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Alaska State Legislature

H. PAPPY MOSS, CHAIRMAN
BETTYE FAHRENKAMP, VICE CHAIRMAN
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Senate Committee on Transportation

Checklist of State Government Oversight Provisions
in CS for Senate Bill No. 352
(Finance) Work Draft 5/2/84

Senate Transportation Committee Staff
May 4, 1984

- (1) Two commissioners remain on the board even if the constitutional amendment passes (see 42.40.020).
- (2) An annual report is required to the governor and the legislature describing the operations and financial condition of the corporation during the preceding fiscal year (see 42.40.260).
- (3) An annual financial records audit is required by an independent certified public accountant experienced in railroad accounting. Standards of the ICC for a Class I railroad are to be used (see 42.40.270(a)).
- (4) An annual performance audit is required to be conducted by a recognized railroad management expert. Standards of the ICC for a Class I railroad are to be used (see 42.40.270(a)).
- (5) The corporation is required to make available to an auditor appointed by the governor or to the legislative audit division all financial records (see 42.40.270(b)).
- (6) A state oversight report is required before the corporation undertakes any activity which would alter services provided by the railroad or if they are applying for an appropriation for a service which is not otherwise self-sustaining (see 42.40.280).
- (7) Specific legislative approval is required by law for any conveyance of the corporation's entire interest in land, any issuance of bonding, major extensions of the rail lines or leasing of land for over 20 years if the corporation does not reserve a right to terminate the lease (see 42.40.285).

- (8) The corporation is required to prepare a long range capital improvement and program plan. The plan is required to be submitted every five years but updated every year for the governor and the legislature.
- (9) In addition to the specific legislative approval required in 42.40.285 for conveyance of land section 42.40.350 restricts all land sales and restricts certain dispositions of land in the railroad utility corridor.
- (10) The Department of Administration may participate in labor negotiations between the corporation and the labor organizations (see 42.40.860).
- (11) A railroad labor relations agency appointed by the governor oversees all labor disputes.
- (12) Notice of legal action by the corporation is required to be given to the Department of Law (see 42.40.902).
- (13) The governor may force sale of the of the railroad (see 42.40.940).

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in
CS for House Bill No. 512 (Transportation)*

March 29, 1984

Title

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

The statutes are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Section 2
Section 42.40.010

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

Section 42.40.020

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

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

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

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

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

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

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

The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.

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

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

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

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

The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.

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

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

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

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

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

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

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

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

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

The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.

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

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

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

The House Bill, [CSHB 512(Trsp)], has no similar provision.

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

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

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

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

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

Special Note: The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.

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

In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

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

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

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

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

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

No comparable provisions in House Bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bill does. Those provisions can be found in the House Bill at; 42.40.740 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.

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

The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2

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

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

The House Bill, [CSHB 512(Trsp)], has no similar provision.

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

The House Bill, [CSHB 512(Trsp)] has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.

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

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

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

The statutes are:

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

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

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

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

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

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

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

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, [CSHB 512(Trsp)], has a substantially different list of positions under executive officer.

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

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

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

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

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

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

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

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

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

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

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

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

Alaska State Legislature

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Finance)

April 30, 1984

Title

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

The statutes are:

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

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

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

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

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

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

AS 37.10.010 - 37.10.060 - Give the Department of Administration

duties related to Public Funds.

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

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

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

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

AS 39 - Title 39 is the public officer and employees statute. See sections 42.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

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

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

*Section 2
Section 42.40.010

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

Section 42.40.020

The corporation is run by a board with nine members including the Chief Executive Officer of the Corporation and one appointed member who is a

representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

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

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

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

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

Section 42.40.050 An appointed member of the board received \$400 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

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

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

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

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must

delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action. Specific board approval is required for projects with an estimated completion cost of \$500,000 or more or an estimated completion time of more than one year.

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

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

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

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

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

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

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

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

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

Sec 42.40.230 A board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt

rules to further define conflict of interest and ethical rule 120 days after its first meeting.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section. The corporation does not have the power of eminent domain nor may it sell land.

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends. An analysis of at least three corporation initiated attempts to sell the railroad to private enterprise must be included every five years.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division. In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

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

Section 42.40.310. Requires a written report to the governor and the Legislature before a major change in service or extension of over 25 miles. In addition, a written report is also required for bonding. Over \$5,000,000 or for an appropriation if it is required for a service which is not self-sustaining.

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

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may lease rail land for fair market value.

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

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

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

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

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

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

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

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

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

Section 42.40.450 No land of the railroad may be claimed under adverse possession.

Section 42.40.460 Requires that the railroad comply with all state pesticide and herbicide laws or regulations.

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

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

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

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

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

Section 42.49.600 - 42.49.700 Contains standard bonding provisions.

Section 42.40.710 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

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

Section 42.40.720 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.730 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees and are listed in this bill as 42.40.740 - 42.40.840.

Section 42.40.850 Employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

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

Section 42.40.904 The corporation is required to give advance notice of any legal action.

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

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

The statutes are:

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

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

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

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

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

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

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

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

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

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

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

AS 39 - Title 39 is the public officer and employees statute. See

sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 3); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

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

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

Section 42.40.980 Definitions of the chapter are provided.

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

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

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

*Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

*Section 6 Amends 42.40.020 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

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

*Section 8 Repeals 42.40.180 if the Constitutional Amendment passes by adding a new section. The new section gives the board discretion in adopting a rule making process.

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 19, 1984

SUBJECT: Alaska Railroad (SB 352)

TO: Senator Pappy Moss
Chairman,
Senate Transportation Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the section by section analysis of SB 352 that you requested.

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

* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation outside the executive branch of government but considered a principal department for the

purposes of art. III, sec. 26 of the state constitution. This last provision is an apparent effort to justify legislative confirmation of members of the board of directors.

The Alaska Supreme Court has found that the power to appoint executive officers is solely an executive function. While Article III, sections 25 and 26 of the state constitution requires legislative confirmation of the appointments of heads of departments and members of quasi-judicial or regulatory agencies, the court has held that those sections represent the outer limits of the legislature's power to confirm. (Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976)) Despite the effort at characterizing the board as a ". . . board or commission . . . at the head of a principal department or a regulatory or quasi-judicial agency. . . ." (Article III, Section 26, Constitution of the State of Alaska), I am certain that the court would find that the board does not fit within the terms of Article III, Section 26 and that legislative confirmation on that basis is inappropriate.

There is a basis for arguing in support of the confirmation requirement. It could be argued that Bradner applies only to appointments of officers of the executive branch and does not apply to appointments of officers of public corporations that have an independent legal status from the executive branch of government. Confirmation of appointments to independent public corporations does not directly invade the governor's power of appointment, because the governor has no duty to administer the corporation that is similar to his duty to administer the executive branch. Nevertheless, it must be stressed that the provision regarding confirmation of board members is subject to constitutional attack.

Section 42.40.020 Five voting members who are voters in the state are appointed to the board of directors by the governor. No more than two members may be from one judicial district and two members must have at least five years experience as owners or managers of a business in the state. A member may not be a state officer or employee. However, the governor may appoint one person who is not a voter if he has at least 10 years of experience in management of railroads. In addition to voting members, the governor shall appoint a nonvoting member who is an employee of the corporation and the chief executive officer of the corporation shall serve as another nonvoting member. The voting members are to be confirmed by the legislature.

The board is to elect a chairperson and appoint a secretary. The chairperson must call a meeting at least every three months and may call other meetings. The governor is authorized to remove a member from the board for incapacitation, failure to attend meetings, conviction of a felony, or conviction of a misdemeanor involving moral turpitude.

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

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

Section 42.40.050 An appointed member of the board receives \$200 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.070 The board must provide by rule for the method of voting and representation of persons absent from a meeting.

Section 42.40.100 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.110 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation.

Section 42.40.200 Meetings of the board are public with the exception of executive sessions. These may be called as authorized under the Administrative Procedure Act or to consider matters pertaining to personnel, the corporation's legal position, land acquisition or disposal, or proprietary information as defined in a manner consistent with the practices of the Interstate Commerce Commission.

Section 42.40.220 The board must keep minutes of each meeting.

Section 42.40.230 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.240 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.250 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

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

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

Section 42.40.300 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.310 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. These plans are to be prepared by employees of the corporation. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

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

of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.400 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be of other width as designated by the corporation. Portions of the utility corridor may be leased or rented for other transportation services.

Section 42.40.420 The board may request conveyance of land owned by or subject to selection by the state. Upon receipt of a request the commissioner of natural resources shall temporarily classify the land for railroad purposes and vacate a classification allowing disposal or lease of that land under other laws. The temporary classification remains in effect for 180 days. Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation or notify the corporation of reasons for refusal to classify the land for railroad purposes. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or subsurface estate.

The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes. When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.430 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.450 The corporation may acquire interests in federal land and property that is available under federal law and may acquire property that is available from the state.

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

Section 42.40.520 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.530 The corporation must keep in force public liability insurance naming the state as an additional insured.

Section 42.40.540 Claims involving activities of the railroad shall be brought against the corporation and not against the state. (b) provides that if the railroad corporation prevails in a legal action, the other party is liable for full costs and legal fees incurred by the corporation in defending the action. This subsection is flawed in that it ignores the possibility that the corporation will be a prevailing plaintiff rather than a prevailing defendant in many cases.

Aside from that minor consideration, this subsection raises a severe constitutional question. Under the Civil Rules of Court there are situations where a prevailing party has only a limited right to attorney's fees and cost. (see Civil Rule 72 (k)) In any case, Civil Rule 82 provides for payment of attorney's fees to a prevailing party according to a schedule that, in general, provides less than the full cost incurred in fees. Singling out the railroad corporation for different treatment from any other prevailing party creates equal protection problems under both the federal and state constitutions that need to be considered. Furthermore, since Article IV, Section 15 of the state constitution grants the supreme court the power to promulgate rules governing practice and procedure in civil cases, it appears that this subsection will have to be approved by two-thirds of the members elected to each house of the legislature. Uniform Rule 39(e) requires that if a bill contains a section changing a court rule the bill must have a section citing the rule and noting what change is made. The fact that the bill changes a court rule must also be noted in the title of the bill. SB 352 does not comply with these technical requirements.

Under (c) the corporation enjoys certain legal rights which the state has. Provisions dealing with the administrative handling of claims against the state do not apply to the corporation.

Section 42.40.550 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation. This raises a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and the state constitution.

Section 42.40.560 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.40.570 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The board is authorized to enter into certain agreements with the holders of the bonds or bond anticipation notes listed in (f).

Section 42.40.580 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.590 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.600 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.620 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.630 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.640 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.650 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.660 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.670 An officer or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.680 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and

notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.690 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.700 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply. The collective bargaining agreements between the corporation and its employees remain in effect until they expire or are renegotiated. The corporation may not enter into a collective bargaining agreement with an organization representing the corporation's chief executive official or other executive officials appointed by him.

Section 42.40.710 Assets of the corporation may not be used for political activity. Board members and employees may on request appear before Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation. A board member or employee who violates this section is subject to a civil penalty not to exceed \$5,000.

Section 42.40.900 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.950 Definitions for the chapter are provided.

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

* Section 3 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

* Section 4 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

* Section 5 The Act takes effect immediately.

A M E N D M E N T

Offered in the SENATE

By Josephson

TO: CSSB 352 (Trsp)

Page 2, line 12:

Delete "and"

Page 2, line 14:

Delete "." and insert "; and" in its place

Page 2, after line 14 insert the following new paragraph:

"(5) railroad freight traffic within certain portions of the Alaska Railroad right-of-way create or may create damage to existing buildings or facilities and may present potential or immediate hazards to the public health and welfare, life or safety, especially at or near locations affected by the earthquake of March 27, 1964."

Remember that your lead in reads: (a) The legislature finds that (than put in the amendment). If you read this in context I think the amendment invites lawsuits with legislative blessing. Very bad public policy because it places blame on the railroad before it reaches the judicial process.

Page 12, after line 1 insert a new section to read:

"Sec. 42.40.230. COMPLAINT PROCEDURE. The board shall provide by rule for a formal procedure for the receipt and consideration of complaints or suggestions regarding activities of the corporation."

Page 15, line 9, after "category." insert:

"The report shall list all complaints and suggestions received by corporation during the previous fiscal year and describe the act taken on the complaint or suggestion."

42.40.230. Creates a complaint procedure. Poor wording because it should also include a frivolous complaint penalty or other restriction. Rule of thumb - any provisions like this will be used more by competitors or environmentalists attempting to tie up railroad activities for purposes other than the actual complaint. Therefore any complaint procedure must put the burden of proof for validity of the complaint or cost of taking advantage of the procedure, on the complainant. In this regard page 15, line 9 add on is especially costly for the railroad.

Page 15, line 24, after "plan." insert:

"The board shall consult with affected municipalities
in preparing plan."

Page 15, line 24, requirement of consulting with affected municipalities. Policy call. My reaction is that it is a premature involvement of the municipality in the railroad planning process. I say this because this is a long range plan and therefore prior to the community input stage. I think the railroad should have a chance to present their optimal plan before other agencies have a chance to delete them. The political process will kick in after they have the opportunity to present their best scenario.

Page 36, line 25:

Delete "REPORT." and insert "REPORTS. (a)"

Page 37, after line 2, insert the following new subsection:

"(b) The corporation shall study the problems created by vibrations, noise and other environmental degradation due to operating the railroad from Ship Creek to the south end of Potter's Marsh and prepare a report. The report shall also include consideration of the potential for additional problems that may be created by hauling coal and larger quantities of gravel along that portion of the rail line. By February 1, 1986, the corporation shall present a report to the legislature on the study containing recommendations for correcting the problems identified."

Page 37, after line 2, requires a special report on the vibration problem. Probably the least obnoxious of all the proposed amendments in that it does not go into permanent law. However, it still should be reworded to remove the positive statements about the actual existence of a problem. This amendment seems to be making a statement that (1) a problem exists (2) thus the railroad is at fault. A good case can be made that homeowners took it upon themselves to locate in an inappropriate area and therefore the problem is artificial.

Page 37, after line 23, insert the following new bill section:

"* Sec. 12. Until November 1, 1987, railroad freight traffic within the Municipality of Anchorage shall proceed at rates of speed not exceeding rates approved by the Assembly after receiving advice from the Municipal Geotechnical Advisory Committee."

Re-number following sections accordingly.

Page 37, line 25:

Delete "12" and insert "13"

Page 37, line 28:

Delete "9 - 11" and insert "9 - 12".

Page 37, after line 23 this amendment would require the railroad to set speed limits of their trains through Anchorage according to the wishes of the Anchorage assembly. The testimony given at the Transportation hearing related to the Bootlegger Cove vibrations seemed to indicate that the speed of the train relates to several safety variables. (1) obviously excessive speed creates a safety related problem. (2) reduced speed causes a safety related problem in that children may be more inclined to hitch rides on the train. Under this amendment I would suppose the municipality would be looking at lowering the speeds. My caveat - who then assumes the liability for any injury caused by children hitching rides: If Anchorage can set speed rates then they should also accept responsibility for accidents related to lower speeds.

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

SIDE-BY-SIDE SUBJECT COMPARISON

OF SB-10 and

SB-352 (HB-512)

WITH

COMPARATIVE ANALYSIS BY
LEGISLATIVE AFFAIRS AGENCY,
DIVISION OF LEGAL SERVICES

PREPARED BY:
Senate Transportation
Committee Staff

January 23, 1984

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

March 12, 1984

SUBJECT: Alaska Railroad
(CSSB 352 (Trsp))

TO: Senator Pappy Moss
Chairman, Senate Transportation
Committee

FROM: Tamara Brandt Cook *TBC*
Deputy Director
Division of Legal Services

Here is a draft of CSSB 352 (Trsp) that you requested. Due to the general complexity of the bill and the fact that provisions were submitted to the Senate Transportation Committee from many sources, I have found a great many redundancies, ambiguities, and conflicts in this bill. In resolving these problems I have tried to conform to the apparent intent of the committee, but may have misconstrued some provisions. For this reason it is critical that you carefully review this draft and let me know if there are changes that should be made to it.

In addition, be alerted that I have reorganized portions of the bill, primarily by dividing very long sections into several smaller sections or moving sections from inappropriate articles and placing them elsewhere. I have changed certain wording so that it is consistent. For example, since "land" is defined to be all real property including tide and submerged land, I have replaced references to "real property" with "land" and removed superfluous references to tide and submerged land. Likewise, since "executive officer" and "executive official" appear to be interchangeable, I have consistently used the term "executive officer".

Section 42.40.020(e) provides for confirmation of board members. It is my understanding that you wish to retain this provision and that you understand that it can only function as a request to the governor to submit the members for confirmation, as has been done with certain other boards and

Senator Pappy Moss
Page 2
March 12, 1984

commissions. It is not, however, constitutionally enforceable under Article III, sections 25 and 26 of the state constitution as construed in Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976).

Section 42.40.390 appears to be an attempt to grant the power of land use regulation, such as platting and zoning, to the railroad corporation, which would contravene the requirement contained in Article X, section 2 that all local government powers shall be vested in boroughs and cities. If, on the other hand, the purpose of the section is to exclude rail property from municipal land use regulation, that should be done specifically. I would recommend that the section be clarified or eliminated.

Section 42.40.720 grants protection from liability resulting from the execution or issuance of bonds or notes to employees and executive officers. Both these terms are defined and neither includes members of the board of directors. Should they be specifically included within this section?

Section 42.40.900(b) provides that in claims brought against the corporation in which it is the prevailing party, it is not an abuse of discretion for a court to award full costs and attorney's fees. I note that, for some reason, actions brought by the corporation are not included within this section. More importantly, this appears to be an attempt to overrule the line of cases that overturns awards of full attorney's fees by trial courts as abuses of discretion. Continental Ins. Co. v. U.S. Fid. & Guar. Co., 552 P.2d 964 (Alaska 1976); Davis v. Hallett, 587 P.2d 1170 (Alaska 1978). An award of attorney's fees is always subject to review for possible abuse of discretion. To the extent that this section treats the railroad corporation differently from other litigants similarly situated by shielding an award of full attorney's fees from review, it may constitute a denial of equal protection of the law under both the state and federal constitutions. To the extent that this section can be construed not to discriminate in favor of the corporation, it serves no purpose. I would recommend that it be eliminated.

Please let me know if I can be of further assistance with this draft.

TBC:ojb

J4/066

deemed by the ~~Board~~ Council to be necessary for the operation of a railroad."

~~Section 3-~~ 42.40.710. Except as may be specifically provided otherwise, the provisions of this Act take effect upon enactment.

ARTICLE 8 APPLICATION OF OTHER LAWS

Sec. 42.40.800. CONFLICTING LAWS

INAPPLICABLE. Insofar as the provisions of this Act are in conflict with the provisions of any other law, or parts thereof, the provisions of this Act shall prevail.

Specifically, and without otherwise limiting the generality of the foregoing, it is intended by this Act that the federal and state antitrust laws shall not be applicable to any action of the Alaska Railroad Authority taken pursuant to the provisions of this Act. The Legislature of the State of Alaska by this Act expressly authorizes the Authority to engage in all types of conduct related to pursuit of the purposes, exercise of the powers, and performance of the duties granted to the Authority by this Act and expressly intends to displace the antitrust laws from applying to

all such conduct and activities of the authority. It is similarly intended that the antitrust laws shall not be applicable to any action or conduct engaged in by the Alaska Railroad Authority Council and its individual members pursuant to the provisions of this Act.

Sec. 42.40.810. REPEAL AND AMENDMENT OF EXISTING STATUTES.

(1) A.S. Title 19 shall not apply to the operations of the Alaska Railroad.

[Title 19 sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways. Some of its provisions regarding construction, public bids, etc. arguably apply to other activities of Public Facilities, to which the railroad will be nominally assigned.]

(2) A.S. 23.10.420 shall not apply to the operations of the Alaska Railroad.

[Full-crew law]

(3) A.S. 30.15 shall not apply to the operations of the Alaska Railroad.

[Procedures for state grants for construction of local port facilities.]

(4) The important public purposes to be served by the railroad authority require the authority to have all of the powers and duties granted to it by this chapter; the Legislature intends that the authority will exercise such powers and duties as a public service on behalf of the State of Alaska and recognizes that the exercise of the powers and duties granted by this chapter will require the authority to engage in a wide variety of different kinds of conduct; [the Legislature further intends that in engaging in types of conduct related to the exercise of its powers and performance of its duties under this chapter, the authority shall not be subject to either the federal or state antitrust laws nor any other limitation that could hinder the effective exercise of the powers and duties granted by this chapter to the Authority.

Findings

ARTICLE 4. 2. CREATION AND ORGANIZATION

Sec. 42.40-010.200. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established as a public corporation of the

February 1, 1984

John Riley, Administrator
Federal Railroad Administration
U.S. Dept. of Transportation
400 7th St. SW
Washington, D.C. 20590

Dear Mr. Riley;

As you know, the Alaska State Legislature is currently involved in a decision which may lead to the State of Alaska purchasing the Alaska Railroad from the Federal government. In this regard, the Governor has introduced legislation which would authorize him to negotiate, on behalf of the State, for the final transfer of the Alaska Railroad to the State of Alaska. As I am sure you are aware, the Federal Transfer Legislation, P.L. 97-468, 45 U.S.C. 1201-1214, stipulates certain requirements the state must meet before the transfer can be certified. For this reason, I have enclosed a copy of SB 370 for your response as whether or not this legislation, in your estimation, will meet the necessary requirements for the Department of Transportation certification of the transfer requirements.

In advance, let me express my thanks for your time and effort with this matter. I respectfully await your reply.

Sincerely yours,

Senator H. Pappy Moss, Chairman
Senate Transportation Committee

enclosure

SB 352

Editor's note. — Section 1, Executive Order No. 39 (1977) provides: "FINDINGS AND PURPOSE. As governor, I find that the diverse transportation needs of the state would best be served by the creation of a single department for the planning, study, development, management and operation of integrated, intermodal transportation systems. The purpose of this department is to evaluate, plan, design, construct, manage, operate and maintain all state transportation modes and systems, relying on analysis of the relative advantages of different modes and systems and considering their social, economic, and environmental consequences."

Section 8, Executive Order No. 39 (1977) provides: "All litigation, hearings, investigations and other proceedings pending under a law amended or repealed by this Order, or in connection with functions transferred by this Order, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Order. Certificates, orders, and regulations issued or adopted under authority of a law amended or repealed by this Order remain in effect for the term issued, until revoked, vacated, or otherwise modified under the provisions of this Order. All contracts, rights, liabilities, and obligations created by or under a law amended or repealed by this Order, and in effect on the effective date of this Order, remain in effect notwithstanding this Order's taking effect. Records, equipment, and other property or agencies of the state whose functions are transferred under this Order shall be transferred commensurate with the provisions of this Order."

Section 9, Executive Order No. 39 (1977) provides: "(a) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Public Works

relating to planning, construction, maintenance and operation of transportation facilities, including state ferries, airports and water and harbor facilities, and for design and construction of buildings and appurtenant structures, and specifically including all powers and duties formerly held by the Department of Public Works under AS 02, AS 30.05, AS 30.15, AS 35, AS 41.20 and AS 44.65.

"(b) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities including state highways, roads, bridges, traffic signs and signals, the supervision and maintenance of state automotive and mechanical equipment, the control of outdoor advertising visible from state highways and all other duties and powers of the Department of Highways, and specifically including powers and duties formerly held by the Department of Highways under AS 19, AS 28.01, AS 28.05, and AS 44.57."

Section 10, Executive Order No. 39 (1977) provides: "The commissioner of transportation and public facilities shall replace the commissioner of highways on the state Geographic Board, the Alaska Toll Bridge Authority, and all other boards and commissions."

Section 12, Executive Order No. 39 (1977) provides: "During Fiscal Year 1978, all appropriation items made for that fiscal year and prior years for the Department of Highways and the Department of Public Works may, upon approval of the governor, be appropriately transferred to implement the purposes of this Order."

Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 1 et seq.

39A C.J.S. Highways § 1 et seq.

Attachment #1

Sec. 44.42.010. Commissioner of transportation and public facilities. The principal executive officer of the Department of Transportation and Public Facilities is the commissioner of transportation and public facilities. (Executive Order No. 39 § 2 (1977))

Sec. 44.42.020. Powers and duties, (a) The department shall

(1) plan, design, construct and maintain all state modes of transportation and transportation facilities, communication facilities, and all docks, floats, breakwaters, buildings and similar facilities;

(2) study existing transportation modes and facilities and communication facilities in the state to determine how they might be improved or whether they should continue to be maintained;

(3) study alternative means of improving transportation and communication in the state with regard to the economic costs of each alternative and its environmental and social effects;

(4) develop a comprehensive, long-range intermodal transportation plan for the state;

(5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;

(6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties;

(7) manage, operate, and maintain state transportation facilities, communication facilities, and all docks, floats, breakwaters and buildings, including all state highways, vessels, railroads, pipelines, airports, and aviation facilities;

(8) study alternative means of transportation in the state, considering the economic, social, and environmental impacts of each alternative;

(9) coordinate and develop state and regional transportation systems, considering deletions, additions, and the absence of alterations;

(10) develop facility program plans for transportation and communication facilities and state buildings, docks and breakwaters required to implement the duties set out in this section, including but not limited to (A) functional performance criteria; and (B) schedules for completion;

(11) supervise and maintain all state automotive and mechanical equipment, aircraft, and vessels, except vessels and aircraft used by the Department of Fish and Game or the Department of Public Safety; and

(12) supervise aeronautics and communications inside the state, under AS 02.10.

(13) complete and maintain a current inventory of public facilities, including a projection of the serviceability of the facilities and projections of replacements and additions to facilities needed to provide the level of services programmed by the various user agencies, for municipalities with populations of less than 12,000 and for unincorporated communities, and perform those duties on a cooperative basis with larger municipalities.

(14) adopt energy performance standards for public facilities of the state, the construction of which begins after July 1, 1980; the standards shall be based on thermal and lighting energy standards established by

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COMMITTEE REPORT
SENATE

FURTHER: FINANCE

1/13/84

Date: 1/13/84

Mr. President:

The Committee on TRANSPORTATION has had SB 352

establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; eid.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 352 (new) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

George Johnson Kamp
Don Gilman
Janet

MEMBERS HAVING
OTHER RECOMMENDATIONS:

H. Poppy
 CHAIRMAN
Do Pass

GUIDELINES FOR STATE OVERSIGHT OF RAILROAD FISCAL PROCEDURES

Because the railroad will be a public entity there must be public oversight and accountability. The entity statute should assure that this oversight be provided in a manner that:

- gives railroad management the flexibility needed to operate in the competitive business environment, and
- facilitates the transfer of the railroad to a private sector operator.

These goals can be achieved with oversight based on the following principles:

1. The responsibility for establishing and maintaining the railroad's accounting and procurement systems will be delegated from the Commissioner of Administration to the Board of Directors of the Alaska Railroad Corporation.
2. Delegation will be made after the Commissioner of Administration and the Legislative Auditor have assured that the railroad's accounting and procurement systems comply with accepted standards.
3. This delegation may be revoked if the railroad does not annually receive acceptable financial and performance audit reports.

Alaska State Legislature

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



STATE CAPITOL
POUCH V
JUNEAU, ALASKA
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(907) 465-4797
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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in
CS for House Bill No. 512 (Transportation)*

March 29, 1984

Title

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

The statutes are:

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

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

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

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

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

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

and 42.40.280.

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

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

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

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

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

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

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

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

*Section 2
Section 42.40.010

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

Section 42.40.020

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

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

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

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

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

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

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

The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.

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

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

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

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

The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.

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

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

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

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

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

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

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

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

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

The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.

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

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

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

The House Bill, [CSHB 512(Trsp)], has no similar provision.

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

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

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

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

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

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.*

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

In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

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

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

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

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

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

No comparable provisions in the House Bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.49.500 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The proceeds from the bonds may not be used for any other purpose than that for which the instruments were originally issued. There is also a list of mandatory requirements that the instruments must comply with.

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

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bill does. Those provisions can be found in the House Bill at; 42.40.740 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.

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

The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2

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

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

The House Bill, [CSHB 512(Trsp)], has no similar provision.

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

The House Bill, [CSHB 512(Trsp)] has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.

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

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

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

The statutes are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, [CSHB 512(Tresp)], has a substantially different list of positions under executive officer.

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

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

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

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

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

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

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

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

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

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

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

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

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February 22, 1984

MEMORANDUM

TO: Senate Transportation Committee
FROM: Gross & Burke *[Handwritten initials]*
RE: Organization of Public Corporation to
Operate the Alaska Railroad

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

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

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

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

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

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

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

Sec. 26 of the same article states that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The factors that the court cited were as follows:

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

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

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

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

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

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

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

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

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

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

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

Walker, at 250 n.19.

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

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

De Armond, at 724 (emphasis added).

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

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

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

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

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

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

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

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

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

AMG/SAB/yw

621 Nathan Circle
Anch 99502
10 April 84

APR 26 1984

To Whom it May Concern:

Reference: Abnormal gravel train noise while unloading in our area, 621 Nathan Circle, adjacent to Alagco Gravel Company.

Copies to:

1. Alaska Railroad General Manager
2. Alaska Railroad Train Master
3. Municipality Noise Control
4. Alagco Gravel Company
5. Federal Environmental Agency, Seattle
6. Senate Transportation Committee
7. Senator Pappy Moss
8. Representative Rick Uehling

One of the Anchorage area gravel locations is across the railroad track from us. During most of the unloading periods the train is directly in front of our house.

Past unloading times have utilized up to twelve hours, occurring all weekdays and occasionally even on Sunday. A typical day last summer was arrival at 5 to 6 a.m. to as late as 2 a.m. next morning. Were told future outlook is for more traffic and noise. Sleeping is impossible during unloading periods.

Nearly all of the trains going north or south, including the other gravel trains, pass here. This involves the one unloading here having to move into the siding and then reposition each time.

The unbearable noise problem is created by the stretching and compressing of the train couplings which, in most cases, occurs for every car stopping over the dumping area. To emphasize - noise from trains simply passing by is unimportant in comparison to the noise created while unloading gravel at this location.

The basic complaint is that almost all of the noise can be eliminated via the engineer and crew being careful. An occasional train will unload, mostly without us even hearing it. Slow starts and stops with light continuous brakes applied apparently solves most of the problem. All of the abnormal noise can be solved via modifying the unloading setup to permit continuous movement of the train and reasonable care on the part of the engineer and crew.

We've called dozens of times to complain to the railroad and environmental noise people. Also, a couple of times to the gravel company. Explained that we realize the trains are a necessity but the the noise is controllable. Answers are always vague, and unsatisfactory, to the effect they didn't intend to really try to do any thing about the problem. Examples follows:

1. Railroad people

(A) Property is commercial across railroad where noise originates, therefore legitimate.

- (B) Train Master - he has a lot of engineers, needs to be informed of those being careless. Offered to call him and keep records of abnormal noise cases but received no cooperation.
- (C) Reply to complaint on two occasions was to expect situation to get worse.

2. Environmental people

- (A) They are uncertain how noise laws work, one side of railroad being commercial and other residential.
- (B) To my knowledge they never even made a reasonable attempt to get an average noise level.
- (C) After several calls were told they knew about the problem, were looking into it. Three years since - no action to my knowledge.

3. Gravel Company people

- (A) Their reply to complaint - they left one or two previous areas due to residential problems and are not about to move again.

SOLUTIONS

1. Confirm that noise is a serious problem via contacting people in the area, including tenants in house with us.
2. Talk with a Mr. or Mrs. Richard Penland, a previous nearby neighbor. My understanding is that he sold his house partially due to the noise. Their comment to me was how could we stand it being even nearer the tracks than they were and if I intended selling to be sure and do it in the winter when the gravel trains weren't operating. Their present address is 110 East 11th Avenue, phone number: 278-4367.
3. Discipline those persons in charge of engineers and crews that refuse to make the necessary efforts to control the noise. They probably wouldn't believe we were serious when the first one was fired. When the second one got fired the noise would stop.
4. Modify unloading arrangement to permit the operation with a minimum of starts and stops.
5. Organize the neighborhood to force action on the part of the railroad. This would probably require legal court action since they obviously don't respond to verbal complaints.
6. Last resort - sell the house and move out.

need help

STATE OF ALASKA

APR 26 1984
BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)
Address:
(907) 465-2600

April 17, 1984

Ms. Lauri Adams
Sierra Club Legal
Defense Fund, Inc.
419 6th Street, Suite 321
Juneau, Alaska 99801

Dear Ms. Adams:

Your letter of March 16, 1984, asks several key questions regarding the State pesticides program and its applicability to the Alaska Railroad (ARR) vegetation control program. As stated in the Attorney General's letter of March 12, 1984, this agency will have statutory authority to regulate or prohibit the use of pesticides and broadcast chemicals by whatever entity the legislature creates to operate the railroad.

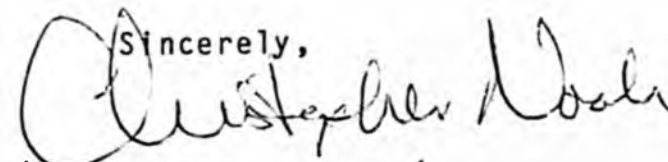
Specifically, in answer to your questions:

- 1) The spray program would be regulated as a "public pesticides project" as defined by 18 AAC 90.060(11) and subject to public notice and hearings provided by 46.03.330(b).
- 2) Likewise, the spray program would require a pesticide project permit under 18 AAC 90.055.
- 3) I know of no other permits (other than certification of applicators) that this department would need pertaining to the spray program. It is certainly possible that other departments have permitting requirements, under "worker right to know" statutes, or occupational safety and health for example. Any residual chemicals or containers which are "hazardous wastes" would be subject to appropriate EPA or State requirements.

April 17, 1984

I hope this satisfactorily answers your questions. Feel free to contact Bob Martin of my staff if you need clarification of any of these points.

Sincerely,



Richard A. Neve
Commissioner

RAN:vh

cc: Keith Kelton, ADEC
Bob Martin, ADEC
Bill Burgoyne, ADEC
Sara Kavasharov, Attorney General's Office
Governor Bill Sheffield
Senator Pappy Moss
Senator Jalmar Kerttula
Mark Hickey, Dept. of Transportation
Paul Bratton
Billie Trent, ADEC

MEMORANDUM

Date: April 23, 1984

Subject: News Release

To: All Committee Members

From: Senator Pappy Moss, Chairman *P. Moss*

Please find attached a copy of a news release I have released this date concerning the House version of SB 352.

Alaska State Legislature

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



STATE CAPITOL
POUCH V
JUNEAU, ALASKA
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(907) 465-4797
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Senate Committee on Transportation

Comparison of Major Differences
between
CS for Senate Bill No. 352 (Finance) Working Draft dated 5/2/84
and
CS for House Bill No. 512 (Finance)
as passed by the House on May 7, 1984

Senate Transportation Committee
Staff Analysis
May 9, 1984

*Section 1. Legislative Findings and Purpose.

The House has an additional finding which reads: "there is vast potential in Alaska's natural resource areas and extension of the Alaska Railroad into natural resource areas is necessary for long-term economic growth."

In addition, under the corporate intent section of the findings there are some variations of the language between the two bills. Under the House bill the bonding capability of the corporation is limited to raising capital for expansion purposes. Furthermore two more sections are included in the House Bill which read: "in all job classifications, provide for the employment of women and minorities if qualified;" and, "provide for the payment of equal pay for equal work." Under the same section of the Senate bill bonds require legislative approval.

Sec. 42.40.020 Board of Directors.

The Senate bill has the chief executive officer on the board and the House bill does not. The Senate bill requires 10 years of experience for the board member who is an experienced railroad manager while the House bill requires "substantial" experience. Similarly, the Senate bill requires at least five years of business experience of two of the board members while the House bill requires "substantial" experiences.

Sec. 42.40.040 Term of office.

The Senate bill provides for removal of the board by the governor at his pleasure while the House bill provides for removal for cause only. (However, see the Senate constitutional amendment section.)

Sec. 42.40.100 Management by the Board.

Under the Senate bill the board is required to delegate certain functions to corporation management within 60 days of its first meeting while under the House bill the board may delegate to the corporation management and no time period is set.

(House bill Sec. 42.40.205 brings part of the Senate bill definition of rules into the main part of the bill and exempts certain corporate functions from the rule making process.)

Sec. 42.40.260 Annual Report.

Every five years the Senate bill requires verification of corporation initiated attempts to sell the corporation to private enterprise. (However, see House bill Section 6.)

Sec. 42.40.280 State Oversight Reports.

The House bill requires oversight reports for the extension of the track and for bonds over \$5,000,000. while the Senate bill does not.

Sec. 42.40.285 Legislative Approval Required.

The House bill requires legislative approval for bonds over \$5,000,000 while the Senate bill requires approval for all bonding.

The House bill requires legislative approval for extension of the tracks more than 25 miles or five percent of the total track mileage while the Senate bill requires legislative approval for all track extension which are not a spur, industrial, team, switching or side track.

The Senate bill requires legislative approval for a lease that exceeds 20 years if it does not have a termination clause if needed for railroad purposes while the House bill does not.

Sec. 42.40.290 Long Range Program and Capital Improvement Plans.

The House bill requires that the corporation consult with affected state agencies and municipalities in preparing their long range program and capital plans while the Senate bill contains no similar provision.

(The House bill authorizes Eminent Domain (see Sec. 42.40.390) while the Senate bill does not.)

Sec. 42.40.540 Appropriations.

Under the Senate bill the corporation is required to get concurrence of the governor for an appropriation request while the House bill has no similar requirement.

(The House bill has a section prohibiting the use of corporate assets for political activities (see Sec. 42.40.705) while the Senate bill does not.)

Sec. 42.40.940 Sale of the Railroad.

The governor may sell the corporation under the Senate bill so long as it can be assured that the railroad will continue to operate after the sale while the House bill says the governor may force the board to negotiate a sale in good faith.

(The House bill specifically states the corporation is subject to state anti-trust laws.)

Constitutional Amendment

The Senate bill has the removal for cause section kick in if the constitutional amendment passes while the House bill has it in this legislation. The Senate bill has a revised rule section that kicks in if the constitutional amendment passes while the House bill does not.

Section 7 Special Report.

The Senate bill requires the corporation to contract with an outside consultant for a report on the long term operation of the railroad and possible alternative operational options including selling to private enterprise. The House bill has no similar provision.

Section 10

The Senate bill restricts the Railroad from applying for a right-of-way across the Kobuk (Gates of the Arctic).

SENATE
LETTER OF INTENT

TO ACCOMPANY SCS CSHB 512 (Finance) am S

It is the policy of the State that the Alaska Railroad should be operated in a business-like manner so as to foster the development of a strong and financially sound system of Interstate Commerce. Accordingly, although the Railroad may use public resources or the benefits of its public status to extend its lines or to provide passenger service, it should not use direct subsidies to compete unfairly with privately owned carriers.

Adopted by the Senate May 30, 1984.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: SB 352
Title: Alaska Railroad Corporation Act of 1984
Sponsor: Kerttula, Faiks, & Halford
Requestor: Senator Moss
Date of Request: 3/8/84

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING	-0-	37,300	57,750	58,000	57,300	57,900
100 PERSONAL SERVICES		24,300				
200 TRAVEL		300				
300 CONTRACTUAL		4,800				
400 SUPPLIES		5,200				
500 EQUIPMENT		1,200				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		1,500				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING	-0-	37,300	57,750	58,000	57,300	57,900
CAPITAL	-0-	15,800	20,450	20,450	20,450	20,450
REVENUE	-0-	37,350	67,200	70,200	73,300	76,350

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	15,750	11,000	8,250	4,450	2,000
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	37,350	67,200	70,200	73,300	76,350
TOTAL	-0-	53,100	78,200	78,450	77,750	78,350

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

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

ANALYSIS: Attach a separate page for analysis

Prepared By: Mark S. Hickey, State Railroad Coord. Phone: 465-3900
Division: Alaska Railroad Transfer Team Date: 3/15/84

Approved by Commissioner: R. J. Knapp Date: 3/15/84
Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

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

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION

FISCAL NOTE

Bill/Resolution No.: SB 352

Title: Alaska Railroad Corporation Act of 1984

BILL ANALYSIS

Overview:

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

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

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

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

Assumptions:

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

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

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

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

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

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

Operating Expenditures:

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

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

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

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

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

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

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

Capital Expenditures:

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

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

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

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

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

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

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

Revenue:

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

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

Funding Source:

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

Positions:

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

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

Summary:

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

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

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

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

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

ATTACHMENT A

Operating Budget - FY85

In Thousands (000) of Dollars

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

<u>Category</u>	<u>Amount</u>	<u>Explanation</u>
100 Personal Services	\$24,300.0	This funding level is based upon current work force of 478 permanent full-time, 38 part-time and 64 temporary positions. Of this amount salary comprises \$19,950 and benefits comprise \$4,350. Also included in this estimate are the Board of Directors' compensation expenses.
200 Travel	300.0	This funding level is the estimate of travel funding needs, including the Board of Directors' travel expenses.
300 Contractual	4,800.0	This funding level includes coverage of the following areas: continuation of Transfer Team activities for FY 85 - \$1,750.0 (see Attachment B); Transfer Financial Audit - \$200.0; \$200.0 for initiation of the Special Report required in Section 9 of the bill; Department of Administration - \$80.0 for archives preservation and labor relations coordination; costs for the labor relations agency under Article 8 of the bill - \$35.0; Department of Natural Resources - \$35.0 for land designation activities under Article 5 of the bill. The remainder of these funds are for the railroad's general contractual needs resulting from capital improvement, operations and financial planning activities.

400 Supplies	5,200.0	This funding level is required for the day-to-day operations of the railroad, supporting all facets of operations from administration to maintenance of way.
500 Equipment	1,200.0	This item is the complement of the supply item also supporting day-to-day railroad operations.
700 Grants & Claims	1,500.0	This item provides for funds for the railroad's risk management expenses, payment of damage claims, workmen's compensation expenses and other money claims against the railroad. No grants are anticipated.
TOTAL:	<u>37,300.0</u>	

ALASKA RAILROAD TRANSFER PROJECT

FY 85 PROJECT BUDGET

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

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

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

Work Component #1 - Alaska Railroad Transfer Team Staff

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

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

Work Component #2 - Department of Natural Resources Assistance

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

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

Work Component #3 - Department of Labor Assistance

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

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

Work Component #4 - Department of Administration Assistance

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

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

Work Component #5 - Department of Law Assistance

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

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

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

Work efforts under this component will consist of the following: (1) initiation of planning work necessary to file the appropriate valuation studies before the ICC for purposes of rate-making justification; and (2) performance of ongoing capital planning analysis. This second task will be a continuation of efforts performed under task #5 in Attachment B. It will be coordinated with the initiation of the ICC valuation studies to maximize generation of a data base useful to both efforts. Funding in this area is needed for contractual assistance, which will be directly managed by the Transfer Team Staff.

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

ALASKA RAILROAD TRANSFER PROJECT BUDGET

PROJECT BUDGET

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

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

ATTACHMENT C

Capital Improvement Program - FY85

In Thousands (000) of Dollars

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

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

Supplement to Item #3, Attachment C

Track & Roadbed - \$6,185,000

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

Bridges - \$883,000

Replace stringers, bents, and spans
Reset bearings, piles, and abutments

Tunnels - \$1,060,200

Line with multi-plate
Excavate rock fall areas

Docks - \$706,800

Preliminary work to rebuild barge slip #1 at Whittier

Communications - \$570,000

Complete microwave system
Remove pole lines
Acquire equipment

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

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

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

FINANCIAL

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The following four financial statements (Tables VIII through XI) describe the financial situation (Note 1) of The Alaska Railroad.

TABLE VIII: STATEMENT OF INCOME
FISCAL YEARS 1982-83
(Thousand dollars)

CATEGORY	1983	1982
REVENUES (Note 2):		
Operating Revenues:		
Freight	\$43,787	\$47,877
Passenger	3,305	2,627
Other (Note 15)	5,305	4,941
Total Operating Revenues	52,397	55,445
Non-Operating Revenues (Note 16)	3,697	3,352
Total Revenues	\$56,094	\$58,797
EXPENSES (Note 3):		
Operating Expenses:		
Maintenance of Way & Structures (Note 4)	\$9,859 ⁽¹⁾	\$8,554
Maintenance of Equipment	12,326	11,702
Transportation	19,551	18,685
Traffic Management	855	757
Incidental	4,529	4,152
General and Administration (Note 5)	5,863	5,128
Total Operating Expenses	52,993	48,978
Non-Operating Expense (Note 17)	277	258
Total Expenses	\$53,270	\$49,236
NET PROFIT (Surplus)	\$2,824	\$9,561
Add Depreciation included in Expenses	4,404	3,712
CASH FLOW (Gain)	\$7,228	\$13,273

Notes follow Table XI

(1) Includes \$1.7 million which was part of Congressional Appropriation major maintenance and not included in FY 1982 expense.

Expense/Revenue Ratio	94.97%	83.74%
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**TABLE IX: BALANCE SHEET
SEPTEMBER 1982-83
(Thousand dollars)**

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

Notes follow Table X:

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

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

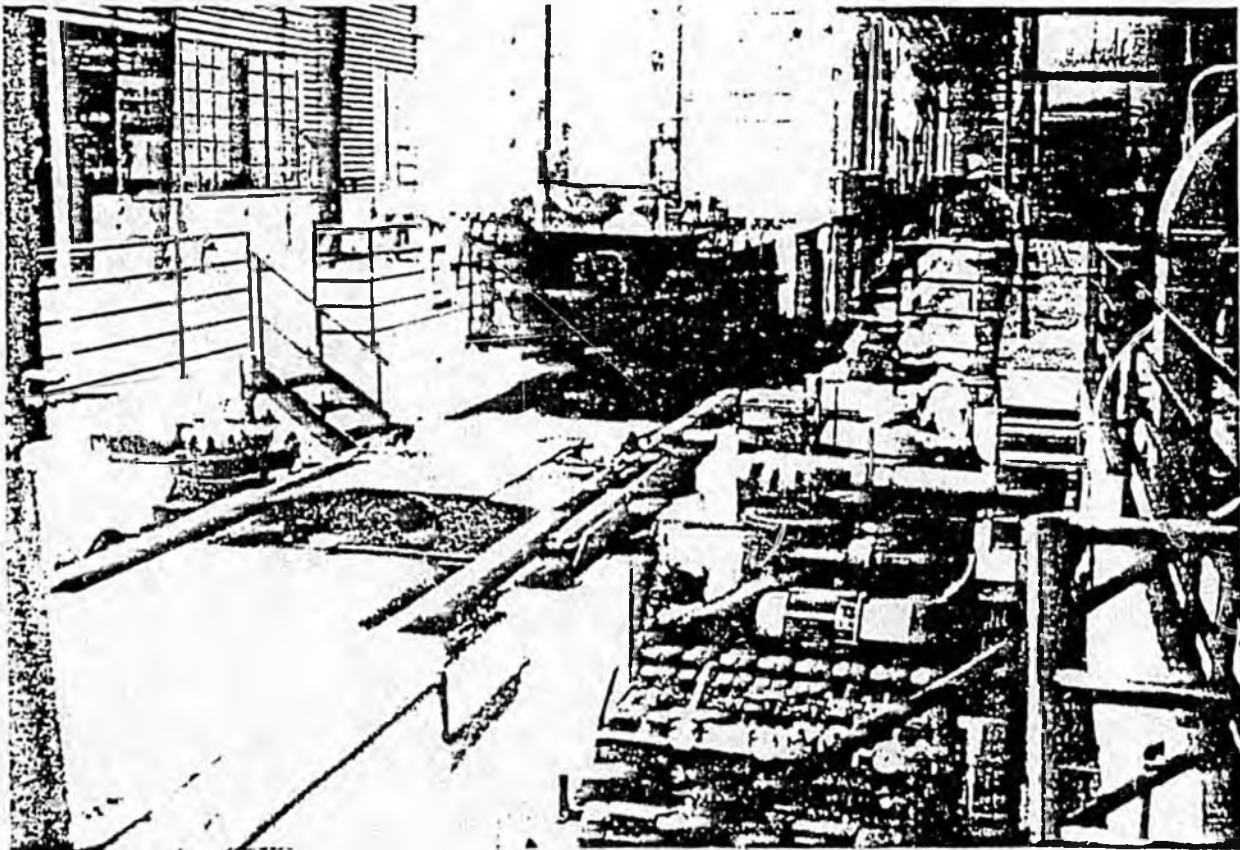
Notes follow Table XI

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

CATEGORY	1983	1982	1981	1980	1979
REVENUES:					
Operating	\$52,397	\$55,445	\$40,782	\$26,737	\$23,200
Non-Operating (Note 16)	<u>3,697</u>	<u>3,352</u>	<u>3,159</u>	<u>2,155</u>	<u>2,081</u>
Total Revenues	\$56,094	\$58,797	\$43,941	\$28,892	\$25,181
EXPENSES:					
Operating	\$52,993	\$48,978	\$40,358	\$34,380	\$31,285
Non-Operating (Note 17)	<u>277</u>	<u>258</u>	<u>273</u>	<u>344</u>	<u>204</u>
Total Expenses	\$53,270	\$49,236	\$40,631	\$34,724	\$31,489
NET PROFIT (LOSS)	\$2,824	\$9,561	\$3,310	(\$5,832)	(\$6,308)
Less Extraordinary Items (Note 6)	<u>(\$5,646)</u>	<u>(\$4,154)</u>	<u>(\$204)</u>	<u>(\$692)</u>	<u>(\$319)</u>
Annual Retained Earnings	(\$2,822)	\$5,407	\$3,106	(\$6,524)	(\$6,627)
Expense/Revenue Ratio	94.97%	83.74%	92.47%	120.19%	125.05%

Notes follow Table XI



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

NOTES TO FINANCIAL STATEMENTS

1. SUMMARY OF ACCOUNTING POLICIES

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

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

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

The Railroad is financed from a revolving fund.

2. REVENUES

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

3. EXPENSES

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

4. MAINTENANCE OF WAY AND STRUCTURES

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

5. GENERAL AND ADMINISTRATION

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

6. EXTRAORDINARY ITEMS

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

7. DEPRECIATION

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

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

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

8. CASH

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

9. TRUST AND DEPOSIT FUNDS

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

10. MATERIALS AND SUPPLIES

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

11. LAND

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

12. ADDITIONS AND BETTERMENTS IN PROGRESS

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

13. PROPRIETARY INTEREST OF THE U.S. GOVERNMENT

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

(Thousand dollars)

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

14. CONGRESSIONAL APPROPRIATIONS

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

(Million dollars)

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

15. OTHER OPERATING REVENUES

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

(Thousand dollars)

Reimbursable services	\$2,036
Sale of non-invested property	1,301
Reimbursements - real estate, utilities, and equipment	541
Whittier shuttle - vehicles	533
Wharfage and handling	148
Mail	145
Switching	116
Equipment rentals	90
All other	<u>395</u>
Total	\$5,305

16. NON-OPERATING REVENUES

Non-operating revenues in FY 1983 were:

(Thousand dollars)

Miscellaneous rentals	\$3,466
Interest earned	144
All other:	<u>87</u>
Total	\$3,697

17. NON-OPERATING EXPENSES

Non-operating expenses in FY 1983 were:

(Thousand dollars)

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



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

TRAFFIC

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FREIGHT

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

TABLE II: FREIGHT TRAFFIC BY COMMODITY

COMMODITY	1983 FY	1982 FY	% CHANGE
REVENUE TONS CARRIED (000's)			
Sand and Gravel	4,397.7	2,753.8	+ 59.7
Coal	625.8	653.6	- 4.2
Petroleum, Oil, Lubricants	462.2	439.4	+ 5.2
Manufacturers and Misc.	323.1	449.9	- 28.2
TOFC/COFC (Piggyback)	98.0	122.4	- 19.9
Products of Forests	105.1	77.0	+ 36.5
Products of Agriculture	<u>6.1</u>	<u>6.8</u>	- 10.3
Total Tonnage	6,018.0	4,502.9	+ 33.7
REVENUE DOLLARS (000's)			
Sand & Gravel	6,647	4,556	+ 45.9
Coal	5,007	5,072	- 1.3
Petroleum, Oil, Lubricants	9,723	8,376	+ 16.1
Manufacturers and Misc.	15,704	22,512	- 30.2
TOFC/COFC (Piggyback)	3,625	4,915	- 26.2
Products of Forests	2,955	2,301	+ 28.4
Products of Agriculture	<u>126</u>	<u>145</u>	- 13.1
Total Revenue	43,787	47,877	- 8.5

PASSENGER

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

TABLE III: PASSENGERS HANDLED

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

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

TARRIFS

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

TABLE IV: FY 1983 TARIFF CHANGES

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

Attachment E
3/14/84

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

	<u>FY 1973</u>	<u>FY 1974</u>	<u>FY 1975</u>	<u>FY 1976</u>	<u>FY 1977</u>	<u>FY 1978</u>	<u>FY 1979</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
Operating Revenue	\$16,996	\$20,783	\$41,416	\$52,517	\$33,376	\$27,440	\$23,100	\$26,737	\$40,782	\$55,445
Non-Operating Revenue	681	703	871	1,161	1,646	1,651	2,081	2,155	3,159	3,352
<u>Total Revenues</u>	<u>17,677</u>	<u>21,486</u>	<u>42,287</u>	<u>53,678</u>	<u>35,022</u>	<u>29,091</u>	<u>25,181</u>	<u>28,892</u>	<u>43,941</u>	<u>58,797</u>
Operating Expenses	\$20,057	\$22,389	\$35,883	\$49,387	\$35,703	\$33,301	\$31,285	\$34,380	\$40,358	\$48,978
Non-Operating Expenses	153	158	272	191	255	213	204	344	273	258
<u>Total Expenses</u>	<u>20,210</u>	<u>22,547</u>	<u>36,155</u>	<u>49,578</u>	<u>35,958</u>	<u>33,514</u>	<u>31,489</u>	<u>34,724</u>	<u>40,631</u>	<u>49,236</u>
<u>Gain (Loss)</u>										
Before depreciation - cash flow (\$ 7)	\$ 7	\$ 1,300	\$ 8,513	\$ 6,628	\$ 2,186	(\$ 1,227)	(\$ 3,089)	(\$ 2,306)	\$ 6,567	\$13,274
After depreciation	(\$ 2,533)	(\$ 1,061)	\$ 6,132	\$ 4,100	(\$ 936)	(\$ 4,423)	(\$ 6,308)	(\$ 5,832)	\$ 3,310	\$ 9,561
<u>Capital Expenditures</u>	<u>\$ 1,260</u>	<u>\$ 313</u>	<u>\$ 2,772</u>	<u>\$ 8,602</u>	<u>\$ 8,316</u>	<u>\$ 5,822</u>	<u>\$ 8,181</u>	<u>\$ 6,893</u>	<u>\$11,409</u>	<u>\$11,821</u>
<u>Revenue Tons of Major Commodities</u> (in thousands of tons)										
Sand and Gravel	2	1	1	104	700	727	637	396	1,797	2,754
Bulk Petroleum	363	414	557	624	532	374	220	252	379	439
Coal	565	563	584	607	550	593	524	590	653	654
Iron & Steel Pipe & Fittings	11	15	107	174	16	28	33	37	83	165
Piggyback	43	57	95	114	100	100	89	92	113	122
Forest Products	49	56	120	124	82	68	55	109	101	77
Manufactured Iron & Steel	18	37	60	89	19	12	12	10	8	19
Cement	15	14	25	32	42	33	33	32	43	51
Machinery and Machines	12	21	60	31	47	47	24	16	28	24
Mfrs. & Misc. NOS	32	34	44	29	17	13	25	26	11	**
Other	216	165	209	260	270	183	156	181	146	198
<u>TOTAL</u>	<u>1,331</u>	<u>1,337</u>	<u>1,862</u>	<u>2,188</u>	<u>2,305</u>	<u>2,178</u>	<u>1,808</u>	<u>1,741</u>	<u>3,362</u>	<u>4,503</u>
<u>Passengers</u>	<u>74,000</u>	<u>84,000</u>	<u>81,000</u>	<u>84,500</u>	<u>103,632</u>	<u>126,277</u>	<u>151,045</u>	<u>150,678</u>	<u>161,068</u>	<u>172,116</u>

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

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