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FILE No. 2

February 24, 1981

Representative Bette M. Cato
House of Representatives -
Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Ms. Cato:

House Bill Number 12 appears to represent an initial attempt to address the issue of changing the status of the Alaska Railroad from that of a federal agency to a state controlled entity. As such, it is an applaudable effort to recognize the need for change and to take some type of action prior to having that change imposed from outside. However, in its present form the bill does not directly address the issue that is before the state. In particular, the following defects appear to be present:

- o It tries to do too much in a single piece of legislation. It establishes a body which has the authority to acquire, operate, and expand the Alaska Railroad and, through its rate setting power, becomes an economic regulation body;
- o It is premature in that it forecloses on a number of options for dealing with the railroad which may be more attractive for the state in terms of long-term operational considerations;
- o It does not address many of the problems of the railroad transfer which can be dealt with only on a legislative basis.

Each of these points deserves a bit more detailed comment.

In establishing an authority with the rather broad power to acquire, operate, expand, and regulate railroad operations in the state the bill combines within a single entity responsibilities which will probably be in conflict. Acquisition of the present railroad is a function which requires both a good deal of planning and a sensitivity to the long-term economic and political goals which may be held for the railroad. The body which plans and negotiates this transfer should at the same time be designing the organization which will operate the railroad to the best advantage of the state. It cannot do this if its form is already set by legislative mandate. Likewise, an organization which is required to operate the railroad in the manner of a private business (as is implied by the bonding provisions of the bill) will inevitably find itself in conflict with the political policy aspects of both its own operational and regulatory mandates and with the political control implied by the board membership. All of these areas offer serious opportunity for potential conflict both within the rail authority and with external organizations.

In an earlier review of this issue I identified at least fifteen major policy considerations which must be addressed in any change in rail status within the state. These are as follows:

- o The status of rail-related lands both in relationship to ANCSA conveyances and to the railroad's operational and industrial development requirements;
- o The status of public employee unions, existing labor agreements, employee benefits and retirement programs, and employee protection conditions;
- o Design of an ownership/operational structure which permits the railroad to seek investment capital;
- o Design of an ownership/operational structure which avoids the public/private conflicts now inherent in the marketing of the railroad's services;
- o Design of an ownership/operational structure which give management the flexibility to make entrepreneurial decisions and to be accountable for the outcomes of these decisions;
- o A determination of whether passenger service is necessary and, if so, whether it is required to continue its operation;
- o A determination of whether the railroad represents an appropriate mechanism for implementing state development policy and, if so, under what types of financial, operational, political, and economic conditions;
- o A determination of the present and historic financial status of the railroad particularly as this information relates to the prospect of attracting private capital, both equity and debt;
- o The desirability or usefulness of establishing a state rail regulatory capability;
- o The determination of tax status (federal, state, local) of revenues and for real and operating property after conveyance;
- o An assessment of traffic potential for the railroad and how an institutional realignment might affect various traffic possibilities;
- o A determination of responsibility and operational mechanisms for subsidies should operating revenues not be sufficient to cover operation costs and capital renewal;

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The bill in its present form has selected a means for organizing any future rail activity in the state without investigating alternative operational forms which may be much more attractive options. There are at least six major alternative ways in which the Alaska Railroad (and any extensions or other acquisitions) may be organized in the future. None of these is clearly superior to any of the others at this time. They are as follows:

- o Maintain the status quo. That is, continue to function as a federal agency.
- o Reorganize as a federal corporation. In form this might be somewhat similar to Canadian National Railway.
- o Reorganize as a state agency. This would give the railroad somewhat the same status as the Marine Highway System.
- o Reorganize as a state corporation. Such an operation might be similar to either the British Columbia Railway, the Ontario Northland Railway, or to any number of small operations developed in the eastern and mid-western U.S. during the past five years.
- o Reorganize with a combination of state ownership and private operation. This would give the state ownership of some combination of the railroad's real and operating assets while a private entrepreneur would either enter into a long-term lease agreement or contract to operate the property in a manner similar to the arrangement between the Southern Railway and the city of Cincinnati for operation of several hundred miles of line owned by that city.
- o Sell the railroad to a private firm who would then function in a manner similar to comparable operations elsewhere in the country.

Clearly, these options can differ substantially in the range and size of their impacts upon the state. They also would provide considerable variation in the amount of state investment required although none of them would entirely eliminate state involvement. Finally, the organizational form which evolves will determine almost entirely the degree to which rail decision making in the state will be political rather than commercial. The important point is that it is not yet necessary or in the state's best interest to foreclose on any of these options.

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- o An analysis of the different possible impacts of various institutional arrangements on potential rail extensions;
- o An analysis of the impact on rail competitors of various institutional arrangements for the railroad; and
- o Determination of which federal funding programs would or would not be available under different ownership/operational structures.

Many of these are not addressed in the present bill and given the lack of information on most of the areas, it would be impossible to do so at this time.

In addition to the areas mentioned above it is important to remember that any future rail activity in the state will be largely shaped by the federal legislation which transfers control of the Alaska Railroad to the state. Given this reality, I would suggest that the most important direction that could be taken at this point in time would be to establish an organization which can negotiate transference of the railroad, can participate in the shaping of the federal legislation, can investigate the state's options in this matter, and can assist the legislature in preparing suitable legislation to address the organizational form of future state participation as well as other institutional and policy matters. I would suggest that this organization be set apart from present state agencies due to the fact that its concerns would necessarily span many of their individual interests. For example: the Departments of Transportation, Commerce and Economic Development, Natural Resources, Community and Regional Affairs, Attorney General and Labor all have concerns within their jurisdictions which would also be involved in rail transfer questions. An independent group would be better able to coordinate these concerns while still utilizing existing programs. The most important of these existing programs is the rail planning work presently being done within the Department of Transportation.

Most importantly, by taking this approach, the state would preserve all of its options. While it is clearly time to take action on this matter, it is not yet appropriate to commit the state to a particular and final course of action. House Bill 12 makes this commitment at a time when there is insufficient information to determine whether it is in the correct direction and at a time when the federal consideration is unclear. In view of this I would urge the members of the legislature to adopt a course of action which permits the state to play a major role in shaping future rail matters while postponing the details of rail operation, expansion, and regulation until an appropriate time and until the necessary information has been assembled.

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The transfer of the Alaska Railroad to state control represents a major change in the transport system and its institutions. Undoubtedly the most important change since statehood placed the highway and airport system within state jurisdiction. It is important that this change proceed in an orderly manner with clear understanding of the opportunities and liabilities of various courses of action. I hope these comments have helped to further this understanding.

Sincerely,

John T. Gray
Assistant Professor of
Transportation

and expand the Alaska Railroad and, through its rate setting power, becomes an economic regulation body;

- o It is premature in that it forecloses on a number of options for dealing with the railroad which may be more attractive for the state in terms of long-term operational considerations;
- o It does not address many of the problems of the railroad transfer which can be dealt with only on a legislative basis.

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In establishing an authority with the rather broad power to acquire, operate, expand, and regulate railroad operations in the state the bill combines within a single entity responsibilities which will probably be in conflict. Acquisition of the present railroad is a function which requires both a good deal of planning and a sensitivity to the long-term economic and political goals which may be held for the railroad. The body which plans and negotiates this transfer should at the same time be designing the organization which will operate the railroad to the best advantage of the state. It cannot do this if its form is already set by legislative mandate. Likewise, an organization which is required to operate the railroad in the manner of a private business (as is implied by the bonding provisions of the bill) will inevitably find itself in conflict with the political policy aspects of both its own operational and regulatory mandates and with the political control implied by the board membership. All of these areas offer serious opportunity for potential conflict both within the rail authority and with external organizations.

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SECTION-BY-SECTION EXPLANATION TO ** DRAFT

ARTICLE 1. FINDINGS

Sec. 42.40.100. FINDINGS. The individual findings are self-explanatory. Each was included for a specific purpose. In addition to describing the factual and policy setting in which the transfer of the railroad to the state is occurring, findings are necessary to establish the legislature's expectations with respect to the authority. Some findings are required by the state Constitution and others will strengthen the ability of the authority to secure tax-exempt financing.

ARTICLE 2. CREATION AND ORGANIZATION.

Sec. 42.40.200. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established in this section. Its existence commences on the appointment by the governor of all of the members of its board of commissioners.

Sec. 42.40.205. LIMITATION OF LIABILITY. That all the authority's liabilities are exclusively its own and not the state's is clearly stated in this section.

Sec. 42.40.210. BOARD OF COMMISSIONERS. Self-explanatory.

Sec. 42.40.215. APPOINTMENT AND COMPOSITION OF BOARD. Subsection (a) provides that the board consists of the Commissioner of Transportation and Public Facilities and six "public" members, who may not be state officers or employees.

The authority's chief executive officer and an authority employee, appointed by the Governor, representing the unions on the property are ex officio, non-voting members. A general qualification standard is provided in order to encourage the appointment of persons who can make substantive contributions to the council. One member is to be or have been an executive of a non-connecting railroad, if legally permissible. At least four public members must come from areas served by the railroad.

Subsection (b) provides that the governor exercises his power of appointment only upon enactment of state legislation accepting the closing report prepared under the federal transfer legislation. The closing report is to include a specific accounting of the assets and liabilities being transferred. The legislature may not condition its acceptance of the report on its modification but may only accept or reject it.

Subsection (c) provides for confirmation of board members by the legislature but also provides that appointed members have full powers and responsibilities until rejected.

Subsections (d), (e), and (f) relate to the election of board officers and the removal of board members for specific reasons.

Sec. 42.40.220. TERM OF OFFICE; VACANCIES. Other than initial board members who serve staggered terms to ensure long-term continuity, board members will serve five year terms, as provided in this section. The section also provides for the appointment, subject to confirmation, of replacement members to fill unexpired

terms and the preservation of the authority of a board quorum in the event of a vacancy. A member whose term has expired serves until his successor has been appointed.

Sec. 42.40.225. COMPENSATION AND EXPENSES. Compensation in the amount of \$300 per day for public board members is provided in this section. The board is responsible for determining, in its rules, how partial work days will be compensated. Members also are entitled to per diem and travel expenses.

Sec. 42.40.230. QUORUM AND NOTICE OF MEETINGS. A quorum of four voting members is established by this section. In addition to the notice requirements of state law, this section provides that notice of meetings must be given to board members, certain state officials, two newspapers of statewide circulation and, upon request, members of the general public.

Sec. 42.40.240. VOTING. This section provides that the board rules will prescribe the manner of voting and any representation of absent members.

Sec. 42.40.250. EXECUTIVE OFFICIALS. This section provides for appointment of authority officials and personnel. The board itself appoints and fixes compensation for a chief executive officer and legal counsel. Appointment of legal counsel is subject to the approval of the Governor for competence. The chief executive officer, subject to board approval, names the other executive officials. These officials, designated in the definitions, all serve at the pleasure of the board. The chief

executive officer appoints all other personnel. No executive official, except as may be temporarily required by the federal transfer legislation, may receive more compensation than state departmental commissioners.

Sec. 42.40.260. DELEGATION. This section provides that the daily affairs and operations of the railroad are the responsibility of the chief executive officer. The board is required to delegate to the chief executive officer certain matters such as leasing, specific rate-setting, routine changes in service levels and procurement. General or particular board authorization or concurrence is required for other enumerated activities.

ARTICLE 3. ADMINISTRATIVE PROVISIONS

Sec. 42.40.300. CONFLICTS OF INTEREST. This section prohibits a board member or employee from participating in a decision in which he, or a member of his immediate family, has a direct or indirect financial interest. The board may authorize a member or employee to participate when the financial interest is only a remote one, as defined in subsection (b). Additionally, a board member or employee may participate where he will not be affected in a manner different from the public generally. Subsection (d) voids board action where a vote in violation of Sec. 42.40.300 was necessary to make up the majority. Otherwise, the board may ratify action taken after a separate vote without participation by the interested person. An intentional violation of Sec.

42.40.300 or A.S. 39.50 results in the forfeit of the member's or employee's office.

Subsection (e) extends A.S. 39.50, requiring the submission of financial disclosure statements and compliance with conflict of interest standards, to the executive employees and board members. The board is also required in subsection (f) to adopt within 120 days of the first meeting rules implementing the conflict of interest section.

Sec. 42.40.310. PUBLIC BOARD MEETINGS. This section requires that board meetings be public and that executive sessions be used only when permitted by the state open meetings statute, A.S. 44.62.310, or when the matters under discussion pertain to land acquisition or disposal or proprietary information.

Sec. 42.40.320. MINUTES OF MEETINGS. This section requires the board to keep minutes of its meetings and to send certified copies of the minutes covering the public portion of each meeting to the governor and to the leadership of the legislature.

Sec. 42.40.330. ADMINISTRATIVE PROCEDURE. This section provides that the state's Administrative Procedure Act does not apply to the authority, with the exception that the Open Meeting Act applies to the authority's meetings. The authority is required to make its rules and regulations available to the public. The legislature may, by appropriate action, annul or temporarily suspend an authority regulation.

Subsection (b) requires the authority to provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public. Emergency regulations may be adopted, but may remain in effect for only 120 days. Subsection (c) requires that certain types of rules and regulations be submitted to the attorney general for review and approval. Subsection (d) exempts from the rulemaking procedures four designated classes of regulations. Subsection (e) provides that the authority shall be considered an agency of the state for purposes of judicial review of the authority's actions.

Sec. 42.40.335. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD. This section allows the authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 42.40.340. PENALTY FOR VIOLATION OF DESIGNATED REGULATION. This section makes a violation (other than by an authority official or employee within the scope of his employment) of any of the authority's regulations designated as necessary to protect life, health, or property a misdemeanor punishable by a \$1,000 fine and/or six months imprisonment.

Sec. 42.40.345. PUBLIC DISCLOSURE OF INFORMATION. This section requires that information in the possession of the authority is public unless the authority, by rule or regulation, withholds

such information by designating it to be of a nonpublic or privileged nature. A procedure is also established whereby individuals may object to public disclosure of information in the possession of the authority, and such information may be withheld if the public interest is not adversely affected.

ARTICLE 4. POWERS AND DUTIES

Sec. 42.40.400. GENERAL POWERS. This section delineates the numerous powers the authority needs in order to effectively manage and operate the Alaska Railroad. The list is intended to be nonexclusive but each of the enumerated powers appears for a specific reason. Most are obviously required by the authority to enable it to operate and manage the railroad. Others strengthen the authority's ability to engage in tax-exempt financing. Others will enable the authority to satisfy reasonably foreseeable requirements of the federal transfer legislation and still others anticipate the role the railroad will play in the future economic development of the state.

Sec. 42.40.410. ANNUAL REPORT. A report generally describing the operation and financial condition of the authority, certified by the board, is required by this section to be submitted to the governor and each member of the legislature by February 1 of each year.

Sec. 42.40.420. ANNUAL AUDIT. This section obligates the board to have the authority's financial records audited annually by an independent certified public accountant experienced in rail

accounting. The audit, during the five years following transfer, is to include the status of the assets and liabilities identified in the closing report prepared under the federal transfer legislation. The financial records of the authority also are subject to audit and inspection by the governor's internal auditor and the legislative auditor. Access to these materials by these officials is unrestricted but disclosure is limited.

Sec. 42.40.425. LONG-RANGE PROGRAM AND CAPITAL PLANNING.

This section obligates the authority to prepare long-range program and capital plans. The planning process is intended to ensure authority fidelity with the purposes of this chapter. The five-year, annually updated program plan required by paragraph (a)(1) is to provide information substantially consistent with that required of line agencies by the Executive Budget Act, although the format in which it is presented is to be developed by the authority, the legislative auditor and the division of budget and management. Three years after the preparation of the first program plan, the governor and legislative auditor may conduct a performance and efficiency audit of the authority's compliance with its plan. Paragraph (a)(2) provides for a companion five-year capital improvement plan which also is to be annually updated. The information provided in this plan is to be consistent with that required in Sec. 42.40.700(b) for projects subject to state review.

Subsection (c) requires distribution of the annually updated plans to state officials.

Sec. 42.40.430. USE OF AUTHORITY ASSETS. This section requires use of authority funds, property, assets and credit for activities authorized by this chapter. It also precludes the issuance of stock, loans to board members or employees, business for private benefit and other activities inappropriate for a public authority. Subsection (b) makes it clear that the authority is allowed to serve its employees or board members in the same manner it would others in the same general class, such as passengers or shippers, as long as no special privilege is accorded the employees or board members. It also expressly permits the authority to indemnify and insure its employees, agents and board members.

ARTICLE 5. RAIL PROPERTIES

Sec. 42.40.500. RAIL PROPERTIES. Sec. 42.40.500 provides that the authority will receive and own the properties of the Alaska Railroad transferred under the federal legislation. These properties, as defined by A.S. 42.40.900(10), include both real and personal property of the railroad. Like state lands, the authority's lands are protected from adverse possession by A.S. 38.95.010. Subsection (a) also provides that the authority's lands may not be disposed of without compliance with the specific procedures contained in Chapter 40.

Subsection (b) requires the authority to convey the subsurface estate of the lands it receives to the state within 120 days after transfer. The authority may reserve the right to use sand, gravel and other materials on the lands conveyed to the state. Its retained interest includes the right to tunnel and otherwise use the subsurface as necessary for transportation and related purposes.

Under subsection (c), the authority is given the power to litigate and settle any claims arising out of the transfer process, including claims for breach of warranty by the United States. Under subsection (d), the authority may submit applications for interests in federal lands, such as rights-of-way, and receive conveyances of those interests. Additionally, the authority is authorized by subsection (e) to acquire state and federal surplus property under existing law.

Subsection (f) requires the authority to give public notice of the disposal of interests in land, other than leases, easements, and land-use permits.

Sec. 42.40.510. CLASSIFICATION, ACQUISITION AND USE OF STATE LANDS FOR RAILROAD PURPOSES. Sec. 42.40.510 provides a mechanism allowing the authority to acquire state lands for railroad purposes with the concurrence of the Commissioner of Natural Resources. Such acquisition would be necessary in the event of an expansion which involves use of state lands for new routes. The acquisition procedure is initiated by a resolution of the

authority's council identifying specific lands for rail purposes. Within 180 days after receiving the resolution, the Commissioner of Natural Resources is required to either permanently classify and convey the surface estate of the requested lands for railroad purposes or to deny the classification as not in the best interest of the state. Conveyances under this section include sand, gravel and other construction materials useful for railroad purposes.

Subsection (c) also allows the authority and the Commissioner to engage in joint management of railroad lands, to agree to conditions for the classification of state lands as railroad lands, and to periodically review both state and railroad lands to determine their suitability for railroad purposes. The authority may reconvey to the state lands which it no longer needs.

Subsection (d) elaborates on the nature of the authority's retained interest.

Subsection (e) provides an emergency procedure for relocation of right-of-way and related fixtures to state lands where such relocation is necessary to maintain safe and adequate rail operations. Within 45 days after relocation, the authority must request classification and conveyance of the state lands under the normal procedure.

Sec. 42.40.515. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LANDS. The Department of Natural Resources may lease or develop resources on authority

lands only after a review procedure involving both the Department of Natural Resources and the authority has been completed. The review procedure requires an agreement as to suitable reimbursement for any costs incurred by the authority as a result of the development. The authority's approval of the development must be evidenced by a written authorization. Additionally, subsection (b) requires the department of natural resources to require a surety bond from any party other than the state engaged in resource development on railroad lands.

Subsection (c) requires the Department of Natural Resources to maintain records and annually report to the legislature concerning the income received from the subsurface of railroad lands and the value of all subsurface conveyed by the authority to the state.

Subsection (d) establishes the Alaska Railroad Income Fund in the State Treasury for income received by the state from lands in which the authority has an interest. The fund is subject to appropriation by the Legislature.

Sec. 42.40.520. LAND USE REGULATION. This section authorizes the authority to promote the common health, safety, and welfare of the public by adopting regulations governing land use by private parties having interests, such as leases or permits, in lands owned or managed by the authority.

Sec. 42.40.530. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS. This section confers eminent domain power on the

authority under the state's general eminent domain statute. When the authority acquires a fee simple interest, which may be necessary to ensure control of activities on the surface estate, the authority must reconvey the subsurface to the state. The authority is exempted from the requirements of A.S. 09.55 that fences and cattle guards be built in cases where land is condemned for railroad purposes.

Subsection (d) authorizes the authority to acquire land by filing a declaration of taking.

Subsection (e) clarifies that the authority may exercise eminent domain to obtain materials as well as the land and access necessary to develop them. The authority is also authorized by subsection (f) to vacate land, or any part of it, and reconvey title to the state, if compensation was paid for it.

ARTICLE 6. FINANCIAL PROVISIONS

Sec. 42.40.600. BONDS AND NOTES. This section authorizes the authority, by resolution of the board, to issue bonds and bond anticipation notes to provide money to carry out its purposes. The section vests broad discretion in the board in the exercise of this authority. Other than specific limitations provided in this section such as a maximum term of 50 years for instruments and the requirement that bond or note proceeds be dedicated to activities specifically related to the purposes for which the instruments are issued, it is intended that the board have the maximum flexibility legally permissible in financing its

activities. The 18 covenants and powers delineated in subsection (g) are not intended to be exclusive. Paragraph (19) is a general grant of authority to the board to exercise such other powers and make such other covenants, notwithstanding their omission from the specific list, as may be necessary, convenient and desirable.

Sec. 42.40.610. INDEPENDENT FINANCIAL ADVISOR. The board is required by this section to retain a financial advisor independent of the underwriter in negotiating the private sale of bonds and notes.

Sec. 42.40.615. VALIDITY OF PLEDGE. This procedural section facilitates the pledge of assets or revenues to the payment of authority debt. It provides for automatic lien attachments; gives the liens priority against all parties with junior position regardless of notice; and allows the authority to sell assets subject to a pledge.

Sec. 42.40.620. REMEDIES. For the benefit of holders of authority securities, this section provides that remedies and rights available under the terms of such instruments are to be broadly enforceable.

Sec. 42.40.625. NEGOTIABLE INSTRUMENTS. Self-explanatory.

Sec. 42.40.630. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. This section authorizes public and private entities and individuals, including the state, and its other political subdivisions,

institutions and others subject to regulation by state law to invest in authority securities.

Sec. 42.40.635. REFUNDING BONDS. The issuance of refunding bonds to refund outstanding bonds is authorized by this section. Insofar as may be appropriate, the provisions of this chapter also apply to refunding bonds. Subsection (b) authorizes investment of refunding bond proceeds, pending their application as contemplated upon issuance, in direct or guaranteed obligations of the United States, the state or other entities with comparably rated credit.

Sec. 42.40.640. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER. This section states that the authority's securities are not obligations of the state and are payable exclusively from revenues or assets of the authority, without recourse to the state or its other political subdivisions. It also requires that each instrument issued by the authority contain a disclaimer on its face to this effect.

Sec. 42.40.645. NO PERSONAL LIABILITY. Self-explanatory.

Sec. 42.40.650. REVENUES. This section provides for authority retention and management of its own revenues, which do not become part of the state's general fund.

Sec. 42.40.655. INSURANCE. In addition to requiring the authority to maintain adequate insurance, this section requires that the state be named as an additional insured.

Sec. 42.40.660. SAFEGUARDING OF FUNDS. Self-explanatory.

Sec. 42.40.665. FIDELITY BOND. Self-explanatory.

Sec. 42.40.670. REVERSION OF ASSETS. Self-explanatory.

ARTICLE 7. STATE OVERSIGHT

Sec. 42.40.700. STATE REVIEW. This section requires the authority to obtain the approval of at least the governor and possibly the legislature for certain enumerated major actions. The authority must first notify the governor and the leadership of the legislature that it proposes to undertake any of the designated actions. The governor may either disapprove the proposal, suspend it pending review by the legislature or approve it. Approval or disapproval are final and dispositive. If the governor suspends the proposal, he transmits his decision and his recommendation to the legislature. The legislature may then reject it. If either the governor or the legislature fail to act within the time provided, the proposal is deemed approved and the authority may proceed.

Subsection (e), the foregoing notwithstanding, requires specific authorization by the legislature by law of any proposed extension representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million.

Subsection (f) provides that this section is satisfied if the authority has been directed to proceed with a project through the Sec. 42.40.710 action-forcing mechanism or in the event the legislature has funded a project independently.

Sec. 42.40.710. ACTION-FORCING MECHANISM. This section requires the authority to respond formally to a request for consideration of a proposal by either the governor or the legislature. Within 30 days of receiving such a request, the authority, in writing, must commit to undertake the suggested proposal or explain why it will not or is precluded from doing so. At the request of the governor or on its own initiative, the legislature may then direct the authority to proceed, its response notwithstanding, if the legislature also provides funds to plan and implement the proposal.

Sec. 42.40.715. INTERVENTION. This section provides that the governor, when so authorized by the legislature, may intervene in and exercise control of the authority under certain delineated circumstances. The intervention mechanism permits the governor to correct the deficiencies and is to cease as soon as the necessary corrections have been made.

Sec. 42.40.720. TRUSTEESHIP. This section provides that the legislature may also authorize the governor to petition the State Superior Court at Anchorage to impose a trusteeship over the authority under specific circumstances, including insolvency, misapplication of resources or impairment of the state's creditworthiness. The trustees appointed by the court are given broad powers to cure the situation.

ARTICLE 8. PERSONNEL AND GENERAL PROVISIONS

Sec. 42.40.800. PERSONNEL. This section provides that the employees of the authority are not employees of the state. It also provides for application of the state's Public Employment Relations Act to the authority's employees.

Subsection (c) directs the authority to adopt collective bargaining agreements which continue, until they expire or are renegotiated, the provisions of the agreements in effect immediately prior to transfer.

Subsection (d) precludes organization of the authority's executive officials.

Sec. 42.40.810. POLITICAL ACTIVITIES. This section precludes use of authority funds in political activities including legislative efforts. Nevertheless, board members and employees are authorized to participate in legislative proceedings at all levels of government in connection with matters directly affecting the authority. Violations of this section are subject to personal fines up to \$5,000 under subsection (b).

Sec. 42.40.820. LICENSES AND PERMITS. This section provides that the authority, to the same extent as the state and except as otherwise provided in this chapter, will comply with local, state and federal licensing and permitting requirements.

Sec. 42.40.830. UNAUTHORIZED REPRESENTATION. Self-explanatory.

Sec. 42.40.840. CLAIMS AGAINST THE AUTHORITY. Subsection (a) of Sec. 42.40.840 requires that all legal claims involving the authority be brought against the authority and not against the State of Alaska. This requirement reaffirms that the debts of the authority are not the debts of the state.

Subsection (b) extends certain rights, privileges and immunities of the state and state officers to the authority and its council members and employees. Among these are the requirement that legal actions generally be brought within six years (A.S. 09.10.120), immunity against suit for actions taken with due care or in the exercise of discretion (A.S. 09.50.250), and an exemption from giving bond in actions where such is ordinarily required (A.S. 09.65.040).

Subsection (c) provides that claims against the authority will not be subject to the administrative procedure for presenting and deciding claims against the state or its agencies. (A.S. 44.77.010 et seq.)

Subsection (d) clarifies that A.S. 44.80.010, concerning the state's status as a party to actions against departments and agencies, does not apply to the authority. As a result, the state may not be named in an action against the authority and the Department of Law is not required to bring or defend actions concerning the authority.

Sec. 42.40.855. EXEMPTION FROM TAXATION. This section exempts the authority from state and political subdivision

taxation. Subsection (c) provides that authority property is considered taxable for the limited purposes of computing state aid to local school districts.

Sec. 42.40.870. PAYMENTS IN LIEU OF LOCAL REAL PROPERTY TAXATION AND IMPACT . . . This section authorizes the authority to provide, in its discretion and under certain circumstances, partial payments in lieu of local real property taxation by communities in which the authority has substantial land holdings. The authority also is allowed to provide discretionary impact aid to localities for public education and other facilities required to be developed as a result of expanded authority activities in such areas.

ARTICLE 9. MISCELLANEOUS PROVISIONS

Sec. 42.40.900. DEFINITIONS.

(1) through (6) Self-explanatory.

(7) "Immediate family" is defined for purposes of Sec. 42.40.300 CONFLICTS OF INTEREST.

(8) Self-explanatory.

(9) "Leadership of the legislature" is defined for purposes of notice and filings required by this chapter. The definition specifically provides that the designated office-holders may designate persons or offices to receive such notices and filings.

(10) Self-explanatory.

(11) "Regulation" is defined to have the same meaning as that term is defined under the State Administrative Procedure Act.

(12) "Rule" is distinguished from "regulation" as it relates to the authority's internal affairs and not to activities affecting the public at large.

Sec. 42.40.910. SEVERABILITY. Self-explanatory.

Sec. 42.40.920. CONSTRUCTION. Self-explanatory.

Sec. 42.40.930. DATE OF EFFECTIVENESS. This section provides that the chapter becomes effective upon enactment of federal legislation transferring the Alaska Railroad.

ARTICLE 10. APPLICATION OF OTHER LAWS

Sec. 42.40.1010. CONFLICTING LAWS INAPPLICABLE. Self-explanatory.

Sec. 42.40.1020. REPEAL, AMENDMENT, AND APPLICATION OF EXISTING STATUTES.

(1) A.S. Title 19 does not apply to the authority -- sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways; some of its provisions regarding construction, public bids, etc., arguably apply to other activities of DOT/PF, to which the authority will be nominally assigned.

(2) The authority is considered a "political subdivision" for purposes of A.S. 23.10.055 -- state wage and hour statute.

(3) A.S. 23.10.420 does not apply to the authority -- full-crew law.

(4) A.S. 30.15 does not apply to the authority -- procedures for state grants for construction of local port facilities.

(5) Authority activities are not subject to A.S. Title 35, which deals generally with public works. The authority is exempt from public bidding requirements, Department of Transportation and Public Facilities supervision of construction, planning of projects, etc.

(6) The following provisions of A.S. Title 37 do not apply to the authority's operations and budgeting procedures:

(a) A.S. 37.05 -- the Fiscal Procedures Act establishes uniform accounting, purchasing, post auditing, and related financial provisions for all "state agencies" and requires state agencies to submit reports, documents, and statements to the Department of Administration for accounting purposes, requires federal funds received by state agencies to be deposited in the state treasury, makes the Department of Administration responsible for all accounts and purchases of state agencies, requires competitive bidding procedures, and imposes other financial and reporting requirements;

(b) A.S. 37.07 -- Executive Budget Act;

(c) A.S. 37.10.010 - .060 -- these sections make the Department of Administration the custodian of state funds and

require all officers, boards, commissions, etc., to account to the Department of Revenue for all moneys received;

(d) A.S. 37.10.085 -- prohibits a political subdivision of the state from subscribing to the stock of the corporation for loaning credit or borrowing money for use of the corporation;

(e) A.S. 37.20 -- authorizes the governor to accept federal grants and transfers of property, and making land so transferred subject to the jurisdiction of the initial Department of Natural Resources; and

(f) A.S. 37.25 -- determines which unexpected appropriations lapse and which do not.

(7) The authority is not subject to the jurisdiction of the Alaska Transportation Commission.

(8) A.S. 39.50.200(b) is amended to include the authority.

(9) Provides subsequently enacted statutes shall not be interpreted to apply to the authority unless they do so specifically by their terms.

STATE OF ALASKA
THE LEGISLATURE

POUGH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1981

SUBJECT: Sectional analysis of Alaska Railroad
Authority Bill (Work Order Number 12-0866)

TO: Senator M. E. Dankworth

FROM: Randolph G. Berry *RGB*
Legislative Counsel

In accordance with your request, the following is a section-by-section analysis of your bill establishing the Alaska Railroad Authority (Work Order No. 12-0093).

Sec. 1 of the bill:

Sec. 42.40.010 establishes the Alaska Railroad Authority as a public corporation within the Department of Transportation and Public Facilities.

Sec. 42.40.020 provides that the authority shall be governed by a board of directors.

Sec. 42.40.030 sets out the membership of the board of directors, the method of appointment, and qualifications of the members.

Sec. 42.40.040 provides for a four year term of office for directors and provisions for filling of vacancies.

Sec. 42.40.050 sets out procedures to be followed in the event of a conflict of interest by a member of the board of directors.

Sec. 42.40.050 provides for per diem and travel expenses for the directors.

Sec. 42.40.070 establishes the quorum for the board of directors.

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Sec. 42.40.080 provides that board meetings are public meetings.

Sec. 42.40.090 requires board to keep minutes of its meetings.

Sec. 42.40.100 allows the board to employ a president to manage the authority and sets out certain qualifications for the president.

Sec. 42.40.110 sets out the general powers of the authority, including operating authority and financial powers.

Sec. 42.40.120 provides that the authority shall provide for the operation of the Alaska Railroad, either operating the railroad itself or otherwise, and allows the authority to expand the operations of the railroad.

Sec. 42.40.130 provides that the board shall adopt and issue regulations pertaining to its operations and the operations of the railroad.

Sec. 42.40.140 requires the board to prepare and distribute an annual report.

Sec. 42.40.150 requires an annual audit of the authority by the legislative auditor or by an independent auditor acceptable to the legislative auditor.

Sec. 42.40.160 allows the authority to issue and sell bonds and notes to provide money for corporation purposes, including the operation, maintenance and expansion of the railroad; provides that these bonds and notes are payable from funds and assets of the corporation; allows the authority to determine the number, denomination and other matters relating to the issuance of bonds and notes; allows the authority to make pledges and guarantees with respect to the security for the bonds and notes; the payment of interest and principal, the redemption of the bonds, and the establishment of special funds for payment or redemption of the bonds or notes; and allows the

authority to make pledges with regard to the appointment and powers of a trustee or trustees to protect the interests of the holders of the bonds and notes issued by the authority.

Sec. 42.40.170 requires the authority to retain the services of an independent financial advisor when negotiating for the private sale of bonds or notes.

Sec. 42.40.180 provides that pledges of assets or revenue made by the authority as security for the payment of principal or interest on bonds or notes are binding on the authority.

Sec. 42.40.190 grants the holders of authority bonds or notes, or trustees appointed to protect the holder's interests, to enforce the rights granted under this chapter and pledges made under the trust agreement or resolution of the board.

Sec. 42.40.200 provides that bonds and notes of the corporation are negotiable instruments.

Sec. 42.40.210 provides that bonds and notes of the authority are securities which are eligible for investment of state funds and qualify for investment of reserves and other funds by insurance companies, bank and other companies maintaining reserve accounts.

Sec. 42.40.220 allows the authority to issue refunding bonds to replace previously issued and outstanding bonds and notes of the authority.

Sec. 42.40.230 provides that the authority is not allowed to pledge the taxing power of the state or assets of the state other than the assets of the authority.

Sec. 42.40.240 protects the officers and employees of the authority from personal liability for the issuance of bonds or notes by the corporation.

Sec. 42.40.250 grants tax exempt status to the authority and to bonds and notes issued by the authority.

Sec. 42.40.270 allows the board of directors to dissolve the authority after provision for repayment of all its bonds and notes, but requires legislative approval of the dissolution.

Sec. 42.40.280 provides that personnel of the authority are in the exempt state service.

Sec. 42.40.990 defines various terms used in the previous sections.

Sec. 2 establishes the terms for initial members of the board of directors appointed under sec. 42.40.030.

Sec. 3 provides for the board of directors of the Alaska Railroad Authority to enter into negotiations with representatives of the federal government for the transfer of the Alaska Railroad to the authority.

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SECTION-BY-SECTION EXPLANATION TO CS FOR SENATE BILL 212

Sec. 1. LEGISLATIVE FINDINGS, POLICY AND DECLARATION. The individual findings are self-explanatory. Each was included for a specific purpose. In addition to describing the factual and policy setting in which the transfer of the railroad to the state is occurring, findings are necessary to establish the legislature's expectations with respect to the authority. Some findings are required by the state Constitution and others will strengthen the ability of the authority to secure tax-exempt financing.

Sec. 2. Amends AS 42 to add a new chapter as follows:

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established in this section. To comply with the state Constitution, the authority is established as an instrumentality of the state within the Department of Transportation and Public Facilities but it clearly has a legal existence independent of and separate from the state.

Sec. 42.40.020. LIMITATION OF LIABILITY. That all the authority's liabilities are exclusively its own and not the state's is clearly stated in this section.

Sec. 42.40.030. BOARD OF COMMISSIONERS. Subsection (a) provides that the board consists of seven voting members, the Commissioner of Transportation and Public Facilities and six "public" members, who may not be state officers or employees.

The authority's chief executive officer and an authority employee, appointed by the governor, representing the unions on the property are non-voting members. A general qualification standard is provided in order to encourage the appointment of persons who can make substantive contributions to the council. One member is to be or have been an executive of a non-connecting railroad, if legally permissible. At least four public members must come from areas served by the railroad.

Subsection (b) provides for confirmation of board members by the legislature but also provides that appointed members have full powers and responsibilities until rejected.

Subsections (c), (d), and (e) relate to the election of board officers and the removal of board members for specific reasons.

Sec. 42.40.040. TERM OF OFFICE; VACANCIES. Other than initial board members who serve staggered terms as provided in Section 7 to ensure long-term continuity, board members will serve five year terms, as provided in this section. The section also provides for the appointment, subject to confirmation, of replacement members to fill unexpired terms and the preservation of the authority of a board quorum in the event of a vacancy. A member whose term has expired serves until his successor has been appointed.

Sec. 42.40.050. COMPENSATION AND EXPENSES. Compensation in the amount of \$300 per day for public board members is provided in this section. The board is responsible for determining, in

its rules, how partial work days will be compensated. Members also are entitled to per diem and travel expenses.

Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. A quorum of four voting members is established by this section. In addition to the notice requirements of state law, this section provides that notice of meetings must be given to board members, certain state officials, two newspapers of statewide circulation and, upon request, members of the general public.

Sec. 42.40.070. VOTING. This section provides that the board rules will prescribe the manner of voting and any representation of absent members.

Sec. 42.40.080. MANAGEMENT OF AUTHORITY. This section provides for appointment of authority officials and personnel. The board itself appoints and fixes compensation for a chief executive officer and legal counsel. Appointment of legal counsel is subject to the approval of the governor for competence. The chief executive officer, subject to board approval, names the other executive officials. These officials, designated in the definitions, all serve at the pleasure of the board. The chief executive officer appoints all other personnel. No executive official, except as may be temporarily required by the federal transfer legislation, may receive more compensation than state departmental commissioners.

Subsection (b) provides that the board may provide for the management and operation of the railroad by a third party contractor, subject to state review under Sec. 42.40.600(g).

Sec. 42.40.090. DELEGATION. This section provides that the daily affairs and operations of the railroad are the responsibility of the chief executive officer. The board is required to delegate to the chief executive officer certain matters such as leasing, specific rate-setting, routine changes in service levels and procurement. General or particular board authorization or concurrence is required for other enumerated activities.

ARTICLE 2. ADMINISTRATIVE PROVISIONS

Sec. 42.40.200. CONFLICTS OF INTEREST. This section prohibits a board member or employee from participating in a decision in which he, or a member of his immediate family, has a financial interest. The board may authorize a member or employee to participate when the financial interest is only a remote one, as defined in subsection (b). Additionally, a board member or employee may participate where he will not be affected in a manner different from the public generally. Subsection (d) voids board action where a vote or participation in violation of Sec. 42.40.200 was necessary to the decision. Otherwise, the board may ratify action taken after a separate vote without participation by the interested person. An intentional violation of Sec. 42.40.200 or A.S. 39.50 results in the forfeit of the member's or employee's office.

Subsection (e) extends A.S. 39.50, requiring the submission of financial disclosure statements and compliance with conflict of interest standards, to authority executive officials and board members. The board is also required in subsection (f) to adopt within 120 days of the first meeting rules implementing the conflict of interest section.

Sec. 42.40.210. PUBLIC BOARD MEETINGS. This section requires that board meetings be public and that executive sessions be used only when permitted by the state open meetings statute, A.S. 44.62.310, or when the matters under discussion pertain to personnel, the authority's legal position, land acquisition or disposal or proprietary information.

Sec. 42.40.220. MINUTES OF MEETINGS. This section requires the board to keep minutes of its meetings and to send certified copies of the minutes covering the public portion of each meeting to the governor and to the leadership of the legislature.

Sec. 42.40.230. ADMINISTRATIVE PROCEDURE. This section provides that the state's Administrative Procedure Act does not apply to the authority, with the exception that the Open Meeting Act, as modified in Sec. 42.40.210, applies to the authority's meetings. The authority is required to make its rules and regulations available to the public. The legislature may annul or temporarily suspend an authority regulation.

Subsection (b) requires the authority to provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public.

Emergency regulations may be adopted, but may remain in effect for only 120 days. Subsection (c) requires that certain types of rules and regulations be submitted to the attorney general for review and approval. Subsection (d) exempts from the rulemaking procedures four designated classes of regulations. Subsection (e) provides that the authority shall be considered an agency of the state for purposes of judicial review of the authority's actions.

Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. This section requires that information in the possession of the authority is public unless the authority, by rule or regulation, withholds such information by designating it to be of a nonpublic or privileged nature. A procedure is also established whereby individuals may object to public disclosure of information in the possession of the authority, and such information may be withheld if the public interest is not adversely affected.

ARTICLE 3. POWERS AND DUTIES

Sec. 42.40.300. GENERAL POWERS. This section delineates the numerous powers the authority needs in order to effectively manage and operate the Alaska Railroad. The list is intended to be nonexclusive but each of the enumerated powers appears for a specific reason. Most are obviously required by the authority to enable it to operate and manage the railroad. Others strengthen the authority's ability to engage in tax-exempt financing. Others will enable the authority to satisfy reasonably foreseeable requirements of the federal transfer legislation and

still others anticipate the role the railroad will play in the future economic development of the state.

Sec. 42.40.310. ANNUAL REPORT. A report generally describing the operation and financial condition of the authority, certified by the board, is required by this section to be submitted to the governor and each member of the legislature by February 1 of each year.

Sec. 42.40.320. ANNUAL AUDIT. This section obligates the board to have the authority's financial records audited annually by an independent certified public accountant experienced in rail accounting. The financial records of the authority also are subject to audit and inspection by the governor's internal auditor and the legislative auditor. Access to these materials by these officials is unrestricted but disclosure is limited.

Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS. This section obligates the authority to prepare long-range program and capital plans. The planning process is intended to ensure authority fidelity with the purposes of this chapter. The five-year, annually updated program plan required under this section is to provide information substantially consistent with that required of line agencies by the Executive Budget Act, although the format in which it is presented is to be developed by the authority, the legislative auditor and the division of budget and management. The section also provides for a companion five-year capital improvement plan which also is to be

annually updated. The information provided in this plan is to be consistent with that required in Sec. 42.40.600(b) for projects subject to state review.

Subsection (e) requires distribution of the annually updated plans to state officials.

Subsection (f) and Section 10 provide that, three years after the preparation of the first program plan, the governor and legislative auditor may conduct performance and efficiency audits of the authority's compliance with its plan.

Sec. 42.40.330. USE OF AUTHORITY ASSETS. This section requires use of authority funds, property, assets and credit for activities authorized by this chapter. It also precludes the issuance of stock, loans to board members or employees, business for private benefit and other activities inappropriate for a public authority. Subsection (b) makes it clear that the authority is allowed to serve its employees or board members in the same manner it would others in the same general class, such as passengers or shippers, as long as no special privilege is accorded the employees or board members. It also expressly permits the authority to indemnify and insure its employees, agents and board members.

ARTICLE 4. RAIL PROPERTIES

Sec. 42.40.400. RAIL PROPERTIES. Sec. 42.40.400 provides that the authority will receive and own the properties of the Alaska Railroad transferred under the federal legislation. These properties, as defined by A.S. 42.40.900(10), include both real

and personal property of the railroad. Like state lands, the authority's lands are protected from adverse possession by A.S. 38.95.010. Subsection (a) also provides that the authority's lands may not be disposed of without compliance with the specific procedures contained in Chapter 40.

Subsection (b) requires the authority to convey the subsurface estate of the lands it receives to the state within 120 days after transfer. The authority may reserve the right to use sand, gravel, coal and other materials on the lands conveyed to the state. Its retained interest includes the right to tunnel and otherwise use the subsurface as necessary for transportation and related purposes.

Under subsection (c), the authority is given the power to litigate and settle any claims arising out of the transfer process, including claims for breach of warranty by the United States. Under subsection (d), the authority may submit applications for interests in federal lands, such as rights-of-way, and receive conveyances of those interests. Additionally, the authority is authorized by subsection (e) to acquire state and federal surplus property under existing law.

Subsection (f) requires the authority to give public notice of the disposal of interests in land, other than leases, easements, and land-use permits.

Sec. 42.40.410. CLASSIFICATION, ACQUISITION AND USE OF STATE LAND FOR RAILROAD PURPOSES. Sec. 42.40.410 provides a mechanism

allowing the authority to acquire state lands for railroad purposes with the concurrence of the Commissioner of Natural Resources. Such acquisition would be necessary in the event of an expansion which involves use of state lands for new routes. The acquisition procedure is initiated by a resolution of the authority's council identifying specific lands for rail purposes. Within 180 days after receiving the resolution, the Commissioner of Natural Resources is required either to permanently classify and convey the surface estate of the requested lands for railroad purposes or to deny the classification as not in the best interest of the state. Conveyances under this section include sand, gravel, other construction materials and coal useful for railroad purposes, unless the Commissioner reserves them to the state.

Subsection (d) also allows the authority and the Commissioner to engage in joint management of railroad lands, to agree to conditions for the classification of state lands as railroad lands, and to periodically review both state and railroad lands to determine their suitability for railroad purposes. The authority may reconvey to the state lands which it no longer needs.

Subsection (e) elaborates on the nature of the authority's interest in surface estate conveyed to it by the state.

Subsection (f) provides an emergency procedure for relocation of right-of-way and related fixtures to state lands where such

relocation is necessary to maintain safe and adequate rail operations. Within 45 days after relocation, the authority must request classification and conveyance of the state lands under the normal procedure.

Subsection (g) permits the authority to use coal on its lands for operational purposes (e.g., generation of electrical power) if the Department of Natural Resources first finds the coal is located on authority land and is not owned by another party. Use of coal for operational purposes includes payment in kind of a contractor engaged to extract the coal.

Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LAND. The Department of Natural Resources may lease or develop resources on authority lands only after a review procedure involving both the Department of Natural Resources and the authority has been completed. The review procedure requires an agreement as to suitable reimbursement for any costs incurred by the authority as a result of the development unless undertaken by the state itself. The authority's approval of the development must be evidenced by a written authorization. Additionally, subsection (b) requires the department of natural resources to require a surety bond from any party other than the state engaged in resource development on railroad lands.

Subsection (c) requires the Department of Natural Resources to maintain records and annually report to the legislature concerning the income received from the subsurface of railroad lands

and the value of all subsurface conveyed by the authority to the state.

Subsection (d) establishes the Alaska Railroad Income Fund in the State Treasury for income received by the state from lands in which the authority has an interest. The fund is subject to appropriation by the Legislature.

Sec. 42.40.420. LAND USE REGULATION. This section authorizes the authority to promote the common health, safety, and welfare of the public by adopting exclusive regulations governing land use by private parties having interests, such as leases or permits, in lands owned or managed by the authority.

Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS. This section confers eminent domain power on the authority under the state's general eminent domain statute. When the authority acquires a fee simple interest, which may be necessary to insure control of activities on the surface estate, the authority must reconvey the subsurface to the state.

Subsection (c) authorizes the authority to acquire land by filing a declaration of taking.

Subsection (d) clarifies that the authority may exercise eminent domain to obtain materials as well as the land and access necessary to develop them. The authority is also authorized by subsection (e) to vacate land, or any part of it, and reconvey title to the state, if compensation was paid for it.

ARTICLE 5. FINANCIAL PROVISIONS

Sec. 42.40.500. BONDS AND NOTES. This section authorizes the authority, by resolution of the board, to issue bonds and bond anticipation notes to provide money to carry out its purposes. The section vests broad discretion in the board in the exercise of this authority. Other than specific limitations provided in this section such as a maximum term of 50 years for instruments and the requirement that bond or note proceeds be dedicated to activities specifically related to the purposes for which the instruments are issued, it is intended that the board have the maximum flexibility legally permissible in financing its activities. The 18 covenants and powers delineated in subsection (g) are not intended to be exclusive. Paragraph (19) is a general grant of authority to the board to exercise such other powers and make such other covenants, notwithstanding their omission from the specific list, as may be necessary, convenient and desirable.

Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR. The board is required by this section to retain a financial advisor independent of the underwriter in negotiating the private sale of bonds and notes.

Sec. 42.40.515. VALIDITY OF PLEDGE. This procedural section facilitates the pledge of assets or revenues to the payment of authority debt. It provides for automatic lien attachments; gives the liens priority against all parties with junior position

regardless of notice; and allows the authority to sell assets subject to a pledge.

Sec. 42.40.520. REMEDIES. For the benefit of holders of authority securities, this section provides that remedies and rights available under the terms of such instruments are to be broadly enforceable.

Sec. 42.40.525. NEGOTIABLE INSTRUMENTS. Self-explanatory.

Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. This section authorizes public and private entities and individuals, including the state, and its other political subdivisions, institutions and others subject to regulation by state law to invest in authority securities.

Sec. 42.40.535. REFUNDING BONDS. The issuance of refunding bonds to refund outstanding bonds is authorized by this section. Insofar as may be appropriate, the provisions of this chapter also apply to refunding bonds. Subsection (b) authorizes investment of refunding bond proceeds, pending their application as contemplated upon issuance, in direct or guaranteed obligations of the United States, the state or other entities with comparably rated credit.

Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER. This section states that the authority's securities are not obligations of the state and are payable exclusively from revenues or assets of the authority, without recourse to the state or its other political subdivisions. It also requires that

each instrument issued by the authority contain a disclaimer on its face to this effect.

Sec. 42.40.545. NO PERSONAL LIABILITY. Self-explanatory.

Sec. 42.40.550. REVENUES. This section provides for authority retention and management of its own revenues, which do not become part of the state's general fund.

Sec. 42.40.555. INSURANCE. In addition to requiring the authority to maintain adequate insurance, this section requires that the state be named as an additional insured.

Sec. 42.40.560. SAFEGUARDING OF MONEY. Self-explanatory.

Sec. 42.40.565. FIDELITY BOND. Self-explanatory.

Sec. 42.40.570. REVERSION OF ASSETS. Self-explanatory.

ARTICLE 6. STATE OVERSIGHT

Sec. 42.40.600. STATE REVIEW. This section requires the authority to obtain the approval of at least the governor and possibly the legislature for certain enumerated major actions. The authority must first notify the governor and the leadership of the legislature that it proposes to undertake any of the designated actions. The governor may either disapprove the proposal, suspend it pending review by the legislature or approve it. Approval or disapproval are final and dispositive. If the governor suspends the proposal, he transmits his decision and his recommendation to the legislature. The legislature may then reject it. If either the governor or the legislature fail to act

within the time provided, the proposal is deemed approved and the authority may proceed.

Subsection (g), the foregoing notwithstanding, requires specific authorization by the legislature by law of any proposed extension representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million or provision for the management and operation of the railroad by a third party contractor.

Subsection (h) provides that this section is satisfied if the authority has been directed to proceed with a project through the Sec. 42.40.610 action forcing mechanism or in the event the legislature has funded a project independently.

Sec. 42.40.610. ACTION-FORCING MECHANISM. This section requires the authority to respond formally to a request for consideration of a proposal by either the governor or the legislature. Within 30 days of receiving such a request, the authority, in writing, must commit to undertake the suggested proposal or explain why it will not or is precluded from doing so. At the request of the governor or on its own initiative, the legislature may then direct the authority to proceed its response notwithstanding, if the legislature also provides funds to plan and implement the proposal.

Sec. 42.40.615. INTERVENTION. This section provides that the governor, when so authorized by the legislature, must intervene in and exercise control of the authority under certain delineated circumstances. The intervention mechanism permits the

governor to correct the deficiencies and is to cease as soon as the necessary corrections have been made.

Sec. 42.40.620. TRUSTEESHIP. This section provides that the legislature may also authorize the governor to petition the State Superior Court at Anchorage to impose a trusteeship over the authority under specific circumstances, including insolvency, misapplication of resources or impairment of the state's creditworthiness. The trustees appointed by the court are given broad powers to cure the situation.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Sec. 42.40.700. PERSONNEL. This section provides that the employees of the authority are not employees of the state. It also provides for application of the state's Public Employment Relations Act to the authority's employees.

Subsection (c) precludes organization of the authority's executive officials.

Sec. 42.40.710. POLITICAL ACTIVITIES. This section precludes use of authority funds in political activities including legislative efforts. Nevertheless, board members and employees are authorized to participate in legislative proceedings at all levels of government in connection with matters directly affecting the authority. Violations of this section are subject to personal fines up to \$5,000 under subsection (b).

Sec. 42.40.720. LICENSES AND PERMITS. This section provides that the authority, to the same extent as the state and except as

otherwise provided in this chapter, will comply with local, state and federal licensing and permitting requirements.

Sec. 42.40.730. UNAUTHORIZED REPRESENTATION. Self-explanatory.

Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. Subsection (a) requires that all legal claims involving the authority be brought against the authority and not against the State of Alaska. This requirement reaffirms that the debts of the authority are not the debts of the state.

Subsection (b) extends certain rights, privileges and immunities of the state and state officers to the authority and its board members and employees. Among these are requirements relating to statutes of limitations, immunity from suit, and exemptions from giving bond.

Subsection (c) provides that claims against the authority will not be subject to the administrative procedure for presenting and deciding claims against the state or its agencies. (A.S. 44.77.010 et seq.)

Subsection (d) clarifies that A.S. 44.80.010, concerning the state's status as a party to actions against departments and agencies, does not apply to the authority. As a result, the state may not be named in an action against the authority and the Department of Law is not required to bring or defend actions concerning the authority.

Sec. 42.40.755. EXEMPTION FROM TAXATION. This section exempts the authority from state and political subdivision taxation. Subsection (c) provides that authority property is considered taxable for the limited purposes of computing state aid to local school districts.

Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID. This section authorizes the authority to provide, in its discretion and under certain circumstances, partial payments in lieu of local real property taxation by communities in which the authority has substantial land holdings. The authority also is allowed to provide discretionary impact aid to localities for public education and other facilities required to be developed as a result of expanded authority activities in such areas.

ARTICLE 8. GENERAL PROVISIONS

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE. This section provides for an authority security force to enforce state laws and authority regulations with respect to violations of the laws or regulations that occur on or to authority property. Security force members have the same enforcement powers granted by law to state law enforcement officers.

Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION. This section makes a violation of the authority's regulations designated as necessary to protect life, health, or

property a misdemeanor punishable by a \$1,000 fine and/or six months imprisonment. The authority is expected to be able to deal with the problem of violations by employees incidental to and within the scope of their employment in regulations implementing this section.

Sec. 42.40.890. CONSTRUCTION. Self-explanatory.

Sec. 42.40.900. DEFINITIONS.

(1) through (6) Self-explanatory.

(7) "Immediate family" is defined for purposes of Sec. 42.40.200 CONFLICTS OF INTEREST.

(8) Self-explanatory.

(9) "Leadership of the legislature" is defined for purposes of notice and filings required by this chapter. The definition specifically provides that the designated office-holders may designate persons or offices to receive such notices and filings.

(10) Self-explanatory.

(11) "Regulation" is defined to have the same meaning as that term is defined under the State Administrative Procedure Act.

(12) "Rule" is distinguished from "regulation" as it relates to the authority's internal affairs and not to activities affecting the public at large.

Sec. 3. Amendment to A.S. 09.55.310(a)(4)

Sec. 4. Amendment to A.S. 09.55.350

Sections 3 and 4 amend A.S. 09.55.310(a)(4) and A.S. 09.55.350 respectively to exempt the authority from any requirement that it pay for or erect fences and cattleguards along right-of-way it condemns.

Sec. 5. Amendment to A.S. 39.50.200(b)

Section 5 amends A.S. 39.50.200(b) to add the authority to the list of state commissions and boards whose officials are subject to the conflict of interest and reporting requirements of A.S. 39.50.

Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY. This section provides that the authority's legal existence commences when the governor appoints all of its initial members.

Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD OF COMMISSIONERS. This section provides for the appointment of the initial members of the board. The governor may exercise his power of appointment only upon acceptance by the legislature of the closing report prepared under the federal transfer legislation. The section also directs the governor to designate the terms of the initial public members and staggers the terms to ensure long-term continuity on the board.

Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION. The closing report prepared under the transfer legislation is to include a specific accounting of the assets and

liabilities being transferred. This section also provides that the legislature may not condition its acceptance of the report on its modification but may only accept or reject it.

Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. The audit, during the five years following transfer, is to include the status of the assets and liabilities identified in the closing report prepared under the federal transfer legislation.

Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS. This section requires the authority to prepare and the board to adopt initial long-range program and capital improvement plans within 18 months of the date of transfer.

Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD. This section allows the authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 12. COLLECTIVE BARGAINING AGREEMENTS BETWEEN ALASKA RAILROAD AUTHORITY AND EMPLOYEES. This section requires the authority, as soon as practicable after transfer of the railroad, to adopt collective bargaining agreements with its employees that continue the provisions of the agreements in effect immediately prior to the date of transfer. The agreements are to remain in effect until they expire by their terms or as required under the transfer legislation, they are renegotiated, subject to board approval.

Sec. 13. CONFLICTING LAWS INAPPLICABLE. Self-explanatory.

Sec. 14. APPLICATION OF EXISTING STATUTES.

(a) A.S. Title 19 does not apply to the authority -- sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways; some of its provisions regarding construction, public bids, etc., arguably apply to other activities of DOT/PF, to which the authority will be nominally assigned.

(b) The authority is considered a "political subdivision" for purposes of A.S. 23.10.055 -- state wage and hour statute.

(c) A.S. 23.10.420 does not apply to the authority -- full-crew law.

(d) A.S. 30.15 does not apply to the authority -- procedures for state grants for construction of local port facilities.

(e) Authority activities are not subject to A.S. Title 35, which deals generally with public works. The authority is exempt from public bidding requirements, Department of Transportation and Public Facilities supervision of construction, planning of projects, etc.

(f) The following provisions of A.S. Title 37 do not apply to the authority's operations and budgeting procedures:

A.S. 37.05 -- the Fiscal Procedures Act establishes uniform accounting, purchasing, post auditing, and related financial provisions for all "state agencies" and

requires state agencies to submit reports, documents, and statements to the Department of Administration for accounting purposes, requires federal funds received by state agencies to be deposited in the state treasury, makes the Department of Administration responsible for all accounts and purchases of state agencies, requires competitive bidding procedures, and imposes other financial and reporting requirements;

A.S. 37.07 -- Executive Budget Act;

A.S. 37.10.010 - .060 -- these sections make the Department of Administration the custodian of state funds and require all officers, boards, commissions, etc., to account to the Department of Revenue for all moneys received;

A.S. 37.10.085 -- prohibits a political subdivision of the state from subscribing to the stock of the corporation for loaning credit or borrowing money for use of the corporation;

A.S. 37.20 -- authorizes the governor to accept federal grants and transfers of property, and makes land so transferred subject to the jurisdiction of the Department of Natural Resources; and

A.S. 37.25 -- determines which unexpended appropriations lapse and which do not.

(g) The authority is not subject to the jurisdiction of the Alaska Transportation Commission.

(h) Provides subsequently enacted statutes shall not be interpreted to apply to the authority unless they do so specifically by their terms.

Sec. 15. EFFECTIVE DATE. This section provides that the chapter becomes effective upon acceptance by the legislature of the closing report submitted under the federal transfer legislation or upon approval by the legislature of operation of the federal Alaska Railroad by the authority.

ALASKA STATE SENATE BILL NO. 212 - RAILROAD AUTHORITY

1) Article 1, Page 2. Findings.

Sec. 42.40.100 - Legislative Findings and Policy.

Paragraph (b). It is the policy of the state...

Sub-paragraph (5) To provide reasonably high quality and low cost transportation to the people, visitors, and businesses of the state.

Change: We suggest that the entire sub-paragraph (5) or just "and low cost" be deleted.

2) Paragraph (c), Page 3. The legislature further declares that...

Sub-paragraph (2)

Sub-paragraph (f) Provide the best possible combination of high-quality and reasonably low cost transportation.

Change: Suggest that the entire sub-paragraph (f) be deleted or delete the words, "and reasonably low cost" and replace with "effectively managed".

3) Paragraph (c), Page 3.

Sub-paragraph (2)

Sub-paragraph (g) Operate according to sound business management practices.

Change: Add to this statement, "and in a manner that is consistent with the total transportation needs of the people of the State of Alaska."

4) Paragraph (c), Page 3.

Sub-paragraph (2)

Sub-paragraph (j) Ensure that borrowing by the authority does not indirectly endanger the state's own borrowing capacity.

Change: Insert after "authority", "is kept at the minimum level necessary to meet the railroad's capital needs and", before the word "does".

H.L. Schuyler

Sea-Land Service, Inc.

5) Article 2, Pages 4 and 5.

Sec. 42.40.215. Appointment and Composition of Council.

Comments: Given its structure, per diem compensation level, and conflict of interest provisions (see Article 3), it's quite likely that members will be highly politically motivated; have little, if any, knowledge of business and specifically transportation issues; and be very much subject to the whim of the Governor and the Railroad. Perhaps there is a business or trade organization in Alaska that could be designated in the Statute to nominate members of the Council for the Governor's consideration, or at least to develop recommendations as to their qualifications.

6) Sec. 42.40.250, Page 7.

Paragraph (b). The council may provide for, in a manner consistent with the purposes of this chapter and subject to the approval of the governor, the management and operation of the railroad by a third-party contractor.

Comment: The operation of the railroad may be operated by a third party under contract, after a formal bid procedure.

7) Article 2, Page 9.

Sec. 42.40.250. Executive Officials and Limited Delegation.

Paragraph (c). The general manager of the Authority manages the daily affairs and operations of the Authority.

Sub-paragraph (8) establishment of rates.

Change: This should be expanded and defined as "a joint management and council responsibility."

8) Sec. 42.40.310, Pages 11 and 12.

Paragraph (6). Public Council Meetings.

Comment: All deliberations and decisions relative to land acquisition or disposal should be made public information.

9) Article 3, Page 14.

Sec. 42.40.340. Public Disclosure of Information.
Paragraph (a).

Change: Delete second sentence.

10) Article 4, Page 15.

Sec. 42.40.400. General Powers.
Sub-paragraph (8). Acquire property by eminent domain and/or by a
declaration of taking.

Change: Delete this paragraph.

11) Article 4, Page 16.

Sec. 42.40.400
Sub-paragraph (16)

Change: After the word "railroad", insert "as a common carrier."

12) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (24)

Change: Delete "and low cost" from their sentence and add, "All rates
thus described shall be at a level sufficient to recover the full cost
of providing the particular transportation service concerned."

13) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (26)

Change: Delete their paragraph and replace with, "Enter into contracts
and leases pertaining to the properties and facilities of the Railroad "

14) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (27).

Change: Delete their paragraph and replace with, "Plan for and under-
take the extension of the Alaska Railroad's Rail System into areas of
the State not presently served."

15) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (28).

Change: Delete all after "operations" on Line 10, Page 18, and substitute "and the Railroad has the same ability as any private transportation company to preserve and protect such employee property and operations."

16) Article 5, Page 27.

Sec. 42.40.530. Eminent Domain and Acquisition of Property and Materials.

Change: Delete entirely.

17) Article 6, Page 28.

Sec. 42.40.600. Bonds and Notes.
Sub-paragraph (2).

Change: Delete last word "purposes" and add, "approved capital improvement and expansion projects."

18) Article 7, Page 26.

Sec. 42.40.700. State Review.
Sub-paragraph (a). Prior to undertaking...

Comment: We should make mention of the fact that the words are already sufficient to include the purchase of water or truck carriers.

19) Article 8, Pages 43 and 44.

Sec. 42.40.855. Exemption from Taxation.

Comment: Recommend deletion of entire section. This section both exempts the properties of the railroad from state and local taxes, and provides that bonds and bond anticipation note interest payments shall also be exempt. This is a very substantial subsidy measure and will afford the Railroad a significant cost advantage over its competitor commercial firms. If this section is not deleted, the legislation should require the authority to take into account a hypothetical tax liability based on railroad industry standards in the computation of rail rates.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1981

SUBJECT: Sectional analysis of Alaska Railroad
Authority Bill (Work Order Number 12-0866)

TO: Senator M. E. Dankworth

FROM: Randolph G. Berry *RGB*
Legislative Counsel

In accordance with your request, the following is a section-by-section analysis of your bill establishing the Alaska Railroad Authority (Work Order No. 12-0093).

Sec. 1 of the bill:

Sec. 42.40.010 establishes the Alaska Railroad Authority as a public corporation within the Department of Transportation and Public Facilities.

Sec. 42.40.020 provides that the authority shall be governed by a board of directors.

Sec. 42.40.030 sets out the membership of the board of directors, the method of appointment, and qualifications of the members.

Sec. 42.40.040 provides for a four year term of office for directors and provisions for filling of vacancies.

Sec. 42.40.050 sets out procedures to be followed in the event of a conflict of interest by a member of the board of directors.

Sec. 42.40.050 provides for per diem and travel expenses for the directors.

Sec. 42.40.070 establishes the quorum for the board of directors.

FEB 26 1981

Sec. 42.40.080 provides that board meetings are public meetings.

Sec. 42.40.090 requires board to keep minutes of its meetings.

Sec. 42.40.100 allows the board to employ a president to manage the authority and sets out certain qualifications for the president.

Sec. 42.40.110 sets out the general powers of the authority, including operating authority and financial powers.

Sec. 42.40.120 provides that the authority shall provide for the operation of the Alaska Railroad, either operating the railroad itself or otherwise, and allows the authority to expand the operations of the railroad.

Sec. 42.40.130 provides that the board shall adopt and issue regulations pertaining to its operations and the operations of the railroad.

Sec. 42.40.140 requires the board to prepare and distribute an annual report.

Sec. 42.40.150 requires an annual audit of the authority by the legislative auditor or by an independent auditor acceptable to the legislative auditor.

Sec. 42.40.160 allows the authority to issue and sell bonds and notes to provide money for corporation purposes, including the operation, maintenance and expansion of the railroad; provides that these bonds and notes are payable from funds and assets of the corporation; allows the authority to determine the number, denomination and other matters relating to the issuance of bonds and notes; allows the authority to make pledges and guarantees with respect to the security for the bonds and notes; the payment of interest and principal, the redemption of the bonds, and the establishment of special funds for payment or redemption of the bonds or notes; and allows the

authority to make pledges with regard to the appointment and powers of a trustee or trustees to protect the interests of the holders of the bonds and notes issued by the authority.

Sec. 42.40.170 requires the authority to retain the services of an independent financial advisor when negotiating for the private sale of bonds or notes.

Sec. 42.40.180 provides that pledges of assets or revenue made by the authority as security for the payment of principal or interest on bonds or notes are binding on the authority.

Sec. 42.40.190 grants the holders of authority bonds or notes, or trustees appointed to protect the holder's interests, to enforce the rights granted under this chapter and pledges made under the trust agreement or resolution of the board.

Sec. 42.40.200 provides that bonds and notes of the corporation are negotiable instruments.

Sec. 42.40.210 provides that bonds and notes of the authority are securities which are eligible for investment of state funds and qualify for investment of reserves and other funds by insurance companies, banks and other companies maintaining reserve accounts.

Sec. 42.40.220 allows the authority to issue refunding bonds to replace previously issued and outstanding bonds and notes of the authority.

Sec. 42.40.230 provides that the authority is not allowed to pledge the taxing power of the state or assets of the state other than the assets of the authority.

Sec. 42.40.240 protects the officers and employees of the authority from personal liability for the issuance of bonds or notes by the corporation.

Sec. 42.40.250 grants tax exempt status to the authority and to bonds and notes issued by the authority.

Sec. 42.40.270 allows the board of directors to dissolve the authority after provision for repayment of all its bonds and notes, but requires legislative approval of the dissolution.

Sec. 42.40.280 provides that personnel of the authority are in the exempt state service.

Sec. 42.40.990 defines various terms used in the previous sections.

Sec. 2 establishes the terms for initial members of the board of directors appointed under sec. 42.40.030.

Sec. 3 provides for the board of directors of the Alaska Railroad Authority to enter into negotiations with representatives of the federal government for the transfer of the Alaska Railroad to the authority.

RGB:ljb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1981

SUBJECT: Alaska Railroad Authority
(Work Order No. 12-1364)

TO: Senator Bill Ray

FROM: Thomas A. Sofo, *TAS*
Legislative Counsel

You have requested that this office undertake a section-by-section analysis of SB 212 and SB 221 with notations of any differences which exist between the two bills. Both bills create an Alaska Railroad Authority. SB 212 and SB 221 share more parallel provisions than they do differences. In the interest of economy of time and effort, I have attempted to summarize the main differences which exist between the two bills since this seems to be most salient feature of your request. I do not believe that one will encounter much difficulty in understanding what a given section of either bill says, but I am aware that there is some need to be able to compare differences between the two bills. I have undertaken that comparison in narrative form below. You may find that future reference would be facilitated if the format of this memo is changed into some sort of graphic presentation.

Both bills create the Alaska Railroad Authority as a public corporation of the state. However, the composition of the governing board varies. Under SB 212, the board consists of at least one banker, one attorney, one economist, one transportation person, and one business person [sec. 42.40.030]. Under SB 221, the board consists of the commissioner of transportation and public facilities, two senators, two representatives and two members of the general public [sec. 44.87.015]. Only SB 212 specifically sets out a conflict of interest section [sec. 42.40.050]. SB 221 calls for the employment of an executive director to manage the authority [sec. 44.87.025], while SB 212 gives this job to

the president [sec. 42.40.100]. The general powers of the authority under both bills are practically identical. One of the purposes of the authority under SB 221 is to enter into talks with the federal government and Canadian provinces regarding an international rail connection [sec. 44.-87.030]. Nowhere is this expressly mentioned in SB 212 although this purpose could be implied easily under sec. 42.40.120. Only SB 212 expressly calls for an annual report [sec. 42.40.120], and audit [sec. 42.40.150].

The financial provisions of both bills are similar. SB 212 differs as it provides for bond anticipation notes [sec. 42.-40.160(b)]. SB 221 provides for a maximum forty year maturity for authority bonds [sec. 44.87.040(b)], while SB 212 calls for a fifty-year maximum [sec. 42.40.150(c)]. SB 212 goes into much more detail when describing the resolution which authorizes the issuance of bonds [sec. 42.40.160(f)], than does SB 221 [sec. 44.87.040(b)]. Only SB 212 calls for an independent financial advisor [sec. 42.40.170]. SB 221 specifically refers to trust indentures and trust agreements and provides that an issue of bonds may be secured by such instruments while SB 212 is silent on this point [sec. 44.-87.045]. SB 212, unlike SB 221, provides for the issuance of refunding bonds [sec. 42.40.220]. Only SB 212 provides for the dissolution of the authority [sec. 42.40.270], and for the exemption of authority personnel from the State Personnel Act [sec. 42.40.280]. The last substantive difference in the financial provisions of these two bills is that only SB 221 expressly states that income from investments of the authority is limited to maintenance or improvement of railroad facilities [sec. 44.87.075].

Call me at your convenience if you have any problems with understanding the content of a specific section beyond the differences identified by this comparison.

TAS:ljb



TOTEM OCEAN TRAILER EXPRESS, INC.

619 WAREHOUSE AVENUE, SUITE 242 / ANCHORAGE, ALASKA 99501

PHONE: (907) 276-5868

Proposed Amendments to S.B. 212

2/5/82

1. Amend § 42.40.010 (ALASKA RAILROAD AUTHORITY) by adding the following phrase at the end of the first sentence: "for the purpose of providing rail transportation services within the State of Alaska."

Comment: The proposed amendment would clarify the legislative intent that the Railroad Authority refrain from entering the motor carrier or water carrier business.

2. Redesignate § 42.40.120 (OPERATION OF THE ALASKA RAILROAD) as § 42.40.120(a).
3. Add four new subsections to § 42.40.120 (OPERATION OF THE ALASKA RAILROAD), designated as § 42.40.120(b), (c), (d), and (e) as follows:
"(b) The board shall solicit bids from qualified private persons or firms to operate the Railroad on a contract basis and shall contract for private professional management of the Railroad unless the board determines by a 3/4 vote that direct management of the Railroad's operations by the board will be significantly less costly."

Comment: Private, professional management of the Alaska Railroad will help to insure that the Railroad is run on an independent, self-sustaining basis and will deviate from that principle only to extent that the legislature authorized the subsidy of specific enumerated services. Direct operation of the Railroad by an unpaid board of directors would tend to reduce the Railroad's accountability. Contract management can be subjected to restrictions and regulated by incentives and penalties which would not be appropriate to control the board.

"(c) Notwithstanding any other provision of this Act, the operation of the Alaska Railroad shall not be extended to the provision of any motor carrier or water carrier service which would compete with any motor carrier or water carrier service actually provided by a private carrier."

Comment: Where private enterprise is capable of providing a transportation service, the government should stay out. The purpose of this amendment is not to restrict or eliminate any current operations of the Railroad but only to prevent expansion of existing operations in direct competition with private carriers.

"(d) Each competitive service provided by the Alaska Railroad shall generate sufficient revenues to the Railroad to cover the cost of that competitive service; provided that nothing in this subsection shall prevent the Railroad from meeting a rate offered by a private carrier for a competitive service."

"(e) The Alaska Railroad shall be subject to the antitrust laws of the state of Alaska."

Comment: A "competitive service" is defined elsewhere as a service which competes with one or more private carriers. Private companies engaged in freight transportation should not be undercut and driven out of business by the operations of a subsidized, state-owned railroad. Where it competes with private freight carriers, the Railroad should be required to play by the same rules that govern the private carriers. Thus, where it competes with private freight carriers, the Railroad should be required to conduct its operations on a self-sustaining, non-subsidized basis and in accordance with the Alaska antitrust laws.

We have no objection to state subsidization of those services (e.g., passenger and bulk commodity services) which do not compete with private carriers.

Our goal is only to prevent the Railroad's use of government subsidies to compete unfairly with private carriers.

4. Amend § 42.40.150 (ANNUAL AUDITS) by inserting a semi-colon at the end of the last sentence and adding the following:

"except that the financial records of the authority shall identify separately the cost of each service provided by the Alaska Railroad and revenues to the Railroad generated by each such service. The financial records of the authority and of the Alaska Railroad shall be available to the public at such reasonable times and places as the Board may designate."

Comment: These provisions are intended to assure that records are maintained by the Railroad, and accessible to the public, which are necessary to determine compliance by the Railroad with the requirement that the Railroad operate on a self-sustaining basis when it competes with private carriers.

5. Redesignate § 42.40.990 (DEFINITIONS) as § 42.40.290 and amend § 42.40.290 to add three new subsections, designated § 42.40.290(4) and (5), and (6), as follows:

"(4) A "service" provided by a carrier means any activity which the carrier performs or offers to perform, either individually

or as part of a through route, as a common carrier, contract carrier or both, including, but not limited to, any single or multiple commodity freight service."

"(5) A "competitive service" means any service in which the Alaska Railroad does or would compete with one or more private carriers, except that passenger service and bulk commodity service are expressly excluded from the term."

"(6) The "cost to the Alaska Railroad of a competitive service means all capital, operating and other costs actually or constructively incurred by the Railroad which directly or indirectly enhance the Railroad's ability to provide the competitive service. Such costs shall include:

(A) An imputed cost for any property or other right, privilege or thing of value used, received or acquired by the Alaska Railroad without cost or for a consideration less than fair market value. The imputed cost of such properties, rights, privileges and things of value shall be their fair market value as of the date of their acquisition or use, whichever occurs first. In the case of tangible real or personal property, market value shall be the M.A.I. appraised replacement cost, less observed depreciation.

(B) An imputed financing cost computed on the fair market value of the property, rights, privileges and things of value described in paragraph (A) of this section at the rate determined by the

Interstate Commerce Commission in the most recent revenue adequacy proceeding as the average cost of capital in the railroad industry;
and

(C) If the Alaska Railroad receives any capital or operating funds through grants or other direct or indirect subsidies from the state or federal governments or any other source, or through the issuance of tax exempt bonds or obligations, an imputed financing cost computed on the amount of such funds at the rate determined by the Interstate Commerce Commission in the most recent revenue adequacy proceeding as the average cost of capital in the railroad industry.

(D) To the extent that costs described in this section, actual or imputed, benefit more than one of the services provided by the Railroad, the Railroad shall fairly allocate such costs among such services in proportion to the use or benefit which each service derives."

Comment: The definitions are necessary to specify the meaning of proposed subsection 42.40.120 (d), which requires the Railroad to generate sufficient revenues from each service which competes with private carriers to cover the cost of providing that service. The definition of cost is intended to place the Railroad on the same footing as any private railroad and on the

same footing as the private carriers with whom the Railroad competes. The definition is intended to prevent the Railroad from using public subsidies to compete unfairly with private carriers.

6. Add a new section 42.40.300 (COMPLIANCE), as follows:

"The Alaska Railroad shall be operated in strict compliance with this Act. The Superior Courts of the state of Alaska shall enjoin any act or omission in violation of the terms of this Act upon petition by any person and shall grant all other appropriate relief, including damages, to any person injured by such act or omission."

Comment: The Alaska courts should be authorized to enforce the requirements of the Act.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Anchorage, Alaska
May 11, 1982

*Mulcahy, Thors
Outcliffe
Zieroff*

Alaska State Legislature
Juneau, Alaska

Gentlemen:

Legislation effecting transfer of The Alaska Railroad into State ownership presents major challenges, largely because of the conflict inherent in trying to operate a publicly-held corporation as a profit-making business.

We have been long-term supporters of transfer of ownership, having spent the last year and a half analyzing legislation regarding the transfer introduced in both the Congress and the State Legislature. We feel the last version of SB212 drafted May 4, 1982, presently before you, fails in several important regards to provide an adequate framework for State ownership and operation of the Railroad.

We believe there are areas of direct conflict between SB212 and the current version of S1500, now before Congress.

We believe the present version of SB212 provides for an inherently inefficient operation.

We believe the State should now, at the moment, go any further than establishing an independent Alaska Railroad authority, leaving details of its operation to be defined after the Federal bill becomes law.

42.40.400, entitled "Rail Properties", provides for conveyance by the authority to the State of the subsurface estate and mineral rights on Railroad lands, yet S1500 mandates reversion of Railroad lands back to Federal ownership if such lands are not used solely for Railroad purposes. Not only will the ownership be difficult or impossible to recombine, it seems to us the authority should be free to use its enterprise assets to maximize its income.

42.40.700, titled "Personnel"; drafts of S1500 have all contained the mandate that employees may join the State personnel system. This provision prohibits it. This conflict can be avoided by having no provision in the State law until the Federal legislation is adopted.

42.40.740, "Claims Against the Authority", says, in essence, that claims must be brought against the authority, not the State. The language in S1500 provides specifically that the word "State" includes an entity designated by the State to own, operate, or manage The Alaska Railroad.

Concerning those provisions of SB212 which will make the operation of the Railroad inherently inefficient:

42.40.010: We believe the interests of the people of Alaska are best served by preserving the maximum possible amount of independence under which the Railroad now operates. The authority should not be established within an existing department, but should be a separate division of government under Article III, Section 22 of the Alaska Constitution; or should be established by constitutional amendment; or as a Title 10 corporation under Alaska Statutes.

Any of these methods assures the authority of more independence from existing government, assures the Railroad of a place in State government to match its potential impact, and eliminates another layer of administrative procedure.

The rule making and public hearing procedures in 42.40.230, 42.40.330, and 42.40.420 provide for six separate sets of rules to be promulgated by the Railroad to operate under this law. Each of these sets individually reduces the operating efficiency of the Railroad. Collectively, they represent an onerous burden.

Business must be able to move quickly to capture profit opportunities. The Railroad is in competition with other carriers. It cannot be "telegraphing its punches", but must have the speed inherent in an independent board and management, not burdened by a complex and lengthy hearing process.

In addition, every utterance of the Railroad can be classified as a regulation by the reference in 42.40.500, Paragraph (11) to AS 44.62.640. The Railroad now has 143 volumes of orders, with 469 supplements.

The Railroad would limit its own ability to attract operating and management talent under 42.40.080, Paragraph (5), which limits salaries of employed executive officials. We believe prudent business practice should dictate compensation levels.

In closing, let me restate that we feel SB212 is overlong, and that the State should, for the moment, not try to fully implement as-yet-unadopted Federal legislation, but should merely create the authority. Full definition can then be made in light of Federal law.

Sincerely,

Anchorage Chamber of Commerce

(Anchorage Legislative Information Office 3/11/82:
Sent per request of Jan Falks, Legislative Chairman,
Anchorage Chamber of Commerce)

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

SECTION-by-SECTION ANALYSIS of RAILROAD BILL

By BETTISWORTH

SECTION 1

FINDINGS: The individual findings are self-explanatory. Findings are necessary to establish the legislature's expectations with respect to the authority.

SECTION 2

ARTICLE I, CREATION & ORGANIZATION

Section 42.40.010

Establishment of the Authority -- The Alaska Railroad Authority is established in this section. Its existence begins after the appointment of the Board which will take place after the legislature approve the closing report (or its equivalent) presumably next session.

Section 42.40.020

LIMITATION OF LIABILITY--The authority's liabilities are exclusively its own and not the state's.

Section 42.40.030

BOARD OF COMMISSIONERS--The powers of the Authority are in the Board.

APPOINTMENT AND COMPOSITION OF THE BOARD--This section provided that the board consists of the Commissioner of Transportation and Public Facilities and six "public" members, who may not be state officers or employees. Additionally, the authority's chief executive officer and a union representative are non-voting members. All public members must be confirmed by the legislature.

Section 42.40.040

TERMS OF OFFICE-- Board members serve 5 year staggered terms.

Section 42.40.050

COMPENSATION AND EXPENSES--Compensation in the amount of \$300/day for public board members plus per diem and travel expenses.

Section 42.40.060

QUORUM AND NOTICE OF MEETINGS--A quorum of four voting members is established in this section. Public notice of meetings is required.

2

Section 42.40.070

VOTING--This section provides that the board rules will prescribe the manner of voting and any representation of absent members.

Section 42.40.080 .

MANAGEMENT OF THE AUTHORITY--This section provided for appointment of authority officials and personnel. The board appoints a chief executive officer and legal counsel. Appointment of legal counsel is subject to approval of the Governor for competence. No executive official may receive more compensation than the state departmental commissioners. This section also allows the board to provide management by a 3rd party contractor.

Section 42.40.090

DELEGATION-- This section provides that the daily affairs and operations of the railroad are the responsibility of the chief executive officer.

ARTICLE II, ADMINISTRATIVE PROVISIONS:

Section 42.40.200

CONFLICTS OF INTEREST--This section prohibits a board member or employee from participating in a decision in which he, or a member of his immediate family, has a direct or indirect financial interest. The board may authorize a member or employee to participate when the financial interest is only a remote one. This section also allows the board to provide management by a third party contractor. Board members and executive employees are required to submit a financial disclosure statement and to comply with existing conflict of interest laws.

Section 42.40.210

PUBLIC BOARD MEETINGS--This section requires that the board meetings be public and that the executive sessions be used only when permitted by the state open meetings statute or when discussing proprietary information.

Section 42.40.230

ADMINISTRATIVE PROCEDURE-- This section provides that the state's Administrative Procedures Act does not apply to the Authority. The legislature may annul or temporarily suspend an authority regulation.

This section also requires the authority to provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public.

Section 42.40.240

PUBLIC DISCLOSURE OF INFORMATION-- This section requires that information in the possession of the authority is public unless the authority, by rule or regulation, withholds such information by designating it to be of a non-public or privileged nature.

ARTICLE III, POWERS & DUTIES:

Section 42.40.300

GENERAL POWERS-- This section delineates the numerous powers the authority needs in order to effectively manage and operate the Alaska Railroad. The list is intended to be non exclusive.

Section 42.40.310

ANNUAL REPORT-- A report generally describing the operation and financial condition of the authority is required to be submitted to the Governor and each member of the legislature.

Section 42.40.320

ANNUAL AUDIT-- The authorities financial records will be audited annually by an independent certified public accountant. The records will be available for audit by the legislature or the Administration.

Section 42.40.325

LONG RANGE PROGRAM AND CAPITAL PLANNING--This section obligates the authority to prepare long-range program and capital plans.

Section 42.40.330

USE OF AUTHORITY ASSETS--This section requires use of authority asset for activities authorized by this chapter. It also precludes the issuance of stock and loans to board members or employees.

ARTICLE IV, RAIL PROPERTIES:

Section 42.40.400

RAIL PROPERTIES-- This section provides that the authority will own the properties of the Alaska Railroad. The subsurface rights will be conveyed to the State and managed by DNR. The authority may reserve the right to use sand, gravel and other construction materials.

Section 42.40.410

CLASSIFICATION, ACQUISITION AND USE OF STATE LANDS FOR RAILROAD PURPOSES--This section provides a mechanism allowing the authority to acquire state lands for railroad purposes with the concurrence of the Commissioner of Natural Resources. The procedure is initiated by a resolution of the authority identifying specific lands. Within 180 days the Commissioner is required to either convey the surface estate of the requested lands for railroad purposes or to deny the classification as not in the best interest of the state. Subsection (c) also allows the authority and the Commissioner to engage in joint management of railroad lands, and periodically review both state and railroad lands to determine their suitability for railroad purposes. This section also allows the railroad to use coal from railroad lands for non-income producing purposes.

Section 42.40.415

DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LANDS-- The Department of Natural Resources may develop resources on authority lands only after a review procedure involving both the Department and the Authority has been completed. The review procedure requires an agreement approved by the authority as to suitable reimbursement for any costs incurred by the authority. Subsection (c) requires DNR to maintain records and annually report to the legislature concerning the income received from the subsurface of railroad lands. Subsection (d) establishes the Alaska Railroad Income Fund in the State Treasury for income received by the state from lands in which the authority has an interest. The fund is subject to appropriation by the legislature.

Section 42.40.420

LAND USE REGULATIONS-- This section authorized the authority to adopt regulations governing land use by private parties having interests, such as leases in land owned or managed by the authority.

Section 42.40.430

EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS-- This section confers eminent domain power on the authority. When the authority acquires a fee simple interest the authority must reconvey

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the subsurface to the state. Subsection (e) clarifies that the authority may exercise eminent domain to obtain materials as well as land and access necessary to develop them.

ARTICLE V, FINANCIAL PROVISIONS:

Section 42.40.500

BONDS AND NOTES--This section authorizes the authority to issue bonds and bond anticipation notes. It is intended that the board have the maximum flexibility in financing its activities.

Section 42.40.510

INDEPENDENT FINANCIAL ADVISOR-- The board is required by this section to retain a financial advisor independent of the underwriter in negotiating the private sale of bonds and notes.

Section 42.40.515

VALIDITY OF PLEDGE-- This procedural section facilitates the pledge of assets or revenues to the payment of the authority debt.

Section 42.40.520

REMEDIES-- For the benefit of holders of authority securities, this section provides that remedies and rights available under the terms of such instruments are to be broadly enforceable.

Section 42.40.525

NEGOTIABLE INSTRUMENTS-- Bonds and notes issued are negotiable instruments.

Section 42.40.530

BONDS AND NOTES ELIGIBLE FOR INVESTMENT-- This section authorizes public and private entities and individuals, including the state, and its other political subdivisions, to invest in authority securities.

Section 42.40.535

REFUNDING BONDS-- The issuance of refunding bonds to refund outstanding bonds is authorized by this section.

Section 42.40.540

CREDIT OF STATE NOT PLEDGED-- This section states that the authority's securities are not obligations of the state and are payable exclusively from revenues or assets of the authority.

Section 42.40.545

NO PERSONAL LIABILITY-- No board member or employee is personally liable for bonds.

Section 42.40.550

REVENUES-- This section provides for authority retention and management of its own revenues, which do not become part of the state's general fund.

Section 42.40.555

INSURANCE-- In addition to requiring the authority to maintain adequate insurance, this section requires that the state be named as an additional insured.

Section 42.40.560

SAFEGUARDING OF FUNDS--The authority will deposit all funds in acceptable depository and maximize revenue from the funds.

Section 42.40.565

FIDELITY BONDS-- The authority will obtain fidelity bonds for board members and officials.

Section 42.40.570

REVERSION OF ASSETS-- If the authority ceases to exist its assets revert to the state.

ARTICLE VI, STATE OVERSIGHT:

Section 42.40.600

STATE REVIEW-- Prior to undertaking a significant and permanent change in services or borrowing in excess of \$5 million the Board must notify the Governor and legislature and give public notice. The governor may either disapprove the proposal, suspend it or approve it. Approval or disapproval are final. If the Governor suspends the proposal, he transmits his decision to the legislature. The legislature may then reject it. If either the Governor or the legislature fail to act within the time provided, the proposal is deemed approved and the authority may proceed. Extensions representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million require specific authorization by the legislature. This section also requires state review of any proposal to contract management of the railroad to a third party.

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Section 42.40.610

ACTION-FORCING MECHANISM-- This section requires the authority to respond formally to a request for consideration of a proposal by either the Governor or legislature within 30 days. The legislature may then direct the authority to proceed, if the legislature also provide funds to plan and implement the proposal.

Section 42.40.615

INTERVENTION-- This section provides that the Governor, when so authorized by the legislature, may intervene in and exercise control of the authority under certain delineated circumstances. For example, by request of the board or illegal activities of the authority. The intervention mechanism permits the Governor to correct the deficiencies and is to cease as soon as the necessary corrections have been made.

Section 42.40.620

TRUSTEESHIP-- This section provides that the legislature may also authorize the Governor to petition the State Superior Court in Anchorage to impose a trusteeship over the authority under specific circumstances, including insolvency, misapplication of resources or impairment of the state's credit worthiness.

ARTICLE VII, MISCELLANEOUS PROVISIONS

Section 42.40.700

PERSONNEL-- This section provides that the employees of the authority are not employees of the state. It also directs the authority to adopt collective bargaining agreements which continue the provisions of the agreements in effect immediately prior to transfer.

Section 42.40.710

POLITICAL ACTIVITIES-- This section precludes use of authority funds in political activities.

Section 42.40.720

LICENSES AND PERMITS-- The authority will comply with local, state and federal licensing and permitting requirements.

Section 42.40.740

CLAIMS AGAINST THE AUTHORITY-- All legal claims involving the authority must be brought against the authority and not against the State of Alaska. The State may not be named in an action against the authority and the Dept. of Law is not required to bring or defend actions

concerning the authority. .

Section 42.40.755

EXEMPTION FROM TAXATION-- This section exempts the authority from state and political subdivision taxation. It does provide that authority property is considered taxable for the limited purpose of computing state aid to local school districts.

Section 42.40.770

PAYMENT IN LIEU OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID-- This section authorized the authority to provide partial payments in lieu of property taxes to communities in which the authority has substantial land holdings.

ARTICLE VIII, GENERAL PROVISIONS

Section 42.40.870

ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE-- The authority security force have the same enforcement powers as state law enforcement officers for both state law and regulation on authority property.

Section 42.40.880

PENALTY FOR VIOLATION OF DESIGNATED REGUALTION-- This section makes a violation of any of the authority's regualtions designated as necessary to protect life, health, or property a misdemeanor..

ARTICLE IX,

Section 42.40.900

DEFINITIONS-- This provided definitions of terms used in the bill.

SECTION 3 and SECTION 4 exempt authority from requirements to pay for or erect fences and cattleguards along right-of-way it condemns.

SECTION 5: amends full crew law with respect to yard crews only, and represents original CS for SB 849 *.

SECTION 6: adds the authority to the list of State boards and commissions for conflict of interest and reporting requirements.

SECTION 7: deals with commencement of the authority's legal existence, which occurs following appointment of all board members.

SECTION 8: details the length of terms for the first board members.

SECTION 9: addresses the closing report requirements under the federal transfer legislation.

SECTION 10: speaks to the assets and liabilities to be reported during the audits.

SECTION 11: mandates the time requirement of 18 months for the preparation of the first long-range program and capital improvements plan.

SECTION 12: pre-existing rule, regulations and order of the Alaska Railroad-- This section allows the authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

SECTION 13: requires the authority to continue in effect the current collective bargaining agreements for a period of two years.

SECTION 14: declares conflicting laws inapplicable.

SECTION 15: deals with the application of existing statutes: The Authority is considered a "political subdivision" for state wage and hour statute. The full crew does not apply to the authority. Authority activities are not subject to A.S. title 35 which deals generally with public works. The authority is exempt from public bidding requirements. The following provisions of A.S. title 37 do not apply to the authority's operation: The Fiscal Procedures Act, Executive Budget Act. The Authority is not subject to the jurisdiction of the Alaska Transportation Commission.

SECTION 16: provides that the chapter becomes effective upon acceptance by the legislature of operation of the federal Alaska Railroad by the authority.

*This amendment to the full crew law deals with the Yukon-White Pass Railroad as the Alaska Railroad Authority is exempt from the law.

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: Fred J. Seeger
Deputy Commissioner
Standards & Statewide Programs
DOT&PF

DATE: September 26, 1983

FILE NO:

TELEPHONE NO: 364-4331

FROM: Jon Scribner *12 9/28/83*
Deputy Commissioner
Southeast Region
DOT&PF

SUBJECT: Governor's Mansion &
Conference Room

Pursuant to our conversation, we are requesting funds in the amount of \$117,000 from Chapter 107, SLA 83, page 80, line 16 for completion of historic renovation and interior decorating of the Governor's Mansion.

We are also requesting an additional \$12,000 from the same source for upgrading the Governor's Conference Room in the Capitol Building.

PDA's reflecting this request are attached for your approval.

Attachments

OB/rc

Project: Statewide Project Development Alternatives | Type: T | Local: Statewide | Agency ID #: | Elect Dist: 00 | Start Date: 7/83 | Imple Date: |

Cash Flow		Operating Impact		First Op. Yr.	Ult. Annual Yr.	Funding Information		Funding Information			
		Funding Source				Agency	FY	Gov. FY	FY	FY	
FY 84	15,000.0		Fed. Rec.			1002	Fed. Rec.	25,000.0			
FY 85	10,000.0		Gen. Fund			1004	Gen. Fund	3,000.0			
FY 86	3,000.0		Other				G.O. Bonds				
FY			Total				Total	28,000.0			
FY		Positions (FTE)				Priority:	Prior Year	Agency		Governor	
TOTAL	28,000.0										

Special Features: One of Several Phases External Funding Source Funds to Enable Completion Contingent Upon Other Projects Site Owned? Utilities Available? Access Available?

Project Description:

This project will provide additional federal authority to receive and expend and state matching funds for the following:

(Boniface Int Glenn Highway, Minnesota Drive phase II, Dimond Blvd, Alaska Highway Yerrick area, Richardson Highway Milepost 138-148, South Fairbanks Expressway Parks to Peger, Lutak Road, Old Glacier Highway, Statewide Safety Improvements, Statewide Bridge Program, Project Contingencies, Emergency Projects, Preliminary Engineering, and additional Federal Authority)

Project Justification:

35a PROPOSED PROJECT
 Statewide Project Development Alternatives
 Project Title

CATEGORY: Transportation
 AGENCY: DOT&PF
 PROGRAM: Statewide All Modes
 PROPOSED FUNDING YEAR: 84

Page 1 of 1
 Revised Date 4/4/83

FY 84

September 30, 1983

SENATE TRANSPORTATION COMMITTEE
SECTION BY SECTION ANALYSIS
of
SENATE BILL NO. 10
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS.

Contains a statement of legislative findings regarding the status of the Alaska Railroad, a statement of state policy concerning the ownership of the Alaska Railroad and a statement of declarations regarding the management and fiscal responsibility of the railroad after state acquisition. The value of this section is to establish the legislature's expectations with respect to the Authority and how it will operate. In addition, some findings are required by the constitution while others may strengthen the ability of the Authority to obtain tax-exempt bonding.

CHAPTER 40. ALASKA RAILROAD AUTHORITY.
ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY.

Establishes the Alaska Railroad Authority. To comply with Art.III, Sec.22, of the constitution, see page 32-38, VIII. CONSTITUTIONAL LIMITATIONS, the Authority is established as an instrumentality of the State by placing it within the Department of Transportation and Public Facilities but with legal existence independent of and separate from the state. [See page 6-7, Appendix I, II. I.C.C. JURISDICTION]

Sec. 42.40.020. LIMITATION OF LIABILITY.

Clearly states that the assets and liabilities of the Authority are exclusively its own and that creditors have no right to other state assets. [See page 5-6, Appendix I, I. STATE LIABILITY]

Sec. 42.40.030. BOARD OF COMMISSIONERS.

Sets out the membership of the Board of Directors, the method of appointment, and qualifications. There are seven voting members of the board including the Commissioner of DOT/PF. The public voting members are made up of at least four members from the geographic areas served by the

railroad and, if possible, one former railroad official from a railroad other than the Alaska Railroad.

There are two non-voting members of the board, the chief executive officer of the Authority and a labor representative who is appointed by the governor. All public members are appointed by the governor and confirmed by the legislature. [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.040. TERM OF OFFICE; VACANCIES.

Provides for staggered five year terms for all public board members and provisions for filling of vacancies.

Sec. 42.40.050. COMPENSATION AND EXPENSES.

Provides for a \$300 per day compensation for all public board members and per diem and travel expenses for all directors.

Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS.

Establishes the quorum for the Board of Commissioners and a required list of individuals and organizations to receive notice of a meeting. Members of the general public receive notice when it is requested.

Sec. 42.40.070. VOTING.

Sets out voting procedures and excludes proxy voting except where the proxy vote is for a specific topic.

Sec. 42.40.080. MANAGEMENT OF AUTHORITY.

This section provides for the appointment and compensation of the executive officers of the Authority by the board. The legal counsel is subject to a review of his or her competence by the governor. This section also provides for the management and the operation of the railroad by a third party subject to the approval of the governor whose decision is binding on the Authority unless the legislature acts to disapprove of the third party manager (See also Sec. 42.40.600). The board also has authority to appoint third party management assistants which are not subject to review of the governor or the legislature.

Sec. 42.40.090. DELEGATION.

Requires the board to delegate, within 180 days, certain of its powers necessary for the operation of the Authority to the chief executive officer or other officers, by formal rule.

ARTICLE 2. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST.

Provides guidelines for determining a conflict of interest for a board member or an Authority employee. Generally, an employee or a board member may not participate in a decision making process where they, or their immediate family, gains more than the general public will gain unless their interest is remote. Remote is defined.

Sec. 42.40.210. PUBLIC BOARD MEETINGS.

With the exception of legally convened executive sessions, all board meeting must be open to the public.

Sec. 42.40.220. MINUTES OF MEETINGS.

Requires that minutes be kept of all public meetings and that copies of the minutes must be sent to the governor and the leadership of the legislature.

Sec. 42.40.230. ADMINISTRATIVE PROCEDURE.

This section removes the Authority from the requirement of the Administrative Procedure Act except that it must meet the requirements of holding open public meetings unless the meeting is a legally convened executive session of the Board of Commissioners. This makes the regulations promulgated by the Authority free from review by other state entities except in certain situations defined in section (c) where the Authority is required to submit proposed actions to the Attorney General for review and the Authority is required to submit its regulations 45 days after they are adopted to the Regulation Review Committee. Subsection (b) requires the Authority to adopt rules which will provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public or which will be used by the Authority's dealings with a significant segment of the public. However, subsection (d) exempts certain specific subjects from the requirements of subsection (b). [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION.

Provides that information held by the Authority is public information except that the Authority may by rule or regulation designate and withhold disclosure of matters of a nonpublic, privileged, or proprietary nature.

ARTICLE 3. POWERS AND DUTIES

Sec. 42.40.300. GENERAL POWERS.

This section delineates the general powers conferred to the Authority to carry out duties, including obtaining state appropriations [see page 16-20, IV. STATE SUBSIDY, STATE CONTRACTS FOR RAILROAD SERVICE, AND STATE INVESTMENT IN RAILROAD CAPITAL IMPROVEMENTS], inherent in operating the railroad. The general powers include provisions associated with the powers of both government agencies and powers associated with corporate structures.

Sec. 42.40.310. ANNUAL REPORT.

Requires the board to prepare and submit for review by the governor and the legislature an annual report on the operations and financial condition of the Authority. The report may contain suggestions for revisions of the Authority or its operations.

Sec. 42.40.320. ANNUAL AUDIT.

Requires an annual audit by a certified auditor experienced in railroad accounting. The Authority is also required to make available its financial records for review by the governor or the legislature whenever necessary.

Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT.

This section requires the Authority adopt both a five year operating and a five year capital plan be revised annually.

Sec. 42.40.330. USE OF AUTHORITY ASSETS.

This section restricts the use of the Authority's property or other assets to the the activities authorized by this Act. [See page 13, Appendix I, 3. Industrial Development Bond Prohibition]

ARTICLE 4. RAIL PROPERTIES.

Sec. 42.40.400. RAIL PROPERTIES.

This section gives the Authority clear authority to hold, transfer or legally litigate all rights to real property transferred as railroad property under federal transfer legislation, except that the subsurface estate and mineral rights must be transferred to DNR within 120 days of receipt. The Authority does, however, retain the right to use, for the purposes of the railroad, sand, gravel, and other construction material without further clearance, and coal if permission is granted by DNR and

it is used for non-income producing activity. The Authority may not obtain property by adverse possession or prescription. With certain exceptions, the Authority must give public notice when it intends to dispose of an interest in real property.

Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE LAND FOR RAILROAD PURPOSES.

This section provides guidelines for the Authority to obtain land needed for its operations from the Department of Natural Resources.

Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LAND.

Provides a mechanism whereby the Department of Natural Resources may lease or otherwise develop oil, gas, minerals and geothermal resources located on Authority lands. The conditions established by this section require consultation with the Authority regarding all negative impact the potential development may have and a joint agreement as to acceptable methods of mitigating the negative aspects of development. This section also creates an Alaska Railroad income fund into which all proceeds from development must go for later appropriation by the legislature. DNR is required to provide annual reports to the Legislature regarding income produced from the development of natural resources on Authority lands.

Sec. 42.40.420. LAND USE REGULATION.

This section give the Authority authorization to adopt regulation governing land use by private parties acquiring an interest in railroad property.

Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS.

This section provides guidelines for acquisition by eminent domain. The Authority has full eminent domain powers but must relinquish all sub-surface rights to the state. [See page 8-10, Appendix I, 1. Political Subdivision]

ARTICLE 5. FINANCIAL PROVISIONS.

Sec. 42.40.500. BONDS AND NOTES.¹

Gives the Authority full bonding authority to issue bonds or bond anticipation notes to carry out its purpose. Money obtained by bonding must be used for the specific purpose for which it was issued. Bonds are

- 1. There are eight existing public corporations with bonding capability:
 - Alaska Gas Pipeline Financing Authority: A public corporation administratively located within the Department of Revenue but with a

not to exceed a 50 year maturity term. The board possess wide discretionary powers to enhance the marketability of bonds.

Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR.

Requires the board to retain a financial advisor for negotiating private sale of bonds or notes independent from the underwriter.

.....
legal existence separate from the State. It was created in 1978 for the purpose of financing the gas pipeline.

Alaska Commercial Fishing and Agriculture Bank: A public corporation administratively located within the Department of Commerce and Economic Development but with a legal existence separate from the State. It was created in 1978 for the purpose of loaning funds to commercial fishermen and farming industries.

Alaska State Housing Authority: A public corporation of the State authorized to: construct, operate and manage low income housing projects; finance rental housing projects; engage in urban renewal programs; and construct and acquire public buildings for lease to the State.

Alaska Municipal Bond Bank: A public corporation administratively located within the Department of Revenue but with a separate and independent legal existence. It was established in 1975 in order to loan funds for capital construction to cities and boroughs in the State.

Alaska Industrial Development Authority: A public corporation administratively located in the Department of Commerce and Economic Development but with a separate and independent legal existence. AIDA was created in 1980 as the successor to the Alaska State Development Authority. AIDA promotes economic development within the State by providing low interest loans to industrial and commercial projects.

Alaska Medical Facility Authority: A public authority administratively located in the Department of Revenue with a separate and independent legal existence. The Authority was created by the legislature in 1978 to finance construction and improvements to medical facilities in the State.

Alaska Housing Finance Corporation: A public corporation administratively located within the Department of Revenue but which has a separate and independent legal existence. AHFC was chartered in 1971 to provide financing for low- and moderate-income housing and housing located in remote, underdeveloped, or blighted areas of the State.

Alaska Power Authority: A public corporation of the State situated for administrative purposes in the Department of Commerce and Economic Development but with separate and independent legal existence. The APA was created to finance, construct, and operate power production and transmission facilities.

Sec. 42.40.515. VALIDITY OF PLEDGE.

This section establishes the validity of a pledge of assets or revenues for the sale of bonds. It also provides guidelines for the disposition of pledged assets if there are legal claims against the assets or if the pledged assets are subsequently sold.

Sec. 42.40.520. REMEDIES.

Establishes the right to legal recourse for any party at interest for transactions authorized by this Act either as a contractual agreement or a security agreement with the Authority.

Sec. 42.40.525. NEGOTIABLE INSTRUMENTS.

Subject to applicable state laws regarding proper registration, all bonds or notes authorized by this Chapter are negotiable interests.

Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.

Investment in bonds or notes issued by the Authority by all state officials, public or private, is proper and does not constitute a conflict of interest.

Sec. 42.40.535. REFUNDING BONDS.

This section authorizes the sale of refunding bonds to pay back previously issued bonds.

Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER.

Bonds or notes issued by the Authority are solely the liability of the Authority and do not constitute an obligation of the state. Words to this effect must appear on all bonds issued by the Authority.

Sec. 42.40.545. NO PERSONAL LIABILITY.

No officer or employee is personally liable for bonds issued by the Authority.

Sec. 42.40.550. REVENUES.

Revenues generated by the Authority are directly controlled by the Authority and not the State.

Sec. 42.40.550. INSURANCE.

Requires the Authority to carry reasonable insurance coverage naming the State as an additional insured.

Sec. 42.40.560. SAFEGUARDING OF MONEY.

The Authority is instructed to maximize revenue from deposited money which is to be deposited in depositories acceptable to the governor.

Sec. 42.40.565. FIDELITY BOND.

Requires the Authority to obtain a fidelity bond for all board members and officials.

Sec. 42.40.570. REVERSION OF ASSETS.

Assets of the Authority revert to the state if for any reason the Authority ceases to exist.

ARTICLE 6. STATE OVERSIGHT

Sec. 42.40.600. STATE REVIEW.

Requires the board to publish and give notice to the governor, leadership of the legislature, at least two newspapers of statewide circulation and members of the general public upon request, prior to undertaking a significant and permanent change in services or borrowing in excess of \$5 million for longer than a one year payback. The published report must detail the financial impact on the Authority, the impact on services, why the action is necessary or desirable, and whether the action is expected to support itself financially. The governor has 45 days to approve or disapprove or he may suspend and defer to the legislature for final disposition. In all cases the legislature has 60 days to enact legislation binding the Authority to either continue or cease the action. Extensions representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million requires specific authorization by the legislature. This section also requires state review of any proposal to contract management of the railroad to a third party (See Sec. 42.40.080). [See page 22-29, Appendix I, VI. STATE OVERSIGHT OF MAJOR FINANCIAL TRANSACTIONS AND POLICY DECISIONS]

Sec. 42.40.610. ACTION-FORCING MECHANISM.

Provides a mechanism for the governor or the legislature to either initiate or require cessation of Authority action by requiring a formal response outlining the Authority position. If they are compelled to initiate action, funding must be provided for both planning and implementation. [See page 29, Appendix I, Action Forcing Mechanism]

Sec. 42.40.615. INTERVENTION.

Under certain extreme circumstances, as delineated, this section provides that the governor may be directed by specific legislation to take control of the Authority to correct specific purposes of this Act. [See page 25-67, Appendix I, Financial Concerns]

Sec. 42.40.620. TRUSTEESHIP.

This section authorizes the governor to petition the Superior Court to appoint trustees when directed by legislation. The trusteeship would then possess unilateral powers enabling it to take whatever measures are necessary to restore the capability of the Authority to perform the functions and activities for which it was established.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Sec. 42.40.700. PERSONNEL.

Employees of the Authority are not to be considered state employees but the Authority is considered a public employer under the Public Employment Relations Act except that the provisions for a merit system does not apply. The Authority's executive officials may not enter into a collective bargaining agreement with the Authority. [See page 30-31, Appendix I, VII. EMPLOYEE]

Sec. 42.40.710. POLITICAL ACTIVITIES.

Prohibits use of the Authority's resources for partisan political activities except where necessary to carry out the purposes of the Authority. Provides for civil liability for violation by individuals employed by the Authority.

Sec. 42.40.720. LICENSES AND PERMITS.

The Authority must comply with local, state, or federal licensing or permitting requirements to the same degree as the state must comply.

Sec. 42.40.730. UNAUTHORIZED REPRESENTATION.

Provides for personal liability for unauthorized persons acting on behalf of the Authority.

Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY.

The State may not be named a co-defendant in any railroad related claims against the Authority. Provisions for administrative appeal for claims against a state agency to the Department of Administration do not apply to the Authority.

Sec. 42.40.755. EXEMPTION FROM TAXATION.

Except for computing state aid to local school districts, the Authority's property and assets are considered the property of a political subdivision and are exempt from taxation. [See page 8-10, Appendix I, 1. Political Subdivision and page 38-41, Appendix I, 2. Financial Limitations - Article IX. Finance & Taxation]

Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID.

The Authority may adopt regulations setting out criteria whereby it can give voluntary impact aid to local political subdivisions in lieu of real property taxes.

ARTICLE 8. GENERAL PROVISIONS

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE.

Enforcement officers of the Authority may enforce regulations adopted by the Authority with the same authority as state law enforcement officers. [See page 8-10, Appendix I, 1. Political Subdivision]

Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.

Violation of a regulation which is designated by the Authority as a regulation necessary to protect life, health or property is a Class B misdemeanor.

Sec. 42.40.890. CONSTRUCTION.

Provides for liberal interpretation of the provisions of this Chapter.

Sec. 42.40.900 DEFINITIONS.

Provides definitions for various delineated terms found in this Chapter.

Sec. 3. AS 09.55.310(a)(4).

Exempts the Alaska Railroad from paying for fences and cattle guards for property condemned by the Authority.

Sec. 4. AS 09.55.350.

Exempts the Alaska Railroad from the time limits provided for paying for railroad fences and cattle guards.

Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.

Deals with commencement of the Authority's legal existence, which occurs following appointment of all board members.

Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD.

Details the term lengths for the first board members and gives the governor power to fill the positions to create the Authority after the legislature has acted to accept the transfer of the Alaska Railroad from the federal government.

Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.

Requires that the closing report submitted under federal legislation provide for all assets and liabilities to be transferred to the state which must be accepted in all material aspects by the state.

Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT.

Requires that assets and liabilities identified by the closing report be noted in the annual audit for five years after transfer.

Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

Requires the preparation and adoption of a long range program and capital improvement plan 18 months after the transfer. Three years after the first long range plan an annual performance audit may be conducted.

Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD.

This section allows the Authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD AUTHORITY AND EMPLOYEES.

Requires the Authority to continue in effect the current collective bargaining agreements for a period of two years.

Sec. 13. CONFLICTING LAWS INAPPLICABLE.

Any laws which conflict with this Act are overruled by this Act.

Sec. 14. APPLICATION OF EXISTING STATUTES.

Deals with the application of existing statutes: for the purposes of state wage and hours the Authority is considered a political subdivision, the Authority is exempt from all regulations promulgated by DOT/PF concerning public buildings, works, and improvements, it is also exempt from the confines required to receive money for Port facilities construction. The following provisions of A.S. Title 37 do not apply to the Authority: The Fiscal Procedures Act, Executive Budget Act, and it is released from the prohibition forbidding lending from or for a corporation. In addition, the Department of Administration and the Department of Revenue do not have jurisdiction over the fiscal matters of the Authority. Moreover, the Authority may receive money directly from the federal government rather than through the governor's office. [See page 32-38, Appendix I, VIII. CONSTITUTIONAL LIMITATIONS and page 20-21, V. INDEPENDENT AND EFFECT RAILROAD MANAGEMENT]

Sec. 15. SUBSEQUENTLY ENACTED STATUTES.

Only subsequent statutes specifically stating its applicability to the Authority will be construed to apply to the Authority.

Sec. 16. EFFECTIVE DATE.

This Act takes effect upon acceptance of the transfer of the Alaska Railroad to the State of Alaska in whatever manner it is ratified by the legislature.

SEN. MOSS CALLS TRANSPORTATION HEARINGS
ON ALASKA RAILROAD'S 'FAIR MARKET VALUE'

DELTA JUNCTION, AK. -- The fair market value of the Alaska Railroad, as determined by the United States Railway Association (USRA), will be analyzed and discussed at public hearings hosted by the state Senate Transportation Committee in Fairbanks and Anchorage this month, according to state Sen. H. "Pappy" Moss, Transportation Committee chairman.

Moss also said that the state's Alaska Railroad Transfer Team will make a presentation to the committee members on the "Valuation of the Alaska Railroad", the report prepared by the USRA, at the hearings.

The hearings will be held in Fairbanks on Monday, October 10, from 10 a.m. to 5 p.m. in Suite 101 of the Fairbanks Legislative Information Office, located at 315 Barnett Street.

In Anchorage, the hearings will be held on Thursday and Friday, October 27 and 28, in the first floor conference room of the Anchorage Legislative Information Office, located at 1024 West 6th Avenue. The hearings will run from 10 a.m. to 5 p.m. both days, with a statewide teleconference hook-up from 1 p.m. to 4 p.m. on Friday, October 27.

"When Congress approved the Alaska Railroad Transfer Act in January this year, the act stipulated that the fair market value of the railroad be ascertained. This is what the U.S. Railway Association has attempted to do in its report entitled 'Valuation of the Alaska Railroad'", Moss said.

"That report is largely responsible for the federal government's asking price of \$22.2 million to transfer the Alaska Railroad from federal to state ownership, and during the hearings that I have called this month we will

(more)

review and analyze the background information used in the USRA's report", Moss explained.

The Delta Junction democrat said the members of the state's Railroad Transfer Team will present their evaluation of the USRA report at the hearings in Fairbanks and Anchorage. The members of that team include Mark Hickey, the state's railroad coordinator; Dave Walsh, an Anchorage attorney and member of the Municipal Assembly; Jack McGee, of the state Attorney General's Juneau office; and Jack Day, of Anchorage.

In addition to the transfer team's presentation, Moss said that Department of Transportation Commissioner Dan Casey and Revenue Commissioner Robert Heath will also make reports to the committee members regarding the railroad transfer to state ownership.

Moss said the hearings are open to the public and that all Alaskans are urged to attend. "We have a situation where the federal government is asking the state to pay a lot of money for the Alaska Railroad. It is important that the public attend and participate in these hearings so they can tell their Legislature whether or not they think the price is a fair one", Moss said.

Other members of the Senate Transportation Committee include Sens. Rettye Fahrenkamp (D-Fairbanks), Jan Faiks (R-Anchorage), Don Gilman (R-Kenai), and Jay Kerttula (D-Palmer).

-30-

For further information, contact:
Clyde Stoltzfus, Tel.: 465-4921

100483



Official Business

Alaska State Legislature

Senate

Office of the President

Pouch V
State Capitol
Juneau, Alaska 99811

October 15, 1983

Honorable Jan Faiks
Chair
Senate Rules Committee
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Faiks:

Thank you very much for your letter of September 30th expressing some of your concerns over the establishment of a state owned and operated railroad should the Alaska Railroad transfer to the State.

I share many of your concerns and feel your suggestions are carefully conceived and I assure you will be seriously considered. I believe we are in basic agreement concerning the inevitable role which the state must play in rail ownership and operation after transfer from the federal government.

Before addressing your points individually, I think it helpful to develop a basic understanding of how Senate Bill 10 came to be. I participated, as part of Governor Hammond's Railroad Policy Task Force, in the preparation of SB 212 from the 12th Legislature. As you know SB 212 became SB 10 with no substantive changes. Representatives from the Legislature, the Office of the Governor, the Departments of Law, Transportation and Public Facilities and Natural Resources worked together toward establishing a workable bill which would accomplish a smooth, efficient transfer of the railroad to the State at no loss in service delivery with as little of liability falling to the State as possible. I hope that we will be able to once again establish such a working, cooperative relationship with all parties interested in the railroad transfer.

Many of your concerns stem from policy decisions made by Governor Hammond's task force and I feel it appropriate to discuss them individually.

On the establishment of a separate State department for the ARR, we felt it to be not in the state's best interest to limit itself by "using" one of the remaining departments for the ARR. This is not to suggest that we did not consider the ARR as a potential department. We did feel the Department of Transportation and Public Facilities was the logical choice since the ARR is a most important part component in our statewide transportation system. I share your opposition to allowing the ARR to become a line-agency of the DOT/PF. SB 10 "pigeon-holes" the ARR within

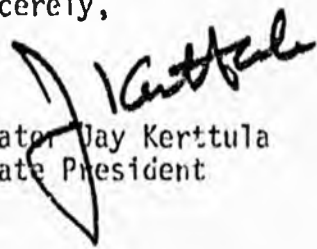
DOT/PF for regulatory and taxation purposes as well as to preserve a department for future needs. At the same time, the Alaska Railroad would be an independent public authority, insulated from the state legally, financially and operationally. As SB 10 is structured, the only input the DOT/PF would have in the affairs of the ARR would be through Commissioner, who sits on the board of commissioners of the Alaska Railroad Authority. He or she would have no more influence and power than the other members of the board of commissioners. I am not devoted to the issue that the railroad authority must be pigeon-holed in the DOT/PF. It could as easily be placed in the Office of the Governor, responsive immediately to his office, a separate department as you suggest, or within the Department of Commerce and Economic Development. Whatever, the outcome, it is imperative that we have a vision far beyond the personalities and leaders in the departments at present.

Senate Bill 10 is long and extraordinarily complex and it came to be so in direct response to decisions by the task force. We felt it important to deal with all railroad issues, regulation, organization of the Alaska Railroad Authority, conflicts of interest, public meeting policy, public domain and land concerns, financial considerations, taxation, state oversight, and personnel agreements in the acceptance and enabling legislation, rather than to deal with these issues in separate legislation or through litigation. I agree, when we let the legal counsel "go" with the bill, it was expanded tremendously. However, I believe the provisions in the bill are well conceived and it is in the public's interest to quickly resolve the many questions which face the state.

I appreciate your interest in this most important issue. I look forward to working to accommodate your concerns that the railroad be a separate entity from the Department of Transportation and Public Facilities. I sincerely believe we can establish an efficient, accountable entity that will best serve all Alaskans.

Thank you again for initiating discussion on the railroad acceptance legislation. I look forward to spending time working with you.

Sincerely,


Senator Jay Kerttula
Senate President

JMK:rjr

Alaska State Legislature

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RULES COMMITTEE



JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

September 30, 1983

OCT 7 RECD

Senator Jalmar Kerttula
Alaska State Senate
Post Office Box Z
Palmer, Alaska 99645

Dear Senator *Jalmar* Kerttula:

I want to take this opportunity to share with you my thoughts on Senate Bill 10 which will establish the state's role in the operation of the Alaska Railroad.

In a previous session, a similar bill to SB 10 -- namely SB 212 -- was introduced, reviewed, discussed, argued and rejected. The rejection, in my opinion, was caused not so much by the concepts set forth in SB 212, but by the fact that the prospect of the State of Alaska taking over the Railroad was entirely new and everybody had a different idea of how it should be done. The rejection was also partially caused by the fact that SB 212 was so detailed having what seemed to be all sorts of pet projects set forth in the bill. It was as if everyone in State Government had put a phrase in the bill.

The concept of the State of Alaska receiving and owning and operating the Alaska Railroad is no longer new. It is, however, new to translate that concept into a workable arrangement which will take the dynamics of the existing Federal Railroad and integrate that railroad into a State structure workable and efficient from the start.

In this vein, I am sharing with the committee members what I believe to be a proper format for a railroad structure within State Government. It consists of two parts. The first is a general blueprint for the railroad, and the second part is the general criticisms of Senate Bill 10 as I see them now. I do propose to make more detailed suggestions regarding the wording of SB 10 at a later time.

The single most important aspect of the State of Alaska ownership of the Railroad is the structure, both corporate and governmental, that is developed for the management of the Railroad. Judged on the basis of importance to the State, the Railroad

should be structured as the permanent fund is structured, as a separate constitutional entity with corporate powers to conduct business independently, but with a political overview built into the structure so that the State of Alaska can implant on the Railroad the general desires of its people and can demand efficient businesslike service from Railroad personnel.

As we know, the permanent fund is part of our constitution and therefore to place the Railroad in the same posture, a vote of the public is required. This may be required at a later date, but for now it is my suggestion that a corporate structure as similar to the permanent fund as possible be devised.

The second type of structure available as an alternative is to make the Railroad a separate department of State Government under Article III, Sec. 22 of the State Constitution. The Constitution has set forth the availability of 20 departments of State Government. At present, there are 17 departments and I propose that the Railroad be the 18th. Certainly on the basis of importance to the destiny of this State, the Railroad should be afforded a separate place in State Government on a par with a number of other departments.

This structure would allow the Governor to appoint a Commissioner of the Railroad and the Commissioner would report directly to the Governor. The Legislature would have input in the budgetary process of the Railroad and all other State laws would apply. There would be no need to pass separate conflict of interest statutes, freedom of information statutes, administrative procedures acts or other phases of State laws merely to take care of the Railroad. It would certainly place the Railroad where it should be in importance to the State.

The third type of structure available is an independent corporation such as Commercial Fishing and Agriculture Bank (AS 44.81.010). The statute initially sets forth how the corporation should be structured and then allows the corporation the power to file its own articles of incorporation and its own bylaws with the State. This corporate framework would recognize that the Railroad is essentially a profit making organization, not a regulatory body, and the goals for this corporation should be one of enhancing the revenue producing aspects of the entity but allowing for governmental oversight. This method of corporate operation would seem to be an excellent matrix for the Railroad.

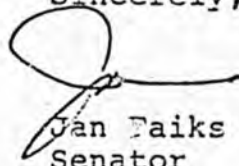
SB 212 had one solution, namely to place the Railroad under a division of State Government. This division, DOT/PF, is the same division that has presently more personnel, more jobs to do, and more problems than any other division in the State Government. It is the same division from which the Legislature has suggested an extrication of the ferry system.

By placing the Railroad under DOT/PF, I can almost guarantee an increase in confusion, an expansion of political involvement in

Railroad management, an enlarging of the problem of chain of command between the Governor and the Management of the Railroad, and a structure which overall will lead to much the same problems experienced by our ferry system over the years.

I look forward to further discussions with the committee on this very important issue.

Sincerely,

A handwritten signature in black ink, consisting of a large loop on the left and a horizontal line extending to the right, with a small flourish underneath.

Jan Paiks
Senator

SENATE TRANSPORTATION COMMITTEE

Staff Analysis of SB 10

September 30, 1983

Alaska State Legislature

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



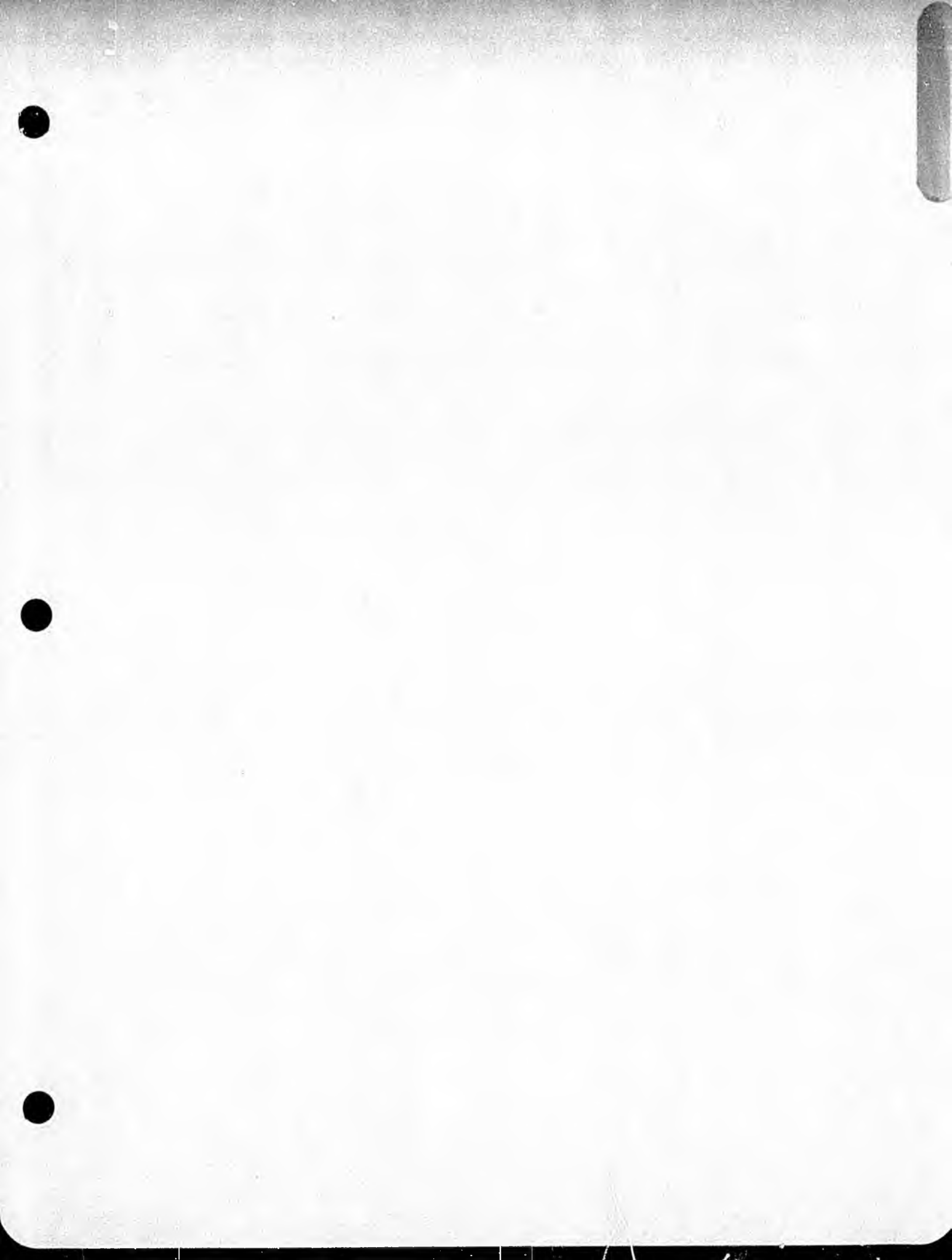
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Senate Committee on Transportation

September 30, 1983

Attached please find a sectional analysis of SB 10 prepared by the Senate Transportation Committee Staff. Also enclosed are copies of important back-up documents which were instrumental in the development of SB 10. The section-by-section analysis is cross referenced to relevant portions of the originating memorandum. The cross references are indicated by brackets [] for your convenience.

The transcript of the December 15, 1982 meeting concerning SB 212 is enclosed because of the excellent discussion it provides concerning important provisions now also included in SB 10.



Alaska State Legislature

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



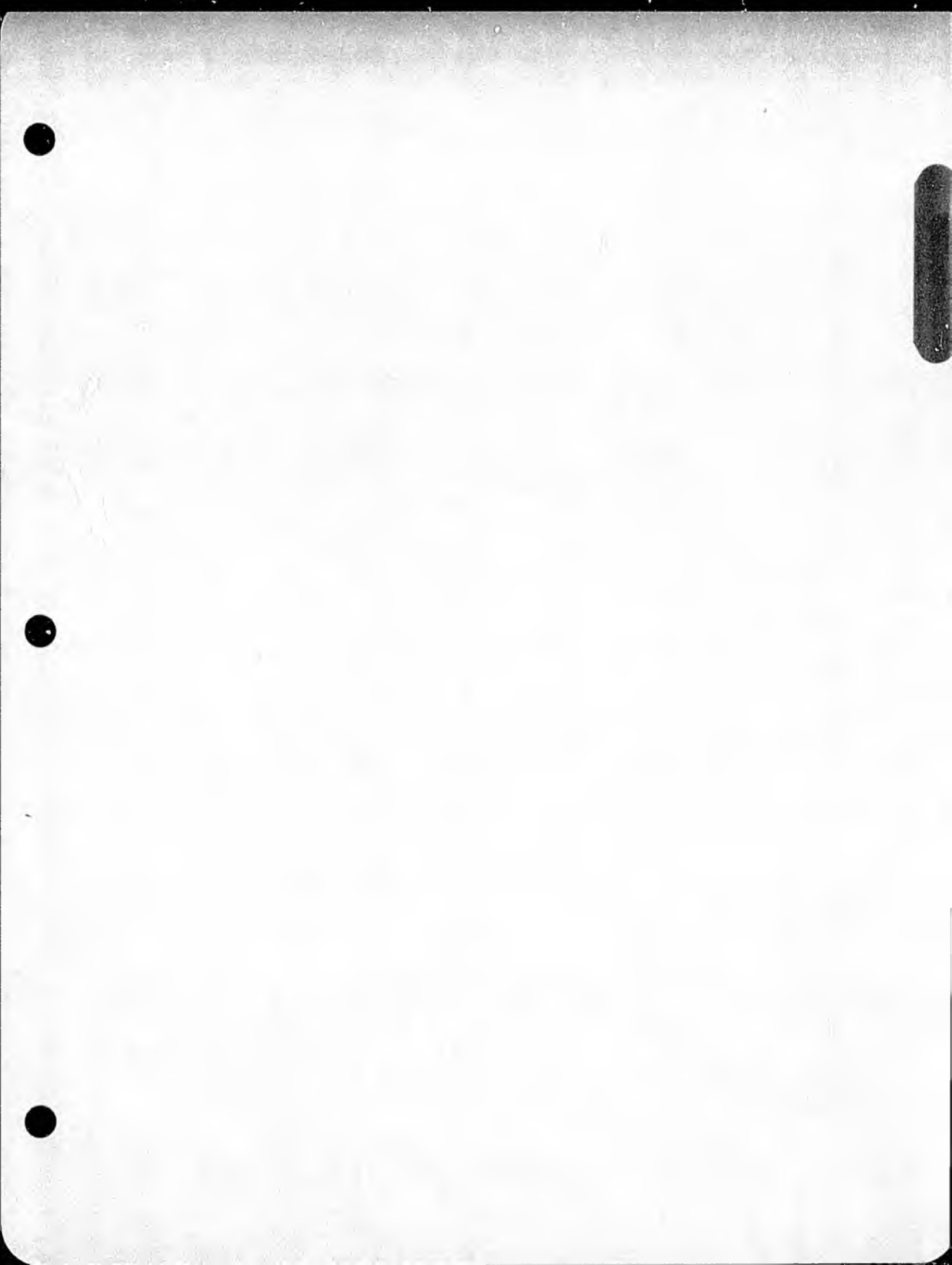
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Senate Committee on Transportation

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Senate Transportation Committee Staff Analysis of SB 10

- I. Section-by-Section Analysis
- II. Senate Bill 10: "An Act relating to the Alaska Railroad; and providing for an effective date."
- III. Appendix I. Memorandum prepared by Wickwire, Lewis, Goldmark and Schorr for DOT/PF which provided the legal basis for SB 10.
- IV. Appendix II. Excerpt from Statewide Rail Systems study for the State of Alaska, Department of Transportation and Public Facilities, Planning and Programming Division, December, 1980, prepared by Bivens & Associates, Inc.
- V. Appendix III. Transcript of the Alaska Railroad Transfer Advisory Commission, December 15, 1982, concerning Authority legislation.



September 30, 1983

SENATE TRANSPORTATION COMMITTEE
SECTION BY SECTION ANALYSIS
of
SENATE BILL NO. 10
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS.

Contains a statement of legislative findings regarding the status of the Alaska Railroad, a statement of state policy concerning the ownership of the Alaska Railroad and a statement of declarations regarding the management and fiscal responsibility of the railroad after state acquisition. The value of this section is to establish the legislature's expectations with respect to the Authority and how it will operate. In addition, some findings are required by the constitution while others may strengthen the ability of the Authority to obtain tax-exempt bonding.

CHAPTER 40. ALASKA RAILROAD AUTHORITY.
ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY.

Establishes the Alaska Railroad Authority. To comply with Art.III, Sec.22, of the constitution, see page 32-38, VIII. CONSTITUTIONAL LIMITATIONS, the Authority is established as an instrumentality of the State by placing it within the Department of Transportation and Public Facilities but with legal existence independent of and separate from the state. [See page 6-7, Appendix I, II. I.C.C. JURISDICTION]

Sec. 42.40.020. LIMITATION OF LIABILITY.

Clearly states that the assets and liabilities of the Authority are exclusively its own and that creditors have no right to other state assets. [See page 5-6, Appendix I, I. STATE LIABILITY]

Sec. 42.40.030. BOARD OF COMMISSIONERS.

Sets out the membership of the Board of Directors, the method of appointment, and qualifications. There are seven voting members of the board including the Commissioner of DOT/PF. The public voting members are made up of at least four members from the geographic areas served by the

railroad and, if possible, one former railroad official from a railroad other than the Alaska Railroad.

There are two non-voting members of the board, the chief executive officer of the Authority and a labor representative who is appointed by the governor. All public members are appointed by the governor and confirmed by the legislature. [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.040. TERM OF OFFICE; VACANCIES.

Provides for staggered five year terms for all public board members and provisions for filling of vacancies.

Sec. 42.40.050. COMPENSATION AND EXPENSES.

Provides for a \$300 per day compensation for all public board members and per diem and travel expenses for all directors.

Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS.

Establishes the quorum for the Board of Commissioners and a required list of individuals and organizations to receive notice of a meeting. Members of the general public receive notice when it is requested.

Sec. 42.40.070. VOTING.

Sets out voting procedures and excludes proxy voting except where the proxy vote is for a specific topic.

Sec. 42.40.080. MANAGEMENT OF AUTHORITY.

This section provides for the appointment and compensation of the executive officers of the Authority by the board. The legal counsel is subject to a review of his or her competence by the governor. This section also provides for the management and the operation of the railroad by a third party subject to the approval of the governor whose decision is binding on the Authority unless the legislature acts to disapprove of the third party manager (See also Sec. 42.40.600). The board also has authority to appoint third party management assistants which are not subject to review of the governor or the legislature.

Sec. 42.40.090. DELEGATION.

Requires the board to delegate, within 180 days, certain of its powers necessary for the operation of the Authority to the chief executive officer or other officers, by formal rule.

ARTICLE 2. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST.

Provides guidelines for determining a conflict of interest for a board member or an Authority employee. Generally, an employee or a board member may not participate in a decision making process where they, or their immediate family, gains more than the general public will gain unless their interest is remote. Remote is defined.

Sec. 42.40.210. PUBLIC BOARD MEETINGS.

With the exception of legally convened executive sessions, all board meeting must be open to the public.

Sec. 42.40.220. MINUTES OF MEETINGS.

Requires that minutes be kept of all public meetings and that copies of the minutes must be sent to the governor and the leadership of the legislature.

Sec. 42.40.230. ADMINISTRATIVE PROCEDURE.

This section removes the Authority from the requirement of the Administrative Procedure Act except that it must meet the requirements of holding open public meetings unless the meeting is a legally convened executive session of the Board of Commissioners. This makes the regulations promulgated by the Authority free from review by other state entities except in certain situations defined in section (c) where the Authority is required to submit proposed actions to the Attorney General for review and the Authority is required to submit its regulations 45 days after they are adopted to the Regulation Review Committee. Subsection (b) requires the Authority to adopt rules which will provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public or which will be used by the Authority's dealings with a significant segment of the public. However, subsection (d) exempts certain specific subjects from the requirements of subsection (b). [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION.

Provides that information held by the Authority is public information except that the Authority may by rule or regulation designate and withhold disclosure of matters of a nonpublic, privileged, or proprietary nature.

ARTICLE 3. POWERS AND DUTIES

Sec. 42.40.300. GENERAL POWERS.

This section delineates the general powers conferred to the Authority to carry out duties, including obtaining state appropriations [see page 16-20, IV. STATE SUBSIDY, STATE CONTRACTS FOR RAILROAD SERVICE, AND STATE INVESTMENT IN RAILROAD CAPITAL IMPROVEMENTS], inherent in operating the railroad. The general powers include provisions associated with the powers of both government agencies and powers associated with corporate structures.

Sec. 42.40.310. ANNUAL REPORT.

Requires the board to prepare and submit for review by the governor and the legislature an annual report on the operations and financial condition of the Authority. The report may contain suggestions for revisions of the Authority or its operations.

Sec. 42.40.320. ANNUAL AUDIT.

Requires an annual audit by a certified auditor experienced in railroad accounting. The Authority is also required to make available its financial records for review by the governor or the legislature whenever necessary.

Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT.

This section requires the Authority adopt both a five year operating and a five year capital plan be revised annually.

Sec. 42.40.330. USE OF AUTHORITY ASSETS.

This section restricts the use of the Authority's property or other assets to the the activities authorized by this Act. [See page 13, Appendix I, 3. Industrial Development Bond Prohibition]

ARTICLE 4. RAIL PROPERTIES.

Sec. 42.40.400. RAIL PROPERTIES.

This section gives the Authority clear authority to hold, transfer or legally litigate all rights to real property transferred as railroad property under federal transfer legislation, except that the subsurface estate and mineral rights must be transferred to DNR within 120 days of receipt. The Authority does, however, retain the right to use, for the purposes of the railroad, sand, gravel, and other construction material without further clearance, and coal if permission is granted by DNR and

it is used for non-income producing activity. The Authority may not obtain property by adverse possession or prescription. With certain exceptions, the Authority must give public notice when it intends to dispose of an interest in real property.

Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE LAND FOR RAILROAD PURPOSES.

This section provides guidelines for the Authority to obtain land needed for its operations from the Department of Natural Resources.

Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LAND.

Provides a mechanism whereby the Department of Natural Resources may lease or otherwise develop oil, gas, minerals and geothermal resources located on Authority lands. The conditions established by this section require consultation with the Authority regarding all negative impact the potential development may have and a joint agreement as to acceptable methods of mitigating the negative aspects of development. This section also creates an Alaska Railroad income fund into which all proceeds from development must go for later appropriation by the legislature. DNR is required to provide annual reports to the Legislature regarding income produced from the development of natural resources on Authority lands.

Sec. 42.40.420. LAND USE REGULATION.

This section give the Authority authorization to adopt regulation governing land use by private parties acquiring an interest in railroad property.

Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS.

This section provides guidelines for acquisition by eminent domain. The Authority has full eminent domain powers but must relinquish all subsurface rights to the state. [See page 8-10, Appendix I, 1. Political Subdivision]

ARTICLE 5. FINANCIAL PROVISIONS.

Sec. 42.40.500. BONDS AND NOTES.¹

Gives the Authority full bonding authority to issue bonds or bond anticipation notes to carry out its purpose. Money obtained by bonding must be used for the specific purpose for which it was issued. Bonds are

1. There are eight existing public corporations with bonding capability:
 - Alaska Gas Pipeline Financing Authority: A public corporation administratively located within the Department of Revenue but with a

not to exceed a 50 year maturity term. The board possess wide discretionary powers to enhance the marketability of bonds.

Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR.

Requires the board to retain a financial advisor for negotiating private sale of bonds or notes independent from the underwriter.

.....
legal existence separate from the State. It was created in 1978 for the purpose of financing the gas pipeline.

Alaska Commercial Fishing and Agriculture Bank: A public corporation administratively located within the Department of Commerce and Economic Development but with a legal existence separate from the State. It was created in 1978 for the purpose of loaning funds to commercial fishermen and farming industries.

Alaska State Housing Authority: A public corporation of the State authorized to: construct, operate and manage low income housing projects; finance rental housing projects; engage in urban renewal programs; and construct and acquire public buildings for lease to the State.

Alaska Municipal Bond Bank: A public corporation administratively located within the Department of Revenue but with a separate and independent legal existence. It was established in 1975 in order to loan funds for capital construction to cities and boroughs in the State.

Alaska Industrial Development Authority: A public corporation administratively located in the Department of Commerce and Economic Development but with a separate and independent legal existence. AIDA was created in 1980 as the successor to the Alaska State Development Authority. AIDA promotes economic development within the State by providing low interest loans to industrial and commercial projects.

Alaska Medical Facility Authority: A public authority administratively located in the Department of Revenue with a separate and independent legal existence. The Authority was created by the legislature in 1978 to finance construction and improvements to medical facilities in the State.

Alaska Housing Finance Corporation: A public corporation administratively located within the Department of Revenue but which has a separate and independent legal existence. AHFC was chartered in 1971 to provide financing for low- and moderate-income housing and housing located in remote, underdeveloped, or blighted areas of the State.

Alaska Power Authority: A public corporation of the State situated for administrative purposes in the Department of Commerce and Economic Development but with separate and independent legal existence. The APA was created to finance, construct, and operate power production and transmission facilities.

Sec. 42.40.515. VALIDITY OF PLEDGE.

This section establishes the validity of a pledge of assets or revenues for the sale of bonds. It also provides guidelines for the disposition of pledged assets if there are legal claims against the assets or if the pledged assets are subsequently sold.

Sec. 42.40.520. REMEDIES.

Establishes the right to legal recourse for any party at interest for transactions authorized by this Act either as a contractual agreement or a security agreement with the Authority.

Sec. 42.40.525. NEGOTIABLE INSTRUMENTS.

Subject to applicable state laws regarding proper registration, all bonds or notes authorized by this Chapter are negotiable interests.

Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.

Investment in bonds or notes issued by the Authority by all state officials, public or private, is proper and does not constitute a conflict of interest.

Sec. 42.40.535. REFUNDING BONDS.

This section authorizes the sale of refunding bonds to pay back previously issued bonds.

Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER.

Bonds or notes issued by the Authority are solely the liability of the Authority and do not constitute an obligation of the state. Words to this effect must appear on all bonds issued by the Authority.

Sec. 42.40.545. NO PERSONAL LIABILITY.

No officer or employee is personally liable for bonds issued by the Authority.

Sec. 42.40.550. REVENUES.

Revenues generated by the Authority are directly controlled by the Authority and not the State.

Sec. 42.40.550. INSURANCE.

Requires the Authority to carry reasonable insurance coverage naming the State as an additional insured.

Sec. 42.40.560. SAFEGUARDING OF MONEY.

The Authority is instructed to maximize revenue from deposited money which is to be deposited in depositories acceptable to the governor.

Sec. 42.40.565. FIDELITY BOND.

Requires the Authority to obtain a fidelity bond for all board members and officials.

Sec. 42.40.570. REVERSION OF ASSETS.

Assets of the Authority revert to the state if for any reason the Authority ceases to exist.

ARTICLE 6. STATE OVERSIGHT

Sec. 42.40.600. STATE REVIEW.

Requires the board to publish and give notice to the governor, leadership of the legislature, at least two newspapers of statewide circulation and members of the general public upon request, prior to undertaking a significant and permanent change in services or borrowing in excess of \$5 million for longer than a one year payback. The published report must detail the financial impact on the Authority, the impact on services, why the action is necessary or desirable, and whether the action is expected to support itself financially. The governor has 45 days to approve or disapprove or he may suspend and defer to the legislature for final disposition. In all cases the legislature has 60 days to enact legislation binding the Authority to either continue or cease the action. Extensions representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million requires specific authorization by the legislature. This section also requires state review of any proposal to contract management of the railroad to a third party (See Sec. 42.40.080). [See page 22-29, Appendix I, VI. STATE OVERSIGHT OF MAJOR FINANCIAL TRANSACTIONS AND POLICY DECISIONS]

Sec. 42.40.610. ACTION-FORCING MECHANISM.

Provides a mechanism for the governor or the legislature to either initiate or require cessation of Authority action by requiring a formal response outlining the Authority position. If they are compelled to initiate action, funding must be provided for both planning and implementation. [See page 29, Appendix I, Action Forcing Mechanism]

Sec. 42.40.615. INTERVENTION.

Under certain extreme circumstances, as delineated, this section provides that the governor may be directed by specific legislation to take control of the Authority to correct specific purposes of this Act. [See page 25-67, Appendix I, Financial Concerns]

Sec. 42.40.620. TRUSTESHIP.

This section authorizes the governor to petition the Superior Court to appoint trustees when directed by legislation. The trusteeship would then possess unilateral powers enabling it to take whatever measures are necessary to restore the capability of the Authority to perform the functions and activities for which it was established.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Sec. 42.40.700. PERSONNEL.

Employees of the Authority are not to be considered state employees but the Authority is considered a public employer under the Public Employment Relations Act except that the provisions for a merit system does not apply. The Authority's executive officials may not enter into a collective bargaining agreement with the Authority. [See page 30-31, Appendix I, VII. EMPLOYEE]

Sec. 42.40.710. POLITICAL ACTIVITIES.

Prohibits use of the Authority's resources for partisan political activities except where necessary to carry out the purposes of the Authority. Provides for civil liability for violation by individuals employed by the Authority.

Sec. 42.40.720. LICENSES AND PERMITS.

The Authority must comply with local, state, or federal licensing or permitting requirements to the same degree as the state must comply.

Sec. 42.40.730. UNAUTHORIZED REPRESENTATION.

Provides for personal liability for unauthorized persons acting on behalf of the Authority.

Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY.

The State may not be named a co-defendant in any railroad related claims against the Authority. Provisions for administrative appeal for claims against a state agency to the Department of Administration do not apply to the Authority.

Sec. 42.40.755. EXEMPTION FROM TAXATION.

Except for computing state aid to local school districts, the Authority's property and assets are considered the property of a political subdivision and are exempt from taxation. [See page 8-10, Appendix I, 1. Political Subdivision and page 38-41, Appendix I, 2. Financial Limitations - Article IX: Finance & Taxation]

Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID.

The Authority may adopt regulations setting out criteria whereby it can give voluntary impact aid to local political subdivisions in lieu of real property taxes.

ARTICLE 8. GENERAL PROVISIONS

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE.

Enforcement officers of the Authority may enforce regulations adopted by the Authority with the same authority as state law enforcement officers. [See page 8-10, Appendix I, 1. Political Subdivision]

Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.

Violation of a regulation which is designated by the Authority as a regulation necessary to protect life, health or property is a Class B misdemeanor.

Sec. 42.40.890. CONSTRUCTION.

Provides for liberal interpretation of the provisions of this Chapter.

Sec. 42.40.900 DEFINITIONS.

Provides definitions for various delineated terms found in this Chapter.

Sec. 3. AS 09.55.310(a)(4).

Exempts the Alaska Railroad from paying for fences and cattle guards for property condemned by the Authority.

Sec. 4. AS 09.55.350.

Exempts the Alaska Railroad from the time limits provided for paying for railroad fences and cattle guards.

Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.

Deals with commencement of the Authority's legal existence, which occurs following appointment of all board members.

Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD.

Details the term lengths for the first board members and gives the governor power to fill the positions to create the Authority after the legislature has acted to accept the transfer of the Alaska Railroad from the federal government.

Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.

Requires that the closing report submitted under federal legislation provide for all assets and liabilities to be transferred to the state which must be accepted in all material aspects by the state.

Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT.

Requires that assets and liabilities identified by the closing report be noted in the annual audit for five years after transfer.

Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

Requires the preparation and adoption of a long range program and capital improvement plan 18 months after the transfer. Three years after the first long range plan an annual performance audit may be conducted.

Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD.

This section allows the Authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD AUTHORITY AND EMPLOYEES.

Requires the Authority to continue in effect the current collective bargaining agreements for a period of two years.

Sec. 13. CONFLICTING LAWS INAPPLICABLE.

Any laws which conflict with this Act are overruled by this Act.

Sec. 14. APPLICATION OF EXISTING STATUTES.

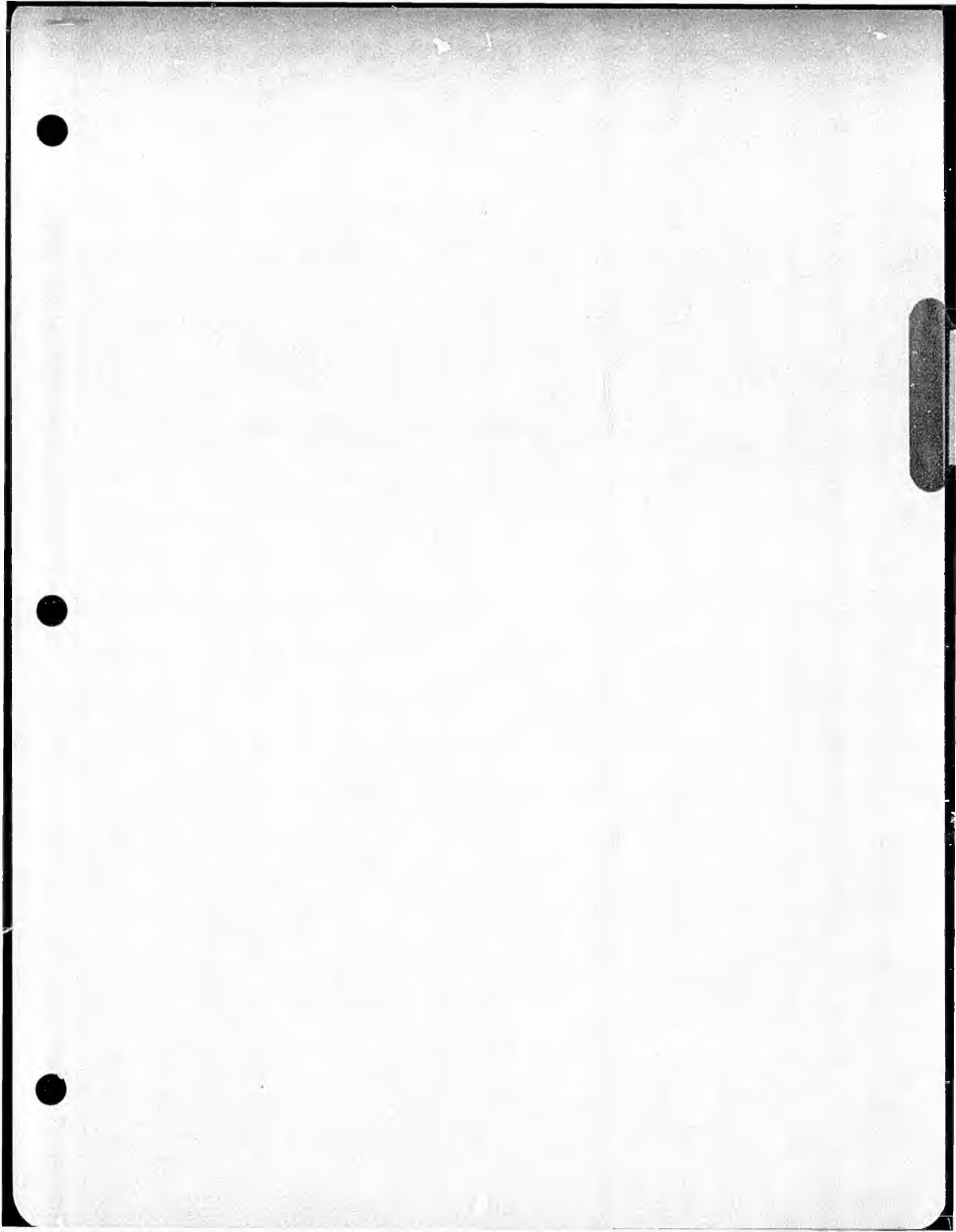
Deals with the application of existing statutes: for the purposes of state wage and hours the Authority is considered a political subdivision, the Authority is exempt from all regulations promulgated by DOT/PF concerning public buildings, works, and improvements, it is also exempt from the confines required to receive money for Port facilities construction. The following provisions of A.S. Title 37 do not apply to the Authority: The Fiscal Procedures Act, Executive Budget Act, and it is released from the prohibition forbidding lending from or for a corporation. In addition, the Department of Administration and the Department of Revenue do not have jurisdiction over the fiscal matters of the Authority. Moreover, the Authority may receive money directly from the federal government rather than through the governor's office. [See page 32-38, Appendix I, VIII. CONSTITUTIONAL LIMITATIONS and page 20-21, V. INDEPENDENT AND EFFECT RAILROAD MANAGEMENT]

Sec. 15. SUBSEQUENTLY ENACTED STATUTES.

Only subsequent statutes specifically stating its applicability to the Authority will be construed to apply to the Authority.

Sec. 16. EFFECTIVE DATE.

This Act takes effect upon acceptance of the transfer of the Alaska Railroad to the State of Alaska in whatever manner it is ratified by the legislature.



Introduced: 1/18/83
Referred: Transportation
and Finance

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 10

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad; and provid-
7 ing for an effective date."

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

9 * Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS. (a) The
10 legislature finds that

11 (1) the United States government has expressed its determination
12 to discontinue federal operation of the Alaska Railroad at the earliest
13 possible date;

14 (2) for the time being, private acquisition and operation of the
15 railroad in a manner consistent with the federal transfer legislation and
16 this Act is not presently considered to be a reasonable possibility or in
17 the best interests of the citizens of the state;

18 (3) continued operation of the railroad is possible only if the
19 state acquires the railroad from the federal government and provides for
20 operation of the railroad;

21 (4) continued operation and development of the Alaska Railroad
22 is essential to the long-term economic growth and development of the state
23 and its natural resources and will serve an important public purpose; and

24 (5) continued operation of the Alaska Railroad will promote the
25 general welfare of the people of the state by providing important freight
26 and passenger service to residents of the state, businesses, visitors, and
27 military installations in the state.

28 (b) It is the policy of the state to

29 (1) foster and promote the development of the state's land and

1 natural resources;

2 (2) foster and promote the long-term economic growth and devel-
3 opment of the state;

4 (3) provide necessary and desirable freight and passenger rail
5 transportation services to residents, businesses, visitors, and military
6 installations in the state;

7 (4) develop and implement plans for a transportation network
8 that effect the policies set out in this subsection; and

9 (5) provide safe, economical, and efficient transportation to
10 residents, businesses, visitors, and military installations in the state.

11 (c) The legislature declares that

12 (1) the exercise of the powers of the state in the interest of
13 the people of the state is necessary to accomplish the policy set out in
14 (b) of this section by authorizing the creation of a public authority with
15 the powers, duties, and functions as provided in this Act to operate the
16 Alaska Railroad and to manage its rail, industrial, port and other proper-
17 ties;

18 (2) it is in the best interests of the people of the state for
19 the public authority created by this Act to operate and manage in a prudent
20 manner the Alaska Railroad

21 (A) to be exclusively responsible for the management of the
22 financial and legal obligations of the Alaska Railroad;

23 (B) with the railroad authority, and not the state, consti-
24 tuting a common carrier subject to the jurisdiction of the United
25 States Interstate Commerce Commission;

26 (C) with the ability to raise capital by issuing obliga-
27 tions exempt from federal and state taxation;

28 (D) to carry out its responsibilities on a self-sustaining
29 basis;

1 (E) to provide the best possible combination of types and
2 levels of safe, efficient, and economical transportation that is
3 necessary to meet the overall needs of the state, supported when
4 necessary by state investment;

5 (F) according to sound business management practices;

6 (G) to provide the level of service that best satisfies the
7 needs of the people of the state;

8 (H) in a financially sound manner; and

9 (I) to ensure that borrowing by the authority does not
10 directly or indirectly endanger the state's own borrowing capacity;

11 (3) the continued operation of the railroad will assure greater
12 use, development, reclamation, and settlement of the state's land for the
13 maximum benefit of the people; and

14 (4) the important public purposes to be served by the railroad
15 authority require the authority to have all of the powers and duties
16 granted to it by this Act; the legislature intends that the authority,
17 consistent with sound business management practices, exercise its powers
18 and duties as a public service on behalf of the state and recognize that
19 the exercise of the powers and duties granted by this Act requires the
20 authority to engage in the wide range of conduct authorized by this Act.

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

22 CHAPTER 40. ALASKA RAILROAD AUTHORITY.

23 ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

24 Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY. There is estab-
25 lished the Alaska Railroad Authority. The authority is a public
26 corporation and, for purposes of art. III, sec. 22, Constitution of
27 the State of Alaska, is an instrumentality of the state within the
28 Department of Transportation and Public Facilities, but the authority
29 has a legal existence independent of and separate from the state. The

1 exercise by the authority of the powers provided in this chapter is
2 considered an essential governmental function of the state. The
3 existence of the authority is perpetual.

4 Sec. 42.40.020. LIMITATION OF LIABILITY. A liability incurred
5 by the authority must be satisfied exclusively from the assets and
6 credit of the authority and no creditor or other person has a right of
7 action against the state on account of a debt, obligation, or liabil-
8 ity of the authority.

9 Sec. 42.40.030. BOARD OF COMMISSIONERS. (a) The powers of the
10 authority are vested in the Board of Commissioners. The board con-
11 sists of the commissioner of transportation and public facilities, who
12 serves as a voting member; the chief executive officer of the authori-
13 ty, who serves as an ex officio nonvoting member; an authority em-
14 ployee appointed by the governor, who serves as a nonvoting member and
15 represents the labor organizations that are certified to represent
16 authority employees; and six voting public members appointed by the
17 governor. The public members must have substantial experience or
18 professional training and expertise in fields relevant to the purposes
19 of this chapter, including, but not limited to transportation, busi-
20 ness, and finance and must have the standing in their communities to
21 command the respect of their fellow citizens. Unless prohibited by
22 law, one public member shall be or have been an executive official of
23 an American railroad that is not now or was never a connecting carrier
24 of the Alaska railroad. At least four public members must be selected
25 from areas served by the railroad. The public members may not be
26 state officers or employees.

27 (b) The public members of the board shall be confirmed by a
28 majority of the membership of the legislature in joint session. A
29 public member appointed by the governor, unless and until the member

1 has been rejected by the legislature, has the full powers and respon-
2 sibilities of a confirmed board member.

3 (c) The board shall elect from its membership a chairman, a
4 vice-chairman, a treasurer, and a secretary and prescribe their
5 specific duties by rule.

6 (d) The chairman shall call meetings of the board at least once
7 every three months. The chairman may call other meetings of the board
8 as the chairman considers necessary. The chairman shall preside at
9 meetings of the board.

10 (e) The governor by written notice to the member may remove a
11 public member from the board for

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

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

16 (3) conviction of a misdemeanor involving moral turpitude
17 or a felony; or

18 (4) any conduct that was intended to harm the authority
19 whether or not it constituted a crime.

20 Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public
21 members of the board serve for staggered terms of five years each.

22 (b) A vacancy on the board is filled by appointment by the
23 governor and the appointment must be confirmed by the legislature in
24 joint session. A member selected to fill a vacancy holds office for
25 the balance of the term for which the member's predecessor is appoint-
26 ed.

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

1 (d) A member whose term has expired shall serve until a succes-
2 sor has been appointed.

3 Sec. 42.40.050. COMPENSATION AND EXPENSES. A public member of
4 the board is entitled to compensation at the rate of \$300 for each day
5 the member is engaged in actual performance of duties as a member of
6 the board. The board shall provide by rule for compensation for
7 partial days during which a member is engaged in the actual perfor-
8 mance of duties. A member is entitled to per diem and travel expenses
9 authorized by law for state boards and commissions under AS 39.20.180.

10 Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS. Four voting
11 members of the board constitute a quorum for the transaction of
12 business. In addition to the notice requirements of AS 44.62, notice
13 of a meeting of the board, including an agenda for the meeting, must
14 be given to

- 15 (1) each member of the board;
- 16 (2) the governor;
- 17 (3) the leadership of the legislature;
- 18 (4) at least two newspapers of statewide circulation; and
- 19 (5) members of the general public upon request.

20 Sec. 42.40.070. VOTING. The board shall provide by rule for the
21 manner of voting and any representation of persons absent from meet-
22 ings. The rules may provide for voting and conferring by means of
23 telecommunication devices or by mail or for voting as directed in a
24 written proxy taking a position on a particular issue so long as
25 voting is consistent with AS 44.62.310. However, no proxy is allowed
26 that delegates to the holder discretion to act for a principal on
27 undisclosed or general matters.

28 Sec. 42.40.080. MANAGEMENT OF AUTHORITY. (a) Unless the board
29 provides for management of the authority by a third-party contractor

1 under (b) of this section,

2 (1) the board shall appoint and fix compensation for the
3 chief executive officer and legal counsel of the authority; the ap-
4 pointment of legal counsel is subject to the approval, for competence,
5 of the governor;

6 (2) the chief executive officer shall appoint and fix
7 compensation for the other executive officials; the appointments and
8 compensation are subject to board approval;

9 (3) officials appointed under (1) and (2) of this subsec-
10 tion serve at the pleasure of the board;

11 (4) the chief executive officer may appoint and fix compen-
12 sation for any additional personnel necessary to carry out the pur-
13 poses of this chapter;

14 (5) except as may be required by federal law, no executive
15 official of the authority may be compensated at a rate in excess of
16 that established under AS 39.20.080 for the heads of principal execu-
17 tive departments of the state.

18 (b) The board may provide for, in a manner consistent with the
19 purposes of this chapter and subject to the approval of the state as
20 provided in AS 42.40.600(g), the management and operation of the rail-
21 road by a third-party contractor. Subject to the limitations in (a)
22 of this section, the board may provide for appointment and compensa-
23 tion of any executive official, including but not limited to those
24 provided for in (a) of this section, necessary to augment the manage-
25 ment and operation of the railroad by the third-party contractor.

26 Sec. 42.40.090. DELEGATION. (a) The board shall by rule dele-
27 gate powers and duties necessary and appropriate for the management of
28 the daily affairs and operations of the authority to the chief execu-
29 tive officer, subject to any requirement of board concurrence or

1 authorization imposed by the rules.

2 (b) Within 180 days of its establishment, the board shall by
3 rule delegate the following activities of the authority to the chief
4 executive officer or other executive official designated by the board,
5 subject to any board review of the activities as may be specified in
6 the rules:

7 (1) leasing, granting easements in, issuing permits for the
8 use of, or conveying other interests that do not constitute a transfer
9 of the authority's entire interest in real property of the authority;

10 (2) establishment of specific rates, tariffs, divisions and
11 contract rate agreements;

12 (3) routine changes in service levels; and

13 (4) procurement.

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

16 (1) transfer of the authority's entire interest in real
17 property other than the execution of a release of a lien or satis-
18 faction of a mortgage after payment has been received;

19 (2) issuance of notes, debentures, or bonds;

20 (3) mortgaging or pledging of authority assets;

21 (4) donation of money, property, or other assets belonging
22 to the authority;

23 (5) an action by the authority as a surety or guarantor;

24 (6) capital projects with an estimated completion cost in
25 excess of \$250,000 or an estimated completion time of more than one
26 year;

27 (7) adoption of the long-range program and capital improve-
28 ment plans under AS 42.40.325;

29 (8) certification of annual reports under AS 42.40.310;

1 (9) generally applicable, comprehensive increases and de-
2 creases in rates other than those periodically approved by the United
3 States Interstate Commerce Commission for application to rail carriers
4 generally;

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

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

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

12 (13) selection of independent auditors and accountants.

13 ARTICLE 2. ADMINISTRATIVE PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the public portion of each meeting to the governor and the leader-
2 ship of the legislature.

3 Sec. 42.40.230. ADMINISTRATIVE PROCEDURE. (a) Except for
4 AS 44.62.310 regarding public meetings, as limited by AS 42.40.210(b),
5 the Administrative Procedure Act (AS 44.62) does not apply to the
6 authority, its rules, regulations, or actions taken under this chap-
7 ter. The authority shall make available to members of the public
8 copies of the rules and regulations adopted under this section.
9 Within 45 days after adoption, the chairman of the board shall submit
10 a regulation adopted under this section to the chairman of the Admin-
11 istrative Regulation Review Committee under AS 24.20.400 - 24.20.460.
12 The legislature may annul or temporarily suspend a regulation adopted
13 by the authority.

14 (b) The board shall adopt rules and regulations to govern its
15 procedures and to carry out the purposes of this chapter. Within 90
16 days after its first meeting the board shall adopt rules establishing
17 a procedure for giving advance public notice and an opportunity for
18 the public to comment on proposed regulations of the authority that,
19 in the determination of the board, will have a substantial impact on
20 the public or be used in the authority's dealings with a significant
21 segment of the public. The rules shall also provide for the adoption
22 of emergency regulations without public notice and comment when the
23 immediate adoption or repeal of a regulation is necessary to continue
24 or reinstate the orderly operation of the authority's facilities or
25 programs. However, emergency regulations may not remain in effect
26 more than 120 days unless during that period the board complies with
27 the public notice and comment procedure required for regulations that
28 are not of an emergency nature.

29 (c) The rules adopted under (b) of this section establishing a

1 regulation-making procedure and all rules or regulations relating to
2 procurement of property by the authority, conflicts of interest, dis-
3 closure of information in the possession of the authority, or the
4 regulation of persons outside the authority through the exercise of
5 police power shall be submitted to the attorney general for review and
6 approval before becoming effective. The attorney general shall re-
7 spond to the authority within 60 days after receipt of the rules or
8 regulations either approving them as consistent with or disapproving
9 them as in conflict with the Alaska Statutes and the Constitution of
10 the State of Alaska. A disapproval of rules or regulations must be
11 accompanied by a memorandum of law explaining the conflict with exist-
12 ing law and a recommendation for revisions to cure the defect. Rules
13 or regulations submitted to the attorney general are considered ap-
14 proved if the attorney general fails to approve or disapprove the
15 rules or regulations, as provided in this subsection, within 60 days
16 after receipt.

17 (d) A regulation is not subject to the procedures in (b) of this
18 section if it is one that

19 (1) relates to the use of public works, including terminal
20 areas, industrial reserves, rights-of-way and streets, under the
21 jurisdiction of the authority if the effect of the regulation is
22 indicated to the public by means of signs or signals;

23 (2) is directed to a specifically named person or to a group
24 of persons and does not apply generally throughout the state;

25 (3) concerns service schedules of the railroad; or

26 (4) relates to specific tariffs, divisions, and contract
27 rate agreements.

28 (e) The authority is an agency of the state for purposes of
29 jurisdictional determinations and judicial review of the authority's

1 action.

2 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
3 as provided by rule or regulation of the authority under this section,
4 facts and information in the possession of the authority are public
5 and communications, reports, files, books, accounts, and papers of
6 every nature in its possession are open to public inspection at
7 reasonable times.

8 (b) The authority may by rule or regulation designate and with-
9 hold disclosure of matters of a nonpublic, privileged, or proprietary
10 nature. Those matters include but are not limited to personnel
11 records, communications with and work product of counsel and, consis-
12 tent with the standards and practices of the United States Interstate
13 Commerce Commission for the protection of these matters, other infor-
14 mation including but not limited to proprietary information associated
15 with specific shippers, divisions, and contract rate agreements.

16 (c) A person may make written objections to the public disclo-
17 sure of information contained in an application, report, or document
18 filed with the authority, stating the grounds for the objection. When
19 an objection is made, the board may order the information withheld
20 from public disclosure if the information

21 (1) would adversely affect the interest of that person and
22 is not required in the interest of the public; or

23 (2) may be protected from disclosure consistent with the
24 standards and practices of the United States Interstate Commerce
25 Commission including but not limited to proprietary information asso-
26 ciated with specific shippers, divisions and contract rate agreements.

27 ARTICLE 3. POWERS AND DUTIES.

28 Sec. 42.40.300. GENERAL POWERS. The authority may

29 (1) adopt a seal;

- 1 (2) adopt rules and regulations;
- 2 (3) sue and be sued;
- 3 (4) appoint officers, employees, trustees, and agents, and
4 prescribe their powers and duties;
- 5 (5) hire legal counsel to represent the authority;
- 6 (6) make contracts and execute instruments necessary or
7 convenient in the exercise of its powers and duties;
- 8 (7) acquire by purchase, lease, bequest, devise, gift, ex-
9 change, the satisfaction of debts, the foreclosure of mortgages, or
10 otherwise, real or personal property, rights, rights-of-way, fran-
11 chises, easements, and other interests in land, including land lying
12 under water and appropriation of water rights that are located in the
13 state, taking title to the property in the name of the authority;
- 14 (8) acquire property by eminent domain or by declaration of
15 taking;
- 16 (9) hold, maintain, use, operate, lease, exchange, donate,
17 improve, convey, alienate, dispose of, mortgage, encumber, and other-
18 wise grant security interests in or transfer any real or personal
19 property including without limitation facilities and equipment;
- 20 (10) borrow money and issue its bonds or notes and provide
21 for and secure their payment, provide for the rights of their holders
22 and purchase, hold, or dispose of its bonds or notes;
- 23 (11) secure the payment of its obligations by pledge or
24 mortgage or other lien on its contracts, revenues, income, or proper-
25 ty;
- 26 (12) contract with and accept transfers, gifts, grants or
27 loans of funds or property from the United States, the state, and its
28 political subdivisions, subject to the provisions of federal, state,
29 or local programs;

1 (13) acquire, hold and dispose of stocks, memberships, con-
2 tracts, bonds, general or limited partnership interests or other
3 interests in another corporation, association, partnership, joint
4 venture or other legal entity, and exercise the powers or rights in
5 connection with these interests which are provided in contracts or
6 agreements and that are allowed by law concerning the satisfaction of
7 debts;

8 (14) undertake or provide for the management, operation,
9 maintenance, use, and control of all of the properties of the Alaska
10 Railroad including without limitation, the tracks, equipment and other
11 property transferred to it by the federal government or by any person;

12 (15) undertake or provide for the acquisition, construction,
13 maintenance, equipping, and operation of connecting, switching, term-
14 inal, or other railroads and railroad facilities in the state;

15 (16) recommend to the legislature and the governor any tax,
16 financing, or security measure the authority considers appropriate for
17 maximizing the public interest in the operation of the railroad;

18 (17) lend its funds, property, credit or services for
19 authority purposes;

20 (18) consent to the modification of the rate of interest,
21 time of payment of an installment of principal or interest, or other
22 term of a loan, contract, or agreement to which the authority is a
23 party;

24 (19) include in any borrowing the amounts necessary to
25 establish reasonable reserves and pay financing charges and interest
26 on the obligations for a reasonable period after which the authority
27 estimates funds will be otherwise available to pay the interest,
28 consultant, advisory, and legal fees, and other expenses necessary or
29 incident to borrowing;

1 (20) maintain offices and facilities at places it desig-
2 nates;

3 (21) purchase the authority's bonds at a price not more than
4 the principal amount of them plus interest;

5 (22) cancel bonds purchased under (21) of this section;

6 (23) apply to the appropriate agencies of the state, the
7 United States, and to a foreign country and other proper agencies for
8 the permits, licenses, or approvals necessary to construct, maintain,
9 and operate transportation services, and to obtain, hold, and reuse
10 the licenses and permits in the same manner as other operating units
11 or persons;

12 (24) prescribe rates to be charged for services provided by
13 the Alaska Railroad;

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

16 (26) enter into contracts, leases, and other agreements with
17 connecting carriers, shippers, and other persons concerning the ser-
18 vices, activities, operations, properties and facilities of the rail-
19 road, including contracts, leases and other agreements that contain
20 provisions intended to preserve and expand the railroad's traffic
21 base;

22 (27) plan for and undertake expansion of the railroad and
23 railroad activities, including extension of the Alaska Railroad's rail
24 system and acquisition and operation of other modes of transportation
25 service connecting to the railroad's rail service;

26 (28) adopt regulations having the force of law that are de-
27 signed to safeguard property owned, managed, or transported by the
28 authority, to protect employees and persons using the authority's
29 property or services, and to promote safe, healthy, secure, and

1 effective railroad operations;

2 (29) maintain a security force to enforce state law and the
3 authority's regulations;

4 (30) adopt rules and regulations having the force of law
5 that require designated classes of proprietary and personnel informa-
6 tion and communications to be confidential;

7 (31) hire and discharge railroad personnel and determine
8 benefits and other terms and conditions of employment established in
9 accordance with obligations that may be imposed by the federal trans-
10 fer legislation;

11 (32) assume and satisfy liabilities of the United States or
12 its agencies as provided by the federal transfer legislation and the
13 closing report, or its substantive equivalent, as accepted by the
14 legislature; and

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

19 Sec. 42.40.310. ANNUAL REPORT. The board shall direct prepara-
20 tion of, certify and distribute to the governor and to each member of
21 the legislature by February 1 of each year a report generally describ-
22 ing the operations and financial condition of the authority. The
23 board may include in the report suggestions for legislation relating
24 to the structure, powers, or duties of the authority or relating to
25 the operation of facilities of the authority.

26 Sec. 42.40.320. ANNUAL AUDIT. The board shall have the finan-
27 cial records of the authority audited annually by an independent
28 certified public accountant experienced in railroad accounting. The
29 authority shall, at all times during normal business hours and as

1 often as the governor's auditor or the legislative audit division
2 considers necessary, make available to an auditor appointed by the
3 governor or to the legislative audit division for examination all of
4 its financial records, and shall permit the auditor appointed by the
5 governor or the legislative audit division to audit, examine and make
6 excerpts or transcripts from the records, and to make audits of all
7 contracts, invoices, materials, payrolls, records of personnel, con-
8 ditions of employment, provision of services and the rates at which
9 the services are provided and other relevant data; disclosure of this
10 information is subject to AS 42.40.240 and rules and regulations
11 implementing that section.

12 Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT
13 PLANS. (a) The authority shall prepare and the board shall adopt a
14 long-range program plan and a capital improvement plan in accordance
15 with sec. 10 of this Act.

16 (b) The long-range program plan must delineate the manner in
17 which the authority intends to accomplish the purposes of and fulfill
18 its responsibilities under this chapter during each of the five years
19 after the plan is adopted. The long-range program plan shall provide
20 information substantially consistent with the requirements of
21 AS 57.07.050. The format of the long-range program plan must be
22 jointly determined by the authority, the legislative audit division,
23 and the division of budget and management, Office of the Governor.

24 (c) The long-range capital improvement plan must present and
25 explain the authority's anticipated capital improvements for each of
26 the five years after the plan is adopted. The long-range capital
27 improvement plan must include the information required by AS 42.40.-
28 600(b) together with any other information prescribed by the governor
29 or the legislative audit division.

1 (d) The authority shall annually revise and the board shall
2 adopt the plans required in this section.

3 (e) The authority shall provide copies of its plans to the
4 governor and the leadership of the legislature.

5 (f) The governor and the legislative audit division may conduct
6 an annual performance and efficiency audit in accordance with sec. 10
7 of this Act.

8 Sec. 42.40.330. USE OF AUTHORITY ASSETS. (a) The authority
9 shall apply all money, property, other assets, and credit of the
10 authority toward activities authorized by this chapter. The authority
11 may not issue shares of stock, pay dividends, make private distribu-
12 tion of assets, make loans to board members or employees, or engage in
13 business for private benefit. The use of authority money, property,
14 other assets, or credit for purposes not authorized by law by persons
15 having the possession or control of it is prohibited.

16 (b) Notwithstanding the provisions of this section, the authori-
17 ty may

18 (1) assist board members and employees as members of a
19 general class of persons to be assisted by an activity to the same
20 extent as other members of the class and as long as no special privi-
21 leges or treatment accrues to the member or employee by reason of
22 status or position held in the authority;

23 (2) return to board members and employees fees, dues, or
24 service charges originally contributed by them and surplus to the pur-
25 poses for which collected;

26 (3) defend and indemnify a current or former employee,
27 agent, or board member of the authority and their successors against
28 all costs, expenses, judgments, and liabilities, including attorney
29 fees, reasonably incurred by or imposed upon that person in connection

1 with a civil or criminal action in which the person is involved by
2 affiliation with the authority, if acting in good faith on behalf of
3 the authority and within the scope of official duties or powers; and

4 (4) purchase insurance to protect and hold personally harm-
5 less its employees, agents, and board members from an action, claim,
6 or proceeding instituted against these individuals arising out of the
7 performance, purported performance, or failure of performance, in good
8 faith, of duties for, or employment with, the authority and to hold
9 these individuals harmless from expenses connected with the defense,
10 settlement, or monetary judgments from that action, claim, or proceed-
11 ing; the purchase of insurance and its policy limits are discretionary
12 with the board and insurance is not considered to be compensation to
13 the insured individual.

14 ARTICLE 4. RAIL PROPERTIES.

15 Sec. 42.40.400. RAIL PROPERTIES. (a) The authority shall
16 receive from the United States and, in its own name, take title to all
17 rail properties transferred under the federal transfer legislation.
18 All land among the rail properties so transferred or otherwise
19 acquired by the authority is subject to AS 38.95.010 and is not sub-
20 ject to classification, control or disposal under AS 38 or other state
21 law, except as otherwise specifically provided in this chapter.

22 (b) Within 120 days after transfer of the rail properties, the
23 authority shall convey to the state the subsurface estate of and the
24 mineral rights in the land among the rail properties. The conveyance
25 shall be made by one or more quitclaim deeds executed by the chief
26 executive officer and delivered to the commissioner of natural re-
27 sources. The authority may reserve in each quitclaim deed the right
28 to extract and use for the authority's purposes sand, gravel, other
29 construction materials, and, in accordance with AS 42.40.410(g), coal

1 on the subject land. The interest retained by the authority after
2 conveyance to the state under this subsection entitles it to exclusive
3 use and control of the surface, complete subjacent and lateral support
4 of the surface, and the right to tunnel, ditch, recontour, excavate
5 and otherwise use the subsurface for railroad, transportation, trans-
6 mission, and related purposes.

7 (c) The authority may litigate, compromise, and otherwise settle
8 claims related to the transfer of rail properties from the United
9 States and to recover for breach of warranties made or other obliga-
10 tions assumed by the United States or other party in relation to the
11 transfer or status of the rail properties.

12 (d) The authority may submit applications on its own behalf as
13 an instrumentality of the state for acquisition of interests in feder-
14 al land available under federal law that will enhance the operations
15 of the authority and may receive conveyances of all interests in its
16 own name.

17 (e) The authority, as an agency of the state, may acquire in its
18 own name from the United States under the Surplus Property Act
19 (50 App. U.S.C. 1622 et seq.), the Federal Property and Administrative
20 Services Act of 1949 as amended (40 U.S.C. 471 et seq.), or other law,
21 property under the control of a federal department or agency that is
22 useful for the authority's purposes and may acquire from the Depart-
23 ment of Administration property of the state made available under
24 AS 44.71.010 - 44.71.040.

25 (f) Before disposing of an interest in real property, other than
26 a leasehold, a utility or access easement, or a land use permit, to a
27 party other than the state, the authority shall give public notice of
28 the disposition in two newspapers of general circulation. The author-
29 ity shall make copies of the notice available to the public at its

1 administrative office, and mail copies of the notice to the commis-
2 sioner of natural resources, the governor, and the leadership of the
3 legislature.

4 Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE
5 LAND FOR RAILROAD PURPOSES. (a) The board by resolution may identify
6 land owned by or subject to selection by the state, including tide and
7 submerged land, as necessary or useful for present or intended rail-
8 road purposes. The resolution must include a statement of and justi-
9 fication for the present or intended railroad use and the date when
10 the use should begin. Upon submission of the resolution and a request
11 for classification and conveyance to the commissioner of natural
12 resources, the commissioner may temporarily classify and reserve the
13 land identified in the request for railroad purposes and may tempo-
14 rarily vacate a classification allowing disposal or lease of that land
15 under laws or programs of the state. A temporary classification and
16 vacation is subject to valid existing rights.

17 (b) Within 180 days after receiving the request, the commis-
18 sioner of natural resources by departmental order shall

19 (1) permanently classify the surface estate of that land
20 for railroad purposes and, subject to valid existing rights, convey
21 the state's interests in and to the surface estate of the land to the
22 authority;

23 (2) deny the classification and conveyance as not in the
24 best interest of the state; or

25 (3) approve in part and deny in part the request for
26 classification under this section.

27 (c) In the absence of a reservation to the contrary, a convey-
28 ance under (b) of this section vests in the authority the exclusive
29 right to extract and use for its purposes sand, gravel, other

1 construction materials, and, in accordance with (g) of this section,
2 coal on the land conveyed without regard to the classification of the
3 resources as part of the surface or subsurface estate.

4 (d) The authority and the commissioner of natural resources may
5 agree to joint management of railroad land and to conditions for
6 classification of railroad land. The authority and the commissioner
7 of natural resources may agree to periodic joint review of state land
8 to determine suitability for railroad purposes and periodic joint
9 review of the status of railroad land to determine the necessity for
10 continued ownership by the authority. The authority may reconvey to
11 the state land that the authority and the commissioner of natural
12 resources jointly identify as unnecessary or unsuitable for the au-
13 thority's purposes.

14 (e) The authority's ownership of a surface interest in state
15 land entitles it to exclusive use and control of the surface, complete
16 subjacent and lateral support of the surface, and the right to tunnel,
17 ditch, recontour, excavate or otherwise use the subsurface for rail-
18 road, transportation, transmission, and related purposes.

19 (f) When physical conditions require that track or other right-
20 of-way fixtures of the authority be moved from the existing location
21 and relocated on state-owned land adjacent to or in the vicinity of
22 the existing right-of-way, and the chief executive officer determines
23 that relocation is necessary to maintain safe and adequate rail op-
24 erations, the authority may effect the relocation after notice to the
25 Department of Natural Resources. The relocation must be limited to
26 land adequate to restore or continue safe rail operations at a normal
27 level. Within 45 days after a relocation under this subsection, the
28 authority shall request classification and conveyance of the land for
29 railroad purposes in accordance with (a) of this section.

1 (g) Before the authority extracts coal on lands in which it owns
2 an interest, as authorized by AS 42.40.400(b) and (c) of this section,
3 it shall submit a request for authorization to do so to the Department
4 of Natural Resources. Within 45 days after receiving the request, the
5 Department of Natural Resources shall approve the request if it deter-
6 mines that the coal to be extracted is located on lands in which the
7 authority owns an interest and is not subject to existing rights of a
8 third party. The state holds title to all coal on lands in which the
9 authority owns an interest until the coal is extracted from the land
10 by the authority under this subsection or otherwise disposed of in
11 accordance with AS 38.05.150 and AS 42.40.415. The authority may use
12 coal made available to it under this chapter for operational, non-
13 income producing purposes only, including the generation of power to
14 support operations and in-kind compensation to a person with whom the
15 authority contracts to extract coal.

16 Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS, AND GEO-
17 THERMAL RESOURCES ON AUTHORITY LAND. (a) The Department of Natural
18 Resources, in accordance with AS 38.05, may lease or otherwise develop
19 oil, gas, minerals, and geothermal resources located on land in which
20 the authority owns an interest, including a surface interest, only
21 upon satisfaction of the following conditions:

22 (1) the Department of Natural Resources submits to the
23 authority a request for authorization identifying the interest to be
24 developed and describing with specificity the proposed plan for devel-
25 opment of the interest, potential negative effects the proposed devel-
26 opment may have on the authority's operations, and measures that will
27 be used to avert or mitigate the effects;

28 (2) the authority reviews the request for authorization
29 and, after considering potential negative effects and proposed

1 mitigation measures, determines that the plan of development presents
2 no appreciable risk of interference with the operations of the author-
3 ity;

4 (3) the Department of Natural Resources and the authority
5 agree upon a suitable requirement that the lessee or party other than
6 the state undertaking the development reimburse the authority from the
7 proceeds of the development for costs incurred by the authority and
8 materials lost by the authority as a result of the development; and

9 (4) the authority issues to the Department of Natural Re-
10 sources a written authorization to proceed with the plan for lease or
11 development; the authority may not unreasonably withhold its consent
12 to a request for authorization submitted by the Department of Natural
13 Resources under this section.

14 (b) The Department of Natural Resources shall require a party
15 other than the state exercising rights under this section to post a
16 surety bond in an amount sufficient to secure the authority against
17 potential detrimental effects of the activity undertaken.

18 (c) The Department of Natural Resources shall maintain an accu-
19 rate record of all income received by the state from the land in which
20 the authority has an interest and of the value of all subsurface
21 estates conveyed by the authority to the state. The Department of
22 Natural Resources shall prepare a yearly summary of the income and
23 subsurface value and submit it to the legislature and the authority
24 before March 15 of each year.

25 (d) There is established in the state treasury the Alaska Rail-
26 road income fund. All income received by the state from lands in
27 which the authority has an interest shall be deposited into this fund.
28 The fund is subject to appropriation by the legislature.

29 Sec. 42.40.420. LAND USE REGULATION. The board may adopt

1 exclusive regulations governing land use by private parties having
2 interests in or permits for land owned or managed by the authority.
3 The power conferred by this section is exercised for the common
4 health, safety, and welfare of the public and, to the extent constitu-
5 tionally permissible, may not be limited by the terms and conditions
6 of leases, contracts, or other transactions with private parties.

7 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
8 MATERIALS. (a) The authority may exercise the power of eminent
9 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
10 in land for lawful purposes consistent with this chapter.

11 (b) The authority may acquire a fee simple title whenever, in
12 the judgment of the authority, ownership of a fee simple is necessary
13 to carry out the authority's lawful purposes in condemning property.
14 When the authority acquires a fee simple, it shall as soon as practi-
15 cable reconvey the subsurface estate to the state by a quitclaim deed.

16 (c) The authority may file a declaration of taking, under
17 AS 09.55.420 - 09.55.460, in the same manner and with the same effect
18 as the state.

19 (d) The authority's power of eminent domain includes, without
20 limitation, the power to obtain material, including clay, gravel,
21 sand, or rock, the land necessary to obtain the material, and access
22 to the land and material.

23 (e) The authority may vacate land, or part of it, or rights in
24 land acquired for railroad purposes by executing and filing a deed in
25 the appropriate recording district. Upon filing of the deed, title
26 reverts to the state of Alaska, if compensation has been paid.

27 ARTICLE 5. FINANCIAL PROVISIONS.

28 Sec. 42.40.500. BONDS AND NOTES. (a) The authority, by resolu-
29 tion of the board, may issue bonds and bond anticipation notes to

1 provide money to carry out its purposes.

2 (b) The principal and interest on the bonds or notes of the
3 authority are payable from money or assets of the authority. Bond
4 anticipation notes may be payable from the proceeds of the sale of
5 bonds or from the proceeds of sale of other bond anticipation notes
6 or, if bond or bond anticipation note proceeds are not available, the
7 notes may be paid from other money or assets of the authority. Bonds
8 or notes may be additionally secured by a pledge of a grant or contri-
9 bution or other property from the federal government, the state or any
10 of its political subdivisions, or a corporation, association, institu-
11 tion, or person, or a pledge of money, income, or revenues of the
12 authority from any source.

13 (c) Bonds or bond anticipation notes may be issued in one or
14 more series and shall be dated, bear interest (fixed or variable) at
15 the rate or rates per year or within the maximum rate, be in the
16 denomination, be in the form, either coupon or registered, carry the
17 conversion or registration provisions, have the rank of priority, be
18 executed in the manner and form, be payable from the sources in the
19 medium of payment and place or places inside or outside the state, be
20 subject to authentication by a trustee or fiscal agent, and be subject
21 to the terms of redemption with or without premium, as the resolution
22 of the board may provide. Bond anticipation notes mature at the time
23 or times determined by the board. Bonds mature at the time, not
24 exceeding 50 years from their date, determined by the board. Before
25 the preparation of definitive bonds or bond anticipation notes, the
26 authority may issue interim receipts or temporary bonds or bond an-
27 ticipation notes, with or without coupons, exchangeable for bonds or
28 bond anticipation notes when these definitive bonds or bond anticipa-
29 tion notes have been executed and are available for delivery.

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

3 (e) If an officer whose signature or a facsimile of whose signa-
4 ture appears on bonds or notes or coupons attached to them ceases to
5 be an officer before the delivery of the bond, note, or coupon, the
6 signature or facsimile is valid as if the officer had remained in
7 office until delivery.

8 (f) Bond or bond anticipation note proceeds may not be dedicated
9 to activities other than those the board reasonably determines to be
10 specifically related to the purposes for which the instruments are
11 issued.

12 (g) In a resolution of the board authorizing or relating to the
13 issuance of bonds or bond anticipation notes, the board has power by
14 provisions in the resolution that will constitute covenants of the
15 authority, and contracts with the holders of the bonds or bond an-
16 ticipation notes

17 (1) to pledge to a payment or purpose all or a part of its
18 revenues to which its right then exists or may later exist, and the
19 money derived from the revenues, and the proceeds of its bonds or
20 notes;

21 (2) to covenant against pledging all or part of its reve-
22 nues, or against permitting or suffering a lien on the revenues or its
23 property;

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

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

29 (5) to covenant as to bonds and notes to be issued, and

1 their limitations, terms and conditions, and as to the custody, appli-
2 cation and disposition of the proceeds of the bonds and notes;

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

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

11 (8) to provide for the replacement of lost, stolen, de-
12 stroyed, or mutilated bonds or notes;

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

15 (10) to covenant as to the redemption of bonds or notes and
16 privileges of their exchange for other bonds or notes of the authori-
17 ty;

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

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

28 (13) to covenant as to the custody of its properties or
29 investments, their safekeeping and insurance, and the use and

1 disposition of insurance money;

2 (14) to vest in a trustee or trustees inside or outside the
3 state property, rights, powers, and duties in trust as the authority
4 may determine, that may include any or all of the rights, powers, and
5 duties of a trustee appointed by the holders of bonds or notes of the
6 authority, and to limit or abrogate the rights of the holders of the
7 bonds or notes of the authority to appoint a trustee under this chap-
8 ter or limit the rights, powers, and duties of the trustee;

9 (15) to pay the costs or expenses incident to the enforce-
10 ment of the bonds or notes or of the provisions of the resolution or
11 of a covenant or agreement of the authority with the holders of its
12 bonds or notes;

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

22 (17) to appoint and provide for the duties and obligations
23 of a paying agent or other fiduciary as the resolution may provide
24 inside or outside the state;

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

28 (19) to make covenants other than and in addition to the
29 covenants expressly authorized in this section, of like or different

1 character, and to make the covenants to do or refrain from doing the
2 acts and things as may be necessary, or convenient and desirable, in
3 order to better secure bonds or notes or which, in the absolute dis-
4 cretion of the board, will tend to make bonds or notes more market-
5 able, notwithstanding that the covenants, acts, or things may not be
6 enumerated in this section.

7 Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR. In negotiating
8 the private sale of bonds or bond anticipation notes to an under-
9 writer, the board shall retain a financial advisor who is independent
10 from the underwriter.

11 Sec. 42.40.515. VALIDITY OF PLEDGE. The pledge of assets or
12 revenues of the authority to the payment of the principal or interest
13 on bonds or notes of the authority is valid and binding from the time
14 the pledge is made, and the assets or revenues are immediately subject
15 to the lien of the pledge without physical delivery or further act.
16 The lien of a pledge is valid and binding against all parties having
17 claims of any kind in tort, contract, or otherwise against the author-
18 ity, irrespective of whether those parties have notice of the lien of
19 the pledge. Nothing in this section prohibits the authority from
20 selling assets subject to a pledge, except that a sale may be re-
21 stricted by the trust agreement or resolution providing for the issu-
22 ance of the bonds or notes.

23 Sec. 42.40.520. REMEDIES. A holder of bonds or notes or of
24 coupons attached to them issued under this chapter, and a trustee
25 under a trust agreement or resolution authorizing the issuance of the
26 bonds or notes, except as restricted by a trust agreement or resolu-
27 tion, either at law or in equity, may enforce all rights granted under
28 this chapter or under the trust agreement or resolution, or under any
29 other contract executed by the authority under this chapter, and may

1 enforce and compel the performance of all duties required by this
2 chapter or by the trust agreement or resolution to be performed by the
3 authority or by its board members or employees.

4 Sec. 42.40.525. NEGOTIABLE INSTRUMENTS. Bonds and notes and
5 interest coupons attached to them issued under this chapter are nego-
6 tiable instruments under the laws of this state, subject only to
7 applicable provisions for registration.

8 Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
9 and notes issued under this chapter are securities in which all public
10 officers and public bodies of the state and its political subdivi-
11 sions, all insurance companies, trust companies, banking associations,
12 investment companies, executors, administrators, trustees, and other
13 fiduciaries may properly and legally invest money, including capital
14 in their control or belonging to them. These bonds and notes may be
15 deposited with a state or municipal officer of an agency or political
16 subdivision of the state for any purpose for which the deposit of
17 bonds or notes of the state is authorized by law.

18 Sec. 42.40.535. REFUNDING BONDS. (a) The authority may provide
19 for the issuance of refunding bonds for the purpose of refunding any
20 bonds then outstanding that have been issued under this chapter, in-
21 cluding the payment of any redemption premium on them and any interest
22 accrued or to accrue to the date of redemption of the bonds. The
23 issuance of the refunding bonds, the maturities and other details of
24 them, the rights of the holders of them, and the rights, duties, and
25 obligations of the authority in respect to them are governed by the
26 applicable provisions of this chapter that relate to the issuance of
27 bonds.

28 (b) Refunding bonds may be sold or exchanged for outstanding
29 bonds issued under this chapter and, if sold, the proceeds may be

1 applied, in addition to other authorized purposes, to the purchase,
2 redemption, or payment of the outstanding bonds. Pending the applica-
3 tion of the proceeds of refunding bonds, with any other available
4 money, to the payment of the principal, accrued interest, and any
5 redemption premium on the bonds being refunded, and, if so provided or
6 permitted in the resolution authorizing the issuance of the refunding
7 bonds or in the trust agreement securing them, to the payment of any
8 interest on the refunding bonds and any expenses in connection with
9 the refunding, the proceeds may be invested in direct obligations of,
10 or obligations the principal of and the interest on which are uncondi-
11 tionally guaranteed by, the United States of America, the State of
12 Alaska, or other entities with comparably rated credit that mature or
13 that will be subject to redemption, at the option of the holders of
14 them, not later than the respective dates when the proceeds, together
15 with the interest accruing on them, will be required for the purposes
16 intended.

17 Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIM-
18 ER. Bonds and notes issued under this chapter do not constitute a
19 debt, liability, or obligation of the state or a pledge of the faith
20 and credit of the state or of a political subdivision of the state
21 other than the authority but are payable solely from the revenues or
22 assets of the authority. Each bond and note issued under this chapter
23 must contain on its face a statement that the authority is not obli-
24 gated to pay it nor the interest on it except from the revenues or
25 assets pledged for it and that neither the faith and credit nor the
26 taxing power of the state or of a political subdivision of the state
27 other than the authority is pledged to the payment of the principal of
28 or the interest on the bond or note.

29 Sec. 42.40.545. NO PERSONAL LIABILITY. A board member or

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

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

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

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

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

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

22 ARTICLE 6. STATE OVERSIGHT.

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

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

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

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

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

9 (1) its financial impact on the authority;

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

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

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

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

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

21 (1) disapprove the proposed undertaking;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 42.40.6.9. TRUSTEESHIP. (a) When authorized by law, the
23 governor may petition the superior court of the State of Alaska for
24 the Third Judicial District at Anchorage to impose a trusteeship over
25 the authority and appoint the trustees if

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

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

1 persons;

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

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

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

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

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

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

27 ARTICLE 7. MISCELLANEOUS PROVISIONS.

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

1 The provisions of AS 39 do not apply to personnel employed by the
2 authority.

3 (b) For the purposes of the Public Employment Relations Act
4 (AS 23.40.070 - 23.40.260) the authority is considered a "public em-
5 ployer" within the meaning of that Act, except that AS 23.40.070(3)
6 does not apply to the authority, and the authority's employees are
7 classified as employees under AS 23.40.200(a)(1).

8 (c) The authority may not enter into any collective bargaining
9 agreement concerning wages, hours, working conditions or other employ-
10 ment terms, conditions and benefits with any organization representing
11 the authority's executive officials.

12 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
13 property of the authority may not be used for partisan political
14 activity or to further the election or defeat of a person seeking an
15 elective office. Money or a substantial part of the activities of the
16 authority may not be used for publicity or educational purposes de-
17 signed to support or defeat legislation pending before congress or the
18 legislature. However, board members and employees of the authority
19 may communicate with and appear before committees of congress or the
20 legislature as well as local legislative bodies in connection with
21 financing and other matters directly affecting the authority or its
22 ability to carry out the purposes for which it is established and
23 respond to requests by members of congress, the legislature, or local
24 legislative bodies for information, views, and testimony.

25 (b) A board member or employee who violates the provisions of
26 this section is personally subject to a civil penalty assessed by a
27 judge of the superior court in an amount not to exceed \$5,000. An
28 action to enforce this penalty may be brought by any person. A viola-
29 tion of this chapter does not constitute a crime and assessment of the

1 civil penalty by a judge does not create any disability or legal
2 disadvantage based on conviction of a criminal offense.

3 Sec. 42.40.720. LICENSES AND PERMITS. Except as otherwise pro-
4 vided in this chapter, if the laws of a municipality, the state, or
5 the United States require a person to hold a license or permit to
6 undertake certain activities or perform an act, the authority, before
7 under taking the activity or performing the act, shall comply with the
8 law to the same extent the state is required to comply.

9 Sec. 42.40.730. UNAUTHORIZED REPRESENTATION. All persons who
10 assume to act for the authority without authority to do so are jointly
11 and severally liable for the debts and liabilities incurred.

12 Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. (a) All claims
13 and lawsuits involving activities of the railroad, including without
14 limitation suits in contract, quasi-contract, or tort, shall be
15 brought against the authority, and not against the state.

16 (b) For the purposes of actionable claims, undertakings, pay-
17 ments of judgments, execution, interest, punitive damages, statutes of
18 limitations, bonds, costs, and similar matters related to the presen-
19 tation and prosecution of claims by and against the authority, the
20 authority and its board members and employees enjoy the same rights,
21 privileges, and immunities as the state and state officers as provided
22 in AS 09.10.120, AS 09.50.250 - 09.50.290, AS 09.50.040, and other
23 similar or related statutes.

24 (c) Claims against the authority are not subject to the pro-
25 visions of AS 44.77.010 - 44.77.070 regarding claims against the
26 state.

27 (d) The authority is not subject to the provisions of AS 44.80.-
28 010, regarding the state as a party to an action.

29 Sec. 42.40.755. EXEMPTION FROM TAXATION. (a) The real and

1 personal property of the authority and its assets, income, and re-
2 cepts are declared to be the property of a political subdivision of
3 the state and devoted to an essential public and governmental function
4 and purpose, and the property, assets, income, and receipts are exempt
5 from all taxes and special assessments of the state or a political
6 subdivision of the state, including, without limitation, a borough,
7 city, municipality, school district, public utility district and other
8 taxing unit. All bonds of the authority are declared to be issued by
9 a political subdivision of the state and for an essential public and
10 governmental purpose and to be a public instrumentality and the bonds,
11 and the interest on them, the income from them and the transfer of the
12 bonds, and all assets, income, and receipts pledged to pay or secure
13 the payment of the bonds, or interest on them, are at all times exempt
14 from taxation by or under the authority of the state, except for
15 inheritance and estate taxes and taxes on transfers by or in contem-
16 plation of death.

17 (b) Nothing in this section affects or limits an exemption from
18 license fees, property taxes, or excise, income or other taxes, pro-
19 vided under any other law, nor does it create a tax exemption with
20 respect to the interest of any business enterprise or other person,
21 other than the authority.

22 (c) For purposes of AS 14.17 relating to the computation of the
23 required local effort by a district as defined in AS 14.17.250(3),
24 property exempted from taxation by this chapter is considered taxable
25 real and personal property.

26 Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXA-
27 TION AND IMPACT AID. (a) To the extent feasible, without impairing
28 the authority's financial viability and consistent with sound business
29 principles, including but not limited to the operation of the railroad

1 on a self-sustaining basis, the need for capital accumulation, and
2 consistency with regulation by the United States Interstate Commerce
3 Commission, the authority may

4 (1) make voluntary payments to political subdivisions
5 served by the railroad or in which the authority has substantial land
6 holdings in place of local taxation of authority real property; and

7 (2) provide financial assistance to political subdivisions
8 and other local districts in the development of public education and
9 other facilities required to be developed as a result of expanded
10 authority activities in the area.

11 (b) The board shall adopt regulations prescribing the conditions
12 under and the extent to which it will undertake to provide payments or
13 assistance, including, but not limited to

14 (1) the conditions cited in (a) of this section;

15 (2) the relative magnitude of the taxation effort deficit
16 or impact caused by authority activities in an area;

17 (3) the relative need among communities affected by author-
18 ity activities; and

19 (4) the present or anticipated benefits to the communities
20 attributable to authority activities.

21 ARTICLE 8. GENERAL PROVISIONS.

22 Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY
23 AUTHORITY SECURITY FORCE. Members of the security force maintained by
24 the authority under AS 42.40.300 may enforce state laws and regula-
25 tions adopted by the authority with respect to violations of the laws
26 or regulations that occur on or to property owned, managed or trans-
27 ported by the authority. Members of the security force may exercise
28 the same enforcement powers granted by law to state law enforcement
29 officers.

1 Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.
2 A person who violates a regulation of the authority that has been
3 designated by the authority as a regulation that is necessary to
4 protect life, health or property, is guilty of a class B misdemeanor.

5 Sec. 42.40.890. CONSTRUCTION. This chapter shall be liberally
6 construed to carry out its purposes.

7 Sec. 42.40.900. DEFINITIONS. In this chapter, unless the con-
8 text clearly indicates otherwise,

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

10 (2) "board" means the Board of Commissioners of the Alaska
11 Railroad Authority;

12 (3) "date of transfer" means the date on which the United
13 States Secretary of Transportation delivers the deed of conveyance for
14 the properties of the Alaska Railroad under the federal transfer
15 legislation;

16 (4) "employees" means all persons employed by the authori-
17 ty, including executive officials;

18 (5) "executive officials" means the authority's chief
19 executive officer, assistant chief executive officer, assistant to the
20 chief executive officer, chief of administration, superintendent of
21 transportation, manager of marketing and sales, chief engineer, chief
22 mechanical officer, manager of industrial development and real estate,
23 manager of budget and accounting, manager of planning, manager of
24 personnel, manager of supply and procurement, chief of security,
25 manager of operating rules, manager of data processing, or any employ-
26 ee of the authority who fulfills these management functions under a
27 different title or who exercises a similar or comparable level of
28 responsibility if so designated by the board;

29 (6) "federal transfer legislation" means that Act of

1 Congress authorizing transfer of the Alaska Railroad to the State of
2 Alaska or the authority;

3 (7) "immediate family" means

4 (A) spouse;

5 (B) dependent parent, parent-in-law, child, son-in-
6 law, or daughter-in-law; or

7 (C) a parent, parent-in-law, child, son-in-law, daugh-
8 ter-in-law, sibling, uncle, aunt, cousin, niece, or nephew resid-
9 ing in the household of an officer or employee of the authority;

10 (8) "land" means all interests in real property, including
11 tide and submerged land;

12 (9) "leadership of the legislature" means the president of
13 the senate, the speaker of the house, the minority leaders of each
14 house, the chairmen of the senate and house transportation and finance
15 committees, the chairman of the legislative budget and audit committee
16 or jurisdictional successors or persons or offices designated by those
17 individuals;

18 (10) "rail properties" means all right, title, and interest
19 of the United States to real and personal property, tangible and
20 intangible, identified in the closing report prepared under the feder-
21 al transfer legislation and transferred to the authority under the
22 legislation;

23 (11) "regulation" has the same meaning as under AS 44.62.-
24 640;

25 (12) "rules" means rules, standards, or written procedures
26 relating to the governance and internal management and affairs of the
27 authority or the Board; rules may not be considered to be "regula-
28 tions".

29 * Sec. 3. AS 09.55.310(a)(4) is amended to read:

1 (4) if the property sought to be condemned is for a rail-
2 road other than one operated by the Alaska Railroad Authority, the
3 cost of good and sufficient fences along the line of the railroad, and
4 the cost of cattle guards where fences may cross the line of the
5 railroad.

6 * Sec. 4. AS 09.55.350 is amended to read:

7 Sec. 09.55.350. TIME FOR PAYING COMPENSATION OR DAMAGES OR BOND
8 TO BUILD RAILROAD FENCES AND CATTLE GUARDS. The plaintiff shall,
9 within 30 days after final judgment, pay the sum of money assessed.
10 If the use is for railroad purposes other than the purposes of the
11 Alaska Railroad Authority, the plaintiff may, at the time of or before
12 the payment, elect to build the fences and cattle guards. If the
13 plaintiff [HE] so elects, the plaintiff [HE] shall execute to the
14 defendant a bond, with one or more sureties to be approved by the
15 court, in double the assessed cost of the same to build such fences
16 and cattle guards within eight months from the time the railroad is
17 built on the land taken. If the bond is given, the plaintiff need not
18 pay the cost of the fences and cattle guards. In an action on the
19 bond, the plaintiff may recover reasonable attorney fees.

20 * Sec. 5. AS 39.50.200(b) is amended by adding a new paragraph to read:

21 (46) members of the Board of Commissioners of the Alaska
22 Railroad Authority.

23 * Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.

24 The legal existence and authority of the Alaska Railroad Authority com-
25 mences upon appointment by the governor under AS 42.40.030 enacted in sec.
26 2 of this Act of all members of the Board of Commissioners of the authori-
27 ty.

28 * Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD OF COMMISSIONERS.

29 (a) The governor shall designate the terms of the six public members of

1 the Board of Commissioners of the Alaska Railroad Authority first appointed
2 under AS 42.40.040. Of the six public members first appointed

- 3 (1) two shall serve a term of two years;
- 4 (2) one shall serve a term of three years;
- 5 (3) one shall serve a term of four years;
- 6 (4) two shall serve a term of five years.

7 (b) The governor may exercise the power of appointment under AS 42.-
8 40.030 only upon acceptance by the legislature by law of the closing report
9 or its substantive equivalent prepared and submitted under the federal
10 transfer legislation or upon approval by the legislature of operation of
11 the Federal Alaska Railroad by the authority.

12 * Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.
13 The closing report submitted under the federal transfer legislation must
14 include a statement of the assets and liabilities of the Alaska Railroad
15 proposed to be transferred to and assumed by the Alaska Railroad Authority
16 or the state which statement is as specific and definitive as practicable
17 under the federal transfer legislation. The legislature may accept or
18 reject the report and may not condition acceptance on its modification in
19 any material respect.

20 * Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. To the extent
21 practicable, for the five years following the date of transfer of the
22 Alaska Railroad to the state or the Alaska Railroad Authority the status of
23 the assets and liabilities specifically identified in the closing report
24 submitted under the federal transfer legislation must be noted in the
25 annual audit.

26 * Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.
27 (a) Within 18 months of the date of transfer of the Alaska Railroad to the
28 state or the Alaska Railroad Authority, the authority shall prepare and the
29 Board of Commissioners of the authority shall adopt a long-range program

1 plan and a capital improvement plan in accordance with AS 42.40.325.

2 (b) Beginning three years after the preparation of the long-range
3 program plan described in (a) of this section, the governor and the legis-
4 lative audit division may conduct an annual performance and efficiency
5 audit of the authority's compliance with the plan.

6 * Sec. 11. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA
7 RAILROAD. The Board of Commissioners of the Alaska Railroad Authority, by
8 resolution, may continue in force for a period of not more than two years
9 after date of transfer all or part of the rules, regulations, and orders of
10 the Alaska Railroad which were in effect one day before the date of trans-
11 fer and are not inconsistent with this chapter or other state law. All
12 authorities continued in force under this section shall expire on the
13 second anniversary of the date of transfer. The Board of Commissioners may
14 adopt in its rules, regulations, and orders the substance of former federal
15 authorities relating to the Alaska Railroad. This adoption is not con-
16 sidered a continuation of the federal authorities if made in compliance
17 with the procedural requirements of this chapter and other applicable law.

18 * Sec. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD
19 AUTHORITY AND EMPLOYEES. As soon as practicable after transfer of the
20 Alaska Railroad, the Alaska Railroad Authority and its employees shall
21 adopt collective bargaining agreements that continue the provisions of the
22 agreements in effect between the Alaska Railroad and its employees immedi-
23 ately before transfer of the Alaska Railroad. The collective bargaining
24 agreements between the authority and its employees shall remain in effect
25 until they expire by their terms or, as required under the federal transfer
26 legislation, they are renegotiated, subject to the approval of the Board of
27 Commissioners of the Alaska Railroad Authority.

28 * Sec. 13. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act
29 are in conflict with the provisions of other law, the provisions of this

1 Act prevail.

2 * Sec. 14. APPLICATION OF EXISTING STATUTES. (a) AS 19 does not apply
3 to the operations of the Alaska Railroad Authority.

4 (b) The Alaska Railroad Authority is considered a political subdivi-
5 sion of the state for the purposes of AS 23.10.055.

6 (c) AS 23.10.420 does not apply to the operations of the Alaska Rail-
7 road Authority.

8 (d) AS 30.15 does not apply to the operations of the Alaska Railroad
9 Authority.

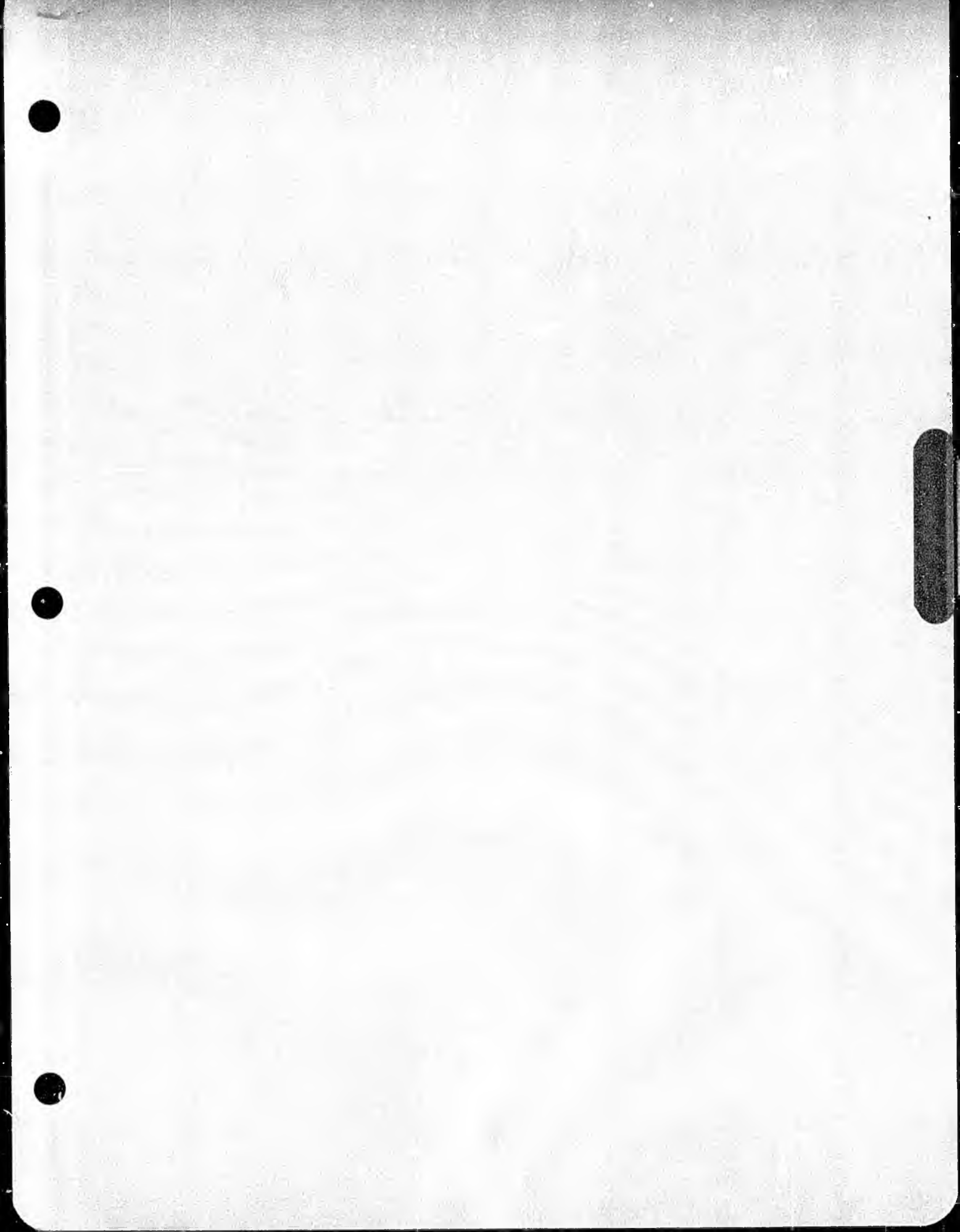
10 (e) AS 35 does not apply to the operation of the Alaska Railroad
11 Authority.

12 (f) The following provisions of AS 37 do not apply to the operations
13 and budgeting procedures of the Alaska Railroad Authority: AS 37.05;
14 AS 37.07; AS 37.10.010 - 37.10.060, 37.10.085; AS 37.20; and AS 37.25.

15 (g) The Alaska Railroad Authority is not subject to the jurisdiction
16 of the Alaska Transportation Commission.

17 * Sec. 15. SUBSEQUENTLY ENACTED STATUTES. No subsequently enacted
18 statute shall be interpreted or construed to apply to the Alaska Railroad
19 Authority, the Alaska Railroad, or any of the authority's activities unless
20 it specifically so provides by its terms.

21 * Sec. 16. EFFECTIVE DATE. This Act takes effect upon acceptance by
22 the Alaska State Legislature of the closing report submitted under the
23 federal transfer legislation enacted by Congress authorizing transfer of
24 the Alaska Railroad to the State of Alaska or the Alaska Railroad Authority
25 or upon approval by the legislature of operation of the Federal Alaska
26 Railroad by the Alaska Railroad Authority.



STATE ORGANIZATIONAL ISSUES
INVOLVED IN THE PROPOSED TRANSFER
OF THE ALASKA RAILROAD FROM THE
UNITED STATES TO THE STATE OF ALASKA

January 15, 1982

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This memorandum addresses some of the issues involved in creating an entity to own and operate the Alaska Railroad after transfer from the federal government to the State of Alaska. The issues involved in determining the most appropriate organizational structure were treated preliminarily in two studies performed jointly by the State and an outside consultant (referred to hereafter as Bivens 1 and Bivens 2).¹ As stressed in Bivens 2, the issue is important because the railroad's organizational structure will directly affect the State's ability to meet its policy objectives for the railroad, see Bivens 2 at 81.

Bivens 2 predicated its analysis of different organizational structures on a set of specified assumptions, (See Appendix 2 enclosed). This memorandum adopts the same assumptions about the State's basic policy guidelines; most of which seem fully warranted by the State's actions and expressed policies to date. This memorandum further agrees with Bivens 2 that the twelve criteria it sets forth are extremely useful tools for evaluating the effectiveness of alternative structures for the railroad. However, as a result of decisions made by the Governor's Railroad Policy Committee in the fall of 1981, this memorandum is organized around a different set of ten goals that are, in substance,

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Statewide Rail Systems Study for the State of Alaska, Department of Transportation and Public Facilities Planning and Programming Division, December 1980, prepared by Bivens & Associates, Inc., et al. (Bivens 1); Assessment of the Alaska Railroad: Ownership and Operational Alternatives, July, 1981, prepared by John T. Gray II and Bivens & Associates, et al. (Bivens 2).

largely identical to the Bivens 2 criteria, but incorporate additional legal constraints that must be considered in setting up a railroad structure. As outlined in the following

sections, the railroad entity should be organized in such a way as to:

1. Insulate the State from legal and financial liability for the railroad's tort, contractual, and debt liability;
2. Insulate the State from I.C.C. jurisdiction;
3. Have an independent capacity to obtain tax-exempt financing;
4. Preclude a State operating subsidy;
5. Permit both service contracts with the State and State investment in the railroad's capital improvements in facilities, rolling stock and track expansion, and rehabilitation;
6. Provide the best possible combination of high quality and low cost transportation;
7. Insulate railroad operations from political pressures generated by the railroad's competitors, suppliers, shippers, lessees, and lessors;
8. Be subject to State oversight and intervention power to:
 - (a) prevent insolvency;
 - (b) ensure continued service;
 - (c) require or preclude expansion or increased service; and

(d) disapprove borrowing that could endanger the State's borrowing capacity;

9. Cause the least possible disruption to the State's employee pay, benefits, and retirement systems; and

10. Conform to the State constitution.

The initial Bivens report (December 1980) considered four very broad approaches to organizing the Alaska Railroad, including continued federal ownership and totally private ownership. By the time the second Bivens study was completed in July 1981, the range of options had been considerably narrowed, and Bivens 2 presents three alternatives: (1) a state line agency, (2) a state public corporation or authority, or (3) a state-owned railroad operated by a private lessee. Bivens 2 at 85. Bivens 2 makes clear, however, that one option -- a public authority or corporation -- best satisfies all of the relevant criteria, whereas each of the other alternatives has serious, indeed potentially fatal, drawbacks or impracticalities. Although the criteria analyzed in this memorandum are somewhat different, and perhaps more legalistic, than those applied in Bivens 2, the conclusion reached is the same; a public corporation or authority provides the greatest opportunity to maximize the State's goals. Leasing to a private operator, for example, would probably preclude tax-exempt financing. Using a State line agency would subject the State itself to tort and contractual liability for railroad activities and probably to

I.C.C. supervision. It also would probably not afford the desired degree of management independence and flexibility.

As a result of the Bivens studies and of preliminary discussions regarding some of the legal concerns addressed below, the Governor's Railroad Policy Committee has tentatively decided to pursue only the possibility of creating a public authority or corporation² to operate the railroad. Accordingly, this memorandum, except as noted, focuses only on this one possibility, and considers whether and how a public authority can achieve each of the State's expressed goals, as outlined above.

As a caveat, it should be noted that the State's fundamental objectives -- to run the railroad both as a public service and as a sound business enterprise -- may conflict to some degree. It will therefore be necessary to create an organizational structure that strikes a balance between these goals, and between the means of achieving those goals discussed below. See Bivens 2 at 79, 89. Fundamental decisions must be made, in particular, on how best to balance autonomy and flexibility on the one hand with accountability and State oversight on the other.

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The terms "public corporation" and "public authority" are used interchangeably in this memorandum. The ramifications of any technical differences between these two structures can be resolved at a later date.

I. STATE LIABILITY.

An independent public authority can effectively insulate the State from legal and financial responsibility for the railroad's tort, contractual, and debt liabilities and can bear sole responsibility for railroad obligations. Public authorities are, in fact, often used for this purpose in other states and in Alaska. The State constitution contemplates and impliedly allows creation of public authorities with the power to issue bonds that are not supported by the full faith and credit of the State. See Alas. Const. Art. IX, Sec. 11 (exempting bonds of public authorities whose debts are not State debts from the credit limitations of Article IX, Section 8). See Section VIII below for further discussion of State constitutional restrictions on public authorities. Numerous other Alaska public authorities have been granted the power to issue bonds without pledging the credit of the State.³ The enabling legislations for these other authorities offers a model for appropriate language in the railroad's enabling legislation.

The acts creating the existing independent public authorities in Alaska appear silent on the issue of State contract and debt

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See, e.g., A.S. 44.81.010 et seq. (Alaska Commercial Fishing and Agriculture Bank); A.S. 44.82.010 et seq. (Alaska Gas Pipeline Financing Authority); A.S. 44.83.010 et seq. (Alaska Power Authority); A.S. 44.88.010 et seq. (Alaska Industrial Development Authority).

liability. The State has the power to provide that an independent public authority will bear exclusive liability for the railroad's contractual obligations and tort liabilities, and can, in fact, limit that liability if it chooses.⁴ To ensure State immunity, the enabling legislation should address the issue specifically.

II. I.C.C. JURISDICTION.

If the Interstate Commerce Commission (I.C.C.) considers the State, rather than a railroad entity, to be the "common carrier," the State itself would be subject to I.C.C. supervision. Such supervision would require the State to conform its accounting practices to I.C.C. requirements and to obtain I.C.C. approval for the issuance of all State securities. The obvious burdens imposed by such requirements appear to preclude direct State operation of the railroad.

Creation of a public authority will avoid such far-reaching I.C.C. jurisdiction. As indicated in Memorandum, Regulatory and Related Issues Involved in the Proposed Transfer of the Alaska

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If the State owned and operated the railroad itself, it might technically have the power to limit its liability for the railroad's tort and contractual obligations. It is unclear whether a court would allow total immunity, however, or whether the railroad would be able to contract effectively with third parties if it denied all liability. Establishing a public authority is the clearest and most definite method of insulating the State itself from liability, while continuing effective and responsible railroad operations.

Railroad from the United States to the State of Alaska, October 3, 1981, prepared by Wickwire, Lewis, Goldmark & Schorr (hereafter "Regulatory Issues Memorandum"), the I.C.C. generally considers a state authority or corporation chartered to operate a railroad to be the "common carrier." See State of Vermont and Vermont Railway Inc., 320 I.C.C. 330, 334-35 (1963); Port Authority Trans-Hudson Corp., 317 I.C.C. 357, 362 (1962). The I.C.C. does not seem to have laid forth any standards, however, either through rule making or adjudication, as to how independent a state authority must be in order to be considered the common carrier.

III. TAX-EXEMPT FINANCING.

As discussed in Bivens 2, at 77-78, 86, one of the major problems with federal administration of the railroad has been inadequate capitalization. In the past, federal appropriations have been the sole source of capital. For reasons set out in the Bivens studies, as well as changes in federal policy, access to other public and private sources will be necessary in the future. Such investment might be easier to obtain if the railroad can issue federally tax-exempt bonds, and an entity to operate the railroad can probably be created that would qualify for tax-exempt financing.]

For interest to be exempt from federal income tax, the obligation must be issued either (1) by a "political subdivision" of

a state, or (2) by an instrumentality of a political subdivision that issues obligations "on behalf of" a political subdivision.

Internal Revenue Code (I.R.C.) § 103(a)(1), Regs. § 1.103-1(b).

Even if the railroad authority qualifies as a political subdivision or an instrumentality thereof, any obligation it issues will nonetheless be taxable if it is considered an "industrial development bond."⁵

1. Political Subdivision.

For purposes of the Internal Revenue Code, a political subdivision is:

any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any State or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement and similar districts and divisions of any such unit.

Regs. §§ 1.103-1(b) (emphasis added).

For a political subdivision to exercise "the sovereign power" of the state, it must have more than an insubstantial amount of the state's sovereign powers: the power to tax, the power of

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There are a number of exceptions to the general rule that industrial development bonds are taxable. Although these exceptions are exceedingly useful in some circumstances and are often relied on for tax-free financing of municipal development, none of these exceptions appears to apply to the entire railroad operation.

eminent domain, or the police power. Estate of Shamberg v. Commissioner, 3 T.C. 131, aff'd, 144 F.2d 998 (2nd Cir.), cert. denied, 323 U.S. 792 (1944). It is not altogether clear whether one of these powers is enough, but all three are not required. If only one power is conferred, it may need to be an unrestricted power. In determining whether an entity has sufficient sovereign powers, the Internal Revenue Service ("the Service") considers "all the facts and circumstances . . ., including the public purpose of the entity and its control by a government." Rev. Rul. 77-165, 1977-1 C.B. 21.

The power of taxation is probably not a realistic alternative for the railroad entity. The State must therefore confer some eminent domain or police powers on the railroad entity if it is to qualify as a political subdivision. The Internal Revenue Service has ruled that an authority's ability to request a political subdivision to condemn property on the entity's behalf is not a substantial possession of unrestricted sovereign power and was not alone enough to make an entity a political subdivision. Rev. Rul. 77-164, 1977-1 C.B. 20. It is unclear whether power to condemn subject to state veto would be sufficient, but it might well not be considered an unrestricted exercise of the sovereign power.

Conferring police power upon the railroad entity may also be feasible, alone or in conjunction with eminent domain power. The law regarding police power is still developing, however, and it

is difficult to say how much police power is required. On the one hand, the Service has ruled that a state university possessed insubstantial police power where its police force was authorized only to enforce traffic regulations on campus and to arrest violators and detain them until city police arrive. Rev. Rul. 77-165, 1977-1 C.B. On the other hand, a regional urban transit authority has been deemed a political subdivision on the basis of its police powers, which included the power to set rates (after public hearings), determine routes, and enforce its regulations by maintaining a security force. The authority exercised these powers free from any regulation by the State Public Service Commission. Rev. Rul. 73-563, 1973-2 C.B. 24. If the State seeks a political subdivision exemption based on police power, it would be advisable to give the railroad entity as much regulatory and enforcement power as possible, perhaps including an independent security force with the ability to make arrests and issue summonses.

In short, the most promising avenue of achieving political subdivision status would be to grant the railroad the power of eminent domain to condemn property directly for railroad purposes, if the State considers this acceptable. A second, and less certain, alternative would be to confer substantial police power upon the railroad entity. A combination of both of these powers increases the likelihood that the railroad entity would be considered a political subdivision.

2. "On Behalf of" Issues.

If the railroad authority is not granted enough sovereign power to qualify as a "political subdivision," it may still be eligible for tax-exempt financing if it issues obligations "on behalf of a political subdivision." It appears that such obligations need not be backed by the full faith and credit or the taxing power of the state. Such an exemption is less certain, however, and subjects the railroad to greater restrictions.

Internal Revenue Service rulings indicate that certain tests must be met for an obligation to be issued "on behalf of" a political subdivision. These are:

(a) The issuer must engage in activities that are essentially public in nature;

(b) The issuer, except to the extent of retiring indebtedness, must not be one which is organized for profit;

(c) Income must not inure directly or indirectly, or appear to be available to, any private person;

(d) The state or political subdivision must have a beneficial interest in the organization while the indebtedness remains outstanding and must obtain full legal title to the property when indebtedness is retired;

(e) The corporation must be approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation.

The first three requirements will probably not be difficult for the railroad entity to meet, especially if the enabling legislation takes account of these requirements and states that the railroad serves important public purposes, requires supervision of railroad books, and so on. The more significant difficulties for the railroad in achieving "on behalf of" status will be the requirement that property revert to the State after the indebtedness is retired and the necessity for State approval of each railroad obligation. On occasion the Service departs from its own established guidelines, and it is conceivable that the entity established to manage the railroad could obtain a favorable "on behalf of" ruling even if it does not comply with these two requirements. In similar situations, local public authorities have obtained "on behalf of" rulings where the property would continue to be held by the authority after the retirement of the indebtedness, but in those cases the political subdivision (a city) possessed substantial control over the issuer's governing body, and upon liquidation of the issuer the property would pass either to another entity of the same nature or revert to the political subdivision. It is impossible to assess the likelihood that the Service would confer "on behalf of" status to a railroad entity that does not comply with these two requirements.

In 1976, the Service published proposed regulations to significantly tighten the requirements for obligations issued "on

behalf of" political subdivisions. Although these regulations have not yet been adopted, the Service may in fact rely on them in making private rulings. Although a number of these requirements are the same as those enunciated above, they go further and require even tighter organizational and supervisory control by the governing unit (the State) over the issuer. For example, the proposed regulations require state approval of the issuer's obligations not more than sixty days before issuance, as well as substantial control over membership on an issuing authority's governing board.

The restrictions and potential restrictions over a public entity entitled to "on behalf of" tax-exempt status generally make an "on behalf of" exemption less desirable than a direct "political subdivision" exemption, as discussed above. If the State decides to rely on an "on behalf of" exemption, qualification of the railroad entity will necessarily impose certain restrictions, which must be analyzed in greater detail to make sure that the enabling legislation complies.

3. Industrial Development Bond Prohibition.

Even if the railroad entity achieves tax-exempt status as a "political subdivision" or as acting "on behalf of" a political subdivision, its bonds will nevertheless be taxable if the proceeds of the bonds benefit private persons in their trade or business. In such event, the bonds are considered taxable "industrial development bonds." Cf. footnote 5. A bond is

classified as an industrial development bond if (1) more than 25% of the proceeds of the obligation are used directly or indirectly in any trade or business carried on by non-exempt persons, and (2) the payment of principal or interest on the obligation is secured, in whole or major part, by any interest in property or payments made in respect of property used or to be used in a trade or business or derived from payments in respect to property, or borrowed money, used in a trade or business.

The industrial development bond regulations are not intended to preclude a state or political subdivision from operating a business. The regulations specifically state:

When publicly-owned facilities which are intended for general public use, such as toll roads or bridges, are constructed with the proceeds of a bond issue and used by non-exempt persons in their trades or businesses on the same basis as other members of the public, such use does not constitute a use in the trade or business of a non-exempt person for purposes of the trade or business test.

Regs. §§ 1.103-7(b)(3).

Based on the examples in the regulations and on public and private rulings issued by the I.R.S., a strong argument can be made that the mere fact that the railroad hauls the property of private (non-exempt) parties does not mean that the railroad would be using bond proceeds for the trade or business of "private persons," as defined by I.R.S. regulations. It would be necessary, however, to obtain an advance ruling on this issue.

On the other hand, if any part of the operation or the facilities of the railroad were leased to a private party for use in its trade or business, unless amounting to less than 25% of the obligation, the project would constitute industrial development bond with the commensurate loss of tax exemption of its interest payments. The Service has indicated, in private rulings, that it will closely scrutinize any direct or indirect benefits to non-exempt persons. It seems likely that if the railroad were to contract with a private company for the management or operation of the railroad or various of its facilities, the Service would consider such a contract as a benefit to a non-exempt person which would render railroad obligations industrial development bonds. Thus if the railroad entity is to be eligible for tax-exempt financing, leasing operations to a private operator is not a realistic option, and even hiring a private operator could preclude tax-exempt financing. For this reason it will be important to continue to monitor railroad operations to ensure that future actions do not cause the Railroad to lose its tax-exempt status.

This discussion of the industrial development bond prohibition is not intended to preclude further in-depth consideration of other sophisticated avenues of generating private investment. As pointed out in Bivens 2, several ways of using federal tax advantages to raise private investment funds may exist, including

limited partnerships, Bivens 2 at 90-91, and perhaps joint ventures or syndications. Use of the public authority structure to operate the railroad should leave these possibilities open, and may even give the State greater flexibility. Once some of the fundamental issues discussed in this memorandum have been resolved, more specific proposals for tax-exempt and other advantageous financing can be explored, and may well prove fruitful.

IV. STATE SUBSIDY, STATE CONTRACTS FOR RAILROAD SERVICE, AND STATE INVESTMENT IN RAILROAD CAPITAL IMPROVEMENTS.

Although the railroad currently is profitable, it is saddled with years of deferred maintenance attributable to inadequate federal appropriations. It is generally believed that the railroad's operating revenues will be insufficient to cover its full operating costs for all services and to finance overdue and future capital improvements, see Bivens 2 at 77-80, 98-99. Accordingly, it will be necessary to find other means of meeting capital requirements and such operating expenses as passenger service. The State wishes to avoid a direct general subsidy, but nevertheless recognizes the need to participate in certain operations that serve clear public purposes, such as passenger service or track expansion. The State can reconcile these competing interests by establishing an entity that is precluded from asking for general operating subsidies but is permitted to request State funds for purposes specified in the legislation establishing the entity.

Contracting. Contracting with the railroad authority for the provision of specific services would ensure that State funds are spent only for those purposes that the State has decided are important. Contracting appears legally permissible,⁶ so long as the expenditure of State funds is for a "public purpose." The Alaska constitution requires that State funds be spent only for "public purposes," Alas. Const., Art. IX, Sec. 6, but does not appear to otherwise prohibit or significantly restrict the State's ability to contract for desired railroad services. See discussion in Section VIII below. The public purpose requirement has been broadly construed, at least so far, by the Alaska Supreme Court. The court has, for example, upheld a State mortgage adjustment plan in which public monies were used to pay private mortgage obligations for dwellings that had been damaged by earthquake. Suber v. Alaska State Bond Committee, 414 P.2d 516 (Alas. 1966). It has also upheld the validity of municipal bonds issued to finance the construction of a manufacturing facility to be leased to a private business. Wright v. City of Palmer, 468 P.2d 326 (Alas. 1970).

The public purpose requirement of Article IX undoubtedly imposes some outside limitation on the nature of the contracts

⁶ A.S. 37.10.085 prohibits the State from subscribing to corporate stock, or lending credit to or borrowing money on behalf of a corporation. It is not clear whether this provision would affect the financial dealings between the State and the railroad, but in the interest of caution, the enabling legislation might specifically provide that the railroad is exempt from this restriction. Cf. 18.26.150 (Medical Facilities Authority).

the State may make with the railroad, but contracts for the provision of services that benefit the public, such as passenger service, appear unexceptionable. To help ensure that such contracts would survive judicial review, the enabling legislation for the railroad authority should set forth specific legislative findings regarding the public purposes served by State-railroad contracts and could provide a non-exclusive list of permissible contracts. To make it more likely that the State would be exempt from potential antitrust liability, the enabling legislation should specifically address the State purpose to be served by any contracts that might be subject to antitrust challenge, and should indicate an affirmative intention to displace free competition. Direct oversight of these contracts by the governor or the executive department would also strengthen the State's claim that such contracts are exempt from the antitrust laws. It is impossible to predict, however, whether these efforts would be sufficient to exempt the State from antitrust coverage. See Regulatory Issues Memorandum, at 15-27.

The enabling legislation can adopt any degree of specificity as to the type of contracts authorized and the amounts, but as the legislation becomes more specific, the executive is less able to respond to new needs and changing circumstances. On the other hand, if significant discretion is vested in the executive branch, it is important to make sure that the department or

agency does not inadvertently become an additional tier of railroad management.

Capital Improvements. State expenditures for capital improvements are also subject to the broad public purpose limitation of the State constitution. Such investment is quite probably for a public purpose, especially if the enabling act contains convincing language to that effect. The technical question of who should hold title to railroad property that is acquired or constructed need not be addressed at this time. The question involves tax, financing, liability, and other issues that should be considered after other, more basic, decisions have been made.

Procedures. To regulate requests for appropriations for railroad projects, the State may wish to establish guidelines for the railroad to follow in requesting State funds. Requests for funds could be made directly to the Legislature (or to the relevant committee), cf. A.S. 144.83.080(16) (Alaska Power Authority), or the railroad could be required to appeal to the Governor or other member of the executive branch who could in turn request legislative appropriations. If desired, the legislation could also provide standards by which requests for appropriations are to be judged, which could range in severity from "appropriate to further railroad purposes" to "essential for the continued operation of the railroad." The legislation can set up as many, or as few, levels of review as the State feels is appropriate, so long as it does not become unduly burdensome,

expensive, or time-consuming. The trade-off, of course, is between the perceived need for State oversight of the railroad and the business advantages of independence and efficiency.

Instead of allowing the railroad to request appropriations as necessary, the legislation could require the railroad to include its appropriation request as part of an annual budget.

Alternatively, the Legislature could establish a railroad fund from which monies could be disbursed when the appropriate official found that the requisite standard had been met.

V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT.

A management structure for the railroad that will foster the optimal combination of high quality and low cost transportation demands that railroad operations be insulated from the political pressures generated by the railroad's competitors, suppliers, shippers, lessees, and lessors. The Bivens 2 criteria, at 83-84, make clear that management freedom and authority (see criteria 2, 4, 5, 8, 9) and freedom from cumbersome bureaucratic restraints (see criteria 5, 7) are critical if the new railroad entity is to operate effectively. To meet these goals, the entity managing the railroad will probably need significant control of day-to-day railroad operations. Giving the railroad entity sufficient control of day-to-day operations to meet the State's goal of effective business management conflicts, however, with the

State's interest in retaining control over major financial and policy decisions for the railroad.

The railroad will be able to make managerial decisions more quickly, flexibly, and efficiently if it is free from most of the restrictions that normally encumber the action of governmental bodies. The railroad entity should be specifically exempted from most such restrictions, such as the State Administrative Procedure Act, A.S. 44.62 et seq., state public bidding and procurement requirements, state personnel requirements, and other restrictions to be identified by the Attorney General's office. If the railroad is to be free to set its own rates and make its own rules, an explicit exemption from regulation by the Alaska Transportation Commission, would avoid any possible jurisdictional disputes over intrastate transportation.

It is also important to note that freedom from some of the restrictions that normally apply to line agencies will help give the railroad entity a sufficient degree of independence to justify insulation of the State from liability for the authority's debts.

The State can also use appointment and membership requirements for the entity's governing board to reduce political influence over the railroad board. The most common means of doing so include confirmation of appointments by the Legislature, requiring a bipartisan board, staggering terms so that no one governor appoints the entire board, setting qualifications for

board members (e.g., one member each who represents or has expertise in finance, law, railroads, labor, etc.), or allocating appointment power among different State officials.

VI. STATE OVERSIGHT OF MAJOR FINANCIAL TRANSACTIONS AND POLICY DECISIONS.

Although the day-to-day operations of the railroad can be left to the railroad entity, the State can retain oversight power to prevent the railroad from making major policy changes or taking actions that would threaten the railroad's financial stability. Conversely, the State may also wish to establish a mechanism for ensuring that the railroad's operator will seriously consider the State's ideas regarding railroad projects. In particular, the State is concerned with (a) preventing railroad insolvency, (b) ensuring continued railroad service, (c) having a major policy role in proposed changes in service levels and track expansion, and (d) preventing borrowing that could indirectly endanger the State's own borrowing capacity.⁷

In dealing with these concerns, the State must balance its desire for oversight against the railroad's legal and practical need for independence. If the railroad entity is to make most

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Although the State of Washington is facing serious financial problems, the precarious position of the Washington Public Power Supply System, a creature of the State, is acknowledged to have contributed to the recent lowering of the State's own bond rating.

business decisions and be responsible for the railroad's performance, it will need significant control over its budget and over policy decisions, especially in relation to service changes and expansion. See Bivens 2 at 83, 85-89. It is therefore important to ensure that the State carefully consider the effect of forcing the railroad authority to take a particular action, perhaps by providing that the executive or the Legislature make detailed findings regarding the impact, financial and otherwise, of amending or overruling a decision made or recommended by the railroad. Requiring the State to fund projects it determines the railroad entity must undertake is another possible way to ensure that the State share in the consequences of its decisions.

The enabling legislation can provide generally that the State will retain power to oversee the railroad entity's activities. The State has a wide range of options as to who will be responsible for monitoring railroad performance. An existing body could be given this responsibility, or a new body could be created. Appropriate choices among existing bodies include the Department of Transportation, the Transportation Commission, the Governor's office, or the House and/or Senate committees with substantive jurisdiction over railroad affairs. It is possible to erect several layers of supervisory control and overlapping responsibilities, as has apparently been done in South Dakota, where state railroad activities involve the legislature, the governor, the department of transportation's division of

railroads, the director of railroads, the state railroad board, the railroad advisory commission, and the railroad authority. It is not clear that such a complex structure is necessary or desirable, and it might very well make it difficult for the railroad to operate efficiently and apolitically.

In establishing procedures for State oversight of major financial and policy decisions, the enabling legislation must (1) identify the class of actions or situations that will trigger State review, (2) establish procedures for determining when those situations have materialized, and (3) set forth the method for State review. The State has already identified several primary concerns regarding both policy (cutbacks and expansion of service and undertaking non-railroad activities), and finance (railroad insolvency and indirect effect on State credit rating).

Policy Decisions. For the two policy concerns, the State needs to determine how large a change must be proposed before the State will step in and review it. For service cuts and expansions, this level could be defined either as a percentage of existing service or as a dollar amount. It is important to set the level high enough that routine changes in timetables and service do not require State approval. Changes of less than 5% or 10% are probably de minimis; changes of 33% are quite probably significant. Picking a figure between those two points may be relatively arbitrary. Since expansion and cutbacks will be conscious decisions for the railroad entity, requiring it to

notify the State within a specified period of time before acting will probably provide sufficient notice; there should be no thorny questions as to whether the "triggering event" has actually occurred. Similarly, the State can require that the railroad authority give notice before engaging in non-railroad activities, as defined in the legislation, and can require State approval for such activities.

Once the class and magnitude of decisions that the State wishes to oversee have been identified, the State should devise an oversight process to give it an effective voice, without making it impossible for the railroad entity to act. To facilitate State review, the railroad can be required to present written reasons for its proposed action. It would probably be most efficient for the report to be submitted to the appropriate legislative committees, but it is also possible for the report to be first submitted to the Governor. The Legislature could either be required to approve it (by resolution or by regular vote of one or both houses); alternatively, the Legislature could be given veto power, to be exercised within a specified time, and possibly requiring a supermajority. The latter approach ensures that a decision will be made promptly.

Financial Concerns. The financial concerns present more difficult issues of assessment and notice to make sure that the State does not step in prematurely. The traditional indicia of insolvency used in contracts between private parties tend to come

too late to be useful to the State (e.g., appointment of a receiver or filing a bankruptcy petition). Other alternatives need to be investigated, perhaps with the assistance of a financial analyst. Possible events to trigger State intervention to prevent insolvency might include an actual or projected budget deficit of a specified percentage or dollar amount, a serious drop in the railroad entity's bond rating, railroad inability to meet bills as they fall due, and so on. If the State retains significant discretion to decide when the railroad is "approaching insolvency," it will be important to ensure that the railroad entity has an opportunity to respond to the State's concerns and to demonstrate that the railroad's financial condition is acceptable. It may also be desirable to provide for review of the State's decision to intervene, either by the judiciary or by a specially constituted advisory board.

If the State determines that the railroad is in danger of becoming insolvent, it could provide for State management of the railroad, perhaps with the governor or other executive officers serving as trustee. A less intrusive alternative would be to replace the executive officers or board of directors of the railroad.

As in the case of impending insolvency, it will be important to establish a fair procedure to guide the State in deciding that the railroad's credit rating is indirectly injuring the State's own borrowing ability. A specific fact-finding process by the

governor or other government officer or body could be required. In making this determination, the State should also be required to consider the impact on the railroad if it is not permitted to continue borrowing. Railroad borrowing is perhaps simpler to oversee than insolvency. Once it has been determined that the State's credit rating, or the authority's credit rating, is in jeopardy, the railroad can be required to obtain State approval (by the Governor or the Legislature) before issuing further bonds. Again, this approval can be active or can be exercised through a veto power.

Other Forms of Oversight. As a general matter, most public authorities in Alaska are subject to annual legislative audit, are required to submit an annual report to the Governor and/or the Legislature, and are required to give the legislative auditor access to their books at all times. See, e.g., A.S. 44.82.180, 44.83.190, 44.85.100. Similar requirements can be imposed on the railroad entity. The State may also want to give the legislative auditor the power to prescribe the form and content of the authority's financial records, as is the case with some of the other public authorities, see, e.g., 44.82.180, 44.83.190, but this requirement could limit the railroad's flexibility or conflict with federal I.C.C. accounting regulations. Alternatively, an independent outside audit could be required, which has the advantage of being immune from the political considerations that sometimes impinge on legislative audits.

with
some
sensitivity
to proprietary
concerns.

The procedures for appointing and removing members of the railroad's governing board are another source of State control over railroad activities. The power to remove board members without cause would give the State an effective check on the board's actions. If overused, however, this power could undermine the railroad's independence and make it more vulnerable to political pressures. Another effective tool for State control over the railroad is to require the railroad's governing board and not just its executive officers -- to retain actual control over specified important decisions. The legislation could accomplish this by specifying that the board must concur in specified decisions, such as expansion or reduction of service, contracting of debts or issuance of bonds or notes, sale of railroad property, all large expenditures or transactions (specified by dollar amount), filing of annual reports required by the State, adopting an annual budget, contracting with the State, requesting State appropriations, and so on.

An even more effective, although more intrusive, check on railroad decision-making would be to require the railroad to follow specific administrative procedures in making important decisions. The enabling legislation would need to identify what actions would be subject to such requirements, and would need to set forth specific procedures. The formal administrative procedures could allocate responsibility between railroad management

and the governing board, establish specific fact-finding processes (possibly including notice to specified parties and public hearings), and require the railroad to make adequately documented written findings. The State could participate at the decision-making level by contributing at hearings, submitting statements, or reviewing the railroad's files. It can also retain power to review the railroad authority's decisions, as discussed above. Alternatively, procedures for judicial review could be established. Such administrative requirements would, of course, undercut the railroad management's flexibility and independence, which Bivens 2 concluded were necessary, see Bivens 2 at 77-80, 82-83. The effects on railroad management should thus be carefully considered before such requirements are imposed. Cf. Section V above.

Action-Forcing Mechanism. The State may also wish to consider providing a mechanism that will guarantee that the entity in charge of the railroad considers actions proposed by the State, but that does not impose so much control over the railroad that the advantages of independent management are lost. One way to balance these competing interests would be to set up procedures for railroad review of legislative proposals. For example, the legislative committees with substantive jurisdiction over railroad matters, or the Governor, could be permitted to request the railroad to consider State proposals for railroad actions. Such consideration could require that the railroad entity hold

public hearings, conduct appropriate studies, and issue a written report of its findings and decision. The legislation can specify how much time the railroad entity has to reach its decision. After a decision is returned, the State can adopt, modify, or override it. A decision by the State to overrule or significantly modify a railroad decision will, of course, affect the railroad entity's plans and finances, and it may be necessary to require the State to fund any project that the railroad entity has rejected or to otherwise take responsibility for overriding the railroad entity's decision.

VII. EMPLOYEE ISSUES.

Concern has been expressed that State acquisition of the Alaska Railroad may disrupt the State's present employee pay, benefits, and retirement systems. In particular, there has been fear that if railroad employees continue to receive certain benefits comparable to those they receive as federal employees (treatment which may be necessary to induce them to continue working for the railroad), other State employees will feel unfairly treated. See generally, Memorandum, Employee-Related Issues Raised by the Proposed Transfer of the Alaska Railroad from the United States to the State of Alaska, September 25, 1981, prepared by Wickwire, Lewis, Goldmark & Schorr, at 16-17. It would be desirable to prevent such reverberations and dissatisfaction, if possible. Establishing an independent public

authority should largely resolve this problem, since the more independent the railroad entity is, the more it should be perceived as legally separate from the State, justifying differential treatment of railroad employees.

The federal transfer legislation may require that railroad employees be treated somewhat differently from other State employees. If so, the railroad authority will need some degree of independence and flexibility in deciding employee issues. It would therefore be advisable (1) for the State to review present State law to make sure that the railroad will have all of the necessary authority to permit it to comply with the requirements of the transition plan, and (2) that the railroad entity be freed from the restraints of State civil service requirements and that it not be required to conform to or participate in State employee benefit programs. See Section VIII(3) below. Freedom from state civil service system requirements will also make it possible for the railroad entity to adopt a performance-based personnel management system, with direct railroad responsibility for personnel decisions and with the ability to provide adequate performance incentives, as recommended in Bivens 2. The State will also need to decide whether the State itself or the railroad entity will be responsible for the obligations created by the federal transfer legislation.

VIII. CONSTITUTIONAL LIMITATIONS

A number of State constitutional provisions will have a bearing on the structure and powers of the railroad entity, but none appears to present insuperable obstacles to establishing an authority to meet the objectives discussed above.

1. Organizational Limitations - Article III: The Executive Section 22. Section 22 of Article III of the Alaska Constitution provides that "[a]ll executive and administrative offices, departments, and agencies . . . shall be allocated by law among and within not more than twenty principal departments," with the exception of "regulatory, quasi-judicial, and temporary agencies." Unless the legislature has made recent changes, there are currently 17 principal departments, plus the University of Alaska, a constitutional corporation that is not allocated among any of the principal departments. See University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alas. 1975).

It is not altogether clear whether an entity established to operate a proprietary enterprise such as a railroad is considered an executive or administrative office, department or agency. There appears to be no State case law on this point, perhaps because most other State proprietary ventures are administered by State line agencies. If "executive and administrative" is used in Article III merely to distinguish between the three branches of government, then the railroad entity would quite clearly be within the province of the executive branch.

Assuming in the interest of prudence that the entity established to operate the railroad is an executive or administrative body, it must constitute a new executive department, be allocated among one of the existing departments, or fall within the exception for regulatory, quasi-judicial, or temporary agencies. The three exceptions seem inapplicable. The railroad authority would quite clearly not be quasi-judicial or temporary. It is debatable whether it could be classified as a "regulatory" agency. Unfortunately, there is very little helpful Alaska case law interpreting this provision. The Alaska Supreme Court has upheld, without explanation, a superior court finding that the Alaska State Mortgage Association, a public corporation established to provide housing financing, is not a regulatory, quasi-judicial, or temporary agency. Walker v. Alaska State Mortgage Association, 416 P.2d 245, 249 N.11 (Alas. 1966). The State supreme court has also indicated that the Alaska State-Operated School System (a state-wide school system comprised of schools outside of organized boroughs and cities and operated by a State-appointed board) is not a regulatory, quasi-judicial, or temporary agency, a point not disputed by either of the parties. Alaska State-Operated School System v. Mueller, 536 P.2d 99 (Alas. 1975). Unless the history of the State constitution sheds light on the proper meaning of "regulatory" as used in this section, it would be wise to assume that the railroad entity would not be a regulatory agency, since it would have direct

responsibility for operating the railroad, and not merely for setting rates, rules, etc.

If the railroad does not fall within one of the exceptions, it must be established as a State department or allocated among one of the existing departments. Virtually every statutory independent public authority in Alaska has been placed within one of the principal departments (usually the Department of Revenue or the Department of Commerce and Economic Development). The only apparent exception is the Alaska State-Operated School System, which the Alaska Supreme Court has implied, without holding, is "functionally if not nominally within the Department of Education." Id. at 104.

While such an allocation may seem a purely formal matter, the issue can become important. Other independent public corporations have been challenged as unconstitutional on the theory that they were not actually "within" one of the executive departments as required by Section 22. The Alaska Supreme Court analyzed the enabling legislation of two of these authorities and concluded that there was sufficient executive department control to bring the authorities "within" the designated executive departments. In reaching its decision, the court relied on the facts that the head of the executive department sat on the board of the public authority, that all members of the authority's board were appointed by the Governor and subject to removal at his pleasure, that the authority was required to submit an annual

report to the Governor and the Legislature, that the authority was subject to a legislative audit, and, in one case, that the corporation submitted certified copies of all its meetings to the Governor. DeArmond v. Alaska State Development Corporation, 376 P.2d 717 (Alas. 1962); Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alas. 1966). In DeArmond the court also pointed out that the corporation was only temporary and could be dissolved by its members, and that the Legislature had set qualifications for board membership with the clear intent of keeping the board free from outside control. The court concluded:

The fact that the statute declares that the corporation shall have a legal existence independent of and separate from the state does not add weight to appellant's argument [that the corporation is unconstitutional]. This is nothing more than a declaration of the legal relationship that most corporations have with respect to their creators.

376 P.2d at 724.

The DeArmond and Walker cases tell us only what controls will be sufficient to keep a quasi-independent authority "within" a State department; they do not indicate which features are actually necessary. Most of the other Alaska public authorities are subject to similar controls, however, and it would be prudent to impose the same requirements on the railroad entity. Most of these provisions will not significantly limit the State's flexibility in establishing an entity to operate the railroad, with the possible exception of the board membership provisions.

It should be noted that the same features that saved the constitutionality of the mortgage association and the development corporation would have been the basis for finding that quasi-independent public bodies were State agencies for the purposes of other State statutes. In Alaska State-Operated School System v. Mueller, 536 P.2d 99 (Alas. 1975), the court compared the features that made the school system autonomous with those provisions, subjecting it to legislative and executive control, and concluded that for the purpose of procedural rules governing service upon and answers by State defendants, the school system was an instrumentality or agency of the State. In Alaska State Housing Authority v. Dixon, 496 P.2d 649 (Alas. 1972), the court cited DeArmond and Walker for the proposition that the Alaska State Housing Authority was an instrumentality of the State within the Department of Commerce, and held that it was therefore a "state agency" as defined by the State Administrative Procedure Act. The authority was thus required to comply with the provisions of the Administrative Procedure Act. In drafting legislation, the State should thus carefully consider all of the rules and statutes that govern or protect State "agencies," "departments," "instrumentalities," etc., and decide whether to exempt the railroad from any such regulations. See section VI above. The cases are silent as to whether coverage as a State agency for these other purposes is constitutionally required by

Article III, Section 22, or was merely required by the enabling statutes under review.

Section 26. Section 26 of Article III provides:

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

According to Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alas. 1966), this provision does not apply to nonregulatory, nonjudicial agencies that are not the heads of principal departments. Thus, Section 26 will govern railroad appointments only if the railroad is considered a regulatory agency or is established as a new principal department.

The Alaska Supreme Court has held that Section 26 and Section 25 (governing the appointment of heads of principal departments) delimit the full extent of the Legislature's constitutional power over appointments. Bradner v. Hammond, 553 P.2d 1 (Alas. 1976). Accordingly, if the railroad authority is not a regulatory agency or a principal department, there appear to be no explicit constitutional restrictions on appointments.

Section 23. Section 23 of Article III provides that where the Governor makes changes in the organization of the executive branch and "these changes require the force of law," they shall be set forth in executive orders, subject to legislative veto. It is not at all clear what types of changes "require the force

of law." The case law is scanty and unhelpful, and the Attorney General's office should pursue the issue further if significant organizational changes are to be made by the executive.

2. Financial Limitations - Article IX: Finance & Taxation

Section 4. Sect'on 4 of Article IX of the Alaska

Constitution governs exemption from state taxation. It provides:

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit, religious, charitable; cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law.

It is possible that a public authority is not a "political subdivision" automatically entitled to an exemption from state property tax. See City of Nome v. Block No. H, Lots 5, 6, & 7, 502 P.2d 124 (Alas. 1972) (Alaska State Development Corporation, a public corporation within the Department of Commerce, is not identical to the State and is not entitled to tax exemption as a "politica" subdivision").

The Legislature can, however, specifically grant tax-exempt status to a public corporation. The Alaska Supreme Court has upheld the power of the Legislature to grant tax exemptions beyond those specifically enumerated in Section 4. DeArmond v. Alaska State Development Corp., 376 P.2d 717 (Alas. 1962); see City of Nome, supra. This power to legislate tax-exempt status

may be subject to an implicit requirement that only property used for public purposes be treated as tax-exempt. See City of Nome, supra, citing Evangelical Covenant Church v. City of Nome, 394 P.2d 882 (Alas. 1964).

The Legislature therefore seems to have the power to grant a state tax exemption to the authority operating the railroad. Most of the other public authorities in Alaska have been specifically granted such a tax exemption in their enabling legislation. See, e.g., A.S. 44.81.170; A.S. 44.82.150; A.S. 44.83.150; A.S. 44.85.160; A.S. 44.88.140. To avoid litigation or dispute over state tax issues, it would be advisable for the enabling legislation to specifically address the railroad's tax liability for all forms of State taxation.

Section 6. Section 6 of Article IX of the Alaska Constitution provides that:

No tax shall be levied or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

"Public purpose" has been interpreted very broadly in Alaska, at least so far. The State supreme court has indicated that it will defer to legislative findings regarding public purpose unless "it clearly appears that such findings are arbitrary and without any reasonable basis in fact." DeArmond v. Alaska State Development Corp., 376 P.2d 717, 721 (Alas. 1962). The court has also stated that the concept of "public purpose" is "not capable of precise definition," but will change with changing times. Id.

See Wright v. City of Palmer, 468 P.2d 326 (Alas. 1970); Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alas. 1966); Suber v. Alaska State Bond Commission, 414 P.2d 546 (Alas. 1966).

The court's analysis in some of these cases indicates that explicit legislative findings regarding the public purpose to be served provide a basis for a court to uphold the challenged spending. See Walker, supra.

A more difficult question is whether Section 6 even applies to the expenditures and borrowing of a public authority. Most of the cases assume, without specific analysis, that it does. DeArmond seems to imply, however, that the borrowing of an independent corporation is not the use of "public credit." The Attorney General's office may wish to pursue this point, since the cases are not illuminating. In all probability, however, railroad spending is governed by the public purpose requirement, and the State should certainly proceed on this assumption.

Section 7. Section 7 of Article IX provides: .

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

The section has been broadly interpreted by the Attorney General's office in a series of opinions stating that the section applies not only to taxes and licenses, but to all sources of

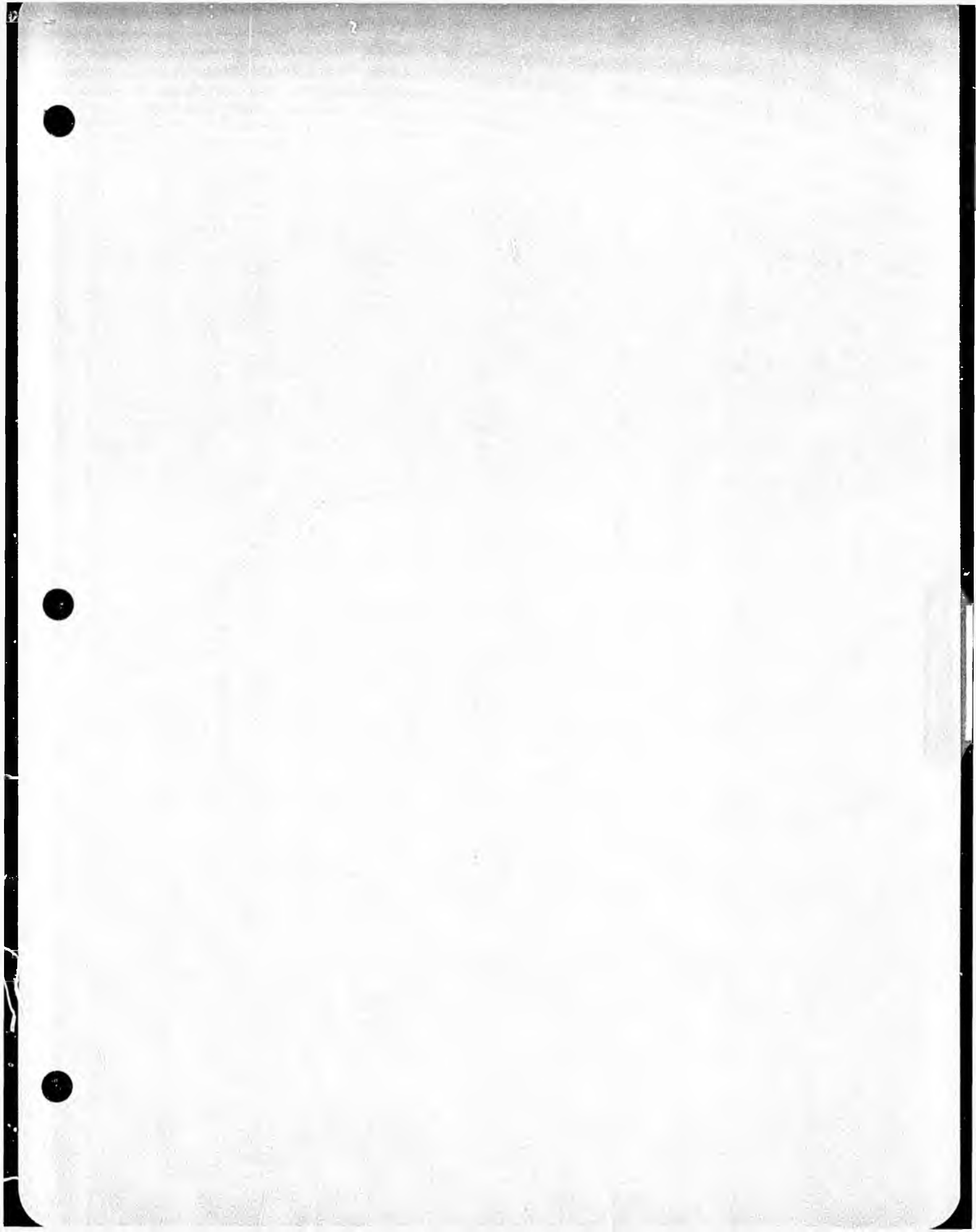
revenue, including, for example, natural resources revenues. See May 2, 1975, Opp. A.G. It is not at all clear whether revenues of an independent public authority would be covered by Article IX, Section 7, or whether application of railroad revenues to railroad expenses would constitute a prohibited dedication. It seems doubtful that this constitutional provision would apply to railroad revenues, but it is an issue that is worthy of further investigation by the Attorney General's office. The railroad might also be able to fall within the "federal program" exception if the transfer legislation is drafted so as to require the use of railroad revenues for railroad expenses.

Sections 8 & 11. Section 8 of Article IX allows State debt to be incurred only for the purpose of capital improvement and only with voter approval. Section 11, however, exempts the bonds of public authorities whose debts are not State debts from the requirements of Section 8. If the railroad's debts are, by law, not the debts of the State, the railroad would not be subject to the requirements of Section 8.

3. Other Limitations.

Article XII, § 6. Article XII, Section 6 directs the Legislature to establish a merit system for State employees. It is not clear whether the constitution requires that the merit system cover employees of independent public authorities. The present merit system, A.S. 39.25.010 et seq., contains a number of exemptions (including employees of the Gas Pipeline Financing

Authority and unionized members of ferry crews); presumably
railroad employees could be similarly exempted.



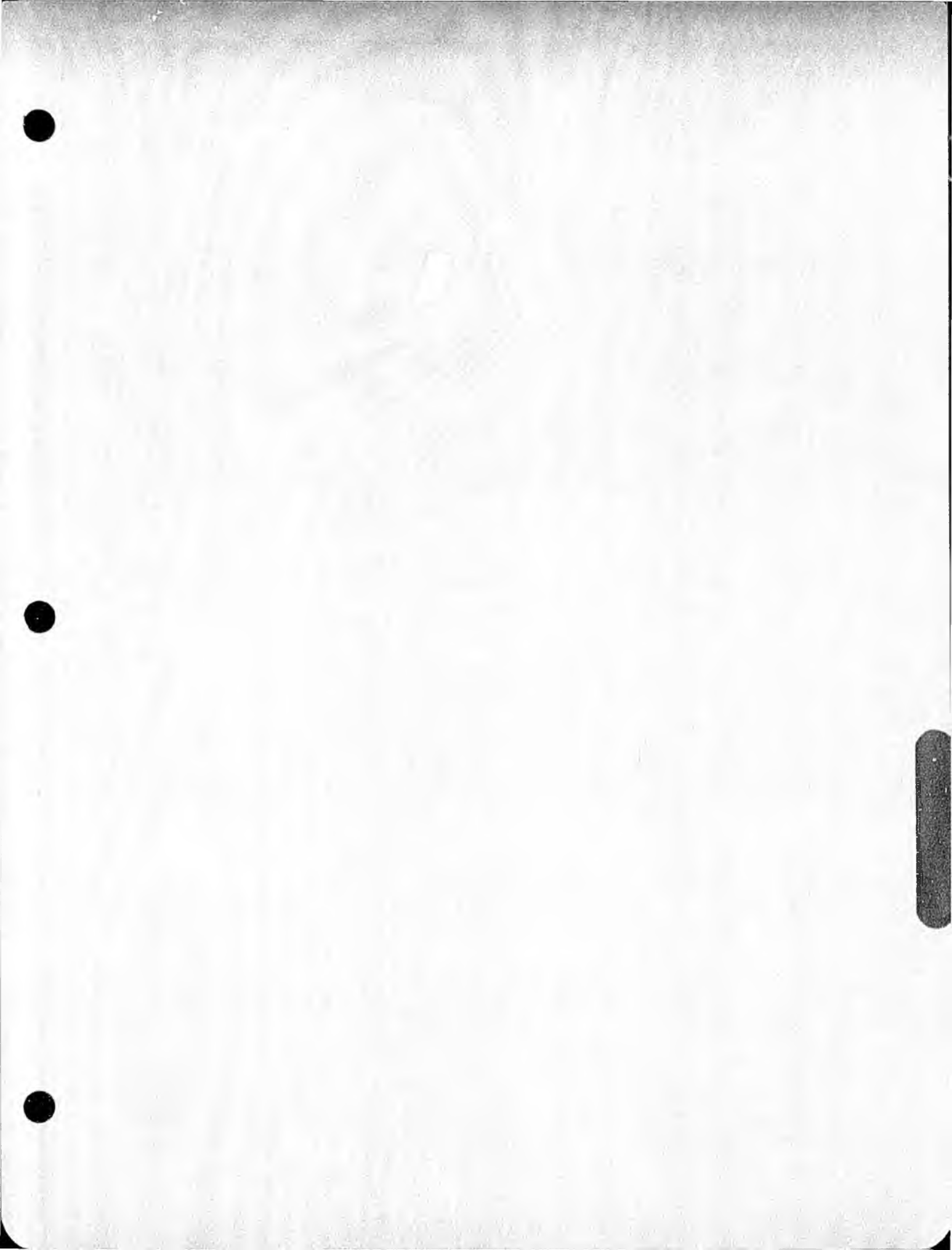
4.3. Assumptions and Criteria for a State Railroad Organization

In evaluating the organizational alternatives for a state-owned and/or state-operated railroad, the following assumptions are made for consideration of the Alaska decision makers:

1. The Alaska Railroad is to be transferred to the State of Alaska without direct compensation of the federal government, but with indirect costs to the state for existing liabilities and any requirements for capital investments.
2. The State of Alaska wishes to operate the railroad in the most efficient manner minimizing the cost to the taxpayers of the state.
3. The Alaska Railroad is an important element of the state's transportation system, and any state investments relating to transportation will be made with full recognition of the importance and intermodal nature of the railroad.
4. The Alaska Railroad can and will be responsive to changing needs and opportunities for transportation services.
5. The railroad revenues are to be used to provide essential rail service, maintain and 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 to include adequate service frequency, an adequate number of cars, appropriate car types, and the like.
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.

After reviewing the limitations of the Alaska Railroad as a federal agency, it seems appropriate to set forth certain criteria for the state railroad organization. The establishment of 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 and access to public and private capital funds.
2. Management freedom for the railroad's operational decisions within established policies.
3. Clear-cut lines of management responsibility and accountability for decisions which are made.
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.



Meeting of the Alaska Railroad Transfer Advisory Commission
December 15, 1982 - Anchorage, Alaska

Commission members present:

Al Swalling, Chairman
John Bates, representing the Commissioner of Transportation
John Kelsey, Vice Chairman
Senator Jay Kerttula
Jim O'Sullivan

Commission members absent:

Beverly Dunham
Rep. Bette Cato

Also in attendance:

Dr. David Olson, University of Washington
Captain Merle Adlum, Port of Seattle
Yale Lewis and Gerry Johnson of Wickwire, Lewis, Goldmark and Schorr
Steve Soenksen, House Transportations Committee Staff

Other legislators present:

Mike Szymanski
Joe Flood
Walter Furnace
Mitch Abood

Chairman Swalling introduced Dr. David Olson, Professor of Political Science from the University of Washington.

Dr. Olson: I'm pleased to be here today. It was just a short month ago when Captain Adlum and I came up and shared some thoughts and observations and experiences about this kind of an organization called a public authority and I'm pleased to come back again and to share some of those same thoughts and some additional thoughts. I realize that the meat of this session is to turn to Senate Bill 212 and review it in some detail. I will try to be as brief as I can but at the same time try to accomplish the purposes I've come for.

Let me just say a couple words about myself and how I came to the area of research on public authorities. About five years ago I had completed writing my fifth book and all the prior research had dealt with what I considered to be failed institutions of government in this society. Whether it was looking at the atrophy of political parties, the demise of participation through voting or bureaucratic operations at the national level. Each of the books focused on a set of institutions that fundamentally failed to accomplish the kinds of purposes that were mandated to them. I turned and wanted to look at a set of institutions that worked, to understand how they were organized, why they were organized, the way in which they were organized, and how they performed. My immediate focus was on ports as public authorities. All seaports handling general cargo in this country are publicly owned and most of them are organized as public authorities. So what I have to say today is based upon the empirical record of the performance of ports as public

enterprise, public authorities, but in the recent period, the last year and a half, I've turned to look more broadly at public authorities. So my purpose today is to offer some observations on how public authorities are designed across the country and how they are organized in the lower 48 states and what differences it makes, what kinds of consequences are forthcoming about how they're organized.

I've attended a number of sessions like this including your own a month ago and one of the problems that I've seen in those sessions is that they tend to be either too narrow or too broad. Too narrow in the sense of focusing exclusively on the kinds of budget systems that are attached to public authorities, the accounting methods, the audit type, the methods of depreciations, and in a sense, losing the forest for the trees, looking at the (indesc) and not appreciating the larger theoretical questions that are involved the organizing of public authorities.

A second kind of problem is of the opposite, which is to say, to get hung up on the very general questions that can stimulate a good deal of emotion and precious little reflection. Most often this turns on the question of public vs. private ownership of commercial firms, commercial activities, and the resolution to that question often turns on the ideological bias the values of those who make the argument about public or private ownership. I want to turn to halfway house between the minutiae and the very vague and general questions and look at the question of organization of institutional design with respect to public authorities. First, let me put public authorities in the context of their place in American society by comparing them to what we are familiar with. One point of comparison is with the traditional private firm that is organized with stockholders as the ultimate decisional body who in turn choose a board of directors who in turn choose chief executive officers who hires management, who hires employees. Public authorities have several things in common with the traditional private firm both organizationally and in a larger sense in what they do. The most decided point of commonality between the two is that they exist in commercial marketplaces so that the public authorities is partly related to commercial marketplaces not unlike the private firm. Second point of comparison is with the traditional, the familiar governmental agency or department, where instead of stockholders are the ultimate decisional body who elect officials who in turn appoint administrators, who hire employees. What public authorities have in common with the traditional governmental agency is their public ownership. So that a public authority is essentially a hybrid between the private firm and the traditional governmental agency. They draw part of their existence from the private firm model to the extent that they are commercial enterprises that operate in competitive marketplaces. They draw a part of their existence from the traditional governmental department in the sense they are publicly owned and controlled. The essence of the public authority is this unique hybrid combination of public ownership and control with market orientation of the public firm.

So, we'll begin with the first order of question. Is a commercial activity going to be privately owned or publicly owned. I take it with respect to the Alaskan railroad, and I suspect we'll get into this later

on in the day, that the decision has largely been taken to organize it as a publicly owned entity not unlike its current existence that the private firm is basically uninterested in picking up or operating the Alaskan Railroad. And conversations with the Chairman of the Alaskan Railroad Advisory Committee, it appears to me that there simply is not that option available. So the first question is settled between public vs. private ownership which gives rise to a second question.

If public, does one follow the traditional governmental department as a means of organizing this commercial entity or creation of public authority. Senate Bill 212 essentially says that it will be organized as a public authority and there are consequences of that that I want to develop in a moment but let me regress for one moment at this point. I have rarely experienced the kind of emotional reactions to governmental institutions as is provoked by the creation of public authorities. That there is such deeply engrained entrepreneurial spirit and private marketplace belief system in this country that the very mention of public authority raises fears about something unamerican, something so totally unique, so totally unheard of in the American experience that it ought not be entertained as an option. My digression is historical in the first instance. Prerevolutionary war, many of our country's transportation institutions were organized as public authorities. The King's highway, the post roads. In 1776, the Declaration of Independence but a remarkable line was written by Adam Smith, the Wealth of Nations, the intellectual godfather of conservatism in America. Smith argued in one portion in that book that public authorities were one of the three functions of the sovereign. To Smith the sovereign had the obligation of national defense, protecting the country from external aggression; had the obligation of internal police force, protecting individuals from their brothers; and the third function was the creation of public authorities and he specifically mentioned transportation and education as the arenas that fit his criteria where profit does not repay the expenses or where it is so marginal that the private firm will not enter to invest or to operate a commercial set of activities. This from the intellectual godfather of conservatism in America. Beginning with the country's history and its origins, most of the transportation institutions were organized as public authorities whether it was harbors, water ways, the post roads, the highways that penetrated to the west through Appalachian such that if one takes a careful look at the role public authorities in America's history at the early period, I had characterized them as American as apple pie and I think that historical record stands.

What of their evolution and development over time? They have continued to proliferate in number, in size, and in the share of the markets in which they exist over the two hundred years of the country's history. They have been created during historically specific time periods such as the great wars, World War I and II, so a mass of expansion of public authorities at the national level. They have also been expanded dramatically during periods of economic depression. The 1930's saw a proliferation of post public authorities. They also have been created in response to specific political reform movements the great reform movement at the turn of the century held as one of planks in its campaign to

reconstitute the economic order of the society. The creation of public authorities.

Allow me to spend one minute on one such institution on which you will hear more detail about from Captain Adlum who is not only commissioner of the Port of Seattle but has in the last year and a half achieved the status of the most tenured commissioner in the history of the existence of the Port of Seattle and can talk with a degree of detail about that public authority. Seattle wanted the Transcontinental Rail line to locate at its harbor. It meant a great deal to the city building process in the last quarter of the nineteenth century. It literally gave a way to James J. Hill and the great Northern, a monopoly over its waterfront. The Great Northern which eventually did come to Seattle organized and controlled the waterfront. It began to practice not unlike monopolies elsewhere, monopolistic abuse through differential rate structures, to its competitors or outright prohibition of the transport of goods across its lines from competing interests in institutions in the midwest. That gave rise to the great reform movement in Seattle where literally seven to eight thousand people would gather downtown and agitate for passage of a public authority for the organizing of port district in the harbor so as to break monopolistic abuse in this natural monopoly area. The legislature passed in 1911 and the volume of trade that occurred across that waterfront increased significantly in the period of public organization of the harbor through the Port of Seattle. We may want to talk about the current period in more detail as we get into this session. But the first point I want to make here is that it is simply indefensible to say that public authorities are not a central part of the political economy of the United States or that they have not been a central part over the history of the country.

Allow me to turn to what I consider to be core question. In the state that you're at, if you make a decision on public ownership as opposed to private, if you go the route of public authority rather than traditional governmental department. The key issue, I think, is whether or not public authorities can effectively combine the hybrid qualities of public ownership on one hand and commercial orientation on the other. Put it in different terms. Commercial orientation, marketplace orientation, deals with the question of efficiency. Can a publicly owned commercial firm act in an efficient fashion. The conventional wisdom is no. Efficiency is incompatible with governmental ownership and control of commercial organizations. I'm going to argue that it depends on how that entity is organized. The inducements that are offered to management be competitive and efficient and the way in which the organization relates to the marketplace within which it exists. On the other side of the coin is whether or not public authorities can also be held publicly accountable. Now we enter the great debate. Efficiency and accountability are usually posed as antithetical one to the other. You can't have an efficient market oriented entity in a commercial marketplace that at the same time is accountable or controlled by the political system or by the public. They are usually posed as inversed to one another such that if you maximize efficiency you decrease accountability; if you maximize accountability, you decrease efficiency.

The unique quality of public authorities is the attempt to combine those two principles of maximizing efficiency at the same time as maximizing accountability. The way in which that is done is largely related to the nature of the organization that is created within the commercial marketplace within which it exists. The inducements to management, the reward structure to management to operate in an efficiency manner in the first instance that is to say they have to be given a degree of flexibility, a degree of ability to adapt to market forces and to behave in business-like manner without the consistent and direct intervention into management decisions by the political system. At the same time as those entities have to be made accountable by state oversight, by policy direction, that does not intervene in the day to day management decisions that must be taken within the commercial marketplaces that the public authority exists within.

Let me turn to the question of organization. Across the lower 48; one of the curious things is there is a great deal of diversity in the organization of public authorities. That organization, at times, works against either efficiency or accountability. Allow me to get specific with an instance.

The Port of San Francisco was organized as a public authority in 1856. From that point through to the first third of the 20th century, the Port of San Francisco was the dominant port in California. Its organization was not within the city of San Francisco or the San Francisco bay area but the entire state of California. With the development of harbor facilities in San Pedro Bay, Los Angeles, and Long Beach, when the old bond issues were put to public vote, the competitive character of Southern Californians was such as to vote against any GO bond that was floated by the Port of San Francisco because it worked to the disadvantage of Long Beach and Los Angeles so that over time the organizational form came back to haunt the Port of San Francisco and its origins of statewide organization was appropriate. It developed the capital that was needed for the development of the Port of San Francisco, but into the 20th Century when L.A. and Long Beach began to operate harbor facilities, Southern Californians simply voted against any issue that would advantage San Francisco or Southern California. (indesc) the Port of San Francisco to literally be beaten in the competition for cargo by Oakland and by its cousin ports to the south, Long Beach and Los Angeles. It's not until 1978 that the state of California finally relinquishes control of the Port of San Francisco and gives it back to the city of San Francisco and it's not just coincidental that at that point the port of San Francisco turns it's first profit in 20 years because there was a disincentive to profitability or to efficiency as long as it was organized on a statewide basis because all excess revenues went to the state of California.

Here is a classic example of an organizational design that was not appropriate to the commercial character of that port. The decentralized mode that currently gives expression to its organization is much more appropriate and the results are predictable and are a matter of public record that the port of San Francisco is simply more efficient and more accountable under its current organization.

Let me look at two areas of the internal organization of public authorities. One is the relationship between the commission, the policy board and management. Last time up I characterized that relationship as inherent abrasive. Commissioners have a tendency to dip down into the organization in management decisions on a day to day basis and vice versa. Management has an inherent tendency to not carry out policy but to set policy. The relationship between commission and management is necessarily a war zone and within that war zone battles are waged where commissioners who are suppose to set policy and allow management to carry out tend to want to carry out the policies that they set and where management that is charged with the responsibility to carry out policy tends to attempt to set policy as well. The trick organizationally is to create a designed institution that mandates policy setting to the policy board and constrains the policy boards tendency to wanting to manage the firm and that sets management the charge of administering the policy and not setting those policies. Captain Adlum will discuss one institutional device that the Port of Seattle has developed. It is a statement of that port's purposes and objectives that singles out what the goals of the organization are. The maximization of the (indesc) of commerce, water and air, based on the commerce through the port district. Secondly it sets out the policy board's role of what the board can and can't do within the Port of Seattle. Thirdly, it mandates the managerial function and gives a reward structure for appropriate performance, for efficient performance, and a set of non rewards for inefficient performance. That is one way in which the war zone can be clarified and where at least constraints can be placed on commissioners from not trying to manage the day to day operations of the firms and constraints on executive and management from not trying to set policy. The second area that I would characterize as the twilight zone is the relationship between the public authority and its parental government, its sponsoring government. In the case of the Port of Seattle the parental government is the state legislature. The parental government is simply that agency of the government that gives rise to, that spawns, that creates the public authority. Anything they create they can abolish. Anything they create they can also give policy and direction to. The twilight zone concept is intended to say we know very little of the relationship between the parental government and its creature, the public authority. The greatest abuses in the twilight zone is where the public authority does not follow the policy direction that is mandated by the parental government. There is an equal tendency to ere where the parental government attempts to dip directly into the organization and to set its day to day management on a (indesc) basis. This is a very fine line that we are trying to draw in the twilight zone between the giving of policy direction and the holding of accountability from the public authority to its parental government on the one hand and a sufficient degree of flexibility, autonomy, on the part of the public authority to do what it is mandated to do and to be held responsible through periodic checks on its performance. Let me conclude my observations with this comment. The tradeoffs that are traditionally attributed to efficiency as against accountability need not be a necessary, inevitable relationship. Public authorities have proven themselves to be simutaneously accountable and highly efficient. Part of my analysis of those public authorities that do that, that are able

to accomplish that is the way in which they have worked out relationship the management and executive and the policy board in the war zone, and on the other hand, the relationship between the entity, the public authority, and its parental government. I presume that that is part in parcel of what we are all here for today in looking at the bill in some detail and I look forward to joining you in that exercise. Thank you for your attention.

Chairman Swalling thanked Dr. Olson and introduced Captain Merle Adlum.

Last time we were up we did point out and we are kind of doing it in reverse this time but these ports and public ports have had some great successes; however, each and everyone that has the successes some real downfalls. The Port of Seattle when started in 1911 officially rose up to the Great Depression to be the second largest port in the U.S. second only to New York and went downhill and downhill. There was a spurt of business of course during WW II, mostly due to the military and then it went downhill again following WW II and was in one the worst doldrums in its history until the early sixties. During the early sixties it was so bad that one of our leading TV stations did an hour long documentary called "The Lost Cargo". And it showed all of our empty warehouses and the doors falling off of them. The people started to ask why? "The Lost Cargo" did get their attention, they looked to the then port commission and found that they didn't have the leadership that they thought they should have. That commission hadn't hired the managerial personnel that it took to do this work and there were even some investigations as to the propriety of how it was being run. This all led to as I remember (indesc) Alan Hamilton report which was commissioned and a study was done of the whole system. Out of that (indesc) Alan Hamilton report I think was a real turn around point again for the Port of Seattle. Amongst the other things that happened, a commission was expanded from three to five. They were elected by the people of King County and that was even expanded to where they were elected at-large rather than by districts so that they were there to represent all of the port and not some special purpose of the port. They did go out and hire a new management. They let that management hire his department heads and they did everything they possibly they could. Early after the (indesc) Alan Hamilton report they did come up with a document called "Purposes and Objectives." I believe the first one was in 1966 and was done by one of the commissioners and adopted by the rest of them. We lived with that until about 1973 and found out we still some abuses so redid that and then feeling that this had worked so well in 1980 we commissioned a committee very broadly representative, the League of Women Voters, people from the city council, the county council, the state legislature, industry and we really redid that and what I think we have now is an optimum of how a commission should operate a public utility and how they should direct the management of it and leave the management to the people that they hired to do it. This, I am happy to say now at least turning this 19th year I finished, I guess, next week I was appointed 19 years ago to fill a vacancy and has now put me in the longest tenure of anybody there. I think my whole life has been in transportation. I started coming up here to Alaska, and a great deal of it has been with Alaska, about 40 years ago. But the thing that we have seen as being real important had not been just the decision of hiring

management, you've got to go out and find out what your port is capable of doing. And we got a long ways from the waterfront from the Port of Seattle. One of the things we recognized early on is that the Panama Canal was having real troubles. And after WW II the ships are getting bigger and bigger. So we started developing and working with the railroads, what we called the mini land bridge and the land bridge and we just plain by passed the Panama Canal. We installed equipment to meet the newer and faster vessels across the Pacific ocean now as fast as six days. We couldn't even get the material from Yokohama to Seattle in time by courier, so we installed a satellite system. Now all our material comes by satellite right to our computer room where all the bill of lading are done so that when that vessel arrives we know which boxes are going by unit train across the country or going by truck or what ever else goes with it. So it becomes a very highly complex thing, where one port even enters into trucking agreements so that we can stay competitive with other ports on the pacific coast. This is an ongoing thing that we are trying to learn what is the best that your port can accomplish. We now rank number one on the pacific coast and number two in the nation, number five in the world. We enjoyed a triport seminar last month in Rotterdam with our sister city of Rotterdam and Copenhagen, two of the largest container ports in the world. There we shared experience of how we can build better and better mousetraps to beat our competition, Rotterdam has its competitor right next door in Amsterdam and we have a little place called Tacoma to the south of us, that spends all of its time not looking for business but how it might steal ours. So there always problems that have to be met. Some can be met by regionalization. Back on the east coast, the New York Port Authority which is now in existence was previously made up of several small ports both in the State of NY and in New Jersey. They not only combined all of their ports in the state into one but the two states joined together, they have what is known as the 51st state and the New York Port Authority handles just about as much money as any state in the Union and a lot more than some of the others. So there are a lot of problems in this and what we are trying to do is come up here and hope we can share with you how we solved some of our problems as they arose. When I first came on the port commission we didn't have contracts with labor unions. But we resolved satisfactorily and to my knowledge we have never been tied up a minute since we did that, we were tied up several times. If we can be of any help in any way sharing this experience with you and passing it on, because we look at Alaska from our region as our number one customer. You still produce for us about 27% of our business so we are just more than happy to help in any way we can. Thank you.

Chairman Swalling: Thank you Captain Adlum. Early on in one of our very first meetings of the commission we tried to narrow our goals. One of our decisions was that this commission had no business or status in Washington, D.C. in watching the progress of the bill that would turn this entity over to the state. Our commission was narrowed when and if we get it, how will be will run it. However, we are all interested in what's happening there. Steve Soenkson from Rep. Cato's office has just returned from Washington. He has kindly consented to bring us a brief update of the status of the legislation and he might even care to make a prediction.

Steve Soenkson: I've never liked trying to forecast weather and I don't think I'll make a straight prediction on the railroad here either. To give you a little background on myself, I'm staff assistant to the House Transportation Committee and I work for Representative Cato on a variety of transportation issues and I worked with SB 212 when it was in the House Transportation Committee and I've been working with federal legislation also back in Washington. In Washington, I've worked with David Rogers of the Senate Advisory Council, Mark Hickey with state DOT and more recently with Dave Walsh for the Sheffield administration. We have also been assisted by Tom Allison who is seated in the back of the room. He is with the Federal Railroad Administration assisting on the transfer and getting information together on the state level and also in Washington, D.C. Our role has been to help gather information to legislators and to work with the Congressional delegation in Washington on the transfer. In general do research and analysis on the issues relating to the transfer. Were we're at right now, the transfer legislation is on a siding, it's on hold at this time. As many of you have heard and has been printed in the media, Sen. Howard Metzenbaum from Ohio has a hold on the bill at this time preventing floor action. Discussions are preceding with him and with other Senate members at this time on the legislation and its hoped that that legislation can be brought up before the conclusion of the lame duck session. The lame duck session was originally scheduled to be completed by the end of this week, but I've heard that that has been extended at least through next week and there is also the possibility that the session will be continued after the Christmas holidays. Time is very important on this. We are getting close and down to the wire but we should know in the next few weeks how its going to come out. As far as the legislation itself, its in content and the objections to the legislation remain the same through all these discussions. There have been quite a few discussions with the House Interior Committee which has particular interest in the legislation now. The House and Senate Commerce Committee in the Congress that have been working with the bill all the way through and those kind of discussions are proceeding also. The legislation is on hold and if time can work with us for a change we will have a federal railroad transfer bill.

Chairman Swalling: Thank you Steve. Tom, I didn't see you come in. Do you have anything you care to add to Mr. Soenkson's remarks?

Tom Allison, FRA: No I really don't have anything additional. I think Steve did a good job. The primary problem that he alluded to which is time. There may not be time in the lame duck session to pass the transfer bill but there is some chance. We won't know the answer to that for at least a week or more. I can tell you from the view of the Federal Railroad Administration if passage in the lame duck session is not successful that certainly our goals of transferring the railroad to the state do not change by the fact that we are getting a new Congress in January. Certainly will be pursued at that time. The problem that we are facing now (indesc) the ability of even one member to hold up the legislation. The time encumbrances will not be present so we will not be present so we will continue working on the transfer of this railroad to (indesc - end of tape).

BREAK

Copies of SB 212 were passed out to each table during the break. Chairman Swalling introduced Yale Lewis of Wickwire, Lewis, Goldmark and Schorr of Seattle.

Yale Lewis: First of all, its a pleasure for Mr. Johnson and I to be here. This is a project that we have ex-craordinarily interesting. My firm, though it is a Seattle firm, has been involved in legal matters in the State of Alaska for a long and its a pleasure to be able to offer assistance in something that we think is so important to the state. Let me give you a little bit of background on the two of us. Then I'd like to explain how this bill was developed. The procedural processes that led up to this bill and what we were asked to do and how we attempted to do it. First of all, I graduated from college in 1962, in economics and went into the Navy for four years where I was a submarine officer worked for Southern Railroad, then went to law school, came out to the pacific northwest, worked for a federal judge in Oregon for a year then began practice in Seattle. My principle areas of interest have been advising various groups of people, either public or private who wanted to undertake some new project or convert some project offering advice on various ways to structure the new entity. Sometimes our recommendations are that it should be for profit, sometimes it should be a governmental agency and sometimes a public authority. We have had significant involvement in railroad law over the past 3 or 4 years as well as public land law. Gerry Johnson and I were involved in the Milwaukee Railroad Restructuring Act in which we were retained in that case to represent the State of Montana which was interested in trying to preserve the Milwaukee Railroad lines across the western states. We were involved in the Staggers Rail Act and appeared in a number of ICC rate regulatory processes. I am a practitioner before the Interstate Commerce Commission. Mr. Johnson, prior to coming to our firm was first legislative then administrative assistant to former Sen. Magnusson. He also in his further experience worked with private developers in Seattle and worked as a legislative aid to the Seattle City Council. We represent seven or eight public authorities in the State of Washington and we are currently advising the City of Seattle, the City of Olympia and the City of Tacoma in possible tax syndications of a variety public buildings and ways in which the public entities in cooperation with the private sector can get some new capital for their capital projects and at the same time blend with the private sector and pass to the private sector certain tax advantages that public bodies can't take advantage of. Often they end up looking for something like a public authority for the railroad that you are considering here. We were first contacted in late spring of 1981 when the attorney general called and said that 6 firms were being contacted that had railroad expertise and asked if they would be interested in representing the State in this particular process. We said that we were extremely interested. We submitted resumes' and there were interviews and we were ultimately selected by the attorney general to represent the Department of Transportation. So from the beginning there was some ambiguity as to who our particular client would be. We were advised that there were a number of strong interest groups in the state that had very strong interest and feelings about the subject and we were warned of that. Subsequently we worked with a three person policy

committee, the attorney general, Jessie Dodson of the Governor's office and the Commissioner of Transportation. They had an additional staff with whom we worked, but the three of them made policy through the first year or so. When the legislative session began last year we were sort of loaned or turned over to the legislature and began working with the legislative leadership. So from a traditional lawyer-client perspective our client throughout this has been the Department of Law, the Department of Transportation, the Governor and the Legislature. As you all know, all of those entities don't necessarily see the same way on anything and there was a lot of disagreement among them on particular issues of this bill. We tried to handle this by simply pointing out the questions that had to be answered, trying to advise on the consequences and having somebody else fill in the blank. Often the blank was filled in daily, different ways. We have a stack of drafts of the legislation about like this (hand two feet off table). If one were interested, one could go back and see the alternatives that were rejected along the way along with some notation as to how they ended up being the way they are now. We were asked to advise the State, first of all on the entity, on the issues that had to be answered and assist in the drafting of the state legislation assist in the draft of the federal legislation and attempt to make them consistent. The other thing that would be helpful in a general way is to share with you the policy of that committee, the Governor, the attorney general and the Commissioner of Transportation. There were ten of them:

- (1) The State should be insulated from legal and financial liability for the railroad's tort, contractual and debt obligations and liabilities.
- (2) The State itself, as distinguished from the railroad, should be insulated from Interstate Commerce Commission jurisdiction and regulation. What that meant is that the railroad entity was to be set up in such way that there would be an independent entity to be regulated by the ICC so that the ICC didn't get an opportunity or be required to review all the State undertakings as it would have if the State itself were the railroad operator.
- (3) The railroad entity should have an independent capacity to obtain tax exempt finance.
- (4) The State operating subsidies to the railroad should be precluded.
- (5) The State should have the ability to enter into service contracts with the railroad. The State should also be able to invest in capital improvements for the railroads facilities and rolling stock, and for track expansion and major rehabilitation. If you notice, the distinction was made between state involvement in operating subsidies and state involvement in major capital expansions, rehabilitation programs.
- (6) The railroad should provide the best possible combination of high quality and low cost transportation.
- (7) Railroad operation should be insulated from political pressure generated by the railroads competitors, suppliers, shippers, lessees, lessors, and of course from the state legislature itself.
- (8) The railroad should be subject to state oversight and intervention only on narrow, specific areas. One, to prevent insolvency. Two, to insure continued service. Three, to require or preclude expansion or substantially change service levels. Four, to prevent borrowing debt that can endanger the state's borrowing capacity.

(9) Transfer of the railroad should be accomplished in a manner that would cause the least possible disruption to the state employee pay, benefits and retirement system.

(10) The relationship between the state and railroad must conform to the state constitution.

As we began on the first part, the first thing we were asked to do was to advise this policy committee on the substantive issues and decisions that would have to be made by the state as it made a decision on how to set up and operate the railroad. In that context we reviewed first the draft Senate bill that had been introduced the previous session by Senator Kerttula. We were given and reviewed carefully something called the Statewide Rail Systems Study which was commissioned by the State. We referred to it as Bivens I, Mr. Bivens and John Gray of the University of Alaska worked on that for the State. They did a subsequent that we referred to as Bivens II. The third was a document entitled "An Assessment of the Alaska Railroad Ownership and Operational Alternatives" which was published in July of 1981. A study had been arranged for a commission by the state legislature called "Alaska Public Corporations: A Framework for Assessment". Those were the principle documents and we relied upon for our subsequent work. We obviously looked at scores of other articles we have. We have bibliography that I would be happy to share with anyone who is interested in that much detail. The way we then broke up the area that needed to be the subject matter area into five broad subject matter areas. The first one was land and property issues. Obviously the most important thing that was going to be transferred was land with improvements and personal property, typewriters, rolling stock, locomotives. The property would be encumbered by leases there would be options and all of that type of thing and we were asked to advise on how the state could figure out what it was getting from the federal government and how the state should deal with that broad category called property once the state got it. The second broad issue was the regulatory issues. What would be the regulatory framework for the railroad once it was transferred to the state. Would it make a difference what form it was organized under? Would that effect the regulatory issues and climate? There were broad employee issues running from simple things like transfer of personnel, of records, issues involving labor unions, the right to organized, the right to strike, personnel systems, pensions, profit sharing, the whole works. There were tax issues, those state, federal, local issues. How would the form of organization effect the entities tax status under various local, and state and federal tax laws. And last, the simple entity issues. So there were five broad areas. We divided the work product into those five areas and comparing lists of questions that needed to be answered without any regard to what the answer should be and began working with the state staff with the policy committee. We drafted preliminary memoranda that identified the issues and the consequences of various decisions. The draft memoranda were then circulated and reviewed with a variety of state departments, the Attorney General's office, the Governor's office, the Department of Transportation, railroad management, railroad employees where appropriate and various interest groups in the state that we were directed to consult with. During the course of the consultation various people met with and received comments from the State Chamber of Commerce, Fairbanks,

Anchorage Chambers of Commerce, Commonwealth North, Resource Development Council, Railroad management and leadership of various unions that operated on the railroad property. I think that is it in a general way. We are prepared to do now is go through the bill after to responding to questions that might be asked now. Chairman said that there might some people that simply wanted to get answers to specific questions then leave. We will answer these as well as we can now. At the conclusion of that I thought we might go through the bill on a section by section basis. Mr. Johnson and I will alternate going through the bill trying to identify the critical issues and explaining how they came to be. Some of them we as lawyers had opinions on that we thought that there were very significant consequences and we advised the people we were working with in those instances. Most of them we simply identified issues, question marks and did not supply the answers ourselves. We have some recollection of how the answers came to be or the rationale for them. There were lots of them that we would be indifferent to in the sense of offering advice. How much should commissioners get? That was simply a blank. How many commissioners should there be? 3? 5? 15? Who should be the composition of the commissioners? There were issues such as the separation of power concern between the governor and the legislature. We were very sensitive to those and basically tried not to take an issue on those. We were representing both the executive and the attorney general and we were cognizant there was a dispute and we made an effort not to characterize answers that would appear to weight that overall struggle that has been going on here ever since statehood. There are some issues such as the appointment power of the governor, the relationship between the governor and the legislature to initiate action that we can simply identify to you as issues and explain why they were solved the way they were. There were other issues involving tax consequences and regulatory consequences that we had more precise legal judgments about.

With that introduction. I'll turn this back over to the Chairman.

Chairman Swalling: Is there anybody in attendance, who has read the bill and who has a specific question that they would like to address to Mr. Lewis?

Jim Harla, Anchorage Chamber of Commerce: Thank you very much for coming to the State of Alaska. I think your comments have very informative and provide some background information that we have not had at least from our viewpoint. My question is: What thoughts or discussions went on with regard to placing the railroad into private ownership, either initially, or midterm or long term?

Lewis: That issue was constantly if not on the center of the table lurking in the background and was reviewed constantly. When we started we were going to do a analysis of all three alternatives, a full blown analysis of all the consequences of all the different consequences of the three different forms of organization, a line agency, private ownership or public authority. However, we were asked, because of the press of time to concentrate first on the public authority alternative, in part because that was the conclusion reached by each of the predecessor studies I mentioned, Statewide Rail Systems Study, Bivens I and II, and the Assessment of the Alaska Railroad Ownership and Operational

Alternatives. It was I think perceived by the people we were advising as an open question but that the most likely conclusion would be a public authority and so we were directed after some initial discussion to focus on that one first with the understanding that if time permitted we might be asked to go back and do the same type of analysis on either of the other two alternatives. My impression from listening to discussions however, was that the concensus of the people we were working with seemed to be that simply in the short period of time was not that the most likely alternative would not be private ownership at least at the outset. The state bill does not in any way preclude private ownership. In fact there is a specific provision for private operation. It is very short in terms of the amount of language devoted to it but it clearly provide without any additional legislation the alternative for private operation. I think that the decision was that if the railroad and all its property were actually going to be divested by the state, that the legislature itself should make that decision. The state bill that's before you gives the commission or the railroad authority the legal power, without going back to the legislature to contract with the private sector for operation and management but it would not permit the railroad authority to commission itself to divest the state that property without going back to the legislature. My impression again was that there was no sentiment either in the legislative or executive branches for giving the railroad authority the right to divest the state of the property without putting that issue back to the legislature. So the distinction was made with this bill between private operation and private ownership. The legislature reserved unto itself the issue of ownership. Mr. Johnson has pointed out the federal bill also conditions the transfer that it be operated by the state and those provisions change. One of the things unfortunately, that has happened, is when somebody in the state says that this railroad could make x-hundred million dollars and be very profitable then congressional people from other states say 'if the railroad is so profitable then the federal government is not going to give it to the state of Alaska but will sell it'. The Congressional debate to some extent goes the opposite direction from comments made here. The bill as of the end of the day yesterday, though had a restriction on ownership and required that the state operate it for at least five years.

Harle: Thank you for your comments. I have one other general type question. In general, some of the discussion of what we refer to as the old Senate Bill 212, the nominal 55 page or so version, much of the justification for its length has been that most of the statements in that legislation are required by law. Would you comment on that statement and maybe explain your feelings on how much of bill is required by law?

Lewis: I'm sure what the statement "required by law" means. I think the state could in fact simply set up a commission, turn the railroad over to it and conclude. And that would be a lawful piece of legislation. Maybe what you're referring to is there are issues that have to be answered. They can be answered either in lawsuits or by the legislature.

Harle: What I'm referring to is that due to the fact that the railroad would be either a public corporation or some subsidiary of the legislature. Due to that fact, that there are certain requirements of law to protect its operation, to manage its affairs.

Lewis: I think I understand what you mean. If it were going to be turned over to the private sector, it could be just sold. There could be a bill that said that we will sell the railroad at public auction. That is all the legislature would have to say. Then the way that the private entity would be operated would be effected by all the other millions of laws that affect the private sector operation. If it is going to be a state owned railroad, state owned property, then as a public agency there are a whole raft of other pieces of legislation that affect it. At that point if this legislation doesn't deal with specific issues then people will turn to the laws that affect the state in general. For example, this bill exempts much of the railroad's operation from the state's Administrative Procedures Act. And in its place, it attempts to draft a less restrictive and shorter provisions. The bill could have simply referred to the Admin. Procedure Act and this bill would have been very short. But then the whole of the Admin. Proc. Act would have replaced that which is here. The same way with conflict of interest, with constitutional provisions. Your constitution is very short. It talks about the number of departments that can exist in the state and the agencies have to be in one or the other and there are a number of state supreme court decisions and a lot of litigation dealing with that. We tried to take all of the things that we knew had to be answered, either by this legislation or by the existing legislation and tried to ask the policy committee how they wanted those questions answered. If they said "we are quite content with the existing state law" on conflict of interest, public disclosure, or open meetings or Administrative Procedure Act, or those kinds of things, then this bill simply adopts those. Where the decision was made that the existing state purchasing, bidding laws were too restrictive for the railroad then we attempted to draft less restrictive provisions and put them here so that there would not be any doubt about when somebody came in said all public agencies have to bid and rather than leave that open for a lawsuit we tried to deal with those particular things here. That's an example. The public open meetings act is where we should air those kind of things. I'm sure we left some out which the local lawyers of this state will be delighted to find out. There will actually be litigation about this but we tried on the basis of our experience to go through and have the legislature specifically answer everything that is normally litigated about. One, we also, and I have a copy here, in the course of preparing this we took the provisions of the Alaska Code that would be applicable if we had not granted a different one in the bill. If you put those on a bar graph and you took all the words in S 12 it would be about that high and if you took the existing legislation that is excluded by these it would be something about like that. So, it is long but the effort was made. The reason it is as long as it is was an effort to draft lesser restrictive provisions to the existing state legislation that would presumably be applicable in lieu if this legislation were not adopted.

Harle: Could you realize then, and it would be very subjective but could you make a general estimate of how much of the old SB 212 related to the required legislation in the nature you just discussed. The 55 page version.

Lewis: The one the legislature was considering at the end of the last session?

Harle: That's right.

Lewis: Your question again?

Harle: In terms of that bill, how much of that bill was required due to the fact that it was a government or public authority? How much of the legislation, in an effort to streamline the legislation that may be required was the total content of that legislation. I'm looking for just raw numbers in terms of 70% of the legislation was required to streamline the existing laws of the state that apply to the railroad.

Kerttula: While you're answering that question, I'd like to point out that there are two or three items in this legislation that pertain to errors or oversights or mistakes that were made in previous port authorities that we wanted to avoid. Of course, that takes a page or two or three. For instance, not only do you not want political input directly involved in deciding what the railroad is going to do out political bodies, you want reverse. You want the railroad to perpetuate itself as has been accused in the New York-New Jersey port authority. You want to perpetuate something that's (indesc) not public interest or just in their particular interest by virtue of law being buying and selling legislators and so on and we wanted to put a strong exclusion from that particular experience. There are things like that that occur in this bill that add to number of pages but if you got into it you would see the reason and you would probably want to keep it.

Harle: No, my comments, Senator, aren't related to the length of the bill. That's probably been an overstatement that has carried on in the past. The concern relates more to how much structure a public corporation requires as opposed to a private operation with limited controls by government.

Lewis: If the provision here were to sell the railroad and simply set up an agency to receive title to the federal property and then sell it to the private sector, it could be very short. I don't think that's what you're asking but I'm not really able to answer.

Harle: We're discussing an issue and a policy and I think your comments are very well taken and I thank you for them.

Lewis: My comments about the federal legislation to which I really intended to defer to him later, Jerry was going to give it after we've taken these early questions. Give a brief comparison between the federal legislation and the state legislation. The provision in the federal legislation that relates to resale by the state at the end of five years is a much more complicated provision. I gave you a condensed

statement that could be construed erroneously. Basically in a more detailed form it talks about whether the state sells it for a profit over it receives more money, a ratio between assets and liabilities, a transfer the state receives from it. It is not a prohibition against transfer and also that was sale having to do with operation. So, what I would like to do is retract what I said earlier deferred to Jerry Johnson to cover that and the part of our presentation we had intended to deal with federal legislation.

Chuck Smith: I'm representing myself as a long time interested Alaskan. I've been interested in the Alaska Railroad program since the late 40's and early 50's when I worked with the railroad. First of all, I would like to thank Senator Kerttula for putting together this very interesting forum. Last month's forum with Captain Adlum and Professor Olson was very interesting and informative and it certainly served a service bringing that to us to tell us a little about public authorities. My area of concern or interest is in the governing body of the Alaska Railroad in the public authority area that Professor Olson spoke about and that you have alluded to also. I preface these remarks to Mr. Lewis and Professor Olson and perhaps even to Senator Kerttula.

Speaking in relation to this commission management concept of governing where we have the policy body which is the commission and the management who are responsible for implementing this policy I would assume under this arrangement that the commission would be appointed by the governor with legislative approval with the commissioners probably serving on staggering terms to assure continuity in the body of commissioners. I would wonder if we could not draw a parallel with some public authorities that we have in operation today in relation to this public authority or Port of Seattle that had been discussed quite extensively in the last meeting we had last month. Is not the public school system today a parallel of what has been discussed here with a school board that is elected by the public operating as a policy body dealing with the management school administration. I had to chuckle when Professor Olson mentioned with this type of arrangement it very often develops into a war zone. This is very. Those of you have followed school operation since statehood that very often there have been war zones because of this. But the question is is this not a parallel of what has been discussed and proposed. Is that not a parallel of what we have as the governing body in our public school system?

Kerttula: I can say that there are some relationships we're discussing here. One thing is, constitutionally and I know I'm interfering in a way, constitutionally I don't believe the legislature has the right of confirmation of the railroad commissioner appointments by the governor. We think we should have and think there's some good public interest having it but we're not at all we do have. That's a question yet to be answered. I presume that the legislature doesn't have the right of confirmation of those particular people. The school board concept that you mentioned and I suppose you both know it's kind of a superficial way, there are some relationships at this level I suspect between the board and the management. Mr. Kelsey asked me would the legislature interfere, and that was our conversation, and I too noted that in the University of Alaska, in our state school boards, we don't interfere

except at times of budget. This case I don't think we have particularly have them with the railroad. It has it's own. It may come to the legislature for an appropriation for new construction or something but by and large it has its own area of hopefully reaching a break even point and not coming to the legislature for funds like other public entities would. I don't think we've tried to interfere with the railroad operation at least at this stage of our development at all.

Lewis: I can elaborate on that. Very briefly, and we'll go into this in much more detail. This particular bill makes it very difficult. It narrowly prescribes the things the legislature can do and it carefully prescribes the form in which the legislative oversight or intervention has to take form. So, there is a pyramid. Three tier approach. This bill vests authority in the board of commissioners and then it deal in some specificity with relationship between the board and management a lot more specifically than one might gather on a first reading and it requires the board to delegate a fair amount of managerial responsibilities to management and it reserves to the board certain things that the board has to approve itself. That's to make the board be accountable and responsible but delegate most things and this bill delegate most managerial decisions to the management as in a normal private corporation with a board of directors has responsibility and delegates to the chief executive officer. It also very specifically describes the relationship between the board and the state legislature. We'll go over that in detail. But there is no way that the state legislature can intervene in the managerial decisions which this bill delegates to the management. Meaning management like chief executive officers and operating officers. They have to go through very formal processes and the state itself can only reach the commission. It can- not reach management.

Chris Gates, Port of Anchorage: I appreciate you being here very much and for the opportunity to converse such a forum. For those of us who have been trying to stay abreast of this particular piece of legislation for the last two years, you've just tripled my knowledge on the way that the legislation was put together and I appreciate you relaying the facts that in fact there was a policy committee and that they were given ten directives to start with. I guess my first question is were you given a specific directive as to land issue, especially native lands, as far as the Alaska Railroad were concerned and how those were to be addressed by the state?

Lewis: Yes and no. Actually, I'm glad for the opportunity. I should make one other thing clear which I should have done earlier. We did not, because my firm has represented the Arctic Slope eskimos since a long time ago, we made it clear that we felt there would be a conflict of interest that would preclude us from advising a representative in the state in the native issues themselves. And, since that time, the state had as land commissioner and other people who were well versed and competent in that area. We did our best to maintain an absolute strict separation between the discrete issues between the railroad and the native corporations or villages that railroad property went through. That was done by the commissioner of Natural Resources, land. We dealt with all of the other land issues. Now, so with respect to the other

land issues that did not involve the native corporations. We asked what the state was getting. There had never been a survey to this day. We advised the state to hire appraisers and people to go out and survey the property. In fact, the state hired other people to do that and a very extensive survey, not survey in the sense of survey instrument, but a property, document survey has been done in which we assisted and took a major role in going to the various state and federal agencies and looking at the land document. And, basically, the way the railroad property worked originally, if there was a certain recognized right of way and it was presumed that people could more or less tell where that was from the railroad. You looked x number of feet this way and you looked x number that way and where the tree lines were or whatever there was that was the railroad property. So one of the first things that we recommended in a very absolute recommendation, we said you have to determine what it is you're getting. You do that first by document and we can do the document searches for you but you need other experts in document searches who can develop these further and then at some point somebody goes out with surveying equipment and surveys property. Now there are hundreds, thousands of leases, easements, recorded, nonrecorded property that has come and gone, all the homestead laws, all the townsite laws, all of the laws that the state operated under have effected railroad property. You just know if you deal with real property in Alaska that they effect them. There's no where that says these statutes effect them. That survey is still ongoing. We recommended the inventory be computerized and turned over to the state by the Federal Railway Administration ahead of time. We identified at the end of this a number of property issues and areas that would be controversial. There were leases that have been entered into over the past years. Some people think they're good leases, some people think they're bad leases and there are will and property improvements that have not been constructed on land that would appear to have been leased by the people who made them. So, we basically pursued and attempted to pursue a systematic inventory, a physical inventory, a document inventory and a legal inventory of the consequences of these various operations recorded and unrecorded.

Kerttula: If I could touch base just slightly on this issue, too. Remember this is all federal land essentially so you could put the railroad where you wanted to. It went at a 90 degree angle to my piece of property. Everyone of us has experiences here on the edge of Anchorage where expensive housing is overlooking a very narrow right-of-way on a track. We went back to Washington D. C., twelve state senators, and we invited some members of the House. The majority of the state Senate. There were other meetings on the east coast at the time so we could get that number together to go back and talk to the senators on the transfer part of it. Of course this dovetails in, the acceptance of management that would dovetails in with the transfer. We developed the slogan, the bottom line of which was, if we had all the liabilities of the railroad, we wanted all the assets and that the native corporations that had some theoretical claims during the transfer moment under Section 3(e). We wanted them to get their claims settled out of other lands, other federal lands but not the railroad lands, not the gravel, the dense rock, or the staging areas in Anchorage, or other values. The railroad would not be acceptable, I don't think, if we had

to buy and rent, buy gravel and rock, and rent space for staging and the various areas of Seward, Anchorage, and so on and Fairbanks. We have fairly pitched battle and I'm philosophically implying in a different direction in regard to the arguments I had to pose dealing with the native corporations and I got for a little while somewhat heated. I think since then they've recognized that the future of their export it is necessary to keep this railroad viable and I think they've withdrawn a lot some early positions but not entirely. But we did recognize in the transfer legislation the need to be certain that we didn't up front destroy the railroad in its infancy before the state acquires it.

Chris Gates: Thank you very much and I know we'll be getting into detail discussion of the provisions and look forward to that. Professor Olson, do you think that the provisions of SB 212 adequately address the efficiency vs. accountability issue?

Olson: When we get into some of the specific provisions I happen to have several questions that I want to raise. They are more on the certainties at this point than problems and they are at the margins. In terms of the core of the document of the relationship of the parent government, the legislature, the entity, which was one set of my commitments, and in terms of the relationship of the board to the executive and to management, I think that this approximates the kinds of conditions that you want to begin with and when we get into the specific provisions I want to make that point but also raise a couple of issues that frankly that are not self evident in the bill. What they mean, they may be in the language of the law which I am not an expert on. The general response of the question is I am impressed with this bill with respect to the two areas that I raised cautions flags about.

Gates: Mr. Lewis, will you be disposing of any documents or bibliographies or any directions from the state to your firm regarding this legislation in the near future?

Lewis: We, I think, would not ever be doing that. I would assume the governor or the legislature might. We had a, even though it was not clear, whether our client was the executive, the legislature, or the attorney general, we had attorney-client relationship and did our best to point both sides of the issues so there were areas where we said if you take this alternative there are consequences which could be harmful and if the state chooses, sometimes that was on both sides, we said you have two alternatives and they both had bad consequences and here they are. The state at some point will choose one or the other of those two alternatives. If they chose to release a document which we pointed out the liabilities attached to the form they took then that will be their prerogative but we do not have the power to breach the attorney-client privilege that is maintained by the governor and the legislative leaders.

Gates: Thanks for your time.

Kerttula: I think it should be point out to that Ken Sheppard and Al Swalling position of interested of public citizens with a great deal of knowledge of the railroad brought to several of the legislative group,

including myself, brought to their early attention some of the problems we've just discussed and thought it was necessary to resolve them before the state accepted responsibility for the railroad. They've been several years, at least two years, bringing to my attention some of the problems before, they were appointed to an official body to help resolve and make recommendation. They just did it as public spirited individuals.

Jerry Ward, Representative-elect, Alaska House of Representatives: I need to clarify one point here that I have questions on concerning the actual chemical make-up of the public commission as such. I notice that we had a fairly learned gentleman that has been serving on the Port of Seattle and I another person, a friend serving on the Port of Tacoma and I understand there's some conflict there. Nevertheless, those are elected positions, am I correct.

Adlum: Yes.

Ward: And, within our formula here, I do not find and I have to plead that I very quickly read it, I would like to know what consideration taken the top 100 public authorities in the United States that are profitable, how many are public authorities by election, how many public authorities by appointment and does it make any relative difference whatsoever?

Adlum: One of the most argued points that you can come up with whether you get a better commission by election or a better one by appointment. I've been working on this and studying it around the nation. In fact that's why Dave took a year's sabbatical and worked with the port. I don't think there is a real good definite answer. You can get a real good commission by election, you can get a real lousy one by election. You can get, depending upon who makes the appointment, a real good commission by appointment. I'm inclined to believe you can get an even better one, that way. But I think that they should be confirmed by the legislature so that once they were appointed and confirmed they would then be on their own and not answerable to the guy that appointed them. (indesc) you can get into the Los Angeles where you signed your resignation at the time you are appointed so if anytime the mayor wanted to get rid of you all he had to do is pull it out and put a date on it. (indesc) its a hard question to answer.

Ward: Alaska appointments aren't like that, yet. The follow-up thing is the ports and the public authority, I wanted to break away from ports for a second, because I think a lot of this has been based upon the authorities of other public entities. The Port of Seattle has the right to tax, is that correct? Is that incorporated into this in any form or fashion?

Lewis: No. This commission does not have any tax power.

Ward: OK

Lewis: That was one of the things that I said earlier. We presented a list of questions and one of the questions was. Well there were two questions that were related. Will this entity have the right tax? The answer to that we were given is no. The other question was, Will this

entity have to pay state and local taxes? The first answer to that no, then it was no, then yes, no, yes, no, yes, then it ended up being no. But there is a provisions here in lieu of taxes. So basically, the answer to the second question is no, kind of.

Olson: Can I just make an observation about the first question. What Captain Adlum had reported is correct. And he and I did struggle with the question of appointment verses election. The election of commissioners is fairly distinctive to the pacific northwest and reflects the political movement that originally created these entities back in 1910 and 1920. When you try and impose the election of commissioners on the Alaskan Rail, it simply doesn't work, in the sense that port districts are drawn around county lines. You have a bounded territory, a political jurisdiction that is pre-existing. When you at the impact of the Alaskan rail, there is no pre-existing political jurisdiction, whether county, region or otherwise that bounds the economic activities of the entity and in that sense, appointment is almost inevitable by my calculation as a political scientist at least. You have to have congruence between the impact of the entity and pre-existing political boundaries and that does not work with the Alaskan Rail.

Ward: Within the State of Washington also cannot other existing political authorities own property within a port authority. Can they form their own port authority such as a farming community farther out? No?

Adlum: No. The Port Authority of Seattle is really the Port Authority of King County. You can have more than one authority in a county, if it's set up that way and I think that's true in Everett and in some of the smaller counties were they set up a port authority to build a boat marina or something of that nature.

Ward: One last question. I believe that Washington has been doing much longer. Is it now under consideration to form some kind of united public authority for ports within the state of Washington.

Adlum: What we're using is a regional port authority.

Ward: Which is where we're starting out now.

Adlum: There is a lot of merit to a regional port authority at least as David and I have studied, if you have a real regional economy. Such as Puget Sound as on region. I think you could look at the Columbia River as another region. The Bay area as another region. Your competition lies between these regions and not within the region itself.

And a regional port authority can stop this. You have one example here that I can't get an answer for in your state. I understand that you have two grain elevators being built and you don't have any grain to go in either one of them.

Lewis: I can give you a slightly more elaborate answer. Section of the bill 42.40.030 provides for the board which includes 6 public members, voting public member,, appointed by the governor. One of the provisions is that at least 4 public members must be selected from areas served by the railroad. So of the 6 voting members appointed by the governor, four of those must come from the Railbelt. They could all six come from there but the legislation requires at least four of them. Now obviously

that is something that the legislature could change. It could say they all do or none of them have to. But the way it exists right now the decision was made in this bill, by the legislative leadership that there would be 4 Railbelt representatives. At least four.

Any other specific questions before we go through in more systematic, section by section analysis?

During the lunch break, one thing that we could share with you, if you're interested, we have the side by side comparison of the provisions of SB 212 with the provisions of the normal state statutes that were replaced. So you can thumb through this. This shows the provisions of 212 and this the provisions of state law that were replaced by these provisions. They are done on a section by section basis. In a very short time you get into pages that are blank, that 212 just deleted the existing state law. I don't have enough to distribute but you are welcome to look through them and take notes if you like.

Well, we will go through the eight article. As I mentioned earlier there were 6 lawyers from our office, experts in different areas, employee, tax, property issues that are not here. Gerry Johnson is legislative expert in general and has specific expertise in drafting both state and federal legislation dealing with energy and transportation. My background is more in entity in a general sense, and in transportation in a specific sense. We are going to divide this up arbitrarily. I'll take one article, he'll take the next one. And during the course of this we'll probably confer on to the other and perhaps there will be instances where we wish we could defer to one of our other 4 colleagues who is an expert in a section and who is not here. We'll do the best we can to answer the substantive questions in all of these six areas that we mentioned at the outset.

First there are findings. They run for three pages. These are legislative declarations. These really do reflect more than anything else the statements, philosophies, goals and aspirations for the railroad for the legislative leadership. We assisted them in drafting them. They deal with a variety of areas. Some of these are in here to lay the foundation for exemption from federal taxes, to lay the foundation for tax exempt financing, to lay the foundation for an exemption exempting the state from certain regulatory restrictions if it owned the railroad itself. And they are designed to track the federal legislation. Which reminds me, I'll turn the mic over to Gerry to give a 5 or 10 minute synopsis of the federal legislation. This is what we had intended to do at first. He will go through and give you a brief summary of the federal bill as of midnight last night and draw your attention corresponding state legislation. I think it would not be helpful for us to get into a long debate on the merits of the federal legislation, because there is nothing that any of us can now do to affect that one way or another. That is not true of the state legislation which this commission will have an active role in. So the point of this exercise will be a brief summary of the federal law to point out the corresponding provisions of state law.

Gerry Johnson: I'll just give you a very quick review of the federal transfer legislation and this represents a later generation of \$1500 million which you are basically familiar and I think more than anything, this quick review will serve to refresh your memories. Tom Allison and Steve

who have also been working on this closely should feel free to make additional comments as appropriate. Federal legislation also includes findings some of which are merely recitals of congressional intent regarding that proposed transfer. Others have specific purposes with respect to state objectives and the operation of the railroad. One in particular goes to the issue that has been raised recently by the attorney general regarding the ability of the railroad authority to operate independent of the state appropriations process. As you know, the dedicated revenues questions is one which has been controversial in this state and the federal legislation attempts to suggest that to transfer to the state of the railroad is in fact pursuant to a federal program which is one of the exceptions that are provided in the state constitution for the preclusion of dedicated revenues... The federal legislation goes on to provide a series of definitions. I would draw your attention to the definition of state which can be either the state or the state owned railroad as the context requires. That's done that way, it's also accompanied by the way, with a specific definition of the state owned railroad which is used when specificity is necessary. But the definition of state is given both ways in effect to preserve the flexibility of the state in terms of how it chooses to operate the railroad. This would allow the state owned railroad to actually assume the liabilities of the federal Alaska railroad and allow the federal Secretary of Transportation to still make his certification that the state has assumed the liabilities. That point is being subject to some confusion in the past. The legislation then proceeds to an article authorizing the transfer itself without compensation to the state of Alaska. It is subject to a lengthy series of certifications of which are threshold determinations that the Secretary of Transportation must make before his power to transfer the railroad to the state ripens. These include his ability to certify that the state will operate the railroad as a regulated carrier under the Interstate Commerce Act, that the state has assumed the liabilities of the federal railroad. A whole series of conditions providing for protection of the existing employees of the railroad during a two year transition period running from the day of transfer. These include assumption by the state of existing collective bargaining agreements subject to renegotiation at the end of that period, retention of the current work force, compensation at the current level, priority for re-employment in the event of layoffs, preservation of accumulated leave, protection of cost of living benefits, and continuation of health and live insurance benefits. It also provides for a similar protection of the officers of the Alaska Railroad, a defined list of particular employees including the general manager, general counsel, and so on, for a period of one year. The legislation then proceeds to provide for a six month transition period following the date of enactment of the federal legislation. During that period, a closing report would be prepared which would delineate the assets and liabilities of the Alaska Railroad to the best available descriptions of property and so on. This section has been carefully drawn to be consistent, well SB 212 was carefully drawn to be consistent with this concept as have the triggers for the effectiveness of the state legislation. During the period following the date of enactment prior to the transfer, this six month period, the state is granted in the legislation the right to inspect documents and records on the railroad property. The consent of the state is required for capital expenditures in excess of \$300,000

for the sale of real property, for leases in excess of five years. The federal government has also required to bring the accounting system of the Alaska Railroad in conformance with ICC standards which may or may not be the case now. The next section of the bill provides the mechanism for transfer of lands of the Alaska Railroad to the state of Alaska. It essentially is an expedited process where the resolution of claims about existing rights on record as of the date of transfer. Next section deals in more detail with the employees of the Alaska Railroad being transferred to the state. I would note here that the legislation does not contain a mandate that the employees be included in the state civil service system. The article dealing with the employees more than anything else has to do with their retirement system. It preserves their continued eligibility for participation in the federal civil service retirement system but allows the state at the end of the two year period the option of the state owned railroad of incorporating these employees into the state retirement system or establishing an independent Alaska Railroad retirement system substantially equivalent in nature. The legislation requires, in the event the state owned railroad elects that option, the federal government fund that system to the extent of the accumulated benefits that the employees have in the federal system. Basically, the federal government would disgorge the investment in the federal system and start the new system. This article also includes a provision that allows employees notwithstanding the potential election of the state allows employees within five years of retirement of the federal system to stay in the federal system so that they don't have to transfer and can receive their federal benefits although they're working at the state railroad which has established its own system and a fairly lengthy provision is necessary to authorize that. This article also preserves the federal benefits of those employees who do not transfer to the Alaska Railroad or are terminated by it. The next section in the next article or title of the federal bill bears on the state operation of the railroad after transfer. It is in this section that the railroad is made explicitly subject to jurisdiction of the ICC which is something of a change from the current situation is by the consent of the Secretary of Transportation basically subject to the informal regulation by the commission. It is a condition of the transfer that it now becomes a fully regulated carrier with a series of very important statutory exemptions that will free the Alaska Railroad under state ownership from a number of federal statutes that regulate the activities of railroad on the outside including the railway labor act, rail retirement act and so on. It provides a continuation in effect of memorandum non compliance that the federal railroad administration has granted the Alaska Railroad from federal rail safety statutes. The concern of the state here is that once the railroad leave federal ownership that it not immediately be subject to full compliance of the federal rail safety acts of which we are not confident. There is a provision requiring in this section requiring that the revenues generated by the railroad be reserved for and maintained by the state owned railroad and not by the state generally again going to the dedicated revenue issue. There is a clarification of the tax status of the state owned railroad under both public and private circumstances. There is a requirement that the Interstate Commerce Commission develop a proceeding for the issue on granting of a certificate of public convenience and necessity on the date of transfer to the state owned railroad. And

finally, there is a specific provision making the state owned railroad eligible to participate in any federal rail assistance programs. The next major section of the legislation deals with future rights-of-way, it establishes a statutory support for the expansion of the Alaska Railroad and a process for doing that. Next major section deals with potential reversion of the railroad in the event the state converts it to a use that would prevent operation of the state owned railroad or ceases to operate the railroad. It's also in this context that the sale notion has come up. You may know that the House legislation which authorizes this transfer is much less detailed. It however includes an explicit requirement that the state pay 75% of their net liquidated value of the railroad in order to receive it. The House Commerce Committee has proposed in the alternative the requirement that if the state sells the railroad within five years of the transfer at a profit which is defined as anything in excess of the liabilities assumed by the state plus anything the state invests in the railroad then that profit would revert to the government. The final couple sections of the legislation provide for other disposition of the railroad in the event the state elects not to take it. If after the closing report is filed, one year after the closing report is filed, the secretary is not able to make those certifications I spoke of earlier then he is authorized to dispose of the railroad to another party, giving preference to someone who would continue to operate the railroad. And finally, there are administrative provisions regarding the applicability regarding the appeal and amendment of other statutes which formally dealt with the Alaska Railroad as a federal entity.

Chairman Swalling: Did I understand that in the extension of the railroad did they provide a one window over federal lands?

Johnson: The question is does the legislation provide one window for expansion of the railroad through federal lands. I guess I'm not exactly sure what that means. It relates to future rights-of-way section, obviously. The legislation will provide statutory support for expansion of the railroad. Our expectation now that it will be subject to existing law. There will not be a special process provided.

Kerttula: Secretary Watt did make the commitment, however, that if we would push ahead of right-of-way requests and of course it conflict with extreme environmental potential problems why the state would probably would get from his office conveyance, if they exercised it within fifteen years it would have the standing of statute on the subject.

Johnson: That's right. This is one of the matters that Senator Kerttula and his colleagues took up with the Secretary directly on his trip to Washington.

Harle: Mr. Johnson, I would like to also thank you for coming to Alaska to share your expertise with us. I'd like to ask you what the status of the native claims on railroad lands and how that is handled in the current legislation.

Johnson: Again, that's a subject which we've exempted ourselves from participating. I can tell you this to report as the legislation

provides a process for the expedited adjudication of those claims. That's essentially what the legislation . .

Kerttula: Tom Allison was discussing this with Senator Faiks moments ago. If he is here he would probably be the briefest presentation.

Allison: There's two provisions in the existing federal bills that would promote the resolution of those outstanding native claims that haven't otherwise been settled on railroad property. It provides for a negotiation process upon passage of the federal bill. It would tend to promote a resolution of remaining claims and the ones that are usually focused on or ones that involve railroad gravel holdings and things of that nature. Post that negotiation period the 3(e) process is mandated to complete itself within three years of passage of the federal bill so that would substantially speed up final determination of all native claims of the railroad. I think that a practical matter of the state, assuming that the bill is enacted in that form the more important provision will be the negotiation provision which would occur immediately upon passage because the state would have an opportunity to get together with the claimants to resolve all of the issues in a way which optimizes the railroad's holdings in such a way that it doesn't denude the railroad of needed gravel reserves and other things which we'll need for continued operation. What Gerry said is essentially correct that speeded up 3(e) determination of prior negotiation process in order to resolve, hopefully, the remaining differences that exist.

Kerttula: Major problem is one village corporation is it not Tom?

Allison: I believe that's correct.

Soenkson: Another point that's important is there's been discussion on the Cook Inlet waiver amendment that there are some amendments in S1500 on Cook Inlet selections, is a regional corporation and they have potential claims to the rights to 13,000 acres, I believe, of railroad properties. They've given a waiver of their rights to that property in exchange for the Cook Inlet amendment which basically modifies the terms of conditions agreement that's existing under existing law. I believe it's the native claims settlement act so that portion and that corporation's selections to rail properties are handled differently and are exempt from this legislation at this time. Other affected native corporations, you really have to look at the individual corporation and their selections to rail property to evaluate and to go down through processing to see how those are going to shake out. In echoing Tom Allison and Gerry Johnson's comments, the legislation provides for an expedited review process with the opportunity to settle those claims prior to final adjudication by the Secretary of the Interior. So, it's thought that that process will facilitate an orderly adjudication and settlement to native claims.

Kerttula: Senator Stevens continuously states also that the railroad was never intended as a piece of surplus property under the Native Land Claims no matter how the treaty is interpreted. Further, the Justice Department has twice made a statement that this is exempt, railroad properties are exempt. The Cook Inlet's and I think all native

corporations save maybe one village corporation have been very cooperative after a series of discussion and negotiations. I don't think they, right now, eye a substantial or perhaps any part of the railroad. They are looking for alternatives.

Soenkson: With the Cook Inlet Region's selections aside, it boils down to about 3,800 acres of 38,000 total rail property so that's the portion we're talking about.

Speaker: Will the railroad have to buy its gravel from the Eklutna pits under the way it's framed?

Soenkson: Are you talking about long term or interim kind of thing?

Speaker: Under S1500 is there a mechanism whereby the railroad won't have to pay for its gravel at Eklutna?

Soenkson: No. The Eklutna gravel situation is a unique situation and it's very interesting discussion but what's happening in that case is the regional corporation, Cook Inlet, has selection right to the subsurface which Eklutna Village Corporation has selection rights to the surface. And so if you're going into a gravel pit situation, what's under the ground is what you're after. Surface rights to get that or to enlarge the pit is a whole other discussion. So, with the CIRI waiver to rights to railroad properties, that type of scenario for gravel is not there.

Karttula: It was key to all our discussions in Washington that specific thing. The dense rock and the gravel there. The railroad would always be in the whole if it had to buy its own gravel, its own basic materials.

Harle: Is this lands issue liable to be a major impediment to passage of S1500 or is it close enough to negotiable terms to allow the passage without interference.

Soenkson: I don't believe the lands question was is the lands issue the impediment to the transfer or to the passage of the transfer legislation. I don't believe so at this time. Discussions have gone on and all parties are in agreement at this time to much of those discussions and final settlement are going to be left to the period after transfer so the parties involved can sit down at the table and discuss and negotiate settlement or adjudication of valid native claims. And there's even some question as to are the claims valid to railroad property. That question aside, the parties presently are in agreement to the process for adjudicating settlement of those native claims so that's not a problem. House Interior Committee has had some question on rail properties in the Denali National Park area and those to a degree have been solved. There's a provision for railroad even through the park at this time. That's the only area that they've isolated and that's, to my knowledge, that's the extent of it. The parties are in agreement so there's no future impediment to the transfer or bill passage.

Break for lunch.

Yale Lewis: First of all, let me say again how very interesting it is to be here and it's a pleasure for a variety of reasons. Everyone looked so interested this morning. Often lawyers argue to judges, or lawyers or clients and whoever you're arguing to is asleep or bored. You all looked at least very interested and intent. I think that is an indication as to how important this issue is to this state. It's a pleasure as a professional to be able to work on things that people think are important. This is an extraordinarily complex project. We have been involved in a lot of legislation that has affected Alaska over the last 12 years and I think this is clearly the most complex. It is not a single issue as for example as the Native Claims Settlement Act or D-2 have been. The regulatory issues, the tax issues, the labor issues, the securities issues that are so integral to this process make it so interesting professionally. The way they come together. The way this state has not approached it in a simplistic, quick fix way. You are looking at a very complex problem and you are approaching it in a way that will hopefully come up with a solution that provides that good response for a number of years. Before I go into the first section, it might be helpful if I give one other short overview.

Kerttula: You might care to hear a response. I was sitting up next to one of the principals at the head table and he said that it was nice to listen to an attorney who spoke the king's English.

Lewis: Thank you very much. The selection of the entity, in this case the public authority, I think has connotations that maybe are not accurate. Let me address a few things that we picked over the past two years and over the past day or two and the past hour. This legislation, if it were enacted exactly the way it is, without any changes, would not preclude the railroad from leasing equipment from private operators, from either leasing to or from. It is perfectly consistent with an operation where private shippers own their own cars, where private shippers own their own sidings and spurs, their own short lines. As a common carrier the railroad would have to accept whatever anybody tenders for shipment on it. So it could be a combination. And presumably it will be. I guess it's my professional opinion that in fact that some of the cars on the railroad line will be owned by individuals, some will be owned by wealthy doctors who looking for tax write offs, some will be owned by the railroad itself and some will be owned by other railroads. There would be cars that be time share or time share leases. Some cars the railroad would lease to private parties, some cars the railroad from private parties, all kind of ownership issues, all kind of tax appreciation issues. The form of entity does not have anything to do with those issues. There are technical, when one starts talking about investment tax credits, safe harbor leasing, depreciation, accelerated depreciation, those types of things. These are very discrete issues that to a certain extent are affected by the form of the entity but basically this form of entity doesn't preclude the types of private investment in specific equipment, sidings, leasings, spurs, warehouses, all of that type of thing. It

also does not preclude private operation. All this really does is preclude as I said earlier, is sale of the real property to the private sector. The legislature always reserves the right to do that. Another thing that is not inconsistent at all, and which I assume will be true is the selection of this form of entity does not preclude efficiency incentives to management, bonus, incentives tied on productivity, paying the vice president of management an incentive to increase the freight, it doesn't preclude the vice president of operations from getting bonuses for smoother operations. There is only one provision in this bill which relates to that. There is a limitation on the executive salaries. Now that what's I referred to as a marginal type of decision, not marginal in that it's not important, but it's a political decision, it doesn't have anything to do with the entity itself. The commissioners of the New York Port Authority, the executive director of the NY PA makes a lot of money, probably more than anybody here. So does selection of this with the one exception of the limitation that is in the existing bill, there is nothing in the existing bill. There is nothing that would preclude the board of commissioners from paying the CEO \$5 million a year, or \$5 a year, or having bonuses and incentives that are distributed evenly or unevenly among all the employees. At a certain point in any railroad there are limitations based upon productivity and that type of thing. With that one exception, that salary cap, which can be left in, taken out or modified. The selection of this entity does not effect that particular issue. Separately, the amount of money paid to the commissioners is not effected. This particular bill provides per diem of something like \$300 a day. That's a blank line for the legislature to fill in. The legislature could say \$3000 a day, \$3 million a day or they could have said \$30 a day. Marginal decisions, in that they have no legal impact of how the railroad would operate or the way the state relates to the railroad. They're political policy decisions in the first instance up to the legislature and after the legislature takes a broad cut, then it's up to the commissioners themselves to determine the salary and incentives and compensation arrangements with their chief executives. Are there any questions on those two points? I took them out of order simply because I had gotten the impression that those were important to people.

Harle: I have a question relative to if the old bill allows those things to happen how for instance do the laws, that are substantially documented in this bill, how would they pertain say to a private operator?

Lewis: Well I think they wouldn't at all. If this commission under this bill were to enter into a ten year management contract with Railroad Management, Inc.. RMI could pay their executives anything they wanted to.

Harle: But in terms of day to day operations or accounting methods, ICC regulations, how would that impact ...

Lewis: I would not impact at all because the ICC prescribes the accounting methodology. The same accounting methodology is going to be required regardless whether the railroad is by the state, is a line agency, whether it's sold to Railroad Management Unlimited or whether is

operated by a public authority. So what these bill do by the way, the federal bill requires the railroad to bring its accounting system in accordance with prescribed ICC methodology. Betterman (?) accounting would still be used just as it would be for any other railroad in the country. There would still be a limitation in this bill, if this bill remains unchanged, the commissioners would still get \$300 a day regardless of whether the railroad was privately operated or not, but otherwise it would not have any impact on any of those decisions.

Chris Gates, Port of Anchorage: The entity question was the focus of the questions at least in the Anchorage area between a number of groups when this bill was being discussed. What type of entity, an authority, a line agency, private ownership or contracted to private ownership. The motivation was again to get the best railroad, the best railroad system to keep the cost of living and doing business in Alaska as low as possible. That was the motivation, politically. Above all, in the drafts of 212 that came down, the number two finding was that this time private ownership and operation was not considered to be in the public interest. I think this advisory commission might be helped by having an explanation as to why that finding came down and why it was consistent throughout the entire drafting process that the operation of the Alaska Railroad by private contractor owned by the state but by the private operator was deemed to be in the best interest of the state.

Lewis: That reflected, as far as I know, the considered judgement of the policy committee that I described earlier and the legislative leadership and the earlier studies, the one done by the University of Alaska and the various studies that I referred to. I never heard any debate about the factual foundation for that conclusion. It was a working assumption that the people who were setting policy expressed a preference or a wish that it could be done that way. But there were never any surveys that I saw other than those, which were pretty detailed, which were reflected in the University and the other studies that I mentioned earlier. Something that I believe the Chamber of Commerce referred to that study that was done last July, 1981. One of those "The Assessment of the Operational Alternatives" It was just a working assumption that people shared so I didn't hear any debate about the details of it.

Gates: That is kind of key to everything that follows is that it is based on that finding that it would not be in the public interest to have the railroad contracted out. Maybe Senator Kerttula might be able to shed some light as to why that was handed down to your firm.

Lewis: Maybe it would be better...Tom?

Tom Allison: I can shed a little bit of light on it from the point of view of the federal government. For the purpose of the finding, it doesn't really say anything about public interest per se. The truth of the matter is that it has been sort of for sale by my client for quite a while and we haven't received any offers. I think it's also true that at least initially, and this is yet to be decided, it is not clear that we will be able to transfer the railroad cost free to the state. But it's quite clear at least to me that Congress would not agree to

transfer cost free to a private entity. So that as a practical matter, we have not been able to get any interest (indesc) and we see private acquisition or operation of the railroad as something probably more likely to happen post transfer to the state at least initially. We don't feel it would be feasible, politically to transfer the railroad to a private entrepreneur at no cost.

Lewis: I can respond a little bit more from a national perspective. The trend is not from public ownership to private ownership, the trend is just the opposite. In West Virginia, South Dakota, Minnesota, Wisconsin, North Dakota, all the way the state of Washington, all across the northern tier, I know from intimate involvement that what is happening in all those states is that public authorities are being set up to operate the remnants of former private systems. From Vermont all the way across, the same way that port authorities are generally, I mean that debate goes on in Seattle. Like the port authority could be operated more efficiently by the private sector, that type of thing. The debate goes on constantly, but the practical judgments across the lower 48 are that all the mass transportation facilities are being operated by public authorities now, all the railroads are bailing out and the big fight now is to keep Amtrak running to keep Conrail running and the public authorities in everyone of the states that I have mentioned have been set up in the last 2 of 3 years or they are being set up now to operate railroads that the private sector wouldn't operate because the judgements made by the legislators in those states that operation having the service in the northern tier, largely agricultural, mineral, coal resources was more important than the return on the dollar investment that the railroads had as their single objectives. Basically it is an issue of objectives. The private railroad has only a single objective, which is to maximize return on investment. The legislatures across the states have as a primary objective, continued operation if they can afford it. And the public authorities are being used as a means of trying to combine tax exempt financing to make it more affordable with continued operations. Perhaps, as we go into the sections some of this will become more clear.

Gates: I don't want to belabor this point. You are starting with SB 212 which has that as a basic, fundamental premise, that that is not in the best interest of the people and in all preceding drafts that specific choice of words is in there. Two sessions ago the advisory commission was told by Malcolm Roberts who suggested that we don't start with 212, that we look at that basic fundamental premise, that is it good to contract it out to a private operator or do we really want to accept this point blank without any justification.

Chairman Swalling: I'd like to comment on that just a little bit. I hope I'm a free enterpriser. I have visited with one of the most successful railroads in the United States twice on this very issue. They have absolutely no interest in it. They wouldn't take it. And I visited with them as late as last Monday. And he said "what can we do for you?" He said we do not want to put any money into it, we have no interest in capital expenditures and he said "If you need equipment, we'll help you find it, help lease it. Presently, if you need help in personnel we'd

be very pleased to help you find such personnel and if we were to operate it for you as an operating entity, there wouldn't be any incentive because there is no money to be made." As far as his entity is concerned in being an operating contractor for the Alaska Railroad. I have personally explored this and I would like to report those conversations. He further said "You have a fine operating entity. I don't know what I would off hand to improve it." So, don't think it hasn't been looked at.

Harle: Chairman Swalling, my comments to that are: When you look at the railroad as a whole your statements are correct. What we would like to see is some innovative thinking along the lines of a private entity of operation of the railroad, a working railroad, with state support for the expansion and capital investment required to develop the railroad. I certainly agree with Tom and yourself and others who say that there are probably no buyers for the railroad in its present form. And that is probably exactly correct. That has a lot to do with the bureaucracy that goes with the railroad. It has a lot to do with the legislation of bringing the railroad from the federal government to the state. But once you get the railroad in a form that a private operator can look at without all the legislative red tape wrapped around the railroad and separate the railroad into logical business elements it might be very advantageous to operate the railroad as a private entity. And I think that where we'd like to suggest that the commission and legislators look at innovative ways to put the railroad together in a package such that it can be operated by a private developer.

Chairman Swalling: I hear you loud and clear. As I read the bill there is nothing that will prevent after should be say a shake out period or something to entertain such proposals and to convert it to that basis.

Harle: I would like to go on record that while that is possibly true and I certainly don't have the capability that Mr. Lewis has in forming the legislation. But the bill does not provide the optimum avenue to go in that direction. What it does is provide the major avenue to go into a bureaucratic type public authority. What we'd like to see is an equal avenue open to go to a profit motive.

Chairman Swalling: I have no answer. I have explored it to the best of my ability. The other thing that they did say, in addition to all the other things, you're jumping into a political morass and they have no interest in that whatsoever.

Harle: That relates directly back to my previous comment. That in the present form the railroad is not salable. We would not certainly not disagree with that.

Chairman Swalling: Russ?

Russ Babcock, Alaska Miners Assoc.: I think that I notice in the findings and in this first section is that there is absolutely no reference to the state ever divesting itself of the railroad in favor of private enterprise concern. I think that the reservations and the decisions of the legislature maybe completely appropriate in the context

of this bill as one of those things that triggers legislative approval. In the findings at least, it would certainly serve us in part of some reference to consideration of eventual consolidation and sale to a

private entity could be allowed. It is not even mentioned, and therefore are we precluding it forever?

Chairman Swalling: I presume what the legislature can create they can change or eliminate.

Babcock: I'm saying in these findings they made a decision that they wouldn't consider it. I say that we should put it in there that they would consider it.

Chairman Swalling: Nothing wrong with that. They are looking for ideas.

Soenkson: What you're getting into has been discussed in some degree and we're kind of getting back to the political morass of whether the state should finance a gas line. There are some similarities that can be drawn there. Just by way of process, this is more of a legislative staff observation that when this commission completes its work and makes its recommendation to the legislature on possibly language as to what the bill should contain on those specific provisions it may be appropriate at that time to incorporate that type of additional finding if you will or some additional history that this should be discussed and looked into in more detail by the authority once they are set up.

Because we are in agreement at this time that it is probably not feasible for the railroad to be in private operation; however, as conditions change and there could be an effort towards that point where it may be possible. This could be a kind of ongoing consideration that the authority should look into. The Institute of Public Administration has looked this bill and has looked at public authorities in Alaska in general has recommended that either through this bill or through legislative committee report language which when people testify on bills those are the kind of things that end up in the committee reports. Those kinds of the things give the commission or the authority more direction in general policy matters. The authority make the determination whether or not those are applicable and receives a lot of general policy decisions. Those kinds of things are probably part of the ongoing discussion and deliberation that the authority is going to be involved with as part of the general policy.

John Kelsey: I would like to pose a question to the gentleman. Perhaps you'd like to see us as a commission even though we adopt and recommend 212, that we attach a recommendation to make a better avenue for your proposal. Do I get that from you?

Harle: That's right, John. The concern that I have personally, that I think it would not be advantageous for the commission to merely take Senate Bill 212 back to the legislature and say here, this is the best document that we can find. Our voice in the wilderness has been that there are other potential options and we are trying to those ideas somewhat clear. We're not proposing tremendous turnover or changes in

SB 212. There are some things in there that are perfectly satisfactory. We just would like to see other options addressed. And this isn't done in the present SB 212.

Kelsey: I think it's fair to say that the commission will consider that and perhaps recommend that. I don't want to speak for the chairman but I believe that this will be a consideration that we will take up.

Lewis: One other comment that might be helpful. When one talks about private enterprise, you're talking about two things: return on an individual's time and return on equity. The private people that I represent, which are most of the people I represent, they talk about return on equity. I think right now that the assumption of the policy group, the legislative leadership is that this bill, and they have made it very clear that the state ferry system approach is not appropriate for the railroad. That there has been unanimity on that. That's not a reflection on the operation of the state ferry system. But trying to apply that model to the railroad, we have been instructed not to do. To do everything that we can to avoid that. The notion of private incentives through financial rewards for risk taking, for efficiency, for initiative, for good management, those are drafted into the bill and are left to the commission. With the exception of the limitation on executive salary, which I mentioned earlier. But for that limitation, everything that you would want in terms of the opportunity for a commission to give financial incentives to its management is present in this bill. What is not present of course is a provision for a return on equity to private investors because at this point the state leadership considers that the private sector has not made an equity investment on the railroad and therefore there isn't one. I think there has been consideration that if private sector wanted to step in for example and expand the railroad, then if the private sector put the capital in to do it, then there would be arrangements made, as there would obviously have to be for the private sector to get a proper return on its equity investment. The same way, if the railroad leases cars from shippers, whoever owns the cars, the rolling stock, the sidings, will get a proper return on their investment. Those things aren't said explicitly in the bill, but if we get time maybe I can show you that they really are in here and it was the intention of those of us who worked on it both policy makers and us the drafters that the commission have all of those possibilities and the assumption that they would use them. The assumption has been that it will take good efficient management to make the railroad work, much less expand. The other point on that, as long as the railroad is operated by the commission with its existing capital, the state legislature doesn't have anything to say really about how it operates. The assumption is that if it tries to cut back service, it has to account to the legislature. If it gets involved in a major capital expansion, then the legislature has an oversight. So long as the railroad is operated without either expanding or contracting service, maintaining its rolling stock in its existing roadbed, it's strictly between the commission, its executives and its employees. And the legislature doesn't really have very much to say about it, so long as it continues to operate as it is operated on the day that the transfer takes place.

The Findings, which I started on about four hours ago. I think we basically discussed, and given that we are running out of time, we've

talked about the philosophy. I think they are here, I gave you ten policy directions that were implicit from the beginning, based upon all the other studies that were done, the executive policy committee made and the legislative leadership accepted those ten principles that

I mentioned earlier today. Those, if you made notes of them, or I can give them to you later, are reflected basically through these findings. The basic assumption through these findings is that the legislature wants the railroad to be continued to be operated. Regardless of whether it gets a return on investment, regardless of these other things, it is a legislative intent and that is the most important...One of these findings.. The legislature says we intend for this railroad to be operated until further notice. And that is the dominant theme that runs through these findings. We've talked about other assumptions, but the basic message is that operation of the railroad comes number one. The legislature hopes that it will be done effectively and efficiently and won't take money from the general fund and people will be happy with the service and all that. But the basic principle is continued operation.

The reasons for it are given in the second one. It is the policy of the state to, the same type things, the legislative declarations. Number two on page two, it is in the best interest of the people of the state that the public authority created by this act, operate and manage in a prudent manner, the Alaska Railroad. Then it goes through and lists a bunch of things which are a restatement of those ten principles. The only one that is not mentioned is to be consistent with the constitution, because the legislature assumed that whatever it did would be consistent with the constitution. All the others... to be exclusively responsible for the management of the financial and legal obligations of the Alaska Railroad. That was the first principle, to insulate the state from legal and financial liability. If you go through them you can pair them with those ten. They run a-i and are restatements of those ten policies. When you look to number 4, it is a general statement which is really designed the Internal Revenue Service and other federal agencies that the legislature intends for this entity to be able to engage in tax exempt financing and that type of thing.

Chapter 40, Article 1, we get into the first meat of the bill. I'm going to go through article one, Gerry Johnson will go through article two that after that we'll start rotating.

Article one first deals with the establishment of the authority. There is a statutory reference here that I think has created some confusion. It reads as follows: The authority is a public corporation and for purposes of article three, section 22, Constitution of the State of Alaska, it is an instrumentality of the state within the department of transportation and public facilities. I think that this makes people think that, oh my god, here comes the ferry system. I've heard that over, and over and over again. This does not mean that. Your state Constitution requires that things be placed somewhere. Think of pigeon holes, think of a mailbox. Your constitution limits the number of separate departments. A policy decision was made not to create a new department for the railroad. Therefore, it must be placed somewhere, it can't just be left dangling. That's all it does. The second part of that sentence makes that clear: but, the authority has a legal existence independent and separate from the state. From a lawyer looking at its operational significance, the second part is the operational

significance. The first part is boiler plate, designed to conform with the state constitution. The operative language is that the authority has a legal existence independent of and separate from the state. That's all you can say. You can't say anything more to make it separate and independent. We've used all the magic words there. Legal existence independent of and separate.. and that is the significant part of that.

Kelsey: It says a public corporation. Does that mean that it is going to be an incorporated entity, the same as a private corporation?

Lewis: No. That word, as a term of art(?). There are three kinds of corporations, there are laws, there are corporations incorporated under your business for a profit, which is what most people work for. I think that is Title X here in Alaska. There is another section which deals with non-profit organizations, churches, boy scouts, those kinds of charitable organizations. Everything else, if it is not under the business or profit or the non-profit, then it is public. So this means that it is owned, that its shareholders are the public at large, rather than the non-profit board of directors or for profit partnership or corporation. Public corporations are used loosely in two ways: sometimes it means publicly held corporations, a lot of people have stock in. That is not what it means here. It means that it is synonymous with public authority.

Olson: I presume on the date of effectiveness that there would be nothing to prohibit passage and creation of the authority even before the federal legislation passed that reverted the entity back to the state. Isn't it possible under this section that the Alaska Railroad Authority would come into being before the passage of S. 1500.

Lewis: Yes. There is another provision the way your legislative draft is worked here which I think is a good way to do it, the bill in an earlier form had sections in it that deal with the initial creation of it, and those become redundant or dated the day after they begin it so there is in the back part of this bill under article eight there are sections that deal with the initial incorporation and what happens and which come first in the order of things. Cause once they've all happened they'll no longer be effective so they were stuck in the back. They were put in the back by the legislative codifiers(?) rather than be left in the operative provisions.

Adlum: What different connotations do you put on public corporations rather than municipal corporations?

Lewis: I hate to get into that. That's the kind of thing that lawyers fight about.

Adlum: The only reason I asked was most of the port authorities are often called municipal corporations.

Lewis: No. We'll we fight about them in Washington, too. The public is a broader word than municipal. Municipal normally means an entity that has the delegation of sovereign powers of taxation and lease power. So, a public corporation is generally a municipal entity, port

authority, has tax power. And will have both tax and police power. So those have significance. Bond lawyers fight about them. Public attorneys fight about them so we've tried to avoid those.

Gates: Does the constitution of the State of Alaska allow a separate form of government equity established as an authority with the power of taxation and eminent domain to government property?

Lewis: Well, I'm not sure. Let me answer it a different way. This entity could have been condemnation and tax power, I think, but nobody wanted to do that. Now, I'm not certain about that since a decision was made earlier that the entity would not have police power. Now there is some condemnation power, I think port authorities here have condemnation power.

Adlum: No. They do in Washington.

Lewis: I guess I really don't know the answer to that.

Harle: I can offer a comment there. I would certainly wish someone could convince me that if the railroad was put into the Department of Transportation and Public Facilities that it would not become a ferry system. What would be a possibility of considering something in the establishment of the authority to create a private corporation of which the state owns 100% of the outstanding stock. I suppose getting away from the constitutional requirement of having all the pigeon holes to place this thing in.

Lewis: I think probably the state could do what you suggested first but I don't think that will avoid, I really don't know the answer, but I suspect it would not avoid the second problem even though it could be done, I think.

Harle: That would be along the lines of the idea we would like to throw out later. This is one of the Anchorage Chamber of Commerce's great concerns is this section right here where the railroad is placed in DOT/PF. Because that opens up all the horrors of red tape bureaucracy and a ferry system and we can't see our way clear how it will not become a ferry system if this is indeed where it is placed within state government.

Lewis: Well, another alternative it could be placed in a brand new department called the Railroad Department and that's perfectly available to the state. I think the decision there was made just the assumption that (indesc) another one of the few remaining numbers.

Harle: That is certainly preferable, I think, to put it in a DOT/PF. At least it wouldn't have to deal with all the procedures of that department.

Lewis: From a legal standpoint, the state could do that as easily as it could do this but the second point I think which may be more relevant and that's what I hope will become a little bit more clear. The reason that there's so much specificity in this bill was to avoid the

regulations the Department of Transportation operates under. Again, we would not, we meaning the bill could have been, if it were simply decisional made to make it subject to everything to which the Department of Transportation is subject, the bill could end it at this point. The reason it goes on in such gory detail is to carve out exceptions and make it clear that to keep the Department of Transportation from getting control in that sense. That's what some people said. I would say it was a clarity.

Harle: That is a very laudable effort, however, the railroad would still have to deal through the DOT/PF commissioner and be subjugated his direction.

Lewis: If this law is followed, maybe what your decision is and the way things work the law can be just a matter of course. The law won't be followed. I can tell you categorically that if this bill is inacted the Commissioner of the Department of Transportation is one vote on the commission and that's it. Now whatever powers of persuasion he or she might have is a different proposition. But everything we could think of that needed to be dealt with was done to preclude it.

Harle: Organizationally, doesn't your wording here place the railroad under, I'm not talking about the Board of Commissioners. Organizationally, it places the railroad within the Department of Transportation and as such the railroad must report up to the governor through the commissioner of DOT.

Soenkson: Probably John Bates can help us out on this but in order for the Department to have operative control over the railroad there would have to be a specific provision in their statute. How do you log it. The Department of Transportation gives them specific powers to deal with the railroad and to my knowledge their existing statutes doesn't have anything to do with operating on the railroad. Also, the reason the commissioner was placed on the board was for the purpose of being able to work to help intergrate the entire state infrastructure and the rail, of course, being an important part of that. Maybe John can respond to that.

Harle: Steve, I'd like to comment on that. What that tends to do though is to subjugate the railroad to the commissioner's whims in terms of how he views them relative them to other transportation features. If you separate the railroad and let them speak for themselves as a separate department or at our suggestion, as a private corporation, they can lobby in their own behalf. Instead of being on the level with all the other modes of transportation.

Lewis: That's a perfectly reasonable decision. I think what you're suggesting, the commission could consider taking the commissioner of transportation off the board. That was one of the things that I can tell you that has been debated and that can be changed. I'm not suggesting that that should be changed or that's it right the way it is now but that's another flag, the composition. The decision to put the chief operating officer of the railroad on the board was another blank, to put a representative of the labor unions on the board. Those three people

are all political choices which this commission can address but there's certainly no reason for them to be on in that sense. There is maybe a reason to keep the Commissioner of the Department of Transportation on because there are Supreme Court decisions in this state which say that in order which has relied upon the existence of the Commissioner on a board as addition that the public agency is really within the department. So I'm not really offering a ultimate legal conclusion on that particular part but it could be put in a different department in which case it would be the Department of Railroad and there would not be a commissioner of transportation on it. At that point it would become a political decision and not a legal judgement.

O'Sullivan: Mr. Harle, would it help your thoughts if he were a non-voting member?

Harle: I think that would be more acceptable than the way it is now.

Lewis: Those are both, as I say, they are legal which in a public forum like this I'm reluctant to comment on that part because there is a problem under state constitution. But aside from that state constitutional problem, whether the commissioner is on it, whether he has voting power or whether he is not on it at all are all political judgement.

Gates: Those are the nature of our comments. They are political rather than judgements of law. Would it behoove the commission to look at the establishment of a separate department so that in case you didn't address the right issues it wouldn't fall back to DOT practice?

Lewis: I wouldn't advise the commission on what they ought to do but that's certainly something that is the realm of possibility.

Who promulgates regulations under this act?

Lewis: Well when we get to that section they're dealt with very specifically here. It's not the commissioner of the Department of Transportation. It's the board itself.

They have the effect of law?

Lewis: Yes they do. I'm beginning to get nervous that we're going to give out a time and the most philosophical questions might take up all the more detailed time. That specific question is dealt with in great length. There was a lot of debate within the attorney general's office. Some of the attorneys there thought this was a sellout to the private sector. Some of these thought it wasn't so this was hotly debated not so much by us but by other people who worked on the bill and dealt with it in great specificity. One other point I'd missed earlier. This railroad does have condemnation power or expansion power. The authority would have it. That was another one of the things that was debated a lot. That is obviously a political decision. It doesn't need condemnation power. There has been huge debate for as long as we've been working on this about expansion and it's been almost as significant as private/public, the notion of expansion and who pays for it and who decides and what people don't like it. That again will be dealt with. That's

dealt with in great length in the property section and one of the other sections we'll come to today. (indesc) Now, the next section is section 42.040.030, Board of Commissioners. I think we have already addressed this. I'm not sure there is really anything new to say about it. I think this section is clear.

Mr. Moore, Resource Development Council: I'd like to know with regard to the board why there are two members (indesc) and a quorum of four (indesc).

Lewis: Well the first one I think the truthful answer is to compromise between having the chief executive officer on the board and not. It's an issue that's debated in all the private corporations we represent as well as the public ones. The notion on the one hand is that the board, the power that's given to the board, and the board tells the chief executive officer, the board sets the policy, and the chief executive officer carries it out. And the chief executive officer's role should be kept distinct. He or she should not be in a situation where they are voting on policy. For example, in losing in the vote on the commission and then being in a position of carrying it out. It's a practical judgement not to have the chief executive officer on the board. It's not peculiar to this, as I say. Some very large private corporations have chief executive officers on the board and some don't. I don't know what the experience of the people here is. So on the other hand there were people and I think that the bill was reviewed by railroad management and the existing management thought it was very important that the chief operating officer be on the board and be able to speak to argue but not so a decision was made by the policy board and by the legislative leadership to have the chief executive officer on the board in a non voting capacity so he or she could participate in the debate, have access to all the information but not be able to vote.

Moore: Do you expect them to be responsible?

Lewis: Well, I assume he'll be responsible and I assume the board does also.

Moore: Then you better have the authority (indesc).

Wright: Earlier on there was some discussion that members of the board and not have to be confirmed by the legislature and there was some concern by the legislature but I see here in this draft they are to be confirmed by the legislature.

Lewis: Yes. I said there was a debate about that. This reflects the resolution of that debate. They'll be appointed by the governor and subject to confirmation by the legislature. What you asked, the second question about the quorum, why is the quorum four. I guess I really can't answer that. There's six voting members and the quorum requirements are that there be four present. That's one more than half and I think often a quorum is half or whatever the next number of persons up over half or is the next number up over the half of six, I think that was the rationale.

Moore: I would just like to voice an opinion that I feel the chief executive officer should be a voting member of the commission (indesc).

(Speaker unidentified) Question on the certification. You're talking about labor organizations that are concerned by the representative of the authority. Is certification some kind of special labor representation or is that a general sense?

Lewis: That certification is the act where whatever the regulatory body certifies that a group of employees are the recognized bargaining agent for those employees on that particular property. They might change. The existing unions might be the unions twenty years from now but they will always be certified as such.

Mike Olson, United Transportation Union: Why can't they have union representatives be a voting member?

Lewis: Same debate as the other. You heard the debate here. One person thought management should have a vote, one person thought management should not have a vote. The same debate was done. Should the labor representative, first of all should there be a labor representative on the board. Some people thought they should, some people they shouldn't. And the second question was should they have vote. Some thought should. There was a parity done to treat the labor representative the same way as the management representative as I recall.

Buki Wright, Fairbanks Chamber of Commerce: I want to refer to the second to the last sentence in that paragraph. The four public members selected from areas served by the railroad. I think that's good. I think though that it needs to go a bit further in that the two major areas served by the railroad are Southcentral and Interior Alaska. The political power base is clearly in Southcentral Alaska. So I think that the possibility exists that a mass majority of those members could quite possible end up being from Southcentral Alaska and then Interior Alaska not being represented adequately. I would like to see if we would like to see that subject addressed and that if you specified that half of those or two be from south of the Alaska Range and two be from north of the Alaska Range. In dealing with that I think there's another area that needs to be considered and I would appreciate it if you would have whether it has been and that is in dealing with this from areas served by the railroad. Barrow is served indirectly by the railroad. Prudhoe Bay is served by the railroad. Ft. Yukon is, St. Michael is. Would it be those persons living in those areas be eligible to be one of those four or are we talking about people who live along the railbelt. In others words somewhere from Seward to Eielson to the other end of the railroad.

Lewis: Well, I can give you a little bit of the debate. Earlier there were notions by locality. One commissioner from one locale. As you went through, there was a huge uproar and they got to the legislative leadership and it ended up four without specification. It was an intense debate all along the way and I think the decision on that was made basically to defer that to the future and trust the legislative leadership and the governor would work out something that was there. That was

a situation which earlier drafts we had addressed to great specificity. A political judgement was made that that was not politically a good thing to do. Second question you raise is how do you define an area served by the railroad and that's where you get into specificity again. We could have had another section and I don't say this /. There could have been a description, a definition, and that was considered about what is an area served by the railroad. The points you made were debated and there was some confusion and disagreement about it and a decision was made to leave it this way. In answering questions like that I'm not meaning that this is a proper solution. I think all of these kind of questions you're really directing your responses to the commissioners who are here thinking about these and make recommendations. All I'm trying to give is a historical perspective on how it ended up this way.

Wright: I would imagine the argument that would be put forth arguing that a certain number of individuals should come from the area served by the railroad would be the same argument put forth that half of them should be north of the Alaska Range and half south. As you mentioned earlier, there has been substantial debate about the expansion of the railroad and that's certainly something we're interested in in the Interior because if the railroad is to expand and a lot of the expansion, or the majority of it, will happen with the Interior being a hub of that. I think the Interior is very important to the survival of the railroad and what happens there. So, I think that same argument applies. In order to keep it away from political infighting and in order to keeping it away from having to trust the legislature and the governor who may be from a certain geographical area and therefore may have a tendency to want to support his local constituents. Then we wouldn't have to deal with that. Then it would be specified. In response to the second part of my question, possibly rather than just from areas served by using the word residing somehow other than from might be a bit more specific without getting so specific that everybody would get upset.

Lewis: I think that is a very reasonable suggestion. This is actually probably useful on a particular point as example of whether you want specificity or lengthiness. It's kind of a microscopic look of one of two hundred debates that was entered into on this. Specificity versus generality. Legal or practical considerations.

Speaker: Can I ask one question, what's your definition of a connecting carrier of the Alaska Railroad. Those aren't railroads and we're talking about railroads here. I just want to make sure that it doesn't mean another railroad or putting rail cars on the Alaska Railroad system.

Lewis: It doesn't mean the latter. Gerry, do you remember?

Johnson: Yes, this is another area which the bill could have been much more specific. Virtually any railroad in the nation could be said to be a connected carrier indirectly or very indirectly. The intent here was to railroads, probably in the State of Washington, maybe British Columbia, that have a more or less direct with the intermediary of one, water carrier relationship with the Alaska Railroad and that again could

be more specific but that would add to the complexity and length of the bill and I think that's something that could be left to legislative history.

Lewis: That's a good example of something that maybe has not been adequately addressed in a definitional sense. Are there any other questions about subsection a. That's what we just got through talking about. Now subsection b is a confirmation. We looked carefully at all the other public authorities in the state and the legislation that set them up. Sometime there is disagreement. When the governor doesn't want to confirm someone there is disagreement about what their status is. This provision says that once the governor has appointed someone, unless and until they are rejected by the legislature so that if the legislature never gets around to acting on the confirmation they have full voting and participatory rights. I'm not going to comment on c or d. They're, I understand, more a place of business. Subsection e describes the conditions forewhich the governor may remove someone. This is an important section. I think it is, hopefully, relatively clear. It's a political issue and it's an issue to be debated about how much control the governor should have and it's like the notion of judges should be. Should they have life tenure or shouldn't they. This says that once they are appointed, unless they are rejected by the legislature they serve to the end of the term unless they are removed by the governor for certain specific causes.

Speaker unidentified: What does it mean, conduct intended to harm the authority? Does that mean take any violent policy disagreement with someone else on the board and someone else thinks that your suggestion would have harmed the railroad?

Lewis: The key word there, this gets into criminal law, the key word there is intent. Two people could violently disagree about something. Violently disagree about whether the chief executive officer should have a vote and on the board. Their intention would be what was the good of the board. So they could be criminally violent in that situation. That's designed to get in a situation where someone intends, knows what they want to do would be harmful and intends to do it anyhow. The next section, Section .040 deals with term of office, public members of the board serve for staggered terms of five years each, could be four, could be six or any other number. I don't remember who made that decision. Those were basically blanks. I won't go through the rest of that, they're fairly self explanatory. Compensation and expenses in .050. That's the one that has the limitation of \$300 a day and that type of thing. As I said earlier, that's a blank and it could be removed. The legislation could not put any limitation leaving it up to the commission to set their own salary. Some people would think that the legislature should set the salary for the commissioners and the commissioners set the salaries for their employees. Otherwise there would be no one to whom the commissioners would be accountable. Strictly political issues. Policy decisions to be made by the legislature and who receive advice from this commission. Quorum and meetings. I'm not going to go into those. Again, I think it's self explanatory. Dropping down to .080 on page 6, this is a very important section. It's one that the people invent, I guess I kind of alluded to earlier in the day referring to

other sections. Now, Subsection (a) says, "unless the board provides for management of the authority by a third party contract under Section (b)" so this recognizes right off the beginning in the first statement on that issue is that the board can provide for management of the authority by a third party contract. Then it goes on and says the board shall appoint fixed compensation for the chief executive officer and legal counsel of the authority. There was some discussion which we did not participate in whether or not the governor should also appoint the chief legal officer feeling that it was important that the chief attorney for the commission, that that person should give advice that would be consistent to the advice the board would get if they went to the attorney general. There were other fights that the board's lawyer should be loyal to the board, independent and all that. This was a compromise to say that the governor got to review the appointment of legal counsel for competence. Whatever that means. So that the board appoints the chief executive officer, not the governor, but the board appoints the chief executive officer. The only person the governor even gets to consider is the competence of the legal officer. The decision was made not to give the governor the confirmation powers of the chief executive officer. That's strictly by the board. There's no question about that and I don't think there's any room for there to be question about that. That was a very important policy decision that was hashed out basically over the whole year. People had their strong feelings about that. Then, the chief executive officer shall appoint and fix compensation for the other executive officials just like any private corporation. The chief executive officer has everybody else fix his salary. In this case, the appointments of compensation are subject to board approval. There was debate about whether or not that should be limited so that the only ones the board had approval power over things like treasurer or vice president, chief operating officer. Those were rejected. This was the resolution after long debate on that subject. The officials appointed under Sections 1 and 2, that means the executive officials who are defined later in the act can be fired by the board any time the board wants to. Other people presumably will have contracts and this doesn't effect people other than the chief executive officers. This again is like a private corporation rather than public one. Public officials are elected for a discreet term. In the private sector, the board can fire the chief executive officer whenever the board wants to. Subject, of course, to whatever the contract terms are. If the chief executive officer had a contract that said he was entitled to one year and couldn't be fired before a year and if he or she would be fired sooner they would get two years severance pay. Of course, that would override this. But this basic decision again was that the board would function here with all the efficiency just like a private authority and the board could fire the chief executive officer, the chief executive officer wants to do what the board wanted.

Why is that extended to other officials other than the chief executive officer. It appears to me that you weaken the chain of command when you do that. It says the board can fire the second level. It's no good.

Lewis: You look to the definition of executive officials. Again, basically it's a blank. That's what people decide. Our advice was be specific. Don't leave it up to the people who wonder about the future.

Who got the power to appoint, approve and fire. Do it specifically so everybody knows going in. This was a particular resolution there are infinite numbers of others that maybe would be as good or better.

Chris Gates: These people then serve both the general manager and the board.

Lewis: Yes

Gates: Ok, isn't that traditionally a nonproductive arrangement were you don't have a clear boss you've got two bosses, and you've got to please both of them.

Lewis: They're debated constantly, they're lots of kinds of corporations I know where the chief financial officer and the chief executive officer or the chief legal officer all serve for the pleasure of the board. There are others where nobody but the committee do. There are just lots of ways to do it. And here is a section, section five then is the one that... the provision that no executive official may be compensated at a rate in excess of that established for the heads of principal executive department of the state. Policy called, there's no legal basis for that.

Unknown speaker: Did you read that before to permit incentive bonus to such a person or are those precluded?

Lewis: My interpretation would be mean that that would be the limit, if the limit perceived department heads at 60 thousand dollars, for example, that the total compensation for one of these executives could not exceed that.

Unknown speaker: Doesn't that leave you up in grey area, how are you going to get a competent executive officer for that amount of money? I doubt it for the Alaska railroad. You'll never get it. That's a poor provision.

Lewis: That's a policy provision that you can change your recommendation could be to change, if the legislature could change it it's not. I think that's, it's something I guess I'm not going to I express an opinion because it's not a legal not a legal issue it's a policy decision for other people to make.

Lewis: Oh there's absolutely nothing that prohibits it. That is your judgement about what is the best way to operate.

Unidentified Speaker: Excuse me Mr. Lewis, if I may make a reference back to number three, officials appointed under 1 and 2 that the gentleman from the port authority just made reference to here, back on page 44 there's a definition of what executive officials is and it's incredible, manager of marketing and sales, chief engineer, chief mechanical officer, officer of industrial development, real estate manager of budget

and accounting, manager of planning, chief of security. That seems to be quite a can of worms.

Lewis: It's a big list.

Same speaker: All those people are answering to the board or the what ever we're calling this. As well as the chief executive officer, your example makes sense that the chief financial officer or chief legal council or what have you might answer directly to the board, but with an operating structure where there is one chief executive officer with other people subordinate, to that working within that operational structure needing to be abordinated through one entity and one voice.

Lewis: I, know what you're saying, I don't disagree with you, this could easily have been changed and I suspect in some earlier draft it probably said that. I know that a earlier draft there was a very narrow definition of executive officials. And it got lengthened for reasons that I don't really recall now. But it could say that this does provide that the CEO appoints and sets salary for all these people. There is no question about that, but it also says that all these at level two can be fired by the board. There was a practical judgement as I recall, something that somebody said "well look, if the board tells the CEO to fire somebody and he or she doesn't then they'll fire him or her." Then that does the same thing and I think what you're expressing here is that the list is too big and there's probably a better way to do it and I sure don't disagree with the observation.

Speaker: It would seem me that it would be the function of the board to tell the CEO to run the railroad and to run it efficiently. If he does that terrific and doesn't then deal with the executive officer .

Lewis: That is a perfectly good way to approach it. Looking under section B, page seven. The board may provide for in a manner consistent with the purposes of the chapter, and subject to the approval of the state has provided in section of the state code, the management and operation of the railroad by a third party contractor. The purposes of the chapter are the ones set out in the beginning. Obviously, if the board decides that it could be done by private operator then it would nullify the finding that it is not presently appropriate for private operation. But so long as the board decides that the private operation will provide good efficient, safe, economical, continued service then the board may contract with a private operator. I don't remember the reference to the state code. Legislative approval of course. That's one of the provisions that we'll get to later, where the commission puts something in motion and then the legislature can come in and stop it if they choose to.

Speaker: That need not be the entire railroad, it could be segments of its operation.

Lewis: Yes sir. It could be for different times or different parts of the railroad. That is left up to the board. We come now to section 090, delegation, which responds to a question that somebody asked earlier. Subsection a, the board shall by rule,

delegate powers and duties appropriate and necessary for managing the daily affairs and operations of the authority to the CEO subject to any requirement of board concurrence or authorization imposed by the rules. That says board just sets its own rules and regulations and for turning the railroad over for operation to the CEO but what recognizes what's obvious, that the board itself can limit what it gives to the CEO. And this is very important. This is something that I think was a result of input by the Chamber of Commerce or Commonwealth. Within 180 days of its establishment, the board shall delegate the following activity of the authority to the CEO or other executive officials designated by the board subject to board review of any activities that may be specified in the rules. Now if you look at these things, this is the nuts and bolts of the operation of the railroad. And what the legislature is saying to the board is: within 180 days you will delegate these things to the CEO recognizing that the board will have review power, and they can't get out of their own responsibility by delegating to a CEO. But saying nevertheless, the management of all these things must within 180 days be delegated to the CEO. Look at them. They are complicated. I suggest that we not linger on them but I would be happy to respond to questions.

Speaker: I have one question. Why was not an operating budget included in there? That the CEO should provide an operating budget to the board

Lewis: The debate on that I recall, that the commission itself would require the CEO to submit a budget. It was an assumed responsibility of the chief executive officer. You'll note that another section says that the board shall cause to be, you know the plans the annual plans, the five year plans, I think this specific language to accompany shortly reads like the board shall direct that a budget be prepared that the board will submit to the legislature. It doesn't have to be done, it could be added. One of the dangers in adding things, if you start adding too much then people will argue that what you didn't have you didn't intend to delegate. The assumptions were that the CEO would prepare a budget.

Harle: This seems to be in conflict with some of the other procedures. Legislatively, why should the board be told what to delegate.

Lewis: My recollection is that this was requested by if not your group, I think one of the Chambers of Commerce, Commonwealth North, I really don't remember the history of that. Gerry. Oh, I beg your pardon. It concerned the management of the railroad.

Harle: It just doesn't seem appropriate in legislation to tell the commission what they ought to be doing in terms operation. Lewis: I don't disagree with that at all. I think your suggestion is a good one. Last spring, there was a lot of concern by people here that it was set up, that it was too bureaucratic and the manager of the railroad didn't have enough authority. This was a political response to a perceived local concern generated by the management and supported people that the board would keep too much power to itself and ought to be ordered by the legislature to delegate. It's not a provision that needs to be in here. The other side of that is there were certain things that people thought that the board itself really had to be responsible for. Not that they

would do it originally, but that they would vote on it, they could be cognizant of it, they couldn't simply delegate without further thought. And those are the ones that are set out in sub-section "c" on page 8: General or particular board authorization or concurrence is required for a number of other things. The list is based upon various people's experience, things to be added to it, things can be deleted. It could be deleted altogether. It's a policy decision that certain things were so important that the legislature thought the board itself really ought to vote on it, to not resolve it say arbitrary (??). So if its \$5 million, or \$1 million or say \$50 million. And that brings us to the conclusion of Article One and Gerry Johnson will take Article Two.

Russ Babcock: Perhaps I could address a question to Capt. Adlum and Dr. Olson. We've now structured a board and given its duties and constraints. Are doing a good job? Are we going to get a good board out of this process? In your experience, are they going to be able to function under this set up? What's your comment on what we've done so far?

Adlum: Well as a commissioner, a couple of things that strike me, the even numbers. I can see too many deadlocked votes, 3 to 3, 2 to 2 and not much of a way to resolve that. I do agree that the executive director should not be a voting member. If you are going to keep this division between the commissioner and the management.

Lewis: I apparently made a mistake. There are six public voting members. There are a total of seven voting members. Right now, the Commissioner of Transportation is a voting member though not public. There are six public members. If the decision were made to take the commissioner of Transportation off, then I think the recommendation to go along with that would be to add another public member to you end up with an uneven number.

Adlum: Then you have one more than half as a quorum. We have a five man commission. Even though there are only three of us there, and that's a quorum, we have to have three votes to pass something. You can't come there with a minimum quorum of three, and pass on a 2 to 1 vote.

Lewis: We have drafted that for other public authorities that we represent to require a super majority. There are lots of things like that could also be drafted so that certain decisions required more than a majority.

Adlum: Maybe you could put that in some bylaws of the commission, though and cover them in that manner. Lewis: That is intended to be done by the Commission in their own regulations. Everything that is not dealt with specifically, will be left to the board to promulgate their own regulations.

Adlum: My feeling on that. Just because somebody happens to be traveling, out of town working for the commission, a small group can get together and get something passed without the whole majority.

Babcock: What about representation, getting people who really represent the interests of the authority in this case, to serve on the board. Should there be geographic reflections in that, or not.

Adlum: Well, we talked on that, David and I both, when we were talking the issue of whether they should be elected or appointed. We felt the area that you had to cover with the railroad it would be very difficult to have an election that would be representative. We did feel strongly that they should be appointed. I personally have strong feelings for at large. What can happen on commissions, and has happened on the Seattle Port Commission, you get one guy that is for the waterfront and one guy that is for the airport. We have it today on our county commission. In King County where they're elected by districts. They're fighting for their own districts and to hell with the rest of the county. I don't think that's good either. If you're going to run a successful railroad, you got to have representation (?) over the entire area.

Wright: But suppose the governor is from the waterfront and he's doing the appointing.

Adlum: You happen to have one from the hotel industry and he's got hotel everywhere.

Olson: Let me just make one response to Russ's question. My own reading of this section of the bill is that closely approximates the kind of organizing structures that worked best with respect to public authorities, generally. I strongly agree the comment that Mr. Ebert made earlier on, that this section at the top of page seven, that gives appointment and compensation powers at a second level of the organization and particularly as these are spelled out in the list on page 44. That really violates some very fundamental properties of inducements toward efficiency, flexibility, managerial expertise and dipping that far down into the managements staffing side of the organization is probably not a well founded principle.

Adlum: --It takes a big risk toward patronage.

Olson: Correct. Other than that, I find most of the provisions here closely approximating some of the best public authority structures. But that one, I just strongly agree with the comment.

Johnson: To have any hope of getting through this we are going to have to start moving more quickly. And I think it's more important that we try and explain things at this point. The next article has to do with the administrative provisions provided for the railroad authority. As I go through these I'm going to try and compare them to some extent to the Alaska Code that affects other public entities. As we've noted consistently throughout. An effort was made to review the statutory provisions that effect other public entities to determine they can be improved upon in the sense of providing more independence and flexibility, workability to the railroad, making it less like a conventional public agency and more like a private entity. The first provision you see there has to do with conflicts of interest. This is a little understood provision. I think people on first reading considered it a

restriction. Actually, it is permissive in the sense that its major function is to be very detailed in defining what conflicts of interest are. Secondly, to allow the authority to operate in the face of existence of conflicts of interest, to deal with them in order to allow it to function. The state code is basically two parts, a financial disclosure aspect and a bare prohibition against acting in cases where there are conflicts of interest. It does not define conflicts of interest to this extent. Incidentally, I would pause in the explanation to note that this provision is basically consistent with a rapidly developing area of the law concerning private boards of directors and fiduciary duties owed by those directors to their colleagues or their companies.

Harle: Mr. Johnson, what is the need for this article in total. Why couldn't the board of commissioners establish these procedures, instead of through legislation?

Johnson: Because the state statute is so explicit and doesn't reach this, it was our opinion that simply delegating broad, rule making power in this area to the board would not be sufficient to allow them to save a decision in the face of a conflict of interest. The meat of this provision is to first narrowly define what an inhibiting conflict of interest is, and secondly provide a procedure through which the disclosure of other minor conflicts of interest and then the board proving participation of the member following disclosure, that the board can actually make a decision. That we feel is very important.

Harle: So this article is required by law because it's a public authority-

Johnson: It's not required by law and you could do without it. It just gives this body more flexibility it makes it better (end of tape) circumstances from judicial attack. Which is very important.

Gates: Article two or the second part of this article, deals with public board meetings. This is the very first instance where we approach a subject of competition. And I'd like to take just one minute if I could to say get a real consideration here that this is a tough, thorny issue that must be considered. And that is the long term effects of this bill on all transportation competition into southcentral and the railbelt. You're dealing with exemption from taxes, tax exempt financing, railroad operating modes of transportation other than a railroad, rate making by legislative fiat as opposed to fully allocated costs, exemption from state anti-trust provisions, the ability to form contract rates as opposed to other carriers not having that ability, entering water transportation with direct competition with some existing carriers. How far do we want to make the Alaska Railroad a profitable beast? Do we want to eliminate SeaLand and TOTE? Do we want to eliminate present competition on the long term and do you only want the ARR serving the railbelt? It's a tough, thorny issue, but how much subsidy, how much help do you give the railroad when it in fact when it competes for general cargo and could drive out competition that is normally considered beneficial.

Johnson: You're raising a policy question regarding the ability of the ARR as a quasi public entity to function like a private carrier. If the board of TOTE or SeaLand would agree to set their rates in public hearings then I think the state of Alaska should consider comity. Since they don't do that and since the ICC doesn't require any other carrier to do that I think that the Alaska Railroad should probably enjoy the same protection from the inappropriate disclosure of proprietary information.

Gates: This is just the tip of the iceberg. When they can do all these things and have access to capital subsidies from the legislature. It's a real issue.

Johnson: To some extent you're mixing apples and oranges. The legislature doesn't have to give them capital subsidies. If it does give them a capital subsidy, then the ICC in regulation of the railroad's rates will take that into account.

Gates: Contract rates?

Johnson: Contract rates are subject to regulation.

Gates: SeaLand can't enter into contract rates as a public common carrier, the railroad is entitled to do that without any disclosure at all. Without any filing of tariffs.

Johnson: I think we're into something other than an explanation of this provision. I would just point out to you that the purpose of this public board meeting section as well as the disclosure of public information later on is to give the railroad entity access to the same exemptions that exist under state law for other public entities plus additional ones that are peculiar to the railroad business, that would be necessary for it to operate. I would simply point out that the concerns that have been raised are largely ones that are subject to the regulation of the railroad by the federal government. Minutes of meeting: that provision is there simply to go the creation issue some of your Supreme Court decisions invalidating the creation of independent public corporations outside of the 22 department limit have looked to provisions in those statutes requiring the submission of minutes in this manner to support the creation of entities outside the 22 agency limit. The administrative procedure section, the gentlemen who asked the question, unfortunately is gone, but this is a section which is basically a provision exempting the authority from the state Admin. Proc. Act and giving it an independent streamlined rule making power. There is one provision here that requires the submission of certain types of rules and regulations to the attorney general for review. The inclusion of that is not required by law and it was made basically as a policy decision and one may or may not feel that that is appropriate for an independent authority. With the exception of that provision, the administrative procedure section represents substantially the provision to the authority of substantially greater flexibility than any other public entity would have. All this does is say that with respect certain types of regulations that effect the public in major ways, the

railroad has to comply the bare minimum of due process, which, I noticed is an opportunity to be heard.

Public disclosure information we discussed. Again, the Alaska Code requires the disclosure of everything that's public.

Speaker: Could I go back to Administrative procedure? At the bottom of page 11, it says the legislature can annul or temporarily suspend any regulation it likes. To me that seems to give the legislature an infinite capability of doing anything it wants.

Johnson: That, unfortunately, is a requirement of you law at the moment.

Speaker: Is it a requirement of a law that is higher than this law?

Johnson: Yes, it's a generic requirement. I'm trying to recall the history of this a bit and maybe what I should do is to refresh my memory and get back in touch with you on this. There have been Supreme Court decisions on this question and I think I care to go right now.

Gates: Would this have any effect if this were operated by a private entity? Would those regs that are internally generated have to be approved by the legislature?

Johnson: If it were operated by a private entity under a public authority, the public authority would still be subject to this. The ability for it to delegate out from under requirements like this to a contract management is not clear. It's something that would require a lot of work to determine in order for it to be done right. If the railroad was simply transferred to the private sector, taken by the state and sold or given away, then these requirements would not follow.

Speaker: If you could give us some help on that one, it kind of sticks in our craw a bit. A lot of our people question that.

Johnson: Sure, we'd be happy to do that.

Speaker: That would apparently cover operating rules..then it would have to go before the legislature.

Johnson: There's a bifurcation here. Regs affect things relating to the outside world. Rules affect the internal governance of the authority. This goes only to regs so it's not as broad as it at first appears to be. We'd be happy to reflect on that and provide more information to the commission.

Lewis: Article 3, page 14: The first 4 pages specify 32 specific powers plus one general power that is expressly delegated by the legislature to the railroad authority. I'm not going to go into the details and again they are self explanatory. They're in there for a variety of reasons. Often when people challenge actions of public authorities, one of the challenges is that the public authority doesn't has not been delegated the legal authority by the state legislature to do something. So this was intended as a long shopping list to take all the issues that

have been controversial that we know about (indesc) and to specifically challenges that have been made in this state to the authority of your other public authorities in making clear that the authority has those. 33 is a catch all which says that if something that has been left out in the first 32 items, the public authority has the power to do all things necessary, convenient and desirable to carry out the powers and duties expressly granted that necessarily apply to this chapter or any of the other laws of the state, etc. It's also designed, in looking ahead, one of the other things that we've given a great deal of attention to are the bonding provisions. Some of these specific powers are in here to satisfy some of the bond council. When the railroad floats a bond to do something, and the bond council asks for an opinion that the railroad has the power to do that. This would be the reference that the bond council would look to. So it's designed in a prospective way to deal with bonding provisions that we'll come to later.

Wright: Could you elaborate briefly on 27? I assume there has been discussion about the latter half of that and the railroad's ability to acquire the modes of transportation and for example compete with private trucking industry.

Lewis: It's a policy question. There has been tons of discussion about that.

Wright: It is the intent of this legislation that the railroad could compete with private industry and other things, other forms of transportation other than the railroad, such as the barge lines or trucking firm, a wholly owned subsidiary of the railroad which could be a trucking firm that would compete as a feeder service for some railroad terminal to say Valdez, or Delta or Tok. Is that a specific intent of this or is it an accidental happening that it's there.

Lewis: I'm trying to recall and I'm also trying to be careful.

Johnson: You are looking at the May 4 draft, that draft was subsequently amended in the house committee. Power number 27, to provide for extension of the ARR rail system with negotiation of thru tariffs with providers of inter and intra state transportation. That was done, in the rational of the sponsors of you amendment, to go to your point. In spite of the fact of the way that the bill was drawn previously, diversification of other modes was one of those things which was subject to the legislative review provisions.

Wright: So as you're describing it, my concern is no longer valid.

Johnson: Your concern to this particular power on the day that the legislature adjourned is no longer valid.

Speaker: When we go back to this issue that we talked about in the findings where some of us consider that this authority should be in power to consider transfer of the railroad to private enterprise. Again, mention of that ability to consider that should be in these subsequent articles where the activities of the board are allowed or condoned or set in a framework of approvals or what not. It's an issue that should

show up in a couple of places as we go along. I'm just saying this to the board and not to you.

Lewis: There is nothing to preclude that from being added here.

Speaker: Well if you had it one place, I think it's important that we had it the others too.

Lewis: If you get into that, you get into the notion that the legislature still has veto power over those kinds of things. You'd have to decide whether to take out or put it in.
Any other questions?

Bill Zyback: Gerry just referred to the piece of legislation that was passed at the end of the session. The question that I have is whether this advisory commission is going to be dealing with the May 5 version, as I understood it was, or some subsequent version with changes that we are not aware of?

Lewis: Gerry was referring to a House bill. My understanding is that the commission is looking at the senate bill where the house bill was different from the senate bill, this commission would presumably decide whether they think the different provisions of the house bill should be considered with the senate bill or not.

Zyback: We were not aware of that and this is why Buki brought that point to your and the commissions attention.

Lewis: I'm sure the commission will look carefully at any differences between the house and senate versions. Annual reports. This also responds, as I alluded to earlier, Sec. 42.40.310, Annual reports. The board shall direct preparation of, certify and distribute to the governor and each member of the legislature a report generally describing the operations and financial conditions, etc. In the next section 42.40.320, says the board shall have the financial records audited etc. Then we go on irto, the next section, 325, the authority shall prepare and the board shall adopt a long range program. All of these are assuming that the board will its CEO prepare these things for its review and that the board will vote on them, approve them or disapprove them or change them, and the board will submit them to its seniors, the legislature the governor.

Johnson: One additional point on that. This collection of provisions also assumes or in lieu of annual appropriation of the authority's revenues.

Lewis: This bill does not contemplate any annual appropriations by the by the legislature. It is quite explicit that all the revenue generated by the railroad will be retained by the railroad and will not go into the general fund, one. Two, the railroad will not look to the general fund for appropriations. The legislature is simply saying to the authority: We want to know what's going on, what your plans are, and we want to make sure that you plan. That you plan in one and five year intervals or other provisions early on for 18 month intervals. But it's

basically the legislature responding to some of these outside studies done and some of the studies of the other public authorities and through these various provisions required the board to plan both policy, program and financial planning and to do it on a regular basis and to require them by law to submit those things to the legislature and to the governor. So that the gov. and the leg. will know: one, that the railroad authority is planning to do something, and that two they'll know how they plan to carry it out.

There is an annual audit that I referred to in sec. 320. There are other sections in the back of this bill, I'll refer to briefly on page 47, sections 10 and 11, talk about the first reports and audits, right after the initial start up. Sections 10 and 11 have little asterisks, because after the first the first time they are complied with, they'll fade into history and they'll be superseded by the annual requirements that we just talked about in the main body of the legislation. It's an interesting fertile area and the commission will look very carefully into this because this is really the part of the bill that deals with planning and that sets out the requirements that the authority plan and disclose its information to the state policy makers.

Mr. Ebert: If audit by an independent public accountant is provided why is there also audit by the governor and the legislature whenever they consider necessary, which I guess if they disagree with railroad policy could be arranged to be during the evening hours of every day.

Lewis: That's a very good question. One answer is that it's not necessary, if there's an audit, there's an audit. And that's all that one needs. There was concern, and I don't remember the details, both by the governor's office and by the legislative leadership that apparently somebody had had some difficulty with some of the existing public authorities and the wanted a provision to get information from them.

Johnson: And only during normal business hours.

Lewis: That's right. See the whole debate is playing out again. The authority shall, at all times during normal business hours, etc. That's one part. The other part, and as often governor's auditor or the legislative audit division considers necessary make available.

Johnson: One other point, deserves passing, is that although the auditors can examine the authority's records, the information cannot not be disclosed unless its consistent with the protection of information that we've seen in other aspects of the bill.

Lewis: Page 19, sec 42.40.330, use of authority assets. This is really is the only part that really differs in some ways from a private entity the authority shall apply all money, property, other assets accredited to the authority towards activities authorized by this chapter. Now first of all this is limitation they can't use their money for something that's not authorized in this legislation, presumably they could not go into raising ox or wheat or something, they couldn't manufacture blivits.

Ebert: Except one of their expressed powers and authorities is to invest in the stock of other corporations who might be raising wheat, manufacturing blivits.

Lewis: Which number are you referring to?

Ebert: It's in the litany (Lewis: Back in on of those 32 powers?) yes.

Lewis: well you're talking about section 13, (yes).

Ebert: Acquire, hold and dispose of stocks, memberships, contracts, bonds general limited partnership interests or other interests in another corporation, association, partnership, joint venture or other legal entity.

Lewis: That is still subject to the substantial limitations, that's a technical provision to say that if a purpose, I suppose some of you mentioned grain, somehow you grain elevator and that's not a bad example. If there was a decision that somebody didn't have enough capital to build their own grain elevator or spur or siding or that type of thing and the purpose of the railroad required them in carrying out their other purposes to participate in a silo then this gives them explicit authority to engage in that specific legal arrangement where it's necessary to carry out one of the substantive powers that's been authorized by this chapter.

Ebert: I thought this was the purposes in substantive powers.

Lewis: Well it is, I think the normal parlance divides between things that are necessary to do something and the purpose. The purpose of the authority would not be to borrow money. The purpose is to provide transportation.

Ebert: Is that stated in here somewhere?

Speaker unidentified: That's in the findings.

Lewis: I think that's the way statutes are normally construed. Again, this is for bonding issues and those kinds of things. You look at explicit provisions. The purpose of entity is not to sign contracts but it is given the power to sign contracts where it necessary to do something else. But the purpose of the entity is not to sign contracts. The purpose is to provide transportation.

Speaker unidentified: I have one concern. Isn't this section subject to litigation? Assuming that maybe the Alaska Railroad were to make money, isn't there a provision in our constitution that all monies shall go back into the general treasury. I'd like for you to address that.

Lewis: That's a very important question that received a lot of debate. You looked at two things. That what you are referring to derived from the state constitution. There is an exception in the state constitution that says that where required authorized by federal programs, the money does not have to go into the general treasury. The federal legislation

that Gerry described earlier had an explicit provision that says that all revenues generated by the Alaska Railroad shall be retained by the authority for purpose authorized under this chapter and shall not go into the general fund.

Speaker unidentified: We don't know if that provision is going to survive, do we?

Lewis: That's right and if it doesn't the bill will be a significant problem. The next part that says notwithstanding provisions that set those limitations we just talked about, this is a traditional section that says that the board may nevertheless pay the board members fees, dues, or service charges, etc., and defendant identified. Presuming the board will be sued anytime the railroad runs over somebody or somebody thinks that they default on a contract or something, people will typically sue everybody in sight including the individual board members. This simply says that the board can use board revenue to protect and defend and indemnify its employees, counsel members, and commissioners. Buy insurance and that type of thing. That brings us to Article 4 which Gerry will talk about.

Johnson: Rail properties. This section is, I think, largely self explanatory. The first Subsection of .400 deals with the receipt by the railroad of the property from the federal government under the transfer legislation in its own name. So that it doesn't have to first pass through the state and then to the authority. Authorizing direct receipt. The one issue that I would mention here that was a policy decision that has caused some controversy is the so called bifurcation of the properties. The requirement the authority reconvey subsurface to the state for management by the Commissioner of Natural Resources. That is a policy decision. It is not required by state law. Authority yes.

Ebert: Why did you hitch it to the term subsurface, state which we are all going to be learning what it means over the course of the years as the district court tells us what villages own and what regions own? Why not use the Section 6(i) in the statenood act language.

Johnson: This language was proposed by assistant attorneys general in the Department of Natural Resources. It is their policy, their idea.

Gates: Between the last draft and this draft you added on line 7, page 21, and in accordance with AS 42.410(g), Coal. What does that refer to? Does that allow the railroad to mine its own coal, for example?

Johnson: If you'll look on page 24 you'll see for .410(g). This is a coal amendment, basically, which allows the authority to use coal. That provision is to protect the railroad authority to use its own coal and notwithstanding the reconveyance back to the subsurface. If the policy decision is made to keep the title unified, then the coal provision, obviously, would not be necessary. It's merely a cross reference to the internal provision. The rest of these subsections speak to basically the ability of the railroad to settle claims and apply for federal land in its own name. The next section in classification acquisition of use and state land for railroad purpose, again, is self explanatory. Allows

the railroad expansion, for instance, or for other purposes to seek the allocation to bid on state lands and provides an expedited process for doing that requiring certain findings by the Department of Natural Resources and so on. Whether or not that is adequate is something I think you should review. Development of oil, gas, minerals, geothermal, resources, this again, is required as a result of bifurcation of title. In the event this provision is essential to tax the operation of the railroad in the event the Department, in its ownership and management of the subsurface decides that it wants to export minerals therein requires that notification be given and that findings be made the railroad has to certify and so on. It's not going to impair the operation of the railroad. Furthermore it establish funds in the treasury into which revenues are deposited that the railroad would benefit from. .420, land use regulation. Straight forward provision allowing the railroad to promulgate regulations concerning the land. .430 is the eminent domain provision. It grants the railroad the power of condemnation for railroad purposes. That brings us to the financial provisions.

Speaker unidentified: If we consider that the railroad might one day be sold to a private entity and would like to keep in a bundle, the land, the railroad, and its operations, for consideration of that purpose there's no constitutional reason why the lands and the subsurface or the 6(i) definition if you want to use that one, don't state in the authority as a package and could subsequently be passed off. That's a policy decision.

Johnson: That's right although I think when the time comes that should be looked at carefully. I haven't given that much thought and it would have to be considered. I don't believe that's impediment.

Speaker: If that was the case then you wouldn't need all this other language about geothermal and coal and things. The land would be the authority's.

Johnson: That's there strictly because of bifurcation that is envisioned here at the outset. That conveyance back of the subsurface. If you don't do that then you don't need any of this stuff.

Easley: Do you know what the decision was on the bifurcation of the (indesc).

Johnson: It was strictly the preference of the Department of Natural Resources and the previous administration. I'm not even sure the policy survives. I think its strictly up to them to think about and of course it's within the pervue of this group to make a recommendation. We believe it is technically (indesc) done.

Lewis: Article 5, financial provisions. Bonds and notes. Any questions?

Gates: As long as the commission is aware that we don't create a monster. Go to far. Saying that we want efficient railroad, which we do and everybody does, but we don't get it to the point where private enterprise, which competes against it and 13% of its revenues, general

cargo, that we don't create a monster that just kicks that out through these special provisions that private enterprise does not have access to. Such as tax support, exemption from taxes in total, such as acquiring other modes which I'm glad to hear did not survive in the House version. Such as exemption from antitrust provisions which private operators must abide by. Such as the ability to go with contract rates private carriers can operate with. On and on. There's just the ability here to change the competitive aspect and its up to eliminate competition and I think its a public purpose to have good competition. Head to head competition and not create a distinct advantage on one hand over and above the other hand. It's just that we don't go too far and it's not something that's obstructive.

Lewis: Any other questions about the bond provisions? I would be very happy to go into them. We've given a lot of thought to them. There was some earlier suggestion that the bond provision didn't do something. I had hoped that whoever it was would be here. We've had it reviewed carefully by bond underwriters as well as bond counsel and based upon the fair amount of experience we've had representing public authorities in these areas. I think I'll defer that until some questions. Lets skip those to page 33, Section 42.45.40. There is again making it clear that the credit of the state is not pledged to this authority. That the authority stands on its own. The section we talked about before and I'll mention it one other time is .550, revenues. Revenues generated by the authority did not become part of the general fund of the state's but is kept and managed by the authority for purposes authorized by this chapter. The validity of this there has been a debate conflicting attorney general opinions by our previous attorney general about the dedication of funds issue. That's what this refers to. Sometimes you attorney general thinks that dedication of funds would not apply to revenue generated by something like this railroad since it was generated by property that was acquired by the federal government rather than property that was acquired funds which had been raised by taxes. Big debate upon that issue. There is a provision in the federal legislation, though, that is consistent with the federal exceptions of the state constitution and if that provision survives in the federal legislation then presumably this is an effected provision in this legislation.

Babcock: Is there any chance a good attorney could do something with that word "do" as opposed to "may?" Revenues generated by the authority "do" not become part of the general fund as opposed to "may" not.

Lewis: I would say "do" is a better word there than may or will not or should not. I think the intent is clear here. Maybe there should be some clarification. Should take a look at that.

Wright: Same section there. Purposes authorized by this chapter. I'm assuming the authority is authorized to operate the railroad, repair, maintenance, etc. Not just retire bonds.

Lewis: Yes. We all know that certain things are part of running a railroad. Well, that's it on that section. The next section, Article

6, is one of the most important articles in the legislation. I talked earlier in detail about the relationship between the commission and its management. This talks in detail about the relationship between the commission and the state and Gerry will handle this.

Johnson: This section attempts to establish the relationship between the state and its creature, the authority.. To establish is on a mutually understood clearly defined and formal basis so that each actor knows when accountability is expected and the relationship can function in a formal and hopefully ultimately routine way. It is designed to make the relationship as structured as possible in the sense that it limits state oversight and interference by defining the manner in which the state relates to the authority. There are four basic mechanisms. The first of them is state review which for those things set out on page 34 on the authority prior to undertaking them must first notify the governor. He, at that point, has the option, notification, incidentally, means to specify those things on the top of page 35, the governor then has three choices. He may approve it in which case the authority can go ahead. He can send it to wait for the legislature to come into session or he can disapprove it. The provision in (e) explains what the legislature's options then are and that continues on through (f). In (g) there are somethings delineated which require the approval of the legislature, the governor's aide keeping function notwithstanding. In other words they're considered so significant that the legislature must approve them. They're not things that the governor could simply brew and allow the authority to go ahead on their own. The items which are subject to these various levels of approval are again policy types of decisions. They were considered the types of activities over which the state, for a variety of reasons, ought to have some control because they were either on different activities than what the railroad is eventually doing or they were financial undertakings so substantial as to either potentially impair the viability of the entity itself or perhaps the credibility of the state. The coverage of these items, the treatment of the items within the mechanism were again policy decision. I think we could debate whether or not its appropriate or whether more things or fewer things should be subject to review. The point I would stress here today is examination of the mechanism is built. The mechanism is something which we were responsible for.

Bates: Under Article 6, Subsection (a) 1, "significant or prominent change must be approved." Is there any possibility of further defining that beast so that it does not rear its ugly head.

Johnson: That's a very good point and its something a lot of people thought long and hard about. It still worries me. We stopped short of more detail because we were already concerned about the level of specificity, complexity of the legislation. I think it's entirely appropriate to consider some further elaboration on that point.

Speaker: Could you refer that back to .300 which gives them general powers? There's some conflict there. One place it says its their power to do and the other says you can't do without approval.

Johnson: I think that's not an entirely different thought.

Speaker: Because what's significant one day might not be the next and vice versa.

Bates: I think they've got wires down that are killing moose now. The fact of getting those wires up if that's significant to the news media would it be significant to the governor?

Harle: We would encourage the commission to look at this particular Article 6 very carefully with regards to seeing if they couldn't somehow consider depoliticizing this section of the article.

Johnson: Let me just say one thing about that. The whole purpose of this article is to depoliticize the relationship. It may not be apparent but I think the politization of the relationship between the state and the authority is something that worried everyone that's been working on this. The decision was made that there ought to be a mechanism through which the two can relate so that instead of it being informal and subject to abuse on an adhoc basis that the relationship would be defined. This is an effort to do it. Whether it achieves that result I don't know.

Harle: In our view it does not accomplish that. What it does is require the commission to come back for specific activities and still remains to leave open the other issues that are unwritten to be directed by various political entities. We view this as somewhat as an interference. You should set up a commission, give it directives, and let it do its day to day work.

Johnson: The other objective in this section was to strike a balance between accountability and independence. I suppose on the one hand you could say that it makes the railroad overly accountable and results in interference. It wasn't intended to do that.

Harle: . . . approval prior to proceeding and that is a definite hinderance on certain things major things.

Johnson: What we were told was that the operation of the railroad and the functions that it currently has and hopefully willing to undertake in the future is so important to the state that there had to be a formal mechanism for insuring that it was accountable and not reckless.

Harle: Isn't that mechanism inherent in organization as you have developed this?

Johnson: I think that whether it is or not is a judgement call and whether this (indesc) the objectives I mentioned to you is again is subject to personal judgement.

Speaker : It seems that you've got three different points in Article 6 where you have an interface between the legislature and the authority. You've got 600 and 610 and 615 and they all act separately. Couldn't you say just leave it with 615 which says the governor shall intervene and excersize some control over the authority if necessary and specify the areas that are a real concern.

Johnson: They do different things. Maybe we should move through the rest of them quickly and talk about them as a subset. The last two are escalating. The first two are companions. The first one requires authority to seek approval for certain activities. The second one allows the governor or the legislature to request the authority to do certain things. It's the converse. They have that relationship as well but also for anything basically the governor or the legislature can ask that the railroad take action. Instead of having a whole bunch of things coming from a whole bunch of different sources to which the railroad make varying responsive replies what this attempts to do is to structure the relationship so that the governor or the legislature may officially ask the railroad to do something or not to do something. The railroad is then obligated to respond in writing with some specificity and then that sets up, it poses the policy issue in an informed way for the subsequent action of the state government. Make a decision on way or the other. Intervention and trusteeship are more regulatory in nature. They deal with situations in which the railroad has gone awry, in a sense. The first one allows the governor when authorized by the legislature to intervene and temporarily control the affairs of the authority in a case of those five things listed on page 37. Trusteeship has something of a conotation of bankruptcy of almost where the affairs of the railroad are still troubled that the management of it has to be totally taken over and things set right.

Ebert: You've got intervention triggered by an insufficient membership to constitute a quorum which itself would be a condition brought about by the governor failing to appoint. So the governor would be in a position to create the condition of his own intervention.

Johnson: No. He can only intervene when the legislature authorizes him to it.

Ebert: In which case all of this is academic. The circumstances underwhich the legislature would chose to authorize intervention would presumably be addressed when they authorize the intervention.

Johnson: This sets up a set of circumstances underwhich the governor could seek it or the authority could seek it or the legislature could initiate it. It creates a new entity. If, for instance, the authority in number 2 is represented to the public or the creditors that they have access to the credit of the state in their dealings, then this poses the opportunity for the legislature to step in.

Ebert: Doesn't the legislature have that option at anytime anyway?

Johnson: Well, the legislature can abolish the authority. There is no question about that. This is an interim mechanism that saves it. It provides a way in which a cure can be imposed at short of simply abolishing it or taking it within the Department of Transportation.

Ebert: Even though it would be a situation procured by the gentleman proposing to intervene?

Johnson: Well, in that case I think that if the governor were setting up that circumstance by not appointing people then assuming the legislature wouldn't authorize him to intervene. Do you see that that is not a circular situation.

Ebert: Actually I do not see that that is not circular. If this section has any life without future legislation it's circular. If it has not life without future legislation then why is it here.

Johnson: Well, I guess I don't agree with your characterization. These mechanisms, I know, are new to you. There's nothing like them currently in Alaska law. They were developed as a result of the concern of the policy group to achieve that balance of independence and accountability and also to respond to the criticisms of the many existing public corporations that you have in this state that have come out in legislative audits and in the review by the Institute of Public Affairs. We drew heavily on those materials in working with the policy people who developed these mechanisms.

Bill Zybach, Fairbanks North Star Borough: Is there an inconsistency in (g) of this section where it says there needs to be approval for the provision of management and operation of the railroad by a third party contractor and on page 6 when we were talking about management of the authority it seemed to indicate that the board could provide for management by a third party?

Johnson: Yes, the legislation provides for the possibility of contracting out to management. What this is additive in a sense that it requires the legislature to approve it if they elect to do that.

Babcock: I might pose the same question as before to Captain Adlum and Dr. Olson in their experience how they see this Section 6 operating. Is it workable, is it not, are there any pitfalls.

Dr. Olson: Let me respond to that. I spent a good deal of time going through this section first time up and again before coming up this time. I recall this morning I characterized the set of relationships you are dealing with here as the twilight zone and what is characterized as the twilight zone is that not many people know very much about how it operates or who acts on whom are the rest. I think that its a very imaginative way of trying to do as Mr. Johnson says, maximize the kind of independence and autonomy for this quasi public entity at the same time as having checkpoints that assure a measure of public control. On the first two of these, the state review and the action forcing mechanism, the first one is requiring a set of reports, accountability, and responsiveness to the parental government while the second is allowing for policy direction. I think you come down in the end on this second one by saying that the parental government of the entity ought to or ought not to have the ability to set broad policy issues for the entity and if you come down on the affirmative on that question, the action forcing mechanism is about as controlled a set of policy interventions as I have seen in other public authorities. I don't have problems with either the review or the action forcing mechanisms. On intervention and trusteeship, trusteeship is tied to a fairly specific set of

contingencies. Intervention seems to be the one that gives people the greatest degree of pause and it is attempting to anticipate a set of events that would require intervention and I think Mr. Johnson is quite in correct in saying that experience and working through this intervention mode is about all one can rely upon at this point. I don't see any necessary problems nor do I think its necessarily a circular set of requirements that are being set out here. So within that general area of the twilight zone, this is at least as good as most of the other sets of relationships that I have seen. We're in a very difficult area because you're trying to say that we want the degree of autonomy, flexibility for the entity in order for it to be an efficient business like organization but you're also saying that you want a set of structures that insure public accountability and policy direction. Combining those two is a very difficult enterprise and I think that's where most of the concern comes from.

Babcock: I recognize the balancing effort there and agree with you . It's nice to have the structure instead of not structure. The problem is that like any balance you can put as many on either side as you want and what maybe we should focus us is restrict it to the significant ones. And again that's the definition of significant (that's right) do we invite too much balance, too much balancing so there's no operation you might say. Is there any protective mechanisms that might be.

Adlum: The fact that it's here I think might cause the commission to keep pretty much on the straight and narrow and not get themselves in a position where they could be exercise (indesc) up against them. They know it was there and could be used. I think right now in the state of Washington, why I don't think our law says this, but the legislature could move in with an investigating committee and did once about 21 or 2 years ago.

Olson: Let me just take an example of public agency, public authority, that's gone awry for the lack of this type of attention. Washington Public Power Supply System lacked both the requirements of state review in the first instance, so that superior governmental levels knew what was going on, let alone could agree with what was going on, and, secondly, the state legislature failed to have the tools of intervention until the most recent period, the last couple of years. So that even when they found out how far things had gone awry, on the contracting system on the financing of the entities, it took some doing for them to intervene. And I take it what has been attempted here is to try to anticipate worse case scenarios with respect to trusteeship and intervention, at the same time as allowing for policy influence, policy direction on the action forcing mechanism and more regularized review through the review stage. I think your comment is probably best taken: It's better to have this kind of anticipation of the wayward agency than not to have it at all.

Speaker: I noticed at the federal level that there is a great deal of politication with regard to legislative (indesc). This piece of legislation is review (?) in that regard. I'm referring to the FTC legislation in Congress with all the proposed regulations (indesc)

Johnson: First of all, the legislative veto situation, had you point out something that is a developing question in the law. It's also a problem that is founded on the constitution of any particular entity, the separation of powers, delegation and that sort of thing. I think that particularly with respect in this case where we have a state creature that has operative responsibilities rather than regulatory ones. That should not be a problem, even if any precedents could be applied from the federal litigation to the state system.

Speaker: Doesn't it call for the propagation of regulations?

Johnson: No. You have a legislative annulment scheme now, which is more directly on point than this system. I think that would be in trouble long before these provisions would be. I would point out again, that these are substantive rather than regulatory. And it's not a veto situation in the strict sense either. It's a good, valid concern.

Gates: Wouldn't the defaulting on any revenue bonds by the authority impair the credit worthiness of the state? Just hurt the credit rating of the state?

Johnson: Not necessarily. I think everyone is more skiddish about that these days than they used to be. No. It depends upon the relationship, particularly in the constitutional document which is what this is. If an effort has been made to segregate the liabilities as here, that's something that the rating houses would look to in answering your questions.

Gates: I would really disagree with that.

Olson: There have been a number of studies on the flirtation with default and actual default in the past that shows that there is contamination effect. But it shows that it is not blanket. It really depends on what that geographically proximate agency is, does, and how it operates so that it is disaggregated by the nature of the agency. I would predict for example: if default occurs on the WPPSS bonded indebtedness, the Port of Seattle would continue to hold its AA rate.

Adlum: I was just going to use that example. At that time, that WPPSS was up to 15%, the state itself was at 12% or 13%, not in good shape at all. The Port was still selling bonds at 7% and 8%. Its AA or AAA rating was not affected because of the WPPSS within the same state or the state itself which couldn't balance its budget.

Johnson: Another good example of that also relates to WPPSS and the City of Seattle, which is a participant in three of the five plants but not all five of them. The City's bond rate has been preserved in the face of a declining bond valuation of other public utilities in the state. The bond has to be pretty sophisticated in that if the case is made to them appropriately. It's no guarantee of course.

Olson: It's not denying your point, there is a contamination effect if the other agency. Like if the state of Alaska's budgetary system were itself in jeopardy, then the contamination effect would probably occur.

But if it's not, there is no evidence that that relationship would hold. Johnson: Maybe these days, the state's condition would impair the authority's. Anything else on this section?

The next article is Miscellaneous Provisions. I'll just breeze through this quickly. The first section regarding personnel is a treatment of a couple of issues posed by the transfer of the railroad to the state. I know this is of great concern to the unions on the property and I'm aware that it does not treat a number of these issues to their satisfaction, nor does it reach all of the issues of concern to them, or all the issues that the state will have to address concerning retirement. I think this is something that is policy in nature and not something that we need to spend a lot of time on now. Unless you all want to express....

Leonard Black, Brotherhood of Railway Carmen: It is my opinion, that the first three section of 42.40.700, are anti-labor. Though I can't speak for the management people, I can say that being placed in a restrictive category AS 23.40.200, a, 1, which allows us to take no job actions, and when these provisions provide us with no benefits, the bill appears to us to be anti-labor.

Johnson: I think you should present your concerns to the commission.

Black: Because it would be better if these two sections were completely deleted.

Tony Bashelier, International Assoc. of Machinists and Aerospace Workers: My question would be if you can shed any light on how and why they reached the decisions, number one to exempt us from AS 39 but yet put us in 23.40.200, a (1), the most restrictive category?

Johnson: I really can't, it was simply a decision at the time to do that. Exempting you from the state civil service and at the same time classifying you under that subsection for purposes of job actions. Again, the ball game is not over on this one. It's not my decision to make.

Mike Olson, United Transportation Union: It says here that the provisions of AS 39 do not apply. Would that mean that as general chairman of the UTU, that I could not negotiate into state retirement?

Johnson: No. That has to do with the state civil service. The ability of the authority to provide for a retirement to the state civil service retirement system is something that would have to be separately authorized. In any case. This doesn't preclude it. The legislature would have to allow the authority to elect that option, under the federal transfer legislation. You remember earlier, after two years the state has the option of incorporating you into the state system or setting up a substantially equivalent one that is independent. If they elect the first course, obviously the legislature would have to approve it. That was one decision last year that the policy people decided not to make and really to leave it to the authority to make a recommendation on.

Black: I have one other problem. This bill allows us to deal with management but yet we are dealing with nobody, since the authority has to approve. And then again the legislature has to approve. We are dealing with the bottom step of the ladder and I feel that it puts us in a very disadvantageous position.

Ebert: This does not provide that the legislature must approve a labor contract?

Johnson: No.

(Black and Johnson talking at the same time, indesc.)

Johnson: Political activities is self explanatory. It's protection from politification of the authority or an attempt to severely constricts the ability of board of commissioners from behaving in political activities or using authority funds for that purpose. Licenses and permits from other governmental entities to the same extent would. Claims against the authority. This is basically a more detailed treatment of the principle that the authority's debts are its own and not a debt to the state. It also exempts the authority from any possible suggestion that the authority would be subject to state claims process, in effect the authority will settle its own claims outside of the state system. Exemption from taxation merely clarifying the

Gates: Whoa. Exemption from taxation again. As long as the commission is sensitive to the fact that you are going to be competing against your established system of bringing goods, general cargo, food, clothing, into the state, by allowing special circumstances to exist for one carrier verses others is detrimental to the long term competition. That competition has been a very productive thing. It's allowed the reduction of rates with the head to head competition.

Johnson: Does the Port of Anchorage pay taxes?

Ebert: The railroad does not presently pay taxes. If these other modes survive without the railroad paying taxes I don't suppose they are going to be damaged cause the railroad doesn't pay taxes.

Gates: This is just one of many. As long as the commission is sensitive that we don't go too far. Yes, we want an efficient railroad, but let's watch the other end of the extreme too.

Ebert: If the commission does really want to get into the whole structure of public subsidies to various modes of transportation, the commission will not complete its work for several years to come.

Johnson: Payments in lieu of local property taxes and impact aid. This is a totally discretionary provision through which the authority may make payments in lieu or provide impact aid for its activities.

Lewis: Last article. Article 8, page 43, general provisions. Some of these might be controversial; however, I think most are not. The first section involves criminal laws, it's one of the interesting aspects of

this. The decision made to give the security officers for the authority the authority of other state law enforcement officials to enforce state and authority laws and regulations. With respect to violations of the laws or regulations that occur on or to the property owned, managed or transported by the authority. People can think that's a good idea or a bad idea. But are there any questions about what the effects of that would be.

The next section .880, it's clear I think, again you can think its good or bad.

The next section, .900. A series of definitions. We've probably talked about most of them as we went through. I'd be happy to answer any questions anybody might have about any of these definitions.

Ebert: I'm curious why you tie rail properties to the closing report as opposed to tying it to the property that you ultimately in fact receive.

Lewis: Those are the same thing. The closing report will describe the properties.

Ebert: Under the federal legislation, as it's presently written, the closing report is not intended to be a judicial declaration of what properties go in what direction. It's only a planning document. There's a provision for adjudication of valid existing rights with court appeal. It would seem more appropriate to give the rail authority jurisdiction over properties they in fact receive which might be greater or lessor than the closing report predicted they would receive.

Johnson: Which section?

Ebert: On page 45, item 10. If you're giving someone administrative jurisdiction you should give them jurisdiction over something they in fact get, not someone predicted they would or would not get.

Johnson: Actually, I think the identification of the closing report is not a useful concept in this concept. I think we should say transferred to the authority under the legislation.

Speaker: Could I suggest that maybe we just ask if there's any comments on this last article and deal with those specifically.

Lewis: I think that's an excellent suggestion. Are there any questions on this last article?

Gates: When does the definition for the leadership of the legislature come into play. The definition is really extensive: Speaker of the House, President of the Senate, minority leaders for each house, chairman of the senate and house transportation and finance committees and chairman of the legislative budget and audit committees. I forget when that becomes important. But that is going to be a real battle.

Lewis: I think that is not important and was deleted.

Johnson: For purposes of giving notices under the act, when the authority was required to inform the legislature of certain things the thought

was it was better to have it go to certain people rather than to all of them or one of them or something. That concept was removed.

Ebert: With this discussion of collective bargaining agreements, the discussion on page 47 and over to 48, that the state will continue in existence the existing contracts, until they expire by their terms or as required under the federal legislation, they are renegotiated. It seems to me the federal legislation contains a two year limit on this which is not expressed here. Are they really parallel?

Johnson: Yes. The federal legislation requires them to be renegotiated at the end of the period (indesc) basically within that period of time. Some of them expire sooner than that by their own terms. Others have no explanation date at all.

Speaker: I have a couple of general questions directed toward Adlum and Olson. The first one is regarding Article 4, Lands and it's a question of flexibility or the interrelationship of agencies and their impact on the authority. The Dept. of Natural Resources will have control over the subsurface rights on railroad land. Do you see that as a problem with the authority. Is that going to create a difficulty in its flexibility to carry out its operations?

Adlum: I don't see that its going to be a problem because any right of eminent domain there are still (indesc) in the courts in one manner or another. We have the right of eminent domain in the Port of Seattle but if we can't reach a price between their appraisers and our appraisers we end up going to court. What's decided there is whether have the right to take it and then deciding the fight (indesc)

Olson: I presume that this policy choice toward DNR will have control over the subsurface rights to place in parallel, the mandate of self sufficiency on the part of the rail line such that revenue generation comes from its mode of operation of the rail as opposed to its extractive capacity. To that extent you ought to build in, inducements to efficiency on the rail line itself. I happen to personally agree with that policy declaration if I understand it correctly that they're saying that the resources that lie in the subsurface rights will go to the DNR and the state general treasury and the railroad will attempt to achieve self sufficiency of its own operation. That is a powerful inducement to efficiency.

Adlum: If the government had done this when they alloted all those spaces to the railroad that came across the nation at the turn of the century, they might be in a lot better shape right now.

Speaker: One other question. On the article that deals with the make up of the board. What are the implications of having a union member on the board? Is that something that's common in other authorities?

Adlum: I'm the first union official to serve on the pacific coast that I know of.

Olson: The port commission currently has two of its members whose backgrounds are in organized labor. Informally, which is what's

happening, that by elections, two of those members have come from organized labor. In other ports across the country, there is a formal slotting of positions. The Port of Milwaukee, for example, mandates that one of its members be drawn from organized labor. It also mandates one of its members from the south side of Milwaukee, one from the north side of Milwaukee, one from the Chamber of Commerce. MASSPORT, Boston's port has a similar slating of membership. My own analysis says that the greater the degree of formal slotting of positions to occupational groups, and this is not a criticism of organized labor because the slotting is going on the business side as well, or the residential basis, the more precise the slotting, the greater the attention to particularistic issues as opposed to universalistic issues. Let me get away from the academic jargon. What that means is: particularistic issues are those that are specific to the group or to the constituency that is being represented; universalistic issues are those that deal with larger questions of the operation of the entity. What you get is a function of how you orient yourself toward that question, of slotting or not slotting. As I read what this bill does there is a half way house that is struck. It does not, as the gentleman from Fairbanks suggested, draw a line for geographic representation. It does not give the vote to organized labor's representation on the board. So that it is once again a delicate compromise that is reflective of interests within the state and within the legislature and I suspect that set of compromises will continue forward as this bill is enacted. My point is that the kind of representation, the kind of policy orientation you get on the board, is partly a function of how you draw the criteria for membership on the board and you get very different things.

Adlum: I get the jeweler and the other guy's vote a helluva lot quicker than I get the other labor guys' votes.

Lewis: Are there any other questions about Article 8?

Gates: AS 23.10. 055. The Alaska Railroad Authority is considered a political subdivision for the state for the purposes of the section. I thought I had the rest of them figured out, but that one escaped me. Can you explain that for me? Why is the ARR Authority considered a political subdivision-

Lewis: I'll call you tomorrow. I don't remember which one that is.

Ebert: Workman's compensation, I think.

Gates: Cause you get into troubles of establishing a new form of government which is...

Lewis: I don't think we'll be able to help much cause I can't remember what that section is.

Chairman Swalling: If there are no more questions, these men have to catch an airplane. We're very grateful that they were able to come up. Now, I'd like to say that if any of you have a position paper or anything that you'd like to submit either today or at some future time we solicit your input. It will help us if it is in writing. Now we will

have a very short meeting to decide a little about our future. You're all welcome to stay. I'll tell you what we're going to discuss, is where do we go from here, because we are not in a position yet to prepare a report. Our request for funding for a word merchant has been frozen. So we don't know when our next meeting will be. We're going to take a few minutes and discuss where we go from here.

Harle: Mr. Chairman, I have a concept that is written and I would like to them to the commission for your consideration.

Chairman Swalling: We appreciate that very much.

Wright: Chairman Swalling, I have not a concept, but a position paper that I'd like to submit also from the Greater Fairbanks Chamber of Commerce. And I'd also like to formally request and invite the commission to at some point hold some of your meetings in Fairbanks so you can get more input from the people in the interior.

Chairman Swalling: It is doubtful that we are going to have another public meeting such as this for input. I thank you all for being very cooperative and very attentive as to presenting your views and we're gonna try to go from here and put a report together.

Speaker: The State Chamber has already submitted their position but we would also like to go on record in support of the Fairbanks Chamber position which they have submitted to you.

Chairman Swalling: Anyone is perfectly welcome to stay. We've got to stay and decide what we've got to do now.