

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902 80/2

2140 ST SB 212 - SB 219

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In reviewing Senate Bill 212 there are two primary areas of concern for Totem. These are -

- (1) Entry of the Alaska Railroad into the water carrier or motor carrier field - it is Totem's belief that the Alaska Railroad will "have its hands full" in the coming years improving its right-of-way and extending its right-of-way to tap the mineral resources of the State of Alaska. Private enterprise has shown a willingness to supply necessary water and motor carrier services both within and to the State of Alaska. We can see no need for the Alaska Railroad to operate in competition with these services. Obviously if private enterprise refuses, does not, or cannot supply these necessary services the railroad should return to the State Legislature for specific authority to enable it to enter into these businesses.

- (2) Rate making policies of the Alaska Railroad - The Alaska Railroad, by virtue of State ownership, will enjoy both direct and indirect subsidies. By direct subsidies I refer to such items as direct cash appropriations from the State Legislature for either capital or operating purposes. Indirect subsidies would take the form of the ability to finance debt utilizing tax exempt bonds, the ability to avoid the payment of federal, state and local property and income taxes, freedom from the need to earn a profit with which to support added investment, a re' cion

in expenses based on a State-owned entities ability to avoid paying for license and other fees, etc.

Private carriers faced with competition from a State-owned entity are at a distinct disadvantage if such competition is based on "cost alone" inasmuch as the State-owned entity has the benefit of both direct and indirect subsidies. In the case of the Alaska Railroad cross competition exists for a segment of the rail market. We at Totem have no desire to have any impact on the pricing policies of the Alaska Railroad for the movement of traditional bulk rail commodities.

We feel, however, that the Railroad should not be allowed to utilize either direct or indirect subsidies in the pricing of cross-competitive commodities where they wish to offer rates below those of the privately owned carriers.

Totem has proposed amendments to S.B. 212 which would prohibit the railroad from pricing below the levels set by the privately owned carriers where the railroad utilized either direct or indirect subsidy to achieve this level of price. It should be noted here that we have no desire to stop the railroad from meeting rates set by the

privately owned carriers. We also have absolutely no desire to stop the railroad from pricing below the rates set by privately owned carriers if the rate does not include the utilization of any direct or indirect subsidy.

We have offered a series of specific suggestions to committee staff from both houses concerning these areas and we look forward to continuing discussions with you in these areas.



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Proposed Amendments to S.B. 212

2/5/82

1. Amend § 42.40.010 (ALASKA RAILROAD AUTHORITY) by adding the following phrase at the end of the first sentence: "for the purpose of providing rail transportation services within the State of Alaska."

Comment: The proposed amendment would clarify the legislative intent that the Railroad Authority refrain from entering the motor carrier or water carrier business.

2. Redesignate § 42.40.120 (OPERATION OF THE ALASKA RAILROAD) as § 42.40.120(a).
3. Add four new subsections to § 42.40.120 (OPERATION OF THE ALASKA RAILROAD), designated as § 42.40.120(b), (c), (d), and (e) as follows:
"(b) The board shall solicit bids from qualified private persons or firms to operate the Railroad on a contract basis and shall contract for private professional management of the Railroad unless the board determines by a 3/4 vote that direct management of the Railroad's operations by the board will be significantly less costly."

Comment: Private, professional management of the Alaska Railroad will help to insure that the Railroad is run on an independent, self-sustaining basis and will deviate from that principle only to extent that the legislature authorized the subsidy of specific enumerated services. Direct operation of the Railroad by an unpaid board of directors would tend to reduce the Railroad's accountability. Contract management can be subjected to restrictions and regulated by incentives and penalties which would not be appropriate to control the board.

"(c) Notwithstanding any other provision of this Act, the operation of the Alaska Railroad shall not be extended to the provision of any motor carrier or water carrier service which would compete with any motor carrier or water carrier service actually provided by a private carrier."

Comment: Where private enterprise is capable of providing a transportation service, the government should stay out. The purpose of this amendment is not to restrict or eliminate any current operations of the Railroad but only to prevent expansion of existing operations in direct competition with private carriers.

"(d) Each competitive service provided by the Alaska Railroad shall generate sufficient revenues to the Railroad to cover the cost of that competitive service; provided that nothing in this subsection shall prevent the Railroad from meeting a rate offered by a private carrier for a competitive service."

"(e) The Alaska Railroad shall be subject to the antitrust laws of the state of Alaska."

Comment: A "competitive service" is defined elsewhere as a service which competes with one or more private carriers. Private companies engaged in freight transportation should not be undercut and driven out of business by the operations of a subsidized, state-owned railroad. Where it competes with private freight carriers, the Railroad should be required to play by the same rules that govern the private carriers. Thus, where it competes with private freight carriers, the Railroad should be required to conduct its operations on a self-sustaining, non-subsidized basis and in accordance with the Alaska antitrust laws.

We have no objection to state subsidization of those services (e.g., passenger and bulk commodity services) which do not compete with private carriers.

Our goal is only to prevent the Railroad's use of government subsidies to compete unfairly with private carriers.

4. Amend § 42.40.150 (ANNUAL AUDITS) by inserting a semi-colon at the end of the last sentence and adding the following:

"except that the financial records of the authority shall identify separately the cost of each service provided by the Alaska Railroad and revenues to the Railroad generated by each such service. The financial records of the authority and of the Alaska Railroad shall be available to the public at such reasonable times and places as the Board may designate."

Comment: These provisions are intended to assure that records are maintained by the Railroad, and accessible to the public, which are necessary to determine compliance by the Railroad with the requirement that the Railroad operate on a self-sustaining basis when it competes with private carriers.

5. Redesignate § 42.40.990 (DEFINITIONS) as § 42.40.290 and amend § 42.40.290 to add three new subsections, designated § 42.40.290(4) and (5), and (6), as follows:

"(4) A "service" provided by a carrier means any activity which the carrier performs or offers to perform, either individually

or as part of a through route, as a common carrier, contract carrier or both, including, but not limited to, any single or multiple commodity freight service."

"(5) A "competitive service" means any service in which the Alaska Railroad does or would compete with one or more private carriers, except that passenger service and bulk commodity service are expressly excluded from the term."

"(6) The "cost to the Alaska Railroad of a competitive service means all capital, operating and other costs actually or constructively incurred by the Railroad which directly or indirectly enhance the Railroad's ability to provide the competitive service. Such costs shall include:

(A) An imputed cost for any property or other right, privilege or thing of value used, received or acquired by the Alaska Railroad without cost or for a consideration less than fair market value. The imputed cost of such properties, rights, privileges and things of value shall be their fair market value as of the date of their acquisition or use, whichever occurs first. In the case of tangible real or personal property, market value shall be the M.A.I. appraised replacement cost, less observed depreciation.

(B) An imputed financing cost computed on the fair market value of the property, rights, privileges and things of value described in paragraph (A) of this section at the rate determined by the

Interstate Commerce Commission in the most recent revenue adequacy proceeding as the average cost of capital in the railroad industry;
and

(C) If the Alaska Railroad receives any capital or operating funds through grants or other direct or indirect subsidies from the state or federal governments or any other source, or through the issuance of tax exempt bonds or obligations, an imputed financing cost computed on the amount of such funds at the rate determined by the Interstate Commerce Commission in the most recent revenue adequacy proceeding as the average cost of capital in the railroad industry.

(D) To the extent that costs described in this section, actual or imputed, benefit more than one of the services provided by the Railroad, the Railroad shall fairly allocate such costs among such services in proportion to the use or benefit which each service derives."

Comment: The definitions are necessary to specify the meaning of proposed subsection 42.40.120 (d), which requires the Railroad to generate sufficient revenues from each service which competes with private carriers to cover the cost of providing that service. The definition of cost is intended to place the Railroad on the same footing as any private railroad and on the

same footing as the private carriers with whom the Railroad competes. The definition is intended to prevent the Railroad from using public subsidies to compete unfairly with private carriers.

6. Add a new section 42.40.300 (COMPLIANCE), as follows:

"The Alaska Railroad shall be operated in strict compliance with this Act. The Superior Courts of the state of Alaska shall enjoin any act or omission in violation of the terms of this Act upon petition by any person and shall grant all other appropriate relief, including damages, to any person injured by such act or omission."

Comment: The Alaska courts should be authorized to enforce the requirements of the Act.

TESTIMONY

BEFORE

THE ALASKA SENATE TRANSPORTATION COMMITTEE

APRIL 6, 1982

JUNEAU, ALASKA

H. L. SCHUYLER

SEA-LAND SERVICE, INC.

I AM HAROLD L. SCHUYLER, DIRECTOR OF PUBLIC AFFAIRS FOR SEA-LAND SERVICE, INC.'S ALASKA DIVISION.

WE, AT SEA-LAND, DO NOT OPPOSE THE TAKEOVER OF THE ALASKA RAILROAD BY THE STATE OF ALASKA FROM THE FEDERAL GOVERNMENT. THE RAILROAD IS NECESSARY FOR THE FUTURE GROWTH OF ALASKA RESOURCE DEVELOPMENT AREAS AND COMMUNITIES. COAL, MINERALS, AND FARMING PRODUCTS MUST HAVE AVENUES TO TIDEWATER PORTS IN ORDER TO BE EXPORTED TO WORLD MARKETS.

WE HAVE ANALYZED IN GREAT DETAIL SENATE BILL NO. 212 AND APPLAUD ITS IMAGINATIVE AND FAR-REACHING PURPOSE; HOWEVER, WE, AT SEA-LAND, ARE CONCERNED ABOUT THE ADMINISTRATION, OPERATION, POLICIES, AND RULES AND REGULATIONS UNDER WHICH THE ALASKA RAILROAD AUTHORITY WILL BE OPERATING IN CARRYING OUT ITS MISSION.

AS PRESENTLY DRAFTED, THE LEGISLATION PROVIDES US THE FOLLOWING CONCERNS:

1. A STATE OWNED ENTITY WHICH IS EXEMPT FROM ALL FEDERAL, STATE, AND LOCAL TAXES HAS A GREAT ADVANTAGE OVER OTHER COMPETITIVE MODES OF TRANSPORTATION THAT ARE PAYING TAXES TO THE FEDERAL, STATE, AND LOCAL COMMUNITIES.
2. THE OPPORTUNITY FOR THE PROPOSED RAILROAD AUTHORITY TO SELL BONDS OR BOND ANTICIPATION NOTES AS TAX EXEMPT VEHICLES GIVES THE AUTHORITY ANOTHER DEFINITE EDGE IN OBTAINING CAPITAL FOR IMPROVEMENTS AS COMPARED TO PRIVATE TRANSPORTATION THAT MUST COMPETE FOR MONEY IN THE OPEN MARKET, PAYING CONSIDERABLY HIGHER INTEREST RATES THAN DOES THE STATE GOVERNMENT.

3. THE RAILROAD AUTHORITY IS VESTED WITH THE ABILITY TO ACQUIRE AND OPERATE OTHER MODES OF TRANSPORTATION SERVICE CONNECTING TO THE RAILROAD'S RAIL SERVICE IN DIRECT COMPETITION WITH PRIVATE TRANSPORTATION. THIS ALLOWS THE RAILROAD TO BUY TRUCK LINES, WATER CARRIERS, AND AIRLINES. THIS PART OF THE BILL IS PARTICULARLY WORRISOME AS THE ALASKA RAILROAD AUTHORITY COULD VERY WELL BECOME A STATE TRANSPORTATION SYSTEM WITH NO COMPETITION AS THE PRIVATE SECTOR WOULD NOT BE ABLE TO FINANCIALLY COMPETE WITH THE AUTHORITY. THERE IS ALSO THE FACT THAT THE STATE WOULD LOSE A CONSIDERABLE AMOUNT OF TAX BASE IF AND WHEN PRIVATE SECTOR TRANSPORTATION COMPANIES ARE FORCED OUT OF BUSINESS.

4. THE LEGISLATION LIBERALLY DISCUSSES RATE MAKING, AND RATE POLICY. THE ESTABLISHMENT OF RATES FOR ALASKA RAILROAD AUTHORITY'S REVENUES WILL EFFECT THE PRIVATE CARRIERS OF OTHER MODES OF TRANSPORTATION. WE ARE CERTAINLY NOT SUGGESTING THAT THE LEGISLATURE DICTATE THE AUTHORITY'S RATE POLICIES, HOWEVER, WE FEEL THAT ALL RATES PRESCRIBED BY THE AUTHORITY MUST BE AT A LEVEL SUFFICIENT TO RECOVER THE FULL COST OF PROVIDING THE PARTICULAR TRANSPORTATION CONCERNED, TAKING INTO FULL ACCOUNT THE LEVEL OF SUBSIDY AND THE COST OF BORROWED CAPITAL. SEA-LAND WOULD URGE SPECIFIC LEGISLATIVE AMENDMENTS WHICH WOULD PROHIBIT A STATE-OWNED RAILROAD FROM CHARGING RATES WHICH ARE BELOW THOSE CHARGED BY PRIVATELY-OWNED CARRIERS, FOR FREIGHT ON WHICH BOTH CARRIERS COMPETE, WHERE THE RATES DO NOT RECOVER THE FULL COST OF THE SERVICE OFFERED (TO INCLUDE ANY DIRECT OR INDIRECT SUBSIDY).

5. WE FEEL THE LEGISLATION NEEDS AN ANTITRUST PROVISION. THE LEGISLATION NEEDS TO BE AMENDED TO PLACE THE STATE-OWNED RAILROAD UNDER STATE ANTITRUST

LAWS. ALL OF THE PRIVATELY-OWNED WATER CARRIERS AND MOTOR CARRIERS ARE SUBJECT TO THE FEDERAL AND STATE ANTITRUST LAWS, AND WHILE THIS BODY CANNOT PLACE THE RAILROAD UNDER FEDERAL ANTITRUST LAWS, STILL IT IS OUR BELIEF THAT THE RAILROAD SHOULD BE SUBJECTED TO THE SAME LAWS AS ARE THE PRIVATE CARRIERS. IN SHORT, WE SHOULD ALL PLAY BY THE SAME RULES.

6. I AM SURE YOU GENTLEMEN ARE AWARE THAT THE STAGGERS RAIL ACT OF 1980 HAS VIRTUALLY DEREGULATED INTERSTATE RAIL SERVICE. AS A PRACTICAL MATTER, THE ALASKA RAILROAD AND ALL OTHER MAJOR RAIL LINES ARE TOTALLY UNREGULATED. WHILE DEREGULATION MAY BE GOOD IN THEORY, THE TRADE BETWEEN ALASKA AND THE LOWER 48 IS IN ESSENCE A MICROCOSM: ALL TRANSPORTATION MODES COMPETE DIRECTLY WITH EACH OTHER FOR THE SAME BASIC CONSUMABLES. WE READILY ACKNOWLEDGE THAT LARGE PORTIONS OF THE ALASKA RAILROAD'S FREIGHT ARE BULK COMMODITIES; STILL, ALL OF THE COMPETING MODES ARE REGULATED WHILE THE RAILROAD IS NOT, THUS GIVING THE RAILROAD A DISTINCT COMPETITIVE EDGE WHICH CAN BE SUBJECT TO ABUSE.

7. THE BILL PROVIDES FOR THE ESTABLISHMENT OF CONTRACT RATES BY THE RAILROAD. THE STAGGERS ACT ALLOWS CONTRACT RATES BUT THAT LAW CONTEMPLATED THE RAILROADS ENTERING INTO CONTRACTS WITH MAJOR SHIPPERS WHOSE CARGO THEY HAD HISTORICALLY HANDLED FOR THE BENEFIT OF BOTH. THAT CONTRACT ABILITY WAS NOT ENVISIONED TO BE USED AS A COMPETITIVE TOOL, AS IT HAS BEEN UTILIZED BY THE ALASKA RAILROAD. SEA-LAND HAS CHALLENGED THESE PRACTICES, BOTH BEFORE THE INTERSTATE COMMERCE COMMISSION AND IN THE COURTS, TO NO AVAIL BECAUSE THE RAILROAD IS UNREGULATED AND IMMUNE FROM SUIT. WE CANNOT LEGALLY

ESTABLISH CONTRACT RATES AND, THEREFORE, CANNOT EFFECTIVELY COMPETE WITH SUCH RATES. WE URGE THIS BODY TO CRITICALLY SCRUTINIZE THAT PORTION OF THE BILL AND DELETE SUCH PROVISIONS FROM THE LEGISLATION.

8. ARTICLES 4 AND 5 OF THE LEGISLATION PROVIDE FOR THE AUTHORITY TO EXERCISE THE STATE'S POWER OF EMINENT DOMAIN/CONDEMNATION. SEA-LAND DOES NOT CHALLENGE THE STATE'S ABILITY IN THIS AREA, BUT WE STRONGLY FEEL THIS RIGHT SHOULD NOT BE LODGED WITHIN THE AUTHORITY BUT SHOULD BE RESERVED TO THE STATE TO PRECLUDE ANY COMPETITIVE USE OR ABUSE. IT IS A SIMPLE MATTER FOR THE RAILROAD AUTHORITY TO APPROACH THE STATE TO OBTAIN THE ABILITY TO ACQUIRE THE NECESSARY RIGHTS OF WAY.

9. SEA-LAND NOTES THAT THE AUTHORITY CAN DETERMINE WHAT INFORMATION IT KEEPS CONFIDENTIAL. WE URGE THAT THIS ABILITY IS SUBJECT TO POSSIBLE ABUSE. AT A MINIMUM, ALL RATES, RULES, PRACTICES, DIVISIONS OF REVENUE, CONTRACTS, IF ANY, AND COST DATA MUST BE OPEN TO PUBLIC INSPECTION.

WE, AT SEA-LAND, ARE NOT HERE MERELY TO TELL YOU WHAT IS WRONG WITH THIS PROPOSED LEGISLATION. WE WISH TO BE CONSTRUCTIVE AND ASSIST YOU GENTLEMEN IN REACHING THE BEST POSSIBLE COMPROMISE WHICH WILL WORK TO THE BENEFIT OF THE STATE, ITS CITIZENS, AND THE TRANSPORTATION CARRIERS SERVING ALASKA. TO THIS END, I AM ENCLOSING AS AN APPENDIX HERETO, CERTAIN LANGUAGE AND PROPOSED AMENDMENTS TO THIS BILL WHICH WE FEEL WILL GO A LONG WAY TOWARD MEETING THE NEEDS OF ALL INTERESTED PARTIES, WHILE PROTECTING THE COMPETITIVE ENVIRONMENT IN THE ALASKA TRADE.

I AWAIT YOUR QUESTIONS.

THANK YOU.

ALASKA STATE SENATE BILL NO. 212 - RAILROAD AUTHORITY

1) Article 1, Page 2. Findings.

Sec. 42.40.100 - Legislative Findings and Policy.

Paragraph (b). It is the policy of the state...

Sub-paragraph (5) To provide reasonably high quality and low cost transportation to the people, visitors, and businesses of the state.

Change: We suggest that the entire sub-paragraph (5) or just "and low cost" be deleted.

2) Paragraph (c), Page 3. The legislature further declares that...

Sub-paragraph (2)

Sub-paragraph (f) Provide the best possible combination of high quality and reasonably low cost transportation.

Change: Suggest that the entire sub-paragraph (f) be deleted or delete the words, "and reasonably low cost" and replace with "effectively managed".

3) Paragraph (c), Page 3.

Sub-paragraph (2)

Sub-paragraph (g) Operate according to sound business management practices.

Change: Add to this statement, "and in a manner that is consistent with the total transportation needs of the people of the State of Alaska.

4) Paragraph (c), Page 3.

Sub-paragraph (2)

Sub-paragraph (j) Ensure that borrowing by the authority does not indirectly endanger the state's own borrowing capacity.

Change: Insert after "authority", "is kept at the minimum level necessary to meet the railroad's capital needs and", before the word "does".

5) Article 2, Pages 4 and 5.

Sec. 42.40.215. Appointment and Composition of Council.

Comments: Given its structure, per diem compensation level, and conflict of interest provisions (see Article 3), it's quite likely that members will be highly politically motivated; have little, if any, knowledge of business and specifically transportation issues; and be very much subject to the whim of the Governor and the Railroad. Perhaps there is a business or trade organization in Alaska that could be designated in the Statute to nominate members of the Council for the Governor's consideration, or at least to develop recommendations as to their qualifications.

6) Sec. 42.40.250, Page 7.

Paragraph (b). The council may provide for, in a manner consistent with the purposes of this chapter and subject to the approval of the governor, the management and operation of the railroad by a third-party contractor.

Comment: The operation of the railroad may be operated by a third party under contract, after a formal bid procedure.

7) Article 2, Page 9.

Sec. 42.40.250. Executive Officials and Limited Delegation.

Paragraph (c). The general manager of the Authority manages the daily affairs and operations of the Authority.
Sub-paragraph (8) establishment of rates.

Change: This should be expanded and defined as "a joint management and council responsibility."

8) Sec. 42.40.310, Pages 11 and 12.

Paragraph (6). Public Council Meetings.

Comment: All deliberations and decisions relative to land acquisition or disposal should be made public information.

9) Article 3, Page 14.

Sec. 42.40.340. Public Disclosure of Information.
Paragraph (a).

Change: Delete second sentence.

10) Article 4, Page 15.

Sec. 42.40.400. General Powers.
Sub-paragraph (8). Acquire property by eminent domain and/or by a
declaration of taking.

Change: Delete this paragraph.

11) Article 4, Page 16.

Sec. 42.40.400
Sub-paragraph (16)

Change: After the word "railroad", insert "as a common carrier."

12) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (24)

Change: Delete "and low cost" from their sentence and add, "All rates
thus described shall be at a level sufficient to recover the full cost
of providing the particular transportation service concerned."

13) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (26)

Change: Delete their paragraph and replace with, "Enter into contracts
and leases pertaining to the properties and facilities of the Railroad."

14) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (27).

Change: Delete their paragraph and replace with, "Plan for and under-
take the extension of the Alaska Railroad's Rail System into areas of
the State not presently served."

15) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (28).

Change: Delete all after "operations" on Line 10, Page 18, and substitute "and the Railroad has the same ability as any private transportation company to preserve and protect such employee property and operations."

16) Article 5, Page 27.

Sec. 42.40.530. Eminent Domain and Acquisition of Property and Materials.

Change: Delete entirely.

17) Article 6, Page 28.

Sec. 42.40.600. Bonds and Notes.
Sub-paragraph (2).

Change: Delete last word "purposes" and add, "approved capital improvement and expansion projects."

18) Article 7, Page 26.

Sec. 42.40.700. State Review.
Sub-paragraph (a). Prior to undertaking...

Comment: We should make mention of the fact that the words are already sufficient to include the purchase of water or truck carriers.

19) Article 8, Pages 43 and 44.

Sec. 42.40.855. Exemption from Taxation.

Comment: Recommend deletion of entire section. This section both exempts the properties of the railroad from state and local taxes, and provides that bonds and bond anticipation note interest payments shall also be exempt. This is a very substantial subsidy measure and will afford the Railroad a significant cost advantage over its competitor commercial firms. If this section is not deleted, the legislation should require the authority to take into account a hypothetical tax liability based on railroad industry standards in the computation of rail rates.

STATE OF ALASKA TAKEOVER OF THE ALASKA RAILROAD:

SUPPORT FOR POSITION OF WATER CARRIERS AND MOTOR CARRIERS SERVING ALASKA.

THE ISSUE:

As you are undoubtedly aware, the federal government has indicated a desire to transfer ownership of the Alaska Railroad to the State of Alaska.

Current press reports indicate that, while the state is agreeable to taking over ownership and operation of the Alaska railroad, there are a host of problems with the transfer legislation. Most of these problems revolve around the transfer of rail lands as well as the ability of the State of Alaska to further expand the railroad.

In addition to the problems mentioned above, the existing water carriers and motor carriers who operate between the Lower 48 and the State of Alaska, are seriously concerned with the potential impact this transfer may have on the existing transportation system between the Lower 48 and various destinations in Alaska. It should be noted that currently Alaska enjoys one of the finest integrated transportation systems in the nation. Water service is provided between the Lower 48 and Alaska utilizing all major modes (ro-ro, container, rail barge and break bulk barge). Competition between the carriers providing this service has always been intense and the result has been very high levels of service as well as relatively low prices for the service. Indeed, price competition has been so severe that many observers have often equated this competition to that of a "rate war."

Within the State of Alaska the transportation system has become very well developed with a multitude of motor carriers, as well as the Alaska Railroad, serving intrastate needs. This system is well integrated with many of the highway carriers using rail piggyback service for a portion of their movement. Again, the marketplace has seen a very high degree of both service and price competition.

THE CONCERNS OF THE WATER CARRIERS AND MOTOR CARRIERS:

In assessing the impact the transfer from federal to state ownership will have on existing, privately-owned water carriers and motor carriers, we have three major concerns. All of these concerns revolve around the fact that the railroad would be owned by a state entity and thus not subjected to the normal "checks and balances" any privately-owned business is subjected to when that business is faced with the need to earn a profit to enable it to re-invest in its business, as well as pay a fair return to its stockholders. Our major concerns are:

1. Entry by the Railroad into the Water Carrier or Motor Carrier business:

The private carriers desire legislation which will prohibit entry by a state-owned railroad into the water carrier or motor carrier business.

We feel quite strongly that the Alaska Railroad, which has enjoyed an average subsidy of 17.5 percent of revenue for the past several years, should direct all of its energies towards operating the most efficient rail service possible. Utilization of either their direct or indirect

subsidies (indirect subsidies are those the railroad enjoys by virtue of public ownership: examples would be significantly lowered interest rates due to tax exempt bonds; elimination of need to earn a profit; lack of any requirement that they pay interest on their working capital; freedom from taxation; elimination of the requirement that they pay for licenses, permits, etc.) to enter the water or motor carrier fields. Currently, the water carrier field is served by all four major modes, ro-ro, container, rail barge and break bulk barge, and we see no long-term shortfall in available capacity. Within the motor carrier field, there are a multitude of motor carriers available in the state, and this industry has been severely depressed for several years, i.e., there has been significant overcapacity available.

2. Antitrust:

Private carriers desire legislative amendments which would place a state-owned railroad under both the federal and state antitrust laws.

All of the privately-owned water carriers and motor carriers are subject to the federal and state antitrust laws. It is our belief that the railroad should be subjected to the same laws as the private carriers are. In short, we should all play by the same rules.

3. Ratemaking Policy:

Private carriers desire specific legislative amendments which would prohibit a state-owned railroad from charging rates which

are below those charged by privately-owned carriers, for freight on which both carriers are cross-competitive, that is, compete for the same traffic, where the rates do not recover the full cost of the service offered (to include any direct or indirect subsidy).

The railroad, by virtue of state ownership, will in all probability enjoy some form of direct subsidy as well as enjoy the benefits of indirect subsidization (as discussed above, by virtue of state ownership the railroad is not faced with all of the expenses which a privately-owned and operated corporation is subjected).

We believe that on all traffic where the railroad competes for the same traffic with privately-owned and operated carriers, the railroad should not be permitted to utilize its direct or indirect subsidies to set rates below those established in the private marketplace. This, we feel is simply "fair play" inasmuch as the private carriers do not have available to them the railroad's direct or indirect subsidies and we have no desire to become involved in any subsidy schemes. Certainly, if the railroad, without using either direct or indirect subsidies, can price their service below that of the privately-owned and operated carriers, they should be allowed to do so.

ANSWERS TO QUESTIONS WE HAVE BEEN ASKED:

In making our feelings known, we have been asked the following questions by many individuals:

1. Why Isn't ICC Regulation of the Alaska Railroad's Rates Sufficient to Eliminate any Problems the Private Carriers Might Have With the Railroad Utilizing Subsidies to Compete With the Private Carriers?

The privately-owned carriers feel, quite strongly, that the ICC is not set up to regulate a state-owned railroad. Commission cost accounting procedures have no method of taking into account either direct or indirect subsidization which the state-owned railroad may receive. It should further be noted that a primary component of commission regulation of railroads is the fact that the railroad must face the "test of the marketplace" in terms of its ability to earn a profit, i.e., a primary component of the Staggers Act, which significantly changed the reasonableness test for railroad rates was the feeling that in the "long run" the railroads would not price their services below cost because they would have to eventually earn a profit on the provision of those services.

As discussed in the foregoing, a state-owned railroad would of course have no need to earn a profit. Additionally, the ICC has no method of factoring in to any cost analysis (assuming that they utilize their current cost formulas) the value of direct and indirect subsidies which would be received by the railroad. Thus, commission regulation is not a viable method of ensuring that the economic advantages enjoyed by a state-owned railroad are not utilized unfairly against the railroad's privately-owned competitors.

2. Doesn't the Desire of the Private Carriers to Establish a "Rate Floor" in Reality "Tie the Hands" of the Alaska Railroad?

The privately-owned carriers have absolutely no desire to establish anything akin to a "rate floor" or to "tie the hands" of the Alaska Railroad. What we desire is simply that the railroad "play by the same rules" as privately-owned carriers. Our sole concern regards the railroad's rate practices on movements of commodities which can and do move by both the railroad and the privately-owned carriers. We have absolutely no desire to have any impact on the railroad's rate policies for the movement of such bulk commodities as coal, gravel and other historic rail bulk commodities.

Within that area of commodities which are cross-competitive, all we have asked is that the railroad not be allowed to use its direct or indirect subsidies when it sets prices which are below those which have been set between private carriers in a free and competitive marketplace. It should be noted that our position allows the railroad to meet any rates set by the private carriers irrespective of whether or not the railroad can earn a profit by so doing -- all we ask is that the railroad not be allowed to artificially depress the rates of the private carriers through the use of either direct or indirect subsidies -- if the railroad can legitimately price below the private carriers and still earn a profit, they should certainly be allowed to do this.

3. What is the Position of the Private Carriers on the Expansion of the Railroad?

The private carriers feel the railroad should be expanded and utilized as the primary tool in developing the mineral deposits within the State of Alaska. Any expansion of the railroad will improve the overall business climate in Alaska and such improvement will automatically mean there will be more business available for all carriers. We feel it is a legitimate use of state power for the state to use its railroad to assist in opening up undeveloped areas of the state and the private carriers will certainly support the Alaska railroad in these efforts.

4. The Privately-Owned Carriers Proposed Amendments to the Current Transfer Legislation are Too Complex:

While we admit that our proposed amendments to the current transfer legislation are somewhat complex, it must be realized that the issues we attempt to address are quite complex. Certainly, within the rate area any legislation which attempts to deal with this problem must include rigorous definitions of what both the intent and the method of implementation are if we are to avoid abuses by either side. The private carriers have no "pride of authorship" in this area and we stand ready to work with all members of the public sector to ensure that the state arrives at the fairest, and easiest-to-enforce legislation.

5. Isn't This Only a "Tempest in a Teapot" and in Fact Private Carriers Will "Continue to do Business As Usual" No Matter How the Transfer of the Railroad Occurs?

Certainly the private carriers have not suggested that "if we do not get what we want" we will close our doors. We also do not feel that this

would be the natural outcome if the private carriers are unsuccessful in obtaining the legislation we seek. What we do feel will occur, over time, is that the private carriers, if faced with competition from a state-owned railroad which uses its direct and indirect subsidies to either underprice them or operate a competing water or motor carriage service, will simply fail to reinvest the necessary dollars to maintain a viable privately-owned and operated service.

One needs only look at the existing services which are available in the water-carrier field to see that some of the vessels serving Alaska are extremely old (average age 40 years, in some cases). The ability of the private water carriers to generate the needed capital to replace overage equipment as well as to convince their stockholders that the necessary commitments of capital will be economic, is a function of the carrier's perception of the marketplace in the "long run." Certainly most business would find it difficult to authorize the commitment of almost \$100 million per vessel (the approximate construction cost of any new vessels which would be placed in operation in an Alaskan service) when faced with competition from a state-owned railroad which had access to both direct and indirect subsidies with no constraints on their use.

In the motor carrier field problems could "come on" much more quickly. Many of the motor carriers operating within the Alaska area are not now well capitalized or in the best financial health. Indeed, there have been several recent bankruptcies. Certainly investment in new trailers and tractors would slow down if these carriers were faced with unrestrained competition from a state-owned railroad which had access to both direct and indirect subsidies.

EVALUATION
OF THE
INTERSTATE COMMERCE COMMISSION BUREAU OF ACCOUNTS
SECTION OF COST DEVELOPMENT JUNE 15, 1981 STUDY
OF THE ALASKA RAILROAD WATER/RAIL CONTRACT RATES AND
WATER/RAIL TARIFF CHARGE RATES

Executive Summary

This evaluation of an Interstate Commerce Commission (ICC) examination of the Alaska Railroad's pricing was occasioned by expressions that the ICC had concluded that the Alaska Railroad insofar as it competes with private companies is not pricing below costs. No ICC study stands for that proposition.

Working with data supplied by the Alaska Railroad, and thus presumably favorable to the Railroad's position, the ICC report in fact demonstrates that the Alaska Railroad's prices for competitive service are provided at a level below the costs the Alaska Railroad would experience if it were an unsubsidized private enterprise.

A recently released General Accounting Office study casts doubt on anyone's ability to determine whether the Alaska Railroad is pricing above costs.^{1/} GAO concludes that despite its having drawn attention to the railroad's lack of costing data, corrective action was not initiated until December, 1981, and is still not completed. Thus, the Alaska Railroad's costs of providing freight transportation service is still unknown.

^{1/} Comptroller General's Report to the Congress, Alaska Railroad's Federal Rule Should End; Some Management Problems Remain, February 25, 1982, hereinafter, "the GAO Study," pages 14 and 15.

Introduction

The Conference Report on Appropriations for the Department of Transportation and Related Agencies^{2/}, for fiscal year 1981, directed the ICC to provide a determination (along with supporting data) to the House and Senate Committees on Appropriations as to whether the Alaska Railroad's (the "ARR" or "the Railroad") water/rail contract rates and water/rail tariff charges recover the full variable cost of such service as well as any subsidy allocable in providing such service. The pertinent part of the Conference Report states,

PAYMENT TO THE ALASKA RAILROAD REVOLVING FUND

Amendment Number 36: The Conferees also direct the Interstate Commerce Commission, in cooperation with the Federal Railroad Administration and the State of Alaska, to provide a determination (along with supporting data) to the House and Senate Committees on Appropriations as to whether Alaska Railroad water/rail contract rates and water/rail tariff charges recover the full variable cost of such service as well as any subsidy allocable in providing such service. Such determination shall be provided no later than June 1, 1981.

Report No. 98-1400, 96th Congress, 2d Session, p. 14.

The Senate Appropriations Committee gave its reasons for ordering the study as follows:

"The Committee is concerned that the federally owned and subsidized Alaska Railroad may be pricing its interstate water/rail services at a level so low as to threaten the existence of its unsubsidized private carrier competition...".

S. Report No. 96-932, 96th Congress, 2d Session, p. 43.

The ICC completed the required study, entitled, "Study of the Alaska Railroad Water/Rail Contract Rates and Water/Rail Tariff Charge Rates Pursuant to Amendment No. 36 to the Conference

Report Making Appropriations for the Department of Transportation and Related Agencies" (the "Study") on June 15, 1981. The Study used some of the same methods employed in an earlier ICC study of two contract rates published by the ARR. The earlier study, mandated by Section 709 of the Staggers Rail Act of 1980, P.L. 96-448, was published on June 1, 1981, and was entitled, "Study of the Alaska Rates Pursuant to Section 709 of the Staggers Rail Act of 1980" (the "Staggers Act Study").

Background

The principal commercial link between Alaska and the contiguous or "lower 48" states is by water. No rail route exists, and motor carriage up the Al-Can Highway is both prohibitively expensive and subject to restrictions by the Province of British Columbia.

At present three water carriers haul virtually all the freight moving to Alaska from the lower 48 states. Totem Ocean Trailer Express ("TOTE"), Sea Land Service Inc. (Sea Land), and the U.S. Government owned and operated ARR are the three principal common carriers which publish tariffs for the transportation of cargo by water between the lower 48 and Alaska.

TOTE transports trailers in "RO-RO" (roll on/roll off) vessels, and Sea Land transports containers in container ships. TOTE and Sea Land publish competing tariffs, each of which states through routes and joint rates which are concurred in by various motor carriers.

The ARR, which itself only provides intrastate rail service inside Alaska, also publishes a through route/joint rate tariff

for water/rail service between the lower 48 and Alaska. The water portion of this transportation is provided by Alaska Hydrotrain, a division of Crowley Maritime Corporation. Hydrotrain transports rail cars on barges pursuant to the ARR's water/rail tariff.

TOTE, Sea Land, and the ARR all offer complete through transportation to or from inland points in the lower 48 to or from inland points in Alaska in conjunction with their respective concurring and connecting carriers. Thus TOTE, Sea Land, and the ARR are direct competitors in providing transportation between the lower 48 and Alaska.

More than 80 percent of the freight traffic (except oil) moving between Alaska and the lower 48 moves between Anchorage and the Puget Sound. Most of that movement is by water. But Alaska Hydrotrain, the only water carrier of rail cars in the trade, publishes no tariffs and establishes no separate charges for its services. Its prices are included in the joint rates charged by the ARR.

As the Conference Report indicates, TOTE and Sea Land, the ARR's unsubsidized competitors, have complained that the Railroad is using the public subsidy it receives to publish below cost rates on traffic for which it competes with ARR/Hydrotrain. The Congress therefore mandated the study to examine whether the ARR was using the subsidy it receives^{2/} to price its

^{2/} The ARR received \$6.5 million in subsidy in FY 1980, \$10 million in FY 1981, and \$6 million in 1982. In addition, the ARR/Hydrotrain service has received substantial ongoing benefits through government construction of facilities such as the harbor facilities at Whittier, which the ARR may use free of debt service.

competitive service^{3/} at a level below that which it could maintain without subsidy.

Analysis

The ICC concluded that the ARR's charges for rail service recover the cost of providing that service.

Of obvious importance to a finding related to costs is that one know what the costs are. The ICC stated that the only cost data available was that "developed by the railroad's costing system."^{4/}

Therein lies a basic weakness with the Study. The Railroad has no effective cost information. The General Accounting Office, at page 18 of its Feb. 25, 1982, study, noted that in its 1978 report GAO had concluded: "Furthermore, the Railroad did not have information on the cost of transporting specific commodities to use in setting rates and making other marketing decisions." GAO then reported that little substantive change had occurred. Then at page 21 GAO said,

"...[W]e continue to believe that complete cost information is crucial to an effective marketing program. An FRA rate consultant stated that rates are determined by the market conditions, not by costs. Our previous reports stated that Alaska Railroad's rates should be based primarily on costs, but even if they are based on market conditions, as the consultant suggests, complete cost and revenue information is needed to determine

^{3/} The ARR maintains a number of services for which little or no competition exists. An example is the rail passenger service between Anchorage and Fairbanks. In addition, neither TOTE nor Sea Land compete for the carriage of bulk commodities between the lower 48 and Alaska.

^{4/} The Study, p. 13.

which business is the most profitable and should therefore be emphasized and encouraged through marketing efforts."

Thus, the cost data underpinning for any conclusions simply do not exist on the ARR.

Even if we assume that the cost data has some relation to fact, the Study shows the Railroad's rates to be below cost "as well as any subsidy allocable in providing such service." The Study demonstrates that the ARR's prices for its competitive rail service are set at a level below the costs that the ARR would have to pay to meet that service if it did not receive a subsidy from the Federal Government. If the ARR were privately owned, it would be losing substantial amounts on its competitive service.

Table 1 below, which was compiled using data and assumptions used by the ICC in the Study, demonstrates this point.

Table 1

WATER/RAIL RAILCAR TRAFFIC: COMPARISON OF REVENUE PER CARLOAD AND FULL VARIABLE COSTS PER CARLOAD

(Cost of Capital at Government Rate and at Private Enterprise Rate)

Traffic Category	Revenue per Carload	Full Variable Costs per Carload		Ratio of Revenue to Full Variable Costs	
		Govt. Rate	Pvt. Rate	Govt. Rate	Pvt. Rate
Competitive	1224	1193	1389	1.03	.88
Noncompetitive	1492	1045	1216	1.43	1.23
Total	1299	1151	1340	1.13	.97

The far right-hand column on Table 1 shows the "Ratio of Revenue to Full Variable Costs"^{5/} for "competitive," "noncompetitive," and total rail/water traffic moving between the lower 48 and Alaska. The Study does not break the water/rail traffic down into competitive or noncompetitive categories. But TOTE has demonstrated -- without contradiction from the ICC or the ARR -- that it and Sea Land face competition from the ARR on about 20 percent of their traffic; the bulk of the "competitive traffic" is lumber and building materials.^{6/}

^{5/} The variable cost of providing transportation service includes the costs that vary according to the extent of that service, as opposed to fixed costs, which remain constant. Examples of variable cost include labor, fuel, and wear and tear on equipment, while an example of a fixed cost is the service on outstanding debt. The allocation of costs into the variable or fixed categories may be made in different ways, depending on the period of time under consideration and the assignment of certain "common" costs to different services. In the Study, the ICC computed seven different levels of variable cost, described at pages 17-20 of the Study. Table 1 uses the lowest level and, thus, the level most favorable to the Railroad's position, i.e. ICC's "Level I" variable cost computation, the level closest to the ARR's direct or out-of-pocket costs. The other cost levels contain some allocation of indirect costs to this traffic.

^{6/} TOTE identified 15 commodities with which it competes with the ARR in a "Motion for Supplementary Action" filed at the ICC on January 9, 1981, in Ex Parte No. 405, the proceeding in which the ICC developed the Staggers Act Study. A copy of the Motion, and the attached Verified Statement of expert witness Carl M. Snavely, Jr., is available from counsel for TOTE, Garvey, Schubert, Adams & Barer, 1000 Potomac Street, N.W., Washington, D.C. 20007, upon request. The Study develops cost/revenue ratios for a number of different commodity groups in Appendices E, F, and H. A comparison of the TOTE list of 15 commodities with the commodities listed in the Appendices produced a list of seven competitive commodity categories, as follows: housebuilding materials, agricultural commodities, iron and steel, machinery, paper and printing paper, food and drink, and manufactured and miscellaneous. The list is not exhaustive, but it is representative: most of the traffic as to which TOTE/Sea Land and the ARR compete is lumber and building materials designated as "housebuilding" in Appendices E, F, and H.

With cost of capital computed at the "embedded cost" to the Government,^{7/} Table 1 shows that the revenues from the competitive traffic exceeded the full variable costs by three percent, whereas the revenues from the noncompetitive traffic exceeded the full variable costs by 43 percent.

However, Table 1 also shows that when the cost of capital is increased to the "private enterprise requirements," -- i.e. the cost of capital to private enterprises rather than to the Government -- the competitive traffic fails to cover the full variable costs by 12 percent. In contrast, the revenues on the noncompetitive traffic exceed the full variable costs by 23 percent.

Hence, the Study shows that the availability of the Government's capital subsidy does permit the ARR to continue the long-term carriage of the competitive commodities at a revenue level which would not support a private enterprise railroad. The only conclusion available is that the Alaska Railroad is using its favored position to compete unfairly with private business.

As the language in the Senate Appropriations Committee Report indicates, the Committee wanted the Commission to

^{7/} The embedded cost of capital to the Government is the price the Government actually paid for the capital it has invested in rail facilities; the cost is much lower than the cost of capital to a private individual, since (1) in many cases the Alaska Railroad could rely on its subsidy monies rather than borrowing funds and (2) the interest rate available to the Alaska Railroad reflects the fact that it is an agency of the United States Government, and as such has the full faith and credit of the United States behind it.

determine if the pricing practices of the Alaska Railroad
(1) increased its reliance on the Federal subsidy and/or
(2) threatened the existence of its unsubsidized competitors.
However, the Commission directed its entire effort to merely
developing revenue-to-full variable cost ratios.

The Commission study is silent both as to the effect of the
ARR's rate policies on the level of the Federal subsidy, as well
as to the effect of those policies on the private enterprise
carriers with which the railroad competes.

The ARR's rate policies can have several effects on the
competitive private enterprise water carriers. Obviously, if
its rates divert traffic from those carriers to the railroad,
there is a direct and negative impact on the gross revenues of
the competitive carriers and, dependent on the economics of the
situation, on their net revenues. More subtle perhaps is the
impact on the willingness of the private enterprise carriers to
take the risk of future investment in the Alaska trade.

Over the long run, private enterprise capital cannot compete
pricewise with Government funding. As a result, the private car-
riers will gradually withdraw investment from the trade by not
replacing existing investment as it becomes worn out or obsolete.
Ultimately, the private carrier will go out of business altogether
unless the Government funded carrier does not have or does not
obtain sufficient capacity to meet the demands of the trade.

Even in times of high demand, a history of below-cost rates --
i.e. below the costs that private enterprise carriers would have
to pay -- by the Government funded carrier will cause the private

enterprise carriers to be reluctant to make investments in new capacity to meet future increases in demand. They will recognize that, if the demand increases do not materialize as projected, the Government funded carrier can and, perhaps, will undertake rate actions that will undercut their return on the new investment.



UNIVERSITY OF ALASKA
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Anchorage, Alaska 99501
Phone (907) 278-4621

15 January 1981

The Honorable Jalmar Kerttula
President, Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula,

In light of your longstanding interest in Interior Alaska and the role the Alaska Railroad might play in the region's economic development, I wanted to share with you a number of policy issues surrounding the proposed change in the ownership and operation of the Alaska Railroad.

In the attached memorandum, John Gray of my staff identifies many of these policy issues and suggests a way to examine them. John has shared his thoughts informally with staff of DOTPF and reports that they are making every effort to address these issues with the limited resources and time available to them. Hopefully, the departmental analyses will be sufficiently timely and pertinent to legislative interests to contribute to the legislature's final determination.

The Institute has devoted several years to developing a professional capability to aid the state in its transportation policy development and training and has made substantial progress in the past few years. As discussed in the enclosed Review, our transportation system is inextricably intermodal, with something like 85 percent of all goods being transported by more than one mode of travel. This interrelationship suggests that any possible changes in one mode, such as the railroad, may affect other modes to which it is linked and those with which it competes. Moving more freight by rail suggests changes in the demand and handling capacity of port facilities, warehousing, and transfer facilities and very real impacts on highway uses and on the trucking industry. Ideally, these intermodal impacts will also be taken into account in deciding the fate of the Alaska Railroad.

Alaska has an exciting opportunity to build a foundation for its future. Hopefully, the sudden availability of surplus revenues will not make us less judicious or wise in making such important decisions as the sound development of our transportation and power infrastructure.

JAN 19 1981

UNIVERSITY OF ALASKA

The Honorable Jalmar Kerttula

15 January 1981

Page Two

If I or the Institute can be of any assistance to you as you consider this important question, please feel free to call me.

With best regards.

Sincerely,



Lee Gorsuch
Director

LG/ds

Enclosure

cc. ✓ Senator Ed Dankworth
Senator Bill Ray
Representative Pappy Moss
Representative Brian Rogers
Ms. Fran Ulmer, Director, DPDP
Ms. Jessie Dodson, Special Asst., Governor's Office
Commissioner Bob Ward, DOTPF
Commissioner Chuck Webber, CED
John Gray, Asst. Prof., ISER

MEMORANDUM

January 9, 1981

TO: Lee Gorsuch

FROM: John Gray *JG*

SUBJECT: Policy Questions Requiring Examination Prior to a Change in Institutional Status of the Alaska Railroad

There now exists a fairly high probability that the Alaska Railroad will undergo some form of change in its institutional framework over the course of the next two to four years. This expectation is based on the perception by federal decision makers that:

- The Alaska Railroad no longer serves its original function (a frontier development tool) but has become a component in a more mature transport and economic system;
- The state now possesses the resources to assume responsibility for the operation and, if necessary, subsidization of the railroad;
- Mid- to long-term traffic prospects suggest that private capital might find some degree of involvement in the railroad increasingly attractive; and
- The railroad would be capable of providing more effective support to both public and private objectives under a revised organizational and institutional structure.

Clearly, the types of changes which could evolve from the modification which these perceptions represent could have considerable influence on both federal and state transport policy and the potential for utilization of the railroad as a development tool by or in the state. To understand the breadth of the possible changes it is first necessary to identify the issues which are critical to the parties potentially involved and how various scenarios of the railroad's future could influence these issues.

The consultant's report to the Department of Transportation and Public Facilities on the preliminary phase of the Statewide Rail Systems Study identified a number of questions requiring consideration prior to decision making on this issue. These, and a number of others listed below, include:

- The status of rail-related lands both in relationship to ANCSA conveyances and to the railroad's operational and industrial development requirements;
- The status of public employee unions, existing labor agreements, employee benefits and retirement programs, and employee protection conditions;
- Design of an ownership/operational structure which permits the railroad to seek investment capital;
- Design of an ownership/operational structure which avoids the public/private conflicts now inherent in the marketing of the railroad's services;
- Design of an ownership/operational structure which give management the flexibility to make entrepreneurial decisions and to be accountable for the outcomes of these decisions;
- A determination of whether passenger service is necessary and, if so, whether it is a public good which should be subsidized if the railroad is required to continue its operation;
- A determination of whether the railroad represents an appropriate mechanism for implementing state development policy and, if so, under what types of financial, operational, political, and economic conditions;
- A determination of the present and historic financial status of the railroad particularly as this information relates to the prospect of attracting private capital, both equity and debt;
- The desirability or usefulness of establishing a state rail regulatory capability;
- The determination of tax status (federal, state, local) of revenues and for real and operating property after conveyance;
- An assessment of traffic potential for the railroad and how an institutional realignment might affect various traffic possibilities;
- A determination of responsibility and operational mechanisms for subsidies should operating revenues not be sufficient to cover operation costs and capital renewal;

- An analysis of the different possible impacts of various institutional arrangements on potential rail extensions;
- An analysis of the impact on rail competitors of various institutional arrangements for the railroad; and
- Determination of which federal funding programs would or would not be available under different ownership/operational structures.

While many of these questions have already been identified none have undergone any detailed examination. Although there are fifteen areas of interest identified above they seem to group themselves into several broad categories each of which is somewhat interrelated to the others.

The first and central of these concerns the ownership, operational, and political form of any scheme for rail status revision. This form may place important limitations on the scope of management decision making flexibility, responsiveness to state policy making and the ability to operate the railroad in a manner acceptable to the various potentially interested parties. A variety of options appear to be available including:

- Maintain the status quo. That is, continue to function as a federal agency.
- Reorganize as a federal corporation. In form this might be somewhat similar to Canadian National Railway.
- Reorganize as a state agency. This would give the railroad somewhat the same status as the Marine Highway System.
- Reorganize as a state corporation. Such an operation might be similar to either the British Columbia Railway, the Ontario Northland Railway or to any number of small operations developed in the Eastern and Mideastern U.S. during the past five years.
- Reorganize with a combination of state ownership and private operation. This would give the state ownership of some combination of the railroad's real and operating assets while a private entrepreneur would either enter into a long-term lease agreement or contract to operate the property in a manner similar to the arrangement between the Southern Railway and the city of Cincinnati for operation of several hundred miles of line owned by that city.
- Sell the railroad to a private firm who would then function in a manner similar to comparable operations elsewhere in the country.

Clearly, these options can differ substantially in the range and size of their impacts upon the state. They also would provide considerable variation in the amount of investment by the state (although none of them would necessarily entirely eliminate state involvement). Finally, the form chosen for the railroad would determine almost entirely the degree to which rail decision making in the state would be political rather than commercial.

A second group of the decision questions might be termed institutional. These include the labor, lands, regulatory, federal relationship and, to some degree, the intermodal competition questions. While these are related to the structural matters outlined above, they are grouped separately since they have substantial portions which are applicable to any of the forms noted above. Their solutions may also take several forms in any one of the cases noted above. These may also be among the most difficult questions to answer since they tend to involve a variety of rather vocal political constituencies.

The final set of areas are those involving finance and traffic. Clearly, they cannot be separated from the structural matters outlined, however, much of the content of these questions can be relevant to any of the potential forms. As such, they may serve as descriptive baselines against which to evaluate alternatives. Much of the background for these areas already exist in two documents:

- "The Preliminary Statewide Rail Systems Study"
- "The Alaska Railroad - Future Freight Markets"

The latter item would require a good deal of updating.

The principal area which is lacking is a solid understanding of the railroad's financial structure. I would suspect that much of the accounting data which one might need to compare the ARR operations with those of other carriers will not exist since the railroad has been required to maintain its books on the basis of federal government accounting practices rather than industrial practices. Additionally, valuing existing capital assets could be very difficult because of the railroad's federal status. However, it will be necessary to perform such an evaluation, particularly if private capital is to be brought into the concept.

I would suggest that the following study procedure would produce most quickly results of value to decision makers. It is based on the premise that the central element in the analysis is the structural ownership/operational form that would result from the decision making. The first step would appear to be the careful and complete definition of each of the potential structural forms including any subtypes. These definitions would then be compared to each of the fifteen questions

each of the fifteen questions raised earlier. To as great an extent as possible, these relationships should be quantified, however, this is clearly not possible in all of the areas. In some cases qualitative assessment will be necessary with, if possible, some thought given to a (relatively) subjective weighting of alternatives. As mentioned, many of the institutional matters may require considerations outside a specific structural form and should thus be evaluated and defined in the same manner as the forms with the results then used to judge the interaction of institutional alternatives with structural forms.

For strict decision making purposes, it is not usually of great value to have large volumes of detailed quantitative information. Therefore, I believe that the final product should be in the form of a matrix with the structural forms on one axis and decision questions (or sub-questions) on the second axis. The contents of each matrix location would be a weighting factor which would compare the quality of the forms in addressing the question. It would probably not be appropriate to suggest a best solution (although it would be possible to do so) rather, it would be more useful to indicate a best course of action in regards to each question. The text would be both a qualitative and quantitative analysis which would support the entries in the matrix.

Finally, I would emphasize that any work in this area should be coordinated with the continuing DOTPF rail planning program. This information and contacts available through their office are much more extensive than we could possibly develop within a reasonable timeframe. Further, individuals in that office have been involved in various aspects of this work for almost six months and have begun to develop a good deal knowledge in the field. They would also probably be involved in any plan of execution that in any way concerned an expenditure of state funds for the capital or operating acquisition or subsidies and would, in any case, be a part of intermodal planning efforts related to the railroad.

ADOPTED

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 "omission" 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 3-4; 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

As you know

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 212 (Dankworth, Kerttula & Sturgulewski)
 Title An Act establishing the Alaska Railroad Authority
 Requested by Sens. Dankworth, Kerttula & Sturgulewski Date 2/26/81

II. FISCAL DETAIL

Agency Affected DOT/PF
 Program Category Affected N/A
 BRU, Program, Or Subprogram(s) Affected Transportation
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

(See Footnote #1)	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		160.5	243.8			
200 TRAVEL		25.2	28.0			
300 CONTRACTUAL		270.0	270.0			
400 COMMODITIES						
500 EQUIPMENT		5.0	2.0			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		460.7	543.8			

FUNDING (Thousands of Dollars)

(See Footnote #2)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		460.7	543.8			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

ASSUMPTIONS/EXPENDITURE BREAKDOWNS:

- A) All cost estimates are in FY 82 dollars.
- B) Expenditures will not commence prior to FY 83. The Act carries an outdated effective date.
- C) FY 83 and 84 estimates cover only initial organizational structuring and expenses through the transfer negotiation stages.

D) 100 Personal Services:

Position	FY 83 Range	Salary	Overhead (27%)	Total
President (Dir. level)	26	\$59,225	\$15,985	\$75,210
Executive Secretary	10	\$21,505	\$ 5,750	\$27,255
Planner V	21	\$45,770	\$12,305	\$58,075
				\$160,540

IV. DATE 1/18/82 PREPARED BY Mark S. Hickey
 AGENCY DOT/PF - S.E. Planning and Programming
 Original: Legislative Finance PHONE 364-4332
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

PAGE TWO

100 Personal Services (cont.): FY 84

<u>Position</u>	<u>Range</u>	<u>Salary</u>	<u>Overhead (27%)</u>	<u>Total</u>
President (Dir. Level)	26	\$62,215	\$16,790	\$ 79,005
Executive Secretary	10	\$23,345	\$ 6,325	\$ 29,670
Planner V	21	\$49,680	\$13,455	\$ 63,135
Planner III	17	\$37,145	\$10,005	\$ 47,150
Clerk Typist II	07	\$19,550	\$ 5,290	\$ 24,840
				<u>\$243,800</u>

(These positions reflect the authority noted in the legislation allowing the President to employ additional staff as necessary. The staff growth in FY 84 is based on the assumption of increased duties following organizational structuring in the FY 83 year.)

E) 200 Travel: FY 83

Quarterly meeting of the board of directors, with an assumption of additional attendance by the President (average attendance = 8):

Round-trip air fare @ \$350 x 8 = \$2,800

Two days per diem @ \$80 per day x 8 = \$1,280

Incidental meeting expenses = \$130

Total per meeting = \$4,210 x 4 meetings = \$16,840

Additional travel requirements of board and staff (including D.C. trips for negotiations):

12 trips per year @ \$700 air fare and per diem = \$8,400

FY 83 Total = \$25,240

FY 84 travel budget reflects a small increase due to additional staff and greater duties: \$28,000

F) 300 Contractual: FY 83 and 84

Office Space Rental: 1,000 net square feet @ \$20 annual nsf cost = \$20,000

Bond counsel and consultant requirements: \$250,000 Total: \$270,000 per year

(These latter contractual requirements reflect the authority noted in the legislation and are based on the assumption of needed expertise to establish the appropriate bonding authorities and the organizational format of this public corporation.)

G) 500 Equipment: Minor expenditures for the necessary business machines are indicated under this category.

FISCAL NOTE: SB 212 An Act establishing the Alaska Railroad Authority

PAGE THREE

FOOTNOTES:

1. No actual estimates are provided for subsequent fiscal years because of the difficulty in predicting levels of responsibility beyond initial organizational structuring and potential expenses through the transfer negotiation stages. In that Sec. 42.40.120 specifically requires the authority to provide for the operation of the Alaska Railroad following transfer, there exists the real possibility of the State incurring significant liabilities for the ongoing operation of the railroad. Although rough estimates could be provided of these potential costs, there exists a structural limitation under this piece of legislation as drafted, since Sec. 42.40.230 clearly states that neither the credit nor the taxing powers of the State or its political subdivisions may be pledged by the authority, and that the State and its political subdivisions will not be liable for the debts incurred by the authority.

2. The legislation does not address a specific source of funding for the establishment of this public corporation. Consequently, the first two years of funding are depicted under the General Fund category. Although no funding is shown under the Federal Fund category, there are both planning and operational assistance grants available from the Federal Railroad Administration, U.S. Department of Transportation, to aid local rail operations. DOT/PF is currently the recipient of rail planning funds, which represents the major source of funds of DOT/PF's rail studies. However, while it is apparent that if this public corporation is formed, it will become the administrator of these funds, it is doubtful that the State of Alaska would be allowed to use these funds other than for technical rail planning. As a result, these funds are not depicted as a source of funding for the contractual requirements noted above.

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SECTION-BY-SECTION EXPLANATION TO ** DRAFT

ARTICLE 1. FINDINGS

Sec. 42.40.100. FINDINGS. The individual findings are self-explanatory. Each was included for a specific purpose. In addition to describing the factual and policy setting in which the transfer of the railroad to the state is occurring, findings are necessary to establish the legislature's expectations with respect to the authority. Some findings are required by the state Constitution and others will strengthen the ability of the authority to secure tax-exempt financing.

ARTICLE 2. CREATION AND ORGANIZATION.

Sec. 42.40.200. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established in this section. Its existence commences on the appointment by the governor of all of the members of its board of commissioners.

Sec. 42.40.205. LIMITATION OF LIABILITY. That all the authority's liabilities are exclusively its own and not the state's is clearly stated in this section.

Sec. 42.40.210. BOARD OF COMMISSIONERS. Self-explanatory.

Sec. 42.40.215. APPOINTMENT AND COMPOSITION OF BOARD. Subsection (a) provides that the board consists of the Commissioner of Transportation and Public Facilities and six "public" members, who may not be state officers or employees.

The authority's chief executive officer and an authority employee, appointed by the Governor, representing the unions on the property are ex officio, non-voting members. A general qualification standard is provided in order to encourage the appointment of persons who can make substantive contributions to the council. One member is to be or have been an executive of a non-connecting railroad, if legally permissible. At least four public members must come from areas served by the railroad.

Subsection (b) provides that the governor exercises his power of appointment only upon enactment of state legislation accepting the closing report prepared under the federal transfer legislation. The closing report is to include a specific accounting of the assets and liabilities being transferred. The legislature may not condition its acceptance of the report on its modification but may only accept or reject it.

Subsection (c) provides for confirmation of board members by the legislature but also provides that appointed members have full powers and responsibilities until rejected.

Subsections (d), (e), and (f) relate to the election of board officers and the removal of board members for specific reasons.

Sec. 42.40.220. TERM OF OFFICE; VACANCIES. Other than initial board members who serve staggered terms to ensure long-term continuity, board members will serve five year terms, as provided in this section. The section also provides for the appointment, subject to confirmation, of replacement members to fill unexpired

terms and the preservation of the authority of a board quorum in the event of a vacancy. A member whose term has expired serves until his successor has been appointed.

Sec. 42.40.225. COMPENSATION AND EXPENSES. Compensation in the amount of \$300 per day for public board members is provided in this section. The board is responsible for determining, in its rules, how partial work days will be compensated. Members also are entitled to per diem and travel expenses.

Sec. 42.40.230. QUORUM AND NOTICE OF MEETINGS. A quorum of four voting members is established by this section. In addition to the notice requirements of state law, this section provides that notice of meetings must be given to board members, certain state officials, two newspapers of statewide circulation and, upon request, members of the general public.

Sec. 42.40.240. VOTING. This section provides that the board rules will prescribe the manner of voting and any representation of absent members.

Sec. 42.40.250. EXECUTIVE OFFICIALS. This section provides for appointment of authority officials and personnel. The board itself appoints and fixes compensation for a chief executive officer and legal counsel. Appointment of legal counsel is subject to the approval of the Governor for competence. The chief executive officer, subject to board approval, names the other executive officials. These officials, designated in the definitions, all serve at the pleasure of the board. The chief

executive officer appoints all other personnel. No executive official, except as may be temporarily required by the federal transfer legislation, may receive more compensation than state departmental commissioners.

Sec. 42.40.260. DELEGATION. This section provides that the daily affairs and operations of the railroad are the responsibility of the chief executive officer. The board is required to delegate to the chief executive officer certain matters such as leasing, specific rate-setting, routine changes in service levels and procurement. General or particular board authorization or concurrence is required for other enumerated activities.

ARTICLE 3. ADMINISTRATIVE PROVISIONS

Sec. 42.40.300. CONFLICTS OF INTEREST. This section prohibits a board member or employee from participating in a decision in which he, or a member of his immediate family, has a direct or indirect financial interest. The board may authorize a member or employee to participate when the financial interest is only a remote one, as defined in subsection (b). Additionally, a board member or employee may participate where he will not be affected in a manner different from the public generally. Subsection (d) voids board action where a vote in violation of Sec. 42.40.300 was necessary to make up the majority. Otherwise, the board may ratify action taken after a separate vote without participation by the interested person. An intentional violation of Sec.

42.40.300 or A.S. 39.50 results in the forfeit of the member's or employee's office.

Subsection (e) extends A.S. 39.50, requiring the submission of financial disclosure statements and compliance with conflict of interest standards, to the executive employees and board members. The board is also required in subsection (f) to adopt within 120 days of the first meeting rules implementing the conflict of interest section.

Sec. 42.40.310. PUBLIC BOARD MEETINGS. This section requires that board meetings be public and that executive sessions be used only when permitted by the state open meetings statute, A.S. 44.62.310, or when the matters under discussion pertain to land acquisition or disposal or proprietary information.

Sec. 42.40.320. MINUTES OF MEETINGS. This section requires the board to keep minutes of its meetings and to send certified copies of the minutes covering the public portion of each meeting to the governor and to the leadership of the legislature.

Sec. 42.40.330. ADMINISTRATIVE PROCEDURE. This section provides that the state's Administrative Procedure Act does not apply to the authority, with the exception that the Open Meeting Act applies to the authority's meetings. The authority is required to make its rules and regulations available to the public. The legislature may, by appropriate action, annul or temporarily suspend an authority regulation.

Subsection (b) requires the authority to provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public. Emergency regulations may be adopted, but may remain in effect for only 120 days. Subsection (c) requires that certain types of rules and regulations be submitted to the attorney general for review and approval. Subsection (d) exempts from the rulemaking procedures four designated classes of regulations. Subsection (e) provides that the authority shall be considered an agency of the state for purposes of judicial review of the authority's actions.

Sec. 42.40.335. PRE-EXISTING RULES, REGULATIONS AND ORDERS OF THE ALASKA RAILROAD. This section allows the authority board to continue in effect the Alaska Railroad's existing rules, regulations and orders for a period not to exceed two years.

Sec. 42.40.340. PENALTY FOR VIOLATION OF DESIGNATED REGULATION. This section makes a violation (other than by an authority official or employee within the scope of his employment) of any of the authority's regulations designated as necessary to protect life, health, or property a misdemeanor punishable by a \$1,000 fine and/or six months imprisonment.

Sec. 42.40.345. PUBLIC DISCLOSURE OF INFORMATION. This section requires that information in the possession of the authority is public unless the authority, by rule or regulation, withholds

such information by designating it to be of a nonpublic or privileged nature. A procedure is also established whereby individuals may object to public disclosure of information in the possession of the authority, and such information may be withheld if the public interest is not adversely affected.

ARTICLE 4. POWERS AND DUTIES

Sec. 42.40.400. GENERAL POWERS. This section delineates the numerous powers the authority needs in order to effectively manage and operate the Alaska Railroad. The list is intended to be nonexclusive but each of the enumerated powers appears for a specific reason. Most are obviously required by the authority to enable it to operate and manage the railroad. Others strengthen the authority's ability to engage in tax-exempt financing. Others will enable the authority to satisfy reasonably foreseeable requirements of the federal transfer legislation and still others anticipate the role the railroad will play in the future economic development of the state.

Sec. 42.40.410. ANNUAL REPORT. A report generally describing the operation and financial condition of the authority, certified by the board, is required by this section to be submitted to the governor and each member of the legislature by February 1 of each year.

Sec. 42.40.420. ANNUAL AUDIT. This section obligates the board to have the authority's financial records audited annually by an independent certified public accountant experienced in rail

accounting. The audit, during the five years following transfer, is to include the status of the assets and liabilities identified in the closing report prepared under the federal transfer legislation. The financial records of the authority also are subject to audit and inspection by the governor's internal auditor and the legislative auditor. Access to these materials by these officials is unrestricted but disclosure is limited.

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

This section obligates the authority to prepare long-range program and capital plans. The planning process is intended to ensure authority fidelity with the purposes of this chapter. The five-year, annually updated program plan required by paragraph (a)(1) is to provide information substantially consistent with that required of line agencies by the Executive Budget Act, although the format in which it is presented is to be developed by the authority, the legislative auditor and the division of budget and management. Three years after the preparation of the first program plan, the governor and legislative auditor may conduct a performance and efficiency audit of the authority's compliance with its plan. Paragraph (a)(2) provides for a companion five-year capital improvement plan which also is to be annually updated. The information provided in this plan is to be consistent with that required in Sec. 42.40.700(b) for projects subject to state review.

Subsection (c) requires distribution of the annually updated plans to state officials.

Sec. 42.40.430. USE OF AUTHORITY ASSETS. This section requires use of authority funds, property, assets and credit for activities authorized by this chapter. It also precludes the issuance of stock, loans to board members or employees, business for private benefit and other activities inappropriate for a public authority. Subsection (b) makes it clear that the authority is allowed to serve its employees or board members in the same manner it would others in the same general class, such as passengers or shippers, as long as no special privilege is accorded the employees or board members. It also expressly permits the authority to indemnify and insure its employees, agents and board members.

ARTICLE 5. RAIL PROPERTIES

Sec. 42.40.500. RAIL PROPERTIES. Sec. 42.40.500 provides that the authority will receive and own the properties of the Alaska Railroad transferred under the federal legislation. These properties, as defined by A.S. 42.40.900(10), include both real and personal property of the railroad. Like state lands, the authority's lands are protected from adverse possession by A.S. 38.95.010. Subsection (a) also provides that the authority's lands may not be disposed of without compliance with the specific procedures contained in Chapter 40.

Subsection (b) requires the authority to convey the subsurface estate of the lands it receives to the state within 120 days after transfer. The authority may reserve the right to use sand, gravel and other materials on the lands conveyed to the state. Its retained interest includes the right to tunnel and otherwise use the subsurface as necessary for transportation and related purposes.

Under subsection (c), the authority is given the power to litigate and settle any claims arising out of the transfer process, including claims for breach of warranty by the United States. Under subsection (d), the authority may submit applications for interests in federal lands, such as rights-of-way, and receive conveyances of those interests. Additionally, the authority is authorized by subsection (e) to acquire state and federal surplus property under existing law.

Subsection (f) requires the authority to give public notice of the disposal of interests in land, other than leases, easements, and land-use permits.

Sec. 42.40.510. CLASSIFICATION, ACQUISITION AND USE OF STATE LANDS FOR RAILROAD PURPOSES. Sec. 42.40.510 provides a mechanism allowing the authority to acquire state lands for railroad purposes with the concurrence of the Commissioner of Natural Resources. Such acquisition would be necessary in the event of an expansion which involves use of state lands for new routes. The acquisition procedure is initiated by a resolution of the

authority's council identifying specific lands for rail purposes. Within 180 days after receiving the resolution, the Commissioner of Natural Resources is required to either permanently classify and convey the surface estate of the requested lands for railroad purposes or to deny the classification as not in the best interest of the state. Conveyances under this section include sand, gravel and other construction materials useful for railroad purposes.

Subsection (c) also allows the authority and the Commissioner to engage in joint management of railroad lands, to agree to conditions for the classification of state lands as railroad lands, and to periodically review both state and railroad lands to determine their suitability for railroad purposes. The authority may reconvey to the state lands which it no longer needs.

Subsection (d) elaborates on the nature of the authority's retained interest.

Subsection (e) provides an emergency procedure for relocation of right-of-way and related fixtures to state lands where such relocation is necessary to maintain safe and adequate rail operations. Within 45 days after relocation, the authority must request classification and conveyance of the state lands under the normal procedure.

Sec. 42.40.515. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LANDS. The Department of Natural Resources may lease or develop resources on authority

lands only after a review procedure involving both the Department of Natural Resources and the authority has been completed. The review procedure requires an agreement as to suitable reimbursement for any costs incurred by the authority as a result of the development. The authority's approval of the development must be evidenced by a written authorization. Additionally, subsection (b) requires the department of natural resources to require a surety bond from any party other than the state engaged in resource development on railroad lands.

Subsection (c) requires the Department of Natural Resources to maintain records and annually report to the legislature concerning the income received from the subsurface of railroad lands and the value of all subsurface conveyed by the authority to the state.

Subsection (d) establishes the Alaska Railroad Income Fund in the State Treasury for income received by the state from lands in which the authority has an interest. The fund is subject to appropriation by the Legislature.

Sec. 42.40.520. LAND USE REGULATION. This section authorizes the authority to promote the common health, safety, and welfare of the public by adopting regulations governing land use by private parties having interests, such as leases or permits, in lands owned or managed by the authority.

Sec. 42.40.530. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS. This section confers eminent domain power on the

authority under the state's general eminent domain statute. When the authority acquires a fee simple interest, which may be necessary to ensure control of activities on the surface estate, the authority must reconvey the subsurface to the state. The authority is exempted from the requirements of A.S. 09.55 that fences and cattle guards be built in cases where land is condemned for railroad purposes.

Subsection (d) authorizes the authority to acquire land by filing a declaration of taking.

Subsection (e) clarifies that the authority may exercise eminent domain to obtain materials as well as the land and access necessary to develop them. The authority is also authorized by subsection (f) to vacate land, or any part of it, and reconvey title to the state, if compensation was paid for it.

ARTICLE 6. FINANCIAL PROVISIONS

Sec. 42.40.600. BONDS AND NOTES. This section authorizes the authority, by resolution of the board, to issue bonds and bond anticipation notes to provide money to carry out its purposes. The section vests broad discretion in the board in the exercise of this authority. Other than specific limitations provided in this section such as a maximum term of 50 years for instruments and the requirement that bond or note proceeds be dedicated to activities specifically related to the purposes for which the instruments are issued, it is intended that the board have the maximum flexibility legally permissible in financing its

activities. The 18 covenants and powers delineated in subsection (g) are not intended to be exclusive. Paragraph (19) is a general grant of authority to the board to exercise such other powers and make such other covenants, notwithstanding their omission from the specific list, as may be necessary, convenient and desirable.

Sec. 42.40.610. INDEPENDENT FINANCIAL ADVISOR. The board is required by this section to retain a financial advisor independent of the underwriter in negotiating the private sale of bonds and notes.

Sec. 42.40.615. VALIDITY OF PLEDGE. This procedural section facilitates the pledge of assets or revenues to the payment of authority debt. It provides for automatic lien attachments; gives the liens priority against all parties with junior position regardless of notice; and allows the authority to sell assets subject to a pledge.

Sec. 42.40.620. REMEDIES. For the benefit of holders of authority securities, this section provides that remedies and rights available under the terms of such instruments are to be broadly enforceable.

Sec. 42.40.625. NEGOTIABLE INSTRUMENTS. Self-explanatory.

Sec. 42.40.630. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. This section authorizes public and private entities and individuals, including the state, and its other political subdivisions,

institutions and others subject to regulation by state law to invest in authority securities.

Sec. 42.40.635. REFUNDING BONDS. The issuance of refunding bonds to refund outstanding bonds is authorized by this section. Insofar as may be appropriate, the provisions of this chapter also apply to refunding bonds. Subsection (b) authorizes investment of refunding bond proceeds, pending their application as contemplated upon issuance, in direct or guaranteed obligations of the United States, the state or other entities with comparably rated credit.

Sec. 42.40.640. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER. This section states that the authority's securities are not obligations of the state and are payable exclusively from revenues or assets of the authority, without recourse to the state or its other political subdivisions. It also requires that each instrument issued by the authority contain a disclaimer on its face to this effect.

Sec. 42.40.645. NO PERSONAL LIABILITY. Self-explanatory.

Sec. 42.40.650. REVENUES. This section provides for authority retention and management of its own revenues, which do not become part of the state's general fund.

Sec. 42.40.655. INSURANCE. In addition to requiring the authority to maintain adequate insurance, this section requires that the state be named as an additional insured.

Sec. 42.40.660. SAFEGUARDING OF FUNDS. Self-explanatory.

Sec. 42.40.665. FIDELITY BOND. Self-explanatory.

Sec. 42.40.670. REVERSION OF ASSETS. Self-explanatory.

ARTICLE 7. STATE OVERSIGHT

Sec. 42.40.700. STATE REVIEW. This section requires the authority to obtain the approval of at least the governor and possibly the legislature for certain enumerated major actions. The authority must first notify the governor and the leadership of the legislature that it proposes to undertake any of the designated actions. The governor may either disapprove the proposal, suspend it pending review by the legislature or approve it. Approval or disapproval are final and dispositive. If the governor suspends the proposal, he transmits his decision and his recommendation to the legislature. The legislature may then reject it. If either the governor or the legislature fail to act within the time provided, the proposal is deemed approved and the authority may proceed.

Subsection (e), the foregoing notwithstanding, requires specific authorization by the legislature by law of any proposed extension representing more than 50 percent of the railroad's total track mileage and requiring the issuance of securities in an amount greater than \$50 million.

Subsection (f) provides that this section is satisfied if the authority has been directed to proceed with a project through the Sec. 42.40.710 action-forcing mechanism or in the event the legislature has funded a project independently.

Sec. 42.40.710. ACTION-FORCING MECHANISM. This section requires the authority to respond formally to a request for consideration of a proposal by either the governor or the legislature. Within 30 days of receiving such a request, the authority, in writing, must commit to undertake the suggested proposal or explain why it will not or is precluded from doing so. At the request of the governor or on its own initiative, the legislature may then direct the authority to proceed, its response notwithstanding, if the legislature also provides funds to plan and implement the proposal.

Sec. 42.40.715. INTERVENTION. This section provides that the governor, when so authorized by the legislature, may intervene in and exercise control of the authority under certain delineated circumstances. The intervention mechanism permits the governor to correct the deficiencies and is to cease as soon as the necessary corrections have been made.

Sec. 42.40.720. TRUSTEESHIP. This section provides that the legislature may also authorize the governor to petition the State Superior Court at Anchorage to impose a trusteeship over the authority under specific circumstances, including insolvency, misapplication of resources or impairment of the state's creditworthiness. The trustees appointed by the court are given broad powers to cure the situation.

ARTICLE 8. PERSONNEL AND GENERAL PROVISIONS

Sec. 42.40.800. PERSONNEL. This section provides that the employees of the authority are not employees of the state. It also provides for application of the state's Public Employment Relations Act to the authority's employees.

Subsection (c) directs the authority to adopt collective bargaining agreements which continue, until they expire or are renegotiated, the provisions of the agreements in effect immediately prior to transfer.

Subsection (d) precludes organization of the authority's executive officials.

Sec. 42.40.810. POLITICAL ACTIVITIES. This section precludes use of authority funds in political activities including legislative efforts. Nevertheless, board members and employees are authorized to participate in legislative proceedings at all levels of government in connection with matters directly affecting the authority. Violations of this section are subject to personal fines up to \$5,000 under subsection (b).

Sec. 42.40.820. LICENSES AND PERMITS. This section provides that the authority, to the same extent as the state and except as otherwise provided in this chapter, will comply with local, state and federal licensing and permitting requirements.

Sec. 42.40.830. UNAUTHORIZED REPRESENTATION. Self-explanatory.

Sec. 42.40.840. CLAIMS AGAINST THE AUTHORITY. Subsection (a) of Sec. 42.40.840 requires that all legal claims involving the authority be brought against the authority and not against the State of Alaska. This requirement reaffirms that the debts of the authority are not the debts of the state.

Subsection (b) extends certain rights, privileges and immunities of the state and state officers to the authority and its council members and employees. Among these are the requirement that legal actions generally be brought within six years (A.S. 09.10.120), immunity against suit for actions taken with due care or in the exercise of discretion (A.S. 09.50.250), and an exemption from giving bond in actions where such is ordinarily required (A.S. 09.65.040).

Subsection (c) provides that claims against the authority will not be subject to the administrative procedure for presenting and deciding claims against the state or its agencies. (A.S. 44.77.010 et seq.)

Subsection (d) clarifies that A.S. 44.80.010, concerning the state's status as a party to actions against departments and agencies, does not apply to the authority. As a result, the state may not be named in an action against the authority and the Department of Law is not required to bring or defend actions concerning the authority.

Sec. 42.40.855. EXEMPTION FROM TAXATION. This section exempts the authority from state and political subdivision

taxation. Subsection (c) provides that authority property is considered taxable for the limited purposes of computing state aid to local school districts.

Sec. 42.40.870. PAYMENTS IN LIEU OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID. This section authorizes the authority to provide, in its discretion and under certain circumstances, partial payments in lieu of local real property taxation by communities in which the authority has substantial land holdings. The authority also is allowed to provide discretionary impact aid to localities for public education and other facilities required to be developed as a result of expanded authority activities in such areas.

ARTICLE 9. MISCELLANEOUS PROVISIONS

Sec. 42.40.900. DEFINITIONS.

(1) through (6) Self-explanatory.

(7) "Immediate family" is defined for purposes of Sec.

42.40.300 CONFLICTS OF INTEREST.

(8) Self-explanatory.

(9) "Leadership of the legislature" is defined for purposes of notice and filings required by this chapter. The definition specifically provides that the designated office-holders may designate persons or officers to receive such notices and filings.

(10) Self-explanatory.

(11) "Regulation" is defined to have the same meaning as that term is defined under the State Administrative Procedure Act.

(12) "Rule" is distinguished from "regulation" as it relates to the authority's internal affairs and not to activities affecting the public at large.

Sec. 42.40.910. SEVERABILITY. Self-explanatory.

Sec. 42.40.920. CONSTRUCTION. Self-explanatory.

Sec. 42.40.930. DATE OF EFFECTIVENESS. This section provides that the chapter becomes effective upon enactment of federal legislation transferring the Alaska Railroad.

ARTICLE 10. APPLICATION OF OTHER LAWS

Sec. 42.40.1010. CONFLICTING LAWS INAPPLICABLE. Self-explanatory.

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

(1) A.S. Title 19 does not apply to the authority -- sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways; some of its provisions regarding construction, public bids, etc., arguably apply to other activities of DOT/PF, to which the authority will be nominally assigned.

(2) The authority is considered a "political subdivision" for purposes of A.S. 23.10.055 -- state wage and hour statute.

(3) A.S. 23.10.420 does not apply to the authority -- full-crew law.

(4) A.S. 30.15 does not apply to the authority -- procedures for state grants for construction of local port facilities.

(5) Authority activities are not subject to A.S. Title 35, which deals generally with public works. The authority is exempt from public bidding requirements, Department of Transportation and Public Facilities supervision of construction, planning of projects, etc.

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

(a) A.S. 37.05 -- the Fiscal Procedures Act establishes uniform accounting, purchasing, post auditing, and related financial provisions for all "state agencies" and requires state agencies to submit reports, documents, and statements to the Department of Administration for accounting purposes, requires federal funds received by state agencies to be deposited in the state treasury, makes the Department of Administration responsible for all accounts and purchases of state agencies, requires competitive bidding procedures, and imposes other financial and reporting requirements;

(b) A.S. 37.07 -- Executive Budget Act;

(c) A.S. 37.10.010 - .060 -- these sections make the Department of Administration the custodian of state funds and

require all officers, boards, commissions, etc., to account to the Department of Revenue for all moneys received;

(d) A.S. 37.10.085 -- prohibits a political subdivision of the state from subscribing to the stock of the corporation for loaning credit or borrowing money for use of the corporation;

(e) A.S. 37.20 -- authorizes the governor to accept federal grants and transfers of property, and making land so transferred subject to the jurisdiction of the initial Department of Natural Resources; and

(f) A.S. 37.25 -- determines which unexpected appropriations lapse and which do not.

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

(8) A.S. 39.50.200(b) is amended to include the authority.

(9) Provides subsequently enacted statutes shall not be interpreted to apply to the authority unless they do so specifically by their terms.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

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100 Personal Services (cont.): FY 83

<u>Position</u>	<u>Range</u>	<u>Salary</u>	<u>Overhead (27%)</u>	<u>Total</u>
President (Dir. Level)	26	\$54,100	\$14,600	\$68,700
Executive Secretary	10	\$20,300	\$5,500	\$25,800
Planner V	21	\$43,200	\$11,700	\$54,900
Planner III	17	\$32,300	\$8,700	\$41,000
Clerk Typist II	07	\$17,000	\$4,600	\$21,600
				<u>\$212,000</u>

(These positions reflect the authority noted in the legislation allowing the President to employ additional staff as necessary. The staff growth in FY 83 is based on the assumption of increased duties following organizational structuring in the FY 82 year.)

E) 200 Travel: FY 82

Quarterly meeting of the board of directors, with an assumption of additional attendance by the President (average attendance =8):

Round-trip air fare @ \$300 x 8 = \$2,400

Two days per diem @ \$67 per day x 8 = \$1,100

Incidental meeting expenses = \$100

Total per meeting = \$3,600 x 4 meetings = \$14,400

Additional travel requirements of board and staff (including D.C. trips for negotiations):

12 trips per year @ \$600 air fare and per diem = \$7,200

FY 82 Total = \$21,600

FY 83 travel budget reflects a small increase due to additional staff and greater duties: \$24,000

F) 300 Contractual: FY 82 and 83

Office Space Rental: 1,000 net square feet @ \$18 annual nsf cost = \$18,000

Bond counsel and consultant requirements: \$200,000 Total: \$218,000 per year

(These latter contractual requirements reflect the authority noted in the legislation and are based on the assumption of needed expertise to establish the appropriate bonding authorities and the organizational format of this public corporation.)

- G) 500 Equipment: Minor expenditures for the necessary business machines are indicated under this category.

FOOTNOTES:

- 1 No attempt has been made to include cost estimates with respect to liabilities and obligations associated with the transfer of the railroad itself. The FY 82 and 83 figures only cover organizational structuring and transfer negotiation. However, in that Section 3 (b) (2) specifically notes the authority may enter into a transfer agreement that includes the assumption of rights and obligations of the Alaska Railroad, there are several major concerns which warrant attention prior to legislation enactment. The following list briefly highlights these items:
- (a) acquisition costs: this item could potentially range from the high estimate of \$220 - \$240 million, which reflects the railroad's current value in terms of actual Federal dollars invested, to the inferred asking price of one dollar;
 - (b) deferred maintenance costs: current estimates by the railroad and the Federal Railroad Administration place this figure somewhere between \$60 to \$70 million, which raises the associated question of Federal replacement responsibilities to cover these expended assets;
 - (c) ongoing capital and operation (freight and passenger) costs: this item, which varies greatly depending on current traffic volume and the relative health of the Alaskan economy, could easily become a significant ongoing liability to the State or merely a sporadic or even nonexistent requirement; (Note: Attached are four financial statements from the Alaska Railroad's FY 80 Annual Report to provide some current data on this point.)
 - (d) personnel liabilities: this concern, which without more specific data is impossible to estimate other than to say it could well range into the hundreds of millions of dollars, includes not only existing retirement and benefit responsibilities, but also the assumption of contractual obligations under current collective bargaining agreements with respect to such items as pay scales, employee levels, and seniority requirements.
 - (e) land status uncertainty: this issue involves both the general question of status of all railroad property under the transfer scenario, and the specific concern of outstanding land claims, particularly under ANSCA, against Alaska Railroad property;
 - (f) pending litigation: the majority of these items involve the lands question, however, all pending legal liabilities should be evaluated; and
 - (g) tax and commerce considerations: evaluation should be given to all potential advantages and disadvantages with respect to these items in the context of removing Federal ownership of the Alaska Railroad.

2. No actual estimates are provided for subsequent fiscal years because of the difficulty in predicting levels of responsibility beyond initial organizational structuring and potential expenses through the transfer negotiation stages. In that Sec. 42.40.120 specifically requires the authority to provide for the operation of the Alaska Railroad following transfer, there exists the real possibility of the State incurring significant liabilities for the ongoing operation of the railroad. Although rough estimates could be provided of these potential costs, there exists a structural limitation under this piece of legislation as drafted, since Sec. 42.40.230 clearly states that neither the credit nor the taxing powers of the State or its political subdivisions may be pledged by the authority, and that the State and its political subdivisions will not be liable for the debts incurred by the authority.

3. The legislation does not address a specific source of funding for the establishment of this public corporation. Consequently, the first two years of funding are depicted under the General Fund category. Although no funding is shown under the Federal Fund category, there are both planning and operational assistance grants available from the Federal Railroad Administration, U.S. Department of Transportation, to aid local rail operations. DOT/PF is currently the recipient of rail planning funds, which represents the major source of funds of DOT/PF's rail studies. However, while it is apparent that if this public corporation is formed, it will become the administrator of these funds, it is doubtful that the State of Alaska would be allowed to use these funds other than for technical rail planning. As a result, these funds are not depicted as a source of funding for the contractual requirements noted above.

FINANCIAL

The following four financial statements (Tables VIII through XI) describe the financial situation of The Alaska Railroad.

TABLE VIII : STATEMENT OF INCOME
FISCAL YEARS 1979-80
(Thousand dollars)

CATEGORY	1980	1979
Operating Revenues (Note 3):		
Freight	\$21,664	\$18,158
Passenger	1,549	1,564
Other (Note 17)	3,524	3,378
	<u>\$26,737</u>	<u>\$23,100</u>
Operating Expenses (1) (Note 4):		
Maintenance of Way & Structures (Note 5)	\$ 5,109	\$ 5,235
Maintenance of Equipment	9,118	7,845
Transportation	13,146	11,821
Traffic Management	530	470
Incidental	2,456	1,937
General and Administration (Note 6)	4,021	3,977
	<u>\$34,380</u>	<u>\$31,285</u>
Income (Loss) from Operations	<u>(7,643)</u>	<u>(8,185)</u>
Non-operating Properties (Note 18):		
Income	2,155	2,081
Less Expense (1)	344	204
Net	<u>1,811</u>	<u>1,877</u>
Net Gain (Loss)	<u><u>\$(5,832)</u></u>	<u><u>\$(6,308)</u></u>
(1) Depreciation included in Expenses (Note 8)	\$ 3,526	\$ 3,219
Operating Ratio including depreciation	128.59%	135.43%
Operating Ratio excluding depreciation	115.40%	121.50%

Notes follow Table XI

TABLE IX : BALANCE SHEET
SEPTEMBER 1979-80
(Thousand dollars)

CATEGORY	1980	1979
Assets:		
Current Assets:		
Cash (Note 9)	\$ 3,638	\$ 5,225
Trust and Deposit Funds (Note 10)	83	63
Accounts Receivable	8,364	6,791
Materials and Supplies (Note 11)	5,426	6,339
Prepaid Expenses	...	83
	<u>\$17,511</u>	<u>\$18,501</u>
Properties:		
Land (Note 12)	265	618
Buildings	12,361	12,389
Roadway Structures & Facilities	111,689	110,689
Equipment	44,031	41,330
Non-operating Property	2,997	3,932
Total Properties	<u>171,343</u>	<u>168,958</u>
Less Accumulated Depreciation:	<u>51,529</u>	<u>49,587</u>
Properties - Net	<u>119,813</u>	<u>119,371</u>
Additions and Betterments in Progress (Note 13)	14,277	11,759
	<u>134,090</u>	<u>131,130</u>
Other Assets and Deferred Charges	2,176	1,748
Total Assets	<u>\$153,777</u>	<u>\$151,379</u>
Liabilities & Proprietary Interest of the U.S.		
Government:		
Current Liabilities:		
Accounts Payable	\$ 2,772	\$ 1,615
Accrued Payrolls Payable	1,603	1,325
Trust and Deposit Funds (Note 10)	83	63
	<u>\$ 4,458</u>	<u>\$ 3,003</u>
Provision for Employees Annual Leave (Note 14)	...	(2)
Other Liabilities and Unadjusted Credits	1,922	936
Total Liabilities	<u>6,380</u>	<u>3,937</u>
Proprietary Interest (Note 15):		
Net Investment	174,082	167,603
Retained Earnings from July 1, 1954	(20,161)	(13,534)
Current Year Operating Results	(5,832)	(6,308)
Extraordinary Items (Note 7)	(692)	(319)
Total Proprietary Interest (Note 15)	<u>147,397</u>	<u>147,442</u>
Total Liabilities and Proprietary Interest	<u>\$153,777</u>	<u>\$151,379</u>

Notes follow Table XI

TABLE X: STATEMENT OF CHANGES IN FINANCIAL POSITION
 FISCAL YEARS 1979-80
 (Thousand dollars)

FUNDS	1980	1979
Funds Were Provided by:		
Revenues and Other Receipts	\$ 28,973	\$ 25,290
Appropriations from Congress (Note 16)	<u>6,500</u>	<u>9,300</u>
Total Funds Provided	35,473	34,590
Funds Were Used for:		
Labor	21,360	22,138
Other	7,832	5,445
Capital Improvements & Replacements	<u>6,893</u>	<u>8,181</u>
Total Funds Used	36,085	35,764
Increase (Decrease) in Government Equity	(613)	(1,173)
Other Increase (Decreases):		
Undelivered Orders	(1,824)	(705)
Supplies and Materials	(996)	(157)
Properties	2,960	4,711
Other	<u>428</u>	<u>5</u>
Total, Other	568	3,854
Total Increase (Decrease) in Government Equity	<u>\$ (45)</u>	<u>\$ 2,681</u>
Proprietary Interest:		
Beginning Balance	\$147,442	\$144,761
Increase (Decrease)	<u>(45)</u>	<u>2,681</u>
Ending Balance (Note 15)	<u>\$147,397</u>	<u>\$147,442</u>

Notes follow Table XI

TABLE XI: FIVE-YEAR CONDENSED SUMMARY OF OPERATIONS
 FISCAL YEARS 1976 - 1980
 (Thousand dollars)

CATEGORY	1980	1979	1978	1977	1976	
					TQ (Note 2)	JUNE
Operating Revenues	\$ 26,737	\$ 23,100	\$ 27,400	\$ 33,376	\$ 9,737	\$ 52,511
Operating Expenses	34,380	31,285	33,301	35,703	11,127	49,380
Income from Operations	(7,643)	(8,185)	(5,861)	(2,327)	(1,390)	3,130
Non-operating Properties (Note 18):						
Income	2,155	2,081	1,651	1,646	314	1,160
Expense	344	204	213	255	35	190
Non-operating Gain (Loss)	1,811	1,877	1,438	1,391	279	970
Net Gain or Loss	\$ (5,832)	\$ (6,308)	\$ (4,423)	\$ (936)	\$ (1,111)	\$ 4,100
Less Extraordinary Items (Note 7)	(692)	(319)	(654)	(833)	(919)	(1,050)
Annual Retained Earnings	\$ (6,524)	\$ (6,627)	\$ (5,077)	\$ (1,769)	\$ (2,030)	\$ 3,040
Operating Ratio	128.59%	135.43%	121.53%	106.97%	114.30%	94.04%
Including Depreciation						
Working Ratio						
Excluding Depreciation	115.40%	121.50%	109.91%	97.62%	107.02%	89.23%

Notes follow Table XI

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219

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 7, 1981

SUBJECT: SB 219 -- Surface Transportation Projects

TO:

FROM: John B. Chenoweth
Legislative Counsel

The genesis of this bill is the limitation of Article II, section 13 of the state constitution by which "bills for appropriations shall be confined to appropriations", and the rather unsettling habit of the last few years to clothe appropriation bills with statements of intent, letters of intent and other devices in order to pin down the purpose and use of particular appropriations. So significant are the projects which are under consideration in SB 219 and SB 220 that, rather than provide the detail for authorization of the projects only in an appropriation bill, I developed two pieces of legislation, "confining the appropriation bill to appropriations" and adding all the details concerning use of the proceeds into a companion authorization. The appropriation is dependent on the authorization by its effective date clause.

SB 219: Secs. 1 - 5 amend provisions of law relating to roads built for resource development purposes by saying that these roads may be built for assistance in agricultural development. The material in Sec. 4 is responsive to your request for provisions by which to make the state transportation department the "lead" agency, and to waive major state permits that might hold up a road project. Related to this is the repealed in Sec. 10 (payment by land credit certificates). The companion appropriation bill provides money for one specific agricultural road project in the vicinity of Nenana.

Secs. 6 and 7 add a new "intermunicipal road" program for the construction of roads between settled communities which