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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 358
 (S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Alaska Railroad Track Work RDU Alaska Railroad Corporation
 Component _____
 Sponsor Senate Transportation
 Requester Senate Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would allow the Department of Transportation and Public Facilities to enter into an agreement with the Alaska Railroad Corporation (ARRC) for the ARRC to perform the construction of rails, ties or ballast for railroad tracks used by the ARRC. The ARRC may perform the work itself without procuring a contractor to provide the supplies, services, professional services or construction services necessary for the work.

The ARRC is a public corporation supported by revenues generated through its freight, passenger and real estate services. ARRC does not receive state subsidies for operations or capital improvements from the State.

Prepared by: Wendy Lindskoog, Director of External Affairs Phone (907) 269-2498
 Division Alaska Railroad Corporation Date/Time 3/3/04 3:23 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/3/2004
 Agency Department of Community & Economic Development

SENATOR
JOHN J. COWDERY
Anchorage

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Chair: Transportation
Chair: World Trade &
State Federal Relations
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SPONSOR STATEMENT FOR SB 358

"An Act relating to performance of railroad track construction work for the Department of Transportation ... by the Alaska Railroad ..."

Senate Bill 358 pertains to certain Department of Transportation projects that include construction of railroad facilities.

In 1998, the state procurement code was amended to require that railroad facility work on a DOT project, other than signalization and flagging, be obtained through the use of a competitive bid process. Prior to 1998, DOT worked directly with the Railroad under a utility agreement.

Today, there are a minimal number of contractors in Alaska who possess the specialized equipment and skill necessary to construct *critical* track work in conformance with contract specifications.

In order to ensure that track construction conforms to performance specifications and to minimize service interruptions for railroad and highway operations, SB 358 will allow DOT to use either the competitive bid process, or work directly with the Railroad for critical track work under a utility agreement.

A Memorandum of Understanding ("MOU") was developed by DOT, the Railroad, the Alaska District Council of Laborers and the Associated General Contractors to provide reasonable limitations on the type of work DOT contracts with ARRC to perform. The MOU allows DOT to use the railroad for construction of critical track work involving railroad switches, cutovers from new track to mainline track, and construction of rail facilities where the Department's contractor is unable to perform in accordance with DOT's contract terms and construction schedule.

In addition, the utility relocation agreement between DOT and the Railroad contains provisions to assure that railroad facility work is performed in an economical manner and without delay to a contractor's schedule.

THE
FOLLOWING
DOCUMENT(S)
ARE
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MEMORANDUM OF UNDERSTANDING

This Memorandum Of Understanding ("MOU"), is entered into this fourteenth day of April, 2004, by and between the Alaska Department of Transportation and Public Facilities, hereinafter referred to as "Department", the Alaska Railroad Corporation, hereinafter referred to as "ARRC", Laborer's International Union of North America, Alaska District Council of Laborers hereinafter referred to as "Alaska District Council of Laborers" and the Associated General Contractors of Alaska, hereinafter referred to as "AGC".

RECITALS

- A. Certain Department highway construction projects necessitate relocation, removal, adjustment, protection or construction of railroad facilities.
- B. Prior to 1998, when it was necessary to relocate railroad facilities because of a proposed Department project, the Department had authority pursuant to 17 AAC 15.511 to enter into a utility relocation agreement with ARRC in accordance with 17 AAC 15.521 authorizing ARRC to perform the relocation work.
- C. In 1998, the State Procurement Code, AS 36.30, was amended to require that the services required to perform railroad facility relocation work, other than signalization and flagging, on a Department project be obtained through the use of a competitive sealed bid or proposal process.
- D. Since 1998 such railroad facility relocation work has been performed by contractors obtained by the Department through a competitive bid process.
- E. Today, there are a minimal number of contractors in Alaska who possess the specialized equipment and skill necessary to construct critical track work in conformance with contract specifications. In order to ensure that track construction conforms to performance specifications and to ensure that service interruptions are minimized for railroad and highway operations, ARRC and the Department are supporting SB 358/HB 529 which proposes to amend the State Procurement Code to give the Department the option to enter into an agreement with ARRC to perform certain railroad facility relocation work as opposed to having to put such work out to bid.
- F. AGC and Alaska District Council of Laborers are willing to support said amendment to the State Procurement Code so long as there are reasonable limitations on the type of work the Department contracts with ARRC to perform and the utility relocation agreement between the parties contains provisions to assure that such railroad facility work is performed in an economical manner and without delay to a contractor's schedule.
- G. It is the purpose of this MOU to establish the type of railroad facility relocation work that the Department may authorize ARRC to perform under a utility relocation

agreement and the terms and conditions under which such work shall be performed in the event that the State Procurement Code is amended to allow the Department to enter into an agreement with ARRC to perform railroad facility relocation work.

THEREFORE, the parties hereby agree as follows:

AGREEMENT

1. When a Department project involves the construction of rail, ties or ballast for railroad tracks used by ARRC, the Department may enter into a utility relocation agreement with ARRC to perform critical relocation work that could impair, endanger or unreasonably delay ARRC's ability to operate its trains in a safe and timely manner if not performed properly. The scope of such critical work shall be limited to performing the following categories of work: (1) cutovers to a new alignment of ARRC's mainline; (2) the installation or removal of switches on ARRC's mainline; and (3) any other construction work involving rail, ties or ballast, in situations where the Department's contractor is unable to perform railroad facility work in accordance with the Department's contract terms and construction schedule (hereinafter collectively referred to as "critical rail work").
2. The agreement between ARRC and the Department to perform critical rail work shall set out the terms of the work along with the terms of the reimbursement for the costs of the work. The agreement may, in the Department's discretion, provide for a lump-sum payment for the work. The agreement must contain a cost estimate, plans, and a scope-of-work statement as provided in 17 AAC 15.351, 17 AAC 15.361, and 17 AAC 15.371 respectively. Billing and audit of the costs of the critical rail work shall be made in accordance with the provisions of 17 AAC 15.431.
3. The agreement between ARRC and the Department to perform critical rail work shall include a provision requiring ARRC and the Department or its contractor to make every possible attempt to insure the smooth operation/coordination of both the rail traffic and construction schedule and not to interfere with the other. The agreement shall require the parties and the contractor to meet and confer at reasonable intervals to coordinate the work schedules of ARRC's personnel with the work schedule of the Department's contractor in a manner that does not unreasonably delay the performance of each party's work. Pursuant to 17 AAC 15.421(b), ARRC will also be responsible for extra costs resulting from delays to the Department contractor's operations if the railroad facilities are not relocated in accordance with the relocation agreement, except when the delays are beyond the control of ARRC.
4. Nothing in this MOU affects ARRC's right to perform signalization and flagging on Department projects as authorized by AS 36.30.015(i).
5. Unless otherwise provided herein, all notices and communications concerning this MOU shall be addressed as follows:

Alaska Department of Transportation and Public Facilities:

Contact Name: Commissioner Mike Barton
Mailing Address: 3132 Channel Drive
Juneau, AK 99801-7896
Telephone: (907) 465-3901
Fax: (907) 586-8365

Alaska Railroad Corporation:

Contact Name: Patrick Gamble
Mailing Address: P.O. Box 107500
Anchorage, AK 99510-7500
Delivery Address: 327 W. Ship Creek Avenue
Anchorage, AK 99501
Telephone: (907) 265-2414
Fax: (907) 265-2312

Associated General Contractors of Alaska:

Contact Name: Richard Cattanach
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Laborer's International Union of North America, Alaska District Council of Laborers:

Contact Name: Blake Johnson
Mailing Address: 2501 Commercial Drive
Anchorage, AK 99501
Telephone: (907) 272-4571
Fax: (907) 274-0570

or at such other address as may be designated in writing from time to time to a party by another party.

6. The parties agree to meet and attempt in good faith to resolve any problems or disputes that may arise in the performance of this agreement by negotiation between representatives of the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the dates written below.

Alaska Railroad Corporation

By: *T.K. Gable*
Its: VP/CEO
Date: 4/15/04

Alaska Department of Transportation
and Public Facilities

By: *Mike Bunker*
Its: Commissioner
Date: 4-13-04

Associated General Contractors of Alaska

By: *Kevin Egan*
Its: Executive Director
Date: 4/14/04

Laborer's International Union of North
America, Alaska District Council of
Laborers

By: *Pat B. Jr.*
Its: President
Date: 4-14-04