

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86 / 2

3116 HT AK RAILROAD / PROPOSAL - CORRESPONDENCE 310

MAR 20 1984

Anchorage

CHAMBER of COMMERCE

Representative Bette Cato
State Capitol
Pouch V
Juneau, Alaska 99811

Crossroads of the Air World

Dear Representative Cato,

For several years the Anchorage Chamber of Commerce has been closely following the transfer and operation issue of the Alaska Railroad. The Anchorage Chamber has expressed its support of a strong independent railroad which operates as a business entity.


We feel our objectives, and the citizens of the state, are best achieved through passage of HB 512. The major elements in this legislation which we support are as follows:

1. Specific reference under the legislative purpose of the eventual transfer of the railroad to the private sector.
2. The independent status of the Corporation as an entity of the State.
3. The strength of the Corporation Board of Directors identified by its powers and duties.
4. The establishment of the Executive Officers of the railroad to manage the day-to-day activities of the railroad.
5. We strongly support the Railroad Corporation right to hold and manage its lands including the right of eminent domain, and the right to request additional lands for railroad purposes.
6. We support the inclusion of the strong bonding authority of the Alaska Railroad Corporation.
7. We support the railroad generated revenues staying within the Corporation for future railroad purposes.
8. And finally, we support the Alaska Railroad employees being employees of the Corporation.

We would like to propose one addition to Article 4, Section 42.40.300 General Powers. We recommend that the Corporation be permitted to lease a portion or all of the operation of the railroad to a private entity. We feel this addition should be granted to the Corporation as an option to their management prerogatives and is within the overall intent of the proposed legislation.

We recommend your support of this legislation.

Sincerely,


Al Fleetwood, President
Anchorage Chamber of Commerce

FEB 27 1984

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 622
SEATTLE, WASHINGTON 98119

February 22, 1984

H. L. SCHUYLER
Director Public Affairs
Alaska Division

TELEPHONE:
(206) 938-8349

Honorable Bette Cato
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Cato:

Attached to this letter are a few suggested amendments which we believe to be in the best interest of the State, the citizens, and various modes of the transportation industry in the State of Alaska.

We do not feel that our suggestions are so restrictive that the Alaska Railroad will not be able to carry on with an economical/operational program and keep the Alaska Railroad a viable institution. The Authority, composed of astute businessmen and a General Manager who knows how to operate and market his railroad as a free enterprise business, will succeed. After all, we are all working for our share of the Alaska freight "pie." The only difference is that the private sector pays taxes to City, State, and Federal Governments, and pays the commercial interest rate for his capital.

Trust these suggestions are accepted and reviewed in an unbiased manner.

Thank you for your consideration and taking the time to review. All we, in the private sector, are asking for is to be able to compete on an equal basis.

Sincerely,



HLS:kt
Attachment

SENATE BILL NO. 352

Suggested amendments that should make for a better bill:

1. Page 2, Section 1, Line 17. Add: "and to apply for any Federal monies to which the State would be entitled, or may be available;" §605 of ARTA.
2. Page 2, Section 1, Line 21. Add the word "rail" between "economical" and "transportation" in the middle of the sentence.
3. Page 2, Section 1, Line 28. Add: Paragraph "(H) The Corporation will not use State investments, subsidy money, non-taxable property and chattles in considering the pricing of the property services of the railroad."
4. Page 7, Article 1, Section 42.40.110, Delegation, Line 7. Add: "(12) Applying for subsidies, grants and endowments available from Federal, State or Private entities."
5. Page 8, Article 3, Administrative Provisions, Line 19. Add: "This shall be a public document."
6. Article 8, General Provisions, Page 27, Line 26. Prior to "Where possible," add: "The Corporation shall comply with and be subject to, all provisions of the Antitrust Laws." If this sentence cannot be added, strike out "Where possible."

Adopted for HB 512

3/13/84 HB 512 additions

Sec. 42.40.280 PERFORMANCE AUDIT. The board shall have an annual performance audit conducted by a qualified professional performance auditing firm to assure that the railroad is being managed and operated effectively and efficiently in accordance with the requirements of this Act.

Sec. 42.40.470. AGREEMENT (a) The Department of Administration may participate in labor negotiations between the corporation and an employee organization. ^{the corp} The corporation ~~shall consult~~ ^{shall notify} with the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment. The Department of Administration ^{will} ~~shall~~ notify the Governor and the Legislature if any proposed contract provisions conflict with State labor management policy.

The Bd shall notify DOA of time & place of labor neg & DOA shall be able to attend those neg and DOA may ~~attend~~ participate @ request of Bd.

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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.

SUGGESTED AMENDMENT TO HB 512

Page 19, lines 5 -- 29; page 20; and page 21, lines 1 -- 21

Delete all material and insert the following new material:

(f) In the discretion of the board, an issue of bonds may be secured by a trust indenture or trust agreement between the authority and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee by means of which the corporation may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the corporation may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the ~~authority~~ ^{CORPORATION} or of money or other property of the corporation or in which it has an interest;

(B) the fixing and collection of rentals, charges, fees or other consideration for, and the other terms to be incorporated in, contracts with respect to the use of any of the corporation's property;

(C) the fixing and collection of tariffs, ~~and~~ ^{OR SERVICE} fees, charges or other consideration for the use of the Alaska Railroad by passengers, ~~and~~ ^{AND FREIGHT;} other users;

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

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

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

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

FEB 27 1984

Sea-Land Service, Inc.

100 WEST HARRISON STREET, SUITE 622
SEATTLE, WASHINGTON 98119

February 22, 1984

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INTERSTATE COMMERCE COMMISSION

Memorandum

TO : Louis E. Gitomer

DATE: February 27, 1984

FROM :

~~REDACTED~~

SUBJECT :

Commission Jurisdiction over
the Alaska Railroad

At this time
~~Currently,~~ the Interstate Commerce Commission ~~holds~~ ^{has} no statutory authority over the Alaska Railroad (ARR). Exclusive authority over the operations of the railroad was granted to the President under the Alaska Railroad Act of 1914, ~~this authority was~~ ^{and} delegated to the Secretary of the Interior in 1915, and ~~then subsequently transferred to~~ ^{then} the Secretary of Transportation in 1966.

~~While the Commission holds no statutory authority to regulate ARR,~~ in 1963 the Commission was delegated certain rate review authority by the President ^{by} Executive Order No. 11107 (codified at 49 U.S.C. 240). ~~this~~ ^{and that} executive order was recently superceded by ^{an order} Executive Order No. 12434 issued by President Reagan in August 1983. [^] [(Copies of 49 C.F.R. 240 and Executive Order No. 12434 are attached).] The new executive order clarified the ~~fact~~ ^{fact} that the Commission ~~has~~ ^{has} final ratemaking authority over ARR.

(rather than merely offering advisory opinions to the DOT). See *the*

Attached copy

Sealand Service, Inc. v. I.C.C., 697 F.2d 1166 (1983). It also expressly incorporated certain revisions to the rates provisions

^{Act}
~~made to the Interstate Commerce~~ Act since the first executive order was issued in 1963.^{1/}

Thus, Executive Order No. 12434 subjects ARR to the ^{major} ~~major~~ rate provisions of the Interstate Commerce Act including the changes made by the Staggers Act of 1980.

In general, the Staggers Act, ^{which was a major regulatory step,} assures railroads ^{substantially} ~~substantially~~ more rate freedom than was afforded under prior law. It continues the policy started under the Railroad Revitalization and Regulation Reform Act of 1976^{by} substantially eliminating rate regulation of railroads where there is effective competition. Specifically, the Staggers Act:

1. ~~It~~ Establishes a specific 14-point rail transportation policy to guide the Commission in its regulation of the railroad industry.

^{1/} Executive Order No. 12434 provides that with respect to rates filed by the Secretary, the Commission may act in the same manner as though the ARR were subject to the following Sections of Title 49 of the U.S. Code: §10101a (Rail Transportation Policy); subchapter I of Chapter 105 (Rail, Rail Water Express and Pipeline Carrier Transportation Jurisdiction); Chapter 107 (Rates, Tariffs and Valuations) [with modifications to the contract rates provisions and except subchapter V (governing valuations of property), §10723 (charitable purposes), §10724 (emergency rates), §10746 (commodities manufactured or produced by a rail carrier), and §10751 (business entertainment expenses)]; Chapter 111 (Operations of Carriers) except subchapter III ^{and IV} (Railroad Cost Accounting; and Chapter 117 (Enforcement, Investigations, Rights and Remedies) except §11703 (enforcement by the Attorney General) and §11704 (~~actions~~ by a private individual, to enjoin abandonments).

2. Provides the Commission with jurisdiction to determine rate reasonableness only when a rail carrier ^{is serving a captive shipper.} ~~has~~ market dominance and the rate exceeds the applicable revenue to variable cost percentage threshold. ~~When determining reasonableness, the Commission is directed to consider the policy that carriers earn adequate revenues.~~

3. Provides that a rate may not be set below a reasonable minimum, ~~that is predatory pricing - pricing below directly variable costs - is prohibited.~~ ^{for inflation losses}

~~4. Provides a formula which allows carriers to increase any rate to reflect increases in the Index of Railroad Costs and limits Commission jurisdiction over rate increases that are within the zone.~~

5. Permits the Commission, ^{to} ~~on a quarterly basis,~~ the prescribe a percentage rate increase or rate index for rail carriers in order to compensate for inflationary cost increases.

6. Requires the Commission to use its ~~suspension~~ powers ^{To suspend} ~~under limited circumstances~~ ^{a proposed rate only upon protest,} and requires the Commission to complete a proceeding within 5 months of the suspension (unless extended). If there is no timely decision the rate will go into effect. ^{Expand}

A - Rate change filed - before rate effective
- protested

- ICC decides to ICS or I³

- If no 5 then rate goes into effect

B. After rate effective

- file complaint alleging unreasonableness

- ICC hearing

- Decision by ACJ

- Appeal to employee board

- Discretionary appeal to EC

- Court appeal

to be approved by the Commission and immune from the antitrust laws. *Only allow direct connectors to discuss rates.*

~~17. Eliminates §10726(e) of the act which dealt with situations where a rail carrier reduces rates due to competition with a water carrier.~~

18. Permits tariffs be effective with a shorter notice periods

19. Permits the Commission to exempt a person, class of persons, or transaction or service from regulation under specified circumstances.^{3/}

After the date of transfer of the ARR, Section 608 of the Alaska ~~Railroad Transit~~ ^{Railroad Transfer} Act of 1982 ^(ART) provides AAR "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..."^{4/}

follow up the transfers in my opinion
Thus, the AAR will be subject to the whole gambit of Commission regulation. As far as rate matters are concerned, the change from regulation under delegated authority to statutory authority will have limited impact except in *the area of contracts.* ~~one major area.~~

^{3/} The Staggers Act also clarifies the application of the Elkins Act to business expenses by rail carriers. ~~It is not included in the executive order.~~ ^{see 49 USC 1075} ~~The executive order, however, did not make MR subject to our jurisdiction under this provision.~~
^{4/} ~~This does not include~~ certain designated acts affecting employee interests. ^{MR is not subject}

Encourages creation of short line railroads by private enterprise or state governments where class I railroads have or are seeking to withdraw from the market.

As noted in ~~footnote 2~~, the executive order modified the contract rate provisions of 49 U.S.C. 10713 in ^{two} ~~two~~ ways: First, it stated that any contract filed with the Commission shall be available to any other shipper for rates and service ^{for} transportation of the same type of commodity under similar conditions to the contract on file, if the other shipper is able to enter into such contract at a time essentially contemporaneous with the period during which the contract in file is offered. Second, it provides that connecting water carriers may participate in ARR contract rate agreements. While ^{water carriers'} the ability to participate in contract rate agreements is ^{specifically} maintained in section 608(a)(2), neither the ART nor the Interstate Commerce Act give a shipper the right to force a carrier to enter into a contract merely because contract with similar terms is on file with another shipper.^{5/}

There will be several additional minor changes to rate regulation of ARR after transfer. Executive Order No. 12434 does not permit the Commission to act as if ARR were subject to the following provisions of Chapter 107:

5/ If the Commission, however, determines that grounds for a complaint have been established under 49 U.S.C. 10713(d)(2)(B)(i) [governing allegations that a rail carrier who has entered a contract for the transportation of certain agricultural commodities has unreasonably discriminated by refusing to enter into a similar agreement with a similarly situated shipper], the Commission can order the carrier to provide rates and services substantially similar to the contract at issue.

← §10723 (permitting free transportation for →
charitable purposes); §10724 (permitting free or
← reduced rate transportation in emergencies);
§10746 (prohibiting the carrier from transporting
← commodities manufactured or produced by the →
carrier); §10751 (concerning the propriety of
← business entertainment expenses) and subchapter V
(requiring Commission inventory, valuation and
classification of rail property). Following
transfer, ARR will be subject to all of these
provisions. (However, no inventory, valuation, or →
classification of property owned or used by the
state-owned railroad will be required under
subchapter 107 during the two years after the
transfer. See §608(b) of ART.

In addition to ^{these} rate matter, ARR will also become subject to
a number of additional provisions of the Interstate Commerce
Act. These include (1) Chapter 109 licensing procedures
governing the acquisition, construction and operation of rail
lines; ^(c) the abandonment and ^{discontinuance} of operations over
rail lines, the financial assistance ^e procedures and the feeder,
line development program; (2) Chapter 111 provisions governing ^{carriage obligations,}
^{car review,} rail cost accounting principles, and reporting and records
requirements; (3) Chapter 113 governing finance procedures
including the issuance of carriers' securities, equipment trust

- 7 -
[c] Pursuant to §608(b) of ART, the Commission has issued a
~~decision~~ certificate and decision ~~to be effective on the date of~~
~~transfer~~ which finds that the present and future public convenience
and necessity require the acquisition and operation of the Alaska
Railroad by the Alaska State-owned railroad. The certificate and
decision will be effective on the date of transfer. Alaska Railroad

and other securities interests, limitations on ownership, restrictions ^{on} of officers and directors, limitations on pooling and division of earnings, the consolidation, mergers and acquisition of control of carriers, and changes in financial structure; (4) Chapter 115 provisions governing Federal-State relations including Commission Authority over intrastate transportation; (5) Chapter 117 to the extent that enforcement remedies were excluded by Executive Order 12434; and (6) Chapter 119 governing civil and criminal penalties.

~~It is stated~~ Alaska has not been authorized to exercise state-related jurisdiction over intrastate transportation provided by the ARR, under 49 U.S.C. 11501. See State Intrastate Rail Rule Authority, 564 I.C.C. 381 (1981)

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION.

There is established the Alaska Railroad Corporation. The corporation is a public corporation and for the purposes of art. III, sec. 22, Constitution of the State of Alaska, is an instrumentality of the state within the Department of _____. [THE CORPORATION SHALL BE CONSIDERED A PRINCIPAL DEPARTMENT ONLY FOR THE PURPOSES OF ART. III, SEC. 26, CONSTITUTION OF THE STATE OF ALASKA.] 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. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of _____ and four [FIVE] voting members appointed by the governor. These four [FIVE] members must be residents of and registered voters in the state except as provided in (b) of this section. No more than two of these members may be from any one of the four judicial districts in the state. Two of the voting members must have at least five years experience as owners or managers of a business in the state. Except for the commissioner of _____, a voting member may not be a state officer or employee.

(b) One person who is not a resident of or registered voter in this state may be appointed by the governor to be a voting member of the board, if, at the time of appointment, the person has at least 10 years of experience in management of railroads.

1 (c) In addition to the voting members, the following
2 nonvoting members shall serve on the board:

3 (1) an employee of the corporation appointed by
4 the governor to represent the employees;

5 (2) the chief executive officer of the corporation.

6 (d) The voting members of the board shall be confirmed
7 by a majority of the membership of the legislature in joint
8 session. A member appointed by the governor has the full
9 powers and responsibilities of a confirmed board member
10 unless and until the member has been rejected by the legisla-
11 ture.

12 (e) The board shall elect from its membership a chair-
13 person and vice-chairperson and prescribe their specific
14 duties by rule.

15 (f) The board shall appoint a secretary and prescribe
16 the specific duties of the secretary.

17 (g) The chairperson shall call meetings of the board at
18 least once every three months. The chairperson may call
19 other meetings of the board as the chairperson considers
20 necessary. The chairperson shall preside at meetings of the
21 board.

22 [(h) THE GOVERNOR MAY, BY WRITTEN NOTICE TO THE MEMBER,
23 REMOVE A MEMBER FROM THE BOARD FOR

24 (1) INCAPACITATION CAUSED BY INJURY OR SICKNESS
25 THAT LEAVES THE MEMBER UNABLE TO PERFORM DUTIES UNDER THIS
26 CHAPTER;

27 (2) CONTINUED REFUSAL OR INABILITY TO ATTEND
28 MEETINGS OF THE BOARD;

29 (3) CONVICTION OF A FELONY; OR

30 (4) CONVICTION OF A MISDEMEANOR INVOLVING MORAL
31 TURPITUDE.]

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Sec. 42.40.030. TERM OF OFFICE; REMOVAL. Except
for the commissioner of _____, the voting
members of the board serve for staggered terms of five years
each, and serve at the pleasure of the governor during
their terms.

QUESTIONS/CONCERNS OF COMMITTEE

Railroad Land

- . Surface and subsurface rights -- gravel deposits
- . Classification of lands by DNR -- who has power of eminent domain?
- . Legal requirements/restraints for land disposal by Railroad
- . Revenues from managing subsurface resource development
- . Open dock facility in Seward

Constitutional Questions

- . Dedication of funds
- . Is it constitutional to set-up separate department or corporation-independent Railroad authority or state-owned
- . Governor appointed Board of Directors with legislative confirmation-constitutional amendment
- . Oversight for Railroad-Executive Budget Act, Admin Procedures Act, Fiscal Procedures Act--and, who administers

Miscellaneous

- . Value of non-operating properties
- . Ultimate liability for Railroad
- . Bond rating-default by Railroad, Borrowing level from State-bond selling power-state's credit rating
- . Do we want labor contracts as part of transfer bill-who is responsible for negotiation of collective bargaining agreements-state or corporation?
- . Consistency in bill wording-as long as Railroad gets public money must get public oversight
- . OSHA and FRA requirements-how do we want to handle them-waivers of compliance for the state
- . ICC exemption for state
- . Number of states that own Railroad and the type of authorities set-up

(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(d)(3)(E) 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 (26 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. 351 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.

(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(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirements 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.

(6XA) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the

Bette
Question - factor

45 U.S.C. 1207.
What does this mean?
What other Acts?
If Railroad is transferred to the Private Sector, the these description Don't Apply?
Which Exemptions are Available?

① What business opportunities are available to comparable Railroads?
What are Contract Rate Agreements?
What does this Mean?
This is important

Planned Question
① ② ③ ④
Most important

Bette

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

49 USC 1209

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

What does this mean regarding to the Railroads Rule Policy?

What sort of assistance is available.

Very important

Other We hear water carriers concerned about subsidy and the State competing with private carriers. Inasmuch as the Railroad is an ICC carrier...

Are water carriers are EAC. Is there competition here? EAC Rates compare with ICC Rates?

were you were involved in the Section 609 study required in the Staggers Act? What were the findings.

(4) The important public purposes to be served by the railroad authority require the authority to have all of the powers and duties granted to it by this chapter; the Legislature intends that the authority exercise such powers and duties as a public service on behalf of the State of Alaska and recognizes that the exercise of the powers and duties granted by this chapter will require the authority to engage in a wide variety of different kinds of conduct; the Legislature further intends that in engaging in types of conduct related to the exercise of its powers and performance of its duties under this chapter, the authority shall not be subject to either the federal or state antitrust laws nor any other limitation that could hinder the effective exercise of the powers and duties granted by this chapter to the Authority.

Financing

ARTICLE 4. 2. CREATION AND ORGANIZATION

Sec. 42.40-010.200. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established as a public corporation of the

deemed by the ~~Board~~ Council to be necessary for the operation of a railroad."

~~Section 3-~~ 42.40.710. Except as may be specifically provided otherwise, the provisions of this Act take effect upon enactment.

ARTICLE 8 APPLICATION OF OTHER LAWS

Sec. 42.40.800. CONFLICTING LAWS

INAPPLICABLE. Insofar as the provisions of this Act are in conflict with the provisions of any other law, or parts thereof, the provisions of this Act shall prevail.

Specifically, and without otherwise limiting the generality of the foregoing, it is intended by this Act that the federal and state antitrust laws shall not be applicable to any action of the Alaska Railroad Authority taken pursuant to the provisions of this Act. The Legislature of the State of Alaska by this Act expressly authorizes the Authority to engage in all types of conduct related to pursuit of the purposes, exercise of the powers, and performance of the duties granted to the Authority by this Act and expressly intends to displace the antitrust laws from applying to

all such conduct and activities of the authority. It is similarly intended that the antitrust laws shall not be applicable to any action or conduct engaged in by the Alaska Railroad Authority Council and its individual members pursuant to the provisions of this Act.

Sec. 42.40.810. REPEAL AND AMENDMENT OF EXISTING STATUTES.

(1) A.S. Title 19 shall not apply to the operations of the Alaska Railroad.

[Title 19 sets forth the responsibilities of and restrictions on the Department of Transportation and Public Facilities in the construction and operations of highways. Some of its provisions regarding construction, public bids, etc. arguably apply to other activities of Public Facilities, to which the railroad will be nominally assigned.]

(2) A.S. 23.10.420 shall not apply to the operations of the Alaska Railroad.

[Full-crew law]

(3) A.S. 30.15 shall not apply to the operations of the Alaska Railroad.

[Procedures for state grants for construction of local port facilities.]

A M E N D M E N T

Offered in the SENATE

By V.Fischer

TO: SB 352

Page 16, after line 10, insert a new section to read:

"Sec. 42.40.460. MUNICIPAL RIGHTS-OF-WAY. Upon request of a municipality the corporation shall grant to the municipality a right-of-way in a railroad utility corridor or in land owned by the corporation to be used for a pedestrian walkway or trail. Before granting a right-of-way under this section the board may require the municipality to execute an agreement in a form approved by the board to

(1) hold the corporation harmless for any use made of the right-of-way; and

(2) vacate the right-of-way upon request of the corporation if the right-of-way interferes with expansion or replacement of railroad facilities."

GUIDELINES FOR STATE OVERSIGHT OF RAILROAD FISCAL PROCEDURES

Because the railroad will be a public entity there must be public oversight and accountability. The entity statute should assure that this oversight be provided in a manner that:

- gives railroad management the flexibility needed to operate in the competitive business environment, and
- facilitates the transfer of the railroad to a private sector operator.

These goals can be achieved with oversight based on the following principles:

1. The responsibility for establishing and maintaining the railroad's accounting and procurement systems will be delegated from the Commissioner of Administration to the Board of Directors of the Alaska Railroad Corporation.
2. Delegation will be made after the Commissioner of Administration and the Legislative Auditor have assured that the railroad's accounting and procurement systems comply with accepted standards.
3. This delegation may be revoked if the railroad does not annually receive acceptable financial and performance audit reports.

D R A F T

Suggested language for Article 7 (Collective Bargaining)

You have requested that we draft preliminary language which establishes a mechanism for collective bargaining for employees of the Alaska Railroad. In accordance with your request, our preliminary proposal is intended to establish procedures which are substantially identical to the procedures established under the Public Employee Relations Act (PERA) (AS 23.40). To assure the independence of the corporation for purposes of collective bargaining, however, the corporation is specifically exempted from PERA.

Sec. _____. COLLECTIVE BARGAINING RIGHTS. The provisions of the Public Employee Relations Act (AS 23.40) do not apply to the corporation or to its employees. However, employees of the corporation, except the chief executive official and other executive officials appointed by the chief executive official, may self-organize and form, join or assist an organization to engage in collective bargaining with respect to wages, hours and other terms and conditions of employment.

Sec. _____. AGREEMENT. (a) ^{The Corporation may request} The Department of Administration shall participate in the negotiations between the corporation and an employee organization. The corporation may

not enter into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment unless the proposed contract terms are approved by the Department of Administration.

(b) An agreement executed between the corporation and an employee organization shall define "grievances." The agreement shall provide for a grievance procedure in which the final step in the procedure is binding arbitration.

*NLRB Board - District
Sutton and P.C.C. - Chicago
Above - Union Board*

Sec. _____. RAILROAD EMPLOYEES LABOR RELATIONS AGENCY.

(a) There is established a railroad employees labor relations agency which consists of three members appointed by the governor. One member shall be a member of the labor relations agency (AS 23.40). Members serve at the pleasure of the governor.

(b) The railroad labor relations agency shall perform the functions described in AS 23.40.090 -- 23.40.190 to carry out the provisions of the article.

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

Sec. _____. STRIKES. (a) Employees of the corporation

*Safety Class 1
Class 2
Class 3 Employees*

may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(b) Notwithstanding the provisions of subsection (a), the employees and the corporation may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

Introduced: 1/13/84
Referred: Transportation and
Finance

Eric Wohlfarth
Frank Campbell
Wohlfarth & Flint
Proposed Board
900 W. 5th 276-6401
Tim Middleton → Ken Vassar

1 IN THE HOUSE

2 HOUSE BILL NO. 512

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Railroad Corporation
7 to manage and operate the Alaska Railroad; and pro-
8 viding for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
11 finds that

12 (1) The Alaska Railroad is an essential part of the state trans-
13 portation network that without state action will cease to be a transpor-
14 tation option available within Alaska. The federal government has offered to
15 the state the option of taking over the Alaska Railroad to ensure its
16 continued existence. It is in the state's best interest to accept the
17 railroad under the terms and conditions offered by the United States gov-
18 ernment.

19 (2) There is vast potential in Alaska's natural resource areas
20 and that extension of the Alaska Railroad into natural resource areas is
21 necessary for the achievement of the goals of lower freight cost and long-
22 term economic growth.

23 (b) It is the purpose of this Act to create an entity and to provide
24 that entity with the powers and duties necessary to operate and manage the
25 Alaska Railroad as a viable independent entity [pending the eventual trans-
26 fer of the railroad to the private sector for its ownership or operation or
27 both consistent with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
28 1982).]

29 (c) The legislature declares that

Wohlfarth & Flint
Proposed Board

Greater
Self-sustaining
entity
possible

Self-sustaining
entity
operating
entity

Self-sustaining
entity

1 (1) the exercise of the powers of the state in the interest of
2 the people of the state is necessary to accomplish the policy set out in
3 (a) of this section by authorizing the creation of a public corporation
4 with the powers, duties, and functions as provided in this Act to operate
5 the Alaska Railroad and to manage its rail, industrial, port and other
6 properties;

7 (2) it is in the best interests of the people of the state for
8 the public corporation that will operate and manage the Alaska Railroad to
9 be created in such a way that

10 (A) the corporation will be exclusively responsible for the
11 management of the financial and legal obligations of the Alaska Rail-
12 road;

13 (B) the corporation, and not the state, will constitute a
14 common carrier subject to the jurisdiction of the United States Inter-
15 state Commerce Commission;

16 (C) the corporation will have the ability to raise capital
17 by issuing obligations exempt from federal and state taxation;

18 (D) the corporation may carry out its responsibilities on a
19 self-sustaining basis;

20 (E) the best possible combination of types and levels of
21 safe, efficient, and economical transportation can be provided that is
22 necessary to meet the overall needs of the state, supported when
23 necessary by state investment;

24 (F) the railroad may be operated prudently and according to
25 sound business management practices; and

26 (G) borrowing by the corporation does not directly or
27 indirectly endanger the state's own borrowing capacity.

28 * Sec. 2. AS 42 is amended by adding a new chapter to read:

29 CHAPTER 40. ALASKA RAILROAD CORPORATION.

*What does
Buzz word
mean.*

Public Utility and Subfactor

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

1
2 Sec. 42.40.010. ESTABLISHMENT OF THE CORPORATION. There is
3 established the Alaska Railroad Corporation. The corporation is a
4 public corporation for the purposes of art. III, sec. 22, Constitution
5 of the State of Alaska. The corporation shall be considered a princi-
6 pal department only for the purposes of art. III, sec. 26, Constitu-
7 tion of the State of Alaska.) The corporation has a legal existence
8 independent of and separate from the state. The exercise by the
9 corporation of the powers provided in this chapter is considered an
10 essential government function of the state.

table?

*Policy
not vs. Inhabit
8/10/60
Hoyen*

11 Sec. 42.40.020. BOARD OF DIRECTORS. (a) The powers of the
12 corporation are vested in the board of directors. The board consists
13 of five voting members appointed by the governor. These five members
14 must be residents of and registered voters in the state except as
15 provided in (b) of this section. *Members shall have demonstrated business or professional experience*
16 may be from any one of the four judicial districts in the state. Two
17 of the voting members must have at least five years experience as
18 owners or managers of a business in the state. A voting member may
19 not be a state officer or employee.

*Business or
Professional
Expense*

20 (b) One person who is not a resident of or registered voter in
21 the state may be appointed by the governor to be a voting member of
22 the board, if, at the time of appointment, the person has at least 10
23 years of experience in management of railroads.

24 (c) In addition to the voting members, the following nonvoting
25 members shall serve on the board:

26 (1) an employee of the corporation appointed by the gover-
27 nor to represent the employees;

28 (2) the chief executive officer of the corporation.

29 (d) The voting members of the board shall be confirmed by a

Tax
*(3) No. voting members may be
excluded by the board meeting
Executive Session*

- ? -

1 majority of the membership of the legislature in joint session. A
2 member appointed by the governor has the full powers and responsibili-
3 ties of a confirmed board member unless and until the member has been
4 rejected by the legislature.

5 (e) The board shall elect from its membership a chairperson and
6 vice-chairperson and prescribe their specific duties by rule.

7 (f) The board shall appoint a secretary and prescribe the spe-
8 cific duties of the secretary.

9 (g) The chairperson shall call meetings of the board at least
10 once every three months. The chairperson may call other meetings of
11 the board as the chairperson considers necessary. The chairperson
12 shall preside at meetings of the board.

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

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

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

19 (3) conviction of a felony; or

20 (4) conviction of a misdemeanor involving moral turpitude.

21 Sec. 42.40.030. TERM OF OFFICE. The appointed members of the
22 board serve for staggered terms of five years each.

23 Sec. 42.40.040. VACANCIES. (a) A vacancy on the board is
24 filled by appointment by the governor, and the appointment must be
25 confirmed by the legislature in joint session. A member selected to
26 fill a vacancy holds office for the balance of the term for which the
27 member's predecessor is appointed. *Remove the ^{full} term.*

28 (b) A vacancy on the board does not impair the authority of a
29 quorum of members to exercise the powers and perform the duties of the

1 board.

2 (c) A member whose term has expired shall serve until a succes-
3 sor has been appointed.

4 Sec. 42.40.050. COMPENSATION AND EXPENSES. (a) An appointed
5 member of the board is entitled to compensation at a rate of \$200 for ^{fully} 12 ^{days}
6 each day the member is engaged in the actual performance of duties as ^{SECRET}
7 a member of the board.

8 (b) In addition to compensation under ^a (a) of this section, an
9 appointed member of the board is entitled to per diem and travel
10 expenses authorized by law for state boards and commissions.

11 Sec. 42.40.060. QUORUM AND NOTICE TO MEMBERS. ^{Four} Three voting
12 members of the board constitute a quorum for the transaction of busi-
13 ness.

14 Sec. 42.40.070. VOTING. The board shall provide by rule for the
15 manner of voting ~~and representation of persons absent from meetings~~)?
16 The rules may provide for voting and conferring by means of telecommu-
17 nication devices, ~~or by mail or for voting as directed in a written~~
18 ~~proxy taking a position on a particular issue.~~

19 ARTICLE 2. MANAGEMENT.

20 Sec. 42.40.100. EXECUTIVE OFFICERS. (a) The board shall ap-
21 point and fix compensat'ou for the chief executive officer of the
22 corporation. The chief executive officer serves at the pleasure of
23 the board.

24 (b) The chief executive officer of the corporation shall appoint
25 and fix the compensation for other executive officers. The appoint-
26 ment of other executive officers and their compensation are subject to
27 board approval.

28 Sec. 42.40.110. DELEGATION. (a) The board shall by rule dele-
29 gate powers and duties necessary and appropriate for the ma.agement of

1 the daily affairs and operations of the corporation to the chief
2 executive officer, subject to a requirement of board concurrence or
3 authorization imposed by the rules.

4 (b) Within 60 days of its establishment, the board shall by rule
5 delegate the following activities of the corporation to the chief
6 executive officer or other executive officers designated by the board:

7 (1) leasing, granting easements in, issuing permits for the
8 use of, or conveying other interests that do not constitute a transfer
9 of the corporation's entire interest in real property of the corpora-
10 tion;

11 (2) establishing specific rates, tariffs, divisions, and
12 contract rate agreements;

13 (3) making routine changes in service levels; and

14 (4) performing procurement activities.

15 (c) General or particular board authorization or concurrence is
16 required for the following:

17 (1) transferring the corporation's entire interest in real
18 property;

19 (2) issuing notes, debentures, and bonds;

20 (3) mortgaging or pledging authority assets;

21 (4) donating property, or other assets belonging to the
22 corporation;

23 (5) acting as a surety or guarantee;

24 (6) adopting a long-range expansion and capital improvement
25 plan;

26 (7) certifying annual reports;

27 (8) effecting generally applicable increases and decreases
28 in rates other than those periodically approved by the United States
29 Interstate Commerce Commission;

HB 512

*Certify of Collective Barg agreements with labor
Agreements with labor organization*

Ernest Davis

1 (9) expanding or reducing services in a major way as pro-
2 vided under this chapter;

3 (10) expanding the main or branch lines, other than perform-
4 ing routine track alignment as necessary to maintain service levels in
5 effect on the date of transfer; and

6 (11) selecting independent auditors and accountants.

7 ARTICLE 3. ADMINISTRATIVE PROVISIONS.

8 Sec. 42.40.200. PUBLIC BOARD MEETINGS. (a) The meetings of the
9 board are public ^{except that the board may conduct} ~~with the exception of~~ an executive session ^{As the purposes} ~~conducted~~ ^{decided}
10 under AS 44.62.310 and (b) of this section.

11 (b) In addition to those subjects that may be discussed in
12 executive session under ~~AS 44.62.310~~, the board may consider in exe-
13 cutive session matters that pertain to personnel, the corporation's
14 legal position, land acquisition or disposal, or proprietary informa-
15 tion, as defined in a manner consistent with the standards and prac-
16 tices of the United States Interstate Commerce Commission for protec-
17 tion of information associated with specific shippers, divisions, and
18 contract rate agreements.

19 Sec 42.40.220. MINUTES OF MEETINGS. The board shall keep
20 minutes of each meeting.

21 Sec. 42.40.230. RULES. The board shall establish a procedure
22 for adopting rules to carry out its functions and the purposes of this
23 chapter. The rules shall include a procedure for the adoption of
24 emergency rules when the adoption of an emergency rule is essential to
25 continue or to reinstate the orderly operation of the corporation's
26 facilities or program.

27 Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION. (a) Except
28 as provided by rule of the corporation under (b) of this section,
29 information in the possession of the corporation is public and is open

1 to public inspection at reasonable times.

2 (b) Except as provided in AS 42.40.270, the corporation may by
3 rule designate and withhold disclosure of matters of a nonpublic,
4 privileged, or proprietary nature. Those matters include personnel
5 records, communications with and work product of counsel consistent
6 with the standards and practices of the United States Interstate
7 Commerce Commission, and information associated with specific ship-
8 pers, divisions, and contract rate agreements.

9 *Temporary Section* → Sec. 42.40.250. SPECIAL REPORT. The corporation shall investi-
10 gate and prepare a report for the governor and the legislature on the
11 long-term operations of the railroad that are in the best interest of
12 the state. The report shall be due January 1, 1988. It shall make
13 specific recommendations on operational alternatives and the transfer
14 of all or part of the railroads operations to the private sector. *Deanna District Council*

15 Sec. 42.40.260. ANNUAL REPORT. Within 90 days following the end
16 of the fiscal year of the railroad the board shall direct preparation
17 of, certify and distribute to the governor and to the legislature a
18 report describing the operations and financial condition of the corpo-
19 ration during the preceding fiscal year.

20 Sec. 42.40.270. ANNUAL AUDIT. The board shall have the finan-
21 cial records of the corporation audited annually by an independent
22 certified public accountant experienced in railroad accounting. The
23 corporation shall make all of its financial records available to an
24 auditor appointed by the governor or to the legislative audit division
25 for examination. Disclosure to the public by the auditor or legisla-
26 tive audit division of this information is subject to AS 42.40.240 and
27 rules implementing that section.

28 ARTICLE 4. POWERS AND DUTIES.

29 Sec. 42.40.300. GENERAL POWERS. In addition to the exercise of

*Corp. Sets Policy
For RR
Directors are held
Accountable*

- 1 other powers authorized by law, the corporation may
- 2 (1) adopt a seal;
- 3 (2) adopt bylaws governing the business of the corporation;
- 4 (3) sue and be sued;
- 5 (4) appoint trustees and agents of the corporation and
- 6 prescribe their powers and duties;
- 7 (5) hire legal counsel to represent the corporation;
- 8 (6) make contracts and execute instruments necessary or
- 9 convenient in the exercise of its powers and duties;
- 10 (7) acquire by purchase, lease, bequest, devise, gift,
- 11 exchange, the satisfaction of debts, the foreclosure of mortgages, or
- 12 otherwise, real or personal property, rights, rights-of-way, fran-
- 13 chises, easements, and other interest in land, including land lying
- 14 under water and appropriation of water rights that are located in the
- 15 state, taking title to the property in the name of the corporation;
- 16 (8) acquire property by eminent domain in accordance with
- 17 AS 42.40.430;
- 18 (9) hold, maintain, use, operate, lease, exchange, donate,
- 19 improve, convey, alienate, dispose of, or transfer any real or person-
- 20 al property including facilities and equipment;
- 21 (10) contract with and accept transfers, gifts, grants or
- 22 loans of funds or property from the United States and the state or its
- 23 political subdivisions, subject to the provisions of federal, state,
- 24 or local programs;
- 25 (11) undertake and provide for the management, operation,
- 26 maintenance, use, and control of all of the properties of the corpo-
- 27 ration including, the tracks, equipment and other property transferred
- 28 to it by the federal government or by any person;
- 29 (12) recommend to the legislature and the governor any tax,

1 financing, or financial arrangement the corporation considers appro-
2 priate for expansion or extension and operation of the Alaska Rail-
3 road;

4 (13) maintain offices and facilities at places it desig-
5 nates;

6 (14) apply to the appropriate agencies of the state, the
7 United States, and a foreign country or other proper agencies for the
8 permits, licenses, or approvals necessary to construct, maintain, and
9 operate railroad transportation services, and to obtain, hold, and
10 reuse the licenses and permits in the same manner as other operating
11 units or persons;

12 (15) prescribe rates to be charged for services provided by
13 the Alaska Railroad on a competitive basis;

14 (16) determine the routes, schedules, and types of service
15 to be provided by the Alaska Railroad;

16 (17) enter into contracts and leases with connecting carri-
17 ers and shippers, that contain provisions to preserve and expand the
18 railroad's traffic base;

19 (18) plan for and undertake expansion of the railroad and
20 railroad activities, including extension of the Alaska Railroad's rail
21 system, and contract with other modes of transportation service con-
22 necting to the railroad's rail services;

23 (19) adopt rules that are designed to safeguard property
24 owned, managed, or transported by the corporation and to protect
25 employees and persons using the corporation's property or services;

26 (20) hire and discharge railroad personnel and determine
27 benefits and other terms and conditions of employment established in
28 accordance with obligations imposed by 45 U.S.C. 1201-1214 (Alaska
29 Railroad Transfer Act of 1982);

→ *Editorial Collective Bargaining **

1 (21) assume and satisfy liabilities of the United States or
2 its agencies as provided by the federal transfer legislation and the
3 closing report or its substantive equivalent as accepted by the legis-
4 lature;

5 (22) maintain a security force to enforce state law and the
6 corporations rules with respect to violations that occur on or to
7 property owned, managed or transported by the corporation;

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

11 (24) secure the payment of its obligations by pledge or
12 mortgage or other lien on its contracts, revenues, income, or proper-
13 ty;

14 (25) consent to the modification of the rate of interest,
15 time of payment of an installment of principal or interest, or other
16 term of a loan, contract, or agreement to which the corporation is a
17 party;

18 (26) include in any borrowing the amounts necessary to
19 establish reasonable reserves and pay financing charges and interest
20 on the obligations for a reasonable period after which the corporation
21 estimates funds will be otherwise available to pay the interest,
22 consultant, advisory, and legal fees, and other expenses necessary or
23 incident to borrowing;

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

26 (28) cancel bonds purchased under (21) of this section.

27 Sec. 42.40.310. LONG-RANGE EXPANSION AND CAPITAL IMPROVEMENT
28 PLANS. (a) The corporation shall prepare and the board shall adopt a
29 long-range expansion plan and a capital improvement plan. The long-

1 range expansion plan shall delineate the manner in which the corpora-
2 tion intends to accomplish the purposes of this chapter during each of
3 the five years after the plan is adopted. The capital improvement
4 plan shall present and explain the corporation's anticipated capital
5 improvements for each of the five years after the plan is adopted.

6 (b) The board shall annually review and update the plans re-
7 quired under (a) of this section. The board may not contract for the
8 preparation or revision of either the long-range expansion plan or the
9 capital improvement plan, but shall require their preparation and
10 revision by employees of the corporation.

11 (c) The board shall provide copies of its updated plans to the
12 governor and the legislature by December 1 of each year.

13 Sec. 42.40.320. USE OF CORPORATION ASSETS. (a) The corporation
14 shall apply all money, property, other assets, and credit of the
15 corporation toward activities authorized by this chapter. The corpo-
16 ration may not issue shares of stock, pay dividends, make private
17 distributions of assets, make loans to board members or employees, or
18 engage in business for private benefit. The use of money, property,
19 other assets, or credit of the corporation for purposes not authorized
20 by law by persons having the possession or control of it is prohibi-
21 ted.

22 (b) Notwithstanding the provisions of this section, the corpo-
23 ration may

24 (1) defend and indemnify a current or former employee,
25 agent, or board member of the corporation and their successors against
26 all costs, expenses, judgments, and liabilities, including attorney
27 fees, incurred by or imposed upon that person in connection with a
28 civil or criminal action in which the person is involved by affilia-
29 tion with the corporation, if the person acted in good faith on behalf

NOT PART OF ASSETS

1 of the corporation and within the scope of official duties or powers;
2 and

3 (2) purchase insurance to protect and hold personally
4 harmless its employees, agents, and board members from an action,
5 claim, or proceeding instituted against these individuals arising out
6 of the performance, purported performance, or failure of performance,
7 in good faith, of duties for, or employment with, the corporation and
8 to hold these individuals harmless from expenses connected with the
9 defense, settlement or monetary judgments from that action, claim, or
10 proceeding; the purchase of insurance and its policy limits are dis-
11 cretionary with the board and insurance is not considered to be com-
12 pensation to the insured individual.

13 ARTICLE 5. RAIL PROPERTIES.

14 Sec. 42.40.400. LAND. All land among the rail properties trans*
15 ferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of
16 1982) or otherwise acquired by the corporation is under the control of
17 the corporation. As to all land that is transferred or acquired

18 (1) railroad rights-of-way or easements transferred under
19 the federal act or otherwise acquired shall be classified as railroad
20 utility corridors;

21 (2) future railroad utility corridors shall be of a width
22 at least 100 feet on both sides of the centerline of the extended main
23 or branch line, or may be of other width as designated by the corpo-
24 ration, and may be surveyed by the metes and bounds method; and

25 (3) the corporation may lease or rent ^{original easements for} portions of the
26 utility corridor for other transportation services. ~~public or other purposes~~

27 Sec. 42.40.420. CLASSIFICATION, ACQUISITION, AND USE OF STATE
28 LAND FOR RAILROAD PURPOSES. (a) The board by rule may identify and
29 request conveyance of land owned by or subject to selection by the

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1 state, including tide and submerged land and land not adjacent to a
2 railroad corridor, as necessary or useful for present, future or
3 intended railroad purposes. The request must include a statement of
4 and justification for the present, future or intended railroad use.
5 Upon submission of a request for classification and conveyance to the
6 commissioner of natural resources, the commissioner shall temporarily
7 classify and reserve the land identified in the request for railroad
8 purposes and shall temporarily vacate a classification allowing dis-
9 posal or lease of that land under laws or programs of the state. A
10 temporary classification and vacation is subject to valid existing
11 rights and remains in effect for 180 days.

12 ➔ (b) Within 90 days after receiving a request under (a) of this
13 section, the commissioner of natural resources by departmental order
14 shall;

15 (1) classify that land for railroad purposes and, subject
16 to valid existing rights, convey the state's interests to the corpo-
17 ration; or

18 (2) notify the corporation of reasons for refusal to clas-
19 sify the land for railroad purposes.

20 (c) A conveyance under (b)(1) of this section vests in the
21 corporation the exclusive right to extract and use for its purposes
22 sand, gravel, rock, timber and other construction materials ^{Foundation (RDC)} the lands
23 conveyed without regard to the classification of the resources as part
24 of the surface or subsurface estate.

25 (d) The corporation may reconvey to the state land received
26 under this section that the corporation and the commissioner of natu-
27 ral resources jointly identify as unnecessary or unsuitable for the
28 corporation's purposes.

29 (e) The corporation's ownership of state land entitles it to

1 exclusive use and control of the surface, subsurface, complete sub-
2 jacent and lateral support of the surface, subsurface, and the right
3 to tunnel, ditch, recontour, excavate or otherwise use the subsurface
4 for railroad transportation, transmission, and related purposes

5 (f) When physical conditions require that track or other right-
6 of-way fixtures of the corporation be moved from the existing location
7 and relocated on state-owned land adjacent to or in the vicinity of
8 the existing right-of-way, and the chief executive officer determines
9 that relocation is necessary to maintain safe and adequate rail op-
10 erations, the corporation may effect the relocation with concurrence
11 of the Department of Natural Resources. The relocation must be limi-
12 ted to land adequate to restore or continue safe rail operations at a
13 normal level.

14 Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND
15 MATERIALS. (a) The corporation may exercise the power of eminent
16 domain under AS 09.55.240 - 09.55.460 to acquire land or an interest
17 in land for lawful purposes consistent with this chapter.

18 (b) The corporation may acquire a fee simple title whenever, in
19 the judgment of the board, ownership of a fee simple is necessary to
20 carry out the state's lawful purposes in condemning property.

21 (c) The corporation may file a declaration of taking in the
22 manner provided for the state under AS 09.55.420.

23 (d) The power of eminent domain conferred under this section
24 includes the power to obtain material, including clay, gravel, sand,
25 timber, or rock for railroad use, the land necessary to obtain the
26 material, and access to the land and material.

27 Sec. 42.40.450. OTHER ASSETS. (a) The corporation may submit
28 applications on its own behalf as an instrumentality of the state for
29 acquisition of interests in federal land available under federal law

1 that will enhance the operations of the corporation and may receive
2 conveyances of all interests in its own name.

3 (b) The corporation, as an agency of the state, may acquire in
4 its own name from the United States under 50 App U.S.C. 1622 et seq
5 (the Surplus Property Act of 1944), 40 U.S.C. 471 et seq as amended
6 (the Federal Property and Administrative Services Act of 1949), or
7 other law, property under the control of a federal department or
8 agency that is useful for the corporation's purposes and may acquire
9 from the Department of Administration property of the state made
10 available under AS 44.71.010 - 44.71.040.

11 ARTICLE 6. FINANCIAL PROVISIONS. *Look at this*

12 Sec. 42.40.500. LIMITATION OF LIABILITY. A liability incurred
13 by the corporation shall be satisfied exclusively from the assets or
14 revenue of the corporation and no creditor or other person has a right
15 of action against the state because of a debt, obligation, or
16 liability of the corporation.

17 Sec. 42.40.520. FIDELITY BOND. The corporation shall obtain a
18 fidelity bond in an amount determined by the board for its members and
19 any officer responsible for accounts and finances. A bond must be in
20 effect during the entire tenure in office of the bonded person.

*See note
Self-insurance*

21 Sec. 42.40.530. INSURANCE. The corporation shall keep in force
22 public liability insurance in an amount reasonably calculated to cover
23 potential claims for bodily injury, death or disability and property
24 damage that may arise from or be related to its operations and activi-
25 ties, naming the state as an additional insured.

26 Sec. 42.40.540. CLAIMS. (a) All claims and lawsuits involving
27 activities of the railroad, including suits in contract, quasi-con-
28 tract, or tort, shall be brought against the corporation, and not
29 against the state.

1 / (b) In a claim or other legal action against the corporation
2 involving its activities, including the expansion, extension and
3 construction of the railroad, in which the corporation is the
4 prevailing party, the party or parties that maintained the action
5 shall be liable to the corporation for its* full costs and legal fees
6 in defending the action and for the financial losses to the
7 corporation that are directly attributable to the maintenance of that
8 action.

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

16 (d) Claims against the corporation are not subject to the
17 provisions of AS 44.77.010 - 44.77.070 regarding claims against the
18 state.

19 (e) The corporation is not subject to the provisions of AS 44.-
20 80.010, regarding the state as a party to an action.

21 Sec. 42.40.550. REVENUE. Revenue generated by or appropriated
22 to the corporation shall be retained and managed by the corporation
23 for railroad and related purposes as required by 45 U.S.C. 1207(a)(5)
24 (Alaska Railroad Transfer Act of 1982).

25 Sec. 42.40.560. APPROPRIATIONS. *Subject to Fiscal Procedures* The corporation may request,
26 with the concurrence of the governor, a direct appropriation or grant
27 from the legislature to assist in carrying out the provisions of
28 AS 42.40.300 and 42.40.310.

29 Sec. 42.40.570. BONDS AND NOTES. (a) The corporation by

1 resolution may issue bonds and bond anticipation notes to provide
2 money to carry out its purposes.

3 (b) The principal and interest on bonds or notes of the corpo-
4 ration is payable from corporation money or assets. Bonds or notes
5 may be additionally secured by a pledge of a grant or contribution
6 from the federal government or a corporation, association, institution
7 or person, or a pledge of money, income, or revenue of the corporation
8 from any source.

9 (c) Bond anticipation notes may be payable from the proceeds of
10 the sale of bonds or other bond anticipation notes, or, if bond or
11 bond anticipation note proceeds are not available, from other money or
12 assets of the corporation.

13 (d) Bonds or bond anticipation notes may be issued in one or
14 more series and shall, as provided by the resolution of the board,

15 (1) be dated;

16 (2) bear interest at a required rate or rates per year or
17 within a maximum rate;

18 (3) be in a required denomination;

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

20 (5) carry conversion or registration provisions;

21 (6) have a required rank or priority;

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

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

25 (9) be subject to authentication by a trustee or fiscal
26 agent; and

27 (10) be subject to terms of redemption with or without
28 premium.

29 (e) Bonds or bond anticipation notes may be sold in the manner,

1 on the terms, and at the price the board determines. Bond anticipa-
2 tion notes shall mature at the time or times determined by the board.
3 Bonds shall mature at the time, not exceeding 50 years from their
4 date, determined by the board.

5 (f) The corporation may by provisions in a resolution authoriz-
6 ing or relating to the issuance of bonds or bond anticipation notes
7 enter into the following agreements with the holders of the bonds or
8 bond anticipation notes:

9 (1) pledge all or part of its revenue to which its right
10 then exists or may thereafter exist, the money derived from the reve-
11 nue, and the proceeds of its bonds or notes;

12 (2) covenant against pledging all or part of its revenue,
13 or against permitting or suffering a lien on its revenue or property;

14 (3) covenant as to establishment of reserves or sinking
15 funds and provide for, regulate, and dispose of the reserves or sink-
16 ing funds;

17 (4) covenant regarding limitations on a right to sell or
18 otherwise dispose of property of any kind;

19 (5) covenant as to bonds and notes to be issued, their
20 limitations, terms and conditions, the custody, application and dispo-
21 sition of the proceeds of the bonds and notes;

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

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

29 (8) provide for the replacement of lost, stolen, destroyed

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1 or mutilated bonds or notes;

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

4 (10) covenant as to the redemption of bonds or notes and
5 privileges of their exchange for other bonds or notes of the corpo-
6 ration;

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

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

17 (13) covenant as to the custody of any of its properties or
18 investments, their safekeeping and insurance, and the use and disposi-
19 tion of insurance money;

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

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

1 or notes;

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

11 (17) appoint and provide for the duties and obligations of a
12 paying agent or other fiduciary inside or outside the state;

13 (18) limit the rights of the holders of bonds or notes of
14 the corporation to enforce a pledge or covenant securing the bonds or
15 notes; and

16 (19) make covenants other than and in addition to the cove-
17 nants expressly authorized in this section, of like or different
18 character, and make covenants to do or refrain from doing acts in
19 order to better secure bonds or notes or that, in the absolute
20 discretion of the board, will tend to make bonds or notes more
21 marketable.

22 Sec. 42.40.580. INTERIM RECEIPTS, TEMPORARY BONDS, AND TEMPORARY
23 BOND ANTICIPATION NOTES. Before the preparation of definitive bonds
24 or bond anticipation notes, the corporation may issue interim receipts
25 or temporary bonds or bond anticipation notes, with or without cou-
26 pons, exchangeable for bonds or bond anticipation notes when these
27 definitive bonds or bond anticipation notes have been executed and are
28 available for delivery.

29 Sec. 42.40.590. VALIDITY OF SIGNATURES. If an officer whose

1 signature or a facsimile of whose signature appears on bonds, notes,
2 or coupons attached to them ceases to be an officer before the de-
3 livery of the bond, note, or coupon, the signature or facsimile is
4 valid the same as if the person had remained in office until delivery.

5 Sec. 42.40.600. INDEPENDENT FINANCIAL ADVISOR. In negotiating
6 the private sale of bonds or bond anticipation notes to an under-
7 writer, the board shall retain a financial advisor who is independent
8 from the underwriter.

9 Sec. 42.40.610. VALIDITY OF PLEDGE. (a) The pledge of assets
10 or revenue of the corporation to the payment of the principal or
11 interest on bonds or notes of the corporation is valid and binding
12 from the time the pledge is made and the assets or revenue are immedi-
13 ately subject to the lien of the pledge without physical delivery or
14 further act. The lien of a pledge is valid and binding against all
15 parties having claims of any kind against the corporation, irrespec-
16 tive of whether those parties have notice of the lien of the pledge.

17 (b) Nothing in this section prohibits the corporation from
18 selling assets subject to a pledge, except that a sale may be re-
19 stricted by the trust agreement or resolution providing for the assu-
20 ance of the bonds or notes.

21 Sec. 42.40.620. REMEDIES. A holder of bonds or notes issued
22 under this chapter or of coupons attached to them, and a trustee under
23 a trust agreement or resolution authorizing the issuance of the bonds
24 or notes, except as restricted by a trust agreement or resolution,
25 either at law or in equity, may

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

29 (2) compel the performance of all duties of the corporation

1 required by this chapter or by the trust agreement or resolution.

2 Sec. 42.40.630. NEGOTIABLE INSTRUMENTS. Bonds and notes issued
3 under this chapter and interest coupons attached to them are nego-
4 tiable instruments under the laws of this state, subject only to
5 applicable provisions for registration.

6 Sec. 42.40.640. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds
7 and notes issued under this chapter are securities in which all public
8 officers and public bodies of the state and its political subdivi-
9 sions, all insurance companies, trust companies, banking associations,
10 investment companies, executors, administrators, trustees and other
11 fiduciaries may properly and legally invest funds, including capital
12 in their control or belonging to them. These bonds and notes may be
13 deposited with a state or municipal officer of an agency or political
14 subdivision of the state for any purpose for which the deposit of
15 bonds or notes of the state is authorized by law.

16 Sec. 42.40.650. REFUNDING BONDS. (a) The corporation may
17 provide for the issuance of refunding bonds for the purpose of refund-
18 ing bonds then outstanding that have been issued under this chapter,
19 including the payment of a redemption premium on them and interest
20 that accrues to the date of redemption of the bonds. Refunding bonds
21 shall be issued in accordance with provisions of this chapter that
22 relate to the issuance of bonds to the extent those provisions are
23 appropriate.

24 (b) Refunding bonds may be sold or exchanged for outstanding
25 bonds issued under this chapter and the proceeds may be applied to the
26 purchase, redemption or payment of the outstanding bonds in addition
27 to other authorized purposes. Pending the application of the proceeds
28 of refunding bonds to the payment of the principal, accrued interest
29 and redemption premium on the bonds being refunded, and, if permitted

1 in the resolution authorizing the issuance of the refunding bonds or
2 in the trust agreement securing them, to the payment of interest on
3 the refunding bonds and expenses in connection with the refunding, the
4 proceeds may be invested in direct obligations of the United States or
5 obligations the principal of and the interest on which are uncondi-
6 tionally guaranteed by the United States that mature or may be re-
7 deemed not later than the date the proceeds of the refunding bonds,
8 together with the interest accruing on them, will be required for the
9 purposes intended.

10 *Conf stop 2-22-84*
11 Sec. 42.40.660. CREDIT OF STATE NOT PLEDGED. (a) The state and
12 its political subdivisions are not liable for the debts of the corpo-
13 ration. Bonds and notes issued under this chapter are payable solely
14 from the revenue or assets of the corporation and do not constitute a

15 (1) debt, liability, or obligation of the state or of a
16 political subdivision of the state; or

17 (2) pledge of the faith and credit of the state or of a
18 political subdivision of the state.

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

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

24 (2) neither the faith and credit nor the taxing power of
25 the state or of a political subdivision of the state is pledged to the
26 payment of it.

27 Sec. 42.40.670. OFFICERS NOT LIABLE. An officer or employee of
28 the corporation is not subject to personal liability or accountability
29 because of the execution or issuance of bonds or notes.

30 Sec. 42.40.680. EXEMPTION FROM TAXATION. (a) The real and

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

4 (b) This section does not affect or limit an exemption from
5 license fees, property taxes, or excise, income or other taxes,
6 provided under any other law, nor does it create a tax exemption with
7 respect to the interest of any business enterprise or other person,
8 other than the corporation.

9 (c) The exercise of the powers granted by this chapter shall be
10 in all respects for the benefit of the people of the state, for their
11 well-being and prosperity, and for the improvement of their social and
12 economic conditions. Therefore, the corporation is not required to
13 pay a tax or assessment on property owned by the corporation under the
14 provisions of this chapter or on the income from the property.

15 (d) Bonds and notes issued under this chapter are issued by a
16 body corporate and public of the state and for an essential public and
17 governmental purpose. Therefore, the bonds and notes, the interest
18 and income from them, and all fees, charges, funds, revenue, income
19 and other money pledged or available to pay or secure the payment of
20 the bonds and notes or interest on them, are exempt from taxation
21 except for inheritance, transfer, and estate taxes.

22 Sec. 42.40.690. REVERSION OF ASSETS. If the corporation ceases
23 to exist, for whatever reason, its assets revert to the state.

24 ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

25 Sec. 42.40.700 PERSONNEL. (a) Employees of the Alaska Railroad
26 are employees of the corporation and not of the state. The provisions
27 of AS 39 do not apply to employees of the corporation.

28 (b) The collective bargaining agreements between the corporation
29 and its employees shall remain in effect until they expire by their

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1 terms or, as required under 45 U.S.C. 1206 (Alaska Railroad Transfer
2 Act of 1982), they are renegotiated, subject to the approval of the
3 board.

4 (c) The corporation may not enter into a collective bargaining
5 agreement concerning wages, hours, working conditions or other
6 employment terms, conditions and benefits with an organization
7 representing the corporation's chief executive official or executive
8 officials appointed by the chief executive official.

*those referred to as in ARTA-82
(A2) (c)*

9 Sec. 42.40.710. POLITICAL ACTIVITIES. (a) Money, assets, or
10 property of the corporation may not be used for political activity.

11 However, board members and employees of the corporation may ~~not~~
12 *Union Post - Committee General Agreement* communicate with and appear before committees of Congress, the
13 state legislature, and municipal governing bodies in connection with
14 matters directly affecting the corporation.

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

19 ARTICLE 8. GENERAL PROVISIONS.

20 Sec. 42.40.900. APPLICATION OF EXISTING STANDARDS. The Alaska
21 Railroad Corporation is not subject to the jurisdiction of the Alaska
22 Transportation Commission. The following laws do not apply to the
23 operations of the Alaska Railroad Corporation:

- 24 (1) AS 19;
- 25 (2) AS 30.15;
- 26 (3) AS 35;
- 27 (4) AS 37.05;
- 28 (5) AS 37.07;
- 29 (6) AS 37.10.010 - 37.10.060;

- 1 (7) AS 37.10.085;
2 (8) AS 37.20;
3 (9) AS 37.25;
4 (10) AS 44.62.040 - 44.62.320.

5 Sec. 42.40.950. DEFINITIONS. In this chapter,

- 6 (1) "board" means the board of directors of the Alaska
7 Railroad Corporation;
8 (2) "corporation" means the Alaska Railroad Corporation;
9 (3) "date of transfer" means the date on which the United
10 States Secretary of Transportation delivers the deed of conveyance for
11 the properties of the Alaska Railroad under 45 U.S.C. 1201-1214
12 (Alaska Railroad Transfer Act of 1982);
13 (4) "employees" means all persons employed by the
14 corporation including executive officials;
15 (5) "railroad utility corridor" means a right-of-way for
16 railroad and related purposes as defined in 45 U.S.C. 1202(11) (Alaska
17 Railroad Transfer Act of 1982).
18 (6) "land" means all real property, including tide and
19 submerged land; ^{(A2)(4)} *Executive Official & Collective Bargain*
20 ~~Employees - Define~~ (7) "rail properties" means all real and personal property,
21 tangible and intangible, of the corporation.

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

24 * Sec. 3. CONFLICTING LAWS INAPPLICABLE. If provisions of this Act are
25 in conflict with the provisions of other law, the provisions of this Act
26 prevail. Where possible, provisions of this Act shall be construed so that
27 they do not conflict with 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act
28 of 1982).

29 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD

1 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
2 the governor shall designate the terms of the appointed members of the
3 first board of directors of the Alaska Railroad Corporation as follows:

- 4 (1) one shall serve a term of two years;
- 5 (2) one shall serve a term of three years;
- 6 (3) one shall serve a term of four years; and
- 7 (4) two shall serve a term of five years.

8 * Sec. 5. EFFECTIVE DATE. This Act takes effect immediately in
9 accordance with AS 01.10.070(c).

SENATOR
ARLISS STURGULEWSKI

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99508
SENATE DISTRICT F, SEAT A

Alaska State Legislature



Senate

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

MEMORANDUM

March 1, 1984

TO: All Members of the Legislature

FROM: Senator Arliss Sturgulewski ^(A)
Senate District F, Seat A

RE: The Experiences of the Alaska Renewable Resources Corporation
(Or the Rise and Fall of ARC)

Dean F. Olson, Adjunct Associate Professor, School of Business & Public Affairs, University of Alaska-Anchorage, a former trustee of the Alaska Renewable Resources Corporation, has written an excellent analysis of the Alaska Renewable Resources Corporation which was created by the legislature in 1978. After numerous legislative changes, the now-named Alaska Resources Corporation will be dissolved on July 1, 1989 if HB 685 introduced by the Sheffield administration becomes law.

Dean Olson has described what happened to an organization created with interest and enthusiasm to broaden economic opportunities in renewable resources. He makes specific recommendations as to why it is important to create political independence for a public corporate structure and yet retain certain legislative and executive prerogatives. His analysis can be of value while considering various proposed structures currently before the legislature.

Enclosure

Venture Capital for Development:

The Experiences of the

Alaska Renewable Resources Corporation

January 1984
Dean F. Olson
Adjunct Associate Professor
School of Business &
Public Affairs
University of Alaska-Anchorage
(Former Trustee - The Alaska
Renewable Resource Corporation)

I. Introduction

This paper describes the experiences of the Alaska Renewable Resources Corporation (ARRC) during the period from 1979 to 1982. The paper begins with a brief description of the founding legislation and the policy making environment which existed at the time the ARRC was established. The paper then traces the operating experiences of the agency over the three years period ending in June 1982. Finally, certain conclusions are drawn from the ARRC experience in the hope that other governments contemplating similar organizations can avoid making the same public policy errors.

The use of federal funds to broaden and strengthen the private sector through equity investment into privately owned businesses has been accepted public policy for nearly thirty years. Since the mid 1950's federal programs have supported privately owned venture investment firms known as Small Business Investment Corporations (SBIC's) and Minority Small Business Investment Corporations (MESBICS). In the 1960's a number of Community Development Organization (CDC's) were established to further assist the business development efforts of selected target groups.

State support of equity investment into private business is a more recent development. Since the early 1970's State support for venture investment into private enterprises has lead to the initiation of development institutions in Massachussetts, Connecticut, Maine and Kentucky. While these organizations differ considerably they share the broad goal of enhancing private business development through the placement of various types of risk capital.

In Alaska, the State Legislature established (in 1978) and funded (in 1979) the Alaska Renewable Resources Corporation. The Alaska Renewable Resources Corporation (ARRC) was to be funded in yearly intervals at 2.5% of the State's oil and gas royalty receipts. ARRC's goal in general terms was to create a broadened economy based more upon renewable resource businesses. The ARRC was to accomplish this goal through venture capital placement into private businesses owned in the majority by Alaskan residents.

Managed initially by a board of three full time trustees appointed by the Governor, the ARRC could make equity investments for up to 49% of an investee's outstanding common stock and could make loans on any terms which accommodated the needs of the new or expanding business. Any single investment was limited to \$1.5 million unless 'follow-up' investment was regarded as necessary to preserve the initial placement.

In 1982, after three years of operation, discontent with the ARRC resulted in legislation which made significant changes in the scope of the agency's investment policies; the size of investments it could make, and how the agency was funded and organized. Further legislation is being planned in 1984 to terminate the agency.

II. Founding Legislation and Public Policy Issues

By any objective measure the legislation establishing the ARRC was creative public policy. Prompted by the realization that oil and gas royalty income to the State would begin 'playing out' in the early 1990's, certain legislators and Alaska's Governor (Jay Hammond) promoted the

creation of several institutions. The Alaska Industrial Development Authority (AIDA) was created to 'package' small business loans into larger tax exempt bond issues for public sale. The Alaska Commercial Fish and Agricultural Bank (CFAB) was created as a cooperative lending institution to make loans to farmers, fishermen, fish processors and timber producers. The Alaska Permanent Fund (APF) was created to serve as a savings account into which a proportion of royalty receipts was to be placed as a hedge against the future downturn in revenues. Additional institutions were created to enhance hydroelectric power generation (the Alaska Power Authority) and to support the residential construction market (the Alaska Housing Finance Corporation).

The ARRC was intended to 'balance out' the above rainbow of development institutions by providing a source of equity financing to new and expanding businesses engaged in the production of renewable resources (Fishing and fish processing, Agriculture, Forest products, and Alternative energy). The agency was empowered to own up to 49% of the outstanding common stock of target enterprises. Further, the ARRC could make loans at any interest rate for a term of less than 30 years. The ARRC also had granting powers which it could employ to stimulate inquiry into new technology which might enhance renewable resources. Finally, the ARRC could provide technical assistance funds for business development. Total loans and investment into a single business was limited to \$1.5 million.

The initial legislation provided that the ARRC was to receive 2.5% of State lease bonuses, rentals and royalty income. In practice, the agency

approached the legislature each year for operating and investment capital budgets. Over the three year period ending in June, 1982, the ARRC received below 1% of State receipts.

The ARRC was governed by a full time board of three trustee appointed by the Governor for four year terms. The trustees (and all other ARRC employees) were employees of the State of Alaska. There were no professional qualifications for trustees provided for in the legislation. The three trustees were to have equal authority and responsibility for agency decisions.

The ARRC was designed to work in concert with private businesses to:

- (1) rehabilitate, enhance and develop renewable resources by providing maximum opportunities for employment and a higher standard of living for its citizens; and
- (2) further the development of renewable resources that would contribute to a stable self sustaining state economy, employment and life style alternations for citizens (AS 37.12.010).

The legislature agreed, when passing the ARRC legislation, that achievement of the above public policy objectives was being retarded by a cyclical, narrowly based economy. The ARRC was directed to remove barriers to achieving a broadened economy by assisting in research and development and by providing venture capital to renewable resource businesses owned by Alaskan citizens.

The enabling legislation permitted considerable financing flexibility by the ARRC. No income or minimum yield requirements were placed upon the

agency. Grants could not exceed 10% of ARRC capital, but this was never a serious constraint. Because operating funds were appropriated each year, the agency did not have to live within budgets bounded by its investment income.

In sum, the ARRC was created as a part of an array, a 'rainbow', of institutions designed to increase economic opportunities for Alaskans. The ARRC's role was to provide high risk capital to start-up and expanding businesses in renewable resource industries. An agency of State government, the ARRC was managed by a tripartite board of trustees of equal authority and was given substantial flexibility in the selection of alternative investment structure to employ in placing its investments.

III. Operating Experiences 1979-82

The ARRC attracted immediate interest from Alaskans with business ideas. Within six months from its beginning the agency had received several hundred proposals. Many proposals were not well developed, while others were complete business plans. Over the three year period the ARRC received an average of 400 proposals per year.

The ARRC loaned or made investments into about 3% of the proposals reviewed. An immense amount of staff energy was devoted to screening proposals and investigating business plans nearing completion. ~~In the prospect~~

~~for each of the years in turn-downs and 100-1000~~
~~of the ARRC's total investment~~

Due to its political origins and the widespread perception that the ARRC was a "State loan program" (a source of soft money) it was difficult to make turndowns stick. Applicants whose proposals had been turned down would often protest to legislators and succeed in getting their proposal reviewed a second time. While their tactic did not result in an investment it did consume and inordinate amount of energy. Turndowns were particularly difficult to enforce when the proposing business was a major factor in the economy of a small Alaskan community. In these instances local and State politicians would join forces in seeking a favorable review.

By early 1980 the ARRC had acquired the reputation for being slow to reach decisions and for being harsh in its evaluation of proposals. Legislators assailed the agency for 'not getting the money on the street' fast enough. Review of business plans did require three to four months. Investigation and 'due diligence' on the plan and the background of management personnel often requires this length of time; a fact little appreciated by most applicants and legislators accustomed to dealing with collateral lenders.

In May 1980, one year from the operational beginnings of the ARRC, the legislature directed the agency to help seafood processors prepare for a salmon harvest of historically large proportions. Prompted by concerns that domestic processing capacity would fall short of the harvest the legislature appropriated \$15 million for the ARRC and directed the agency to suspend normal business planning and investment criterion, as well as the \$1.5 million investment limit, and move to aid the industry in its

attempts to finance the expansion necessary to process the 1980 salmon harvest.

In addition, in May 1980, the legislature directed ARRC to move to assist timber processors in Southeast Alaska build wood-fired electrical generation plants so as to conform to EPA pollution standards. Again, the emergency legislation suspended the ARRC's normal screening criteria and the \$1.5 million investment limit. Some \$5.2 million was allocated to this special purpose.

The effect of the emergency legislation for fish and timber processors was to redirect the ARRC's strategic focus away from new business development and toward the 'fast tract' restructuring and refinancing of existing businesses. The table below shows the magnitude of this type of activity in relation to the total portfolio on June 30, 1981 and 1982. Refinancing activity accounted for about three quarters of the portfolio in each year and about one quarter of the number of transactions.

Table I
Alaska Renewable Resources Corporation

Portfolio by Type
of Transaction

June 30

(\$'000)

	<u>\$</u>		<u>#</u>	
	<u>1981</u>	<u>1982</u>	<u>1981</u>	<u>1982</u>
Refinancing	\$17,212	\$21,448	6	7
Expansions	1,425	1,711	5	6
Start-ups	3,699	4,762	9	11
R & D and Demonstration	1,088	646	7	5
Totals	<u>\$23,424</u>	<u>\$28,567</u>	<u>27</u>	<u>29</u>

The strategic redirection of the ARRC, from business developer to business savior, is in retrospect the single most important factor in understanding the agency's short and confusing history. The emergency redirection of effort served to cloud the strategic role intended for the ARRC. The ARRC never recovered from the confusion.

Another element of importance in understanding the ARRC's experience is the organizational structure created in the initial legislation. The tripartite board of full time trustees of equal responsibility and authority produced incredible confusion in the internal operation of the

ARRC and in the external environment of the agency. The concept simply could not be made to work. It is hard to imagine any combination of executive personalities which could function effectively in this context.

The dependency of the ARRC upon annual legislative appropriations for operating and investment budgets produced several operational impediments. First, ARRC personnel could never be sure that the agency could participate in second or third round financings of start-up companies. Follow-up financing of this type is common in more than one-half of all new businesses. The initial venture investor is usually a player in these subsequent 'trips to the well' by the venture. The ARRC could provide no assurance to prospective co-investors that it would be in existence to help with any future financings. Second, the ARRC emerged as a political football each year. Legislative supporters of the ARRC and the public policy issues underlying its creation found it increasingly difficult to convince legislators with disappointed constituents. Furthermore, as more legislators became aware that the ARRC could and did take equity positions in private businesses, philosophical concerns about the basic public policy issues became more pronounced. Philosophical support for the agency was never strong and began to erode fairly quickly with a few well publicized turn-downs and an equally well publicized bankruptcy in which the ARRC took control of the enterprise.

The ARRC invested in over 30 businesses over the three year period under review. Table II shows that from its beginning in 1979 to June 30, 1982, the agency placed \$23.3 million in loans and \$7.2 million in equity

investments. The preponderant role played by the two 'assistance funds' is again quite evident.

Table II

Alaska Renewable Resources Corporation

Total Loans & Equity Investments

Fiscal Year Ending

June 30,

(\$'000)

Loans	1980	1981	1982	1983
Agriculture	\$37.6	\$273.9	\$790.1	\$261.9
Fisheries	2,310.2	5,965.0	7,557.3	4,129.2
Fisheries Assistance Fund ¹	5,023.6	10,748.8	11,129.0	8,398.4
Forest Products	201.0	531.7	2,228.5	351.4
Forest Assistance Fund ²		164.3	1,600.0	3,470.2
Manufacturing ³				370.0
sub-total	<u>\$7,572.4</u>	<u>\$17,683.7</u>	<u>\$23,304.9</u>	<u>\$16,981.1</u>
<u>Equity Investments</u>				
Agriculture		\$50.0	\$50.0	
Fisheries	\$375.1	735.5	871.5	\$666.5
Fisheries Assistance Fund ¹	500.0	4,513.6	4,091.1	3,741.3
Forest Products	150.0	350.0	433.1	433.1
Forest Assistance Fund ²			1,800.0	1,800.0
Manufacturing				
sub-total	<u>\$1,025.1</u>	<u>\$5,679.1</u>	<u>\$7,245.7</u>	<u>\$6,640.9</u>
Total	<u>\$8,597.5</u>	<u>\$23,362.8</u>	<u>\$30,550.6</u>	<u>\$23,622.0</u>

¹Special legislation passed in May 1980 directed the agency to provide emergency refinancing to fish processors.

²Special legislation passed in May 1980 directed the agency to provide emergencing financing to forest product producers.

³Legislation passed in May 1982 permitted the agency to invest in manufacturing and mining.

While the volume of transaction activity grew quickly, the full time staff remained small. The first professional employee was hired in March 1980. By the end of that year four investment officers had been retained. As Table III reveals, operating expenses were relatively low in relation to the volume of funds invested and the volume of proposals reviewed. Operating expenses were about 8% of portfolio volume in 1980 and declined to 3.6% in 1982. Operating costs include expert help retained to review specific proposals as well as all full time staff expenses. Table III also reveals that the technical assistance and granting powers that the agency enjoyed were never a major dimension of the ARRC's activities. Finally, provisions for the 'write down' of loans and investments are depicted. Some 20.9% of the portfolio was reserved for loss in 1982. The actual write down of portfolio assets amounted to 22.7% over the fiscal year ending June 30, 1983.

Table III

Alaska Renewable Resources CorporationProvisions for Losses,Operating Expenses, TechnicalAssistance and Development Grants

Fiscal Year Ending

June 30,

(\$'000)

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>Totals</u>
Technical Assistance	\$295.3	\$94.6	\$66.6	-	\$456.5
Development Grants	51.1	167.4	5.0	-	223.5
Provision for:					
Loan Losses	-	261.1	4,712.9	3,420.1	8,394.1
Equity Losses	-	-	1,671.6	259.9	1,931.5
Operating Expenses	687.5	1,111.0	1,096.7	627.4	3,522.6

Each portfolio company is unique. The investment structure employed by the ARRC in each transaction was tailored to investor requirements. The following descriptive examples of the types of transactions the ARRC completed illustrate the diversity of the investment structures employed by the agency.

Portfolio Company A A major fish processing company operating in several fishing communities through out Alaska had grown rapidly since its inception in the mid 1960's.

The company's commercial bankers were requiring a major refinancing which would improve working capital balances and bring better balance to the company's debt to equity ratio. The company was closely held by Alaskan fishermen. The refinancing could not be accomplished within the resources of the existing owners. Financial performance of the company, the condition of the new issues market, and uncertain industry forecasts combined to render a public offering of equity unattractive. The ARRC and another venture capital investor invested a total of \$6.5 million. Certain assets were purchased by the investors and leased back to the company under a lease purchase agreement. The ARRC also acquired a minority equity position in the company through a purchase of common stock and a convertible debenture. A stock repurchase formula was negotiated which would enable the company to purchase the ARRC's stock position over several years. The

company later exercised its option to repurchase the property and has begun to purchase ARRC held stock.

Portfolio Company B A large Pacific Coast firm had gone bankrupt and the trustee was liquidating assets, some of which were in Alaska. A group of Alaskan entrepreneurs and the ARRC acquired a fish processing plant from the bankruptcy court with the intention of converting the plant to process 'bottom fish', an underutilized resource. The plant was purchased with a \$3.5 million loan and investment by the ARRC. The structure consisted of a \$2 million note secured by plant and equipment; a \$1 million subordinated convertible note, and a \$.5 million purchase of 47% of the new company's outstanding common stock. The ARRC later provided substantial additional funds to finance conversion and provide working capital. The new company went bankrupt in 1982. The ARRC owns the facility.

Portfolio Company C A group of Alaskan entrepreneurs had acquired the west coast license for a patented enzyme for conversion of fish waste into a high protein concentrate. The new company needed funds to build a prototype processing plant in hopes of confirming the feasibility of the enzyme when employed under actual production conditions. The ARRC provided \$535,000 in initial financing through a \$335,000 subordinated note with deferred payments of interest and principle and a \$200,000 purchase of 30% of outstanding common stock in the new company.

Portfolio Company D A group of 30 Eskimo fishermen in western Alaska desired to enter a commercial herring fishery which had begun the year before along the coast near their villages. The fishermen needed materials and technical assistance in building the herring skiffs, purchase of the outboard motors and other gear, and to organize a producers cooperative. The ARRC provided loan funds direct to each fishermen to build his own boat and buy the gear. The ARRC also paid for technical assistance to get the project underway.

Portfolio Company E A successful commercial crab and halibut fisherman needed financial help to convert his vessel to a 'long liner' for the harvest of bottom fish. As a demonstration project, the ARRC financed the conversion costs and, through the purchase of common stock in a newly formed company, provided start-up working capital. The initial investment consisted of \$175,000 in a subordinated deferred payment loan and \$175,000 in equity.

Portfolio Company F A successful ship repair facility needed funds to expand docking and plant facilities and to purchase a major item of equipment. The owners could not finance the equity portion of expansion costs and bank lending was not suitable for the young firm in terms of interest rates or repayment schedule. The ARRC provided \$350,000 in subordinated deferred payment debt and \$150,000 in equity in exchange for 22% of outstanding common stock.

The common elements in each of these examples is the assumption of high risk by the ARRC and other investors. Conventional lending sources

were either not available or inappropriate for the situation. The equity capital requirements were well beyond the capacity of the existing owners. Frequently, the ARRC's investment structure employed a combination of loan and equity capital. Restructuring of the investment a year or two later was required in many cases.

In May 1982, in response to encouragement from the Board of Trustees and testimony from others, legislation was passed which dramatically changed the ARRC. The tripartite board was replaced by a part time board of five persons. The maximum investment per transaction was reduced to \$500,000. Manufacturing and mining were included among eligible industries.

Importantly, the newly named agency 'the Alaska Resources Corporation' (ARC), was endowed with the portfolio then in existence and about \$12 million in uncommitted investment capital it held at that point in time. This reduced the political sensitivity of the agency but did not remove it from political supervision in that the Governor retained appointive powers.

Since May 1982, the ARC has been essentially inactive as regards new investments. The present governor is reportedly drafting legislation which would terminate the agency in 1984, thus bringing to a close a noble attempt to implement creative public policy.

IV. Conclusions from the ARRC Experience

Certain conclusions can be drawn from the three year period the ARRC existed. While the Alaskan experience need not be a forecast of outcomes

from similar programs to harness venture capital to public policy, the ARRC experience does suggest that any such attempt be attentive to the following factors.

- (1) Discussion of proposed legislation establishing a State financed venture capital investment organization should be open and well publicized. Many Alaskan legislators and the public in general had a very poor understanding of venture (equity) investment and little appreciation of the public policy issues raised by government ownership of private companies;
- (2) Do not depart from fully tested organizational structures in use by successful businesses. Full-time boards are not an effective organization for this purpose.
- (3) Establish the organization with a definitive endowment of paid in capital. Earnings should be retained by the organization.
- (4) Require the organization to attain self-supporting operations within a specified period of years; provide for the organization to issue its own securities without the guarantee of the State.
- (5) Establish a certain minimum experiential and professional qualification for appointments to the board of directors.
- (6) Provide for separation of employees from State employment. Permit salary and compensation structures analagous to those in private industry; and,
- (7) Provide clear strategic focus to the organization in the enabling legislation.

These conclusions underscore the importance of providing for the political independence of the organization except for the ultimate power of the legislature to terminate and the power of the executive to appoint. The Alaskan experience suggests that measures which fall short of providing for such independence are too prone to political abuse to become effective agents of economic change.

3/8/84, SHIRLEE ANC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL MEMBERS
ALASKA LEGISLATURE

FROM: JEFFREY N. JOHNS
1102 WILD ROSE COURT
ANCHORAGE, AK 99502

SUBJ: SB 346 "(INCREASING THE POWERS OF PSYCHIATRISTS)"

IT IS VERY DANGEROUS TO GIVE PSYCHIATRISTS POLICE POWERS. PSYCHIATRISTS HAVE A SUICIDE RATE 7 TIMES HIGHER THAN THE GENERAL POPULATION (FREEMAN, AMERICAN JOURNAL OF PSYCHIATRY). ELECTRIC SHOCK, PSYCHOSURGERY AND DRUGS CAUSE MEMORY LOSS, KILL BRAIN CELLS AND OTHER WISE HARM INDIVIDUALS. THESE FACTS ARE WELL DOCUMENTED. PLEASE OPPOSE THIS LEGISLATION.

/S/ JEFFREY N. JOHNS

3/8/84, SHIRLEE ANC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL LEGISLATORS

FROM: SHERWIN A. START
320 MCCARREY STREET, 'C'
ANCHORAGE, AK 99504
(H) 337-8988

SUBJ: ALASKA RAILROAD

*BEING AN RAILROAD TRANSPORTATION PLANNER, THE LEGISLATURE IS DOING A MONUMENTAL DISSERVICE TO BOTH THE LEGISLATURE AND THE FUTURE GENERATIONS OF RESIDENTS OF THIS STATE BY PURCHASING THE ALASKA RAILROAD AS IT WILL NEVER OPERATE IN THE BLACK!!! THE FEDS HAVE WITHHELD OR ALTERED THE INFORMATION AS TO COST OF TAKEOVER BY SUBSTANTIAL AMOUNTS (UNDERESTIMATED-ESTIMATED). I FURTHER BELIEVE THAT THE VOTERS OF THE STATE SHOULD HAVE A CHANCE TO VOTE WHETHER WE SHOULD BUY IT OR NOT!!!

/S/ SHERWIN A START

RR plan receives support

By TOM KIZZIA
Daily News reporter

A new survey of Wasilla and Palmer commuters shows that most would consider taking the train to Anchorage each day — provided there is reasonably frequent service and buses to carry them to work from the Alaska Railroad station downtown.

The survey was taken for a task force of municipal, state and railroad officials now looking into creation of a test commuter train. The task force is expected to make recommendations in the next few weeks based on the new marketing survey.

Planning for a commuter train to the Matanuska-Susitna Valley ground to a halt in 1979 after a consultant's study concluded traffic wouldn't justify the cost of additional rail investment. The 1979 study recommended increased bus service.

But unexpected population growth in the valley and increasing congestion on the Glenn Highway have encouraged officials to take another look at rail.

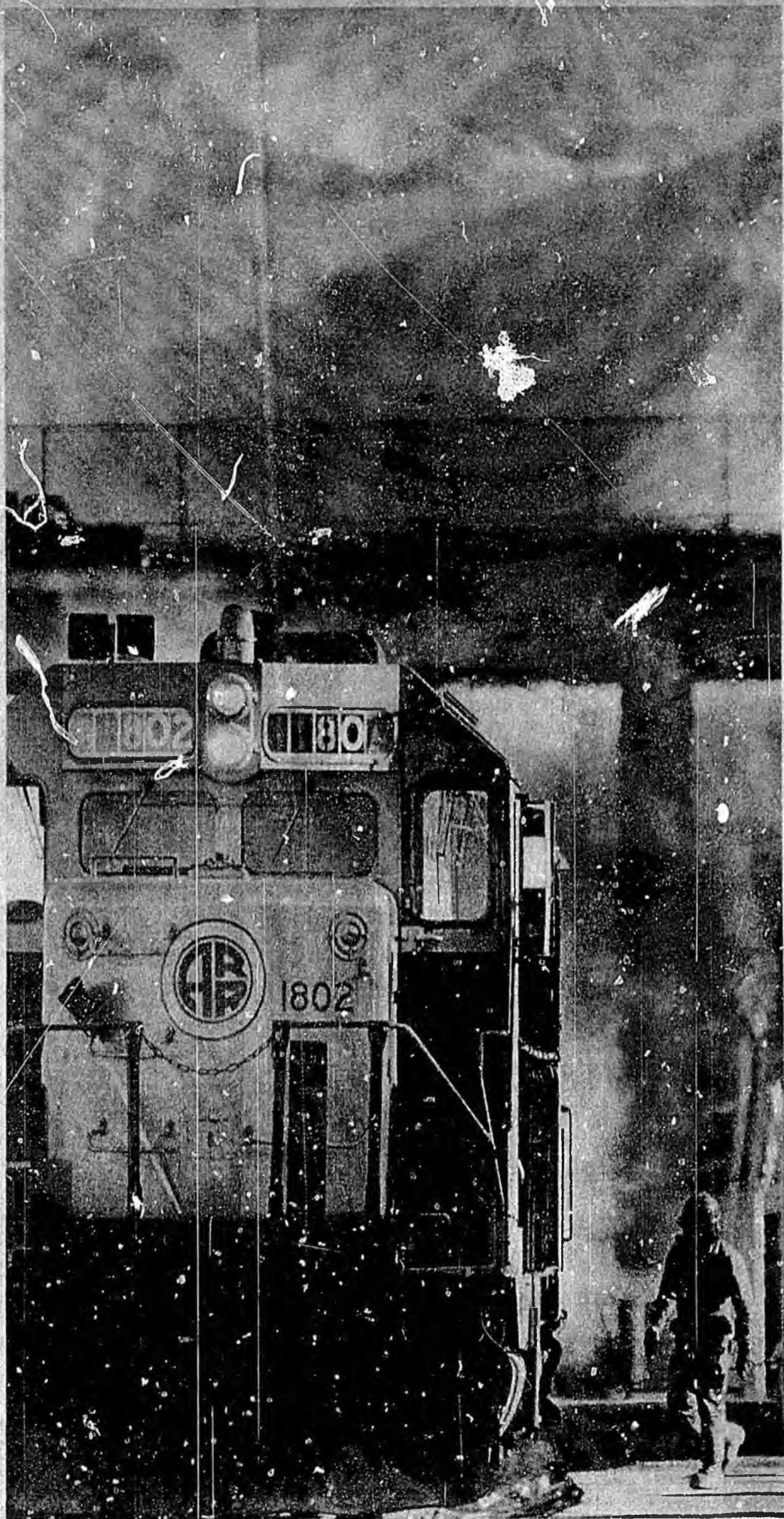
"We're really asking the question, whether the Glenn Highway corridor?" said Tom Brigham, transit director for the municipality of Anchorage. "The rail costs may be high, but they're not prohibitive compared to what they sink into roads."

Brigham said rail service to downtown Anchorage could strengthen the downtown area and help reduce automobile congestion city-wide.

The commuter rail possibility was revived last summer in a meeting between Mayor Tony Knowles, Alaska Railroad general manager Frank Jones and U.S. Secretary of Transportation Elizabeth Dole, Brigham said.

The study group includes representatives of the Matanuska-Susitna Borough, the state Department of Transportation and Public Facilities, the municipality and the railroad.

A key question before the task force is whether a



See Page B-2, RAILROAD

Alaska Railroad may make commuter runs to the Mat-Su Valley in the future.

Anchorage Daily News/Jim Lavrakas

Railroad plan gains support

Continued from Page B-1

single commuter test train would draw enough ridership to prove that more extensive service could be cost-effective.

"We don't want to try it and fall flat," said Bill Coghill, director of planning for the Alaska Railroad. "If that happens then the whole idea is gone for three or four years."

The new marketing survey, completed in January by Transcom Inc. of Seattle, found that 85 percent of the 200 commuters interviewed said they would consider taking the train in winter.

But they rated downtown distribution and flexibility of schedule as very important — and officials say these may be hard to satisfy, especially in a test.

"There isn't going to be a train coming along every 10 or 15 minutes," said Coghill.

"We support the concept, but the borough is not pushing to do it until it can be done right," said Matanuska-Susitna Borough planning director Robert Stickle.

Rated only slightly less important in the survey were ticket cost and travel time.

Officials said the train trip from a possible park-and-ride station at the Glenn and Parks Highway junction

would be about one hour, roughly comparable with driving time. Investments of some \$25 million to straighten track between Eagle River and Anchorage could cut 15 minutes off the journey, they said.

Respondents to the survey said they would be willing to pay \$5 to \$6 for a round trip ticket. Officials said operating costs for the trip would be about twice as much per seat.

Capital costs would push the overall subsidy higher, particularly if commuter service is run in summer, when all existing passenger cars are in use by the railroad.

"The subsidy is going to have to come from the state Department of Transportation," Stickle said.

Detailed cost studies of commuter service have not yet been done, the officials stressed.

The state does not have money in next year's budget to subsidize a test of commuter service, said Roger Maggard, who represents the Department of Transportation and Public Facilities on the committee.

Brigham said the availability of federal funds, which tends to favor highway projects, could affect the long-range decision regarding the Glenn Highway corridor.

TO: REPS DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER
SENS BENNETT, FAHRENKAMP, MOSS
HOUSE TRANSPORTATION -- REPS CATO, ABOOD, FLOOD, HERRMANN,
SYZNIANSKI, MCBRIDE, BETTISWORTH,

FROM: ROBERT GROVE
BOX 91550
FAIRBANKS, AK, 99708
479-6691-H & W

RE: HB 512, ESTABLISH AK RAILROAD

MSG: I ENCOURAGE PASSAGE OF THIS BILL, BUT CAUTION THE CORP. FROM MAKING THE
SAME ERRORS AS THE AK RAILROAD UNDER FEDERAL CONTROL. IE. REMEMBER THE LOCAL
PASSENGER NEEDS (THE FOLKS THAT LIVE NORTH OF TALKEETNA & SOUTH OF HURRICANE)
WITH NO ROADS. THESE PEOPLE ARE DEPENDENT ON THE RAILROAD AND WERE DISCOURAGED
FROM USING THE TRAIN IN THE PAST. IE HIGH FARES FOR SHORT DISTANCES.

-----EOM

MAR 20 1984

Anchorage

CHAMBER of COMMERCE

Representative Bette Cato
State Capitol
Pouch V
Juneau, Alaska 99811

Crossroads of the Air World

Dear Representative Cato,

For several years the Anchorage Chamber of Commerce has been closely following the transfer and operation issue of the Alaska Railroad. The Anchorage Chamber has expressed its support of a strong independent railroad which operates as a business entity.

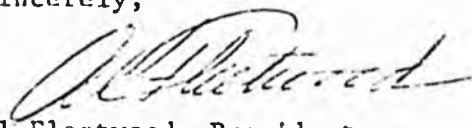
We feel our objectives, and the citizens of the state, are best achieved through passage of HB 512. The major elements in this legislation which we support are as follows:

1. Specific reference under the legislative purpose of the eventual transfer of the railroad to the private sector.
2. The independent status of the Corporation as an entity of the State.
3. The strength of the Corporation Board of Directors identified by its powers and duties.
4. The establishment of the Executive Officers of the railroad to manage the day-to-day activities of the railroad.
5. We strongly support the Railroad Corporation right to hold and manage its lands including the right of eminent domain, and the right to request additional lands for railroad purposes.
6. We support the inclusion of the strong bonding authority of the Alaska Railroad Corporation.
7. We support the railroad generated revenues staying within the Corporation for future railroad purposes.
8. And finally, we support the Alaska Railroad employees being employees of the Corporation.

We would like to propose one addition to Article 4, Section 42.40.300 General Powers. We recommend that the Corporation be permitted to lease a portion or all of the operation of the railroad to a private entity. We feel this addition should be granted to the Corporation as an option to their management prerogatives and is within the overall intent of the proposed legislation.

We recommend your support of this legislation.

Sincerely,


Al Fleetwood, President
Anchorage Chamber of Commerce

MAR 20 1984

Anchorage

CHAMBER of COMMERCE

Representative Bette Cato
State Capitol
Pouch V
Juneau, Alaska 99811

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We recommend your support of this legislation.

Sincerely,



Al Fleetwood, President
Anchorage Chamber of Commerce



Greater Fairbanks

Chamber

of Commerce

First National Center

P.O. Box 74446

100 Cushman Street

(907) 452-1105

Fairbanks, Alaska 99707

February 24, 1984

Representative Bette M. Cato
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

The Alaska Railroad is an important asset to the state and vital to the economy of Fairbanks. For this reason, the Greater Fairbanks Chamber of Commerce and particularly its Transportation Committee has devoted a great deal of attention to the details of the pending acquisition and proposed plans for operation. This has been reflected in our annual Interior Transportation Needs Report published for the past three years and substantial input provided at various public and private meetings.

We have carefully reviewed legislation pending for railroad management and operation. It is apparent that the authors of HB 512 and SB 352 wished to establish a state owned entity to manage the railroad that was as close to a private sector entity as possible given the transfer constraints. We highly support this philosophy and offer the following comments and suggestions to further strengthen this concept.

- * We noted that the preamble of HB 512 and SB 352 contains the basic intent and powers of the legislation, but the intent and powers are not repeated in the body of proposed AS 42, Chapter 40. Would it not strengthen this intent by setting it in State Statute also?
- * SB 352 and HB 512 offer the most attractive organization to operate the railroad within the state government. We believe it is preferable to have the railroad as an operating entity separate from the Department of Transportation and Public Facilities (DOTPF) or any other state department provided that DOTPF is substantially involved in railroad expansion efforts.
- * All legislation is similar in that the governor appoints a board of directors to provide overall railroad direction; however, SB 10 establishes a stronger criteria for membership selection. The composition of the board will determine if the railroad is to be