want to consider mechanisms for involvement by citizen advisory panels or regional organizations, or by local governments.

The INSTITUTE OF PUBLIC ADMINISTRATION (IPA) is a private, nonprofit, nonpartisan organization. It conducts research, advisory and educational activities in public administration, urban affairs, and management and finance of governments. IPA is chartered under the education laws of New York State.

Founded in 1906 as the Bureau of Municipal Research, the activities of the Institute of Public Administration are directed toward the solution of emerging problems at home and abroad, and emphasize innovation, demonstration of new techniques and communication among governments and between the public and private sectors.

IPA's professional staff includes specialists in public and business administration, finance, political science, law, planning, engineering, library science and economics. Offices are located in New York City and Washington, D.C.

Mr. Chairman, Members of the Transportation Committee:

I am Leonard Shapiro, Vice President of Pricing for Totem Ocean Trailer Express. Tote operates two new deep water Ro/Ro vessels between Tacoma, Washington, and Anchorage, Alaska, where we interline trailers to motor carriers and the Alaska Railroad for movement to the interior of Alaska.

We at Totem greatly appreciate this opportunity to express our views concerning the transfer of the Alaska Railroad to the State of Alaska. It should be noted that Totem is among the top five (5) customers of the Alaska Railroad and, therefore, we strongly support a financially strong railroad.

Totem has analyzed in great detail Senate Bill No. 212 and we wish to offer our support to most of the bill. We feel it enables the State of Alaska to smoothly handle the transfer of power from the federal to the State level. We specifically support the position which Senate Bill No. 212 takes on future expansion of the Alaska Railroad, inasmuch as the railroad would be the most economic means whereby the State can develop its extensive mineral resources.

Development of these resources will mean a significant increase in the economic activity of the State and, therefore an increase in the economic activity for all carriers.

Many of you have undoubtedly heard rumors concerning Totem's position on this takeover of the Alaska Railroad by the State of Alaska. I wish to assure all present today that rumors to the effect that "Totem opposes the takeover of the Alaska Railroad by the State and desires the Railroad to remain under Federal control" are totally untrue. Further we have absolutely no desire to "tie the hands of the Alaska Railroad" for rate purposes. Totem's sole desire, insofar as Senate Bill 212 is concerned, is to ensure that all participants in Alaska's intergrated transportations system "play by the same rules". As I mentioned above Totem is one of the top five customers of the Alaska Railroad and as such depends on the Alaska Railroad for a significant portion of the transportation service we need in order to reach the interior of the State. For Totem to oppose in any way legislation which would ensure a financially sound railroad, would be sheer business folly.

In reviewing Senate Bill 212 there are two primary areas of concern for Totem. These are -

- (1) Entry of the Alaska Railroad into the water carrier or motor carrier field - it is Totem's belief that the Alaska Railroad will "have its hands full" in the coming years improving its right-of-way and extending its right-of-way to tap the mineral resources of the State of Alaska. Private enterprise has shown a willingness to supply necessary water and motor carrier services both within and to the State of Alaska. We can see no need for the Alaska Railroad to operate in competition with these services. Obviously if private enterprise refuses, does not, or cannot supply these necessary services the railroad should return to the State Legislature for specific authority to enable it to enter into these businesses.

- (2) Rate making policies of the Alaska Railroad - The Alaska Railroad, by virtue of State ownership, will enjoy both direct and indirect subsidies. By direct subsidies I refer to such items as direct cash appropriations from the State Legislature for either capital or operating purposes. Indirect subsidies would take the form of the ability to finance debt utilizing tax exempt bonds, the ability to avoid the payment of federal, state and local property and income taxes, freedom from the need to earn a profit with which to support added investment, a reduction

in expenses based on a State-owned entities ability to avoid paying for license and other fees, etc.

Private carriers faced with competition from a State-owned entity are at a distinct disadvantage if such competition is based on "cost alone" inasmuch as the State-owned entity has the benefit of both direct and indirect subsidies. In the case of the Alaska Railroad cross competition exists for a segment of the rail market. We at Totem have no desire to have any impact on the pricing policies of the Alaska Railroad for the movement of traditional bulk rail commodities.

We feel, however, that the Railroad should not be allowed to utilize either direct or indirect subsidies in the pricing of cross-competitive commodities where they wish to offer rates below those of the privately owned carriers.

Totem has proposed amendments to S.B. 212 which would prohibit the railroad from pricing below the levels set by the privately owned carriers where the railroad utilized either direct or indirect subsidy to achieve this level of price. It should be noted here that we have no desire to stop the railroad from meeting rates set by the

privately owned carriers. We also have absolutely no desire to stop the railroad from pricing below the rates set by privately owned carriers if the rate does not include the utilization of any direct or indirect subsidy.

We have offered a series of specific suggestions to committee staff from both houses concerning these areas and we look forward to continuing discussions with you in these areas.

Anchorage

CHAMBER of COMMERCE

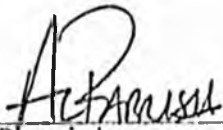


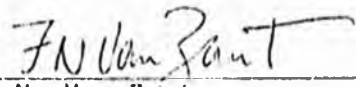
April 16, 1982

The Anchorage Chamber of Commerce believes S.B. 212, dealing with transfer of the Alaska Railroad from federal to state ownership, should not be passed by the Alaska Legislature in its present form.

The Chamber urges the Legislature to amend the current bill to:

1. Preserve the integrity of the railroad and its assets entirely, maintaining it as a unit to ease the early transition into private ownership, control, and operation. Both assets and liabilities should be transferred together, enabling the railroad to retain the basis of self-support.
2. Preserve the employment environment for all of the railroad's present employees, not making state ownership a relative penalty.
3. Establish the Alaska Railroad Authority as an independent entity, owned by the state, but not a part of any existing agency or department.
4. Include in the legislation only those elements of the state's open meeting, freedom of information, conflict of interest, and administrative procedures regulations and statutes which represent a departure necessary for conduct of the railroad's business.
5. Provide for an independent Board of Directors, not including representation of the administration other than by the Governor or Lieutenant Governor.


Al Parrish
President


Frank N. Van Zant
Executive Vice President

EVALUATION
OF THE
INTERSTATE COMMERCE COMMISSION BUREAU OF ACCOUNTS
SECTION OF COST DEVELOPMENT JUNE 15, 1981 STUDY
OF THE ALASKA RAILROAD WATER/RAIL CONTRACT RATES AND
WATER/RAIL TARIFF CHARGE RATES

Executive Summary

This evaluation of an Interstate Commerce Commission (ICC) examination of the Alaska Railroad's pricing was occasioned by expressions that the ICC had concluded that the Alaska Railroad insofar as it competes with private companies is not pricing below costs. No ICC study stands for that proposition.

Working with data supplied by the Alaska Railroad, and thus presumably favorable to the Railroad's position, the ICC report in fact demonstrates that the Alaska Railroad's prices for competitive service are provided at a level below the costs the Alaska Railroad would experience if it were an unsubsidized private enterprise.

A recently released General Accounting Office study casts doubt on anyone's ability to determine whether the Alaska Railroad is pricing above costs.^{1/} GAO concludes that despite its having drawn attention to the railroad's lack of costing data, corrective action was not initiated until December, 1981, and is still not completed. Thus, the Alaska Railroad's costs of providing freight transportation service is still unknown.

^{1/} Comptroller General's Report to the Congress, Alaska Railroad's Federal Rule Should End; Some Management Problems Remain, February 25, 1982, hereinafter, "the GAO Study," pages 14 and 15.

Introduction

The Conference Report on Appropriations for the Department of Transportation and Related Agencies^{2/}, for fiscal year 1981, directed the ICC to provide a determination (along with supporting data) to the House and Senate Committees on Appropriations as to whether the Alaska Railroad's (the "ARR" or "the Railroad") water/rail contract rates and water/rail tariff charges recover the full variable cost of such service as well as any subsidy allocable in providing such service. The pertinent part of the Conference Report states,

PAYMENT TO THE ALASKA RAILROAD REVOLVING FUND

Amendment Number 36: The Conferees also direct the Interstate Commerce Commission, in cooperation with the Federal Railroad Administration and the State of Alaska, to provide a determination (along with supporting data) to the House and Senate Committees on Appropriations as to whether Alaska Railroad water/rail contract rates and water/rail tariff charges recover the full variable cost of such service as well as any subsidy allocable in providing such service. Such determination shall be provided no later than June 1, 1981.

Report No. 98-1400, 96th Congress, 2d Session, p. 14.

The Senate Appropriations Committee gave its reasons for ordering the study as follows:

"The Committee is concerned that the federally owned and subsidized Alaska Railroad may be pricing its interstate water/rail services at a level so low as to threaten the existence of its unsubsidized private carrier competition...".

S. Report No. 96-932, 96th Congress, 2d Session, p. 43.

The ICC completed the required study, entitled, "Study of the Alaska Railroad Water/Rail Contract Rates and Water/Rail Tariff Charge Rates Pursuant to Amendment No. 36 to the Conference

Report Making Appropriations for the Department of Transportation and Related Agencies" (the "Study") on June 15, 1981. The Study used some of the same methods employed in an earlier ICC study of two contract rates published by the ARR. The earlier study, mandated by Section 709 of the Staggers Rail Act of 1980, P.L. 96-448, was published on June 1, 1981, and was entitled, "Study of the Alaska Rates Pursuant to Section 709 of the Staggers Rail Act of 1980" (the "Staggers Act Study").

Background

The principal commercial link between Alaska and the contiguous or "lower 48" states is by water. No rail route exists, and motor carriage up the Al-Can Highway is both prohibitively expensive and subject to restrictions by the Province of British Columbia.

At present three water carriers haul virtually all the freight moving to Alaska from the lower 48 states. Totem Ocean Trailer Express ("TOTE"), Sea Land Service Inc. (Sea Land), and the U.S. Government owned and operated ARR are the three principal common carriers which publish tariffs for the transportation of cargo by water between the lower 48 and Alaska.

TOTE transports trailers in "RO-RO" (roll on/roll off) vessels, and Sea Land transports containers in container ships. TOTE and Sea Land publish competing tariffs, each of which states through routes and joint rates which are concurred in by various motor carriers.

The ARR, which itself only provides intrastate rail service inside Alaska, also publishes a through route/joint rate tariff

for water/rail service between the lower 48 and Alaska. The water portion of this transportation is provided by Alaska Hydrotrain, a division of Crowley Maritime Corporation. Hydrotrain transports rail cars on barges pursuant to the ARR's water/rail tariff.

TOTE, Sea Land, and the ARR all offer complete through transportation to or from inland points in the lower 48 to or from inland points in Alaska in conjunction with their respective concurring and connecting carriers. Thus TOTE, Sea Land, and the ARR are direct competitors in providing transportation between the lower 48 and Alaska.

More than 80 percent of the freight traffic (except oil) moving between Alaska and the lower 48 moves between Anchorage and the Puget Sound. Most of that movement is by water. But Alaska Hydrotrain, the only water carrier of rail cars in the trade, publishes no tariffs and establishes no separate charges for its services. Its prices are included in the joint rates charged by the ARR.

As the Conference Report indicates, TOTE and Sea Land, the ARR's unsubsidized competitors, have complained that the Railroad is using the public subsidy it receives to publish below cost rates on traffic for which it competes with ARR/Hydrotrain. The Congress therefore mandated the study to examine whether the ARR was using the subsidy it receives^{2/} to price its

^{2/} The ARR received \$6.5 million in subsidy in FY 1980, \$10 million in FY 1981, and \$6 million in 1982. In addition, the ARR/Hydrotrain service has received substantial ongoing benefits through government construction of facilities such as the harbor facilities at Whittier, which the ARR may use free of debt service.

competitive service^{3/} at a level below that which it could maintain without subsidy.

Analysis

The ICC concluded that the ARR's charges for rail service recover the cost of providing that service.

Of obvious importance to a finding related to costs is that one know what the costs are. The ICC stated that the only cost data available was that "developed by the railroad's costing system."^{4/}

Therein lies a basic weakness with the Study. The Railroad has no effective cost information. The General Accounting Office, at page 18 of its Feb. 25, 1982, study, noted that in its 1978 report GAO had concluded: "Furthermore, the Railroad did not have information on the cost of transporting specific commodities to use in setting rates and making other marketing decisions." GAO then reported that little substantive change had occurred. Then at page 21 GAO said,

"...[W]e continue to believe that complete cost information is crucial to an effective marketing program. An FRA rate consultant stated that rates are determined by the market conditions, not by costs. Our previous reports stated that Alaska Railroad's rates should be based primarily on costs, but even if they are based on market conditions, as the consultant suggests, complete cost and revenue information is needed to determine

^{3/} The ARR maintains a number of services for which little or no competition exists. An example is the rail passenger service between Anchorage and Fairbanks. In addition, neither TOTE nor Sea Land compete for the carriage of bulk commodities between the lower 48 and Alaska.

^{4/} The Study, p. 13.

which business is the most profitable and should therefore be emphasized and encouraged through marketing efforts."

Thus, the cost data underpinning for any conclusions simply do not exist on the ARR.

Even if we assume that the cost data has some relation to fact, the Study shows the Railroad's rates to be below cost "as well as any subsidy allocable in providing such service." The Study demonstrates that the ARR's prices for its competitive rail service are set at a level below the costs that the ARR would have to pay to meet that service if it did not receive a subsidy from the Federal Government. If the ARR were privately owned, it would be losing substantial amounts on its competitive service.

Table 1 below, which was compiled using data and assumptions used by the ICC in the Study, demonstrates this point.

Table 1

WATER/RAIL RAILCAR TRAFFIC: COMPARISON OF REVENUE PER CARLOAD AND FULL VARIABLE COSTS PER CARLOAD

(Cost of Capital at Government Rate and at Private Enterprise Rate)

Traffic Category	Revenue per Carload	Full Variable Costs per Carload		Ratio of Revenue to Full Variable Costs	
		Govt. Rate	Pvt. Rate	Govt. Rate	Pvt. Rate
Competitive	1224	1193	1389	1.03	.88
Noncompetitive	1492	1045	1216	1.43	1.23
Total	1299	1151	1340	1.13	.97

The far right-hand column on Table 1 shows the "Ratio of Revenue to Full Variable Costs"^{5/} for "competitive," "noncompetitive," and total rail/water traffic moving between the lower 48 and Alaska. The Study does not break the water/rail traffic down into competitive or noncompetitive categories. But TOTE has demonstrated -- without contradiction from the ICC or the ARR -- that it and Sea Land face competition from the ARR on about 20 percent of their traffic; the bulk of the "competitive traffic" is lumber and building materials.^{6/}

^{5/} The variable cost of providing transportation service includes the costs that vary according to the extent of that service, as opposed to fixed costs, which remain constant. Examples of variable cost include labor, fuel, and wear and tear on equipment, while an example of a fixed cost is the service on outstanding debt. The allocation of costs into the variable or fixed categories may be made in different ways, depending on the period of time under consideration and the assignment of certain "common" costs to different services. In the Study, the ICC computed seven different levels of variable cost, described at pages 17-20 of the Study. Table 1 uses the lowest level and, thus, the level most favorable to the Railroad's position, i.e. ICC's "Level I" variable cost computation, the level closest to the ARR's direct or out-of-pocket costs. The other cost levels contain some allocation of indirect costs to this traffic.

^{6/} TOTE identified 15 commodities with which it competes with the ARR in a "Motion for Supplementary Action" filed at the ICC on January 9, 1981, in Ex Parte No. 405, the proceeding in which the ICC developed the Staggers Act Study. A copy of the Motion, and the attached Verified Statement of expert witness Carl M. Snavely, Jr., is available from counsel for TOTE, Garvey, Schubert, Adams & Barr, 1000 Potomac Street, N.W., Washington, D.C. 20007, upon request. The Study develops cost/revenue ratios for a number of different commodity groups in Appendices E, F, and H. A comparison of the TOTE list of 15 commodities with the commodities listed in the Appendices produced a list of seven competitive commodity categories, as follows: housebuilding materials, agricultural commodities, iron and steel, machinery, paper and printing paper, food and drink, and manufactured and miscellaneous. The list is not exhaustive, but it is representative: most of the traffic as to which TOTE, Sea Land and the ARR compete is lumber and building materials designated as "housebuilding" in Appendices E, F, and H.

With cost of capital computed at the "embedded cost" to the Government,^{7/} Table 1 shows that the revenues from the competitive traffic exceeded the full variable costs by three percent, whereas the revenues from the noncompetitive traffic exceeded the full variable costs by 43 percent.

However, Table 1 also shows that when the cost of capital is increased to the "private enterprise requirements," -- i.e. the cost of capital to private enterprises rather than to the Government -- the competitive traffic fails to cover the full variable costs by 12 percent. In contrast, the revenues on the noncompetitive traffic exceed the full variable costs by 23 percent.

Hence, the Study shows that the availability of the Government's capital subsidy does permit the ARR to continue the long-term carriage of the competitive commodities at a revenue level which would not support a private enterprise railroad. The only conclusion available is that the Alaska Railroad is using its favored position to compete unfairly with private business.

As the language in the Senate Appropriations Committee Report indicates, the Committee wanted the Commission to

^{7/} The embedded cost of capital to the Government is the price the Government actually paid for the capital it has invested in rail facilities; the cost is much lower than the cost of capital to a private individual, since (1) in many cases the Alaska Railroad could rely on its subsidy monies rather than borrowing funds and (2) the interest rate available to the Alaska Railroad reflects the fact that it is an agency of the United States Government, and as such has the full faith and credit of the United States behind it.

determine if the pricing practices of the Alaska Railroad
(1) increased its reliance on the Federal subsidy and/or
(2) threatened the existence of its unsubsidized competitors.
However, the Commission directed its entire effort to merely
developing revenue-to-full variable cost ratios.

The Commission study is silent both as to the effect of the
ARR's rate policies on the level of the Federal subsidy, as well
as to the effect of those policies on the private enterprise
carriers with which the railroad competes.

The ARR's rate policies can have several effects on the
competitive private enterprise water carriers. Obviously, if
its rates divert traffic from those carriers to the railroad,
there is a direct and negative impact on the gross revenues of
the competitive carriers and, dependent on the economics of the
situation, on their net revenues. More subtle perhaps is the
impact on the willingness of the private enterprise carriers to
take the risk of future investment in the Alaska trade.

Over the long run, private enterprise capital cannot compete
pricewise with Government funding. As a result, the private car-
riers will gradually withdraw investment from the trade by not
replacing existing investment as it becomes worn out or obsolete.
Ultimately, the private carrier will go out of business altogether
unless the Government funded carrier does not have or does not
obtain sufficient capacity to meet the demands of the trade.

Even in times of high demand, a history of below-cost rates
i.e. below the costs that private enterprise carriers would have
to pay -- by the Government funded carrier will cause the private

enterprise carriers to be reluctant to make investments in new capacity to meet future increases in demand. They will recognize that, if the demand increases do not materialize as projected, the Government funded carrier can and, perhaps, will undertake rate actions that will undercut their return on the new investment.

Introduced: 2/4/81
Referred: Transportation
and State Affairs

BY MOSS, ROGERS, BROWN AND
BETTISWORTH

1 IN THE HOUSE

2 HOUSE BILL NO. 12

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Railroad Authority."

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

8 * Section 1. AS 44 is amended by adding a new chapter to read:

9 CHAPTER 87. ALASKA RAILROAD AUTHORITY.

10 ARTICLE 1. CREATION AND ORGANIZATION.

11 Sec. 44.87.010. ALASKA RAILROAD AUTHORITY CREATED. There is
12 created the Alaska Railroad Authority. The authority is a public cor-
13 poration of the state in the Department of Transportation and Public
14 Facilities, but with a separate and independent legal existence.

15 Sec. 44.87.015. MEMBERSHIP OF THE AUTHORITY. The authority con-
16 sists of the following board of directors: the commissioner of trans-
17 portation and public facilities, the commissioner of revenue, and the
18 commissioner of commerce and economic development.

19 Sec. 44.87.020. OFFICERS AND QUORUM. The board shall elect one
20 member as chairman. Other officers may be elected as the board deter-
21 mines. The powers of the authority are vested in the board. *insert*
22 directors of the authority constitute a quorum. Action may be taken
23 and motions and resolutions adopted by the authority at a meeting by
24 the affirmative vote of *at least three* ~~two~~ directors. *Two three*
25 without compensation, but they are entitled to the same travel expenses
26 and per diem provided by law for board members.

27 Sec. 44.87.025. STAFF. The authority shall employ an executive
28 director who may employ additional staff as necessary. In addition to
29 its staff of regular employees, the authority may contract for and

1 engage the services of the bond counsel, consultants, experts, and
2 financial advisors it considers necessary for the purpose of developing
3 information, or conducting studies, investigations, hearings, or other
4 proceedings.

5 ARTICLE 2. PURPOSE AND POWERS.

6 Sec. 44.87.030. PURPOSE OF THE AUTHORITY. The purpose of the
7 authority is to ^{plan} acquire, construct, operate and maintain ^{OR sell} railroad
8 facilities in the state, *as provided by law*

9 Sec. 44.87.035. POWERS OF THE AUTHORITY. In furtherance of its
10 corporate purposes, the authority may

- 11 (1) sue and be sued;
- 12 (2) have a seal and alter it at pleasure;
- 13 (3) make and alter bylaws for its organization and internal
14 management;
- 15 (4) adopt regulations governing the exercise of its corporate
16 powers;
- 17 (5) acquire by construction, purchase, gift or lease facili-
18 ties in the state;
- 19 (6) improve, equip and operate railroad facilities in the
20 state;
- 21 (7) issue revenue bonds for the acquisition, construction,
22 or improvement of railroad facilities in the state;
- 23 (8) sell, lease as lessor or lessee, exchange, donate,
24 convey or encumber by mortgage or by creation of any other security
25 interest, real or personal property owned by it, or in which it has an
26 interest, when, in the judgement of the authority, the action is in
27 furtherance of its corporate purposes;
- 28 (9) accept gifts, grants or loans from, and enter into con-
29 tracts with a federal agency or an agency of the state, a municipality,

1 a private organization or other source;

2 (10) deposit or invest its funds, subject to agreements with
3 bondholders;

4 (11) contract with any person for the improvement, construc-
5 tion, acquisition, operation and maintenance of its railroad facilities,
6 or for the security of bonds issued by the authority;

7 (12) establish, levy, and collect fares and other charges for
8 the use of its railroad facilities;

9 (13) enter into contracts or agreements with respect to the
10 exercise of any of its powers, and do all things necessary to carry out
11 its corporate purposes and exercise the powers granted in this chapter;

12 (14) exercise the power of eminent domain in accordance with
13 AS 09.55.250 - 09.55.410.

14 ARTICLE 3. FINANCIAL PROVISIONS.

15 Sec. 44.87.040. BONDS OF THE AUTHORITY. (a) The authority may
16 issue bonds in accordance with AS 44.87.035(7) on which the principal
17 and interest are payable

18 (1) exclusively from the income or other money derived from
19 its railroad facilities; or

20 (2) from its income and receipts or other assets generally,
21 or a designated part of them.

22 (b) Bonds shall be authorized by resolution of the authority, and
23 shall be dated and shall mature as the resolution may provide, except
24 that no bond shall mature more than 40 years from the date of its
25 issue. Bonds shall bear interest at the rate or rates, be in the
26 denominations, be in the form, either coupon or registered, carry the
27 registration privileges, be executed in the manner, be payable in the
28 medium of payment, at the place or places, and be subject to the terms
29 of redemption which the resolution or a subsequent resolution may

1 provide.

2 (c) All bonds, regardless of form or character, shall be negoti-
3 able instruments for all the purposes of the Uniform Commercial Code.

4 (d) All bonds may be sold at public or private sale in the manner,
5 for the price or prices, and at the time or times which the authority
6 may determine.

7 (e) The superior court has jurisdiction to hear and determine
8 actions or proceedings relating to the authority, including actions or
9 proceedings brought by or for the benefit or security of a holder of
10 its bonds or by a trustee for or other representative of the holders.

11 Sec. 44.87.045. TRUST INDENTURES AND TRUST AGREEMENTS. In the
12 discretion of the authority, an issue of bonds may be secured by a
13 trust indenture or trust agreement between the authority and a corporate
14 trustee (which may be a trust company, bank, or national banking
15 association, with corporate trust powers, located inside or outside the
16 state) or by a secured loan agreement or other instrument or under a
17 resolution giving powers to a corporate trustee by means of which the
18 authority may

19 (1) make and enter into any covenants and agreements with
20 the trustee or the holders of the bonds which the authority may deter-
21 mine to be necessary or desirable, including, without limitation,
22 covenants, provisions, limitations and agreements as to

23 (A) the application, investment, deposit, use and dis-
24 position of the proceeds of the bonds of the authority or of money
25 or other property of the authority or in which it has an interest;

26 (B) the terms and conditions upon which additional
27 bonds of the authority may be issued;

28 (2) pledge, mortgage or assign money, leases, agreements,
29 property or other assets of the authority; and

1 (3) provide for any other matters which affect the security
2 or protection of the bonds.

3 Sec. 44.87.050. VALIDITY OF PLEDGE. It is the intention of the
4 legislature that a pledge made in respect of bonds be valid and binding
5 from the time the pledge is made; that the money or property so pledged
6 and thereafter received by the authority be immediately subject to the
7 lien of the pledge without physical delivery or further act; and that
8 the lien of the pledge be valid and binding as against all parties
9 having claims of any kind in tort, contract or otherwise against the
10 authority irrespective of whether the parties have notice. Neither the
11 resolution, trust agreement nor any other instrument by which a pledge
12 is created need be recorded or filed under the provisions of the
13 Uniform Commercial Code to be valid, binding or effective against the
14 parties.

15 Sec. 44.87.055. NONLIABILITY ON BONDS. (a) Neither the members
16 of the authority nor a person executing the bonds is liable personally
17 on the bonds or subject to personal liability or accountability by
18 reason of the issuance of the bonds.

19 (b) The bonds issued by the authority do not constitute an
20 indebtedness or other liability of the state or of a political sub-
21 division of the state, except the authority, but are payable solely
22 from the income and receipts or other funds or property of the
23 authority. The authority may not pledge the faith or credit of the
24 state or of a political subdivision of the state (except the authority)
25 to the payment of a bond and the issuance of a bond by the authority
26 does not directly, indirectly or contingently obligate the state or a
27 political subdivision of the state to levy or pledge any form of
28 taxation to the payment of a bond.

29 Sec. 44.87.060. PLEDGE OF THE STATE. (a) The state pledges to

1 and agrees with the holders of bonds issued under this chapter that the
2 state will not limit or alter the rights and powers vested in the
3 authority by this chapter to fulfill the terms of any contract made by
4 the authority with the holders. The state also pledges to and agrees
5 not to impair the rights and remedies of the holders until the bonds,
6 interest on them, interest on unpaid installments of interest on them,
7 and all costs and expenses in connection with any action or proceeding
8 by or on behalf of the holders, are fully met and discharged.

9 (b) The state pledges to and agrees with a federal agency that
10 loans or contributes money for railroad facilities of the authority,
11 that the state will not limit or alter the rights and powers vested in
12 the authority by this chapter to fulfill the terms of any contract made
13 by the authority with the federal agency.

14 (c) The authority is authorized to include the pledge and agree-
15 ment of the state contained in (a) and (b) of this section, insofar as
16 it refers to holders of bonds of the authority, in a contract with the
17 holders, and insofar as it relates to a federal agency, in a contract
18 with a federal agency.

19 Sec. 44.87.065. EXEMPTION FROM TAXATION. The real and personal
20 property of the authority and its assets, income and receipts are de-
21 clared to be property of a political subdivision of the state and,
22 together with the railroad facilities under the jurisdiction of the
23 authority is exempt from all taxes and special assessments of the state
24 or a political subdivision of the state. The bonds of the authority
25 are declared to be issued by a political subdivision of the state for
26 an essential public and governmental purpose and the bonds, and the
27 interest on them, the income from them and the transfer of the bonds,
28 and all assets, and income pledged to pay or secure the payment of the
29 bonds, or interest on them, are exempt from taxation by or under the

1 authority of the state, except for inheritance and estate taxes and
2 taxes on transfers by or in contemplation of death.

3 Sec. 44.87.070. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
4 bonds of the authority are securities in which all public officers and
5 bodies of the state and all municipalities, all insurance companies and
6 associations and other persons carrying on an insurance business, all
7 banks, bankers, trust companies, savings banks, savings associations,
8 including savings and loan associations and building and loan associa-
9 tions, investment companies and other persons carrying on a banking
10 business, all administrators, guardians, executors, trustees and other
11 fiduciaries, and all other persons who are or who may be authorized to
12 invest in bonds or other obligations of the state, may properly and
13 legally invest funds including capital in their control or belonging to
14 them. The bonds of the authority are also securities which may be
15 deposited with and may be received by all public officers of this state
16 and all municipalities for any purpose for which the deposit of bonds
17 or other obligations of the state is or may be authorized.

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 44.87.075. DEFINITIONS. In this chapter

- 20 (1) "authority" means the Alaska Railroad Authority;
21 (2) "board" means the board of directors of the authority;
22 (3) "railroad facilities" includes rights-of-way, trackbed,
23 engines, cars, freight and passenger terminals, and any other facili-
24 ties or equipment used for the operation of a railroad.

ALASKA



REVIEW OF SOCIAL AND ECONOMIC CONDITIONS

UNIVERSITY OF ALASKA, INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH, FEBRUARY 1982, Vol. XIX, No. 1

THE ALASKA RAILROAD: OVERVIEW AND OPERATIONAL ALTERNATIVES

INTRODUCTION

This Review takes a look at the federally owned Alaska Railroad in the context of its apparent pending transfer to the State of Alaska. After describing the history of the railroad—its present physical plant, rolling stock, and its operations—we analyze the most important issues with which the state must deal: railroad land, employees, finances, competition, environmental, and passenger service. We also review organizational structures that might be applied to the railroad following the end of federal control and make recommendations for further action. (See box on page 3 for a brief summary of study findings.)

The Alaska Railroad (ARR) is unique in that it is (1) the only railroad in North America that is a federal agency, (2) the farthest north railroad in North America, a frontier development history and has attracted intense criticism and conceived as a development of the Panama Canal. Its early equipment emerged as a military pauper to spoiled and an anonymity which day.

The Alaska Railroad the United States Federal Railroad Act subject to all the other such agencies, and both political and economic become an important

and a central element in the state's economic development process.

Changing Federal Policy

During the past decade, FRA has become increasingly interested in transferring ownership of the property to a nonfederal entity. The agency first introduced draft federal legislation to facilitate the transfer in 1971. However, the momentary prosperity of the ARR during the Alyeska pipeline construction project diminished federal interest in disposing of the property.

With the return of "normal" economic conditions in 1978, however, FRA was once again motivated to explore means of relieving itself of the ARR. economic downturn also coincided with a shift in FRA policy, mainly due to its increasing involvement with Conrail and Amtrak.¹ By 1979, it was evident that both organizations had become major economic and political liabilities for FRA, leading the agency to both a fear of and disinterest in attempts to operate any railroad. Thus, FRA's policy tended toward the dissolution of any rail property which

rationally controlled railroad properties that had been unsuccessfully managed in the private sector.

This article was adapted from a report prepared for the Alaska Department of Transportation and Public Facilities, Division of Planning and Programming, by the Institute of Social and Economic Research and Bivens and Associates, Inc.

improve railroad property, and meet operational expenses.

6. The public's capital investments are to be protected.
7. The rail service rates are to remain competitive.
8. Public railroad operational subsidies are to be minimized.
9. Rail users are to receive good service, including adequate service frequency, an adequate number of cars, and appropriate car types.
10. The Alaska Railroad is to cooperate with the state, local governments, ports, businesses, industries, and other transportation modes within established policies and legal constraints.

Establishing criteria designed to meet the rail service needs of Alaska will enable the state administration and legislature to evaluate the organizational alternatives subsequently described. Each organizational structure can be measured by the extent to which it satisfies the following criteria:

1. Ability to obtain access to public and private capital funds.
2. Freedom of management to make the railroad's operational decisions within established policies.
3. Clear-cut lines of management responsibility and accountability for decisions.
4. Marketing freedom within established policies and budgetary constraints.
5. Clear decision-making authority without a cumbersome and bureaucratic process.
6. Separation of freight and passenger service functions and accounting.
7. Ability to efficiently procure necessary supplies, equipment, services, and materials within appropriate policies and budgetary authority.
8. Management capability to make long-term commitments within established policies.
9. Management freedom to negotiate solutions to problems and to take advantage of service opportunities.
10. Industrial development capability on Alaska Railroad land.
11. Performance-based personnel management, including the direct ability to hire, fire, promote, train, supervise, and direct required railroad employees.
12. Ability to provide financial and other incentives for performance.

We recognize that it may not be possible or

acceptable to have a state organization which fully meets all of these criteria. However, these criteria are important in defining the long-term objectives for the Alaska Railroad. The State of Alaska should seek an acceptable organizational structure which will enable the railroad to operate as effectively as possible within these areas.

Organizational Alternatives Considered

When we began this study, various alternatives were considered possible. Among these were:

- Keeping the status quo—letting the ARR continue to operate as a federal agency.
- Allowing the ARR to operate as a federal agency corporation like the Consolidated Railroad Corporation (Conrail) or Amtrak.
- Selling the ARR to private investors.

However, during the early stages of this study the federal government made clear its intention to divest itself not only of the ARR, but also of Conrail and Amtrak, which precluded the first two alternatives. Further, the difficulty a private investor would have in financing the marginally profitable ARR, in addition to the complex issue of unresolved land-transfer problems, effectively precluded the third alternative. Thus, there emerged but three remaining alternatives that seemed to offer workable opportunities for the ARR. These included the state (1) operating the ARR as a line agency of the state, (2) operating it as a state public corporation or authority, or (3) leasing it out for operation by a private party. We examine these three alternatives in the following paragraphs.

Three Possible Alternatives

The Railroad as a State Line Agency

Under this approach, the state would take title to the railroad in a manner similar to state ownership of such other transportation facilities as airports, the Marine Highway System, and state highways. However, we should note that the long-term availability of railroad assistance funding from the federal government, either for capital or operating purposes, is very uncertain. There currently exists no trust fund for railroads as there is for airports or highways.

Under this alternative, the Alaska Railroad would logically be made a division or some other unit of the Alaska Department of Transportation and Public Facilities. The railroad personnel would therefore become employees of the state with all of the benefits available to other state employees.

Policy direction for the Alaska Railroad as a

state line agency would come from the governor, from the legislature through normal legislative processes, and from the commissioner of the department involved.

There are several advantages to establishing the Alaska Railroad as a state line agency. The management lines of authority and responsibility would be clear. The institutional structures and resources of the State of Alaska could be readily available for use on the railroad. Alaska Railroad employees would have the fringe benefits and other advantages of state employment, including reasonable job protection. Since the railroad already has a cadre of experienced and trained operational personnel, the transition from federal agency status to state agency status would be easier than other alternatives.

However, there are also significant disadvantages in organizing the railroad as a state line agency. The ARR would encounter most of the same limitations as a state agency as it now does as a federal agency. One of the most critical limitations would be the inability to obtain essential capital investment funds except by state appropriations. The competitive issues related to marketing, management flexibility, state agency regulations, procedures and requirements; the potential for even more direct political influence on operational decisions; and the public-service-versus-business-orientation questions are all disadvantages of this approach.

While the state agency alternative should be considered, it clearly does not meet most of the criteria established for a viable railroad organization, if the Alaska Railroad is to adequately fulfill its transportation role within its technological limitations, a state agency organizational structure is the least desirable of the three alternatives discussed in this report. It would be unfortunate if the State of Alaska were to place the Alaska Railroad in an organizational structure that perpetuated the limitations of federal agency status.

The Railroad as a State Public Corporation or Authority

There are precedents for this approach, both nationally and internationally. The West Virginia Railroad Maintenance Authority and the British Rail Corporation, with some variations, will serve as examples.

The West Virginia Railroad Maintenance Authority. The State of West Virginia has since 1975 owned and operated a railroad¹⁷ similar in some ways to the ARR. The West Virginia Maintenance Authority (WVMA) consists of seven part-time

members, including the governor as an ex-officio member. The other six members are appointed by the governor, with the consent of the state senate, for staggered 6-year terms. The authority selects its own officers and appoints an executive director (the chief administrative officer). The employees of the authority in West Virginia work for the state and are non-union.

The WVMA has all the powers needed to own and operate a railroad. These powers include the ability to plan, carry out projects, acquire property, sell or transfer property, contracts, and sue or be sued. The WVMA may raise capital via railroad authority revenue bonds. It may also acquire railroad rights in other states. In addition, the authority has the power of eminent domain.

The railroad experience in West Virginia has been generally successful, and with some modification, lessons learned there may be applicable to Alaska.¹⁸

The British Rail Corporation. Since its inception in the late 1940s, British Rail has operated as a profit-oriented transportation company, providing both freight and passenger service. A government-appointed chairman and an autonomous board of directors provide general policy for running the corporation, with each director responsible for a particular facet of the operation (passenger, maintenance, capital investment, etc.).

British Rail's chief executive is responsible to the board and the chairman, at the same time serving as a member of the board. The principal officers of British Rail serve at the pleasure of the Chief Executive.

The levels and nature of British Rail's passenger service are negotiated between the government and the corporation, with the government paying for passenger service provided.

British Rail's capital investment package overseen by the Minister of Transport includes a 5-year plan, the first 3 years of which are fixed. This establishes the capital limits, within which investments must fall. British Rail can only borrow through the government, and major projects must be approved by the Minister of Transport.

The ministry of Transport through its Railways Division, oversees the capital investment program of British Rail. It also has some safety responsibilities. Regulation is not institutionalized. The marketplace drives most policy decisions of British Rail.

¹⁷The West Virginia Railroad carries no commercial passengers.

¹⁸A copy of the West Virginia Maintenance Authority Act is on file at the Alaska Department of Transportation and Public Facilities.

Like the West Virginia Railroad Authority, the British Rail Corporation offers a potential organizational model for the Alaska Railroad. If the Alaska Railroad, under state jurisdiction, were organized as an authority or public corporation under carefully worded state legislation, most of the federal agency limitations could be removed. Properly established under this approach, the Alaska Railroad could meet all of the criteria previously outlined for a state railroad organization.

The principal advantages of a public corporation or authority alternative are an ability to obtain access to required capital funds and freedom to manage and operate the railroad within policies established by a board. Management can be given flexibility and responsibility and can also be held accountable for its decisions. Passenger service can be accounted for separately and not subsidized by freight service. The state could determine the appropriate levels, locations, and other areas of passenger train service in accordance with their willingness to pay for the service selected. The freight rail service could be marketed and required to meet fully allocated costs. Thus, under this organizational scheme, it might be possible to reach a compromise between the public service and business purposes of the railroad.

A State Railroad with Private Operations

A third alternative would be for the State of Alaska to own the railroad and contract with private enterprise to provide for operations. The main difference between this and the other alternatives is the operation of the Alaska Railroad by a private organization.

Several states, such as South Dakota and Oklahoma, are using this approach. These states, among others, have experienced abandonment of significant rail lines that they considered essential to their economy and transportation systems. These are using state and federal funds to acquire and rehabilitate extensive rail lines. The Department of Transportation, as a representative of the state, takes title to the rail property (usually excluding rolling stock). The state then selects a private railroad with the required management experience, skills, and interest in operating its equipment over the line to furnish shippers and receivers with rail service. An operating agreement is negotiated with the private common carrier for rail service. The operational limitations of the railroad can be whatever the state and the railroad agree upon.

The negotiated operating agreement can include such provisions as the assignment of maintenance responsibilities; liabilities; frequency, level, and type

of rail service; car supply; revenues; and costs. Thus, all of the appropriate criteria for a state railroad organization can be reflected in the operational agreement. This can even extend to the provision of required capital.

A major advantage of this approach is that once the operating agreement has been negotiated, the state has only a supervisory or overseer responsibility, plus whatever financial requirements have been determined by the negotiations. The railroad operations can include public service rail requirements as well as being performance based.

A substantial difficulty with this alternative for the Alaska Railroad is that no private railroad carrier is operating within the state. Too, there is the problem of the existing Alaska Railroad personnel. While the present railroad employees have the necessary knowledge of railroad operational peculiarities in Alaska, these are federal agency employees, with long-term rights rather than private employees whose rights are subject to negotiation. This could present such a significant liability to prospective private operators that it might be difficult to find interested parties. This approach, therefore, may be impractical unless the responsibility for the current Alaska Railroad personnel is assumed by the Federal Railroad Administration, while a private carrier, with the necessary qualifications, can be attracted as the operator. However, no one knows at this time whether or not such a private operator exists.

One variation to the alternatives described above is a concept under consideration in Iowa. It is an old concept which has proved successful in other organizations but which is new in its application to railroading. It involves the use of a general partner and limited partnerships.

A limited partnership is a very flexible institutional arrangement which could potentially attract substantial private capital. A major consideration in developing this institutional approach is the designation of the general partner. In order to legally establish a limited partnership, at least one financially responsible general partner must be found or established. The State of Alaska could establish an organization which could become the general partner for this railroad venture. Although limited partners are not subject to liability beyond their investment in the partnership, there is usually no limit to the liability of the general partner.

A limited partnership is, by law, a nontaxable entity. All gains or losses from the venture flow directly back to the investors (partners) for tax purposes. Partnerships are thus attractive because (1) there is no double taxation of income as with

corporations and (2) partners can take full tax advantage of losses, depreciation allowances, and tax credits. The ability to take advantage of depreciation allowances will become more important if the Reagan Administration's accelerated depreciation proposal is enacted. It would be necessary, of course, to examine legal constraints in Alaska for public involvement in limited partnerships. In Iowa, there is no apparent constitutional prohibition against public involvement in such arrangements.

It may be possible in such a limited partnership to attract rail users, businessmen, private individuals, and Alaska Railroad employees, among others. Thus, it would be advantageous to those with direct rail interests to see the Alaska Railroad succeed as a business venture while offering only limited individual liability. The idea and concept may be worthy of further consideration.

Alaska Railroad Transition

Transition Legislation and Problems

As noted earlier, the Federal Railroad Administration (FRA) has determined that the original intent of the Enabling Act for establishing and operating the Alaska Railroad has been met and federal responsibilities discharged. Thus, for the past several years, several federal administrations and the Department of Transportation have discussed divestiture of the Alaska Railroad by the federal government. However, it has only been since January 1981 that the decision was made to prepare legislation for such a divestiture and implementation steps taken.

The FRA has shown some urgency in getting the transfer legislation introduced and passed. This urgency results from a reduction of employees in the Federal Railroad Administration, as well as desire to cut the capital fund request of the Alaska Railroad. FRA's schedule calls for passing the legislation this fiscal year. The legislation proposes that the State of Alaska meet the transfer conditions within one year of enactment of the legislation. The draft legislation also provides for transferring the Alaska Railroad to other interested parties should the State of Alaska not meet the conditions for transfer within this time period.

The proposed legislation further embodies a number of discretionary "strings" attached to the transfer which would enable the federal government to ensure that the State of Alaska own and operate the Alaska Railroad in a manner commensurate with FRA's preconceived ideas. Failure by the state to conform to the provisions of the Act would be grounds for the FRA to reclaim the railroad within a 10-year period. The rationale for the continuing

federal interest in the Alaska Railroad is predicated upon the offer of a no-cost transfer to the state.

In summary, there are numerous problems associated with the transfer of the Alaska Railroad from federal to state ownership. Federal transfer legislation will likely be passed by Congress before these problems have been resolved. The U.S. Department of Transportation has not determined the land, the structures, the right-of-way, nor equipment to be included in the transfer. Arrangements have not yet been made to provide for an orderly transfer of the employees from federal agency status. There is no organizational framework established within Alaska to accept the ownership, operation, or employees of the railroad. The FRA is anxious to relinquish ownership, operation, employee, and funding responsibilities of the Alaska Railroad. This could potentially result in postponement of major ARR operational decisions. Such postponement could jeopardize the smooth long-range operation of the railroad and perhaps result in lost traffic—an event not in the best interest of Alaska. In addition, the employees are left in a state of "limbo," not knowing for whom they will work, if they will have a job, how the transition will occur from federal employment, or what happens to the benefits received as a federal employee. The employees lack information, and many of their questions cannot be satisfactorily answered at this time.

State legislation will probably be required to accept the transfer of the Alaska Railroad. The state, however, has made no decision on the transfer question or on the organizational structure required to own and/or operate the railroad. The current railroad assets, obligations, and liabilities have not clearly been defined, which leaves the state with inadequate information on the short- and long-term financial and other requirements accompanying the proposed transfer.

The railroad needs to continue operation without disruption, since disruption would detrimentally affect the state's economy and economic development. And this would come when economic activity is quickly increasing.

These are some of the more important transitional problems. Unfortunately, these problems have not yet received the attention needed to determine their full implications. Time and additional efforts are required to provide the Alaska decision-makers with the information necessary to act in the best interest of the state. The complexities and extent of these transitional problems are likely to result in legal actions and court adjudication. A transitional bridge is needed to facilitate the smooth transfer of the Alaska Railroad from the federal government.

An Orderly Transition

Even if we assume that satisfactory federal legislation can be drafted and passed by Congress for the transfer of the Alaska Railroad from federal to state ownership, there will remain a significant period for transition. Along with land, employee, competition, and various obligation problems, the smooth transition to state ownership and operation is a most perplexing problem. How the transition is handled will have either a positive or adverse impact—long term as well as short term—on the railroad and its operations as well as on the State of Alaska.

During this transitional period, certain needs must be met if the railroad is to fulfill its important and special transportation function in Alaska. These include the need to:

- Continue the freight and passenger operation of the Alaska Railroad.
- Preserve as many potential operational and organizational alternatives for the state as possible.
- Provide adequate legal protection for the Alaska Railroad throughout the transitional period.
- Provide interim protection and transitional assistance for the employees of the Alaska Railroad.
- Provide adequate time for adjudicating the legal issues which have been raised by the

transfer question, such as land title, equipment and railroad property, employee rights and benefits; existing or pending court cases, railroad agreements, contracts, and obligations.

- Establish an orderly process and procedure for solving problems which have been identified or which may arise during the transition.
- Provide the time required for the state administration and the legislature to consider the issues, to seek solutions to problems, and to deliberate carefully on the implications of each proposed state legislative bill without being faced with a stringent schedule and a crisis-type atmosphere.

Given the general mood of the Reagan Administration and the Congress to reduce federal expenditures and the federal perception of great Alaskan wealth, it is quite possible that Alaska Railroad transfer legislation will be passed this year. The State of Alaska will probably be faced with the need for a package of legislation which sets the tone and organizational framework for state ownership of the railroad if Congress passes transfer legislation. Under these circumstances, there is a genuine need to provide for an orderly transition from federal to state ownership. Sufficient time must be allowed to work out the myriad transitional problems.

* * * *

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

AN ASSESSMENT OF THE ALASKA RAILROAD

OWNERSHIP AND OPERATIONAL ALTERNATIVES



**ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

**SOUTHEAST REGION, DIVISION OF
PLANNING AND PROGRAMMING**

JULY, 1981

In cooperation with
Federal Railroad Administration

Bivens & Associates, Inc.
ISER, University of Alaska