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TELECOPY COVER LETTER

DRAFT

TO: Senator John B. Coghill

DRAFT

From: Mr. Frank Turpin, President Alaska Railroad Corporation

DRAFT

Subject: \_\_\_\_\_

Telecopier No. 265-2469 Telephone No. 265-2690 Nancy Alford

NOTE: \_\_\_\_\_

No. of Pages: 2 Including cover sheet

DRAFT

# ALASKA RAILROAD CORPORATION



Pouch 7-2111 • Anchorage, Alaska 99510-7069

April 30, 1985

The Honorable John B. "Jack" Coghill  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Subject: SB 303

Dear Senator Coghill:

Thank you for inviting our response to Senate Bill 303, which proposes repeal of A.S. 42.40.355.

As you know, A.S. 42.40.355 provides that the Corporation may not apply for a right-of-way across, or exercise eminent domain in, the western unit of the Gates of the Arctic National Preserve.

Among the many powers assigned to it, the Corporation is authorized to plan for and undertake expansion of the railroad and railroad activities, including extension of the rail system. We support Senate Bill 303, because it creates a flexibility to plan for extensions in an important part of our State.

The Legislature has previously found that the Corporation must function as a viable economic entity, which will also provide a level of transportation service that best satisfies the needs of the people of the State. Although any proposed extension of the rail system calls for careful scrutiny consistent with such Legislative purposes, by promoting flexibility, SB 303 meshes well with our desire to responsibly plan for the future.

Sincerely,

F. G. Turpin  
President and Chief Executive Officer

"An Act removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain"

SB303

IDENTIFICATION

DATE INTRODUCED  
4-29-85

RELATED BILLS PENDING

SPONSOR(S)

None

REFERRALS

None

Coghill

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS

FISCAL NOTE

Yes

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED

Senator Ferguson

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC  
ARR Entitlement Act

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS

ARR - Pat (Frank Turpin's Sec. will call soon)  
DOT-PF

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET

STAFF MEMO TO COMMITTEE

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES

SUGGESTED AMENDMENTS/CS DRAFTED

STATEMENT BY: SENATOR FERGUSON  
to the Senate Transportation Committee  
May 1, 1985

I am introducing this amendment to better allow the Alaska Railroad Corporation to extend a line into the Kantishna mining area. The Kantishna area is located in the Denali Park Preserve next to Mt. McKinley. The Alaska Land Use Council studied the Kantishna area pursuant to 16 USC 410 HH-1(b). Their findings were that substantial and valuable minerals are present there and extractive activities should be allowed.

I believe that extending the railroad into Kantishna via the Stampede Road route would have many benefits. First it would be a vital asset to mining development of the Kantishna. Secondly, railroad access provides the least environmental damage. Thirdly, the railroad could double the number of tourists that would visit McKinley Park and Denali Park. Since McKinley is operated on a controlled access basis, the presence of the railroad would allow the interchange of bus passengers from one direction with the railroad passengers from the other direction, hence doubling the opportunities to visit the two parks.

While the amendment only pertains to state lands, I believe it will provide the railroad with less obstacle on starting across state land at the beginning of the Stampede route.

My amendment would be parody to the main bill which opens up the gates to the Arctic.

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(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.355. Prohibition.** Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

**Sec. 42.40.360. Request for land.** (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.370. Conveyance of land.** (a) Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision

- (1) designate the identified land for railroad purposes and, subject to valid existing rights, convey the state's interests in the land to the corporation;
- (2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or
- (3) approve the request in part and deny it in part and convey as appropriate.

(b) A conveyance of land under this section may be for less than its appraised value as determined by the commissioner of natural resources.

(c) In the absence of a reservation to the contrary, a conveyance of land under this section vests in the corporation ownership, control of the surface, material and mineral estate, including the right to extract or use timber and other construction materials, sand, gravel, rock, and the right to tunnel, ditch, recontour, excavate, or otherwise use the land for railroad, transportation, transmission, communication, and related purposes.

(d) The corporation may reconvey to the state land received under this section that the corporation and the commissioner of natural resources jointly identify as unnecessary or unsuitable for the corporation's purposes. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.380. Use of state land.** When emergency conditions require that track or other right-of-way fixtures of the corporation be moved from the existing location and relocated on state land adjacent to or in the vicinity of the existing right-of-way and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the corporation may effect the relocation and notify the Department of Natural Resources. The relocation must affect only the amount of state land necessary to adequately restore or continue safe rail operations at a normal level. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.385. Eminent domain.** (a) The corporation may exercise the power of eminent domain under AS 09.55.240 — 09.55.460 to acquire land for railroad transportation purposes consistent with this chapter. Notwithstanding AS 09.55.250, the corporation may acquire a fee simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary to carry out the purposes of this chapter.

(b) The corporation may file a declaration of taking in the manner provided for the state under AS 09.55.420.

(c) The power of eminent domain conferred under this section includes the power to obtain clay, gravel, sand, timber, rock or other material for the operation of the railroad, the land necessary to obtain the material, and access to the land and material.

(d) The exercise of the power of eminent domain requires the prior approval of the governor. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.390. Land use rules.** The board may adopt exclusive rules governing land use by parties having interests in or permits for land owned or managed by the corporation. The power conferred by this section is exercised for the common health, safety, and welfare of the public and to the extent constitutionally permissible, may not be limited by the terms and conditions of leases, contracts, or other transactions. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.400. Vacation of easements.** The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district. If the easement was

SENATE AMENDMENT

By FERGUSON

To: AMEND SENATE BILL No. SB 303

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE: 1      LINE: 11

Add a new Section 2 which reads

Section 2. AS 42.40.370(a)(2) and (a)(3) is repealed.

✓ SB 303 cont'd

The question being: "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

## SB 303 AM 1

Yeas: 10 Bennett, Fahrenkamp, Faiks,  
Ferguson, Halford, Kerttula, Ray,  
Sackett, Zharoff, Ziegler

Nays: 8 Abood, Coghill, Eliason,  
Fischer Paul, Josephson, Kelly,  
Rodey, Sturgulewski

Excused: 1 Fischer Vic

Absent: 1 DeVries

and so, Amendment No. 1 was adopted.

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 303 am be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE BILL NO. 303 am was read the third time.

The question being: "Shall SENATE BILL NO. 303 am (removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain) pass the Senate?" The roll was taken with the following result:

## SB 303 AM 3RD

Yeas: 15 Abood, Bennett, Coghill, Eliason,  
Fahrenkamp, Faiks, Ferguson,  
Fischer Paul, Halford, Kelly,  
Kerttula, Ray, Sackett, Zharoff,  
Ziegler

Nays: 3 Josephson, Rodey, Sturgulewski

Excused: 1 Fischer Vic

Absent: 1 DeVries

and so, SENATE BILL NO. 303 am passed the Senate.

THERE IS NO

COMMITTEE SUBSTITUTE FOR

SB 303

Introduced: 4/29/85  
Referred: Transportation

1 IN THE SENATE

BY COGHILL

2

SENATE BILL NO. 303

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act removing a limitation on the power of the  
7 Alaska Railroad to apply for a right-of-way or exer-  
8 cise eminent domain."

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

10 \* Section 1. AS 42.40.355 is repealed.

# Alaska State Legislature

SENATOR  
JOHN B. "JACK" COGHILL  
Chairman

Senator Jan Faiks—Vice Chairman  
Senator Mitch Abood  
Senator Paul Fischer  
Senator Joe Josephson



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4921

## Senate Committee on Transportation

### MEMORANDUM

TO: Committee Members  
FROM: Committee Staff  
DATE: 4-30-85  
RE: SB 303

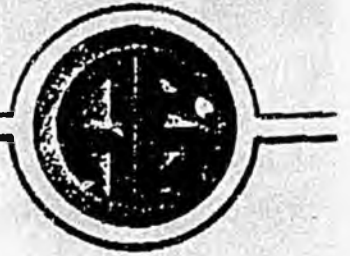
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SB 303 repeals Section 42.40.355 of the Alaska Statutes. This sub-section prohibits the Alaska Railroad from applying for rights-of-way in the western unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). 16 U.S., etc. refers to chapter 11 of the ANILCA act. Chapter 11 allows the State of Alaska to apply for access across or into national parks and preserves if the appropriate requirements are met.

Senator Ferguson, the sponsor of this provision of the Alaska Railroad Enabling Act, has agreed to this change.

STAFF MEMO

ALASKA RAILROAD CORPORATION



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April 30, 1985

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Pouch V  
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Among the many powers assigned to it, the Corporation is authorized to plan for and undertake expansion of the railroad and railroad activities, including extension of the rail system. We support Senate Bill 303, because it creates a flexibility to plan for extensions in an important part of our State.

The Legislature has previously found that the Corporation must function as a viable economic entity, which will also provide a level of transportation service that best satisfies the needs of the people of the State. Although any proposed extension of the rail system calls for careful scrutiny consistent with such Legislative purposes, by promoting flexibility, SB 303 meshes well with our desire to responsibly plan for the future.

Sincerely,


A handwritten signature in cursive script, appearing to read 'F. G. Turpin'.

F. G. Turpin  
President and Chief Executive Officer

ALASKA RR RESPONSE

(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)



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and scenic beauty of the mountains, forelands, rivers, lakes, and other natural features; to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering, and other wilderness recreational activities; and to protect habitat for and the populations of, fish and wildlife, including, but not limited to, caribou, grizzly bears, Dall sheep, moose, wolves, and raptorial birds. Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of title VIII.

*Post*, p. 2422.

(b) Congress finds that there is a need for access for surface transportation purposes across the Western (Kobuk River) unit of the Gates of the Arctic National Preserve (from the Ambler Mining District to the Alaska Pipeline Haul Road) and the Secretary shall permit such access in accordance with the provisions of this subsection.

Publication in Federal Register.

(c) Upon the filing of an application pursuant to section 1104 (b), and (c) of this Act for a right-of-way across the Western (Kobuk River) unit of the preserve, including the Kobuk Wild and Scenic River, the Secretary shall give notice in the Federal Register of a thirty-day period for other applicants to apply for access.

Environmental and economic analysis.

(d) The Secretary and the Secretary of Transportation shall jointly prepare an environmental and economic analysis solely for the purpose of determining the most desirable route for the right-of-way and terms and conditions which may be required for the issuance of that right-of-way. This analysis shall be completed within one year and the draft thereof within nine months of the receipt of the application and shall be prepared in lieu of an environmental impact statement which would otherwise be required under section 102(2)(C) of the National Environmental Policy Act. Such analysis shall be deemed to satisfy all requirements of that Act and shall not be subject to judicial review. Such environmental and economic analysis shall be prepared in accordance with the procedural requirements of section 1104(e). The Secretaries in preparing the analysis shall consider the following—

42 USC 4332.

*Post*, p. 2459.

(i) Alternative routes including the consideration of economically feasible and prudent alternative routes across the preserve which would result in fewer or less severe adverse impacts upon the preserve.

(ii) The environmental and social and economic impact of the right-of-way including impact upon wildlife, fish, and their habitat, and rural and traditional lifestyles including subsistence activities, and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts.

(e) Within 60 days of the completion of the environmental and economic analysis, the Secretaries shall jointly agree upon a route for issuance of the right-of-way across the preserve. Such right-of-way shall be issued in accordance with the provisions of section 1107 of this Act.

Kenai Fjords National Park.

(5) Kenai Fjords National Park, containing approximately five hundred and sixty-seven thousand acres of public lands, as generally depicted on map numbered KEFJ-90,007, and dated October 1978. The park shall be managed for the following purposes, among others: To maintain unimpaired the scenic and environmental integrity of the Harding Icefield, its outflowing glaciers, and coastal fjords and islands in their natural state; and

THERE IS NO

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SB 303

Introduced: 4/29/85  
Referred: Transportation

1 IN THE SENATE

BY COGHILL

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SENATE BILL NO. 303

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FOURTEENTH LEGISLATURE - FIRST SESSION

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Chairman

Senator Jan Falks—Vice Chairman  
Senator Mitch Abood  
Senator Paul Fischer  
Senator Joe Josephson



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4921

## Senate Committee on Transportation

### MEMORANDUM

TO: Committee Members  
FROM: Committee Staff  
DATE: 4-30-85  
RE: SB 303

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