

ALASKA LEGISLATURE COMMITTEE FILES | 1983 - 1984 86/2

3114 HT AK RAILROAD/TRANS ACT OF 1982 - PROPOSAL/CORRESPOND

section 604(b)(1) (A), (B), and (D) of this title; (2) the rail properties to be subject to the license granted pursuant to section 604(c)(1)(C) of this title; and (3) the easements to be reserved pursuant to section 604(c)(2) of this title. The Secretaries of Agriculture, Defense, and the Interior and the Administrator of the General Services Administration shall provide the Secretary with all information and assistance necessary to allow the Secretary to complete the report within the time required.

(b) During the period from the date of enactment of this Act until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law. During that period, the Secretary and the Alaska Railroad shall not, without the consent of the State and only in conformity with applicable law and the Memorandum of Understanding referred to in section 506(b)(3) of this title—

(1) make or incur any obligation to make any individual capital expenditure of money from the Alaska Railroad Revolving Fund in excess of \$300,000;

(2) (except as required by law) sell, exchange, give, or otherwise transfer any real property included in the rail properties of the Alaska Railroad; or

(3) lease any rail property of the Alaska Railroad for a term in excess of five years.

(c) Prior to transfer of the rail properties of the Alaska Railroad to the State, the Alaska Railroad's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to the jurisdiction of the Interstate Commerce Commission.

(d)(1) Within nine months after the date of enactment of this Act, the United States Railway Association (hereinafter in this section referred to as the "Association") shall determine the fair market value of the Alaska Railroad under the terms and conditions of this title, applying such procedures, methods and standards as are generally accepted as normal and common practice. Such determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this title. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential future value if used in whole or in part for other purposes. The Association shall take into account all obligations imposed by this title and other applicable law upon operation and ownership of the State-owned railroad. In making such determination, the Association shall use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the report prepared pursuant to subsection (a) of this section.

(2) The determination made pursuant to paragraph (1) of this subsection shall not be construed to affect, enlarge, modify, or diminish any inventory, valuation, or classification required by the Interstate Commerce Commission pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.).

45 USC 712

(e) Section 202(a) of the Regional Rail Reorganization Act of 1973 is amended—

- (1) by striking "and" at the end of paragraph (9);
- (2) by striking the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and
- (3) by adding at the end thereof the following new paragraph:

"(11) determine the value of the Alaska Railroad, as required by section 605 of the Alaska Railroad Transfer Act of 1982."

LANDS TO BE TRANSFERRED

45 USC 1205.

606. (a) Lands among the rail properties of the Alaska Railroad shall not be—

Post. p. 2558.

(1) available for selection under section 12 of the Act of January 2, 1976, as amended (43 U.S.C. 1611, note), subject to the exception contained in section 12(b)(8)(i)(D) of such Act, as amended by subsection (d)(5) of this section;

(2) available for conveyance under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2515);

(3) available for conveyance to Chugach Natives, Inc., under sections 1429 or 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2531) or under sections 12(c) or 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c) and 1613(h)(8), respectively); or

(4) available under any law or regulation for entry, location, or for exchange by the United States, or for the initiation of a claim or selection by any party other than the State or other transferee under this title, except that this paragraph shall not prevent a conveyance pursuant to section 12(b)(8)(i)(D) of the Act of January 2, 1976 (43 U.S.C. 1611, note), as amended by subsection (d)(5) of this section.

(b)(1)(A) During the ten months following the date of enactment of this Act, so far as practicable consistent with the priority of preparing the report required pursuant to section 605(a) of this title, the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims as possible. Any agreement to settle such claims shall take effect and bind the United States, the State, and the Village Corporation only as of the date of transfer of the railroad.

(B) At the conclusion of the review and settlement process provided in subparagraph (A) of this paragraph, the Secretary of the Interior shall prepare a report identifying lands to be conveyed in accordance with settlement agreements under this title or applicable law. Such settlement shall not give rise to a presumption as to whether a parcel of land subject to such agreement is or is not public land.

(2) The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this title. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after the date of enactment of this Act, and shall complete the survey of all lands to be conveyed under this title not later than five years after the date of enactment of this Act, and after consulting with the Governor of the State of Alaska to determine priority of survey with

regard to other lands being processed for patent to the State. The Secretary of the Interior shall give priority to the adjudication of Village Corporation claims as required in this section. Upon completion of the review and settlement process required by paragraph (1)(A) of this subsection, with respect to lands not subject to an agreement under such paragraph, the Secretary of the Interior shall adjudicate which lands subject to claims of valid existing rights filed by Village Corporations, if any, are public lands and shall complete such final administrative adjudication within two years after the date of enactment of this Act.

(3) Pending settlement or final administrative adjudication of claims of valid existing rights filed by Village Corporations prior to the date of transfer or while subject to the license granted to the State pursuant to section 604(b)(1)(C) of this title, lands subject to such claims shall be managed in accordance with the Memorandum of Understanding among the Federal Railroad Administration, the State, Eklutna, Incorporated, Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), and Tognothele Corporation, executed by authorized officers or representatives of each of these entities. Duplicate originals of the Memorandum of Understanding shall be maintained and made available for public inspection and copying in the Office of the Secretary, at Washington, District of Columbia, and in the Office of the Governor of the State of Alaska, at Juneau, Alaska.

(4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:

(A)(i) Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 604(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 604(b)(1)(B) or (2) of this title.

(ii) With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished prior to final administrative adjudication, the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 604(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

(B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to

the date of enactment of this Act, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 604(b)(1)(B) or (2) of this title shall grant not less than an exclusive use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 604(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to the date of enactment of this Act, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

(c)(1) The final administrative adjudication pursuant to subsection (b) of this section shall be final agency action and subject to judicial review only by an action brought in the United States District Court for the District of Alaska. Review of agency action pursuant to this title shall be expedited to the same extent as the expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

(2) No administrative or judicial action under this title shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this title, or substantially impair or impede the operations of the Alaska Railroad or the State-owned railroad.

(3) Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this title. If transfer to the State does not occur pursuant to section 604 of this title, the State shall not thereafter have standing to participate in any such determination or review.

(d)(1) Section 12(b)(7)(i) of the Act of January 2, 1976 (Public Law 94-204) is amended—

(A) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b)(5) and (6)";

(B) by striking "12(b)(7)(ii)" and inserting in lieu thereof "12(b)(7)(iv)";

(C) by striking "crediting" and inserting in lieu thereof "using";

(D) by striking "this subsection 12(b)(7)(i)(b)" and inserting in lieu thereof "these subsections 12(b)(7)(i)(b) or (ii)";

(E) by striking "State" in the last sentence and inserting in lieu thereof "state"; and

(F) by striking the penultimate sentence.

(2) Section 12(b)(7) of such Act is amended—

(A) by redesignating subsections (ii) through (iv) as subsections (iv) through (vi), respectively; and

(B) by inserting immediately after subsection (i) the following:

"(ii) Subject to the exceptions stated in section 12(b)(9), and notwithstanding the foregoing subsection 12(b)(7)(i) and any provision of any other law or any implementing regulation inconsistent with this subsection, until the obligations of the Secretary and the Administrator of General Services under section 12(b)(5) and (6) are otherwise fulfilled:

"(A) concurrently with the commencement of screening of any excess real property, wherever located, for utilization by Federal agencies, the Administrator of General Services shall

43 USC 1611
note

notify the Region that such property may be available for conveyance to the Region upon negotiated sale. Within fifteen days of the date of receipt of such notice, the Region may advise the Administrator that there is a tentative need for the property to fulfill the obligations established under section 12(b) (5) and (6). If the Administrator determines the property should be disposed of by transfer to the Region, the Administrator or other appropriate Federal official shall promptly transfer such property.

6 USC 1511
note.

"(B) no disposition or conveyance of property under this subsection to the Region shall be made until the Administrator, after notice to affected State and local governments, has provided to them such opportunity to obtain the property as is recognized in title 40, United States Code and the regulations thereunder for the disposition or conveyance of surplus property; and

"(C) as used in this subsection, 'real property' means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

"Real
property"

"(iii) If the Region accepts any conveyance under section 12(b)(7) (i) or (ii), it shall be in exchange for acres or acre-equivalents as provided in subparagraph 1(CX2Xe) of the document referred to in this section, except that, after the obligation of the Secretary and the Administrator under subparagraph 1(CX2Xg) of that document has been fulfilled, the acre-equivalents under subparagraph 1(CX2Xe)(iii)(A) shall be one-half the valued increment therein stated. The entitlement of the Region under section 12(b) of this Act shall be reduced by the number of acres or acre-equivalents attributed to the Region under this subsection. The Secretary and the Administrator are directed to execute an agreement with the Region which shall conform substantially to the Memorandum of Understanding Regarding the Implementation of Section 12(b)(7), dated September 10, 1982, and submitted to the Senate Committee on Commerce, Science, and Transportation. The Secretary, the Administrator and the Region may thereafter otherwise agree to procedures to implement responsibilities under this section 12(b)(7), including establishment of accounting procedures and the delegation or reassignment of duties under this statute."

(3) Section 12(b)(7)(iv) of such Act, as so redesignated by paragraph (2) of this subsection, is amended--

6 USC 1511
note.

(A) by striking "surplus" the first place it appears therein;

(B) by inserting immediately before the period at the end of the first sentence the following: "or paying for the conveyance of property pursuant to subsections (i) or (ii)";

(C) by inserting immediately after "account shall be" the following: "the sum of (1)";

(D) by striking "1(CX2Xe)" and inserting in lieu thereof "1(CX2Xe)(iii)(A)";

(E) by striking "the effective date of this subsection", and inserting in lieu thereof "December 2, 1980";

(F) by striking "and shall be adjusted" and inserting in lieu thereof "and (2) one-half the acre or acre-equivalent exchange value under subparagraph 1(CX2Xe)(iii)(A) of ten townships fewer than the unfulfilled entitlement of the Region on the same date to acres or acre-equivalents under paragraph 1(CX1)

of the document referred to in this section. The balance of the property account shall be adjusted in accordance with subsection 12(b)(7)(iii); and

(G) by striking "subsection 12(b)(5)" and inserting in lieu thereof "section 12(b)(5) and (6)".

43 USC 1611
note.

(4) Section 12(b)(7)(v) of such Act, as so redesignated by paragraph (2) of this subsection, is amended by striking "subsection (ii)" and inserting in lieu thereof "subsection (iv)".

43 USC 1611
note.

(5) Section 12(b)(8) of such Act is amended to read as follows: "12(b)(8). Subject to the exception stated in section 12(b)(9), and notwithstanding any provisions of law or implementing regulation inconsistent with this section:

"(i) The deadlines in subparagraphs 1(C)(2)(a) and (g) of the document referred to in this section shall be extended until the Secretary's obligations under section 12(b)(5) and (6) are fulfilled. *Provided, That:*

"(A) the obligation of the Secretary under subparagraph 1(C)(2)(a) of such document shall terminate on such date, after July 15, 1984, that the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g) of that document; *Provided, That* the obligation of the Secretary under subparagraph 1(C)(2)(g) of such document shall be fulfilled at such date, after July 15, 1984, that the sum of the acres or acre-equivalents identified for and placed in the pool and the acres or acre-equivalents used by the Region in purchasing property under section 12(b)(7) equals or exceeds 128,240 acres or acre-equivalents;

"(B) the authority of the Secretary under subparagraphs 1(C)(2)(b) and 1(C)(2)(g)(ii) of such document to contribute to the pool created under subparagraph 1(C)(2)(a) of such document shall terminate (a) on July 15, 1984, if, by that date, the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g), or (b) if not, on such date after July 15, 1984 as such obligation is fulfilled, or (c) if such obligation remains unfulfilled, on July 15, 1987;

"(C) the concurrence by the State as described in subparagraphs 1(C)(2)(a)(vi) and 1(C)(2)(c) of the document referred to in this section shall be deemed not required after the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g) of that document, but in no event after July 15, 1987. In lieu of such concurrence, after 1984 as to military property, and after the Secretary has fulfilled his obligation under subparagraph 1(C)(2)(g) of that document or July 15, 1987, whichever is earlier, as to any other property, except property of the Alaska Railroad which is governed by subsection 12(b)(6)(i)(D) of this Act, the Secretary shall not place any lands in the selection pool referred to in subparagraphs 1(C)(2)(a) and (g) of the document referred to in this section without the prior written concurrence of the State. Such concurrence shall be deemed obtained unless the State advises the Secretary within ninety days of receipt of a formal notice from the Secretary that he is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or municipality; and

"(D) notwithstanding section 606(a)(2) of the Alaska Railroad Transfer Act of 1982, the Secretary may include property of the Alaska Railroad in the pool of lands to be made available for selection to the extent that he is authorized to do so under a provision of section 12(b) of this Act if the State consents to its inclusion, which consent is not subject to any limitation under subsection 12(b)(3)(i)(C) herein: *Provided*, That, while the Alaska Railroad is the property of the United States, the Secretary shall obtain the consent of the Secretary of Transportation prior to including such property. *And provided further*, That, if the transfer of the Alaska Railroad to the State does not occur pursuant to the terms of the Alaska Railroad Transfer Act of 1982 or any amendments thereto, the State's consent shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that he is considering placing such property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or the municipality.

Alaska p. 2564.

Alaska p. 2568.

Alaska p. 2556.

"(ii) In addition to the review required to identify public lands under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), the Secretary shall identify for inclusion in the pool all public lands (as such term is used under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), as described in subparagraph 1(C)(2)(a)(v) of the document referred to in this section, and shall, in so doing, review all Federal installations within the boundaries of the Cook Inlet Region whether within or without the areas withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act (43 U.S.C. 1510) or by the Secretary acting under authority contained in that section: *Provided*, That no such additional review under such subparagraph shall be required of military installations or of such other installations as may be mutually excluded from review by the Region and the Secretary: *And provided further*, That the Secretary shall not review any property of the Alaska Railroad unless such property becomes available for selection pursuant to subsection 12(b)(3)(i)(D).

"(iii) The concurrence required of the State as to the inclusion of any property in the pool under subparagraph 1(C)(2)(b) of the document referred to in this section shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that the Secretary is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question requires the property for a public purpose of the State or the municipality.

"(iv) The deadlines in subparagraph 1(C)(1)(5) of the document referred to in this section shall be extended for an additional twenty-four months beyond the dates established in the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 347).

"(v) On or before January 15, 1985, the Secretary shall report to the Congress with respect to:

Report to Congress.

"(A) such studies and inquiries as shall have been initiated by the Secretary and the Administrator of General Services, or have been prepared by other holding agencies,

to determine what lands, except for lands held by the Alaska Railroad or the State-owned railroad, within the boundaries of the Cook Inlet Region or elsewhere can be made available to the Region, to the extent of its entitlement;

"(B) the feasibility and appropriate nature of reimbursement of the Region for its unfulfilled entitlement as valued in subsection 12(b)(7)(iv) of this Act;

"(C) the extent to which implementation of the mechanisms established in section 12(b)(7) promise to meet such unfulfilled entitlement;

"(D) such other remedial legislation or administrative action as may be needed; and

"(E) the need to terminate any mechanism established by law through which the entitlement of the Region may be completed."

43 USC 1611
note

(6) Section 11(b) of such Act is amended by adding at the end thereof the following:

Ariz. p. 2568

"12(b)(9). No disposition or conveyance of property located within the State to the Region under section 12(b)(6), 12(b)(7) and 12(b)(8), as amended, shall be made if the property is subject to an express waiver of rights under the provisions of subparagraph I(C)(2)(f) of the document referred to in this section, or if such disposition or conveyance violates valid rights, including valid selections or valid authorized agreements, of Native Corporations (as such term is used in section 1126) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6)) or the State existing at the time of such disposition or conveyance under section 6 of Public Law 35-508, as amended (excepting section 906(e) of the Alaska National Interest Lands Conservation Act), sections 12(a), 12(b), 16(b) or 22(f) of the Alaska Native Claims Settlement Act, section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1134), or sections 1416, 1418 through 1425 (inclusive), 1427 through 1434 (inclusive), or 1436 of the Alaska National Interest Lands Conservation Act. *Provided, however,* That nothing within this subsection 12(b)(9) shall diminish such rights and priorities as the Region has under section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1151), as amended by section 4 of the Act of October 4, 1976 (Public Law 94-456; 90 Stat. 1925), section 3 of the Act of November 15, 1977 (Public Law 95-178; 91 Stat. 1369), section 2 of the Act of August 14, 1979 (Public Law 96-55; 93 Stat. 386), the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947), and section 1435 of the Alaska National Interest Lands Conservation Act.

48 USC note
para. 21
43 USC 1635
43 USC 1611,
1615, 1621
43 USC 1611
note
94 Stat. 2499,
2501-2515,
2518-2544, 2546
43 USC 1611
note

"12(b)(10). For the purpose of its incorporation into this section, paragraph I(C)(1) of the document referred to in this section is amended as follows: (1) by striking 'withdrawn' and inserting in lieu thereof 'withdrawn or formerly withdrawn'; (2) by striking '17(d)(1)' and inserting in lieu thereof '17(d)(1) and (2)'; and (3) by striking the last sentence of subparagraph I(C)(1)(a) and inserting in lieu thereof the following: 'Cook Inlet Region, Incorporated shall not nominate any lands within the boundaries of any conservation system unit, national conservation area, national recreation area, national forest, defense withdrawal, or any lands that were made available to the State for selection pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972.'

"12(b)(11). Notwithstanding the provisions of section 906 of the Alaska National Interest Lands Conservation Act and section 6(i) of the Alaska Statehood Act (72 Stat. 339):

43 USC 1225.
43 USC 3021
PROC. 21.

"(i) The State is hereby authorized to convey to the United States for reconveyance to the Region, and the Secretary is directed to accept and so reconvey, lands tentatively approved for patent or patented to the State, if the State and the Region enter into an agreement that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph 1(CX1) of the document referred to in this section: *Provided*, That the acreage of lands conveyed to the United States under this provision shall be added to the State's unfulfilled entitlement pursuant to section 6 of the Alaska Statehood Act, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph 1(CX1) of the document referred to in this section shall be reduced accordingly.

"(ii) The Secretary is directed to convey to the Region lands selected by the State prior to July 15, 1973 or pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972, if the State relinquishes such selections and enters into an agreement with the Region that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph 1(CX1) of the document referred to in this section, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph 1(CX1) of the document referred to in this section shall be reduced accordingly.

"(iii) The Secretary, in the Secretary's discretion, is authorized to enter into an agreement with the State and the Region to implement the authority contained in this section 12(b)(11), which agreement may provide for conveyances directly from the State to the Region. Conveyances directly conveyed shall be deemed conveyances from the Secretary pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1501 et seq.)."

(e) The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 604(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

43 USC 1225.

EMPLOYEES OF THE ALASKA RAILROAD

Sec. 607. (a)(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of title 5, United States Code) shall, so long as continuously employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5, United States Code, and shall contribute to the Civil Service Retirement and Disability

43 USC 1226.

5 USC 8331.

Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5, United States Code) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5, United States Code. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection—

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336 (a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred, notwithstanding the provisions of section 8334 of title 5, United States Code.

(b) Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

(c) Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 604(dx)(2) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Any employee who transfers to the State-owned railroad under this title shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the State with the unused annual leave balance at the time of transfer.

STATE OPERATION

SEC. 608. (a)(1) After the date of transfer to the State pursuant to section 604 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (25 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 251 et seq.). Nothing in this title shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

45 USC 1207.

(2) The transfer to the State authorized by section 604 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of title 49, United States Code, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 202(n) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e))).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

(5XA) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the

State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 115(a)(1)). Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 103(a)(1)), but not obligations within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(b)(2)).

(B) Nothing in this title shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) As soon as practicable after the date of enactment of this Act, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.) shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code.

(d) After the date of transfer to the State pursuant to section 604 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this title.

FUTURE RIGHTS-OF-WAY

45 USC 1208

Sec. 609. (a) After the date of enactment of this Act, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the

Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 502(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.

(c) Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 610 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the "date of transfer".

REVERSION

Sec. 610. (a) If, within ten years after the date of transfer to the State authorized by section 504 of this title, the Secretary finds that all or part of the real property transferred to the State under this title, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

45 USC 1209

(b) If, after the date of transfer pursuant to section 504 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto, or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

Publication in
Federal
Register.

(c) Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States. Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this

subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

(d) If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this title which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

(e) Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 604 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

(f) The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

OTHER DISPOSITION

45 USC 1210

Sec. 611. If the Secretary has not certified that the State has satisfied the conditions under section 604 within one year after the date of delivery of the report referred to in section 605(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that—

Ante. p. 2564

(1) such preference shall not diminish or modify the rights of the Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), pursuant to such section, as amended by section 606(d) of this title; and

(2) this section shall not be construed to diminish or modify the powers of consent of the Secretary or the State under section 12(b)(6) of such Act, as amended by section 606(d)(5) of this title.

Any disposal under this section shall be subject to valid existing rights.

DENALI NATIONAL PARK AND PRESERVE LANDS

45 USC 1211.

Sec. 612. On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), that portion of rail properties of the Alaska Railroad within the Denali National Park and Preserve shall, subject to the exclusive-use easement granted pursuant to section 604(b)(1)(D) of this title, be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve, except that a

transferee under section 611 of this title shall receive the same interest as the State under section 604(b)(1)(D) of this title.

APPLICABILITY OF OTHER LAWS

Sec. 613. (a) The provisions of chapter 5 of title 5, United States Code (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this title, except to the extent that such laws may be applicable to granting of rights-of-way under section 609 of this title.

45 USC 1212
5 UDC 550 et seq.

(b) The enactment of this title, actions taken during the transition period as provided in section 605 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this title shall be deemed not to be the disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1975 (Public Law 94-204; 39 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371), and the general land and land management laws of the United States.

(c) Beginning on the date of enactment of this Act, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 3905(b)(2) of title 5, United States Code, shall not apply to the Alaska Railroad.

(d) Nothing in this title is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

(e) With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this title, nothing contained in this title shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

CONFLICT WITH OTHER LAWS

Sec. 614. The provisions of this title shall govern if there is any conflict between this title and any other law.

43 USC 1213.

REPEAL AND AMENDMENT OF EXISTING STATUTES

Sec. 615. (a) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are repealed:

(1) The Act of March 12, 1914 (43 U.S.C. 975 et seq.).

16 USC 253a.

42 USC 201a.

(2) The Act of June 24, 1946, to authorize certain expenditures by the Alaska Railroad (60 Stat. 204).

(3) The Act of July 19, 1932, concerning mining of coal adjacent to the Alaska Railroad (30 U.S.C. 208a).

(4) Section 6(i) of the Department of Transportation Act (49 U.S.C. 1655(i)).

(b) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are amended as follows:

(1) Title 5, United States Code, is amended—

(A) in section 305(a), by striking paragraph (3), and by redesignating paragraphs (4)–(8) as paragraphs (3)–(7), respectively;

(B) in section 3401(1), by striking clause (iii), and by redesignating clauses (iv)–(viii) as clauses (iii)–(vii), respectively;

(C) in section 5102(a)(1), by striking clause (iii), and by redesignating clauses (iv)–(ix) as clauses (iii)–(viii), respectively;

(D) in section 5342(a)(1), by striking subparagraph (C), and by redesignating subparagraphs (D)–(J) as subparagraphs (C)–(I), respectively; and

(E) in section 7327, by striking subsection (a), and by striking the subsection designation “(b)”.

(2) Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended by striking “and the Alaska Railroad”.

(3) Section 10749(b) of title 49, United States Code, is amended—

(A) by inserting “or” at the end of paragraph (1)(B);

(B) by striking “; or” at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking paragraph (3).

(4) Section 324(a)(1) of the Public Health Service Act (42 U.S.C. 251(a)(1)) is amended by striking “employees of the Alaska Railroad and”.

(5) Section 202(3)(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh-1(3)(a)) is amended by striking the third sentence.

(6) Section 1(o) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(o)) is amended by inserting immediately after “National Transportation Safety Board,” the following: “the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska.”.

SEPARABILITY

45 USC 1214.

Sec. 616. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

AK. RAILROAD

Proposals

- Correspondence

Alaska State Legislature

Representative Milo Fritz
District 5
P.O. Box 158
Anchor Point, Alaska 99556
(907) 235-8366



While In Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-4833

House of Representatives

MILO FRITZ

ALASKA RAILROAD PURCHASE

By Representative Milo H. Fritz

The possible purchase of the Alaska Railroad from the Federal Government by the State of Alaska represents the most important and expensive piece of legislation that the second session of the 13th State Legislature will undertake. There is some question as to whether or not the state should purchase the railroad and in this article I intend making observations on the basis of conversations with certain individuals who have been successful in running railroads.

One consideration is the reason for the Federal Government wanting to sell an operation if it is a profitable one. If it is not profitable I see no reason for the state to undertake its purchase. It also is a consideration that the Federal Government spends hundreds of millions of dollars in foreign aid, has spent 30 billion dollars in loans to Poland which may never repay the money and contributes hundreds of millions of dollars to the International Monetary Fund which makes loans to Third World countries many of which have little possibility of ever repaying the loans. Under these circumstances it seems to me that the purchase price offered to Alaska of 22 million dollars is unrealistic and that a realistic purchase price would be a token value of one dollar in making the transfer.

Early in November it occurred to me that it would be a good idea if such a railroad existed, that I should try to make contact with someone who ran an intra-state railroad at a profit and who had had long experience in managing such an enterprise. Then on December 6 I was thought in answer to a prayer, I received the 28 November number of Barron's Financial weekly. In it there was the biography of Mr. Win Thornton, President of the Florida East Coast Railway, which was run at a profit, but which went through many very difficult periods owing to early bankruptcy and later labor difficulties involving strikes. The Barron's article explained how the railroad was run at a profit. Its right of way is between Jacksonville and Miami approximately the same distance between Seward and Fairbanks. The difference between the railroads, apart from climatic considerations, lies in the profitability of FEC and the Alaska

ALASKA RAILROAD PURCHASE

February 6, 1984

Page 2

Railroad which excepting for five years since it began operations in the early 1920's, has run at a loss. It ran at a profit two years during pipeline construction and the past 3 years.

I went to St. Augustine, Florida, spent two days with Mr. Thornton and other officials of the FEC. I was given a very thorough briefing in its operations and past history which I believe should be of great value to the Alaska State House of Representatives in making its mind up to whether or not to vote in favor of purchasing the ARR from the Federal Government.

The people at FEC noted that the present labor contracts between the five labor unions involved in running the ARR, will be kept inviolate and intact for the first two years following the projected purchase. The FEC people said that the State of Alaska will lose all bargaining power unless contracts between the labor unions, who will be operating the railroad after the purchase, and the ARR are not brought to fruition before conveyance. They say that if the contracts are negotiated after the purchase all leverage for the State of Alaska will be lost and that if the state does not agree to what the labor unions want prolonged and expensive strikes will inevitably result.

They also recommended that the Board of Directors of the ARR after purchase and the manager of the railroad must be kept independent of any political pressure and that determinations regarding extension of the railroad through the North Slope, the Nome area, the Beluga coal fields and to the Canadian boarder must be dictated not on the basis of politics but on the basis of actual or potential profitability.

If the manager of the railroad is subject to political pressures and has not got his union contracts firmly in place before conveyance he might be unable to undertake such labor saving devices and operating procedures that would increase the efficiency of the railroad. The size of train crews should be determined on the basis of what is minimum for safety, for instance, and there must be permission granted for workers to cross craft lines according to the pressure of work. Such technical improvements as concrete cross ties, the electric sensor determination of individual journal temperatures, the shifting of loads, and the dragging of equipment are transmitted electronically. The dispatching office in the FEC is in contact with the two man crew that runs the trains between Miami and Jacksonville by means of a radio. The hot box, load shifting and dragging information is displayed in the dispatch office on rotating graphic drums that are similar to those familiar in electrocardiographic, electroencephalographic, and seismic determinations.

ALASKA RAILROAD PURCHASE

February 6, 1984

Page 3

The manager of the ARR whose labor relations will clearly delineated by pre-purchase agreements, will also be able to develop other research and development considerations that may come up from time to time. The decreasing use of box cars and the increase in the use of piggybacking operations, seem to be the trends at the FEC and other railroads in the south 48.

Mr. Thornton and the other officials also thought that the uncertain status of certain portions of the ARR rights of way, the Alaska Native land claims considerations, and certain vague agreements about the leasing and use of non-right-of-way properties also cast a cloud over the desirability of purchase. In answer to the direct question whether they would with the knowledge that they obtained about the ARR from the four documents that I had forwarded to them before my visit purchase the ARR the answer was no.

While I was in Florida I had the opportunity of watching the piggy back operation, the changing of wooden railroad ties to the concrete ties, the manufacture of concrete ties, the shifting of personnel from concrete work which was held in abeyance because of technical difficulties to other jobs, speaking to the men, watching the operation in the locomotive shop, and observing how the dispatching office worked while the trains were in motion. I have no doubt that the observation of certain ARR workers whom I have since met, is absolutely true; that the FEC is the state-of-the-art railroad far ahead of any other railroad of similar size any where in the south 48.

Next I went to Philadelphia and met Mr. Richard Hasselman, Executive Vice President of Conrail. I also had the opportunity in speaking to many of his officials. They also had studied the following documents before I got there: the Alaska Railroad Transfer Act, the Alaska Railroad Transfer legislation section by section analysis, the Alaska Railroad Transfer Report and the United States Railway Association Evaluation of The Alaska Railroad. The officials of Conrail who also ran their railroad at a profit, immediately noted the lack of contracts with the railroad unions that would be running the ARR after the purchase. A post conveyance set of agreements would be negotiated at great disadvantage to the State of Alaska. Again, in direct answer to the question regarding whether they would purchase the ARR under the present circumstances the answer was a unanimous no. They were familiar with the FEC operation and described it as the most enlightened and most brilliantly run railroad in the entire nation.

ALASKA RAILROAD PURCHASE

February 6, 1984

Page 4

Mr. Hasselman asked whether I had been in contact with any lawyer who specialized in railroad labor relations. I replied that I never knew there was such a legal subspecialty. Accordingly Mr. Hasselman called up Mr. Henry H. Perritt, Jr. who is Professor of Law at Villanova University just outside of Philadelphia and who is a triple threat man in that he has a degree in Economics, one in Aeronautical Engineering, and one in Law. He had spent a good many years as counsel for Conrail in their negotiations between Conrail management and the labor unions. The Conrail people also pointed out that the five unions involved in running the ARR under the Federal Government, might not be the same ones who would be running the railroad under state auspices. They also pointed out the difficulties caused by clouding of the title of right-of-way lands and the difficulties that would ensue regarding the leasing or renting of non-right-of-way ARR properties. They suggested that passenger operations have been given up by almost all the privately owned railroads in the United States and that Amtrak was a federally funded means by which passenger traffic, even though it was run at a loss, was undertaken by the Federal Government.

After almost a day in conference with the officials of Conrail I took the train out to Villanova and had over an hours conference with Mr. Perritt, who had not had the advantage of reading the documents listed above. He subjected me to searching questions suggesting that the legislature should have a lawyer skilled in railroad labor negotiations to investigate the present and possible future relations between ARR management and railroad unions before the purchase and therefore be able to advise the legislature as to the type of legislation it should pass in either accepting or rejecting, modifying or amending pending legislation.

Before leaving on this trip it was my good fortune to have a forty minute conversation by long distance phone with Mr. D. W. Brosnan who is the recently retired Chief Executive officer of the Southern Railway which also runs at a profit. His conclusions were very little different from what the officials at Conrail, and FEC had arrived at. He had been sent copies of the above documents so that he had a chance to look over the situation before I phoned him. Since returning from Florida I have at hand a letter that he was kind enough to forward here presenting his attitude toward the possible purchase of the ARR from the Federal Government.

Upon returning to Juneau, and again quite by accident, as though some outside influence were guiding the destinies of the state, I received a call from Anchorage from Mr. Bradford W. Coupe who is a friend of Mr. Perritt and a member of the prestigious law firm of Morgan, Lewis & Bockius of Philadelphia which specializes in the type of law that has been discussed. At no expense to the State

ALASKA RAILROAD PURCHASE

February 6, 1984

Page 5

he was willing to come down here and talk with me, the President of the Senate and the Speaker of the House, regarding the importance of investigation of present and possible future contracts with railroad unions in order to protect the state as well as the workers and the people of the state in the purchase of a railroad that would be run, if not at a profit, at least at the smallest possible loss.

Mr. Coupe came to Juneau and had an extensive conference with Speaker Hayes and a brief one with President Kerttula of the Senate. It was my recommendation and Mr. Coupe's that he with ten years experience in Alaska pipeline legislation be retained in order to permit the legislature to proceed on this important project with the greatest possible knowledge at hand for the consummation or rejection of the purchase before the deadline which appears in the ARR transfer legislation.

At the present time there seems to be some reluctance on the part of the Senate to join in an investigation at this time or retaining a specially skilled lawyer to protect the legislature's interest. However, Speaker Hayes is still interested and it is my hope that if the Senate does not care to become a party to this investigation, that the House undertake the investigation on its own.

I have no axe to grind. I very strongly feel that the legislature cannot intelligently make up its mind about this most important legislation unless it gets guidance from people who are experts in the complicated field of railroad labor legislation and in the running of a railroad, similar in size and scope to the one we consider purchasing. I think great consideration should be given to the unanimous opinion expressed by people who have the right to have one, that the purchase of the ARR has contemplated at this time is not in the interests in the State of Alaska or its people. I hope that the matters brought up in this paper will be made available to the people of Alaska through the medium of the newspapers.

4/26/84

Amendments to CS/HB 512 (Finance)
Second Bill

Page 1, line 6, Use Senate Title to the Bill

Use Findings from House Bill.

Page 3, line 15-16, Insert a new paragraph (g) to read "(G) preserve the integrity of the railroad corridor for transportation, transmission, and communication purposes"

Page 3, line 9, delete "Transportation and Public Facilities" and insert "Commerce and Economic Development".

Page 3, line 13, delete (b) in its entirety.

Page 3, line 27, insert "Except for the member appointed under (3) of this section, " and continue with the rest of the sentence.

Page 5, line 24. after "MANAGEMENT BY THE BOARD. delete "Subject to AS. 42.40.280, "

Page 6, line 22, insert a new (9) to read "(9) apply to the legislature for an appropriation to be used to provide a service that is not otherwise self-sustaining if a subsidy is required to maintain that service."

Page 7, line 23, after "(2) insert "mortgaging or " pledging assets.

Page 8, line 23, amend (.) after "mortgaging" and delete rest of sentence.

Page 9, line 4, after "determined", insert "in accordance with AS. 42.40.160" and delete the rest of the sentence.

Page 11, line 7, Change the cite from "AS 42.40.180" to "AS 42.40.175"

Page 14, line 10, after "donate", ^{delete "convey"} insert "delay"

Page 15, line 19 after "railroad" insert consistent with 45 USC 1201-1211 (ARTA 82)

Page 16, line 1-2, after "pledge", insert "mortgage" after "property", delete the rest of the sentence.

Page 17, line 20 Use House Transportation "STATE OVERSIGHT REPORTS" language

Page 20, line 19, after "AS 42.40.400", delete "or pledge the land as security"

Page 20, line 28 after "AS 42.40.400" delete "or pledge the land as security".

Page 22, line 11, delete "physical" and insert "emergency".

Page 23, line 11, after "of", insert "an interest"

Page 23, line 16, delete "RIGHTS-OF-WAY" and insert "USE OF RAILROAD LAND".

Page 28, line 22, delete "(b)" in its entirety.

Page 29, line 15, insert a new section and renumber accordingly "PLEDGE OF THE STATE. The state pledges to and agrees with the holders of bonds issued under this chapter and with the federal agency which loans or contributes funds in respect to a project, that the state will not limit or alter the rights and powers vested in the corporation by this chapter to fulfill the terms of a contract made by the corporation with the holders or federal agency, or in any way impair the rights and remedies of the holders until the bonds together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the corporation, in a contract with the holders and insofar as it relates to a federal agency, in a contract with the federal agency." (This is found in AS 44.88.130)

Page 38, line 4, After "Award" Insert "He/she deems"

Page 38, line 5, insert a new (d) to read "(d) Notwithstanding the provisions of (a)-(c) of this section, the parties to a dispute may mutually agree to submit the dispute to binding arbitration at any time."

Page 39, line 16 insert a new section "Sec 42.40.885

PROHIBITED ACTS. (a) The corporation or an employee may not directly or indirectly:

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

(2) require or coerce an employee to make any report concerning an activity or undertaking of the employee's activities or undertakings unless the activity or undertaking is related to the performance of official duties;

(3) except as directly related to the performance of official duties, require or coerce an employee to submit to an interrogation, examination or psychological test that is designed to elicit information concerning

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

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

(C) sexual matters,

(D) the employee's political affiliation or philosophy;

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

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

(b) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of employees suspected of being involved in criminal

activity, *OR to investigate other activities directly related to official railroad business.*

Page 40, line 28, insert a new section to read

"42.40.905 Legal Action. (a) The corporation shall notify the Department of Law 15 days prior to initiating legal action except when special circumstances exist which require immediate action to protect the corporation assets or to continue existing service.

(b) If notice of legal action is not given under (a) of this section within 7 days of taking action the board shall notify the Department of Law of the action taken and of the special circumstances which exempted the action from the requirements of (a) of this section."

Insert new sections as appropriate for Constitutional Amendment and effective dates.

* Sec. 6 AS 42.40.010 is amended to read:

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

* Sec. 7. AS 42.40.020(a) is amended to read:

(1) The powers of the corporation are vested in the board of directors. The board consists of [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT,] the chief executive officer of the corporation, and eight [SEVEN] members appointed by the governor. At least six [FIVE] of the eight [SEVEN] appointed members must be registered voters in the state. No more than two appointed members may be from

1
2 ARTICLE 9. GENERAL PROVISIONS.

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

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

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

15 (d) The corporation is not subject to the provisions of AS 44.-
16 80.010, regarding the state as a party to an action.

17 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
18 the powers granted by this chapter shall be in all respects for the
19 benefit of the people of the state, for their well-being and prosper-
20 ity, and for the improvement of their social and economic conditions.
21 Subject to (b) of this section, the real and personal property of the
22 corporation and its assets, income, and receipts are exempt from all
23 taxes and special assessments of the state or a political subdivision
24 of the state.

25 (b) Bonds and notes issued under this chapter are issued by a
26 body corporate and public of the state and for an essential public and
27 governmental purpose. Therefore, the bonds and notes, the interest
28 and income from them, and all fees, charges, funds, revenue, income
29 and other money pledged or available to pay or secure the payment of

any one of the four judicial districts in the state. The appointed members must have substantial experience or professional training and expertise in fields relevant to the purposes of this chapter, including transportation, business, and finance. Except for [THE COMMISSIONER,] the chief executive officer [,] and the member appointed under (d) of this section, a member may not be a state officer or employee.

* Sec. 8. AS 42.40.020(e) is amended to read:

(e) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief executive officer of the corporation, the members of the board shall be confirmed by a majority of the members of each house of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member until the member is rejected by the legislature.

* Sec. 9. AS 42.40.030 is amended to read:

Sec. 42.40.030. TERM OF OFFICE; REMOVAL. (a) Except for [THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND] the chief executive officer of the corporation, members of the board serve for staggered terms of five years each [AT THE PLEASURE OF THE GOVERNOR].

* Sec. 10. AS 42.40.030 is amended by adding a new subsection to read:

(b) The governor may, by written notice to the member, remove a member from the board for

(1) incapacitation caused by injury or sickness that leaves the member unable to perform duties under this chapter;

(2) continued refusal or inability to attend meetings of the board;

(3) conviction of a felony; or

(4) any conduct that was intended to harm the corporation, even if it does not constitute a crime.

* Sec. 11. AS 42.40.040(a) is amended to read:

(a) Except for the [COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT AND THE] chief executive officer, a vacancy on the board is filled by appointment by the governor, and the appointment must be confirmed by the members of each house of the legislature in joint session. A member appointed to fill a vacancy holds office for the balance of the term for which the member's predecessor was appointed.

* Sec. 12. ~~Sections 6-11 of~~ this Act take effect on the effective date of an amendment to the Constitution of the State of Alaska relating to the Alaska Railroad.

page 20, line 28 - Insert a new (d) as follows: "Leases to a party other than the State will be made at fair market value as determined either by appraisal or by competitive bid."

page 43, line 4 - Insert a new definition "Rule" as used in this chapter means every standard of general application or the amendment supplement or revision of a standard adopted by the corporation to implement, interpret, or make specific the law enforced or administered by it, to govern its procedure except one which: (1) relates only to the internal management of the corporation, (2) relates to specific rates, tariffs, divisions, and contract rate agreements; (3) relates to service schedules of the railroad (4) is directed to a specifically named person or to a group of persons and does not apply to the general public; or (5) relates to the use of public works under the jurisdiction of the corporation if the effect of the order is indicated to the public by means of signs or signals.

Alaska State Legislature



APR 10 1984

POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

April 9, 1984

Rep. Betty Cato
Capitol, Room 128

Dear Rep. Cato:

Attached is a private sector approach that would make it possible for private enterprise to eventually own and operate the Alaska Railroad. The attached amendment is one that I offered to the Alaska Railroad operation bill, CS HB 512 (trans), this morning in House Finance Subcommittee.

The House Finance Subcommittee began work on the railroad bill this morning. We will meet every Monday, Wednesday and Friday at 8 a.m. until we have completely gone through CS HB 512.

Now. Back to my amendment. At first glance, many people like the idea of the railroad operating in the private arena, but they don't think it is possible. Too many people seem comfortable in letting the State take over ownership and management with a hope and a prayer that the system won't become entrenched as another State bureaucracy that needs yearly injections of operating dollars.

There has been a lot of lip service about putting the railroad into a private enterprise scheme, but nobody is coming up with anything concrete.

I believe my amendment, which allows private (individual) Alaskans to invest in the railroad and to eventually own it, is absolutely workable, sensible, and economic.

Sincerely,

A handwritten signature in cursive that reads "Bob B".

Rep. Bob Bettisworth
RHB/kmd

A M E N D M E N T

Offered in the HOUSE

By Bettisworth

TO: CSHB 512(Trsp)

Page 41, lines 6 - 11:

Delete all material and renumber following sections accordingly.

Page 42, after line 11, insert new bill sections to read:

"* Sec. 11. ALASKA RAILROAD PURCHASE FUND. (a) The Department of Revenue shall establish a trust fund to be known as the Alaska Railroad purchase fund. Each permanent fund dividend designated for payment to the Alaska Railroad purchase fund under sec. 15 of this Act shall be deposited in the trust fund for the credit of the individual for whom the dividend was paid. Interest earned from the dividend shall also be credited to the individual.

(b) At any time before the board of directors of the Alaska Railroad Corporation forms a successor private corporation under sec. 12 of this Act, an individual may elect to withdraw a dividend deposited in the Alaska Railroad purchase fund together with interest earned on it by applying to the Department of Revenue in writing.

* Sec. 12. FORMATION OF SUCCESSOR CORPORATION. (a) When the Department of Revenue determines that the Alaska Railroad purchase fund contains \$75,000,000, it shall notify the board of directors of the Alaska Railroad Corporation. The board shall determine the net book value of the corporation and direct the department to transfer that amount from the Alaska

Railroad purchase fund into the general fund in payment for the Alaska Railroad Corporation. The balance of the fund shall be transferred to the corporation by the department. For purposes of this subsection "net book value" means the amount paid by the state to the federal government for the Alaska Railroad, plus the amount of state money and value of state property transferred to the Alaska Railroad Corporation after the date of transfer of the railroad to the state, minus the amount of operating losses suffered or plus the amount of operating gains realized by the corporation from the date of transfer of the railroad to the date of the most recent audit conducted under AS 42.40.270.

(b) Within 120 days after all money is transferred from the Alaska Railroad purchase fund, the board of directors of the Alaska Railroad Corporation shall reincorporate the corporation under AS 10.05. The board shall enter into an agreement with the state on behalf of the successor private corporation not to convert, for 10 years after the date of transfer of the railroad to the state, all or part of the real property transferred to the state under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982), except that portion of property that lies within the Denali National Park and Preserve, to a use that would prevent the railroad from continuing to operate. Upon entering into this agreement, the state shall designate the private successor corporation as the entity to own, operate, and manage the Alaska Railroad and all assets and liabilities of the Alaska Railroad Corporation shall be transferred to the successor private corporation.

(c) Violation of the agreement entered into under (b) of this section shall result in the reversion to the state of all assets transferred by the state to the private successor corporation.

* Sec. 13. ISSUANCE OF STOCK. The board of directors shall issue stock in the successor private corporation formed under sec. 12 of this Act to each individual who elected under sec. 15 of this Act to deposit a permanent fund dividend into the Alaska Railroad purchase fund. Stock issued under this section shall represent the entire value of the corporation, and the amount of stock issued to each individual shall be based upon the amount credited to that individual in the Alaska Railroad purchase fund.

* Sec. 14. STOCKHOLDERS' MEETING. (a) At the time of issuing stock under sec. 13 of this Act, the board of directors shall notify each stockholder of the time and place of the first stockholders' meeting. The meeting shall be held within 90 days after the stock is issued.

(b) At the stockholders' meeting the board of directors shall resign and the stockholders shall elect nine individuals to serve as the new board of directors of the successor private corporation.

* Sec. 15. PERMANENT FUND DIVIDENDS. Beginning in 1984 and until the board of directors of the Alaska Railroad Corporation forms a successor private corporation under sec. 12 of this Act, the permanent fund dividend application form shall be prepared to allow an applicant to indicate whether the dividend payment should be paid to the applicant or to the Alaska Railroad purchase fund. The Department of Revenue shall pay the dividend as directed on the form. If an applicant does not indicate a preference for the payment of the permanent fund dividend on the application form, the dividend shall be paid to the applicant.

* Sec. 16. AS 42.40 is repealed."

Renumber following sections accordingly.

Page 42, after line 14, insert a new bill section to read:

"* Sec. 18. Section 16 of this Act takes effect on the date the Alaska Railroad Corporation is reincorporated under sec. 12 of this Act."

Renumber following section accordingly.

Page 42, line 15:

Delete "9 - 11" and insert "9 - 15"

SUMMARY: Proposed Amendment to CSHB 512(Trans) by Bettisworth:

Intent: The Alaska Railroad Corporation established in CSHB 512(Trans) remains in effect until the accrual of \$75 million in the ARR Purchase Fund. The State is paid the NET BOOK VALUE of the Railroad with the remaining balance in the fund transferred to the Alaska Railroad Corporation. The Corporation reincorporates as a private corporation. Upon reincorporation of the ARR Corporation, the entire Chapter 42.40 created in CSHB 512(Trans) is repealed. The private Corporation is then fully responsible for the ownership and operation of the Alaska Railroad.

I. Section 11. Alaska Railroad Purchase Fund

- a). Dept. of Rev. to establish trust fund
 - 1). Optional PF Dividends deposited to individual credit
 - 2). Interest earned on deposits credited to individuals
 - 3). Individual may elect to withdraw dividend + earnings upon written request

II. Section 12. Formation of Successor Corporation

- a). Dept. of Rev. notification of accrual of \$75 million in fund to ARR Corp. Board and determine Net Book Value of ARR Corp.
 - 1). Transfer Net Book Value to general fund as payment of ARR Corp. with balance of fund transferred to Private Successor Corp.
 - 2). Net Book Value defined: (audit per 42.40.270)
 - \$ _____ Amount paid by State to Federal Gov't
 - + \$ _____ Approp. or transfer of property to Railroad
 - \$ _____ Operating losses or
 - + \$ _____ Operating gains
 - = \$ _____ NET BOOK VALUE
- b). ARR Corp. to reincorporate under AS 10.05(Ak. Business Corp. Act) within 120 days after money transfer.
 - 1). Agreement between ARRC Board (on behalf of private successor corp) and State:
 - a). Uphold 10 year Federal reversi mary clause to prevent loss of real property to Federal Gov't.
 - b). State designation of private successor corporation as entity to own, operate, and manage ARR.
 - c). ARR Corp. assets and liabilities transferred to private corp.
 - 2). Violation of Agreement transfers assets back to state.

III. Section 13. Issuance of Stock

- a). ARR Corp. Board will issue stock to each individual who elected to deposit their permanent fund dividend into the Purchase Fund.
 - 1). Individual's stock will be based on amount credited in Fund.

IV. Section 14. Stockholders Meeting

- a). 90 days after issuance of stock
- b). ARR Corp. Board Resigns
- c). Stockholder Election: 9 individuals to serve as new board of private corp.

V. Section 15. Permanent Fund Dividend Application

- a). 1984 addendum to Applications to provide option of payment to individual or ARR Purchase Fund.

VI. Section 16 & 18. Effective Date

- a). Effective on the date the Alaska Railroad Corporation is reincorporated under Section 12 of this amendment.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1984

SUBJECT: Alaska Railroad (amendment
to CSHB 512(Trsp))

TO: Representative Robert Bettisworth

FROM: Tamara Brandt Cook
Deputy Director *TBC*

You have asked for an explanation of the provisions dealing with reversion of Alaska Railroad property from the state to the federal government contained in the Alaska Railroad Transfer Act. 45. U.S.C. 1209 contains several provisions on reversion of property in certain situations.

Under (a) if, within ten years after the date of acquisition of the railroad by the state, all or part of the real property transferred by the federal government is converted to a use that would prevent the state-owned railroad from continuing to operate, that property shall revert to the federal government or the state may pay the market value of the property to the federal government. This does not apply to property within the Denali National Park and Preserve. State-owned railroad is defined under 45 U.S.C. 1202(14) to mean:

. . .the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operate or manage the rail properties of the Alaska Railroad . . .

Section 12(b) of this amendment requires the board of directors of the newly formed private corporation that is the successor to the Alaska Railroad Corporation to enter into an agreement with the state not to convert, for 10 years after the railroad is acquired by the state, all or part of the real property transferred by the federal government to a use that would prevent the railroad from continuing to operate. The state will designate the successor corporation as the entity to own, operate and manage the Alaska Railroad, in conformity with the requirement of federal law. If the

agreement is violated, all assets transferred by to the state to the successor corporation revert back to the state, so that the state will have an opportunity to correct the situation and avoid the reversion of property to the federal government.

Under (b) of the federal provision if the state discontinues use of land within the railroad right-of-way, the state's interest in the land reverts to the federal government. The provision goes on to describe ways in which it can be determined that the state has discontinued use of a right-of-way. This amendment does not address this provision, so discontinuing the use of a right-of-way by either the public or private successor corporation will result in the reversion. The federal government will not, however, retain an interest acquired through reversion of a right-of-way. Instead, the federal government will convey the interest to the abutting landowners under (c) of the federal provision.

Under (d) if use is discontinued of property transferred to the state that is within the Denali National Park and Preserve or the Chugach National Forest, the property will revert to the federal government. Upon reversion, the land will become part of the national park or forest. This amendment does not address this provision, so discontinuing the use of land in the national park or forest by either the public or private successor corporation will result in the reversion.

Under (e) if, within five years after the state acquires the railroad, the state in turn transfers all or substantially all of the state-owned railroad to an entity other than an instrumentality of the state, the proceeds from the transfer that exceed the cost of improvements made by the state for the railroad and any net liabilities incurred by the state for the railroad shall be paid to the federal government. Since the language used in the federal law is not limited to outstanding liabilities of the state on the date of transfer but rather, seems to include all liabilities incurred by the state, even those incurred in the past and paid off, it appears that under this provision the state would have to turn over any profit it made in transferring the railroad after deducting money it had invested in the railroad and expenses it had incurred through the operation of the railroad. This amendment does not directly address this provision. However, under section 12(a) the state is to receive for the railroad only the amount paid by the state to the federal government.

The Alaska Railroad: A Response to "Obstacles"
Preventing Private Ownership

By
Representative Robert Bettisworth

Private ownership of the Alaska Railroad has been down-played. The private ownership concept has not been thoroughly examined. It is necessary to respond to some of the statements by those who say too many obstacles stand in the way.

The approach taken in both the House and Senate bills is to establish a state owned "instrumentality" or corporation to operate the Alaska Railroad. The apparent assumption is that independence from state government can be achieved with this kind of operational vehicle.

An attempt at independence is indeed a laudable goal. However, neither CSHB 512 or CSSB 352 will accomplish this goal.

As a state owned corporation the railroad would be subject to undue political influence regardless of the attempt at separation. Under a plan for state ownership the Railroad would become a costly drain on the state's treasury if operating subsidies are necessary and investment decisions are made on a political rather than strictly economic basis.

The amendment offered by Rep. Bettisworth would allow all Alaskans to participate in the ownership and control of the Alaska Railroad as private stockholders. As a private corporation it would have the managerial flexibility necessary to operate in an efficient manner. More importantly the railroad would have an incentive, namely the profit motive, to operate in an efficient manner while providing the level of service that the users of the Alaska Railroad are willing to pay for.

Following below are the obstacles most often raised by opponents of privatization of the railroad and responses to those arguments.

1. Tax exempt financing would not be possible if the railroad was privately owned. This statement is false. Tax exempt industrial revenue bonding is available to private corporations through the Alaska Industrial Development Authority, and would also be available through the Regional Resource Development Authorities authorized by the Alaska Legislature in 1983. It should also be noted that in addition to the initial capitalization of \$75 million additional equity capital could be attracted to the corporation. That equity capital would have to come from State appropriations if the State owned the railroad.

(over)

2. Exemption from municipal taxes would be lost requiring higher freight rates. This statement implies that local taxes are not levied on Railroad lands. Taxes are in fact currently paid on the value of the leasehold interest and on the leasehold improvements of parcels leased to private concerns. It is true that some of the value is presently exempted however a basic theorem of the amendment is that private sector operating efficiencies will translate into lower freight rates even with any added burden of local property taxes. Further research is being done to quantify the increase in local property taxes which the private railroad would face.

3. Exemption from Federal income taxes would be lost. This is true. All private corporations which make a profit are expected to pay Federal taxes. This is simply a cost of doing business to a profitable corporation. It should be noted that if no profits are made, no corporate income taxes will be due.

4. Exemption from The Railroad Retirement act of 1974, the Railroad Retirement Tax act, the Federal Employers Liability Act, the Railway Labor Act, and the Railroad Unemployment Insurance Act would be lost under private ownership. If these are such expensive laws to comply with, why is the Alaska Railroad labor cost per employee nearly 150% of the national average for railroad employees? It would appear that private railroads experience much lower labor costs and that by "going private" labor costs would likely go down, not up as suggested by opponents of the ammendment. Furthermore, the appraisal of the Railroad by the United States Railway Association, which is the official document establishing the price, states that "there would be no significant changes in cash flow if the labor related statutes were applied".

5. Concern has been expressed over the fact that the Railroad would not be able to use the power of eminent domain for future expansion. This concern is not valid because the power of eminent domain is available to private corporations for the purposes of transportation and communication.

6. There has also been concern expressed that the Alaska Railroad Transfer Act (ARTA) would not allow transfer to a private corporation. This is simply not the case. Nothing in ARTA prevents transfer to a private corporation. Furthermore, all reversionary clauses in ARTA have been considered in drafting the proposed amendment, and they have been addressed by the drafter of CSHB 512, Tamara Brandt Cook, in the attached memo from her to Rep. Bettisworth dated April 7, 1984.

Representative Bettisworth

page 3

April 7, 1984

plus the amount of state assets transferred to the railroad after it is acquired, minus the amount of operating losses suffered or plus the amount of operating gains realized by the railroad after the date it is acquired by the state. Under this formula, it appears that only the amount of operating gains realized by the state, if any, would go to the federal government should the state transfer the railroad to the private successor corporation during the five year period. Since the railroad has not had a history of operating at a gain, the money that would go to the federal government might be insignificant.

TBC:csh

C2/142

PRESS RELEASE
April 9, 1984

Rep. Bob Bettisworth
House of Representatives
Juneau, Alaska
465-4984, 465-4967

The Alaska Railroad could be transformed into a private corporation wholly owned by Alaskans in a matter of two or three years under a stock purchase plan devised by Rep. Bob Bettisworth, a Republican legislator from Fairbanks.

Bettisworth introduced an amendment to CS, House Bill 512 (trans), the bill that sets up the operating corporation created when the State of Alaska takes over the Alaska Railroad from the federal government. That legislation is presently in House Finance Committee for review before it goes to the full body for action.

The amendment offered by Bettisworth would allow Alaskans to invest their Permanent Fund Dividends - on a wholly voluntary basis - in a stock ownership plan which would pay interest while that money was invested in a trust account.

"The idea is to eventually transform the Alaska Railroad, a government owned operation, into a private corporation owned by its stockholders who would be Alaskan residents," Bettisworth said.

"They would be allowed to invest their Permanent Fund Dividends in a trust fund for eventual conversion into stock in the New Alaska Railroad Corporation."

He added, "It's my assumption that most Alaskans will want to receive their checks and spend them or invest them as they individually chose, but there will be some who will want to invest in the railroad."

Last year's individual checks of approximately \$385 went to every Alaskan woman, man and child who was a resident of the state for a year or more.

(more)

"If only 15% or 20% of Alaskans chose to put their dividends into the railroad corporation investment, that would raise close to \$25 million in one year. At that rate, " he continued, "it would take two or three years to raise the \$75 million that my amendment calls for as the purchase price for the New Alaska Railroad Corporation."

The "new" corporation, under Bettisworth's suggested plan, would be directed by its own board of directors who would be elected by the stockholders. Only those Alaskans who want to invest would be obliged to do so. Each Alaskan would be allowed this option on an annual basis through the dividend distribution period. After the new corporation was formed, stock then could be transferred or sold.

If an investor wanted to withdraw his dividends from the trust, he would be allowed to do so - with interest - up until the time the new corporation is formed.

Bettisworth's amendment to the railroad transfer bill will not alter the bill's current thrust, that is, to take over State ownership and operation of the Alaska Railroad from the federal government.

"I want to see Alaskans own the railroad without the state government or any state bureaucracy running its day-to-day business. If the bureaucrats in Alaska get their hands on it on a long term basis, that will guarantee that it will not be economically independent and economically healthy," Bettisworth said.

"Private enterprise is the route to take with an investment of such significance to our state," he added.

GROSS & BURKE

A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

February 22, 1984

MEMORANDUM

TO: Senate Transportation Committee
FROM: Gross & Burke *AGB SAB*
RE: Organization of Public Corporation to
Operate the Alaska Railroad

At your request, we have reviewed the drafts of SB 10 and SB 352, with a view toward determining the extent to which those bills create a valid legal structure to operate the Alaska Railroad after its proposed purchase. Initially, we were asked whether the legislature had the power to require that gubernatorial appointments to the governing authority^{1/} of the railroad be confirmed by the legislature. Both SB 352 and SB 10 presently require confirmation of executive appointments. At a second committee hearing we were requested to advise you of the minimum number of executive branch controls which must be placed on any entity created by law to operate the railroad to insure that the entity would be a part of the executive branch and, therefore, constitutionally sound. We shall answer the question in the order posed.

SB 10 and SB 352 both provide that appointments made by the Governor be confirmed by the legislature in joint session.

^{1/} SB 10 speaks of an "Authority" while SB 352 creates a similar organization but describes it as the "Railroad Corporation." Purely for the purposes of simplicity, we will refer to the basic organizational structure at issue here as an "Authority."

We assume that if a similar section remains in a bill, which passes the legislature, the Governor will probably choose to submit the names of his appointees for confirmation just as he submits his appointees to a host of other boards and commissions in state government. It is our opinion, however, that should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

Our conclusion is based both on the words of the Alaska Constitution and a decision of the Alaska Supreme Court.

The constitution provides in Art. III, sec. 25 that:

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session . . .

Sec. 26 of the same article states that:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the Governor subject to confirmation by a majority of the members of the legislature in joint session . . .

The wording of the constitution is clear on its face. The legislature may confirm the heads of all departments, whether they are single executive officers or a board. The legislature may also confirm boards or commissions which are "regulatory or quasi-judicial" agencies. A regulatory authority is, as it implies, one whose basic function is to regulate a particular public activity. The Fish and Game Board is a classic example of such a regulatory board. A quasi-judicial

agency is one in which individual rights are adjudicated. An example of such a board would be the Public Utilities Commission, where contested proceedings determine rates.

The Railroad Authority as established in SB 352 or SB 10 fits under none of these definitions. It is not at the head of a department^{2/} nor is it a quasi-judicial or regulatory agency. Under the constitution, then, the legislature has no power to confirm executive appointments to the Authority, unless the legislature can add to the powers of confirmation which are granted in the constitution.

The legislature attempted to do just that in 1975 when it passed a statute authorizing confirmation of a whole list of lesser executive branch officials, including deputy commissioners and certain division directors. The Alaska Supreme Court held that the statute granting the legislature the additional confirmation power was unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Ak. 1976) In the Supreme Court's view, the power to appoint to positions in the executive branch is a power reserved to the Governor under the doctrine of separation of power, except as the constitution permits the legislature to participate in the process through confirmation. If the constitution does not specifically

^{2/} We recognize that SB 352 provides, "The corporation shall be considered a principal department only for the purposes of Art. III, sec. 26, Constitution of the State of Alaska." (emphasis added) In our view, however, the courts would almost certainly view this purely nominal designation as one purely of form, since the bill does not actually establish a new department with the kinds of gubernatorial controls normally associated with a principal department of state government. This issue of gubernatorial controls is addressed in detail later in this memorandum.

authorize confirmation, there is no legal power to do so and the Governor's power of appointment can not be subjected to confirmation by the legislature. Put another way, the Bradner case holds that the constitution states the outer limits of legislative powers of confirmation; the legislature may not expand that power by statute. While neither SB 10 or SB 352, as presently structured, would withstand constitutional challenge on the issue of confirmation, there are options available to the legislature which would provide a valid legal basis for the confirmation of appointments. We will set these options out briefly for your consideration.

The first and most obvious manner for the legislature to obtain confirmation power is to pass a joint resolution placing before the voters a constitutional amendment that would specifically authorize the legislature to confirm appointments to the Railroad Authority. This amendment could be placed before the voters during this year's election. If the amendment passed, the first appointees of the Governor to the authority or commission would be constitutionally subject to confirmation; if it did not pass, the situation would remain as it is today -- confirmation if and when the Governor chooses to submit the names. We should note that following the Bradner case a constitutional amendment granting broad additional confirmation powers to the legislature was put before the voters and failed, but whether that would be the fate of a more narrowly drawn provision would be difficult to predict.

The second option to insure confirmation would be to create an entirely new department of state government, which would be headed by the Railroad Authority. The sole purpose that new department would be to the railroad. In such an instance, the Authority would be at the head of a department and under Art. III, sec. 26 of the Alaska Constitution, the members of the Authority, would be subject to confirmation. There are, however, certain serious problems which might result from this approach. One of the basic purposes of the present bills creating an independent public corporation or authority (located nominally within a department) is to permit the Railroad Authority to raise money for operations without involving the general credit of the state. If, however, the authority which manages the railroad is a full department of state government there is some real question about its ability to successfully perform this fundraising activity without the involvement of state credit. Art. IX, sec. 8 of the constitution provides that no state debt may be incurred unless (1) it is authorized by law; (2) is for capital improvements; and (3) is ratified by the voters. Sec. XI of the same article provides that the restrictions of sec. 8 do not apply to debts incurred through revenue bonds issued by public corporations or public enterprises of the state when the only security is the revenue of the enterprise or the corporation. Whether or not an entire department of state government can be made a "public corporation" or whether

or not the entire activity of a department of state government would qualify as a "public enterprise" are questions that have never been decided in this state by any court. While the committee can certainly receive advice from legal counsel as to the possible or probable outcome of litigation on these subjects, it would at best be an educated guess. The result might well be that in order to obtain confirmation powers the committee would create a department which, in the end, might be subject to the same bonding restrictions applicable to all other departments of state government. I gather there is no disagreement within the committee that such a result would be highly undesirable. We cannot recommend this method of insuring confirmation powers because the risks are simply too great -- the legislature would be in totally uncharted waters and the magnitude of the questions involved is simply too great to accept that degree of risk.

Having discussed the issue of confirmation, we now move to the second issue posed by the committee. Specifically, that question involves the extent to which a public corporation may be established independently of the authority of executive branch and yet be a part of that branch of government. Art. III, sec. 22 of our constitution requires that all agencies of state government and their respective functions shall be allocated within no more than 20 principal departments.

The only exceptions provided are for "regulatory, quasi-judicial, and temporary agencies." As we view the functions of the operation of the Railroad -- whatever form of entity is chosen -- those functions are not primarily "regulatory" or "quasi-judicial." Further, the railroad operation would not necessarily be "temporary." Although conceivably the railroad could be sold or leased at some point in the future to a private corporation, the existence of the operating entity could well be permanent.

We think it is clear that the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions and would, therefore, require that the Authority be either a separate principal department or located within one of the already established principal departments. We have already reviewed the problems that would be created if the Railroad Authority would be made the head of an entirely separate principal department. Therefore, we are left with the conclusion that the only other constitutionally sound option is to place the governing board or authority within an existing department of state government.

Simply stated, then, the legal issue you have asked reduces itself to this. On the one hand, the legislature seeks to create an "independent" authority -- one which has financial and political autonomy and is not subject to direct gubernatorial control. On the other hand, the constitution

requires that all executive or managerial functions be a part of the executive branch, which, in turn, is under the supervision and control of the Governor. What then are the limits -- how much gubernatorial control is required to make the "independent" authority a constitutionally valid part of state government?

The cases that the Alaska Supreme Court has reviewed concerning the requirements of Art. III, sec. 22 make it clear that more than mere nomin^{al} placement of an independent corporate entity within a department in the executive branch is required. For example, in De Armond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962), it was claimed that the legislation creating the Alaska State Development Corporation was unconstitutional because it sought to create an independent agency that was nominally within the Department of Commerce, but which the challengers claimed was not in actuality within that department. The Alaska Supreme Court rejected this contention and upheld the constitutionality of the Development Corporation. In doing so, the court enumerated a number of features contained in the enabling legislation for the corporation, which demonstrated sufficient ties with the Department of Commerce to justify the conclusion that the corporation was (at least for constitutional purposes) truly within the Department of Commerce.

The factors that the court cited were as follows:

(1) the Commissioner of Commerce had a permanent seat on the board of directors and thus had "considerable influence" on the board;

(2) the other six members of the board were appointed by the Governor, and served at his pleasure;

(3) the board was required to submit comprehensive annual reports to the Governor and legislature;

(4) the financial records were to be audited annually by the legislative auditor; and

(5) the state's bank examiner was required to examine the corporation's records each year.

Additionally, although the court did not make clear what significance this fact had, it noted that the corporation was "temporary" and could be dissolved by a majority vote of the board subject to legislative approval.

Four years later, the court reviewed a similar challenge to the constitutionality of the Alaska State Mortgage Association; i.e. that it was only a nominal rather than a legitimate part of the department of state government in which it had been placed. Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966). The court, however, noted that the mortgage association legislation contained most of the same features which it had cited in De Armond to support its conclusion that the development corporation was properly established within a department of state government. Like

the development corporation in De Armond, the mortgage association members were appointed by the Governor and served at his pleasure. The commissioner of Commerce had a permanent seat on the board of the association. Additionally, the court noted that as further evidence of gubernatorial control, the mortgage association was required to submit detailed annual reports to the Governor and legislature, the financial records were subject to an annual legislative audit, and certified copies of the minutes of every meeting of the association were required to be sent to the Governor.

Neither of these decisions, unfortunately, provide any guidance on the question of the minimum number of factors that will be required in order to meet the constitutional requirements of executive supervision or control. In both cases, however, the court seemed to emphasize two factors over and above all the others. The first was that board members served at the pleasure of the Governor. The second was that the Commissioner of the department within which these independent entities were located served on the board and was a full voting member. These two features were emphasized by the court to demonstrate that the Governor exercised at least partial control over the activities of the board. The court, for instance, noted that while the commissioner was only a single member of a multi-member board his position as a cabinet member would give him

substantial influence. The court further emphasized that the Governor was in a position to exercise influence on an otherwise independent board through the fact if there were a real disagreement in policy, he could exert control over the board members through his ultimate power to reeve them. The court, in Walker, cited with approval language from the Superior Court decision in the case to this effect:

If the Governor is dissatisfied with the executive director in either his capacity as a member of the Alaska State Housing Authority or the Alaska State Mortgage Association, he can assert his authority over the board members to effect the director's removal, and should they disregard his wishes, his alternative is to appoint members to the board who will appoint an executive director satisfactory to the Governor.

Walker, at 250 n.19.

At the same time, the court recognized that there may be important and legitimate reasons for the legislature to insulate a board or authority from direct gubernatorial influence over particular decisions. In the courts words:

It is true that the Commissioner of Commerce can not dictate the decisions of the Board. Nor can any other state official It is quite apparent that the legislature intended the board to be free from outside control in making decisions on particular loans.

De Armond, at 724 (emphasis added).

Nonetheless, it is clear from the decisions that there are limits to the degree of insulation that the court will

tolerate and still uphold the constitutionality of the placement of the independent corporation nominally within a department of state government.

Accordingly, it is our view that to insure constitutionality of this bill the legislature should, at an absolute minimum:

1. create an independent authority which is part of an enumerated department of state government;

2. provide that the board for the public corporation or authority be comprised of persons appointed by the Governor and who serve at his pleasure;^{3/} and

3. that the commissioner of the department in which the authority is placed serve as a voting member of the board.

^{3/} There is a secondary, but perhaps no less important, reason why the appointees to the governing body of the railroad should serve at the Governor's pleasure. As a constitutional matter, there is a serious question as to whether any appointee of the executive branch with the exception of those who serve in regulatory or quasi-judicial positions can be subject to any other restrictions but that they serve at the Governor's pleasure. The U.S. Supreme Court has interpreted that under the federal constitution, if an office is "executive" in nature, legislative efforts to restrict the president's power to remove an official are invalid. Myers v. United States, 272 U.S. 178. That opinion has been modified slightly in Humphries Executor v. United States, 295 U.S. 602, as the court held that a member of the Federal Trade Commission could have his term set by Congress and be insulated from removal by the president, but the court was clear to limit its opinion to quasi-legislative or judicial agencies, i.e. those that were actually passing regulations or resolving legal disputes as their prime function. The Railroad Authority would fall in neither of these categories, but would be within a traditional executive agency structure.

We raise this issue because we can be reasonably sure that the content of this bill will be litigated in the courts, if there is any reasonable basis to do so. The appointment of commissioners to the Railroad Authority who serve at the Governor's pleasure would reduce the possibility of legal attack on yet another basis.

It would be advisable, as well, to include at least some of the kinds of provisions (such as the annual reports to the Governor and legislative audits) which the court in De Armond cited as significant, although these may not be essential. Beyond that, the legislature may, in our view, limit the application of acts such as the Executive Budget Act, Administrative Procedures Act and others which impact most executive branch agencies, but are not, in our view, critical to upholding the constitutionality of this public corporation structure.

AMG/SAB/yw

GROSS-BURKE OPINION KEY POINTS

1. SB 10 and SB 352 both provide that appointments made by Governor and confirmed by legislature in joint session. Should an occasion arise when the Governor decides not to submit a name or names for confirmation, the legislature would have no legal right to insist he do so.

2. The Railroad Authority established under SB 10 and SB 352 does not fit the definitions for the head of a department nor quasi-judicial or regulatory agency. Under the constitution, the legislature has no power to confirm executive appointments to the Authority unless the legislature can add to the powers of confirmation which are granted in the constitution. In Supreme Court's view, the power to appoint positions in the executive branch is a power reserved for the Governor, except as the Constitution permits the Legislature to participate in the process through confirmation.

Therefore, the first and most obvious manner the legislature can obtain confirmation power is to pass a constitutional amendment to specifically authorize the legislature to confirm appointments to the Railroad Authority.

The second option would be to create an entirely new department of state government, headed by Railroad Authority. Constitutional problems with that if Railroad is to raise money for operations without involving general credit of state.

3. Question of extent to which a public corporation may be established independently of the authority of the executive branch and yet be a part of that branch of government. Alaska Constitution requires all agencies of state government allocated within no more than 20 principal departments. Only exceptions are for regulatory, quasi-judicial and temporary agencies-which the Railroad Authority does not fit into.

Believe the Alaska Supreme Court would view the Railroad Authority as performing operational or executive functions. Other than placing Authority in separate department, the only other option is to place governing body or authority within an existing department of state government.

Summarization: The major question presented is, What are the limits-how much gubernatorial control is required to make an independent authority a constitutionally valid part of state government?

In reviewing other cases decided by the Alaska Supreme Court, the Court cited the following factors to insure the constitutionality of the placement of an independent corporate entity within a department in the executive branch:

- (1) Commissioner has a permanent seat on the Board of Directors
- (2) Board members appointed by Governor and serve at his pleasure
- (3) Board required to submit annual reports to Governor and Legislature
- (4) Financial records audited annually by legislative auditor
- (5) State's bank examiner required to examine Corporation's records each year

The Gross-Burke opinion's for insuring the constitutionality of the bill is that the legislature should:

- (1) Create an independent authority which is part of a department in state government
- (2) Board appointed by Governor who serve at his pleasure
- (3) Commissioner of department where authority placed serves as voting member of board.

January 26, 1984

Alaska Railroad Operating Entity
Sheffield Administration - Policy Statement

The Alaska Railroad is a fundamental link in Alaska's overall transportation system. Ensuring the continuation and development of this rail system as Alaska's transportation needs grow should be a major public policy objective in the years ahead.

Along with most Alaskans, I share this objective. I hope to see the Alaska Railroad provide the maximum benefit to our residents with minimum involvement by State government for regulatory oversight and public funding.

I support the development of the Alaska Railroad from its present status of a federally owned and operated agency to one which is funded and operated to the maximum extent possible by the private sector through a private company management contract or similar form of lease arrangement. I believe it will take a period of time to reach this goal. Consequently, it is important that any legislation provide adequate and specific provisions mandating that these alternatives be addressed.

It is important to keep in mind one essential fact: as long as the Alaska Railroad receives public funding, there must be comparable public oversight and accountability for its operation and management. If we accept anything less, we will be shirking our responsibility to all Alaskans to prudently and properly manage public funds.

I commend the members of our Legislature for the extensive interest they have demonstrated in the Alaska Railroad transfer issue. I know that many legislators have worked hard to develop acceptable transfer legislation which addresses a wide range of State policy concerns and interests over the past several years. Rather than introduce legislation of my own, I look forward to working with the legislation already in preparation provided that it is consistent with my following basic policy considerations:

- (1) Railroad operations should be insulated from political interference but remain responsive to the public interest. The public entity selected should be one best able to accomplish this goal.
- (2) The railroad entity should be constituted so that it has broad latitude in its operation and financing subject to public interest safeguards in existing state law, including the Executive Budget Act, Fiscal Procedures Act, and Administrative Procedures Act. I realize that certain sections of these laws may not be entirely applicable, and therefore limited exemptions may be necessary.

- (3) All revenues generated by the railroad should only be expended for railroad and related purposes.
- (4) The railroad should be able to incur bonded indebtedness to an extent consistent with its ability to repay the indebtedness from its own revenues.
- (5) The railroad should hold title to the surface estate of all lands received in the purchase and enjoy access to subsurface material necessary for actual rail operations. Specific arrangements should be included to ensure consistency with general state land policies, and to provide that sale of real property cannot occur without the approval of the Department of Natural Resources.
- (6) To minimize the State's exposure to railroad liabilities and to lower administrative costs, the railroad should take advantage of the economies of scale afforded by participation in the State's insurance and risk management plans. The Department of Administration should have primary responsibility for the negotiation of collective bargaining agreements with railroad employees.
- (7) The railroad should prepare and implement operating and capital plans, and explore long-range expansion needs. No later than three years after acquisition, the railroad must prepare a report for the Governor and the Legislature recommending a method for obtaining private sector participation in railroad operations.

COMMONWEALTH NORTH RECOMMENDATIONS

Richard F. Barnes

RECOMMENDATIONS FOR THE ALASKA RAILROAD CORPORATION

1. The corporation should have full control over the surface and subsurface railroad lands.

The purchase of the Alaska Railroad is often referred to as "a real estate deal" because of the value of land included in the transfer package.

Some private leaseholders and municipal governments with railroad-owned waterfronts or city centers would like to see the land transferred to themselves. The corporation, as a matter of policy, should not sell revenue producing property because it is in the interest of the entire state that the railroad hold these properties for its own needs.

2. The corporation and its union employees should cooperate in modernizing existing labor agreements during the two-year transitional period mandated in the federal transfer legislation.

Particular attention should be given to any archaic work rules that inhibit efficiency. The goal should be to increase productivity rather than diminish compensation to employees.

Efficient utilization of railroad employees is essential for a self-sufficient operation.

3. The corporation should not be mandated to propose or conduct feasibility studies for cross-country track extensions or sale of the railroad.

Major rail extensions and sale issues are not operating issues. The mission of the railroad corporation should be closely focused on matters that affect economics and service to shippers and passengers on existing routes. Fea-

sibility studies are expensive, require extensive staff time, and could drain the limited funds of the railroad.

Extensions and sale proposals have broad policy implications that can best be considered by the executive and legislative branches of state government or private entities.

4. Passenger operations should be modified to take advantage of revenue opportunities and re-evaluate uneconomic services; a system should be devised to accurately identify passenger service costs.

Just as land leasing by the railroad is projected to be profitable, passenger service will likely remain a loss operation if all related expenses and capital costs are considered. To control these costs, however, it is important to account for them accurately.

Reliable cost information is crucial in considering service levels, pricing issues, and capital expenditure decisions.

5. The Board of Directors of the Alaska Railroad Corporation should consist of five to seven voting members representing the interest of the entire public; no board member should be appointed to represent a special interest.

Directors should be chosen for their professional judgment rather than their representations of special interests or home town. Similarly, non-voting membership is inappropriate.

Board members should be limited to two five-year terms of service and with staggered terms to mix continuity of experience with new ideas.

Alaska State Legislature

OFFICIAL BUSINESS

CHAIRMAN
RULES COMMITTEE

MAR 19 1984



JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

MEMORANDUM

DATE: March 9, 1984

TO: All Members
Senate Transportation Committee
House Transportation Committee

FROM: Senator Jan Faiks

SUBJECT: How other State owned railroads are operated

NOTE: The following notes were gathered by my staff about how railroads in other states are run. I thought it might be interesting to you.

SOUTH DAKOTA

There are 433 miles of core track in SD that are in operation. The state owns more mileage that is not in use. There are also 316 miles of main line track that is part of the line running to the west coast. The state owns the track and contracts out the operation. There is no annual appropriation or subsidy from the Legislature. There is no report required to the Legislature. The operator (Burlington Northern RR) is responsible for all facets of running the railroad. The State purchased the track for \$18 million with money raised by a special dedicated sales tax. The state provided the money for the original rehabilitation from a federal program for the rehabilitation of railroads. Burlington Northern runs the railroad as part of their own system and is run on a schedule that traffic demands. The state gets no percentage of the profits and is not liable for any of the debt of the RR. Their only interest is in having the railroad operated to provide the service needed by the shippers.

Information provided by Chris Randall Deputy Secretary of the Department of Transportation 605-773-3265.

VERMONT

In Vermont the state owns the track and the ROW. They lease it to an operator and the state receives a percentage of the gross profits based on a complicated formula. The state owns 4 rail

lines. Only one is operated at a deficit. The state will subsidize it only if it can be shown that it is in the best interests of the public to do so. Last year the subsidies amounted to \$200,000. There are about 300 miles of track and the money was raised to purchase the railroad with a special bond issue. The operator has basically paid the state back for the purchase price through lease payments. There is an annual report required to be submitted to the Dept. and is available to the Legislature upon request.

NEW YORK

The state bought the Long Island Railroad in the 1960s and put it under the jurisdiction of the Metropolitan Transportation Authority. The state also owns a 100 mile branch line that it operates from Utica to Lake Placid. The revenues do not finance the service and money is appropriated each year from the Legislature. The railroad workers are employees of the Long Island Railroad.

Information obtained from John Connor 518-457-2320.

GEORGIA

Georgia owns 150 miles of mainline track. The track was built 125 years ago by the state. The oversight is by the State Properties Commission—they also oversee other state properties. Georgia leases the operation of the railroad to the CSX Corporation. They are required to submit an annual report to the Legislature. The state gets a percentage of the gross profits of the railroad. Last year this amounted to \$3½ million dollars. The railroad has an obligation to maintain the railroad to the standards required of a class IV railroad. The contract was negotiated in the 1960s and will be renegotiated in 1992. The railroad workers are employees of Seaboard Railroad.

Information provided by Jim Statton.

WISCONSIN

The state purchased the branch lines from other major railroads. The state retains ownership of the line and provides to the operator 80% of the value of the track. Twenty percent comes from other sources. The railroad is on its own financially and nothing comes back to the state. The railroad pays very little in taxes and the state does not subsidize the railroad or cover any deficits. The Legislature felt that subsidies would not solve any problems, but only perpetuate the current problems. The Wisconsin Constitution prohibits the state from running a railroad. There are 500 miles of track. The oversight issue is very sensitive politically right now. There is a dispute now about how much access the state should have to the records of the railroad. When the state bought the

railroad, they purchased the land and the track but not the labor agreement.

Information provided by Keith Plasterer at 608-267-7347. Suggested we talk to the City of Belfast Maine 207-338-2330 and the City of Pineville, Oregon 503-447-6251.

Also suggested we read Small Railroads put out by the Association of American Railroads 1220 L street N.W. Washington D.C. 20036. 202-835-9100. \$20.00 and Starting a Shortline by the American Association of Shortline Railroads 2000 Massachusetts Ave. N.W. 20036 202 785-2250.

and British Columbia-a Railroad Derailed by the University of B.C. Press

WEST VIRGINIA

The state owns and operates 51 miles of shortline. The state owns the ROW, track, and rolling stock. In 1978 when the railroad was abandoned, the state looked at three options for running the railroad and decided that running it themselves would be the most cost effective way. The state secured locomotives and engines from government surplus. The employees of the state are non-union because state employees are not organized under state law. They are now in the process of putting the employees under state civil service system. The railroad is a state agency and is subject to state law. They must go through the Department of Finance and Administration for all purchasing and payment of bills. Every purchase over \$200,000 goes through a bidding procedure. Every item less than \$200,000 must be purchased from a list of approved vendors. This causes a lot of paperwork and delay. The railroad is forced to anticipate the time lag. Their budget must be approved by the Legislature. For FY 85 they requested \$812,379 from the Legislature and anticipate revenues of \$315,000. The W. Virginia Maintenance Authority keeps all revenues (that is they are not returned to the general fund). The railroad has 30 employees. The railroad has the authority to issue their own bonds but they have never done so. The former executive director, John Killoran, is now the Director of Strategic Planning for the Alaska Railroad. The people who were involved with the railroad in 1978 now regret their decision to have the railroad run by the state. They feel the railroad is forced to compete with other railroads yet is hamstrung because they are forced to comply with state laws. The budget is overinflated and there are too many employees. They are trying to reduce the number by attrition.

Information provided by Donald J. Baker, Jr. Executive Director of the West Virginia Maintenance Authority at 304-538-2305.

MICHIGAN

Currently, the state owns the right of way for 879 miles of track however, only 670 miles are currently being used. The state holds title to the land but leases out the operation of the railroad to the private sector, therefore, none of the workers are considered employees of the state. All the systems serve mainly rural areas and were taken over by the state because each was in imminent danger of bankruptcy. They are managed by the Michigan Dept. of Transportation, Rail Freight Division. They were purchased by the sale of bonds that were financed from dedicated funds. In Michigan, there is a 13¢ per gallon gas tax levied and mass transit/railroads receive a portion of that income. The first rail system was purchased in 1976 for \$11.9 million and at the time, the Legislature considered setting up a separate agency that would own and operate the railroad. This was opposed by the Chamber of Commerce because they felt it was akin to nationalization of the rails. After a long battle, the Legislature opted to put the system under their DOT and lease out the operation. The state has been subsidizing each of the systems but that financial assistance is being reduced every year and will be completely eliminated by September of 85.

This information was obtained from Don Riel (517) 373-6494.

ALABAMA

There are 75 miles of track in and around the Mobile area which serve the port. The railroad was built in 1929 by the Army Corps of Engineers and taken over by the state shortly thereafter. It has only 5 employees who work for the State of Alabama. The system is run by the Port Authority, Docks Dept. and according to the director, "it's not a very big deal. Usually only runs once a day, carrying some cargo from the port into town." It pays for its own way, ie. there is no state subsidy.

NEW HAMPSHIRE

The state owns the right of way for 2 systems, one which is 72 miles long and the other which is 23 miles long. The larger one serves a sawmill and the other a furniture factory. Both were going bankrupt but the state stepped in and purchased both to ensure that the sawmill and furniture factory would remain open. The state owns the locomotives but none of the other rolling stock. They also lease out the operation to the private sector so the employees do not work for the state. Originally, the state created a separate agency to administer the railroad but they encountered many problems ie. no control so both systems are now administered by the Highway Department.

Bette:

Here are questions regarding the Cook Inlet Amendments. Please call when you have had a chance to look them over in relation to the copy of the actual amendments. I can give you some of the answers. I have used page numbers for easier understanding. Some general comments should be made at the beginning of the call:

- o The amendments, if they are clarifying language, ~~are~~ sure confusing! From one version to the next, citations do not matchup and I am concerned that a section means two different things in different areas. (there are several sections to get into later)
- o I am concerned that this language is expanding and making substantive changes to either the lands bill and/or to the Cook Inlet Agreement. I realize that some of these are outside our focus on the railroad issue, but as a state representative, and as they appear on the railroad transfer bill, I feel responsible to understand their content. (are there substantive changes?)
- o It has been the states position, as I understand it to allow technical amendments that do not make substantive changes but this latest set appears to go far beyond that. (any comments?)

Questions

1. What has been the Departments involvement in these amendments?
2. What is the Departments current responsibility in them?
3. What are the general effects of these amendments to the Railroad Transfer? (we will go into more detail later with specifics)
4. Do these amendments alter or expand either state or federal obligations to Cook Inlet Native Corporation. (could they set a precedent for other regional corporations) Is there any effect to Village Corporations
5. Comment: I see part of the problem in Washington D.C. is these amendments open up the lands bill, (ANILCA) or ANSCA. Isn't this a real danger to the transfer question with congress. Wouldn't it be easier for Sen. Stevens to deal with this elsewhere. I think the state should strongly urge him to not cloud the transfer with this.
6. Are these amendments, dated August 17, 1982, the final offering? Are they complete? and by that I mean if these go in to S. 1500 will the existing language come out?

7. In your opinion, what will Stevens do if the state issues a statement of strong opposition to these amendments" (with the timeline for the bill to come before the Senate, we had better make our determination very soon!!!)

8. What process, if any, are altered from existing lands legislation, or the Cook Inlet Agreement such as in or out of region selection abilities or increased entitlement?

9. Isn't the state giving up partial veto power on page 9 (c)? It seems as though "unless the state expressly" says no within a certain time period, lands go into the selection pool.

10. How is the state of Alaska's veto over native selections altered by these amendments? (the words "public purpose" should come out here. If they do: "how is the state to prove that lands "in the smallest practicable tract are necessary for a public purpose"? ** these are words in the 3E determination process**

**Interior has said that the 3E determination should be sufficient. Isn't it? then why do we need these amendments?

11. Department of Interior seems to get a lot more duties and authority under these amendments. What is their position on this set of amendments?

12. On page 6 (3) (A,B,C,D,E,F,G,), What is the effect of these?

13. What is going on at page 10 (D) I thought C.I.N.A. waived the right to select Railroad Lands? If the Railroad does not transfer to the state, (or if the state does not accept the terms and conditions), and it stays in federal ownership, doesn't this effect the federal governments ability to continue to operate the railroad? This seems real awkward. Again the question arises of how the state or a municipality will prove "public purpose".

14. On page 13 (B) it talks about the "unfulfilled entitlement as valued in subsection 12 (b) (7) (iv). On page 6 this subsection is amended. Does this expand or change entitlement? This looks like the section 6 (d) (3) in the S. 1500 as reported by Sen. Packwood. What is the effect of this?

15. I get really suspicious of repealers like page 14 (e). Also isn't there a provision in the lands bill, ANCSA or the Cook Inlet Agreement that says the courts are to give Cook Inlet the "benefit of the doubt"

when disputes arise. How will this "play" if these amendments are adopted and eventually end up in court?

16. Page 16, 12 (b) (11) (i) and (ii) are any lands being contemplated at this time? In the near future? Can you speculate as to what are they after?

(Optional) 17. Can you give me a time line sequence on how the transfer with these amendment "triggers" will take place? Perhaps Mark Hickey can help on this.

** This should give you some insight as to what is occurring. You may want to call Katz personally after this is over and urge him to oppose these amendments on everything beyond:

- (1) Extension of the deadline for the "in-region" selection
- (2) Updating the list of properties excluded from the out of region selection pool.

X
Use 3E

Preamble

To: Steve Hillard From: Mark Wittow, 9/3

WHEREAS, the State of Alaska, the United States Government and Cook Inlet Region, Inc. entered into an Agreement entitled The Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area on December 10, 1975, as clarified on August 31, 1976 (hereinafter Terms and Conditions);

WHEREAS, the Terms and Conditions was ratified by the Alaska Legislature in Chapter 19, SLA 1976 and by the United States Congress in Public Law 94-204, Section 12, January 2, 1976, 81 Stat. 1150, as amended by Public Law 94-456, Section 3, October 4, 1976, 90 Stat. 1935; Public Law 95-178, Section 3(a), November 15, 1977, 91 Stat. 1369; Public Law 96-55. Section 2, August 14, 1979, 93 Stat. 386; Public Law 96-311, July 17, 1980, 94 Stat. 947; Public Law 96-487, Title XIV, Section 1435, December 2, 1980, 94 Stat. 2545;

WHEREAS, Congress is considering further amendment of the Terms and Conditions by the CIRI Alaska Railroad Waiver Amendments (copy attached);

WHEREAS, the purpose of the present Agreement is to implement the Terms and Conditions as amended by Congress, including the proposed CIRI Alaska Railroad Waiver Amendments.

B. Miracle
8/31

5 reg History - no presumption on favor of CIRI

in agreement preamble

AGREEMENT CONCERNING IMPLEMENTATION OF ALASKA RAILROAD WAIVER AMENDMENTS OF COOK INLET REGION, INCORPORATED

① Whereas
② MAJ limitation
③ #4
④ State, not APD

This Agreement is made this ____ day of _____, 1982, between Cook Inlet Region, Incorporated (hereinafter CIRI) and the State of Alaska (hereinafter State).

In consideration for the mutual terms, conditions and covenants contained in this Agreement, the parties agree as follows:

A

1. In the event that CIRI intends to negotiate a sale pursuant to subsections 12(b)(7)(ii) (A) or (B) of the CIRI Alaska Railroad Waiver Amendments (copy attached), CIRI shall notify the Commissioner of the Department of Natural Resources of the State with respect to real properties located within the State of which CIRI has received notice pursuant to the above subsections. The State shall immediately send a copy of the notice to any municipality in which all or part of said property is located. CIRI shall not accept title pursuant to a negotiated sale of such real property under the authority of the above subsections without the approval of the State. The State will make a good faith effort to provide a written response to CIRI within twenty-five (25) days of receipt of notice from CIRI. If, regarding improved properties, a written response is not received from the State within sixty (60) days of receipt of notice from CIRI, the approval of the State shall be deemed obtained. If, regarding unimproved properties, a written response is not received by CIRI within sixty (60) days of receipt of notice from CIRI, the approval of the State shall be deemed not obtained, subject to the possibility of subsequent approval by the State. The notice provided by CIRI to the Commissioner of the Department of Natural Resources shall designate the status of the property as improved or unimproved, shall specify whether all or part of the property is located within a municipality and shall recite the deadlines for a written response as defined by this paragraph.

2. The purpose of subsections 12(b)(7)(ii) (A) and (B) of the CIRI Alaska Railroad Waiver Amendments (copy attached), which allows CIRI the opportunity to obtain federal excess property as well as federal surplus property, is, among other things, to give CIRI additional notice that surplus property is available. CIRI has had difficulty obtaining information about available federal surplus property. The amendment allowing CIRI to obtain excess property does not broaden the kind of property CIRI could obtain under the surplus property procedures of 12(b)(7)(i). The phrase "excess property" in the amendments has the same definition as "excess property" at 40 U.S.C. § 472 (c) and (e) which state as follows:

(d) The term "property" means any interest in property except (1) in the public domain; lands reserved or dedicated for national forest or national park purposes; minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws; and lands withdrawn or reserved from the public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general public-land laws because such lands are substantially changed in character by improvements or otherwise; (2) naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines; and (3) records of the Federal Government.

(e) The term "excess property" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

3. If legal title is hereafter acquired by CIRI contrary to the provisions of this agreement, CIRI shall seek a rescission of the conveyance from the United States. If the United States does not grant rescission of the conveyance, CIRI shall forthwith convey title to the property to the State, but in no event later than one hundred and eighty (180) days of conveyance of title to CIRI from the United States.

4. The parties agree that "other federal lands", as described in Paragraph I.C.(2)(a)(vi) of the Terms and Conditions, unless otherwise agreed to by the State, does not include federal lands upon which there exists a valid State selection, provided however, that the State may not utilize the authority of Section 6 of the Statehood Act ^{as amended} to exclude or achieve a priority over a CIRI selection pursuant to Paragraph I.C.(2)(a)(vi) of the Terms and Conditions, of D-1 lands which were previously unperfected or abandoned public land entries, unless the State selection on lands within the exterior boundaries of CIRI was made before the effective date of the Terms and Conditions, or the State selection on lands from without the exterior boundaries of CIRI was made prior to the effective date of the CIRI Alaska Railroad Waiver Amendments.

5. The parties recognize that the CIRI Alaska Railroad Waiver Amendments do not alter the priorities established under the Terms and Conditions by paragraph I.C.(1) of the Terms and Conditions with respect to Statehood Act selections made subsequent to July 18, 1975.

6. CIRI shall enter into an agreement with the Secretary of the Interior, pursuant to subsection 12(b)(8)(ii) of the CIRI Alaska Railroad Waiver Amendments, to limit the I.C.(2)(a)(v) review process to the following properties:

- (a) FAA
 - (1) Homer VOR
 - (2) Kenai VOR and airport (including PLO 2585 and ANS No. 11)
 - (3) Talkeetna VOR, NDB and airport
 - (4) Fire Island VOR
 - (5) Skwentna NDB

- (b) Coast Guard
 - (1) Fire Island Race Pt.
 - (2) Fire Island West Pt.
 - (3) Kalgin Island
 - (4) Two undeveloped lots on Government Hill, Anchorage

unless the state

(d) FERC

(1) Power Project 395 (Chackachama), provided, however, that the review is to be limited to T. 12 and 13 N., R. 15 W., Seward Meridian, and that a two hundred foot (200') right of way corridor for transmission lines and road access may be reserved to the State at a location to be specified by the ~~Alaska Power Authority~~ at a subsequent time not to exceed twenty years from receipt of conveyance by CIRI. CIRI will acknowledge this right of way covenant in a recordable instrument on the date of receipt of conveyance. Exercise of the reserved right of way by the ~~Alaska Power Authority~~ will not result in liability for destruction of improvements. CIRI may negotiate a limitation upon this reserved right of way with the State ~~or its Alaska Power Authority~~ at any time.

State

State

(e) Alaska Railroad properties, in the event such properties become available for selection pursuant to subsection 12(b)(8)(i)(D).

The parties hereby agree that the identification of the above properties does not indicate a decision or view by the State regarding the facts to be determined in such a review. The parties further agree that designation of the above properties does not indicate agreement by the State, now or in the future, that any of the lands contained in these federal installations necessarily constitute public lands within the meaning of ANCSA Section 3(e) or Paragraph I.C.(2)(a)(v) of the Terms and Conditions, nor does it indicate a position by the State regarding a public purpose, if any, for which the property is used or might be contemplated for use in the future.

7. On or before September 27, 1982, CIRI shall provide to the Commissioner of the Department of Natural Resources a resolution from its Board of Directors authorizing this Agreement. This provision does not affect the validity of this Agreement.

Add: Neutrality

Dated: _____

Dated: _____

STATE OF ALASKA

COOK INLET REGION, INC.

John W. Katz,
Commissioner of the
Department of Natural Resources

Roy M. Huhndorf,
President

Approved as to form this _____ day of _____, 1982

Barbara Miracle, Esq.
Assistant Attorney General
State of Alaska

STATE OF ALASKA)
_____) JUDICIAL DISTRICT) ss.
)

THIS IS TO CERTIFY that on the _____ day of _____, 198__, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Roy M. Huhndorf, President of Cook Inlet Region, Inc., a Native Corporation existing by virtue of the laws of the State of Alaska, known to me to be the person who executed the above instrument and who acknowledged that the said instrument was signed on behalf of said corporation by authority of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first hereinabove written.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

STATE OF ALASKA)
_____ JUDICIAL DISTRICT) ss.
)

THIS IS TO CERTIFY that on the ____ day of _____, 198__, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared John W. Katz, the Commissioner, Department of Natural Resources, State of Alaska, known to me to be the person who executed the above instrument and who acknowledged that the said instrument was signed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first hereinabove written.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____

by CIRI
8/31

Key Elements of CIRI/State Agreement:

I. Values to the State:

A. Waiver by CIRI of claims under the Terms and Conditions to the Alaska Railroad upon transfer to the State.

B. Additional limitations and waivers of claims by CIRI to federal lands (including military lands) under the "excess public lands" provision [§1(C)(2)(a)(v)] of the Terms and Conditions.

C. Substantially enhanced ability of CIRI to fulfill its entitlement outside the State of Alaska.

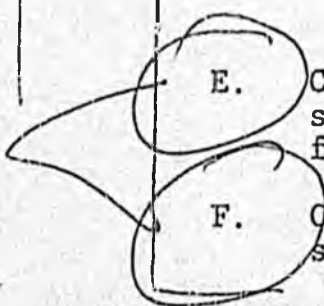
D. Creation of a "Red Line Pool" for CIRI out-of-region selection rights, which will provide to the State the opportunity for orderly and unclouded selection, prioritization and conveyance of its remaining Statehood entitlement. The Red Line Pool is subject to the following conditions:

1. limitation of CIRI selection rights to 30 pre-screened and state approved townships.
2. limitation of time for CIRI selections from the above pool to July 1985.
3. a schedule for prioritization of lands within the above pool.
4. an agreement of exchange for five townships of state patented lands at Illinois Creek in return for recoupment of state selection rights and waiver of remaining CIRI selection rights in the TAPS pipeline corridor as made available by BLM.
 - (a) the lands are subject to mining claims by Anaconda, which supports the exchange and with which CIRI has an existent relationship, and
 - (b) if required by law, the exchange will be subject to legislative approval.

E. Creation of federal "recoupment" provision for state selection rights for state-TA'd or patented lands transferred to CIRI.

F. Clarification and uniformity of state vetoes on CIRI selections within the state.

waiver
OKA



II. Values to CIRI:

- A. In return for waiver by CIRI of claims to the Alaska Railroad and other claims, as noted above, CIRI receives an enhanced ability to acquire surplus federal properties outside Alaska in order to fulfill its entitlement.
1. In response to concerns raised by the Federal Property Review Board and GSA regarding the federal surplus property disposal program outside Alaska, CIRI has agreed to limit its ability to acquire surplus federal property outside Alaska in two respects:
 - (a) to limit the value of the CIRI surplus property account to ten townships less than the remaining entitlement (i.e. CIRI must take ten townships from the out-of-region pool).
 - (b) to defer use of certain portions of the CIRI surplus account until 1984 and 1985.
- B. Revision of federal out-of-region selection pool to reflect post-ANILCA land status.
- C. In addition to the above, the legislation embodies certain extensions to the present CIRI deadlines as previously and independently assured by Senator Stevens.

✓ The above elements represent key components of a seamless web of positions, compromises and concessions woven by numerous parties regarding the Alaska Railroad during the past year. These include CIRI, other Native interests, the Property Review Board, GSA, the Department of the Interior, Senator Stevens and the State of Alaska (as represented by DNR, DOT and at least four assistant AG's).

CIRI
9/14

Outline of Portion of CIRI Amendments

1. Time line regarding authority/obligation

(a) In-region

1. the obligation of the Secretary expires at the time of fulfillment of the minimum 138,240 acres after July 15, 1984
2. the discretionary authority of the Secretary begins at the time of fulfillment of the obligation and continues until fulfillment of the entire CIRI entitlement
3. the residual unfulfilled obligation is approximately 96,000 acres

(b) Out-of-region (surplus, etc. property)

1. there is no obligation of the Secretary to place out-of-region surplus, etc. properties into the in-region pool
2. the discretionary authority of the Secretary to place out-of-region surplus, etc. properties into the in-region pool expires as follows:
 - a) on July 15, 1984, if the in-region obligation is fulfilled
 - b) after July 15, 1984, upon fulfillment of the in-region obligation
 - c) in any case, no later than July 15, 1987

2. Public purpose vetoes

- (a) immediately as to ARR properties and out-of-region surplus, etc. property
- (b) on July 15, 1984, as to military properties in region
- (c) on July 15, 1987, as to all categories (a full generic veto on CIRI rights)

3. Original T&C vetoes

- (a) in addition to the above, the original, ^{limited} in-region veto powers of the State under the T&C remain intact until July 15, 1987

A M E N D M E N T

Offered in the HOUSE

By Bettisworth

TO: CSHB 512(Trsp)

Page 41, lines 6 - 11:

Delete all material and renumber following sections accordingly.

Page 42, after line 11, insert new bill sections to read:

"* Sec. 11. PERMANENT FUND DIVIDENDS. Until the board of directors of the Alaska Railroad Corporation issues stock under sec. 13 of this Act, the permanent fund dividend application form shall be prepared to allow an applicant to indicate whether the dividend payment should be paid to the applicant or to the Alaska Railroad purchase fund. The Department of Revenue shall pay the dividend as directed on the form. If an applicant does not indicate a preference for the payment of the permanent fund dividend on the application form, the dividend shall be paid to the applicant.

* Sec. 12. ALASKA RAILROAD PURCHASE FUND. (a) The board of directors of the Alaska Railroad Corporation shall establish a trust fund to be known as the Alaska Railroad purchase fund. Each permanent fund dividend received from the Department of Revenue shall be deposited in the account for the credit of the individual for whom the dividend was paid. Interest earned from the dividend shall also be credited to the individual.

(b) At any time before the board of directors of the Alaska Railroad Corporation issues stock under sec. 13 of this Act, an individual may elect to withdraw a dividend deposited in the Alaska Railroad purchase fund

together with interest earned on it by applying to the board in writing.

* Sec. 13. ISSUANCE OF STOCK. (a) When the board of directors of the Alaska Railroad Corporation determines that the Alaska Railroad purchase fund contains \$75,000,000, the board shall pay the net book value of the corporation into the general fund in payment for the Alaska Railroad Corporation. Within 120 days after making the payment, the board shall reincorporate the Alaska Railroad Corporation under AS 10.05. All assets and liabilities of the Alaska Railroad Corporation shall be transferred to the successor private corporation. The board shall issue stock in the new private corporation to each individual who elected to deposit a permanent fund dividend into the Alaska Railroad purchase fund. Stock issued under this section shall represent the entire value of the corporation, and the amount of stock issued to each individual shall be based upon the amount credited to that individual in the Alaska Railroad purchase fund.

(b) For purposes of this section "net book value" means the amount paid by the state to the federal government for the Alaska Railroad, plus the amount of state money and value of state property transferred to the Alaska Railroad Corporation after the date of transfer of the railroad to the state, minus the amount of operating losses suffered or plus the amount of operating gains realized by the corporation from the date of transfer of the railroad to the date of the most recent audit conducted under AS 42.-40.270.

* Sec. 14. STOCKHOLDERS' MEETING. (a) At the time of issuing stock under sec. 13 of this Act, the board of directors shall notify each stockholder of the time and place of the first stockholders' meeting. The meeting shall be held within 90 days after the stock is issued.

(b) At the stockholders' meeting the board of directors of the Alaska Railroad Corporation shall resign and the stockholders shall elect nine individuals to serve as the new board of directors.

* Sec. 15. AS 42.40 is repealed."

Re-number following sections accordingly.

Page 42, after line 14, insert a new bill section to read:

"* Sec. 17. Section 15 of this Act takes effect on the date the Alaska Railroad Corporation is reincorporated under sec. 13 of this Act."

Re-number following section accordingly.

Page 42, line 15:

Delete "9 - 11" and insert "9 - 14"

Alaska State Legislature



COMMITTEES
OIL & GAS—(CO-CHAIR)
STATE OF AFFAIRS—(VICE-CHAIR)
LABOR & COMMERCE
RESOURCES

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

ANCHORAGE

P.O. BOX 10-1623
ANCHORAGE, AK 99511
(907) 344-0950

JUNEAU

POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

To: Bette Cato, Representative, District 6
Fr: John Cowdery, Representative, District 8
Re: The Alaska Railroad

March 14, 1984

I have been made aware of some problems with the Alaska Railroad passing by the downtown Anchorage area. Even though the Bootleggers Cove, Turnagin Arm and Oceanview areas are not in my district, I have lived in Anchorage for 30 years and have concerns other than those in district 8. Please take the time to read my letter to the Governor and the resolution from the South Addition Community Council.

If you have questions please contact me.

Thank you.

A handwritten signature in cursive script, appearing to read "John".

Alaska State Legislature



ANCHORAGE

P.O. BOX 101623
ANCHORAGE AK 99511
(907) 344-0950

JUNEAU

POUCH V
JUNEAU, AK 99811
(907) 465-4905
465-4906

House of Representatives

REPRESENTATIVE
JOHN J. COWDERY
DISTRICT EIGHT

COMMITTEES
OIL & GAS--(CO CHAIR)
STATE OF AFFAIRS--(VICE CHAIR)
LABOR & COMMERCE
RESOURCES

March 12, 1984

Honorable Bill Sheffield
Governor
State of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

The Legislature has been debating purchase and operation of the Alaska Railroad during this session and, I believe, will soon reach a resolution. However, many residents in Anchorage have expressed concern about a serious problem which has been occurring. Since you have been such a strong advocate of the railroad purchase, I am sure you have discussed the problem I am about to outline.

Many residents and businesses, particularly in the Bocklegger's Cove area of Anchorage, have become increasingly annoyed by the vibrations caused by train cars carrying heavy industrial products. In fact, these vibrations are becoming progressively worse and may cause structural damage as well if allowed to continue over a period of time. With coal exports planned for the future, and transportation to tidewater being a necessary step in that process, this problem will only escalate. Residents have expressed not only an annoyance with the cars, but a fear for health and safety concerns.

Governor, we both witnessed the devastation caused by the 1964 earthquake. We saw the clay formation just below the surface of the soil slide down the hill when it failed to withstand the geotechnic pressure placed on it. The hill below the Holiday Inn had to be reinforced to prevent further slides. Presently, the ARCO building is experiencing vibrations that have been traced to a water extractor at a nearby commercial laundry establishment. This further demonstrates the extreme sensitivity of the soils in the area.

For quite some time after the quake, the Army Corps of Engineers placed restrictions on building in certain areas of the downtown area. The Municipal Assembly is still sensitive to construction in some downtown areas and has, in fact, rejected proposed projects in recent years because of the concern of land stability. I understand the Municipality has restricted several downtown projects unless some type of ground stabilization is included in any project. Clearly, there is a continuing demonstration of concern about the stability of the downtown area.

I am concerned about the continued effect of heavy vibrations on structures present in the downtown area and in areas adjacent to the railway corridor. The potential for these heavy vibrations to further erode the stability of the land should be of extreme concern. I think several questions must be answered.

What does the state plan to do to lessen the effect of these vibrations?

Has there been any stabilization done to the area?

Are there plans to stabilize land and structures in the area to prevent potential damage? If so, what are the cost estimates for such stabilization?

Are you aware of any studies by the Corps of Engineers relating to what effect vibrations may have on buildings in the affected area or the effect of vibrations increasing the potential for soil sliding activity?

Have you given any consideration to an industrial bypass railroad route which would avoid travel through this sensitive area? If so, what cost might we anticipate for right of way acquisition, and what area might such a bypass impact?

I am sure these issues must be of concern to you as well, and I trust, in all the debate regarding state takeover and operation of the railroad, you have discussed these very issues with Mayor Tony Knowles. Certainly, it would be shortsighted if your administration, the Municipality or the Legislature ignored this serious concern in deliberations of the Alaska Railroad. Citizens in the South Addition area of Anchorage have signed a petition, which I have enclosed, urging state consideration of these concerns. To date, these citizens have apparently received little assistance from the Knowles administration towards solving this problem.

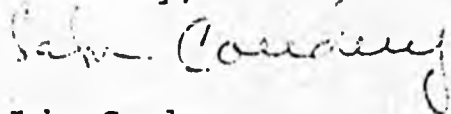
In summary, I am asking what your administration plans to do about this problem. Has consideration been given to rerouting the railroad to avoid the downtown areas?

Governor Sheffield
Page 3

Has consideration been given, for example, to a spur line through other areas where land is much more stable? And if such a spur line has been considered, do we need to progress at this time with railroad overpasses, which are estimated to cost millions of dollars, over major arterials? Perhaps, a spur line would not only eliminate the problems being caused by vibrations but would also eliminate the need to spend large sums simply to build massive train crossings. As I understand it, these intended crossings are being requested to accommodate increased heavy industrial commerce which will tend to interfere with commuter traffic. Yet a spur line might re-route such train traffic and make the need for these overpasses moot.

None of these questions should be considered as a stand against state takeover and operation of the Alaska Railroad. And, since state takeover and operation appears eventual, I think these are serious public concerns which should be addressed prior to state operation. They have potential for creating even greater life threatening and costly problems down the track, so to speak. I look forward to your reply knowing that you must share these concerns for the health and safety of Anchorage residents.

Sincerely,



John Cowdery
Representative-Anchorage

RESOLUTION

A RESOLUTION OF THE SOUTH ADDITION COMMUNITY COUNCIL PLACING THE STATE OF ALASKA ON NOTICE THAT OPERATIONAL PROBLEMS CURRENTLY EXIST RELATING TO THE TRAIN OPERATIONS OF THE ALASKA RAILROAD. THESE PROBLEMS AND THE COST TO SOLVE THEM SHOULD BE CONSIDERED WHEN THE STATE LEGISLATURE ADDRESSES THE TRANSFER OF THE ALASKA RAILROAD FROM FEDERAL CONTROL TO STATE OWNERSHIP.

THE SOUTH ADDITION COMMUNITY COUNCIL RESOLVES:

WE, the members of the South Addition Community Council are hereby putting the State of Alaska on notice that there are a number of problems involving the Alaska Railroad which will require solutions in the future. At present, various train operations of the Alaska Railroad) for example, south-yard switching operations, gravel hauling, etc.) involve excessive noise and vibrations constituting a serious hazard to the health, welfare and quality of life for the residents of the Bootleggers Cove and the South Addition. Additionally, these same problems are expected to increase with the beginning of the coal haul from Healy to Seward.

PASSED AND APPROVED by the steering committee of the South Addition Community Council; Anchorage, Alaska this 8th day of MARCH, 1984.

Cirrus C. Starn
PRESIDENT

ATTEST:

Lynn Benson
COUNCIL SECRETARY OR
MEMBER AT LARGE