

LEG. FINANCE - BILLS 1983 - 1984 1927

HB 512 cont.

1927

1 jurisdiction may not be acquired by adverse possession or prescrip-
2 tion, or in any other manner except by conveyance from or formal
3 vacation by the corporation.

4 ARTICLE 6. FINANCIAL PROVISIONS.

5 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
6 by the corporation shall be satisfied exclusively from the assets or
7 revenue of the corporation and no creditor or other person has a right
8 of action against the state because of a debt, obligation, or liabil-
9 ity of the corporation.

10 Sec. 42.40.510. FIDELITY BOND. The corporation shall obtain a
11 fidelity bond in an amount determined by the board for board members
12 and each officer of the corporation responsible for accounts and
13 finances. A bond must be in effect during the entire tenure in office
14 of the bonded person.

15 Sec. 42.40.520. INSURANCE. Except as provided in AS 42.40.-
16 310(b), the corporation shall protect its assets, services, and em-
17 ployees by purchasing insurance or providing for certain self-insur-
18 ance retentions. The corporation shall also maintain casualty, prop-
19 erty, business interruption, marine, boiler and machinery, pollution
20 liability, and other insurance in amounts reasonably calculated to
21 cover potential claims against the corporation or state for bodily
22 injury, death or disability, and property damage that may arise from
23 or be related to corporation operations and activities.

24 Sec. 42.40.530. REVENUE. Revenue generated by or appropriated
25 to the corporation shall be retained and managed by the corporation
26 for railroad and related purposes in accordance with 45 U.S.C. 1207-
27 (a)(5) (Alaska Railroad Transfer Act of 1982).

28 Sec. 42.40.540. APPROPRIATIONS. The corporation may request a
29 direct appropriation or grant from the legislature to assist in

1 carrying out the provisions of this chapter.

2 ARTICLE 7. BONDS.

3 Sec. 42.40.600. GENERAL PROVISIONS. (a) The corporation by
4 resolution may issue bonds to provide money to carry out its purposes.

5 (b) Bonds may be issued in one or more series and shall, as
6 provided by the resolution of the board,

7 (1) be dated;

8 (2) bear fixed or variable interest at a required rate or
9 rates per year or within a maximum rate;

10 (3) be in a required denomination or denominations;

11 (4) be in a coupon or registered form;

12 (5) carry conversion or registration provisions;

13 (6) have a required rank or priority;

14 (7) be executed in the required manner and form;

15 (8) be payable as required from the sources, in the medium
16 of payment, and place or places inside or outside the state;

17 (9) be subject to authentication by a trustee or fiscal
18 agent; and

19 (10) be subject to terms of redemption with or without
20 premium.

21 (c) Bonds may be sold in the manner, on the terms, and at the
22 price the board determines. Bonds shall mature at the time, not
23 exceeding 50 years from their date, determined by the board, but notes
24 shall mature at the time or times determined by the board.

25 Sec. 42.40.610. NEGOTIABLE INSTRUMENTS. Bonds issued under this
26 chapter and interest coupons attached to them are negotiable instru-
27 ments under the laws of this state, subject only to applicable pro-
28 visions for registration.

29 Sec. 42.40.620. BONDS ELIGIBLE FOR INVESTMENT. Bonds issued

1 under this chapter are securities in which all public officers and
2 public bodies of the state and its political subdivisions, all insur-
3 ance companies, trust companies, banking associations, investment
4 companies, executors, administrators, trustees and other fiduciaries
5 may properly and legally invest funds, including capital in their
6 control or belonging to them. These bonds may be deposited with a
7 state or municipal officer of an agency or political subdivision of
8 the state for any purpose for which the deposit of bonds of the state
9 is authorized by law.

10 Sec. 42.40.630. PAYMENT OF BONDS. The principal and interest on
11 bonds of the corporation is payable from corporation money or assets.
12 Bonds may be additionally secured by a pledge of a grant or contribu-
13 tion from the federal, state, or municipal government or a corpora-
14 tion, association, institution or person, or a pledge of money, in-
15 come, or revenue of the corporation from any source.

16 Sec. 42.40.640. SECURITY FOR BONDS. In the discretion of the
17 board, an issue of bonds may be secured by a trust indenture, which
18 may be a trust company, bank or national banking association, with
19 corporate trust powers, located inside or outside the state, or by a
20 secured loan agreement or other instrument or under resolution giving
21 powers to a corporate trustee by means of which the corporation may

22 (1) make and enter into any and all the covenants and
23 agreements with the trustees or the holders of the bonds that the
24 corporation may determine to be necessary or desirable, including
25 covenants, provisions, limitations and agreements to

26 (A) the application, investment, deposit, use and
27 disposition of the proceeds of bonds of the corporation or of
28 money or other property of the corporation or in which it has an
29 interest;

1 (B) the fixing and collection of rentals, charges,
2 fees or other consideration for, and the other terms to be incor-
3 porated in, contracts with respect to the use of any of the
4 corporation's property;

5 (C) the fixing and collection of tariffs, fees,
6 charges or other consideration for the use or service of the
7 Alaska Railroad by passengers, and other users and freight;

8 (D) the terms and conditions upon which additional
9 bonds of the corporation may be issued;

10 (E) the vesting in the trustee of rights and remedies
11 exercisable by the trustee for the protection of the holders of
12 bonds of the corporation and not otherwise in violation of law
13 and the restriction of the rights of an individual holder of
14 bonds of the corporation;

15 (2) pledge, mortgage, or assign money, leases, agreements,
16 assets, or property of the corporation either presently in hand or to
17 be received in the future, or both; and

18 (3) provide for any other matters of like or different
19 character that in any way affect the security or protection of the
20 bonds.

21 Sec. 42.40.650. INDEPENDENT FINANCIAL ADVISOR. In negotiating
22 the private or public sale of bonds to an underwriter, the board shall
23 retain a financial advisor who is independent from the underwriter.

24 Sec. 42.40.660. VALIDITY OF SIGNATURES. If an officer of the
25 corporation whose signature or a facsimile of whose signature appears
26 on bonds or coupons attached to them ceases to be an officer before
27 the delivery of the bond or coupon, the signature or facsimile is
28 valid the same as if the person had remained in office until delivery.

29 Sec. 42.40.670. VALIDITY OF PLEDGE. (a) The pledge of assets

1 or revenue of the corporation to the payment of the principal or
2 interest on bonds of the corporation is valid and binding from the
3 time the pledge is made and the assets or revenue are immediately
4 subject to the lien of the pledge without physical delivery or further
5 act. The lien of a pledge is valid and binding against all parties
6 having claims of any kind against the corporation, irrespective of
7 whether those parties have notice of the lien of the pledge.

8 (b) Nothing in this section prohibits the corporation from
9 selling assets subject to a pledge, except that a sale may be re-
10 stricted by the trust agreement or resolution providing for the issu-
11 ance of the bonds.

12 Sec. 42.40.675. PLEDGE OF THE STATE. The state pledges to and
13 agrees with the holders of bonds issued under this chapter and with
14 the federal agency that loans or contributes funds in respect to a
15 project, that the state will not limit or alter the rights and powers
16 vested in the corporation by this chapter to fulfill the terms of a
17 contract made by the corporation with the holders or federal agency,
18 or in any way impair the rights and remedies of the holders until the
19 bonds together with the interest on them with interest on unpaid
20 installments of interest, and all costs and expenses in connection
21 with an action or proceeding by or on behalf of the holders, are fully
22 met and discharged. The corporation is authorized to include this
23 pledge and agreement of the state, insofar as it refers to holders of
24 bonds of the corporation, in a contract with the holders and insofar
25 as it relates to a federal agency, in a contract with the federal
26 agency.

27 Sec. 42.40.680. REMEDIES. A holder of bonds issued under this
28 chapter or of coupons attached to them, and a trustee under a trust
29 agreement or resolution authorizing the issuance of the bonds, except

1 as restricted by a trust agreement or resolution, either at law or in
2 equity, may

3 (1) enforce all rights granted under this chapter, the
4 trust agreement or resolution, or any other contract executed by the
5 corporation under this chapter; and

6 (2) compel the performance of all duties of the corporation
7 required by this chapter or by the trust agreement or resolution.

8 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
9 its political subdivisions are not liable for the debts of the corpo-
10 ration. Bonds issued under this chapter are payable solely from the
11 revenue or assets of the corporation and do not constitute a

12 (1) debt, liability, or obligation of the state or of a
13 political subdivision of the state; or

14 (2) pledge of the faith and credit of the state or of a
15 political subdivision of the state.

16 (b) The corporation may not pledge the credit or the taxing
17 power of the state or its political subdivisions. Each bond issued
18 under this chapter shall contain on its face a statement that

19 (1) the corporation is not obligated to pay it or the
20 interest on it except from the revenue or assets pledged for it; and

21 (2) neither the faith and credit nor the taxing power of
22 the state or of a political subdivision of the state is pledged to the
23 payment of it.

24 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
25 member or employee of the corporation is not subject to personal
26 liability or accountability because of the execution or issuance of
27 bonds.

28 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

29 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or

1 property of the corporation may not be used for political activity.
2 However, board members and employees may communicate with and appear
3 before committees of Congress, the state legislature, and municipal
4 governing bodies in connection with matters directly affecting the
5 corporation.

6 (b) A board member or employee who violates the provisions of
7 this section is personally subject to a civil penalty assessed by a
8 judge of the superior court in an amount not to exceed \$5,000. An
9 action to enforce this section may be brought by any person.

10 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
11 Railroad are employees of the corporation and not of the state. The
12 provisions of AS 39 do not apply to employees of the corporation.

13 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
14 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
15 employees. However, employees who are not executive officers may
16 organize and form, join, or assist an organization to engage in col-
17 lective bargaining through representatives of their own choosing and
18 engage in concerted activities for the purpose of collective bargain-
19 ing or other mutual aid or protection.

20 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
21 established a railroad labor relations agency that consists of three
22 members appointed by the governor. One member shall be a member of
23 the state personnel board. Members serve at the pleasure of the
24 governor.

25 (b) The railroad labor relations agency shall carry out the
26 provisions of AS 42.40.710 - 42.40.890.

27 (c) Members of the railroad labor relations agency receive no
28 compensation for their services, but are entitled to per diem and
29 travel expenses authorized for boards and commissions.

1 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
2 relations agency shall decide in each case, in order to ensure employ-
3 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
4 40.710 - 42.40.890 the unit appropriate for the purposes of collective
5 bargaining, based on such factors as community of interest, wages,
6 hours and other working conditions of the employees involved, the
7 history of collective bargaining, and the desires of the employees.
8 Bargaining units shall be as large as is reasonable, and unnecessary
9 fragmenting shall be avoided.

10 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
11 road labor relations agency shall investigate a petition if it is
12 submitted in a manner prescribed by the railroad labor relations
13 agency by

14 (1) an employee or group of employees or an organization
15 acting in their behalf alleging that 30 percent of the employees of a
16 proposed bargaining unit

17 (A) want to be represented for collective bargaining
18 by a labor or employee organization as exclusive representative;
19 or

20 (B) assert that the organization that has been certi-
21 fied or is currently being recognized by the corporation as
22 bargaining representative is no longer the representative of the
23 majority of employees in an appropriate unit; or

24 (2) the corporation alleging that one or more organizations
25 have presented to it a claim to be recognized as a representative of a
26 majority of employees in an appropriate unit.

27 (b) If the railroad labor relations agency has reasonable cause
28 to believe that a question of representation exists, it shall provide
29 for a hearing upon due notice. If the railroad labor relations agency

1 finds that there is a question of representation, it shall direct an
2 election by secret ballot to determine whether or by which organiza-
3 tion the employees desire to be represented and shall certify the
4 results of the election. Nothing in this subsection prohibits the
5 waiving of hearings by stipulation for the purpose of a consent elec-
6 tion in conformity with the regulations of the railroad labor rela-
7 tions agency or an election in a bargaining unit agreed upon by the
8 parties.

9 (c) The railroad labor relations agency shall determine who is
10 eligible to vote in an election held under this section and shall
11 establish rules governing the election. In an election in which none
12 of the choices on the ballot receives a majority of the votes cast, a
13 runoff election shall be conducted, the ballot providing for selection
14 between the two choices receiving the largest number of valid votes
15 cast in the election. If an organization receives the majority of the
16 votes cast in the election it shall be certified by the railroad labor
17 relations agency as exclusive representative of all the employees in
18 the bargaining unit. An election may not be held in a bargaining unit
19 or in a subdivision of a bargaining unit if a valid election has been
20 held within the preceding 12 months.

21 (d) Nothing in this chapter prohibits recognition of an organiza-
22 tion as the exclusive representative by the corporation by mutual
23 consent.

24 (e) An election may not be directed by the railroad labor rela-
25 tions agency in a bargaining unit in which there is in force a valid
26 collective bargaining agreement, except during a 90-day period preced-
27 ing the expiration date. However, no collective bargaining agreement
28 may bar an election upon petition of employees in the bargaining unit
29 but not parties to the agreement if more than three years have elapsed

1 since the execution of the agreement or the last timely renewal,
2 whichever was later.

3 Sec. 42.40.760. UNFAIR LABOR PRACTICES. (a) The corporation or
4 its agent may not

5 (1) interfere, restrain, or coerce an employee in the
6 exercise of the rights guaranteed in AS 42.40.720;

7 (2) dominate or interfere with the formation, existence, or
8 administration of an organization;

9 (3) discriminate in regard to hire or tenure of employment
10 or a term or condition of employment to encourage or discourage mem-
11 bership in an organization;

12 (4) discharge or discriminate against an employee because
13 the employee has signed or filed an affidavit, petition or complaint
14 or given testimony under AS 42.40.710 - 42.40.890;

15 (5) refuse to bargain collectively in good faith with an
16 organization that is the exclusive representative of employees in an
17 appropriate unit, including the discussing of grievances with the
18 exclusive representative.

19 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the corpo-
20 ration from making an agreement with an organization to require as a
21 condition of employment

22 (1) membership in the organization that represents the unit
23 on or after the 30th day following the beginning of employment or on
24 the effective date of the agreement, whichever is later; or

25 (2) payment by the employee to the exclusive bargaining
26 agent of a service fee to reimburse the exclusive bargaining agency
27 for the expense of representing the members of the bargaining unit.

28 (c) An organization or its agents may not

29 (1) restrain or coerce

1 (A) an employee in the exercise of the rights guaran-
2 teed in AS 42.40.720; or

3 (B) the corporation in the selection of a representa-
4 tive for the purposes of collective bargaining or the adjustment
5 of grievances;

6 (2) refuse to bargain collectively in good faith with the
7 corporation, if it has been designated in accordance with AS 42.40.-
8 710 - 42.40.890 as the exclusive representative of employees in an
9 appropriate unit.

10 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

11 If a verified written complaint by or for a person claiming to be
12 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-
13 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged
14 in a prohibited practice, is filed with the railroad labor relations
15 agency, it shall investigate the complaint or accusation. If it
16 determines after a preliminary investigation that probable cause
17 exists in support of the complaint or accusation, it shall try to
18 eliminate the prohibited practice by informal methods of conference,
19 conciliation, and persuasion. Nothing said or done during this en-
20 deavor may be used as evidence in a subsequent proceeding.

21 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor

22 relations agency fails to eliminate the prohibited practice by concil-
23 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
24 890 or before it attempts conciliation, it may serve a copy of the
25 complaint or accusation upon the respondent. The complaint or accusa-
26 tion and the subsequent procedures shall be handled in accordance with
27 the administrative adjudication portion of the Administrative Proce-
28 dure Act (AS 44.62).

29 Sec. 42.40.790. ORDERS AND DECISIONS. if the railroad labor

1 relations agency finds that a person named in the written complaint or
2 accusation has engaged in a prohibited practice, the railroad labor
3 relations agency shall issue and serve on the person an order or
4 decision requiring the person to cease and desist from the prohibited
5 practice and to take affirmative action that will carry out the pro-
6 visions of AS 42.40.710 - 42.40.890. If the railroad labor relations
7 agency finds that a person named in the complaint or accusation has
8 not engaged or is not engaging in a prohibited practice, the railroad
9 labor relations agency shall state its findings of fact and issue an
10 order dismissing the complaint or accusation.

11 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
12 relations agency may apply to the superior court in the judicial
13 district in which the prohibited practice occurred for an order en-
14 joining the prohibited acts specified in the order or decision of the
15 railroad labor relations agency. Upon showing by the railroad labor
16 relations agency that the person has engaged or is about to engage in
17 the practice, an injunction, restraining order, or other order that is
18 appropriate may be granted by the court and shall be without bond.

19 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
20 For the purpose of the investigations, proceedings, or hearings that
21 the railroad labor relations agency considers necessary to carry out
22 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
23 issue subpoenas requiring the attendance and testimony of witnesses
24 and the production of relevant evidence.

25 (b) The railroad labor relations agency may administer oaths,
26 examine witnesses, and receive evidence.

27 (c) The attendance of witnesses and the production of evidence
28 may be required from any place in the state at any designated place of
29 hearing.

1 (d) If a person refuses to obey a subpoena issued under AS 42.-
2 40.710 - 42.40.890, the superior court in the district in which the
3 person resides or is found may, upon application by the railroad labor
4 relations agency, issue an order requiring the person to comply with
5 the subpoena.

6 Sec. 42.40.820. REGULATIONS. The railroad labor relations
7 agency shall adopt regulations under the Administrative Procedure Act
8 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

9 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
10 person who violates a provision of an order or decision of the rail-
11 road labor relations agency is guilty of a misdemeanor and is punish-
12 able by a fine of not more than \$500.

13 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
14 of negotiation over the terms of a collective bargaining agreement, an
15 impasse as determined by the railroad labor relations agency exists
16 between the corporation and an organization, the railroad labor re-
17 lations agency shall appoint a person mutually agreeable to the
18 parties from a list of seven qualified mediators/arbitrators knowl-
19 edgeable in railway labor agreements to act as mediator in the dis-
20 pute.

21 (b) Before the determination of an impasse under this section,
22 the parties may also select a mediator by mutual consent.

23 (c) It shall be the function of the mediator to bring the
24 parties together to effectuate a settlement of the dispute, but nei-
25 ther the mediator nor the railroad labor relations agency has any
26 power of compulsion in mediation proceedings.

27 Sec. 42.40.850. STRIKES. (a) Following a decision by the
28 mediator to end the mediation proceedings, employees of a collective
29 bargaining unit may engage in a strike for a limited time if a

1 majority of the employees in that collective bargaining unit vote by
2 secret ballot to do so. The limit of the strike is determined by the
3 interest of the health, safety, or welfare of the public.

4 (b) The corporation may apply to the superior court in the
5 judicial district in which the strike is occurring for an order en-
6 joining the strike. A strike may not be enjoined unless it can be
7 shown that it has begun to threaten, or is about to threaten, the
8 health safety, or welfare of the public. A court, in deciding wheth-
9 er to enjoin the strike, shall consider the total equities in the
10 particular case, including the impact of a strike on the public and
11 the extent to which an employee organization and the corporation have
12 met their statutory obligations.

13 (c) If an impasse or deadlock still exists after the issuance of
14 an injunction, the parties shall submit the dispute to binding arbi-
15 tration. The arbitrator shall be the same person selected under
16 AS 42.40.840 and shall fashion the award the arbitrator considers
17 equitable.

18 (d) Notwithstanding (a) - (c) of this section, an organization
19 and the corporation may mutually agree to submit a dispute to binding
20 arbitration at any time.

21 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-
22 tion may participate in labor negotiations between the corporation and
23 an organization. The corporation shall seek advice of the Department
24 of Administration before entering into a collective bargaining agree-
25 ment concerning wages, hours, and other terms and conditions of em-
26 ployment. However, the final decision regarding collective bargaining
27 agreements, shall be made by the board.

28 (b) Upon the completion of negotiations between an organization
29 and the corporation, if a settlement is reached, the corporation shall

1 reduce it to writing in the form of an agreement. The agreement shall
2 include a grievance procedure that shall have binding arbitration as
3 its final step. Either party to the agreement has a right of action
4 to enforce the agreement by petition to the railroad labor relations
5 agency.

6 (c) The parties to an agreement under this section may agree to
7 terms that specify an expiration date for the agreement.

8 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
9 TION AND AUTHORIZATION. Upon written authorization of an employee
10 within a bargaining unit, the corporation shall deduct from the pay-
11 roll of the employee the monthly amount of dues, fees, and other
12 employee benefits as certified by the secretary of the exclusive
13 bargaining representative and shall deliver it to the chief fiscal
14 officer of the exclusive bargaining representative.

15 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of
16 AS 42.40.870, a collective bargaining settlement reached, or agreement
17 entered into, under AS 42.40.860 that incorporates union security
18 provisions, including a union shop or agency shop provision or agree-
19 ment, shall safeguard the rights of nonassociation of employees having
20 bona fide religious convictions based on tenets or teachings of a
21 church or religious body of which an employee is a member. Upon
22 submission of proper proof of religious conviction to the railroad
23 labor relations agency, the agency shall declare the employee exempt
24 from becoming a member of an organization. The employee shall pay an
25 amount of money equivalent to regular organization dues, initiation
26 fees, and assessments to the organization. Nonpayment of this money
27 subjects the employee to the same penalty as if it were nonpayment of
28 dues. The receiving organization shall contribute an equivalent
29 amount of money to a charity of its choice not affiliated with a

1 religious, labor, or employee organization. The organization shall
2 submit to the railroad labor relations agency proof of contribution.

3 Sec. 42.40.885. PROHIBITED ACTS. (a) The corporation or an
4 employee may not directly or indirectly

5 (1) require or coerce an employee to participate in any way
6 in any activity or undertaking unless the activity or undertaking is
7 related to the performance of official duties;

8 (2) require or coerce an employee to make any report con-
9 cerning an activity or undertaking of the employee's activities or
10 undertakings unless the activity or undertaking is related to the
11 performance of official duties;

12 (3) except as directly related to the performance of offi-
13 cial duties, require or coerce an employee to submit to an interro-
14 gation, examination, or psychological test that is designed to elicit
15 information concerning

16 (A) a personal relationship with a person connected
17 with the employee by blood or marriage,

18 (B) the employee's religious beliefs or practices,

19 (C) sexual matters,

20 (D) the employee's political affiliation or philoso-
21 phy;

22 (4) coerce an employee to invest or contribute earnings in
23 any manner or for any purpose;

24 (5) restrict or attempt to restrict after-working-hour
25 statements, pronouncements or other activities, not otherwise prohib-
26 ited by law or personnel rule, of an employee, if the employee does
27 not purport to speak or act in an official capacity.

28 (b) The provisions of (a) of this section do not diminish the
29 authority of an authorized law enforcement agency to conduct criminal

1 investigations of employees suspected of being involved in criminal
2 activity or to investigate other activity directly related to official
3 railroad business.

4 Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

5 (1) "collective bargaining" means the performance of the
6 mutual obligation of the corporation or its designated representatives
7 and the representatives of the employees to meet at reasonable times,
8 including meetings in advance of the budget making process, and nego-
9 tiating in good faith with respect to wages, hours, and other terms
10 and conditions of employment, or the negotiation of an agreement, or
11 negotiation of a question arising under an agreement and the execution
12 of a written contract incorporating an agreement reached if requested
13 by either party, but these obligations do not compel either party to
14 agree to a proposal or require the making of a concession;

15 (2) "election" means a proceeding conducted by the labor
16 relations agency in which the employees in a collective bargaining
17 unit cast a secret ballot for collective bargaining representatives,
18 or for any other purpose specified in AS 42.40.710 - 42.40.890;

19 (3) "organization" means a labor or employee organization
20 of any kind in which employees participate and that exists for the
21 primary purpose of dealing with the corporation concerning grievances,
22 labor disputes, wages, rates of pay, hours of employment and condi-
23 tions of employment;

24 (4) "terms and conditions of employment" means the hours of
25 employment, the compensation and fringe benefits, and the employer's
26 personnel policies affecting the working conditions of the employees,
27 but does not mean the general policies describing the function and
28 purposes of an employer.

29 ARTICLE 9. GENERAL PROVISIONS.

1 Sec. 42.40.900. CLAIMS. (a) All claims and lawsuits involving
2 activities of the railroad, including suits in contract, quasi-con-
3 tract, or tort, shall be brought against the corporation and not
4 against the state.

5 (b) For the purposes of actionable claims, undertakings, pay-
6 ments of judgments, execution, interest, punitive damages, statutes of
7 limitations, bonds, costs, and similar matters related to the pres-
8 entation and prosecution of claims by and against the corporation, the
9 corporation and its board members and employees enjoy the same rights,
10 privileges, and immunities as the state and state officers under
11 AS 09.10.120, AS 09.50.250 - 09.50.290, and AS 09.65.040.

12 (c) Claims against the corporation are not subject to the pro-
13 visions of AS 44.77 regarding claims against the state.

14 (d) The corporation is not subject to the provisions of AS 44.-
15 80.010, regarding the state as a party to an action.

16 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
17 shall notify the Department of Law within 30 days before initiating
18 legal action unless special circumstances exist that require immediate
19 legal action to protect the corporation assets or to continue existing
20 service.

21 (b) If notice of legal action is not given under (a) of this
22 section, within seven days of taking action the board shall notify the
23 Department of Law of the action taken and of the special circumstances
24 that exempted the action from the requirements of (a) of this section.

25 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
26 the powers granted by this chapter shall be in all respects for the
27 benefit of the people of the state, for their well-being and prosper-
28 ity, and for the improvement of their social and economic conditions.
29 Subject to (b) of this section, the real and personal property of the

1 corporation and its assets, income, and receipts are exempt from all
2 taxes and special assessments of the state or a political subdivision
3 of the state.

4 (b) Bonds and notes issued under this chapter are issued by a
5 body corporate and public of the state and for an essential public and
6 governmental purpose. Therefore, the bonds and notes, the interest
7 and income from them, and all fees, charges, funds, revenue, income
8 and other money pledged or available to pay or secure the payment of
9 the bonds and notes or interest on them, are exempt from taxation
10 except for inheritance, transfer, and estate taxes.

11 (c) This section does not affect or limit an exemption from
12 license fees, property taxes, excise taxes, income taxes, or other
13 taxes, provided under any other law, nor does it create a tax exemp-
14 tion with respect to the interest of any business enterprise or other
15 person, other than the corporation.

16 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
17 ration is not subject to the jurisdiction of the Alaska Transportation
18 Commission.

19 (b) Unless specifically provided otherwise in this chapter, the
20 following laws do not apply to the operations of the corporation:

- 21 (1) AS 19;
- 22 (2) AS 30.15;
- 23 (3) AS 35;
- 24 (4) AS 37.05;
- 25 (5) AS 37.07;
- 26 (6) AS 37.10.010 - 37.10.060;
- 27 (7) AS 37.10.085;
- 28 (8) AS 37.20;
- 29 (9) AS 37.25;

1 (10) AS 38;

2 (11) AS 44.62.040 - 44.62.320.

3 (c) The corporation is subject to AS 45.50.562 - 45.50.596.

4 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
5 this chapter conflict with the provisions of other state law, the pro-
6 visions of this chapter prevail. Provisions of this chapter shall be
7 construed so that they do not conflict with 45 U.S.C. 1201 - 1214
8 (Alaska Railroad Transfer Act of 1982).

9 Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
10 later than two years after the date of transfer, the Department of
11 Labor in consultation with the corporation shall develop and the
12 corporation, shall adopt a plan to achieve compliance with AS 18.60.
13 The plan shall be implemented and compliance achieved within five
14 years after it is adopted.

15 (b) No later than two years after the date of transfer, the
16 corporation in consultation with the Department of Public Safety and
17 appropriate municipal officials, shall develop and adopt a plan to
18 achieve compliance with building and related safety codes applicable
19 to facilities of the corporation. The plan shall be implemented and
20 compliance achieved within five years after it is adopted. In the
21 sole determination of the commissioner of public safety, any existing
22 building owned or controlled by the corporation that does not present
23 a serious safety hazard and for which compliance would be uneconomical
24 in consideration of its remaining useful life shall be exempted from
25 compliance with state or municipal safety codes.

26 Sec. 42.40.940. NEGOTIATION FOR SALE OF THE RAILROAD. The
27 governor may require the board to negotiate in good faith the sale of
28 the Alaska Railroad.

29 Sec. 42.40.950. REVERSION OF ASSETS. If the corporation ceases

1 to exist, for reasons other than sale of the Alaska Railroad, its
2 assets revert to the state.

3 Sec. 42.40.980. DEFINITIONS. In this chapter, unless the con-
4 text otherwise requires,

5 (1) "board" means the board of directors of the Alaska
6 Railroad Corporation;

7 (2) "bonds" means bonds, bond anticipation notes, notes,
8 refunding bonds, or other obligations;

9 (3) "corporation" means the Alaska Railroad Corporation;

10 (4) "date of transfer" means the date on which the United
11 States Secretary of Transportation delivers the transfer documents
12 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

13 (5) "employees" means all persons employed by the corpo-
14 ration including executive officers;

15 (6) "executive officer" means the corporation's chief
16 executive officer, an employee who fulfills management functions and
17 is so designated by the board, and employees occupying the following
18 positions on the date of transfer: general manager, assistant general
19 manager, assistant to the general manager, chief of administration,
20 and general counsel;

21 (7) "land" means any interest in real property, including
22 tide and submerged land and any right appurtenant to the interest;

23 (8) "rule" means a standard of general application or the
24 amendment, supplement, revision, or repeal of a standard adopted by
25 the corporation to implement, interpret, or make specific the law
26 enforced or administered by it to govern its procedure.

27 Sec. 42.40.990. SHORT TITLE. This chapter may be referred to as
28 the Alaska Railroad Corporation Act.

29 * Sec. 3. AS 42.40.010 is amended to read:

1 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
2 established the Alaska Railroad Corporation. The corporation is a
3 public corporation and is an instrumentality of the state [WITHIN THE
4 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT]. The corporation has
5 a legal existence independent of and separate from the state. The
6 exercise by the corporation of the powers provided in this chapter is
7 considered an essential government function of the state.

8 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
9 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
10 the terms of the appointed members of the first board of directors of the
11 Alaska Railroad Corporation are as follows:

- 12 (1) one shall serve a term of two years;
- 13 (2) two shall serve a term of three years;
- 14 (3) two shall serve a term of four years; and
- 15 (4) two shall serve a term of five years.

16 * Sec. 5. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
17 cable after establishment of the Alaska Railroad Corporation and before
18 transfer of the Alaska Railroad to the state, the Alaska Railroad Corpora-
19 tion and its employees shall adopt collective bargaining agreements that
20 continue the provisions of the agreements in effect between the Alaska
21 Railroad and its employees on the date of transfer of the railroad. The
22 collective bargaining agreements adopted under this section between the
23 corporation and its employees shall remain in effect to the extent required
24 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982).

25 (b) The board of directors of the Alaska Railroad Corporation shall
26 on or before the date of transfer of the Alaska Railroad to the state adopt
27 personnel rules necessary to prevent an interruption of services of the
28 railroad.

29 (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of

1 1982), within 180 days after the first meeting of the board of directors of
2 the Alaska Railroad Corporation, the board and representatives of employee
3 bargaining units shall establish procedures for the renegotiation of col-
4 lective bargaining agreements adopted under (a) of this section. The board
5 shall renegotiate all agreements adopted under (a) of this section within
6 two years after the date of transfer of the Alaska Railroad to the state
7 unless the parties agree to the contrary.

8 * Sec. 6. SALE OF RAILROAD. (a) Not later than two years following
9 the date of the transfer of the Alaska Railroad to the state, the Board of
10 Directors of the Alaska Railroad Corporation, in consultation with the
11 state, shall request proposals from the private sector for the acquisition
12 or operation of the Alaska Railroad. The board may engage the services of
13 an investment banking firm or other professional expertise to assist in the
14 development of the request and evaluation of proposals received. The board
15 shall consider every proposal from the private sector for the acquisition
16 or operation of the Alaska Railroad, even if it is not made in response to
17 a request for proposals under this subsection.

18 (b) In order to be considered responsive, a proposal must

19 (1) ensure continued or improved rail service;

20 (2) return to the state its investment in the Alaska Railroad to
21 the extent possible;

22 (3) be consistent with the terms and conditions of 45 U.S.C.
23 1201 - 1214 (Alaska Railroad Transfer Act of 1982), and not activate the
24 reversion provisions of 45 U.S.C. 1209 (Alaska Railroad Transfer Act of
25 1982);

26 (4) demonstrate with reasonable certainty that the railroad
27 after acquisition by the private sector will be operated as a profitable
28 carrier; as used in this paragraph, "profitable carrier" means a carrier
29 that will be able to

1 (A) generate sufficient revenue to meet its expenses,
2 including reasonable maintenance of necessary equipment and facil-
3 ities; and

4 (B) finance its capital needs in the private market; and

5 (5) demonstrate how the railroad can continue operation of
6 services, including current levels of passenger service.

7 (c) The board may negotiate the details of any proposal found to be
8 responsive, including the execution of a letter of intent to conclude a
9 transfer upon approval of the governor and the legislature.

10 (d) Within one year after requesting proposals under (a) of this
11 section, the board shall submit a report on the results of the process to
12 the governor, including its specific findings on the responsiveness of any
13 proposal received and its recommendations for conclusion of a transfer of
14 the railroad or its management to the private sector.

15 (e) Within 120 days after receipt of the board's report, if the board
16 has recommended transfer of the Alaska Railroad or its management to the
17 private sector, the governor shall

18 (1) disapprove the proposed transfer; or

19 (2) submit the report and recommendations to the legislature.

20 (f) Failure by the governor to act within 120 days after receipt of
21 the board's report shall be considered approval.

22 (g) The legislature may disapprove a proposed transfer without modi-
23 fication by law enacted within 45 days after the proposal is submitted. If
24 a proposal is submitted while the legislature is not in session, the legis-
25 lature may disapprove the proposal with 45 days after the beginning of the
26 next regular session. Failure by the legislature to act within the period
27 required under this subsection shall be considered approval of the pro-
28 posal.

29 (h) Unless a proposal under (a) of this section is approved, the

1 process provided in this section shall be repeated every two years.

2 (i) The board shall, within two years after the date of transfer of
3 the Alaska Railroad to the state, direct the executive officer of the
4 Alaska Railroad Corporation to prepare a report for the governor and the
5 legislature on the feasibility of other operational alternatives for trans-
6 fer consistent with the criteria under (b) of this section of all or part
7 of the railroad to the private sector, including allowing recipients of
8 permanent fund dividends to direct their dividends to a railroad purchase
9 fund.

10 * Sec. 7. SPECIAL REPORT. The corporation shall study any problems
11 created by vibrations due to operating the railroad from Ship Creek through
12 Inlet View to the Turnagain Area and extending to Potter's Marsh. The
13 study shall include consideration of any potential for problems that may be
14 created by hauling coal and larger quantities of gravel along that portion
15 of the rail line. By February 1, 1986, the corporation shall present a
16 report to the legislature on the study containing recommendations for
17 correcting any problems identified.

18 * Sec. 8. Section 3 of this Act takes effect on the effective date of
19 an amendment to the constitution of the State of Alaska relating to the
20 Alaska Railroad.

21 * Sec. 9. Sections 1, 2, and 4 - 7 of this Act take effect immediately
22 in accordance with AS 01.10.070(c).

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 5-1-84

REQUEST

FISCAL DETAIL

Bill/Resolution No.: CS HB 512 (Fin)
 Title: Alaska Railroad Corporation Act of 1984
 Sponsor: Hayes, et. al.
 Requestor: Rep. Bettisworth
 Date of Request: 5/1/84

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		24,350				
200 TRAVEL		140				
300 CONTRACTUAL		5,900				
400 SUPPLIES		4,000				
500 EQUIPMENT		1,200				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		1,500				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		37,090				
CAPITAL	-0-	-0-				
REVENUE	-0-	37,350				

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER		37,350				
TOTAL	-0-	37,350				

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Representative Bettisworth *By Stephen Drisk*
 Division: _____ Phone: 465-3706
 Date: 5/1/84

Approved by Commissioner: Al Adams, Chair *AVA*
 Agency: House Finance Committee Date: 5/1/84

Distribution (by Agency preparing fiscal note):

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

12/1/83

CSHB 512 (Finance)

Fiscal Note Analysis

The Fiscal Note dated 5-1-84 contains operating revenues and expenses as well as other one time only expenses related to the transfer of the Railroad.

The Fiscal Note does not include capital expense items. Capital items should be included in a separate appropriation bill. The appropriation bill should contain an appropriation for acquisition of the Railroad in the amount of \$22,300,000 and \$9,000,000 for capital improvements including OSHA and building code rehabilitation upgrades and replacement of the working capital fund, etc.

ALASKA RAILROAD
Operating Expenses*
FY 85 (in \$000)

ATTACHMENT A

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (HB 352)

	Alaska Railroad							Board of Dir.	Other Expenditures				
	Dec.	Jan.	Feb.	March	April	May	June		Total	ARR Trans. Team	Est. Corp.	Other	Total
<u>Personal Services</u>													
Wages	2,400	2,640	2,640	2,800	2,910	3,035	3,160	19,585					
Fringe	540	590	590	625	650	675	700	4,370					
Sub Total								<u>23,955</u>	<u>120</u>		<u>275</u>	<u>24,350</u>	
<u>Travel</u>													
	12	12	12	16	16	16	16	<u>100</u>	<u>40</u>			<u>140</u>	
<u>Contracts</u>													
	370	370	360	350	350	350	350	<u>2,500</u>		<u>1,650</u>	<u>1,200</u>	<u>550</u>	<u>5,900</u>
<u>Supplies</u>													
	340	350	330	480	555	700	720	<u>3,475</u>			<u>525</u>	<u>4,000</u>	
<u>Equipment</u>													
	100	148	140	180	200	212	220	<u>1,200</u>				<u>1,200</u>	
<u>Grants & Claims</u>													
	200	200	200	200	200	250	250	<u>1,500</u>				<u>1,500</u>	
<u>Total</u>													
	<u>3,962</u>	<u>4,310</u>	<u>4,272</u>	<u>4,651</u>	<u>4,881</u>	<u>5,238</u>	<u>5,416</u>	<u>32,730</u>	<u>160</u>	<u>1,650</u>	<u>2,000</u>	<u>550</u>	<u>37,090</u>

*Minor Discrepancies due to rounding

ALASKA RAILROAD
Operating Expenses*
Analysis by Department
FY 85

Supporting Data for State of Alaska
1984 Legislative Session Fiscal Note (HB 352)

	December	January	February	March	April	May	June	Total
General Manager & Staff								
<u>Personal Services</u>								
Wages	72	92	92	98	101	106	110	671
Fringe	16	21	21	22	22	23	24	149
Travel	2	2	2	3	3	3	3	18
Contracts	2	2	2	2	2	1	1	12
Supplies	9	9	8	11	12	15	16	80
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	101	126	125	136	140	148	154	930
<u>Transportation</u>								
<u>Personal Services</u>								
Wages	985	1,080	1,080	1,148	1,190	1,241	1,290	8,014
Fringe	222	243	243	257	267	277	286	1,795
Travel	2	2	2	2	2	2	2	14
Contracts	166	165	166	166	164	165	165	1,157
Supplies	140	143	133	202	236	300	310	1,464
Equipment	5	13	10	15	20	20	20	103
Grants & Claims	0	0	0	0	0	0	0	0
Total	1,520	1,646	1,634	1,790	1,879	2,005	2,073	12,547
<u>Motive Power & Equipment</u>								
<u>Personal Services</u>								
Wages	505	557	557	588	609	634	661	4,111
Fringe	114	124	124	131	137	141	146	917
Travel	1	1	1	2	2	2	2	11
Contracts	49	48	47	47	47	47	47	332
Supplies	76	77	73	107	124	157	162	776
Equipment	60	80	75	100	105	110	110	640
Grants & Claims	0	0	0	0	0	0	0	0
Total	805	887	877	975	1,024	1,091	1,128	6,787

*Minor Discrepancies due to rounding

(Continued)

	December	January	February	March	April	May	June	Total
<u>Engineering</u>								
Personal Services								
Wages	480	539	539	558	580	604	629	3,929
Fringe	108	118	118	125	130	134	140	873
Travel	1	1	1	2	2	2	2	11
Contracts	18	19	15	12	12	12	12	100
Supplies	70	74	69	100	115	143	147	718
Equipment	30	50	50	60	65	67	75	397
Grants & Claims	0	0	0	0	0	0	0	0
Total	<u>707</u>	<u>801</u>	<u>792</u>	<u>857</u>	<u>904</u>	<u>962</u>	<u>1,005</u>	<u>6,028</u>
<u>Administration</u>								
Personal Services								
Wages	289	304	304	332	347	362	377	2,315
Fringe	65	67	67	74	78	80	84	515
Travel	2	2	2	3	3	3	3	18
Contracts	111	113	107	101	104	104	104	744
Supplies	9	9	8	10	11	14	15	76
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	<u>476</u>	<u>495</u>	<u>488</u>	<u>520</u>	<u>543</u>	<u>563</u>	<u>583</u>	<u>3,668</u>
<u>Marketing & Sales</u>								
Personal Services								
Wages	48	48	48	53	58	58	62	375
Fringe	11	11	11	12	13	13	14	85
Travel	4	4	4	4	4	4	4	28
Contracts	6	5	5	4	4	4	4	32
Supplies	3	3	3	4	4	5	6	28
Equipment	0	0	0	0	0	0	0	0
Grants & Claims	0	0	0	0	0	0	0	0
Total	<u>72</u>	<u>71</u>	<u>71</u>	<u>77</u>	<u>83</u>	<u>84</u>	<u>90</u>	<u>548</u>
<u>Overheads</u>								
Personal Services								
Wages	21	21	21	24	25	30	32	174
Fringe	5	5	5	5	5	7	7	39
Travel	0	0	0	0	0	0	0	0
Contracts	18	18	18	18	17	17	17	123
Supplies	35	37	35	46	51	65	67	336
Equipment	5	5	5	5	10	15	15	60
Grants & Claims	200	200	200	200	200	250	250	1,500
Total	<u>284</u>	<u>286</u>	<u>284</u>	<u>298</u>	<u>308</u>	<u>384</u>	<u>388</u>	<u>2,232</u>

May 2, 1984

Amendment # 1

ALASKA RAILROAD

Pg. 2 line 21 after the word "capital" add the words "for expansion".

Pg. 2 line 29 add the words "most efficient and" ~~prior~~ to the word "prudent". Add the words "consistent with the technology in use" after the word ~~prudent~~ "Practices" on line 1, page 3

Pg. 3 line 3 add the following subsections:-

(H) Provide for the employment of women and minorities in all job classifications in their proportion in the state population.

(I) Provide for the payment of equal pay for jobs of comparable worth.

Pg. 3 line 3 after the word "communication" add the word " pipeline".

Pg. 3 line 28 change "10 years" to "one year".

Pg. 4 line 7 add a new subsection (4) to read:

(4) No member of the board shall be an employee or owner of a transportation company, a company using the railroad's freight services, except infrequently, or a lessee of railroad lands.

Pg. 4 line 15 after the word "board" add the words "appointed after December 31, 1986"

Pg. 4 line 16 add an additional sentence after the word "each" which reads:

"Board members appointed prior to December 31, 1986 shall be interim appointees serving at the pleasure of the governor without legislative confirmation."

Pg. 6; line 9 after the word "capital" add the words "for expansion"

Pg. 14 line 15 after the word "exchange" add the word "condemnation".

Pg. 14 line 29 after the word "use" add the word "expansion".

Pg. 19 line 6 remove the period after word "greater" and add the words: "except that the railroad may acquire right-of-way, engage in engineering and planning, and obtain permits as if authorized to construct unlimited miles."

Pg. 48 line 28 after the word "transfer" add "at any time after December 31, 1995".

Pg. 49 line 22, after the word "state" insert "direct the railroad's executive officer".

Lindauer.

Amendment

Page 4. line 7
add a new subsection to read.

~~and~~ (5). One member
shall be a member
of a railroad collective
bargaining unit.

HOUSE FINANCE COMMITTEE

MEETING OF 5/2

SUBJECT JL - #1

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE	X	
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN		
WARD	X	
ZHAROFF	X	
TOTAL	9	1

HOUSE FINANCE COMMITTEE

MEETING OF 5/2

SUBJECT # 5

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN	X	
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN		
WARD	X	
ZHAROFF	X	
TOTAL	9	1

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT H-7

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH		X
DUNCAN		X
FRITZ	X	
FURNACE		X
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN		A
WARD		X
ZHAROFF		X
TOTAL	3	1

FAICS

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT H 8

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN	X	
FRITZ		X
FURNACE		X
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN	X	
WARD		X
ZHAROFF	X	
TOTAL	4	7

FAILS

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 9

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE	X	
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN	X	
WARD	X	
ZHAROFF	X	
TOTAL	10	1

PASSED

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT

11

MEMBER	YES	NO
ADAMS		X
BETTISWORTH	X	
DUNCAN		X
FRITZ	X	
FURNACE	X	
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN	X	
WARD	X	
ZHAROFF		X
TOTAL	6	5

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 12

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		✓
DUNCAN		X
FRITZ		X
FURNACE		X
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN		X
WARD		X
ZHAROFF		X
TOTAL	1	10

FAILS

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT

VIA - J N RESOND
11

MEMBER	YES	NO
ADAMS	X	
BETTISWORTH		X
DUNCAN	X	
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER		X
MARTIN		X
WARD		X
ZHAROFF	X	
TOTAL	6	5

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF

SUBJECT # 15

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN	X	
FRITZ		X
FURNACE	X	
GRUSSENDORF	X	
HURLBERT		X
LINDAUER	X	
MARTIN		X
WARD	X	
ZHAROFF	X	
TOTAL	6	5

PASSES

32

0

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 11

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN		X
FRITZ		X
FURNACE	X	
GRUSSENDORF		X
HURLBERT		X
LINDAUER	X	
MARTIN	X	
WARD		X
ZHAROFF		X
TOTAL	3	8

FAILS

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT # 15

MEMBER	YES	NO
ADAMS		X
BETTISWORTH		X
DUNCAN	X	
FRITZ		X
FURNACE	X	
GRUSSENDORF	X	
HURLBERT		X
LINDAUER	X	
MARTIN		X
WARD	X	
ZHAROFF	X	
TOTAL	6	5

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT	# 3 V-H		
MEMBER		YES	NO
ADAMS		X	
BETTISWORTH		X	
DUNCAN			X
FRITZ		X	
FURNACE			X
GRUSSENDORF		X	
HURLBERT		X	
LINDAUER			X
MARTIN		X	
WARD		X	
ZHAROFF			X
	TOTAL	7	4

PASSES

HOUSE FINANCE COMMITTEE

MEETING OF _____

SUBJECT		
MEMBER	YES	NO
ADAMS	X	
BETTISWORTH	X	
DUNCAN	X	
FRITZ	X	
FURNACE		X
GRUSSENDORF	X	
HURLBERT	X	
LINDAUER	X	
MARTIN	X	
WARD	X	
ZHAROFF	X	
TOTAL	10	1

PASSED

Rep. Bob Bettisworth

CS for HB 512 (Finance)

Significant Differences Between 4/28/84 Draft And 5/1/84 Draft

1. The title is changed back to a much broader version.
2. The Corporation is now housed within the Department of Commerce and Economic Development until a constitutional amendment removes it. (Page 3, Line 9)
3. Commissioners of Department of Transportation and Public Facilities and the Department of Commerce and Economic Development are on the Board and remain on the Board even after a constitutional amendment. (Page 3, Line 16)
4. The Board shall contain at least two members from each Judicial District served directly by the Railroad. (Page 3, Line 22)
5. Public "consumer" is removed from the Board.
6. An employee who is a member of a bargaining unit representing employees of the Corporation is removed from the Board.
7. The Chief Executive Officer is removed from the Board.
8. Malfeasance and misfeasance are added as grounds for the Governor to remove a Board member. (Page 4, Line 26)
9. Delegation of Board powers to the Chief Executive is changed from "shall delegate" to "may delegate". (Page 5, Line 26)
10. Accounting and auditing procedures are required to comply with ICC standards for Class I Railroads. (Page 6, Line 15 and Page 17, Line 25)
11. Requirement that all complaints and suggestions received be responded to in the annual report is removed. (Page 17, Line 22)
12. Audit section is changed to require the performance audit to be conducted by a recognized railroad management expert. (Page 18, Line 27)

13. Legislative approval by law is required before the Railroad Corporation may:

- a. Convey the Corporation's entire interest in land.
- b. Issue securities, bonds or contracts in an amount exceeding \$5,000,000.00.
- c. Extend the Railroad by more than 25 miles or 5 percent.

14. The provision requiring the concurrence of the Governor before the Corporation may request direct appropriations from the Legislature is removed. (Page 26, Line 18)

15. A provision is added allowing the Governor to require the Board to negotiate for sale of the Railroad. (Page 45, Line 16)

16. Positive action by the Governor within 120 days is required (instead of no action) to disapprove sale of the Railroad. (Page 49, Line 5)

17. Positive action by the Legislature within 45 days is required (instead of no action) to disapprove any proposed sale of the Railroad. (Page 49, Line 12)

18. The requirement for submission of a report on operational alternatives is changed from five years after the date of transfer to two years after the date of transfer. (Page 49, Line 21)

19. The effective date is changed to immediate (except for the section removing the Railroad Corporation for the Department of Commerce and Economic Development which would be effective after the constitutional amendment). (Page 50, Line 7)

Alaska State Legislature

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



STATE CAPITOL
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Senate Committee on Transportation

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

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

March 29, 1984

Title

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

The statutes are:

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

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

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

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

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

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

and 42.40.280.

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

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

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

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

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

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

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

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

*Section 2
Section 42.40.010

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

Section 42.40.020

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No comparable provisions in the House Bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The statutes are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 42.40.980 Definitions of the chapter are provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 30, 1984

MAR 30 1984

SUBJECT: Alaska Railroad (CSHB 512 (Trsp))
TO: Representative Joe Hayes
FROM: Tamara Brandt Cook
Deputy Director *TBC*
Division of Legal Services

Here is the section by section analysis of HB 512 that you requested.

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

* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation within the Department of Commerce and Economic Development.

Section 42.40.020 Seven members, at least five of whom are voters in the state, are appointed to the board of directors by the governor. No more than two appointed members may be from one judicial district and all members must have at least five years experience or training in fields relevant to the purposes of AS 42.40. The governor shall appoint one member who is an employee of the corporation and a member of a bargaining unit. The commissioner of commerce and economic development and the chief executive officer of the corporation shall serve as additional members. The appointed members are to be confirmed by the legislature.

This last provision can only function as a request to the governor to submit the members for confirmation. It is not, however, constitutionally enforceable under Article III, sections 25 and 26 of the State Constitution as construed in Bradner v. Hammond, 553 P.2d (Alaska, 1976).

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

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members. A member whose term expires serves until a successor has been appointed.

Section 42.40.050 An appointed member of the board receives \$400 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.060 The board elects from its membership a chairman and vice-chairman. The board appoints a secretary.

Section 42.40.100 The board is responsible for the management of the corporation. As part of this duty, the board is obligated to carry out certain itemized functions.

Section 42.40.110 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is

established, the board must delegate certain specified activities of the corporation. The board may require exercise of a delegated duty to be subject to board approval. Specific board approval is required for certain itemized actions.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The chairman must call a meeting every three months and may call other meetings as necessary. The board keeps minutes of meetings.

Section 42.40.160 Five members of the board constitute a quorum. Five affirmative votes are required for board action. The board provides for the manner of voting, but may not allow voting by proxy.

Section 42.40.170 The board may consider in an executive session matters that pertain to personnel, the corporation's legal position, land acquisition or disposal, or information of a type treated as confidential by the Interstate Commerce Commission.

Section 42.40.180 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.190 The board may provide that rules and orders in effect on the date of transfer of the railroad to the state that are not inconsistent with AS 42.40 or other state law remain in effect.

Section 42.40.200 Information of the corporation is open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.210 A board member or executive officer of the corporation may not participate in a decision of the corporation in which that person or a member of his immediate family has a direct or indirect financial interest unless the interest is remote and participation is approved by the board. Within 120 days after the first meeting, the board shall adopt rules implementing this section, providing additional conflict of interest rules, and providing for the removal of a board member or executive officer who intentionally violates a prohibition contained in this section.

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

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

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

Section 42.40.280 The board shall provide a state oversight report to the governor and the legislature before undertaking certain major actions. Requirements of the report are specified.

Section 42.40.290 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.300 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit.

Section 42.40.310 The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main

or branch line, or may be of lesser width if adjoining land is not rail land. Portions of the utility corridor may be leased or rented for transportation, communication, and transmission purposes. The corporation may authorize other uses of rail land, but sale is subject to approval of the legislature.

I note that, for some reason, other methods of disposing of land, such as trading it for other property, is not subject to legislative approval. This seems inconsistent from a policy point of view. It may also conflict with the "separation of powers" doctrine which is recognized in Alaska. Bradner v. Hammond, supra. While the precise question was not considered, a scheme that included legislative approval of a Cook Inlet land exchange survived consideration by the court. State v. Lewis, 559 P.2d 630 (Alaska 1977) However, that case involved approval of the exchange of large parcels of land only. The court emphasized the extreme nature of the state interest in settling the land issues arising out of the Alaska Native Claim Settlement Act and the unique nature of that situation. Neither of these considerations apply here. In this draft, legislative approval must be obtained before the sale of any parcel may take place, even very small parcels of little value. Requiring approval in every instance could interfere with the executive function of carrying out the purpose of the Act. Since only land of the Alaska Railroad Corporation is involved and not the land of any other state agency or entity, the provision could amount to local and special legislation.

Section 42.40.360 The board may request conveyance of land owned by or tentatively approved for transfer to the state. Upon receipt of a request the commissioner of natural resources shall temporarily reserve the land for railroad purposes and delay disposal or lease of that land under other laws. The temporary reservation remains in effect for 180 days.

Section 42.40.370 Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation, notify the corporation of reasons for refusal to classify the land for railroad purposes, or approve in part and deny in part the request. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or

subsurface estate. The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes.

Section 42.40.380 When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.390 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.400 The corporation may vacate land and title goes to the state.

Section 42.40.410 The corporation may acquire interests in federal land that is available under federal law.

Section 42.40.420 Upon request the corporation may grant to a municipality a right-of-way for a pedestrian walkway or trail. Before granting the right-of-way the board must require the municipality to agree to hold the corporation harmless and indemnify the corporation for any use made of the right-of-way and to vacate the right-of-way on request of the corporation if it interferes with expansion or replacement of railroad facilities.

Section 42.40.430 The corporation may acquire property available from the federal or state government.

Section 42.40.440 Vegetation control involving the use of pesticides or herbicides on land owned or managed by the corporation must be conducted in compliance with state requirements applicable to other state pesticide or herbicide use.

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

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

Section 42.40.520 The corporation must keep in force public liability insurance covering potential claims against the corporation or the state related to corporation activities.

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

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

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out AS 42.40.

Section 42.40.600 The corporation may issue bonds and bond anticipation notes. The board shall by resolution establish the form and manner of execution of bonds or bond notes. They may be sold as determined by the board and bonds shall mature at the time, not exceeding 50 years from their date, determined by the board.

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

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

Section 42.40.630 Bonds or notes are payable from corporation assets. Bonds or notes may be additionally secured from any source.

Section 42.40.640 An issue of bonds may be secured by a trust indenture or by a secured loan agreement giving powers to a corporate trustee by means of which the corporation may enter into any agreements with the trustees or holders of the bonds, pledge assets, and provide of any matter that affects the security of the bonds.

Section 42.40.650 In negotiating the sale of bonds or notes to an underwriter, the board must retain a financial advisor who is independent from the underwriter.

Section 42.40.660 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.670 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.680 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.690 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it, and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.700 A board member or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.710 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.720 Provisions relating to collective bargaining rights of public employees do not apply to the corporation's employees, but employees who are not executive officers may organize and engage in collective bargaining.

Section 42.40.730 A railroad labor relations agency is established to carry out the provisions of this article. Members receive no compensation but are entitled to per diem and travel expenses.

Section 42.40.740 The railroad labor relations agency shall decide the unit appropriate for the purposes of collective bargaining.

Section 42.40.750 The railroad labor relations agency must investigate a petition submitted by employees or a group of employees or organization alleging that 30 percent of the employees of a proposed bargaining unit want to be represented by an organization or that the organization reorganized by the corporation no longer represents the majority of employees in the unit. The railroad labor relations agency must also investigate a petition submitted by the corporation alleging that an organization has presented a claim to be recognized as representative of a majority of employees in a unit. The railroad labor relations agency must provide for a hearing on a question of representation and an election on the question if it finds that there is a question of representation. An election may not be held in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration of the agreement.

Section 42.40.760 Action that constitutes an unfair labor practice is set out.

Section 42.40.770 If a complaint that an unfair labor practice has occurred is filed with the railroad labor relations agency, it shall investigate the complaint and shall try to eliminate any prohibited practice found to exist by informal methods of conference.

Section 42.40.780 If the railroad labor relations agency fails to eliminate a prohibited practice by conference it may serve a copy of the complaint on the respondent and the complaint shall be handled under the administrative adjudication portion of the Administrative Procedure Act.

Representative Joe Hayes
Page 10
March 30, 1984

Section 42.40.790 If the railroad labor relations agency finds that a person has engaged in a prohibited practice, the agency shall issue an order requiring the person to desist and carry out the provisions of this Article. If the agency finds that a person named in a complaint has not engaged in a prohibited practice, the agency shall dismiss the complaint.

Section 42.40.800 The railroad labor relations agency may apply for an order from the court enjoining prohibited acts.

Section 42.40.810 The railroad labor relations agency may issue subpoenas, administer oaths, examine witnesses, and receive evidence.

Section 42.40.820 The railroad labor relations agency is required to adopt regulations to carry out this article.

Section 42.40.840 When negotiation of a collective bargaining agreement reaches an impasse, the railroad labor relations agency appoints a person to act as mediator. The mediator must attempt to bring the parties together to effectuate a settlement, but may not compel a settlement.

Section 42.40.850 After a decision by a mediator, the employees may strike for a limited time. The strike may be enjoined if it has begun to threaten the health, safety, or welfare of the public. After an injunction is issued, if an impasse still exists the dispute shall be submitted to binding arbitration.

Section 42.40.860 The corporation shall seek advice from the Department of Administration before entering into a collective bargaining agreement, but the final decision regarding the agreement shall be made by the board. An agreement shall be in writing and shall include a grievance procedure. Either party may enforce an agreement by petition to the railroad labor relations agency.

Section 42.40.870 On written authorization the corporation shall deduct from the payroll of an employee the amount of dues and employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver the money deducted to that bargaining representative.

Section 42.40.880 A collective bargaining agreement that incorporates union security provisions shall safeguard the

rights of nonassociation of employees with bona fide religious convictions and shall declare an employee exempt from becoming a member upon submission of proof of religious conviction. The employee must pay an amount equal to regular dues to the organization and the organization shall contribute it to a charity.

Section 42.40.890 Definitions of "collective bargaining", "election", and "organization" for purposes of this Article are provided.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. Certain laws applicable to claims against the state do not apply to the corporation.

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

Section 42.40.920 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

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

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

Section 42.40.980 Definitions for the chapter are provided.

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

The following provisions take effect when a constitutional amendment is adopted:

* Section 3 The provision that the corporation is in the Department of Commerce and Economic Development is deleted.

* Section 4 The commissioner of commerce and economic development is eliminated from the board and another appointed member is added.

* Section 5 Reference to the commissioner of commerce and economic development is deleted.

* Section 6 Reference to the commissioner is deleted and the board members no longer serve at the pleasure of the governor.

* Section 7 The governor may remove a board member only for certain itemized causes.

* Section 8 The reference to the commissioner is deleted.

The following temporary law sections take effect immediately:

* Section 9 The corporation must prepare a report for the governor and the legislature on the long-term operations of the railroad. The report is due on January 1, 1988 and must contain specific recommendations on operational alternatives and the transfer of the railroad's operations to the private sector.

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

* Section 11 Before transfer of the railroad to the state, the corporation and its employees shall adopt collective bargaining agreements that continue the provisions in effect between the Alaska Railroad and its employees on the date of transfer. The agreements adopted under this section remain in effect to the extent required under the Alaska Railroad Transfer Act. On or before the date of transfer the board shall adopt personnel rules necessary to prevent an interruption of services, within 180 days after the first meeting of the board, the board and representatives of employee bargaining units shall establish procedures for the renegotiation of collective bargaining agreements. The board shall renegotiate all agreements adopted under this section within two years after the date of transfer.

The following sections contain effective dates:

Representative Joe Hayes
Page 13
March 30, 1984

* Section 12 Section 3 - 8 take effect on the effective date of a constitutional amendment relating to the Alaska Railroad.

* Section 13 The rest of the Act takes effect immediately.

TBC:ojb
J5/026

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER
Alaska Railroad Transfer Team

March 23, 1984

The Honorable Bette Cato
Chairman, House Transportation Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

Enclosed per your request is a fiscal note on the committee substitute for HE 512, an Act establishing the Alaska Railroad Corporation. Also enclosed is a detailed analysis with supporting documentation to explain its contents.

The estimates in this fiscal note are based on the results of the Alaska Railroad Transfer Team's Alaska Railroad Acquisition Assessment, released in December 1983. Although our "worst case" scenario has been used for these calculations, current indicators regarding uncertainty over potential traffic increases suggest this analysis for FY 85 is a more realistic forecast for determining actual fiscal impact.

Based on a request from the Senate Transportation Committee, the Transfer Team is re-assessing these estimates to develop a "best case" alternative for legislative consideration. This analysis will factor in the full impact of increased revenues from the export coal movement, SeaWay Express' entry into Seward, and additional special trains to meet the summer cruise ships at Whittier. This information will be provided to your committee as soon as it becomes available.

All estimates are presented in constant 1985 dollars and have been inflated from our original 1983 constant dollar estimates using an annual 6% inflation factor. The "general fund" line under the "funding component" is the projected annual shortfall to the State resulting from acquisition of the railroad. In FY 85, an overall appropriation of \$15.8 million will be needed to cover the expected shortfall.

The figures in this note are basically the same as those presented to the Senate Transportation Committee for the CS for SB 352. Another \$50,000 per year has been added to this note in response to the higher compensation levels for board members in Sec. 42.40.050, and the additional notice requirements in Sec. 42.40.090.

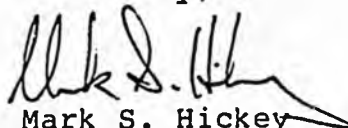
The FY 85 estimate is based on an assumption that actual transfer will occur somewhere between November and January of that fiscal year. Accordingly, most of the figures (e.g., revenues) are merely prorated for a seven month fiscal year ending in July 1985.

In addition, there are certain one-time, start-up expenditures directly attributable to the actual railroad transfer which causes the sizeable shortfall during FY 85. Included in this area are such items as \$4.9 million for replacement of the railroad's working capital fund, \$4.5 million for initiation of compliance with OSHA requirements and state and local building codes, and \$2 million for specific transition expenses to be incurred by the new corporation in taking over the railroad.

Another \$1.75 million of the 300 level contractual category is for the Alaska Railroad Transfer Team to perform its duties during FY 85. These funds are to support several one-time transition activities, most of which are already underway in this fiscal year. All other FY 85 fiscal impact to state agencies as a result of enacting this legislation has also been included in this submittal.

I trust this information helps to explain the highlights of the enclosed fiscal note. If you would like any additional assistance, please do not hesitate to contact me at 465-3900.

Sincerely,



Mark S. Hickey
State Railroad Coordinator

Enclosure

cc: Ray Gillespie, Legislative Liaison,
Office of the Governor
Ben Harding, Special Staff Assistant,
Office of the Governor
R. J. Knapp, Commissioner,
Department of Transportation &
Public Facilities
House Transportation Committee Members

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. CRB 512(Trsp)
Title: Alaska Railroad Corporation
Act of 1984
Sponsor: Hayes, et. al.
Requestor: Representative Cato
Date of Request: 3/22/84

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		24.350				
200 TRAVEL		300				
300 CONTRACTUAL		4.800				
400 SUPPLIES		5.200				
500 EQUIPMENT		1.200				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		1.500				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING	-0-	37.350	57.800	58.050	57.350	57.950
CAPITAL	-0-	15.800	20.450	20.450	20.450	20.450
REVENUE	-0-	37.350	67.200	70.200	73.300	76.350

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	15.800	11.050	8.300	4.500	2.050
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	37.350	67.200	70.200	73.300	76.350
TOTAL	-0-	53.150	78.250	78.500	77.800	78.400

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

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

ANALYSIS: Attach a separate page for analysis

Prepared By: Mark S. Hickey, State Railroad Coord. Phone: 465-3900
Division: Alaska Railroad Transfer Team Date: 3/22/84

Approved by Commissioner: R. J. Knapp Date: 3/22/84
Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

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

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION

FISCAL NOTE

Bill/Resolution No.: HB 512

Title: Alaska Railroad Corporation Act of 1984

BILL ANALYSIS

Overview:

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

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

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

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

Assumptions:

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

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

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

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

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

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

Operating Expenditures:

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

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

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

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

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

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

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

Capital Expenditures:

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

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

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

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

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

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

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

Revenue:

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

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

Funding Source:

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

Positions:

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

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

Summary:

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

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

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

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

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