

ALASKA LEGISLATURE COMMITTEE FILES DO 2020

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SB 212

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1 (b) A person may make written objections to the public
2 disclosure of information contained in an application, report or
3 document filed with the authority, stating the grounds for the
4 objection. When an objection is made, the board may order the
5 information withheld from public disclosure if the information
6 would adversely affect the interest of that person; is not
7 required in the interest of the public; and may be protected from
8 disclosure consistent with the standards and practices of ~~the~~
9 ~~Interstate Commerce Commission.~~ subsection (a) of this section.

10
11 ARTICLE 4. POWERS AND DUTIES

12
13 Sec. 42.40.400. GENERAL POWERS. ^{board, by its own undertaking,} ~~The/authority may:~~
14 or by appropriate delegation to the Chief Executive Officer, may:

- 15 (1) adopt a seal;
- 16 (2) adopt rules and regulations;
- 17 (3) sue and be sued;
- 18 (4) appoint officers, employees, trustees, and
19 agents, and prescribe their powers and duties;
- 20 ~~(5) hire legal counsel to represent the authority;~~
- 21 (6) make contracts and execute instruments
22 necessary or convenient in the exercise of its powers and duties;
- 23 (7) acquire by purchase, lease, bequest, devise,
24 gift, exchange, the satisfaction of debts, the foreclosure of
25 mortgages, or otherwise, real or personal property, rights,
26 rights-of-way, franchises, easements, and any other interests in
27 land, including land lying under water and appropriation of water
28 rights that are located in the state, taking title to the prop-
29 erty in the name of the authority;
- 30 (8) acquire property by eminent domain and/or by a
declaration of taking;

1 (9) hold, maintain, use, operate, lease, exchange,
2 donate, improve, convey, alienate, dispose of, mortgage,
3 encumber, and otherwise grant security interests in or transfer
4 any real or personal property including without limitation facil-
5 ities and equipment;

6 (10) borrow money and issue its bonds or notes and
7 provide for and secure their payment, provide for the rights of
8 their holders and purchase, hold, or dispose of its bonds or
9 notes;

10 (11) secure the payment of its obligations by
11 pledge or mortgage or other lien on its contracts, revenues,
12 income, or property;

13 (12) contract with and accept transfers, gifts,
14 grants or loans of funds or property from the United States, the
15 state, and its political subdivisions, and in that regard comply
16 with the provisions of federal, state, or local programs when
17 necessary;

18 (13) acquire, hold and dispose of stocks, member-
19 ships, contracts, bonds, general or limited partnership interests
20 or other interests in another corporation, association, part-
21 nership, joint venture or other legal entity, and exercise the
22 powers or rights in connection with these interests which are
23 provided in contracts or agreements and that are allowed by law
24 concerning the satisfaction of debts;

25 (14) undertake the management operation, main-
26 tenance, use, and control of all of the properties of the Alaska
27 Railroad including without limitation, the tracks, equipment and
28 other property transferred to it by the federal government or by
29 any person;

30

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Line 6

The word "Authority" should be changed to "board."

Line 9-10

(17) It should read "lend the authority's funds, property, credit or services for authority purposes."

1 (15) undertake or provide for the acquisition,
2 construction, maintenance, equipping, and operation of con-
3 necting, switching, terminal, or other railroads and railroad
4 facilities in the state;

5 (16) recommend to the legislature and the governor
6 any tax, financing, and security measures the ^{board} ~~authority~~ considers
7 appropriate for maximizing the public interest in the operation
8 of the railroad;

9 (17) lend ^{the authority's} ~~its~~ funds, property, credit or services
10 for authority purposes;

11 (18) consent to the modification of the rate of
12 interest, time of payment of an installment of principal or
13 interest, or other terms of a loan, contract, or agreement of any
14 kind to which the authority is a party;

15 (19) include in any borrowing the amounts
16 necessary to establish reasonable reserves and pay financing
17 charges and interest on the obligations for a reasonable period
18 after which the authority estimates funds will be otherwise
19 available to pay the interest, consultant, advisory, and legal
20 fees, and such other expenses as are necessary or incident to
21 this borrowing;

22 (20) maintain offices and facilities at places it
23 may designate;

24 (21) purchase the authority's bonds at a price not
25 more than the principal amount of them plus interest;

26 (22) cancel bonds purchased under 42.40.400(21);

27 (23) apply to the appropriate agencies of the
28 state, the United States, and to a foreign country and other
29 proper agencies for the permits, licenses, or approvals as may be
30 necessary to construct, maintain and operate transportation

Line 25

Between the word "on" and the word "property" the phrase "or to" should be inserted. The change is requested to allow the security force to act as state law enforcement officers for violations that occur to property owned, managed or transported by the authority but that do not occur on property owned, managed or transported by the authority.

1 services, and to obtain, hold and reuse the licenses and permits
2 in the same manner as other persons or operating units;

3 (24) prescribe rates to be charged for services
4 provided by the Alaska Railroad;

5 (25) determine the routes, schedules, and types of
6 service to be provided by the Alaska Railroad;

7 (26) enter into contracts, leases, and other
8 agreements with connecting carriers, shippers, and other persons
9 concerning the service, activities, operations, properties and
10 facilities of the railroad, including contracts, leases and other
11 agreements that contain provisions intended to preserve and
12 expand the railroad's traffic base;

13 (27) plan for and undertake expansion of the
14 railroad and railroad activities, including extension of the
15 Alaska Railroad's rail system and acquisition and operation of
16 other modes of transportation service connecting to the
17 railroad's rail service;

18 (28) adopt regulations designed to safeguard prop-
19 erty owned, managed or transported by the authority, to protect
20 employees and persons using the authority's property or services,
21 and to promote safe, healthy, secure, and effective railroad
22 operations, which regulations shall have the force of law and be
23 enforceable in the same manner as civil and criminal statutes of
24 the state; and maintain a security force to enforce state law and
25 the authority's regulations. For violations that occur on ^{or to} prop-
26 erty owned, managed or transported by the authority, the security
27 force has the same powers and statewide jurisdiction as state law
28 enforcement officers;

29 (29) adopt rules and regulations having the force
30 of law that require designated classes of proprietary and person-
nel information and communications to be confidential;

Line 29-30

Lines 29 - 30 of page 20 and lines 1 - 12 of page 21 should be stricken. Both the Governor and the Legislative Auditors are inexperienced in railroad accounting, in transportation law such as the Interstate Commerce Act, and in business practices as opposed to governmental practices. As a result, information of a confidential nature is subject to leakage without the safeguards of a fiduciary relationship between an accounting firm and the authority. The Railroad believes information in the hands of either the legislative or governor auditor would not remain confidential. If the Legislature and the Governor want access to audit information, they should either be given a voice along with the board in selecting the accounting firm or alternatively they should be allowed access through an independent certified accountant experienced in railroad accounting. Only the former alternative is presented in the suggested Railroad changes to the bill.

1 (30) hire and discharge railroad personnel and
2 determine benefits and other terms and conditions of employment,
3 that may be established in accordance with the obligations
4 imposed by the federal legislation that transfers the Alaska
5 Railroad to the state.

6 (31) ~~assume and satisfy all liabilities of the~~
7 ~~United States or its agencies as provided by the federal transfer~~
8 ~~legislation and the closing report, or its substantive equiva-~~
9 ~~lent, made under it and as accepted by the legislature; and~~

10 (32) do all things necessary, convenient or
11 desirable to carry out the powers and duties expressly granted or
12 necessarily implied in this chapter, or under other laws of the
13 state, or the laws and regulations of the federal government.

14 Sec. 42.40.410. ANNUAL REPORT. The board shall direct prep-
15 aration of, certify and distribute to the governor and to each
16 member of the legislature by February 1 of each year a report
17 generally describing the operations and financial condition of
18 the authority. The board may include in the report suggestions
19 for legislation relating to the structure, powers, or duties of
20 the authority or relating to the operation of railroad facilities
21 of the authority.

22 Sec. 42.40.420. ANNUAL AUDIT. The board, ^{/after concurrence by the}
^{/legislature and the governm} shall have the
23 financial records of the authority audited annually by an inde-
24 pendent certified public accountant experienced in railroad
25 accounting. To the extent practicable, for the five years
26 following the date of transfer, the status of the assets and
27 liabilities specifically identified in the closing report sub-
28 mitted under the federal transfer legislation shall be noted in
29 the annual audit. ~~The authority shall, at all times during nor-~~
30 ~~mal business hours and as often as the governor's internal~~

Line 22-28

42.40.425 (a) (1) should stop after the words "A.S. 37.07.050" on line 22. The Alaska Railroad should not be subject to legislative auditor and the division of budget and management unless the ARR is using State funds. An annual independent audit is recommended. 37.07.050 sets forth the requirements for "agency programs and financial plans." Nothing more need be said.

1 ~~auditor or the legislative auditor considers necessary, make~~
2 ~~available to the governor's internal auditor or the legislative~~
3 ~~auditor for examination all of its financial records, and will~~
4 ~~permit the governor's internal auditor or legislative auditor to~~
5 ~~audit, examine and make excerpts or transcripts from the records,~~
6 ~~and to make audits of all contracts, invoices, materials,~~
7 ~~payrolls, records of personnel, conditions of employment, provi-~~
8 ~~sion of services and the rates at which the services are provided~~
9 ~~and other data related to all these matters. Access to the above~~
10 ~~information shall be unrestricted, but disclosure of it is sub-~~
11 ~~ject to A.S. 42.40.340 and rules and regulations implementing~~
12 ~~that section.~~

13 Sec. 42.40.425. LONG-RANGE PROGRAM AND CAPITAL PLANNING.

14 (a) Within 18 months of the date of transfer, the authority
15 shall prepare and the board shall adopt long-range program and
16 capital improvement plans.

17 (1) The long-range program plan shall delineate
18 the manner in which the authority will accomplish the purposes of
19 and fulfill its responsibilities under this chapter during each
20 of the five years commencing with the year in which the initial
21 plan is adopted. The plan shall provide information substan-
22 tially consistent with the requirements of A.S. 37.07.050, the
23 ~~format of which shall be jointly determined by the authority, the~~
24 ~~legislative auditor and the division of budget and management.~~
25 ~~Beginning three years after the preparation of the initial plan,~~
26 ~~the governor and the legislative auditor may conduct an annual~~
27 ~~performance and efficiency audit of the authority's compliance~~
28 ~~with the plan.~~

29
30

Page 22

Lines 4 - 7

Subsection (2) should consist of the first sentence only. 47.07.060 requires the Governor to present long-range capital plans to the Legislature. The Railroad should be included in that.

1 (2) The long-range capital improvement plan shall
2 present and explain the authority's anticipated capital improve-
3 ments for each of the five years commencing with the year in
4 which the initial plan is adopted. ~~The plan shall, without limi-~~
5 ~~tation, include all of the information required by Sec.~~
6 ~~42.40.700(b) together with any other information prescribed by~~
7 ~~the governor or the legislative auditor.~~

8 (b) The plans shall be annually revised by the
9 authority and adopted by the board.

10 (c) The authority shall provide copies of its initial
11 and subsequent plans to the governor and the leadership of the
12 legislature.

13 Sec. 42.40.430. USE OF AUTHORITY ASSETS. (a) The authority
14 shall apply all funds, property, other assets and credit of the
15 authority toward activities authorized by this chapter. The
16 authority may not issue shares of stock, pay dividends, make pri-
17 vate distribution of assets, make loans to council members or
18 employees, or engage in business for private benefit. The use of
19 authority funds, property, other assets or credit for purposes
20 not authorized by law by persons having the possession or control
21 of it is prohibited.

22 (b) Notwithstanding the provisions of this section, the
23 authority may:

24 (1) assist board members and employees as members
25 of a general class of persons to be assisted by an activity to
26 the same extent as other members of the class and as long as no
27 special privileges or treatment accrues to the member or employee
28 by reason of his status or position in the authority;

29 (2) return to board members and employees fees,
30 dues or service charges originally contributed by them and
surplus to the purposes for which collected;

1 (3) defend and indemnify any current or former
2 authority employee, agent, or board member, and their successors,
3 against all costs, expenses, judgments, and liabilities,
4 including attorney's fees, reasonably incurred by or imposed upon
5 him in connection with or resulting from any claim, action, or
6 proceeding, civil or criminal, in which he is or may be made a
7 party by reason of being or having been an authority board
8 member, employee or agent or by reason of an action alleged to
9 have been taken or omitted by him as a board member, employee, or
10 agent if he was acting in good faith on behalf of the authority
11 and within the scope of duties imposed or authorized by law.
12 This power of indemnification is not exclusive of other rights
13 to which authority board members, employees, and agents are
14 entitled as a matter of law; and

15 (4) purchase insurance to protect and hold per-
16 sonally harmless its employees, agents, and board members from
17 any action, claim, or proceeding instituted against the foregoing
18 individuals arising out of the performance, purported perfor-
19 mance, or failure of performance, in good faith, of duties for,
20 or employment with, the authority and to hold these individuals
21 harmless from expenses connected with the defense, settlement, or
22 monetary judgments from such actions, claims, or proceedings.
23 The purchase of such insurance and its policy limits are discre-
24 tionary with the authority board, and such insurance is not con-
25 sidered to be compensation to the insured individuals. The
26 powers conferred by this paragraph are not exclusive of any other
27 powers conferred by law to purchase liability insurance.

Lines 11-25

Subsection (b) of 42.40.500 should be stricken. All of the Railroad land should be held intact until the reversionary period set forth in the Federal legislation is over. During this reversionary period, according to a draft of the Federal transfer legislation, land "converted to a use that would prevent the property from being used to operate or support the Railroad" would trigger either a reversion to the United States or a payment by the State of the value of the real property. If the Federals require a three-year period, then during that same period the legislators can determine whether they wish the Railroad to operate its own coal lands or the subsurface of all its lands or they wish the Commissioner of Natural Resources to do so. In the meantime, the State should take no action reducing the Railroad's interest in lands conveyed from the Federal Government.

The Railroad, during this debate will argue for the control of the subsurface to its lands. The Alaska Railroad does have coal reserves the same as the Union Pacific Railroad, the Burlington Northern, Inc., and the Denver Rio Grande, etc. If the Alaska Railroad loses its mineral rights to the State, it would reduce the potential of the ARR to earn royalties to keep revenues above expenses and to use coal once the petroleum era is over. Also, the right to use the subsurface for rocks, sand and gravel and for tunnels, ditches, and other recontouring of land is important to the Railroad.

1
2
3 ARTICLE 5. RAIL PROPERTIES

4 Sec. 42.40.500. RAIL PROPERTIES. (a) The authority shall
5 receive from the United States and, in its own name, take title
6 to all rail properties transferred under the federal transfer
7 legislation. All lands among the rail properties so transferred
8 or otherwise acquired by the authority are subject to
9 A.S. 38.95.010 and are not subject to classification or disposal
10 under A.S. 38 or other state law, except as otherwise specifi-
11 cally provided in this chapter.

12 ~~(b) Within 120 days after transfer of the rail proper-~~
13 ~~ties, the authority shall convey to the state the subsurface~~
14 ~~estate of and the mineral rights in the lands among the rail~~
15 ~~properties. The conveyance shall be made by one or more~~
16 ~~quitclaim deeds executed by the general manager and delivered to~~
17 ~~the commissioner of natural resources. The authority may reserve~~
18 ~~in each quitclaim deed the right to extract and use for the~~
19 ~~authority's purposes sand, gravel and other construction~~
20 ~~materials on the subject lands. The interest retained by the~~
21 ~~authority after conveyance to the state under this subsection~~
22 ~~entitles it to exclusive use and control of the surface, complete~~
23 ~~subjacent and lateral support of the surface, and the right to~~
24 ~~tunnel, ditch, recontour, excavate and otherwise use the subsur-~~
25 ~~face for railroad, transportation, transmission and related pur-~~
26 ~~poses.~~

27 (c) The authority is authorized to litigate, compro-
28 mise, and otherwise settle claims related to the transfer of rail
29 properties from the United States and to recover for breach of
30 warranties made or other obligations assumed by the United States
or other party in relation to the transfer or status of the rail
properties.

Lines 14-21

Subsection (f) of 42.40.500 should be deleted, because no interest in real property should be disposed of until after the termination of the Federal reversionary period during which time any land converted from possible railroad use either reverts to the United States or the State pays the United States the value of the real property.

1 (d) The authority is authorized to submit applications
2 on its own behalf as a political subdivision of the state for
3 acquisition of interests in federal lands available under
4 federal law that will enhance the operations of the authority and
5 to receive conveyances of all the interests in its own name.

6 (e) The authority, as an agency of the state, may
7 acquire in its own name from the United States under the Surplus
8 Property Act (50 App. U.S.C. 1622 et seq.), the Federal Property
9 and Administrative Services Act of 1949 as amended (40 U.S.C. 471
10 et seq.), or other law, property under the control of a federal
11 department or agency that is useful for the authority's purposes
12 and may acquire from the Department of Administration property of
13 the state made available under A.S. 44.71.010 - .040.

14 ~~(f) Before disposing of an interest in real property,~~
15 ~~other than a leasehold, a utility or access easement, or a land~~
16 ~~use permit, to a party other than the state, the authority shall~~
17 ~~give public notice of the disposition in two newspapers of~~
18 ~~general circulation. The authority shall make copies of the~~
19 ~~notice available to the public at its administrative office, and~~
20 ~~mail copies of the notice to the director of the division of~~
21 ~~lands, the governor and the leadership of legislature.~~

22 Sec. 42.40.510. CLASSIFICATION, ACQUISITION AND USE OF
23 STATE LANDS FOR RAILROAD PURPOSES. (a) The board by resolution
24 may identify lands owned by or subject to selection by the state,
25 including tide and submerged lands, as necessary or useful for
26 present or intended railroad purposes. The resolution shall
27 include a statement of and justification for the present or
28 intended railroad use and the date when such use should commence.
29 Upon submission of the resolution and a request for classifica-
30 tion and conveyance to the commissioner of natural resources, the

Lines 20-30

All of subsection (c) of 42.40.510 should be stricken. There is no need for joint management of Railroad lands. Moreover, the joint use of Railroad lands could trigger either the reversion of land to the United States or the payment by the State of the value of the lands. During the reversionary period, the legislature should determine who is to control the land, whether it be the surface or subsurface, and whether joint control is necessary.

1 commissioner may temporarily classify and reserve the lands iden-
2 tified in the request for railroad purposes and may temporarily
3 vacate a classification allowing disposal or lease of such lands
4 under laws or programs of the state. Such a temporary classifi-
5 cation and vacation will be subject to valid existing rights.

6 (b) Within 180 days after receiving the request, the
7 commissioner of natural resources by departmental order shall
8 either (1) permanently classify the surface estate of those lands
9 for railroad purposes and, subject to valid existing rights, con-
10 vey the state's interests in and to the surface estate of those
11 lands to the authority; or (2) deny the classification and con-
12 veyance as not in the best interest of the state. The com-
13 missioner of natural resources may approve in part and deny in
14 part the request for classification. In the absence of a reser-
15 vation to the contrary, a conveyance under this subsection vests
16 in the authority the exclusive right to extract and use sand,
17 gravel and other construction materials on the lands conveyed
18 without regard to the classification of such resources as part of
19 the surface or subsurface estate.

20 ~~(c) The authority and the commissioner of natural~~
21 ~~resources may agree to joint management of railroad lands and to~~
22 ~~conditions for classification of such lands. The authority and~~
23 ~~the commissioner of natural resources may agree to periodic joint~~
24 ~~review of state lands to determine their suitability for railroad~~
25 ~~purposes and periodic joint review of the status of railroad~~
26 ~~lands to determine the necessity for their continued ownership by~~
27 ~~the authority. The authority may reconvey to the state lands~~
28 ~~that the authority and the commissioner of natural resources~~
29 ~~jointly identify as unnecessary or unsuitable for the authority's~~
30 ~~purposes.~~

Lines 16-17

The words "Chief Executive Officer" should replace the words "General Manager."

Lines 20-30

42.40.515 should be deleted until such time as the reversionary period set forth in the Federal statute is complete, because non-railroad uses of railroad lands could trigger the reversion of real property to the Federal government or the payment by the State of the value of the real property interest. During this same period, strenuous debate can be had with legislators, the Governor and the public as to the management and development of Railroad land. However, the authority should have the right to use or to develop natural resources on its lands so that its income will be greater than its expenses.

1 (d) The authority's ownership of a surface interest in
2 state land entitles it to exclusive use and control of the
3 surface, complete subjacent and lateral support of the surface,
4 and the right to tunnel, ditch, recontour, excavate or otherwise
5 use the subsurface for railroad, transportation, transmission
6 and related purposes.

7 (e) When physical conditions require that track or
8 other right-of-way fixtures of the authority be moved from the
9 existing location and relocated on state-owned lands adjacent to
10 or in the vicinity of the existing right-of-way, and the ^{chief executive} ~~general-~~
11 ~~manager~~ ^{officer} determines that such relocation is necessary to maintain
12 safe and adequate rail operations, the authority may effect the
13 necessary relocation after notice to the department of natural
14 resources. The relocation shall be limited to land adequate to
15 restore or continue safe rail operations at a normal level.
16 Within 45 days after a relocation under this subsection, the
17 authority shall request classification and conveyance of the
18 lands for railroad purposes in accordance with (a) of this sec-
19 tion.

20 ~~Sec. 42.40.515. DEVELOPMENT OF OIL, GAS, MINERALS AND~~
21 ~~GEOHERMAL RESOURCES ON AUTHORITY LANDS. (a) The department of~~
22 ~~natural resources, in accordance with A.S. 38.05, may lease or~~
23 ~~otherwise develop oil, gas, minerals and geothermal resources~~
24 ~~located on lands in which the authority owns an interest,~~
25 ~~including a surface interest, only upon satisfaction of the~~
26 ~~following conditions:~~

27 (1) ~~The department of natural resources submits to~~
28 ~~the authority a request for authorization identifying the~~
29 ~~interest to be developed and describing with specificity the pro-~~
30 ~~posed plan for development of the interest, potential negative~~

1 ~~effects the proposed development may have on the authority's~~
2 operations, and measures which will be instituted to avert or
3 mitigate such effects;

4 (2) The authority reviews the request for authori-
5 zation and, after considering potential negative effects and pro-
6 posed mitigation measures, determines that the plan of
7 development presents no appreciable risk of interference with the
8 operations of the authority;

9 (3) The department of natural resources and the
10 authority agree upon a suitable requirement that the lessee or
11 party other than the state undertaking the development reimburse
12 the authority from the proceeds of the development for costs
13 incurred by the authority and materials lost by the authority as
14 a result of the development; and

15 (4) The authority issues to the department of
16 natural resources a written authorization to proceed with the
17 plan for lease or development. The authority may not unreason-
18 ably withhold its consent to a request for authorization sub-
19 mitted by the department of natural resources under this section.

20 (b) The department of natural resources shall require
21 a party other than the state exercising rights under this section
22 to post a surety bond in an amount sufficient to secure the
23 authority against potential detrimental effects of the activity
24 undertaken.

25 (c) The department of natural resources shall maintain
26 an accurate record of all income received by the state from the
27 lands in which the authority has an interest and of the value of
28 all subsurface conveyed by the authority to the state. The
29 ~~department of natural resources shall prepare a yearly summary of~~

30

Lines 24-26

Because this subsection (b) of 42.40.520 requires the Railroad to convey the subsurface estate to the State, the Railroad is prevented from using eminent domain to acquire subsurface resources such as coal, gravel, sand and rock.

1 ~~such income and subsurface value and submit it to the legislature~~
2 ~~before March 15 of each year after transfer.~~

3 ~~(d) There is established in the state treasury a fund~~
4 ~~which is identified as the Alaska Railroad Income Fund. All~~
5 ~~income received by the state from lands in which the authority~~
6 ~~has an interest shall be deposited into the fund. The fund shall~~
7 ~~be subject to appropriation by the legislature.~~

8 Sec. 42.40.520. LAND USE REGULATION. The board is
9 authorized to adopt regulations governing land use by private
10 parties having interests in or permits for lands owned or managed
11 by the authority. The power conferred by this section is exer-
12 cised for the common health, safety and welfare of the public
13 and, to the extent constitutionally permissible, shall not be
14 limited by the terms and conditions of leases, contracts or other
15 transactions with private parties.

16 Sec. 42.40.530. EMINENT DOMAIN AND ACQUISITION OF PROPERTY
17 AND MATERIALS. (a) The authority may exercise the power of emi-
18 nent domain, pursuant to A.S. 09.55.240 - .460, to acquire land
19 or an interest therein for lawful purposes consistent with this
20 chapter.

21 (b) The authority may acquire a fee simple title
22 whenever, in the judgment of the authority, ownership of a fee
23 simple is necessary to effectuate the authority's lawful purposes
24 in condemning property. ~~When the authority acquires a fee~~
25 ~~simple, it shall as soon as practicable reconvey the subsurface~~
26 ~~estate to the state by a quitclaim deed.~~

27 (c) A.S. 09.55.310(a)(4) and A.S. 09.55.350 do not
28 apply to the authority.

29 (d) The authority may file a declaration of taking,
30 under A.S. 09.55.420 - .460, in the same manner and with the same
effect as the state; and

Lines 1-4

Subsection (b) of this section 42.40.530 requires the subsurface estate to be reconveyed to the State so this subsection (e) would have no effect unless the subsurface or the gravel, sand and rock part of the subsurface could remain with the Railroad.

1 (e) The authority's power of eminent domain includes,
2 without limitation, the power to obtain material, including clay,
3 gravel, sand, or rock, the land necessary to obtain the material,
4 and access to the land and material.

5 (f) The authority may vacate land, or part of it, or
6 rights in land acquired for railroad purposes by executing and
7 filing a deed in the appropriate recording district. Upon
8 vacating, title reverts to the State of Alaska, if compensation
9 has been paid.

10
11 ARTICLE 6. FINANCIAL PROVISIONS
12

13 Sec. 42.40.600. BONDS AND NOTES. (a) The authority, by
14 resolution of the board, may issue bonds and bond anticipation
15 notes to provide money to carry out its purposes.

16 (b) The principal and interest on the bonds or notes of
17 the authority are payable from money or assets of the authority.
18 Bond anticipation notes may be payable from the proceeds of the
19 sale of bonds or from the proceeds of sale of other bond antici-
20 pation notes or, if bond or bond anticipation note proceeds are
21 not available, the notes may be paid from other money or assets
22 of the authority. Bonds or notes may be additionally secured by
23 a pledge of a grant or contribution or other property from the
24 federal government, the state or any of its other political sub-
25 divisions, or a corporation, association, institution or person,
26 or a pledge of money, income, or revenues of the authority from
27 any source.

28 (c) Bonds or bond anticipation notes may be issued in
29 one or more series and shall be dated, bear interest (fixed or
30 variable) at the rate or rates per year or within the maximum

1 rate, be in the denomination, be in the form, either coupon or
2 registered, carry the conversion or registration provisions, have
3 the rank of priority, be executed in the manner and form, be
4 payable from the sources in the medium of payment and place or
5 places inside or outside the state, be subject to authentication
6 by a trustee or fiscal agent, and be subject to the terms of
7 redemption with or without premium, as the resolution of the
8 board may provide. Bond anticipation notes mature at the time or
9 times as may be determined by the board. Bonds mature at the
10 time, not exceeding 50 years from their date, as may be deter-
11 mined by the board. Before the preparation of definitive bonds
12 or bond anticipation notes, the authority may issue interim
13 receipts or temporary bonds or bond anticipation notes, with or
14 without coupons, exchangeable for bonds or bond anticipation
15 notes when these definitive bonds or bond anticipation notes have
16 been executed and are available for delivery.

17 (d) Bonds or bond anticipation notes may be sold in the
18 manner, on the terms, and at the price the board determines.

19 (e) If an officer whose signature or a facsimile of
20 whose signature appears on bonds or notes or coupons attached to
21 them ceases to be an officer before the delivery of the bond,
22 note or coupon, his signature or facsimile is valid as if he had
23 remained in office until delivery.

24 (f) Bond or bond anticipation note proceeds may not be
25 dedicated to activities other than those the board reasonably
26 determines to be specifically related to the purposes for which
27 the instruments are issued.

28 (g) In a resolution of the board authorizing or
29 relating to the issuance of bonds or bond anticipation notes, the
30

1 board has power by provisions in the resolution that will consti-
2 tute covenants of the authority, and contracts with the holders
3 of the bonds or bond anticipation notes:

4 (1) to pledge to a payment or purpose all or a
5 part of its revenues to which its right then exists or may
6 thereafter exist, and the money derived from the revenues, and
7 the proceeds of its bonds or notes;

8 (2) to covenant against pledging all or part of
9 its revenues, or against permitting or suffering a lien on the
10 revenues or its property;

11 (3) to covenant as to establishment of reserves or
12 sinking funds and the provision for and the regulation and dispo-
13 sition of the reserves or sinking funds;

14 (4) to covenant with respect to or against limita-
15 tions on a right to sell or otherwise dispose of property of any
16 kind;

17 (5) to covenant as to bonds and notes to be
18 issued, and their limitations, terms and conditions, and as to
19 the custody, application and disposition of the proceeds of the
20 bonds and notes;

21 (6) to covenant as to the issuance of additional
22 bonds or notes, or as to limitations on the issuance of addi-
23 tional bonds or notes and the incurring of other debts;

24 (7) to covenant as to the payment of the principal
25 of or interest on the bonds or notes, as to the sources and
26 methods of payment, as to the rank or priority of the bonds or
27 notes with respect to a lien or security, or as to the accelera-
28 tion of the maturity of the bonds or notes;

29 (8) to provide for the replacement of lost, sto-
30 len, destroyed or mutilated bonds or notes;

1 (9) to covenant against extending the time for the
2 payment of bonds or notes or interest on the bonds or notes;

3 (10) to covenant as to the redemption of bonds or
4 notes and privileges of their exchange for other bonds or notes
5 of the authority;

6 (11) to covenant to create or authorize the
7 creation of special funds of money to be held in pledge or other-
8 wise for operating expenses, payment or redemption of bonds or
9 notes, reserves or other purposes, and as to the use and disposi-
10 tion of the money held in the funds;

11 (12) to establish the procedure, if any, by which
12 the terms of a contract or covenant with or for the benefit of
13 the holders of bonds or notes may be amended or abrogated, the
14 amount of bonds or notes the holders of which must consent to
15 amendment or abrogation, and the manner in which the consent may
16 be given;

17 (13) to covenant as to the custody of its proper-
18 ties or investments, their safekeeping and insurance, and the use
19 and disposition of insurance money;

20 (14) to vest in a trustee or trustees inside or
21 outside the state property, rights, powers, and duties in trust
22 as the authority may determine, that may include any or all of
23 the rights, powers and duties of a trustee appointed by the
24 holders of bonds or notes of the authority, and to limit or abro-
25 gate the rights of the holders of the bonds or notes of the
26 authority to appoint a trustee under this chapter or limit the
27 rights, powers and duties of the trustee;

28 (15) to pay the costs or expenses incident to the
29 enforcement of the bonds or notes or of the provisions of the
30 resolution or of a covenant or agreement of the authority with
the holders of its bonds or notes;

1 (16) to agree with an authority trustee that may
2 be a trust company or bank having the powers of a trust company
3 inside or outside the state as to the pledging or assigning of
4 revenues or funds which or in which the authority has any rights
5 or interest; the agreement may further provide for other rights
6 and remedies exercisable by the trustee as may be proper for the
7 protection of the holders of bonds or notes of the authority and
8 not otherwise in violation of law and may provide for the
9 restriction of the rights of an individual holder of bonds or
10 notes of the authority;

11 (17) to appoint and provide for the duties and
12 obligations of a paying agent or paying agents, or other fidu-
13 ciaries as the resolution may provide inside or outside the
14 state;

15 (18) to limit the rights of the holders of bonds
16 or notes of the authority to enforce a pledge or covenant
17 securing the bonds or notes; and

18 (19) to make covenants other than and in addition
19 to the covenants expressly authorized in this section, of like or
20 different character, and to make the covenants to do or refrain
21 from doing the acts and things as may be necessary, or convenient
22 and desirable, in order to better secure bonds or notes or which,
23 in the absolute discretion of the council will tend to make bonds
24 or notes more marketable, notwithstanding that the covenants,
25 acts or things may not be enumerated in this section.

26 Sec. 42.40.610. INDEPENDENT FINANCIAL ADVISOR. In nego-
27 tiating the private sale of bonds or bond anticipation notes to
28 an underwriter, the board shall retain a financial advisor who is
29 independent from the underwriter.

30 Sec. 42.40.615. VALIDITY OF PLEDGE. The pledge of assets or
revenues of the authority to the payment of the principal or

1 interest on bonds or notes of the authority is valid and binding
2 from the time the pledge is made, and the assets or revenues are
3 immediately subject to the lien of the pledge without physical
4 delivery or further act. The lien of a pledge is valid and
5 binding against all parties having claims of any kind in tort,
6 contract, or otherwise against the authority, irrespective of
7 whether those parties have notice of the lien of the pledge.
8 Nothing in this section prohibits the authority from selling
9 assets subject to a pledge, except that a sale may be restricted
10 by the trust agreement or resolution providing for the issuance
11 of the bonds or notes.

12 Sec. 42.40.620. REMEDIES. A holder of bonds or notes or of
13 coupons attached to them issued under this chapter, and a trustee
14 under a trust agreement or resolution authorizing the issuance of
15 the bonds or notes, except as restricted by a trust agreement or
16 resolution, either at law or in equity, may enforce all rights
17 granted under this chapter or under the trust agreement or reso-
18 lution, or under any other contract executed by the authority
19 under this chapter, and may enforce and compel the performance of
20 all duties required by this chapter or by the trust agreement or
21 resolution to be performed by the authority or by its board mem-
22 bers or employees.

23 Sec. 42.40.625. NEGOTIABLE INSTRUMENTS. Bonds and notes and
24 interest coupons attached to them issued under this chapter are
25 negotiable instruments under the laws of this state, subject only
26 to applicable provisions for registration.

27 Sec. 42.40.630. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.
28 Bonds and notes issued under this chapter are securities in which
29 all public officers and public bodies of the state and its polit-
30 ical subdivisions, all insurance companies, trust companies,

1 banking associations, investment companies, executors, admin-
2 istrators, trustees and other fiduciaries may properly and
3 legally invest funds, including capital in their control or
4 belonging to them. These bonds and notes may be deposited with a
5 state or municipal officer of any agency or political subdivision
6 of the state for any purpose for which the deposit of bonds or
7 notes of the state is authorized by law.

8 Sec. 42.40.635. REFUNDING BONDS. (a) The authority may
9 provide for the issuance of refunding bonds for the purpose of
10 refunding any bonds then outstanding that have been issued under
11 this chapter, including the payment of any redemption premium on
12 them and any interest accrued or to accrue to the date of redemp-
13 tion of the bonds. The issuance of the refunding bonds, the
14 maturities and other details of them, the rights of the holders
15 of them, and the rights, duties and obligations of the authority
16 in respect of them are governed by the provisions of this chapter
17 which relate to the issuance of bonds, insofar as those provi-
18 sions may be appropriate.

19 (b) Refunding bonds may be sold or exchanged for
20 outstanding bonds issued under this chapter and, if sold, the
21 proceeds may be applied, in addition to other authorized pur-
22 poses, to the purchase, redemption or payment of the outstanding
23 bonds. Pending the application of the proceeds of refunding
24 bonds, with any other available money, to the payment of the
25 principal, accrued interest and any redemption premium on the
26 bonds being refunded, and, if so provided or permitted in the
27 resolution authorizing the issuance of the refunding bonds or in
28 the trust agreement securing them, to the payment of any interest
29 on the refunding bonds and any expenses in connection with the
30 refunding, the proceeds may be invested in direct obligations of,

Lines 25-28

This section creates a financial revolving fund. All Revenues go into the fund; all expenses are taken from the fund. The surplus in the fund can be obligated to capital improvements, major maintenance programs, and other financial needs.

Lines 24-30

42.40.655 - The Board of Directors "may" instead of "shall maintain in full force and effect public liability insurance." The reason for this change is that the authority may find that the authority may not be able to obtain insurance at either any cost or a reasonable cost and that therefore it is more efficient to be its own insurer and defend its own tort lawsuits. It is a business decision, not a political one, and so should remain with the Railroad. If the ARR maintains public liability insurance, any additional coverage required by the State naming the State as an additional insured should be funded by the State.

1 or obligations the principal of and the interest on which are
2 unconditionally guaranteed by, the United States of America, the
3 State of Alaska or other entities with comparably rated credit
4 that mature or that will be subject to redemption, at the option
5 of the holders of them, not later than the respective dates when
6 the proceeds, together with the interest accruing on them, will
7 be required for the purposes intended.

8 Sec. 42.40.640. CREDIT OF STATE NOT PLEDGED; REQUIRED
9 DISCLAIMER. Bonds and notes issued under this chapter do not
10 constitute a debt, liability, or obligation of the state or a
11 pledge of the faith and credit of the state or of a political
12 subdivision other than the authority but are payable solely from
13 the revenues or assets of the authority. Each bond and note
14 issued under this chapter shall contain on its face a statement
15 that the authority is not obligated to pay it nor the interest on
16 it except from the revenues or assets pledged for it and that
17 neither the faith and credit nor the taxing power of the state or
18 of a political subdivision other than the authority is pledged to
19 the payment of the principal of or the interest on the bond or
20 note.

21 Sec. 42.40.645. NO PERSONAL LIABILITY. No board member or
22 employee of the authority is subject to personal liability or
23 accountability because of his execution of bonds or notes or
24 their issuance.

25 Sec. 42.40.650. REVENUES. Revenues generated by the Alaska
26 Railroad Authority do not become part of the general fund of the
27 state but shall be retained and managed by the authority for pur-
28 poses authorized by this chapter.

29 Sec. 42.40.655. INSURANCE. The authority ^{may} shall maintain in
30 full force and effect public liability insurance in an amount

Lines 21-25

The phrases "expansion, reduction or diversification of services" and "significant and permanent change in the level and nature of services" need to be clarified. The above two phrases are far too broad and can be interpreted to apply to expansions, reductions or diversifications of service due to normal business changes.

1 reasonably calculated to cover potential claims for bodily
2 injury, death or disability, and property damage that may arise
3 from or be related to its operations and activities, naming the
4 state as an additional insured. Any cost incurred for naming the State as
an additional insured shall be funded by the State of Alaska.

5 Sec. 42.40.660. SAFEGUARDING OF FUNDS. The authority shall
6 maximize revenues from and deposit all funds in depositories
7 acceptable to the governor and otherwise safeguard the funds
8 under instructions as the governor may from time to time issue.

9 Sec. 42.40.665. FIDELITY BOND. The authority shall obtain a
10 fidelity bond in an amount determined adequate by the board for
11 its members and any official responsible for accounts and finan-
12 ces to be in full force and effect for the duration of his tenure
13 in office.

14 Sec. 42.40.670. REVERSION OF ASSETS. In the event the
15 authority ceases to exist, for whatever reason, its assets
16 revert to the state.

17

18 ARTICLE 7 - STATE OVERSIGHT

19

20 Sec. 42.40.700. STATE REVIEW. (a) Prior to unertaking:

21 (1) expansion, reduction or diversification of
22 services provided by the railroad upon date of transfer to the
23 authority or as subsequently provided under this chapter that
24 would represent a significant and permanent ^{planned}/change in the level
25 and nature of services provided;

26 (2) extension of main or branch lines by more than
27 25 miles or five percent of the railroad's total track mileage,
28 whichever is greater; or

29

30

Lines 13-30

42.40.700 - Subsection (c) and (d) should be stricken as unnecessary. The review of any proposed action of the Railroad are unnecessary because the legislature and/or the Governor can, through resolution or legislative act or Governor's edict suggest changes or stop any action of the Railroad.

The power of the governor to intervene would make the authority a part of the executive branch government. For the benefit of the citizens of the State of Alaska, the authority should be operated as a business in competition with the rest of the transportation industry, which is in the private sector of the economy. The power of the governor to intervene would allow the governor the opportunity to award his political friends and punish his political enemies.

Similarly, the power of the legislature to intervene with respect to any "expansion, reduction or diversification of services"(an over broad phrase), would allow intervention on the basis of political reasons when only business considerations should be used.

1 (3) the issuance of securities, notes, bonds or
2 contracting for other borrowings with a term in excess of one
3 year and in an amount exceeding \$5 million (\$5,000,000);

4 the board shall notify the governor and leadership of the
5 legislature of any such proposal, and when necessary may request proper
6 funding or aid in funding.

7 (b) The notice shall be in writing and describe the
8 proposed undertaking in detail, specifying its financial impact
9 on the authority; its impact on the level and nature of services
10 provided by the authority; why the project is necessary or
11 desirable to achieve the purposes of this chapter; and whether
12 and when the undertaking will itself be self-sustaining finan-
13 cially.

14 ~~(c) Within 60 days of receipt of the notice, the gover-~~
15 ~~nor, in his sole discretion, may either (i) disapprove the pro-~~
16 ~~posed undertaking; (ii) suspend the proposed undertaking and~~
17 ~~direct that it not be implemented until the legislature has~~
18 ~~reviewed it under subsection (d) herein; or (iii) approve it, in~~
19 ~~which case the authority may proceed. A decision by the governor~~
20 ~~disapproving the proposed undertaking also will be dispositive~~
21 ~~and binding on the authority, unless the authority is directed to~~
22 ~~proceed under A.S. 42.40.710. If the governor suspends the pro-~~
23 ~~posed undertaking, he shall promptly transmit his decision to the~~
24 ~~board and the leadership of the legislature in the form of a~~
25 ~~recommendation that the proposed undertaking be either approved~~
26 ~~or disapproved by the legislature. The governor is considered to~~
27 ~~have approved the authority's proposed undertaking if he fails to~~
28 ~~act under this subsection within the prescribed time.~~

29 (d) Once in session, within 90 days of receipt of the
30 ~~governor's recommendation the legislature may, by law, reject the~~

Line 5

Subsection (e) should be realphabetized to (c). The words "notwithstanding the foregoing" should be stricken.

Line 11

"(c)" should be substituted for "(e)".

Lines 13-14

These two lines should be deleted.

Line 15

"(2)" should be deleted.

Line 18 on

42.40.710 should be stricken. All the Railroad would need would be a resolution passed by either house of the Legislature or a Governor's edict. The action forcing mechanism would make the authority more a part of the government than a business enterprise and subject the authority to railroad decisions made on a political basis rather than a business basis. The rest of the transportation is in the private sector of the economy so the government would be competing with private transportation companies on political grounds but with the resources behind the state government. The action forcing mechanism could allow the State to force the authority to charge unreasonably low land rents or low tariffs in direct competition with private land owners and private transportation companies. Politics should be separated from the day to day operations of the railroad authority. The operations of the railroad should be run by business considerations.

1 ~~proposed undertaking. The legislation is binding on the~~
2 ~~authority. The legislature is considered to have concurred in~~
3 ~~the proposed undertaking if it fails to pass legislation within~~
4 ~~the prescribed time. The concurrence also is binding.~~

5 (c) ~~(e)~~ Notwithstanding the foregoing, a proposed extension
6 of main or branch lines by more than 50 percent of the railroad's
7 total track mileage and requiring the issuance of securities,
8 notes, bonds or contracting for other borrowings on an amount in
9 excess of \$50 million (\$50,000,000) must be specifically
10 authorized by law.

11 (d) ~~(f)~~ Any undertaking described in subsection (a) or ~~(e)~~ ^(c)
12 herein is considered approved for purposes of this section if ^(c)

13 ~~(1) the authority has been directed to act pur-~~
14 ~~suant to A.S. 42.40.710; or~~

15 ~~(2) the legislature by law has specifically~~
16 approved the undertaking by authorizing, appropriating funding
17 for or guaranteeing authority borrowing for it.

18 ~~Sec. 42.40.710. ACTION-FORCING MECHANISM. (a) The governor~~
19 ~~or the legislature, by resolution, may request that the authority~~
20 ~~exercise its powers and authorities or refrain from doing so.~~
21 ~~Notice of a request shall be given to the legislature by the~~
22 ~~governor and to the governor by the legislature.~~

23 (b) To the greatest extent practicable within 30 days
24 of receipt of a request the board shall respond to both the
25 governor and the leadership of the legislature in writing
26 specifying:

27 (1) the manner in which it proposes to take the
28 requested action or any modification thereof requested by the
29 authority; or

30 (2) the specific reasons, financial, legal or
~~otherwise, why the board declines to take the requested action.~~

Page 41

Lines 9-30
and following
page, lines
1-11

42.47.715 should be stricken under the same above reasoning. The operations of the railroad authority should be governed by business considerations rather than political ones so that it can compete fairly with private enterprise. On the other hand, the expansion of the railroad requiring state funds is a political decision. Moreover, section 42.40.720 serves many of the same purposes as 42.47.715.

1 (c) At the request of the governor or on its own ini-
2 tiative, the legislature by law may then direct the authority to
3 take the requested action or the legislature may act to cure the
4 problem precluding the authority from taking it. In the event
5 the authority is unable to take the action for financial reasons,
6 it is obligated to do so, even if directed, only upon provision
7 by the legislature of sufficient funds to plan and implement the
8 action.

9 Sec. 42.40.715. INTERVENTION. (a) When authorized by law,
10 the governor as provided in the legislation may intervene and
11 exercise such control over the authority as is necessary and
12 appropriate to correct any deficiency or to assure that the
13 purposes of this chapter may be reasonably accomplished,
14 including directing affirmative action when:

15 (1) The board has requested such intervention by
16 resolution;

17 (2) The authority has represented to the public or
18 to creditors that recourse may be had to the assets, property or
19 credit of the state on account of acts or omissions of the
20 authority, unless the secondary or direct liability has been
21 expressly assumed by the state;

22 (3) The authority has failed to file an annual
23 report as required by A.S. 42.40.410 within 120 days after
24 receipt of formal notice of the omission;

25 (4) A deadlock has occurred in the board, or the
26 membership of the board is insufficient to constitute a quorum
27 for conduct of affairs so that the authority is unable to conduct
28 its operations or perform its activities; or

29 (5) The assets of the authority have been or are
30 committed to be misapplied or wasted or illegally expended; or

1 ~~the authority has committed or is about to commit a material~~
2 violation of this chapter.

3 (b) The governor may take actions necessary to achieve
4 the object of the intervention stated in the legislation and make
5 corrections ancillary thereto, and shall accomplish the purposes
6 of the intervention as expeditiously as reasonable; board members
7 and employees may not be displaced nor the conduct of their
8 duties impaired more than necessary to accomplish the purposes of
9 the intervention and the intervention shall cease as soon as the
10 objective stated in the legislation and corrections ancillary
11 thereto have been accomplished.

12 Sec. 42.40.720. TRUSTEESHIP. (a) When authorized by law,
13 the governor may petition the Superior Court of the State of
14 Alaska for the Third Judicial District at Anchorage to impose a
15 trusteeship over the authority and appoint the trustees therefor
16 under any of the following circumstances:

17 (1) The board has requested the same by
18 resolution;

19 (2) The authority has become insolvent or other-
20 wise unable to carry out its contractual obligations to creditors
21 and other persons;

22 (3) The authority has filed an annual report that
23 is false or deceptively misleading on a material matter;

24 (4) The authority has become incompetent or
25 ineligible to carry out the public purposes for which it was
26 created;

27 (5) The authority has misused, abused, or con-
28 tinuously exceeded the power or authority conferred by this
29 chapter or committed repeated violations of this chapter; or
30

1 (6) The assets of the authority have been or are
2 committed to be misapplied or wasted, or illegally expended, or a
3 material violation of this chapter has been committed or is about
4 to be committed ~~and the governor has determined that intervention~~
5 ~~as provided in A.S. 42.40.715 would not be feasible under the~~
6 ~~circumstances; or~~

7 (7) The credit-worthiness of the State of Alaska
8 has been directly or indirectly substantially impaired by actions
9 of the authority.

10 (b) The trustees appointed by the superior court shall
11 take reasonable actions necessary during the trusteeship to
12 achieve its object. The trustees have the power and authority to
13 reorganize the authority and amend its rules and regulations;
14 suspend or remove board members and executive officials; manage
15 the assets and affairs of the authority; and exercise all powers
16 necessary or appropriate to fulfill outstanding agreements, to
17 restore the capability of the authority to perform the functions
18 and activities for which it was created, to reinstate its credit
19 or credibility with its creditors or obligees or the credit of
20 the state or its credibility with its creditors or obligees to
21 the extent impaired by authority actions.

22
23 ARTICLE 9. PERSONNEL AND GENERAL
24 PROVISIONS

25
26 Sec. 42.40.800. PERSONNEL. (a) All personnel employed by
27 the Alaska Railroad are personnel of the Alaska Railroad
28 Authority, and not of the State of Alaska. A.S. 39.05 - .51,
29 inclusive, do not apply to personnel of the authority.
30

1 (b) For the purposes of the Public Employment Relations
2 Act, A.S. 23.40.020 - .260, the authority is considered a "public
3 employer" within the meaning of that act, except that A.S.
4 23.40.070(3) does not apply to the authority, and the authority's
5 employees are classified as employees under A.S. 23.40.200(a)(1).

6 (c) As soon as practicable after transfer, the
7 authority and its employees shall adopt collective bargaining
8 agreements that continue the provisions of the agreements in
9 effect at the Alaska Railroad immediately prior to transfer. The
10 agreements between the authority and its employees shall remain
11 in effect until they expire by their terms or, as required under
12 the federal transfer legislation, they are renegotiated, subject
13 to the approval of the board.

14 (d) The authority may not enter into any collective
15 bargaining agreement concerning wages, hours, working conditions
16 or other employment terms, conditions and benefits with any orga-
17 nization representing the authority's executive officials.

18 Sec. 42.40.810. POLITICAL ACTIVITIES. (a) No funds,
19 assets, or property of the authority may be used for partisan
20 political activity or to further the election or defeat of
21 candidates; nor shall funds or a substantial part of the activi-
22 ties of the authority be used for publicity or educational pur-
23 poses designed to support or defeat legislation pending before
24 the Congress of the United States, or the legislature of the
25 state, provided, however, that board members and employees of the
26 authority may communicate with and appear before committees of
27 the congress or the legislature as well as local legislative
28 bodies in connection with funding and other matters directly
29 affecting the authority or its ability to carry out the purposes
30 for which it is created and respond to requests by members of

Lines 12
thru 17

The Railroad requests that the word "municipality" be deleted from any license or permit provision in this statute. The Railroad presently negotiates with a number of municipalities regarding crossings, traffic signals, etc. If the municipalities were granted authority to regulate the Railroad's passage through their boundaries, the Railroad's transportation of goods and services would be so erratic as to be totally non-operable.

1 congress, the legislature or local legislative bodies for infor-
2 mation, views and testimony.

3 (b) A board member or employee who violates the provi-
4 sions of this section is subject to personal liability in the
5 form of a civil penalty assessed by a judge of the superior court
6 in an amount not to exceed Five Thousand Dollars (\$5,000). An
7 action to enforce this penalty may be brought by any person. A
8 violation of this chapter does not constitute a crime and
9 assessment of the civil penalty by a judge does not give rise to
10 any disability or legal disadvantage based on conviction of a
11 criminal offense.

12 Sec. 42.40.820. LICENSES AND PERMITS. Whenever the laws of
13 a ~~municipality~~, the state, or the United States require a license
14 or permit to undertake certain activities or perform an act, the
15 authority, prior to undertaking the activity or performing the
16 act, shall comply therewith to the same extent as the state,
17 except as otherwise provided in this chapter.

18 Sec. 42.40.830. UNAUTHORIZED REPRESENTATION. All persons
19 who assume to act for the authority without authority to do so
20 are jointly and severally liable for the debts and liabilities
21 incurred or arising as a result thereof.

22 Sec. 42.40.840. CLAIMS AGAINST THE AUTHORITY. (a) All
23 claims and lawsuits involving activities of the railroad,
24 including without limitation suits in contract, quasi-contract,
25 or tort, shall be brought against the authority, and not against
26 the State of Alaska.

27 (b) For the purposes of actionable claims, under-
28 takings, payments of judgments, execution, interest, punitive
29 damages, statutes of limitations, bonds, costs, and similar mat-
30 ters related to the presentation and prosecution of claims by and

1 against the authority, the authority and its board members and
2 employees enjoy the same rights, privileges, and immunities as
3 the state and state officers, as provided in A.S. 09.10.120,
4 09.50.250 - .290, 09.65.040 and other similar or related
5 statutes.

6 (c) Claims against the authority are not subject to the
7 provisions of A.S. 44.77.010 - .070 regarding claims against the
8 state.

9 (d) The authority is not subject to the provisions of
10 A.S. 44.80.010, regarding the state as a party to action.

11 Sec. 42.40.855. EXEMPTION FROM TAXATION. (a) The real and
12 personal property of the authority and its assets, income and
13 receipts are declared to be the property of a political sub-
14 division of the state and devoted to an essential public and
15 governmental function and purpose, and the property, assets,
16 income, and receipts are exempt from all taxes and special
17 assessments of the state or a political subdivision of the state,
18 including, without limitation, all boroughs, cities, municipali-
19 ties, school districts, public utility districts and other taxing
20 units. All bonds of the authority are declared to be issued by a
21 political subdivision of the state and for an essential public
22 and governmental purpose and to be a public instrumentality and
23 the bonds, and the interest on them, the income from them and the
24 transfer of the bonds, and all assets, income and receipts
25 pledged to pay or secure the payment of the bonds, or interest on
26 them, are at all times exempt from taxation by or under the
27 authority of the state, except for inheritance and estate taxes
28 and taxes on transfers by or in contemplation of death.

29 (b) Nothing in this section affects or limits an exemp-
30 tion from license fees, property taxes, or excise, income or

1 other taxes, provided under any other law, nor does it create a
2 tax exemption with respect to the interest of any business
3 enterprise or other person, other than the authority.

4 (c) For purposes of A.S. 14.17 relating to the com-
5 putation of the required local effort by a district as defined in
6 A.S. 14.17.250(3), all property exempted from taxation by this
7 chapter are considered taxable real and personal property.

8 Sec. 42.40.870. PAYMENTS IN LIEU OF LOCAL REAL PROPERTY
9 TAXATION AND IMPACT AID. (a) To the extent feasible, without
10 impairing the authority's financial viability and consistent with
11 sound business principles, including but not limited to the
12 operation of the railroad on a self-sustaining basis, the need
13 for capital accumulation and consistency with regulation by the
14 Interstate Commerce Commission, the authority may:

15 (1) make partial payments to political sub-
16 divisions served by the railroad or in which the authority has
17 substantial land holdings in lieu of local taxation of authority
18 real property; and

19 (2) provide financial assistance to political sub-
20 divisions and other local districts in the development of public
21 education and other facilities required to be developed as a
22 result of expanded authority activities in the area.

23 (b) The board shall adopt regulations prescribing the
24 conditions under and the extent to which it will undertake to
25 provide payments or assistance, including, but not limited to the
26 conditions cited in subsection (a): the relative magnitude of
27 the taxation effort deficit or impact caused by authority activi-
28 ties in an area; the relative need among communities affected by
29 authority activities; and the present or anticipated benefits to
30 the communities attributable to authority activities.

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(a) spouse;

(b) dependent parent, parent-in-law, child, son-in-law or daughter-in-law; or

(c) any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the authority officer or employee;

(8) "land" means all interests in real property, including tide and submerged lands;

(9) "Leadership of the legislature", for purposes of notice and filings required by this chapter, means the president of the senate, the speaker of the house, the chairmen and ranking minority members of the senate and house transportation committees, the chairman of the legislative budget and audit committee or jurisdictional successors thereto or persons or offices they may designate;

(10) "rail properties" means all right, title and interest of the United States to real and personal property, tangible and intangible, identified in the closing report prepared under the federal transfer legislation and transferred to the authority under the legislation;

(11) "regulation" has the same meaning as that term is defined in A.S. 44.62.640.

(12) "rules" means rules, standards, or written procedures relating to the governance and internal management and

Sec. 42.40.910. SEVERABILITY. In the event a court of competent jurisdiction adjudges any clause, sentence or paragraph or section of this chapter to be invalid or unconstitutional, the judgment or decree does not affect, invalidate or impair the remainder thereof and the effect of the judgment or decree is

1 confined to the clause, sentence, paragraph, section or part of
2 this chapter so adjudged to be invalid or unconstitutional.

3 Sec. 42.40.920. CONSTRUCTION. This chapter shall deliber-
4 ately be construed so as to effectuate its purposes.

5 Sec. 42.40.930. DATE OF EFFECTIVENESS. The provisions of
6 this act take effect upon enactment of the federal transfer
7 legislation.

8
9 ARTICLE 10. APPLICATION OF OTHER LAWS

10
11 Sec. 42.40.1010. CONFLICTING LAWS INAPPLICABLE. Insofar as
12 the provisions of this act are in conflict with the provisions of
13 other law, or parts thereof, the provisions of this act shall
14 prevail.

15 Sec. 42.40.1020. REPEAL, AMENDMENT AND APPLICATION OF
16 EXISTING STATUTES.

17 (1) A.S. Title 19 does not apply to the operations
18 of the authority.

19 (2) The authority is considered a "political
20 subdivision" of the state for the purposes of A.S. 23.10.055.

21 (3) A.S. 23.10.420 does not apply to the opera-
22 tions of the authority.

23 (4) A.S. 30.15 does not apply to the operations of
24 the authority.

25 (5) Authority activities are not considered
26 "public works" or "public projects" for the purposes of the
27 following provisions under A.S. Title 35:

28 (a) A.S. 35.05.010;

29 (b) A.S. 35.10.010;

30 (c) A.S. 35.10.015;

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- (d) A.S. 35.10.030;
- (e) A.S. 35.10.040;
- (f) A.S. 35.10.050;
- (g) A.S. 35.10.090 - .120;
- (h) A.S. 35.10.130 - .135;
- (i) A.S. 35.10.160 - .200;
- (j) A.S. 35.15;
- (k) A.S. 35.27; and
- (l) A.S. 35.30.10.

(6) The following chapters of A.S. Title 36 do not apply to the operations of the authority:

- (a) A.S. 36.05;
- (b) A.S. 36.10;
- (c) A.S. 36.15;
- (d) A.S. 36.20; and
- (e) A.S. 36.25.

(7) The following provisions of A.S. Title 37 do not apply to the operations and budgeting procedures of the authority:

- (a) A.S. 37.05;
- (b) A.S. 37.07;
- (c) A.S. 37.10.010 - .060;
- (d) A.S. 37.10.085;
- (e) A.S. 37.20; and
- (f) A.S. 37.25.

(8) The authority is not subject to the jurisdiction of the Alaska Transportation Commission.

(9) A.S. 39.50.200(b) is amended by adding a new paragraph as follows: "(45) Alaska Railroad Authority."

1 (10) No subsequently enacted statute shall be
2 interpreted or construed to apply to the authority, the railroad
3 or any of the authority's activities unless it specifically so
4 provides by its terms.
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PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

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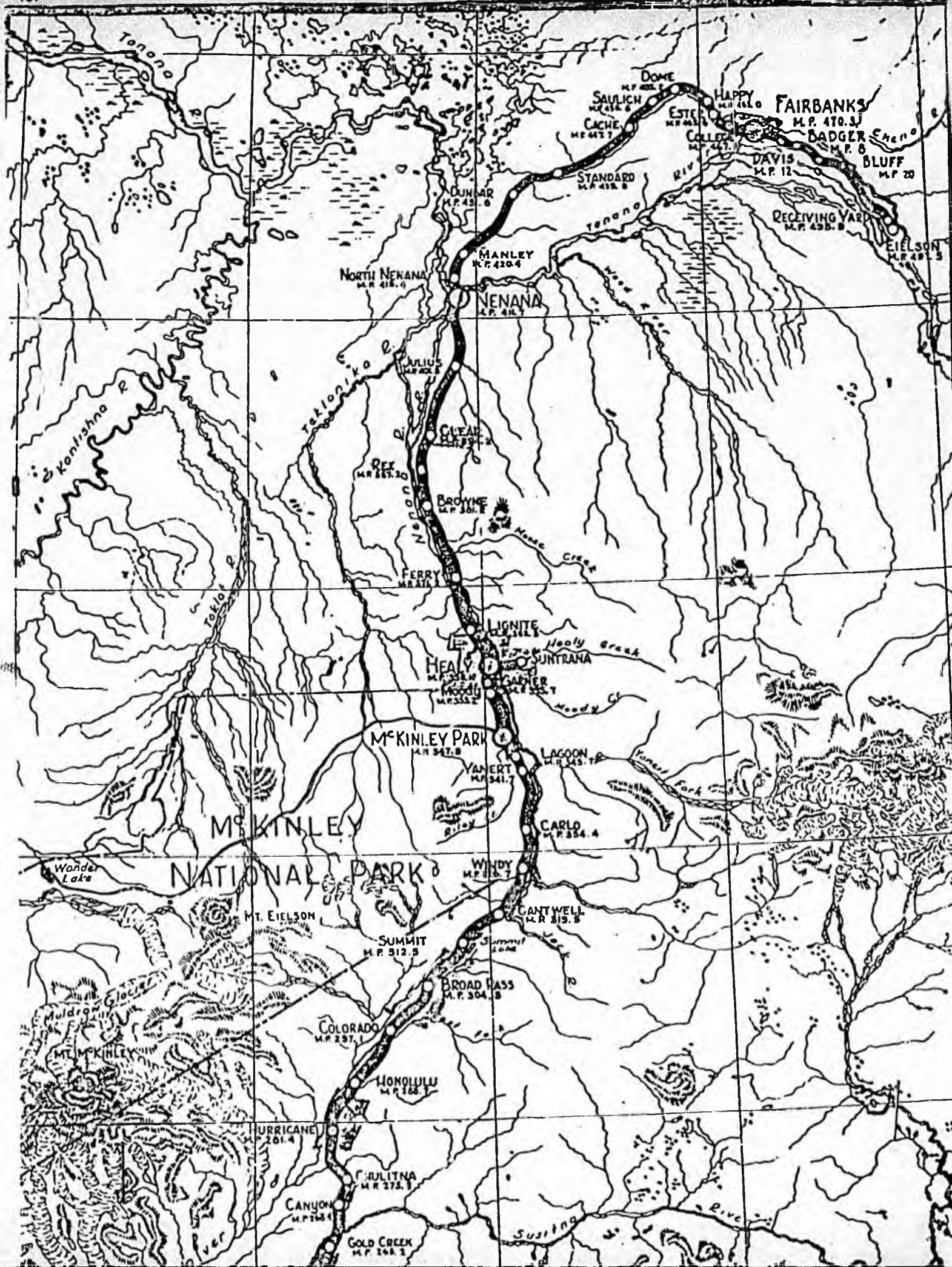
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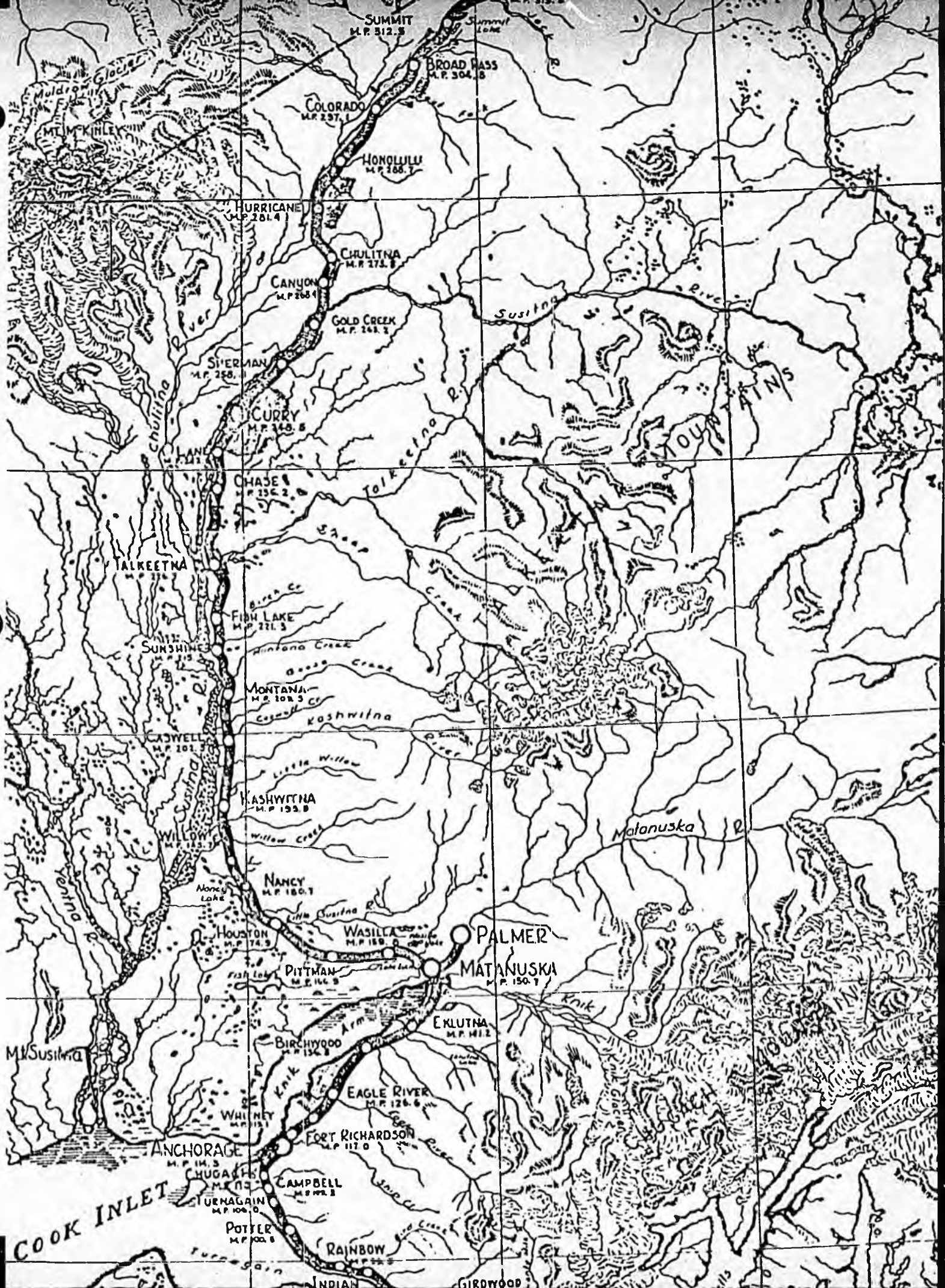
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CROWLEY MARITIME CORPORATION



April 7, 1982

Senator Jalma Kerttula
President, Alaska State Senate
Juneau, Alaska

Dear Senator Kerttula:

I understand the Senate Transportation Committee will soon mark up substitute SB 212, creating an Alaska Railroad authority, and that the full Senate will consider the bill shortly. The Alaska Hydro-Train strongly supports your efforts and urges you to take all possible measures to assure that the Alaska Railroad is able to operate efficiently in the private sector environment in which it must operate. Operating as much as possible like a private business, the Railroad will be better able to provide efficient, low-cost transportation to the benefit of the State of Alaska.

Respectfully,

Thomas E. Garside
Vice President
Common Carrier Services

TEG:mkh

NORTHWEST AND ALASKA DIVISION

Crowley Maritime Plaza
Post Office Box 2287
Seattle, Washington 98111
(206) 583-8100
Telex 32-1228

One Market Plaza
San Francisco, California 94105
(415) 548-2300
Telex 34-737

201 Danner Avenue
Suite 200
Anchorage, Alaska 99502
(907) 549-8881
Telex 28-403

Post Office Box 17178
Portland, Oregon 97217
(503) 283-1244
Telex 38-0935



SEA-LAND
SERVICE, INC.

April 10, 1981

Mr. Greg O'Clarey
National President
Alaska Region Vice President
Inland Boatmen's Union
124 Front Street
Juneau, Alaska 99801

Dear Greg:

Enclosed are some suggested changes which we feel should be made in House Bill No. 12, Senate Bill No. 212, Senate Bill No. 213, and Senate Bill No. 221. No change is recommended in Senate Bill No. 156. Copies of all bills are attached.

Our people are going over House Joint Resolution No. 20 and Senate Joint Resolution No. 18, as well as the new House Bill No. 312, to see if we can recommend any changes in them.

Since all of the above bills are 'initial starters', it would be a good idea to clean up the language now as, I suppose, no one knows which one will be embellished at a later date. The language we have recommended is language that we hope will make the Railroad a viable unit of the State Government and will be able to pay for its operations from its revenues.

Best regards to you and 'Mickey'.

Sincerely,

SEA-LAND SERVICE, INC.

H. L. Schuyler
Director Public Affairs
Alaska Division

HLS:kt
Enclosures

STATE OF ALASKA
ALASKA RAILROAD LEGISLATION

House Bill No. 12

Page 3 -- At line 7, amend Subsection 12 to read as follows:

"(12) Establish, levy, and collect fully compensatory rates and other charges for the use of its railroad facilities. The Authority is specifically prohibited from allowing use of its railroad facilities on a non-reimbursable basis, or from levying and collecting rates and other charges for the use of such facilities that do not reflect the total direct and indirect costs which arise from such use."

Page 4 -- At line 7, redesignate "(e)" as "(f)" and insert new "(e)":

"(e) The proceeds resulting from the issuance of bonds pursuant to this section may only be used for the acquisition, construction and improvement of railroad facilities in the state. None of the proceeds may be used to meet the Authority's operating expenses or any deficit resulting from an insufficiency of operating revenues."

Senate Bill No. 156

No change is recommended.

Senate Bill No. 212

Page 3 -- At line 24, amend subsection (9) as follows: "(9) Borrow money and issue its negotiable bonds or notes, the proceeds of which may only be used for the acquisition, construction, or improvement of railroad facilities in the state; provide for and secure the payment of said bonds or notes; provide for the rights of their holders; and purchase, hold or dispose of any of its bonds or notes;"

Page 3 -- At line 27, add the word "capital" after "its".

Page 4 -- At line 28, add the following new sentence: "The Authority is prohibited from authorizing the use of the Alaska Railroad's facility by any person on a non-reimbursable basis, or from levying and collecting rates and other charges for the use of such facilities that do not reflect total and indirect costs which arise from such usage.

Page 5 -- Delete line 20 and replace with "to meet its capital obligations and expenses."

Senate Bill No. 213

Renumber Section 2 as Section 3, and insert new Section 2: "None of the monies appropriate herein may be utilized by the Alaska Railroad Authority to meet deficits and operating revenues resulting from its failure to levy and collect rates and other charges for the use of its railroad facilities that reflect the total direct and indirect costs which arise in such usage.

- FILE

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 622
SEATTLE, WASHINGTON 98119

H. L. SCHUYLER
Director Public Affairs
Alaska Division

February 19, 1982

TELEPHONE:
(206) 638-6348

Honorable Bill Ray
Alaska State Senator
Room 103, Capitol Building
State Capitol, Pouch V
Juneau, Alaska 99811

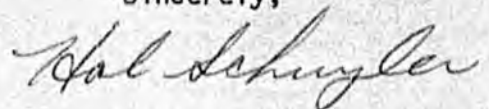
Dear Senator Ray:

A short note to thank you for taking the time to discuss Sea-Land's concern over the Alaska Railroad Authority Bill, S.B. 212, and its amendments.

We agree with you that the A.R.R. is a necessary tool to promote the growth of Alaska's Resources and the Alaska Hinterland. However, we are concerned that it operates as a corporation to serve its Capitol and shows a profit, as all businesses must do to exist. Sea-Land's main concern is that the competitive factors are on an equal footing.

Thanks again.

Sincerely,



HLS:kt

P.S. Two cartons, one red and one green, are forthcoming.

Technical amendments to *** "inter-lineated" draft

- 1) On page 4, at line 3, following the word "not ," add the words "directly or"
- 2) On page 7, at line 14, add a new subsection: "(d) A member whose term has expired shall serve until his successor has been appointed by the Governor."
- 3) On page 9, at line 21, delete the word "governing" and insert in lieu thereof the word "delegating;" at line 22 delete the words "be conducted" through the word "by" in line 23; at line 24, following the word "official" insert a comma and the words "subject to any board review specified in the policies"
- 4) On page 14, at line 3, following the word "information"; on page 17 at line 6, following the word "matters"; and at line 15 of the same page following the word "Commission," add the words "including but not limited to proprietary information associated with specific shippers, divisions and contract rate agreements" On these same pages add "U.S." preceding each reference to the Interstate Commerce Commission.
- 5) On page 14, at line 10 delete the words "and for" through the word "regulations," on the next line; At line 19 following the period add a new sentence: "The legislature by appropriate action may annul or temporarily suspend a regulation adopted by the authority."
- 6) On page 16, at line 12, following the word "after" insert the words "the date of"
- 7) On page 21, at line 30, delete the word "railroad"
- 8) On page 25, at line 21 following the word "classification" insert a comma and the word "control"

9) On page 25, at line 28, strike the words "general manager" and insert in lieu thereof the words "chief executive officer"

10) On page 28, at lines 26-27 strike the words "general manager" and insert in lieu thereof the words "chief executive officer"

11) On page 30, at line 19, following the word "legislature," insert the words "and the authority"

12) On page 30, at line 27, following the word "adopt," insert the word "exclusive"

13) On page 36, at line 13, delete the word "council" and insert in lieu thereof the word "board"

14) On page 38, at line 9 delete the word "appropriate" and insert in lieu thereof the word "applicable"

15) On page 41, at line 29, following the word "approved" insert the words "or rejected" and at line 30, following the word "act" insert the words "or to refrain from acting"

16) On page 42, at line 28 delete the word "may" and insert in lieu thereof the word "shall"

17) On page 43, at line 12, following the word "ommission" insert the words "or has filed an annual report that is false or deceptively misleading on a material matter"

18) On page 51, at line 3, following the word "house," insert the words "the minority leaders of each house,"; delete the words "and ranking minority members" on lines 5-4; and on line 4, following the word "transportation" insert the words "and finance"

19) On page 52, at line 18 delete the text of (5) and insert in lieu thereof the following:

A.S. Title 35 does not apply to the operations of the authority.

Delete subsection 6 of AS 42.40.1020 on page 51.

Senate Bill No. 221

Page 1 -- Lines 12 and 13 have been revised to read as follows: "For the achievement of the goals of reasonable freight costs, long-term economic growth and continuing common carrier service.

Page 1 -- At line 20, add "self-sustaining, financially viable" after "a".

Page 3 -- At line 22, add "in self-sustaining, financially viable" after "operate".

Page 4 -- At line 11, delete "fares" and replace with "fully compensatory rates".

Page 5 -- At line 11, redesignate "(e)" as "(f)" and insert new "(e)":
"(e) The proceeds resulting from the issuance of bonds pursuant to this section may only be used to meet the capital obligations and expenses of the Authority. None of the proceeds may be used to meet the Authority's operating expenses or any deficit resulting from an insufficiency of operating revenues."

Senate Bill No. 212

Page 3 -- At line 24, amend subsection (9) as follows: "(9) Borrow money and issue its negotiable bonds or notes, the proceeds of which may only be used for the acquisition, construction, or improvement of railroad facilities in the state; provide for and secure the payment of said bonds or notes; provide for the rights of their holders; and purchase, hold or dispose of any of its bonds or notes;"

Page 3 -- At line 27, add the word "capital" after "its".

Page 4 -- At line 28, add the following new sentence: "The Authority is prohibited from authorizing the use of the Alaska Railroad's facility by any person on a non-reimbursable basis, or from levying and collecting rates and other charges for the use of such facilities that do not reflect total and indirect costs which arise from such usage.

Page 5 -- Delete line 20 and replace with "to meet its capital obligations and expenses."

Senate Bill No. 213

Re-number Section 2 as Section 3, and insert new Section 2: "None of the monies appropriate herein may be utilized by the Alaska Railroad Authority to meet deficits and operating revenues resulting from its failure to levy and collect rates and other charges for the use of its railroad facilities that reflect the total direct and indirect costs which arise in such usage.

SB 212 establishes the Alaska Railroad Authority. A 7 member board of directors will act as the governing body. (DOT/PF Commissioner and 6 public members appointed by the Governor) The board may employ a president to manage the authority (subject to the Governors approval) and other staff.

The authority is authorized to acquire, provide for the operation and maintenance of, and sell bonds in order to pay for existing costs or development of the railroad or railroad facilities.

The authority is directed (Sec 3, page 14) to enter into negotiations with the Federal government for the transfer of ownership of the Alaska Railroad to the authority subject to money available from appropriations for the purpose.

POSITION STATEMENT

There is pending legislation that would provide for the transfer of the federally owned and operated Alaska Railroad to the State of Alaska. This legislation, if enacted, would transfer ownership, operation and financial support of the Alaska Railroad from the federal government to the State of Alaska government. We do not oppose this action.

The Alaska trucking industry feels very strongly, however, that there are serious concerns regarding the impact state ownership, operation and control of the railroad could have on the privately owned and unsubsidized trucking firms in Alaska.

Further, the trucking industry feels strongly that any transfer legislation should address these concerns in a manner that will protect the future integrity of privately owned carriers in providing service for cargo movement between the Lower 48 and Alaska and within Alaska. Without such protection, the general public of the State of Alaska will have little chance of continuing to enjoy the benefits of strong and vigorous competition in transportation.

Today, the State of Alaska is well served by strongly competitive water and motor carriers providing service to, from and within Alaska. All of these firms are privately owned and receive no subsidy from the state or federal government.

Federal subsidy of the Alaska Railroad has removed any necessity for the railroad to recover its capital costs from its freight revenue.

Transfer of the Alaska Railroad from federal ownership and operation to state ownership and operation could involve the risk that the State would utilize rail properties and facilities in a manner that would artificially impact the level of rates which would otherwise be set by competition among the unsubsidized, privately-owned carriers.

The state-owned railroad must not be allowed to become a subsidized trucking company. It is essential that if the state-owned railroad competes with water and motor carriers, it must do so in a way that allows rate levels to be set through vigorous competition by the privately-owned carriers that have the requirement of buying and paying for their capital equipment, as well as earning a profit and paying taxes.

The state-owned railroad must not be allowed to instigate predatory pricing policies that would reduce railroad rates below that of competitive trucking companies that operate on parallel routes.

Legislation that addresses the transfer of the Alaska Railroad from the federal government to the state government must include safeguards that will encourage increased productivity within the private sector and less reliance on government entities to provide services that can be provided by the private sector.

The trucking industry in Alaska sincerely hopes that legislation can be developed in a way that will assure the future viability of privately owned water and motor carriage for the State of Alaska.

OUTLINE OF SEPTEMBER 29, 1981

TOTE DRAFT AMENDMENTS TO S. 1500

1. Add to Congressional Finding of S. 1500 a provision that further sets the tone for this legislation. To-wit: subsidized rail transport in Alaska is acceptable only where private enterprise cannot do the job.
2. Prohibit subsidization of service that competes with private carriers. (First sentence in a new paragraph 3(a)(2) of S. 1500)
3. Prohibit expansion of ARR motor carrier and water service as long as ARR remains subsidized.
4. Subsidy will be considered to exist for a particular service if the full expense level, including subsidy and cost of capital, exceeds the rate. (A new subsection 2(b) and the second sentence in new paragraph 3(a)(2))
5. The state would be required to maintain and make available to the public data showing the railroad's condition. Information would have to be sufficient to allow tracing of the subsidy.
6. As part of the closing agreement the state would be required to show it had taken steps to have the ARR operate like a business.
7. Impose enforcement provisions requiring the court to award damages and reasonable attorney fees as well as enjoin the offending subsidization.

24 September 1981

1. Add a new subsection 1(c) and renumber the existing subsection 1(c) as 1(d):

(c) Except where private enterprise is unable to provide freight transport service, such service in Alaska no longer requires nor should enjoy government financial support.

2. Add a new subsection 2(b) as follows and renumber existing sections 2(b) through 2(d) as 2(c) through 2(e):

(b) "full expense level" means the level described by the Interstate Commerce Commission in the study of the Alaska Railroad's rates in Ex Parte No. 405, served June 15, 1981, including direct costs plus the freight portion of overhead expenses and fixed expenses, including depreciation and including the subsidy and the cost of capital attributable to that service.

3. Add a new paragraph 3(a)(2), as follows, and renumber paragraphs 3(a)(2) through (4) as paragraphs 3(a)(3) through (5):

(2) The State has agreed that the Alaska Railroad shall be operated in a businesslike manner and that it shall not use public funds to directly or indirectly subsidize transportation services that compete with unsubsidized privately owned for hire carriers in interstate commerce and that as long as the Alaska Railroad receives public funds it will not expand in any way its current water or motor carrier service. The State further agrees that the amount of subsidy attributable to a particular service shall

be the extent to which the full expense level exceeds the rate charged for that service. The State also agrees to develop, maintain and to release to the public upon demand and to publish not less than quarterly current comprehensive data showing the expenditure of all public subsidies on the railroad (including the allocation by specific function of subsidy monies to rail services), the cost incurred in providing any service subsidized directly or indirectly by public revenues, and the revenues derived from providing such services.

4. Add just prior to the period in section 4 the following:

"and that describes in detail the procedure and instrumentality to be employed by the state to implement subsection 1(c) and paragraph 3(a)(2) of this act."

5. Change Sec. 5 to Sec. 5(a)

Add Sec. 5(b):

(b) The State owned railroad shall be operated in strict compliance with the terms of the Certification of the Secretary and agreements by the State giving rise to such Certification as described in section 3 of the Act. Any act or omission constituting noncompliance shall be enjoined by the United States District Court upon petition by any person or carrier and other appropriate relief shall be awarded any person or carrier injured by such act or omission, and the Court shall award appropriate damages and reasonable attorney's fees.

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE

4016 EVERGREEN
FAIRBANKS, ALASKA 99701

907-479-3550



Senate

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
RESOURCES COMMITTEE
907-465-3834
HOME 907-769-9182

April 13, 1982

G. A. Seeliger
1001 Noble Street
Fairbanks, Alaska 99701

Dear Al:

Thank you for your letter concerning SB 212 which would create a vehicle for State control and operation of the Alaska Railroad.

The points you raised in your letter were compelling and I felt it imperative that both the Senate President and the Chairman of the Senate Transportation Committee were made aware of your concerns. I have, therefore, provided each with a copy of your letter.

It is my understanding that all parties to this legislation are working towards legislation which addresses many of the problems and concerns which have been raised in the past. This legislation may well be nearly finalized.

Al, I'll try to keep you apprised of developments in this area as they occur. Thanks again.

Sincerely,

Bettye Fahrenkamp
Alaska State Senator

BF/eb

cc: Senator Verttula
Senator Ray ✓

G. A. Seeliger
1001 Noble Street
Fairbanks, Alaska 99701

April 9, 1982

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V - Mail Stop 3100
Juneau, Alaska 99811

Dear Bettye,

I have read Senate Bill No. 212, which is a proposed act to create an Alaska Railroad Authority. I have several misgivings about the proposed act, and have listed them below.

1) The State proposes to hand the Alaska Railroad over to a State Authority without provision for capitalization or funding of any kind. It is my belief that even though I am normally an anti-subsidy man, the Alaska Railroad will never be operated unless it has substantial subsidy type support. The consequences of the State cutting the railroad loose to fend for itself, in my view, would be disastrous because it would inevitably raise the cost of shipping commodities to this area by many percentage points.

2) I notice the Alaska Railroad Authority is to be administered by a six man commission. I believe, in the first place, that the number is wrong -- there should be an odd number of commissioners. Secondly, I think the commissioners should be appointed from the railbelt area because it is a regional transportation problem. Most of those appointed should be from the Fairbanks area since we have the greatest direct interest in the railroad.

3) There is no provision made for liquidated damages suffered by those persons who have invested rather heavily in warehouses and other improvements in the railroad areas.

4) If the railroad ever did have a chance of operating at a break-even figure, this bill would destroy any chance of financial independence due to the retention by the State of potentially valuable mineral properties.

5) I see a number of sections which are designed to make it possible for the governor and the legislature to essentially booby-trap the commission, tying its hands very neatly so it would be almost impossible to administer a successful business operation. For this reason, I can foresee that the Alaska Railroad Authority could, and probably would become a punching bag in the legislature.

The Honorable Bettye Fahrenkamp

Page 2
4/9/82

For the above mentioned reasons, I sincerely hope you will either amend the bill or defeat it. As it stands, it is a bad bill.

Very truly yours,


G. A. Seeliger

GS:sr

Page 19
of new
CSSB 212 .

1. Revise AS 42.40.400(a)(24) to read as follows:

(24) prescribe rates to be charged for services provided by the Alaska Railroad; provided, however, the authority, when establishing rates to be charged for carriage of commodities in competition with private carriers, shall include any direct or indirect subsidies as costs in such rates; a private carrier may challenge a rate as unreasonably low if it is below the average rate charged by private carriers; a private carrier challenging a rate under this provision shall, on request, demonstrate that its rate is not, unreasonably high under applicable regulatory standards;

Page 39
of new
CSSB 212

2. Revise AS 42.40.700(b) by adding a sentence to read as follows:

(b) The notice shall be in writing and describe the proposed undertaking in detail, specifying its financial impact on the authority; its impact on the level and nature of services provided by the authority; why the project is necessary or desirable to achieve the purposes of this chapter; and whether and when the undertaking will itself be self-sustaining financially. The notice shall be published in accordance with provisions of AS 42.40.230.

TED STEVENS, ALASKA
 LOWELL P. WECKER, JR., CONN.
 JAMES A. MC CLURE, IDAHO
 PAUL LARALT, NEV.
 JAKE GARN, UTAH
 HARRISON SCHAFFT, N. CAROLINA
 THAD COCHRAN, MISSISSIPPI
 MARK ANDREWS, N. DAKOTA
 T. W. KASTON, JR., WIS.
 ALFONSO M. D'AMATII, N.Y.
 MARK MATTHEWS, GA.
 WARREN RUSSMAN, N.J.
 ARLEN SPECTER, PA.

WILLIAM PROSSER, WIS.
 JOHN E. STONER, WIS.
 ROBERT C. BYRD, W. VA.
 DANIEL K. BOND, WYOMING
 EDNETT F. HOLLINGS, S.C.
 THOMAS F. EASTON, MD.
 LAWTON CHILES, FLA.
 J. ROBERT JOHNSON, LA.
 WALTER D. HUDOLISTON, KY.
 GARDNER H. WHITMAN, N. DAKOTA
 PATRICK J. LEAHY, VT.
 JIM SLEDES, TEXAS
 DONALD W. RIEDEL, ARIZ.
 DALE BARNETT, ARIZ.

United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, D.C. 20510

J. KEITH ROBERTS, STAFF DIRECTOR
 THOMAS L. VAN DEN BROEK, CHIEF STAFF DIRECTOR

March 26, 1981

The Honorable M. E. Dankworth
 Alaska State Senator
 Pouch V
 Juneau, Alaska 99811

Dear Ed:

Thank you for your invitation to reiterate my remarks before the Alaska Legislature regarding the Alaska Railroad. I am eager to work with you and the Governor in negotiations between the Federal Government and the State of Alaska concerning ownership of the Alaska Railroad.

If the President's proposed budget is accepted by Congress, a multi-billion dollar reduction in the U.S. Department of Transportation's budget will mean loss of federal funds for the Alaska Railroad after Fiscal Year 1982, if not before. I have been told privately that the Federal Government would prefer to end federal ownership this year. Should the Railroad lose the financial support of the Federal Government and this support not be replaced, the Alaska Railroad will be shut down and dismantled.

The Alaska Railroad is an essential method of transportation for over half of our population. If the coal resources in our State are to be recovered, we must have an operating railroad. I could go on, but I hope we're all agreed on the importance of keeping the Railroad operational.

As I discussed the other day, the mood in Washington is to streamline the federal budget by cut-backs in funding and elimination of many programs. The Alaska Railroad is seen in Washington as a non-national budget item for which federal funding can and should be eliminated. I have been told that legislation which would do this may be introduced at the request of the Administration in the next few months. There must be authority within the State to negotiate with the Federal Government on this issue.

The Honorable M. E. Dankworth

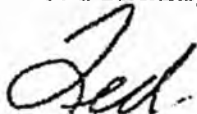
March 26, 1981

Page Two

My staff and I will be at your disposal. We wish to work closely with you in the negotiations between the Federal Government and the State of Alaska to ensure a fair and equitable transfer of ownership of the Alaska Railroad to the State of Alaska.

With best wishes,

Cordially,



TED STEVENS

United States Senator

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Railroad ownership

This may be the legislative session in which something concrete is done toward gaining more state control over the Alaska Railroad. We believe developments in that direction are necessary for Alaska's development.

The railroad is owned and run by the federal government, but we believe it's reasonable and desirable for the state to work toward taking over the line. President Carter's budget proposed getting rid of the railroad to save money and the budget-conscious Reagan administration is not likely to reverse that position.

In recent times, except for some of the pipeline construction years, the line has lost money. The combined congressional appropriation and net loss over the past five years average \$8 million a year. That would not be a particularly heavy subsidy for the state to undertake, particularly in light of the fact that the state subsidy for the Alaska ferry system has been running at \$20 million a year.

The railroad is to much of Interior Alaska what the ferry system is to Southeastern. Both are vital transportation links for our state and the railroad holds enormous potential for Alaskan development.

But it's unlikely that we can expect much more than caretaker status for the line from the federal government. The railroad's managers are under orders from Washington to at least break even. And consequently railroad officials in Alaska must take a hard-nosed attitude. Every additional service or rail extension must pay its way.

Frankly, some of the needed railroad extensions and services won't pay their own way, at least not in the immediate future, and that's where the state comes in with its oil wealth.

There have been calls for state officials to begin negotiating with the federal government to take over the line. That's one good approach and we hope the state initiates those talks soon.

In addition, legislation has been introduced to create an Alaska Railroad Authority that could sell bonds to operate and expand the rail system. The goal of such work would be to promote the state's growth and development.

And pressure is building in the Legislature to get on eastward extension of the railroad to

let to say precisely which approach is the legislative hearing process should be on that question. But we believe we are pleased by the general trend: that of our state leaders are coming to understand the importance of the railroad in Alaska's development and are inclined to act.

Arch. James P. 1/15/81

Railroad sale in Carter budget

Times Washington Bureau

Washington — President Carter's proposed 1982 fiscal budget calls for the sale or transfer of the Alaska Railroad by 1983 and attempts to block reconstruction of the Alaska Highway.

The spending plan, released today, says Alaska is the only state that benefits from the two transportation systems. It also says the state can afford to bankroll the railroad.

(See related story, page A-8)

"The benefits from operating the Alaska Railroad are largely concentrated in that state, making continued federal funding inappropriate," the document says. "Moreover, the state has sufficient funds with which to support and improve the railroad's operation."

The Alaska Railroad is operated by the federal government under a law enacted in 1914. The 1982 budget for the railroad is \$7 million, down from nearly \$10.7 million in 1981.

Alaska Railroad Assistant Manager Arnie Polanchek said today the railroad has technically been up for sale since the early 1970s.

"It's really nothing other than a continuing question that comes up," he said. "It's just the federal government's policy that they would like to see the railroad transferred to the state."

Past attempts to sell the line to private railroad corporations have been unsuccessful.

"Someday it may happen but it's going to take legislation by both the federal government and the state government. A lot of things will have to be worked out."

Polanchek had no idea of the government's asking price for its only railroad. "It'll depend on the legislation and what the federal govern-

ment thinks they should receive for it," he explained.

Carter's budget now moves to Congress is expected to be revised by the incoming Reagan administration.

Earlier this week, incoming Transportation Secretary Drew Lewis promised to work with the Alaska congressional delegation and the state on the possible transfer of the railroad from the federal government to state control. The commitment came at a hearing of the Senate Environment and Public Works Committee.

Carter's budget notes that freight tonnages will continue below the peak achieved during construction of the Alaska pipeline, but that the railroad hopes to achieve some increase in 1982.

The railroad made its last official "profit" during the pipeline years of 1977-78, Polanchek explained. Since then, the system has been showing a paper loss due to depreciation of the physical plant and the railroad's steady reinvestment of funds into improvements.

But fiscal 1981, said Polanchek, has been "a good year."

As in the past, Carter's budget also tries to bar the congressionally authorized reconstruction of the Alaska Highway by not including any funds for the project.

The 1973 Federal-Aid Highway Act authorized \$58.7 million for the reconstruction of the Alaska Highway from the Alaskan border to Haines Junction, Canada, and the Haines Cutoff Highway from Haines Junction to the south Alaskan border.

The costs of the project have skyrocketed to \$180 billion.

(See RAILROAD, page A-3)

Railroad

Continued from page A-1)

The appropriation is being requested for 1982 because the benefits from construction of the highway accrue primarily to one state — Alaska, the budget says.

In other items of interest to Alaska, the budget seeks:

— \$36.6 million for the office of federal inspector of the Alaska gas to coordinate the issuing of permits, carry out environmental and engineering reviews and conduct field surveillance on the project. This represents an increase from the fiscal 1981 total of \$21.5 million.

— \$3.5 million for the Alaska Power Administration, which operates and markets hydroelectric power from two federal projects in the state — Eklutna near Anchorage and Snettisham near Juneau. This is up from \$3 million in fiscal 1981.

— \$2.2 billion for Coast Guard operations in fiscal 1982, up from \$2 billion last year. The money would be used for search and rescue opera-

tions, maintenance of navigation aids, ice breaking, prevention and cleanup of marine pollution, and inspections of offshore drilling rigs.

The money would allow the replacement of three aging cutters, the purchase of 41 jet surveillance aircraft and 90 new rescue helicopters.

The Carter administration wants to defer until 1983 major efforts to improve and modernize several Coast Guard training and shore facilities, but it supports increases in pay and benefits for Coast Guard personnel in 1982.

— \$7.1 billion for Comprehensive Employment and Training Act programs nationwide, including \$3.8 billion for public service employment (an increase of \$7 million from 1981), \$3 billion for general training and employment (a \$144-million increase), and \$314 million to support job placements in the private sector.

But again, we don't think that's an unreasonable amount of information to ask from a candidate for elected office. The public has a right to know who cares enough about someone's election to make a major campaign contribution.

There are several good proposals in the report to Sen. Bennett's committee, but we believe this particular one isn't among them. We hope it's put to rest quietly.

For Alaska Daily M. West

Who'll own the railroad?

What boy has not dreamed of having his own train? It may come to pass that Alaskans will realize that dream, and on a scale no little boy would have expected.

What brings this all to mind is the budget proposal to end federal ownership of the Alaska Railroad. It's not a new idea, but it may be one that gets more serious attention now than it has in the past. It's the only railroad the federal government owns and, since the end of the pipeline days, it has been losing money.

The operating loss has been declining—\$4 million last year compared to \$6 million the year before—but the federal government seems less and less inclined to carry such a loss. And the line also receives federal money for capital improvements.

Outgoing President Jimmy Carter's budget proposal said ownership of the line should be turned over to the state or a private owner by 1983. We doubt that deadline can or should be met, but we do believe it's time for the state to begin thinking about the railroad.

It's evident that the line is of greater importance to Alaska than to the federal government, and therefore we believe the impetus for expansion and improvements in the railroad must come from Alaska.

State officials are justifiably wary of just plunging in; they say they want to study the issue. That's a prudent course and we believe state railroad studies should be pushed by this session of the Legislature.

Beyond that, it's too early to recommend a definite course, but it's not too early for the state to begin developing a policy toward the railroad. It's vital to Alaska and we should have a strong hand in determining what role it will play in our future.

Carter: Give railroad to state

Empire Washington Bureau
WASHINGTON.—The Alaska railroad should be handed over to the state or a private party by 1983, according to President Carter's proposed 1982 budget.

The preliminary budget, which lists Office of Management and Budget recommendations for government expenditures, suggests the railroad sale or transfer as part of an outline of transportation policy priorities of the departing President.

The Alaska Railroad is the only federally owned rail system in the country.

"Legislation is being proposed to Congress that would provide for takeover of the railroad," a Federal Railroad Administration spokesman said Thursday, adding that Democrats are not holding out great hopes of Congressional approval of the transfer in this session.

The Alaska Railroad has been running at a deficit since completion of the Trans-Alaska Pipeline in 1976.

The railroad received \$10.6 million from the federal government for capital expenditures in fiscal 1981, including \$4.5 million for new passenger cars.

The preliminary budget for fiscal 1982 earmarks \$7 million for the railroad's capital costs. Operating costs are paid from the railroad's revenues.

In meetings earlier this week, Alaska Sen. Frank Murkowski suggested to Secretary of Transportation-designate Drew Lewis that his department investigate turning the railroad over to the state.

Sen. Ted Stevens, R-Alaska, has in the past supported transfer of the railroad to the state, but is concerned about the terms. A spokesman for Stevens said he expressed his concerns to the Reagan transition team.

Empire

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