

HB

10

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 10

Revision Date: _____ Department Affected: Administration
 Title: An act establishing the -- BRU: Risk Management
Alaska Marine Highway Authority Component: _____
 Sponsor: Mackie, et al
 Requestor: Transportation & Finance COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: Donald Hitchcock *[Signature]* Phone: 465-2180
 Division: Risk Management Date: 3-7-91
 Approved by Commissioner: Millett Keller *[Signature]*
 Agency: Administration Date: 3/7/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 10

Revision Date: _____ Department Affected: DOT&PF/AMHS
 Title: An Act establishing the BRU: Alaska Marine Highway System
Alaska Marine Highway System Component: _____
 Sponsor: _____
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0.0

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared By: John Halterman Phone: 465-3950
 Division: Alaska Marine Highway System Date: 2/7/91

Approved by Commissioner: [Signature] Date: 2-11-91
 Agency: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note - House Bill No. 10

Analysis:

Assuming the authority is granted the powers contemplated by the legislation, including the changes recommended in the AMHS position paper, operating efficiencies should offset any increased costs. This also assumes the current services provided by other state agencies will continue at no increased cost. The ultimate financial benefit of this legislation is to provide the AMHS management with the structure necessary to develop long term operating plans that maintain and expand service without increased demands on the General Fund.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 10

Revision Date: _____
 Title: Alaska Marine Highway Authority Act

 Sponsor: Mackie
 Requestor: _____

Department Affected: Administration
 BRU: Labor Relations
 Component: Labor Relations

COMPONENT SERIAL NO.

0	0	5	8
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 The enactment would separate the Marine Highway System into a separate quasi-governmental authority. All authority employees including those now in the classified service would be removed from coverage of State Personnel laws and regulations and from coverage by the Public Employment Relations Act. Legislative approval of monetary terms is thereby removed. Actual economic impact is unknown, but "whipsawing" potential for other employee groups is increased. There will be no direct increase in costs for this division.

Prepared by: Bruce Cummings, Director *Bruce Cummings*
 Division: Labor Relations

Phone: 465-4404
 Date: February 8, 1991

Approved by Commissioner: Millett Keller *Millett Keller*
 Agency: Administration

Date: 2/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

EXEMPT V. CLASSIFIED SERVICE

HB 10 proposes to place all employees of the proposed Alaska Marine Highway Authority (AMHA) in the "exempt" service (AS 39.25.110). Shipboard personnel of the ferry system are already in the exempt service [AS 39.25.110(16)]; however, shoreside personnel are currently in the "classified" service of State government. The proposal in HB 10 moves these shoreside personnel into the exempt service, with the AMHA as their employer instead of the executive branch.

Classified employees are employed only in the executive branch of State government. They may or may not be organized for collective bargaining purposes (the overwhelming majority are organized); status as an exempt v. classified employee has no bearing on organizational rights [AS 23.40.250(6)]. Orders and decisions of the Alaska Labor Relations Agency have prohibited the formation of a single bargaining unit which is composed of both classified and exempt employees, but a labor organization may represent bargaining units in both types of service. For example, white-collar employees of the legislative branch [exempt employees under AS 39.25.110(3)] may lawfully organize, but cannot be members of the same bargaining unit as executive employees in the classified service performing the same type of work; however, both may choose to be represented by the same union.

Classified employees are covered by the so-called "merit system"; exempt employees are not. Except as modified by collective bargaining, classified employees are covered by the merit system provided in the State Personnel Act (Title 39, Chapter 25). Section .010 of that chapter outlines the essence of classified service:

SEC. 39.25.010. Purpose of chapter. (a) It is the purpose of this chapter to establish a system of personnel administration based upon the merit principle and adapted to the requirements of the state to the end that persons best qualified to perform the functions of the state will be employed, and that an effective career service will be encouraged, developed, and maintained.

(b) The merit principle of employment includes the following:

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) regular integrated salary programs based on the nature of the work performed;

(3) retention of employees with permanent status on the basis of the adequacy of their performance, reasonable efforts of temporary duration for correction in inadequate performance, and separation for cause;

(4) equal treatment of applicants and employees with regard only to consideration within the merit principles of employment; and

(5) selection and retention of an employee's position secure from political influences. (1 ch 144 SLA 1960; am 1 ch 46 SLA 1980)

As a practical matter, most of these merit system elements are not established--in one form or another--in each bargaining unit contract (including those for "exempt" employees). Nevertheless, classified employees are entitled to these elements even in the absence of collective bargaining. Not so for exempt employees.

"Exempt" literally means exempt from the State Personnel Act. AS 39.25.110 defines the exempt service by stating:

Sec. 39.25.110. Exempt service. Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it . . .

But for collective bargaining rights and agreements (and any specific statutory entitlements to retirement coverage, leave, etc.) exempt employees serve solely at the will of their employer and receive whatever wages, hours, and working conditions that employer may establish.

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE MACKIE

TO: CSHB 10()

Page 3, line 6:

Delete all material.

Reletter the following subsection accordingly.

Page 3, following line 10:

Insert a new section to read:

"Sec. 19.55.045. EMPLOYEES OF THE AUTHORITY. (a) Employees of the authority are in the exempt service under AS 39.25.110.

(b) Eligible employees of the authority shall participate in the supplemental employee benefits program under AS 39.30.150 - 39.30.180 and in the public employees' retirement system under AS 39.35. The authority shall pay the employer's contributions required under AS 39.30.150 - 39.30.180 and AS 39.35."

Amendment #2

Page 12, line 26:

Delete "APPROPRIATIONS"

Insert "EMPLOYEES, APPROPRIATIONS."

Page 12, line 27, after "AUTHORITY.":

Insert a new subsection to read:

"(a) Employees of the Department of Transportation and Public Facilities assigned to the management, operation, and maintenance of the Alaska marine highway system on the effective date of this Act are transferred to the Alaska Marine Highway Authority as employees of the authority. The commissioner of transportation and public facilities shall determine which employees are transferred to the authority. An employee who is transferred to the authority under

this subsection shall continue to participate without interruption in the supplemental employee benefits program under AS 39.30.150 - 39.30.180 and in the public employees' retirement system under AS 39.35, if the employee was a participant in these programs on the day before the employee was transferred to the authority."

(b) Nothing in this Act terminates or modifies recognition of an exclusive bargaining representative or a collective bargaining agreement that is in effect on the effective date of this Act."

Reletter the following subsections accordingly.

A M E N D M E N T #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE MACKIE

TO: CSHB 10()

Page 10, line 30, through page 11, line 4:

Delete all material and insert:

"* Sec. 9. AS 36.30.015 is amended by adding a new subsection to read:

(g) The board of directors of the Alaska Marine Highway Authority shall adopt policies to manage the procurement of supplies, services, professional services, and construction. The policies must be based on principles of competitive procurement consistent with this chapter to satisfy the special requirements of the authority as determined by the board of directors of the authority."

AMENDMENT # 4

OFFERED TO CS HB 10()

By: Rep. Mackie

Page 13, line 2. After "system," insert the following:

and the Department of Natural Resources

AMENDMENT # 1

OFFERED IN THE HOUSE
TO: HB 10

BY REPRESENTATIVE TAYLOR

Page 2, line 5, following "(a)" through line ~~10~~¹¹:

Delete all material

Insert the following material to read:

"The board of directors of the authority consists of seven directors. One director is the commissioner of transportation and public facilities and six directors are appointed by the governor. The six appointed members must be state residents except as provided in (1) of this subsection. One appointed member shall be a representative of the tourist industry who meets one of the requirements under (1) - (4) of this subsection, and one shall be a representative of the commercial carriers who meets one of the requirements under (1) - (4) of this subsection.

Appointed members shall include

- (1) a representative of the maritime industry; a person who is not a state resident may be appointed under this paragraph;
- (2) a member of a maritime union;
- (3) two residents of Southeast Alaska;
- (4) a resident of the Gulf of Alaska area west of Icy Cape; and
- (5) a person who represents the interests of the public."

Page 2, line ~~28~~:

Delete "Three"

Insert "Four"

Page 2, line ~~29~~³⁰:

Delete "three"

Insert "four"

Page 3, line ~~24~~²⁵:

Delete "four"

Insert "five"

13 7
Page ~~12~~, line ~~16~~.

Delete "AS 39.05.055(2)"

Insert "AS 39.05.055(4)"

A M E N D M E N T # 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE TAYLOR

TO: CSHB 10 ()

Page 3, lines 2 - 6:

Delete all material and insert:

"Sec. 19.55.040. STAFF. (a) The board of directors shall employ a chief executive officer who serves at the pleasure of the board.

(b) The chief executive officer may, with the approval of the board, select and employ additional staff as necessary, including additional administrative officers. The chief executive officer may appoint, employ, and remove at the pleasure of the chief executive officer with the approval of the board the following employees of the authority:

- (1) port captain;
- (2) port engineer;
- (3) marine facilities engineering manager;
- (4) reservation and marketing manager;
- (5) customer services supervisor;
- (6) administrative services director;
- (7) deputy and assistant directors."

Page 3, following line 10:

Insert a new section to read:

"Sec. 19.55.045. EMPLOYEES OF THE AUTHORITY. (a) Employees of the authority are state employees.

(b) Eligible employees of the authority shall participate in the supplemental employee benefits program under AS 39.30.150 - 39.30.180 and in the public employees' retirement system under AS 39.35. The authority shall pay the employer's contributions required under AS 39.30.150 - 39.30.180 and AS 39.35."

Page 10, line 21, after "23.40.030":

Insert "and 23.40.070 - 23.40.260"

Page 10, line 23, after "authority":

Insert "or their bargaining agents. This section applies to all employees of the authority whether or not the employees are"

Page 10, line 25:

Delete "or their bargaining agent. ["

Insert ". [OR THEIR BARGAINING AGENT."

Page 12, lines 2 - 11:

Delete all material.

Insert the following new bill sections to read:

* **Sec. 12.** AS 39.20.310(8) is amended to read:

(8) persons employed by the Alaska Marine Highway Authority [DIVISION OF MARINE TRANSPORTATION] as masters and members of the crews operating the state ferry system who are covered by collective bargaining agreements as provided in AS 23.40.040, except as expressly provided by law;

* **Sec. 13.** AS 39.25.110(16) is amended to read:

(16) persons employed by the Alaska Marine Highway Authority [DIVISION OF MARINE TRANSPORTATION] as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040;

* **Sec. 14.** AS 39.25.110 is amended by adding a new paragraph to read:

(30) the following employees of the Alaska Marine Highway Authority:

- (A) chief executive officer;
- (B) deputy or assistant director;
- (C) port captain;
- (D) port engineer;
- (E) marine facilities engineering manager;
- (F) reservation and marketing manager;
- (G) customer services supervisor;

(H) administrative services supervisor.

* Sec. 15. AS 39.30.150(b) is amended to read:

(b) Employees of the Alaska Marine Highway Authority [DIVISION OF MARINE TRANSPORTATION] included in the public employees' retirement system through the process of collective bargaining under AS 39.35.680(21)(D) may, under the terms of a collective bargaining agreement, utilize contributions made under (a) of this section on their behalf to offset the costs of inclusion in the public employees' retirement system; however,

(1) the state is placed under no obligation to continue making contributions under this section if the state resumes participation in the federal social security system;

(2) the bargaining agreement must provide a mechanism for satisfying any residual liabilities that might exist if the state resumes participation in the federal social security system; and

(3) funds contributed under (a) of this section on behalf of employees who are not covered by maritime union contracts may not be obligated or expended to pay any costs associated with the inclusion of authority [MARINE TRANSPORTATION] employees in the public employees' retirement system under this subsection.

* Sec. 16. AS 39.35.680(21) is amended to read:

(21) "member" or "employee"

(A) means a person eligible to participate in the system and who is covered by the system;

(B) includes

(i) active member;

(ii) inactive member;

(iii) vested member;

(iv) deferred vested member;

(v) non-vested member;

(vi) disabled member;

(vii) retired member;

(viii) an elected public officer under AS 39.35.381;

(C) does not include

(i) former members;

(ii) persons compensated on a contractual or fee basis;

(iii) casual or emergency workers or nonpermanent employees as

defined in AS 39.25.200;

(iv) persons covered by the Alaska Teachers' Retirement System except as provided under AS 39.35.131 and 39.35.381, or persons covered by the optional university retirement program;

(v) employees of the Alaska Marine Highway Authority [DIVISION OF MARINE TRANSPORTATION] engaged in operating the state ferry system as masters or members of the crew of vessels who are covered by a union or group retirement system to which the state makes contributions;

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska; (vii) the administrative director of courts appointed under art. IV, sec. 16 of the state constitution unless the director becomes a member under AS 39.35.158; and

(viii) members of the elected public officers' retirement system (former AS 39.37);

(D) may include employees of the Alaska Marine Highway Authority [DIVISION OF MARINE TRANSPORTATION] excluded under (C)(v) of this paragraph provided that

(i) the State of Alaska, acting through the board of directors of the authority, formally agrees to their inclusion through the process of collective bargaining; and

(ii) no collective bargaining agreement has the effect of obligating contributions made by the state under AS 39.30.150 in the event the state resumes participation in the federal social security system;"

Renumber the following bill sections accordingly.

Page 12, line 26:

Delete "APPROPRIATIONS"

Insert "EMPLOYEES, APPROPRIATIONS,"

Page 12, line 27, after "AUTHORITY.":

Insert new subsections to read:

"(a) Employees of the Department of Transportation and Public Facilities assigned to the

management, operation, and maintenance of the Alaska marine highway system on the effective date of this Act are transferred to the Alaska Marine Highway Authority as state employees of the authority. The commissioner of transportation and public facilities shall determine which employees are transferred to the authority. An employee who is transferred to the authority under this subsection shall continue to participate without interruption in the supplemental employee benefits program under AS 39.30.150 - 39.30.180 and in the public employees' retirement system under AS 39.35, if the employee was a participant in these programs on the day before the employee was transferred to the authority.

(b) Nothing in this Act terminates or modifies recognition of an exclusive bargaining representative or a collective bargaining agreement that is in effect on the effective date of this Act."

Reletter the following subsections accordingly.

Page 13, line 8:

Delete ", AS 19.65.020; and AS 39.25.110(16)"

Insert "and AS 19.65.020"

REPRESENTATIVE
JERRY MACKIE

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CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



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House of Representatives

Amendments to HB 10 by Rep. Mackie.

Feb. 5, 1991

Amendment 1.

Page 2, line 8: After "system", insert the following:

"and who have experience in business management, finance, transportation services, or engineering"

Purpose: General statement of qualifying requirements for board membership.

Amendment 2.

Page 2, line 12. Delete "at the pleasure of the governor" and insert the following:

"by the governor for cause"

Purpose: Supposedly offers a measure of board continuity during changes in the executive office.

Amendment 3.

Page 2, line 19. Delete "150" and insert "250".

Purpose: Railroad and Permanent Fund is at 400 and Boards of Fish & Game are at 150. 250 is in between.

Amendment 4.

Page 3, line 26. After "real property" , delete rest of the sentence, insert ";" and insert new subsection (9) to read:

"(9) dispose of real property by sale, lease, or otherwise;"

and renumber accordingly.

Purpose: Legal drafters stylistic change.

Amendment 5.

Page 4. lines 3 and 4. Delete subsections (11) and (12) in their entirety and insert the following new subsection:

"() establish and modify routes, rates, and tariffs; however before the authority may significantly modify routes, rates, and tariffs, the authority shall hold a public hearing in each geographic region affected by the modification; and"

Purpose: Establishes a broader requirement for hearings on route, rate, and tariff changes. In answer to questions such as: If confectionery wholesaler ups cost of candy bars five cents, are public hearings required for the authority to do likewise?

Amendment 6.

Page 4, line 7. Delete "frequent possible" and insert "suitable".

Purpose: Connote some sense of practical, economic, or fiscal constraint.

Amendment 7.

Page 4, line 8. Delete "maximize" and insert "optimize".

Purpose: Same as Amend. 6

Amendment 8.

Page 4, line 11. Delete "maximum" and insert "optimal".

Purpose: Same as Amend. 6

Amendment 9.

Page 4, line 12 and 13. Delete subsections (4) and (5) in their entirety, renumber accordingly.

Purpose: These duties are assumed under subsections (1) and (3).

Amendment 10.

Page 4, line 15. Delete "greatest extent possible" and insert "maximum extent feasible".

Purpose: Same as Amend. 6.

Amendment 11.

Page 4, line 24. Delete the sentence "The comprehensive long-range plan and revisions and updates of the plan are subject to legislative approval by law."

Purpose: Conform with current DOT/PF 5-year plan requirements.

Amendment 12.

Page 5, line 9. Insert new subsection (a) to read as follows:

"(a) The authority may dispose of land, or interests in land, held by the authority by sale, lease, or exchange. The proceeds of a disposal under this section are gross revenue of the authority for the purposes of AS 19.65.050 - 19.65.100. "

and re-letter subsections accordingly.

Purpose: Further expands land disposal options corresponding to Amend. 4.

Amendment 13.

Page 5, line 30. Delete "Sec. 19.55.140. EXISTING FACILITIES NOT AFFECTED....." in its entirety.

Purpose: Not applicable.

Amendment 14.

Page 6, lines 25 and 26. Delete "self-propelled".

Purpose: Allow vans, unaccompanied trailers, et. al. in definition.

Amendment 15.

Page 10, line 5. Insert after "facilities" the following:

" , the sale of goods and services of the authority, and disposal of the authority property"

Purpose: Assure that ancillary revenues are included in definition.

Amendment 16.

Page 10, beginning line 13. Delete the sentence "A collective bargaining agreement entered into by the authority is not final without the concurrence of the commissioner of transportation and public facilities. "

Purpose: To retain finality within the authority.

Amendment 17.

Page 10, line 18 to page 11, line 4. Delete sections 9, 10, and 11.

Purpose: Increase management discretion on arts expenditures.

Amendments 18 relating to procurement.

Page 5, line 21 and 22. Delete the sentence "Construction and purchasing under this section are governed by AS 36.30 (State Procurement Code)."

Page 11, line 5. Insert two new sections as follows:

*Sec. . AS 36.30.015(e) is amended to read:

(e) The board of directors of the Alaska Railroad Corporation and the board of directors of the Alaska Marine Highway Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction. The Procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

*Sec. . AS 36.30.990(1) is amended to read:

(1) "agency"

(A) means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of the executive

branch of state government;

(B) does not include

- (i) the University of Alaska;
- (ii) the Alaska State Housing Authority;
- (iii) The Alaska Railroad Corporation;
- (iv) the Alaska Housing Finance Corporation;
- (v) a regional Native housing authority created under AS 18.55.996, or a regional electrical authority created under AS 18.57.020;

(vi) the Alaska Marine Highway Authority;

Purpose: Allow authority some ability to tailor their own procurement procedures.

Amendment 19.

Page 12, line 13. Insert new section 17 as follows:

"*Sec. 17. TRANSFER OF APPROPRIATIONS AND ASSETS TO THE ALASKA MARINE HIGHWAY AUTHORITY. (a) Subject to appropriation by the legislature, the unexpended and unobligated balances of operating and capital appropriations for the Department of Transportation and Public Facilities, Alaska marine highway system, shall be transferred to the Alaska Marine Highway Authority.

(b) Subject to appropriation by the legislature, the personal property assets and real property assets, including ferries, equipment, buildings, and associated facilities, of the Department of Transportation and Public Facilities, Alaska marine highway system, shall be transferred to the Alaska Marine Highway Authority."

and renumber accordingly.

Purpose: Necessary for the operation of the authority.

Date: February 7, 1990.

Amendments to HB 10 by Representative Hudson:

Amendments 1. relating to power of eminent domain.

Page 3, line 26. Insert new subsection (8) as follows:

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

and renumber accordingly.

Page 4, line 29. Delete "or" and "and in fee simple or easements" , insert after "exchange" the following:

", or eminent domain land or interests in land"

Page 5, line 6. Delete "or" and insert after "exchange" the following:

", or eminent domain"

Page, line 9. Insert new section to read:

"Sec. 19.55.100. EMINENT DOMAIN. The authority may exercise the power of eminent domain under AS 09.55.240 - 09.55.460 to acquire land on behalf of the state for the purposes of this chapter. Notwithstanding AS 09.55.250, the authority 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 authority 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 authority, 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 commissioner of the Department of Transportation and Public Facilities."

Purpose: To give the authority power of eminent domain.

Amendment 2.

Page 3, line 28. Insert after the word "improve" insert the following:

", modify"

Amendment 3.

Page 5, lines 25 and 27. On both lines delete the word "department" and insert therefore the word "authority".

DIVISION OF LEGAL SERVICES

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MEMORANDUM

March 14, 1991

SUBJECT: CSHB 10 (Transportation)

TO: Representative Richard Foster
Chair, House Transportation Committee

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum accompanies CSHB 10 (Transportation).

The Transportation Committee Substitute includes amendments previously adopted by the committee to CSHB 10(), dated 2/12/91, as well as editorial changes and additional technical changes made in order to substitute references to the division of marine transportation that currently exist in statute with references to the Alaska Marine Highway Authority.

The amendment adopted by the committee to provide for the transfer of assets used by the division of marine transportation but held ("owned") by the Department of Natural Resources has been restructured as a new subsection in Section 22 of the bill. This provision authorizes the transfer of these assets. However the actual transfer is contingent upon enactment of an appropriation for the transfer. HB 108 makes appropriations for the transfer of certain assets to the Alaska Marine Highway Authority but does not provide for the transfer of any assets held by the Department of Natural Resources. HB 108 would have to be amended in order to transfer assets from the Department of Natural Resources to the authority.

The following editorial and technical changes are contained in the Transportation Committee Substitute:

Sections 3, 10, 11, 15, 17, and 18 of the bill contain technical amendments substituting the Alaska Marine Highway Authority for the division of marine transportation. The effect of these sections is to transfer existing functions, duties, and powers to the authority without otherwise substantively changing the underlying statutes themselves.

Representative Richard Foster

March 14, 1991

Page 2

Section 9 of the bill, amending AS 23.40.040, contains additional language clarifying that the authority is to be the agency responsible for negotiating labor agreements with all of its employees. This corrects a previous oversight in failing to specify that this section is applicable to all employees of the authority.

The sections of AS 19.55 contained in section 2 of the bill are renumbered so as to allow room for additional sections that may be added to AS 19.55 in the future. As it was, this material was already beginning to get cramped by the addition of new sections to this part of the bill.

If I may be of further assistance, please advise.

GU:pl

91-163.plm

DIVISION OF LEGAL SERVICES

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MEMORANDUM

March 14, 1991

SUBJECT: Sectional Summary of CSHB 10 (Transportation); An Act relating to ferries and ferry terminals and establishing the Alaska Marine Highway Authority

TO: Representative Richard Foster

FROM: George Utermohle, *JM*
Legislative Counsel

This memorandum is a sectional summary of CSHB 10 (Transportation), an Act relating to ferries and ferry terminals and establishing the Alaska Marine Highway Authority.

A summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the purpose of the bill.

Section 2 of the bill amends AS 19 by adding a new chapter relating to the Alaska Marine Highway Authority.

CHAPTER 55. ALASKA MARINE HIGHWAY AUTHORITY.

ARTICLE 1. CREATION AND ORGANIZATION.

Sec. 19.55.010 establishes the Alaska Marine Highway Authority as a public corporation of the state within the Department of Transportation and Public Facilities.

Sec. 19.55.020 relates to the directors of the authority. There are five directors of the authority: the commissioner of transportation and public facilities and four other persons appointed by the governor. The qualifications for the directors are set out.

The appointed directors serve for four year terms. Appointed directors may only be removed for cause.

The directors of the authority are subject to conflict of interest laws under AS 39.50.

The appointed directors of the authority are entitled to compensation in the amount of \$250 for each day they are engaged in the business of the authority. The directors also receive travel and per diem expenses.

Sec. 19.55.030 provides for the election of officers by the directors of the authority and sets the quorum for meetings of the directors.

Sec. 19.55.040 authorizes the directors of the authority to employ a chief executive officer who serves at the pleasure of the authority. The authority may also employ consultants and advisors.

Sec. 19.55.050 provides that employees of the authority are state employees in the exempt service. Eligible employees of the authority shall participate in the Public Employees Retirement System and the supplemental employee benefits program (SBS).

ARTICLE 2. POWERS AND DUTIES.

Sec. 19.55.110 sets out the powers of the authority.

Sec. 19.55.120 sets out the duties of the authority.

Sec. 19.55.130 authorizes the authority to operate a ferry system under the name "Alaska Marine Highway System".

Sec. 19.55.140 requires the authority to prepare a long-range plan for development and improvement of the ferry system, in cooperation with the Department of Transportation and Public Facilities, at least every five years.

ARTICLE 3. ACQUISITION OF PROPERTY.

Sec. 19.55.210 provides that the authority may acquire land and material necessary for the construction, maintenance, or improvement of the marine highway system.

Sec. 19.55.220 provides that the authority may acquire land for the purpose of exchanging the land for other land that the authority needs to acquire.

Sec. 19.55.230 authorizes the authority to exercise the power of eminent domain.

Sec. 19.55.240 provides that the authority may dispose of its land or interests in land by sale, lease, or exchange. The authority may vacate land or rights in land held by the authority. The authority may transfer its surplus lands to the Department of

Natural Resources for disposal. The proceeds of the disposal shall be returned to the source of funds from which the original purchase of the land was made.

ARTICLE 4. VESSELS AND FERRY TERMINAL FACILITIES.

Sec. 19.55.310 authorizes the authority to construct, purchase, or lease ferry terminal facilities and to maintain these facilities.

Sec. 19.55.320 authorizes the authority to connect ferry terminal facilities with local highway systems.

Sec. 19.55.330 authorizes the authority to adopt regulations regarding the use of ferry terminal facilities by the public and to set fees for the use of terminal facilities.

Sec. 19.55.340 provides that the vessels of the authority shall be named by law.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 19.55.910 provides that the authority is subject to the Executive Budget Act and that the expenditures of the authority are subject to appropriation by the legislature.

Sec. 19.55.920 provides that the authority shall annually submit a report to the governor and legislature regarding its operations, income, and expenditures for the preceding fiscal year.

Sec. 19.55.930 provides that the authority shall have its financial records audited annually and that the legislative auditor may prescribe the form and content of the financial records of the authority.

Sec. 19.55.940 provides that the authority is exempt from the procurement code (AS 36.30) and the "art in public places" law (AS 35.27).

Sec. 19.55.990 sets out the definitions of "authority" and "ferry".

Sec. 19.55.995 provides that this chapter may be cited as the Alaska Marine Highway Authority Act.

Section 3 of the bill makes a technical amendment to AS 03.53.010(a) relating to the transportation of animals aboard state ferries.

Section 4 - 8 of the bill make technical and editorial amendments to AS 19.65 relating to the Alaska Marine Highway System Fund.

Section 9 of the bill amends AS 23.40.040 to provide that the authority shall be responsible for negotiating with the unions representing the employees of the authority.

Sections 10 - 11 of the bill make technical amendments to AS 35.10.015 relating to access to and use of state ferry vessels by handicapped, aged, and infirmed passengers.

Sections 12 - 13 of the bill amend provisions of the procurement code (AS 36.30) and set out the responsibilities of the authority under the procurement code.

Section 14 of the bill makes technical amendments to AS 37.05.550 relating to the Alaska Marine Highway System Vessel Replacement Fund.

Section 15 of the bill makes a technical amendment to AS 39.20.310(8) relating to the eligibility of ship board employees of the authority to participate in the leave system for state employees.

Sections 16 of the bill amends AS 39.25.110(11) to provide that the employees of the authority are in the exempt state service.

Section 17 of the bill makes a technical amendment to AS 39.30.150(b) relating to the participation of certain employees of the authority in the supplemental employee benefit program (SBS).

Section 18 of the bill makes a technical amendment to AS 39.35.680(21) relating to the participation of certain employees of the authority in the Public Employees Retirement System.

Section 19 of the bill amends AS 39.50.200(b) to provide that directors of the authority are subject to the conflict of interest law (AS 39.50).

Sections 20 - 21 of the bill amend AS 44.42.020 in order to transfer the authority of the Department of Transportation and Public Facilities over the planning, design, construction, maintenance, management, and operation of the facilities, vessels, and equipment of the marine highway system to the authority.

Section 22 of the bill provides for the transfer of the employees, appropriations, and assets of the Division of Marine Transportation in the Department of Transportation and Public Facilities to the Alaska Marine Highway Authority upon enactment of this bill. This section also provides that nothing in this bill terminates or modifies the bargaining representation or bargaining agreements that are in effect at the time of enactment of the bill.

Representative Richard Foster
March 14, 1991
Page 5

Section 23 of the bill provides for the terms of the initial appointees to the board of directors of the authority in order to provide for staggered terms.

Section 24 of the bill repeals AS 19.60 (Ferry Terminal Facilities) and AS 19.65.020 (Alaska Marine Highway System), which have been replaced by AS 19.55 as contained in sec. 2 of this bill. AS 35.27.030(1)(A)(iii) relating to the applicability of the "art in public places" law to ferry vessels is repealed. AS 39.25.110(16) relating to the exempt status of ship board employees of the division of marine transportation is repealed.

GU:lmb
91-077.lmb

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MEMORANDUM

February 28, 1991

SUBJECT: Application of Conflict of Interest and Ethics laws to an employee of the Authority who serves on the Board of Directors of the Alaska Marine Highway Authority (HB 10)

TO: Representative Jerry Mackie

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to the query of Dave Gray of your staff as to the potential applicability of AS 39.50 (Conflict of Interest) and AS 39.52 (Alaska Executive Branch Ethics Act) to an employee of the Authority who may serve as a member of the Board of Directors of the proposed Alaska Marine Highway Authority.

AS 39.50 is applicable to the chair and other members of state commissions and boards that are listed in AS 39.50.200(b). HB 10 proposes to add the board of directors to the list of commissions and boards in AS 39.50.200(b). The purpose of AS 39.50 is to

- (1) discourage public officials from acting upon a private or business interest in the performance of a public duty;
- (2) assure that public officials in their official acts are free of the influence of undisclosed private or business interests;
- (3) develop public confidence in persons seeking or holding public office, enhance the dignity of the offices and make them attractive to citizens who are motivated to public service; and
- (4) develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who seek and hold public office. AS 39.50.010(a).

To achieve the purposes of the chapter a member of a state commission or board shall file a report listing the member's income sources and business interests with the Alaska Public Offices Commission. AS 39.50.020. The failure to disclose or the misleading disclosure of information by a member of a state commission or board is a misdemeanor and may result in removal from office. AS 39.50.060 and 39.50.080.

Also, a member of a state commission or board may not use their position for the primary purpose of obtaining personal financial gain or financial gain for a spouse, child, mother, father, or business with which the member is associated or in which the member owns stock. AS 39.50.090(a).

AS 39.50 does not represent a substantial impediment to the appointment of an employee of the Authority to the board of directors of the Authority. All that the employee/member must do is to disclose the required information and to avoid the few activities prohibited under AS 39.50.090.

AS 39.52 establishes a code of ethics for public officers. For the purposes of this chapter a public officer includes a member of a board or commission or board of directors of a public or quasi-public corporation that is established in the executive branch. AS 39.52.960. HB 10 creates the Alaska Marine Highway Authority within the Department of Transportation and Public Facilities which is in executive branch and thus the members of the board of directors of the Authority are subject to AS 39.52.

AS 39.52 prohibits several types of unethical conduct by public officers, but some types of conduct would seem to be more relevant to the situation in which an employee/member of the board would be placed. For example,

(1) a public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person (AS 39.52.120(a));

(2) a public officer may not take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest (AS 39.52.120(b)(4));

(3) a current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public (AS 39.52.140(a));

(4) a public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan (AS 39.52.150(a)).

AS 39.52 also prohibits a public officer from representing, advising or assisting a person in any matter pending before the board on which the officer serves, if the representation, advice, or assistance is (1) for compensation, unless the representation, advice, assistance, and compensation are required by statute, regulation, or court rule. or is otherwise customary; or (2) without compensation, but rendered to benefit a personal or financial interest of the public officer. AS 39.52.160(a). However the

Representative Jerry Mackie

February 28, 1991

Page 3

prohibition on representation does not prohibit activities related to collective bargaining and does not preclude a nonsalaried member of a board or commission from representing, advising, or assisting in any matter in which the member has a personal or financial interest regulated by the board or commission on which the member serves. AS 39.52.160(b) and (c). Whether a member of the board of directors of the Authority would be considered a nonsalaried member of a board is unclear. A nonsalaried member of a board is a person who is not a public employee by virtue of membership on the board and who receives only nominal compensation for attendance at meetings; receipt of per diem and travel expenses do not make a board member a public employee. The critical issue is whether the compensation paid to members of the board of directors of the Authority (\$150 per day in HB 10) would be considered nominal. Thus it may be possible that the employee/member of the board could engage in representing, advising, or assisting in matters related to collective bargaining activities or in certain matters in which the person has a personal or financial interest without violating AS 39.52. However the person must engage in the representation, advice, or assistance in a manner that does not violate other provisions of the chapter, such as those listed in the preceding paragraph.

AS 39.52 seeks to avoid violations of the code of ethics by requiring members of boards to disclose matters that may result in a violation of the chapter and to obtain a determination whether the member's involvement in the matter is indeed a violation. The advice of the attorney general is available to determine whether a violation of the chapter may exist. If the member's involvement in the matter before the board would be a violation of the chapter, the member shall refrain from voting, deliberating, or participating in the board's considerations of the matter. AS 39.52.-220.

Any state action taken by a board or board member in violation of this chapter is voidable at the discretion of the Attorney General. The Attorney General may take into consideration the effect of voiding the action on the interests of third parties and the nature of the violation in deciding whether to void the action. AS 39.52.430.

AS 39.50 and 39.52 will apply equally to all members of the Board of Directors of the proposed Alaska Marine Highway Authority. However, the appointment of an employee of the Authority to serve on the board will impose a continuing burden on the employee/member to be mindful of potential ethics violations because the board will deal with issues directly affecting employees of the Authority on a regular basis. The employee/member will have to obtain a determination on each issue or class of issues relating to employees of the Authority that is addressed by the board in order to determine whether the employee/member may participate in the deliberations and votes on the matter. It is possible that an employee/member of the board may be barred from participation in a substantial portion of the business of the board because of potential ethics violations.

Representative Jerry Mackie

February 28, 1991

Page 4

The effectiveness of an employee/member of the board may be substantially impaired by the inability of the employee/member to participate in many of the deliberations and actions of the board relating to employee matters. The Authority may be better served by the appointment of a person who is less encumbered by the inherent potential for violations of AS 39.52.

If I may be of further assistance, please advise.

GU:pl

91-120.plm



Department of Transportation & Public Facilities

POSITION PAPER

BILL NO: House Bill No. 10

APPROVED: *W.K. Gault*

TITLE: An Actestablishing the
Alaska Marine Highway System

DATE: February 7th, 1991

We have reviewed HB 10 "An Act relating to ferries and ferry terminals and establishing the Alaska Marine Highway Authority". Generally, we are supportive of the bill and its intent. However, we offer the following specific comments which we believe will enhance the authority's ability to meet the intent of the legislation:

Section 2

Article 1. Creation and Organization

Sec. 19.55.010(a)

This section establishes the authority's board of directors. As proposed, the board would have 5 members, four of whom are appointed and one being the Commissioner of Transportation and Public Facilities. The qualifications of the appointed members are confined to having "knowledge of the marine highway system". At least two members must be residents of Southeast Alaska and at least one member must be a resident of the gulf of Alaska area west of Icy Cape. It is recommended that any reference to geographic representation be eliminated and candidates for the board should be required to have significant financial, business, transportation or engineering backgrounds.

Sec. 19.55.010(b)

This section establishes four year terms for the board members and allows their removal at the pleasure of the governor. In order to allow for continuity and to insulate the board from partisan politics it would be preferable to allow for the removal of board members for cause.

Sec. 19.55.040(b)

This provision places all employees of the Authority in the exempt service under AS 39.25.110. Shipboard employees are already in the exempt service. We recommend addition of the following language: "Employees of the AMHS are employees of the Authority and not of the State. Provisions of AS 39 do not apply to employees of the Authority."

Article 2. Powers and Duties

Sec. 19.55.050

(8) This section allows the authority to "acquire, hold, use, lease, or rent real property and dispose of real property under AS 19.55.100.

There are concerns with that section which will be discussed below.

- (11) This section establishes the right to set rates and tariffs after public "hearings". The term "hearings" is ambiguous. At the most we should be required to hold one hearing on these issues.
- (12) This section allows the authority to modify routes after public hearings. One hearing should be adequate to meet the public's need to comment on these issues, although it is likely more hearings would be held depending upon the proposal.

A provision should be added to this section which requires the state to provide the authority with insurance coverage through the Division of Risk Management.

Sec. 19.55.055 Duties of the Authority

We recommend that this section be deleted and suggestions be included in a letter of intent.

- (1) By requiring the most frequent service possible without regard to cost, or other demands on the authority's fleet, the result could be inefficient scheduling and overly high operating expenses, which all users would pay through increased tariffs and a larger drain on the state's general fund.
- (2) Maximizing the frequency of service to all ports would have the same results as (1). A more appropriate term would be "optimizing", which is what we currently strive to achieve within our fleet and budgetary constraints.
- (3) No comment
- (4) This section requires nonrefundable deposits for reservations. While this may be a policy the authority would choose to impose, it would be done so only after careful consideration. The legislation generally should avoid interfering with management's latitude to establish operational policies designed to accomplish its basic mission. Current AMHS policy, implemented January 1, 1991, requires payment no later than 10 days prior to sailings, or immediately if a reservation is made for travel to occur within 10 days. A cancellation or a change within 14 days of a sailing which results in the reduction of the amount paid requires a penalty payment of 15% of the unused portion of the reservation, or \$15.00, whichever is greater.

- (5) This provision requires AMHS to provide reservation access and marketing information throughout the state. Once again, this is a policy currently in place. However, as noted above, the legislation should avoid interfering with management's latitude to establish operational policies designed to accomplish its basic mission.
- (6) If the AMHS is to provide the maximum amount of service for the least cost it is vital that the legislation not unduly restrict management's ability to do so. As a matter of policy it is the goal of AMHS to insure that necessary work on our ships or other facilities is done at the lowest cost and in the best manner possible. In most cases this is accomplished by Alaskan firms, however, these criteria cannot always be met locally. This section would be acceptable if the words "to the greatest extent possible" were deleted. Alternatively, language such as "to the greatest extent practicable" might be considered.

Sec. 19.55.070

This section requires that the "comprehensive long-range plan" of the authority be subject to legislative approval by law. Notwithstanding any legal defects in this language, this requirement could constrain the authority from acting quickly on projects or other opportunities which may arise between legislative sessions and until those have been fully considered by that body. Further, the intercession of partisan and regional politics could seriously impair the ability of the authority to accomplish its mission. It is recommended legislative approval be dropped.

Article 3. Acquisition of Property

Sec. 19.55.100 Disposal of Land or Rights in Land

The above provisions grant broad discretion to the authority to acquire and dispose of land as part of its operations. The language is constructed to contemplate an entity with the power of eminent domain. This power is not granted in the legislation, but should be. In addition a provision needs to be added to transfer all real property (as well as personal) assets to the authority upon its creation. Finally, section 19.55.100(b) needs to be amended to insure that the proceeds of land disposals, or the sale of any assets by the authority go to the AMHS Fund.

Article 4. Ferry Terminal FacilitiesSec. 19.55.110 Acquisition and Maintenance of Ferry Terminal Facilities

This section, derived from current law, gives the authority the right to purchase, construct or lease ferry terminal facilities for the loading and unloading of passengers and vehicles under their own power. It further requires the authority to maintain these facilities. In many communities in Southwest Alaska AMHS has entered into lease agreements for dock use. This section should be amended to delete the requirement for the authority to maintain the facilities it leases. The last provision in this section requires that construction and purchasing be governed by the state procurement code (AS 36.30). As a general matter the legislation should exempt the authority from the requirements of AS 36.30.

Sec. 19.55.130 Use of Ferry terminal Facilities

This section authorizes the use of ferry terminal facilities by the public and allows a fee to be charged. The language needs to be changed from "department" to "authority".

Sec. 19.55.140 Existing Facilities not Affected

This section is carried over from existing language. It exempts ferry terminals in existence and serving the public on January 1, 1959, from the provisions of AS 19.55.110-130. It should be deleted, as it does not apply to any existing facilities.

Article 5. General ProvisionsSec. 19.55.299 Definitions

- (3) The definition of "ferry", while carried over from existing statute, poses a problem. A strict reading of the definition: "a vessel used in the common carriage of passengers and self-propelled vehicles...." could be construed to preclude the transporting of vans and other trailerable vehicles, which are currently a major revenue source and an essential part of local community commerce.

Sec. 6Sec. 19.65.080 Annual Appropriation

This section is a restatement of current statutory language which authorizes the legislature to make annual appropriations from the Alaska Marine Highway System Fund for the operations of the ferry system. Technical changes have been made to reflect currently accepted statutory language.

Sec. 7Sec. 19.65.100 Definitions

(4) This provision defines "gross revenue" for the purpose of determining which revenues are deposited into the AMHS Fund. While it reflects current statutory language, it appears to be somewhat restrictive, defining revenues as those derived from "vessel operations and uses of authority facilities". There are other sources of current or potential revenue which do not qualify for deposit under a strict reading of this section, including the sale of gift and souvenir items from ticket offices, the potential sale of advertisement space in the Authority's seasonal schedules, sale of the rights to use the logo of the authority, as well as other possible sources of revenue not yet contemplated. It may also be desirable for the proceeds of any sale of assets to be deposited either into the AMHS fund, or the refurbishment fund. Finally, provision should be made for the earnings of the fund to be retained by requiring that they be accounted for separately, giving the legislature the option of appropriating them to the Fund.

Sec. 8Sec. 23.40.040 Collective Bargaining Agreement

While sec. 19.55.050(5) establishes the authority's right to negotiate the terms of employment with its employees, this section restates current law which requires the concurrence of the commissioner of Transportation and Public Facilities before labor agreements with shipboard employees become effective. It should be repealed.

Sec. 12Sec. 37.05.550 Alaska Marine Highway Authority Vessel Replacement Fund

This section amends the statute creating the AMHS vessel replacement fund to reflect the existence of the authority. The language should be changed to the "system replacement fund" in order to allow funding of shore facility refurbishment in addition to vessels. Section 37.0550(b) needs to be changed to reflect the passage of the budget reserve referendum. In its place an appropriation should be made to capitalize the fund.

To: The members of the Alaska House Transportation Committee,
the Honorable Richard Foster Chairman

From: Bill Quinn, Business Agent Juneau & Southeast
Alaska State Employees Association/AFSCME Local 52

Date: February 12, 1991

Subject: HB 10

Mr. Chairman and members of the committee, thank you for this opportunity to testify regarding HB 10 and to express the position of the Alaska State Employee's Association/AFSCME Local 52 on this legislation.

By way of introduction and for the committee record, I am a Business Agent with ASEA/AFSCME Local 52 covering portions of Juneau and Southeast Alaska. I am the business agent responsible for the representation all of the shore side employees with the current Alaska Marine Highway System DOT/PF. My business address is 240 Main, Suite 702, Juneau, Alaska 99801. My business phone number is 463-4949.

Prior to my employment with ASEA/AFSCME Local 52, I was employed as a Carman/Plumber with the Alaska Railroad Corporation for nine plus years as well as being a railroad union representative for the Brotherhood Railway Carmen Local Lodge 6067.

ASEA/AFSCME Local 52 opposes House Bill 10.

In discussion, I have heard this bill compared to the Alaska Railroad Corporation. As I agree there are similarities, I will use Chapter 40 of the Alaska statutes, that portion dealing with the Alaska Railroad Corporation (ARRC), to emphasis the basis of our opposition.

Chapter 40 at Section 42.40.020(5) insures employee participation in the ARRC at the highest level of involvement by insuring that one of the Directors ". . . shall be an employee who is a member of a bargaining unit representing employees of the corporation."

HB10 does not provide for similar involvement.

Chapter 40 at Section 42.40.720 guarantees collective bargaining rights to its employees.

HB 10 at Section 19.55.040(b) denies it's employees collective bargaining rights by placing them in the exempt service.

Chapter 40 at Section 42.40.730 created the Alaska Railroad Labor Relations Agency as an external vehicle for the resolution of disputes between representatives of the ARRC and representatives of the unions.

HB 10 does not provide any external mechanism of dispute resolution.

Chapter 40 at Section 42.40.760 clearly defines unfair labor practices.

HB 10 is silent on prohibited labor practices.

Chapter 40 at 42.40.860 provides for an agreement between the parties that incorporates ". . . a grievance procedure that shall have binding arbitration as its final step."

HB 10 is silent on grievance and arbitration.

Finally, the state and federal negotiations preceding the ARRC transfer produced federal legislation that guaranteed the railroad employees, our fellow Alaskans, two years of employment.

HB 10 provides no such guarantee.

In summation, this legislation reduces or eliminates the gains our members have fought hard to maintain during their tenure as state employees. For the aforementioned reasons and others, ASEA/AFSCME Local 52 cannot support this legislation.

Thank you.

To: The members of the Alaska House of Representative's Transportation Committee, the Honorable Richard Foster, Chairman.

From: Alaska State AFL-CIO; The Inland Boatmen's Union of the Pacific, Alaska Region, AFL-CIO; The Alaska Public Employees Association/AFT, Local 49, AFL-CIO; Public Employees, Local 71, AFL-CIO; and the Alaska State Employees Association/A.F.S.C.M.E., Local 52, AFL-CIO.

Re: House Bill 10

Mr. Chairman and Committee members, we wish to thank you for this opportunity to provide written testimony for the committee's permanent record on the House Bill 10.

The bill seeks to make the Alaska Marine Highway System, now under the Alaska Department of Transportation and Public Facilities, a separate, quasi-independent state agency to be known as the Alaska Marine Highway Authority.

While we have no objection to the current administration's desire to do this, we share a common concern regarding how such a change will affect 90% of the employees of the Alaska Marine Highway System that we represent.

We have heard Alaska Transportation Commissioner Frank Turpin's testimony before the Committee that the rationale for creating a separate Marine Highway Authority is to free the AMHS from the burdensome regulatory processes it must now follow as a subdivision within DOT/PF, and we certainly respect his efforts to make the system more efficient.

However, with regard to employees of the Alaska Marine Highway Authority, we find HB 10, as currently written, to be seriously flawed for the following reasons:

1) According to March 5, 1991, testimony by Mr. Turpin in the House, given in response to a question from the House Transportation Committee, the employees of such a new Authority would be taken out from under the state's Public Employee Relations Act, or PERA, which protects their collective bargaining rights. This is unacceptable to the members of our respective unions.

2) Employees of the authority would be broken into separate, smaller bargaining units that would have to negotiately separately with the Authority, rather than collectively with the State of Alaska as they now do. This has the effect of weakening the bargaining power of the smaller bargaining units, leaving them with less job security.

(continued)

House Transportation Committee
Testimony Re HB 10, page 2

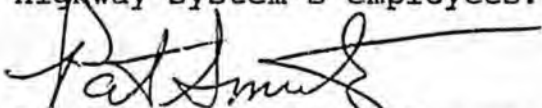
2) (continued): If the purpose of creating the Authority is to streamline the Marine Highway System's regulatory process, why tamper with the employees' present situation regarding bargaining units and negotiations? These situations do not affect regulatory processes.

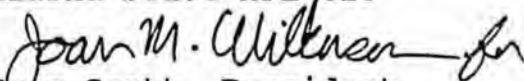
3) As currently written, HB 10 would have the Authority's proposed Board of Directors established without an employee member on the board.

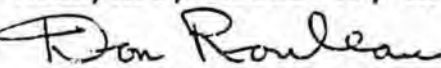
We believe the board would be better served by having two employee representatives--one representing on-vessel employees and one representing on-shore employees--because the nature of their respective duties is vastly different, and the insight and information both employee groups could bring to the board would greatly improve its overall picture of Marine Highway needs and opportunities.

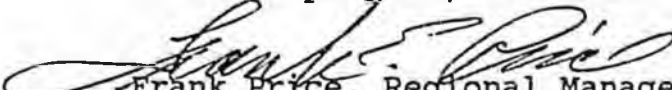
We appreciate efforts by the House committee to retain the employees' rights to participate in the state's Public Employees Retirement System and Supplemental Benefits System, and urge the committee to keep this language in the bill.


However, unless the questions raised in items 1-3 above can be resolved in an acceptable manner, we must oppose CSHB 10 as detrimental to the rights and working interests of the Marine Highway System's employees.


Pat Smutz, Business Representative
Alaska State AFL-CIO


Greg Scott, President,
APEA/AFT, Local 49, AFL-CIO


Don Rouleau, Business Representative
Public Employees, Local 71


Frank Price, Regional Manager,
Inland Boatmen's Union of the Pacific


Paul DeSloover, President,
ASEA/AFSCME, Local 52, AFL-CIO

HOUSE MEMBERS AND/OR HOUSE COMMITTEES AND/OR CAUCUSES

POS MAC KUB HUD LEM PHG GRS

SENATE MEMBERS AND/OR SENATE COMMITTEES

NAME: DOUG NOREM

PF1 = HELP PF3 = QUIT

TITLE: ~~SITKA TERMINAL MANAGER~~

PF4 = MEMBERS

ADDRESS: 511 KINKEAD ST.

PF5 = HOUSE COMMITTEES

CITY: SITKA

ZIP: 99835

PF6 = SENATE COMMITTEES

PHONE: N/R -

PF7 = JOINT COMMITTEES

BILL NO: HB 10

SUBJECT: AK. MARINE HIGHWAY AUTHORITY CREATED

MESSAGE: AS AN ALASKA MARINE HIGHWAY EMPLOYEE SINCE 1975, I AM GREATLY CONCERNED WITH HB 10. MUCH OF THE BILL MAKES SENSE, HOWEVER, IF "ALL EMPLOYEES OF THE AUTHORITY ARE IN THE EXEMPT SERVICE" AND WE WERE TO LOSE COLLECTIVE BARGAINING THROUGH ASEA, I CANNOT SUPPORT THIS BILL.

CREATE: YES ENTER YES	POMOK => RUN SUCCESSFULL
POMID: 12140422	=> ENTER = KEEP NAME AND ADDRESS FIELDS
DATE: 91/02/11	=> PF9 = REFRESH
TIME: 14:04:22	=> POMID = (112)140422
LIONAME: SITKA LIO	