

ALASKA LEGISLATURE COMMITTEES 1903-1904

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Alaska Railroad to the State: or (2) an earlier time specified by the Governor with the approval of the legislature in joint session.

Sec. 42.40.020. APPOINTMENT AND COMPOSITION OF BOARD. (a) The board of directors of the authority consists of the commissioner of transportation and public facilities and six public members appointed by the governor. The public members may not be public officers or employees.

(b) The public members of the board must be confirmed by a majority of the membership of the legislature in joint session.

(c) The governor shall, in transmitting the names of appointees to the legislature for confirmation, state, in writing, why the nominee is expected to contribute to the effective resolution of the financial, transportation, and legal problems facing the authority, and why, in light of the identity of other appointees, the nominee will help effect a balance in the skills and experience of the board membership.

(d) The board shall elect one of its members to serve as chairman. The chairman is empowered to call meetings of the board and shall preside at the meetings.

Sec. 42.40.040. TERM OF OFFICE; VACANCIES. (a) The public members of the board shall serve for a term of four

years, except that with respect to the six members first appointed, the governor shall designate two to serve a term of two years, two to serve a term of three years, and two to serve a term of four years.

(c) A vacancy on the board shall be filled by appointment by the governor and the appointment must be confirmed by the legislature in joint session. A member selected to fill a vacancy holds office for the balance of the full term for which his predecessor on the board was appointed.

(c) A vacancy on the board does not impair the authority of a quorum of members to exercise all the powers and perform all the duties of the board.

Sec. 42.40.050. CONFLICT OF INTERESTS. Upon appointment, annually during his term of office, and upon a change in financial or business interests which generates a conflict such as described in this section, a board member shall declare privately in writing to the governor, the attorney general of the state, and the board, any financial or business interest he has which might conflict with the public nature of his membership on the board. The attorney general shall review such declarations and determine whether there is or would be a conflict. On the basis of the attorney general's determination, the governor shall direct

the member to abstain from voting with respect to decisions which would result in a conflict, and the governor shall advise the board of such directive. Further, if the governor believes the conflict is extensive or would seriously impair the ability of the member to serve impartially on the board, the governor may remove the member from the board.

Sec. 42.40.060. COMPENSATION AND EXPENSES. Members of the board shall receive no salary, but are entitled to per diem and travel expenses authorized by law for state boards and commissions under AS 39.20.180.

Sec. 42.40.070. QUORUM AND NOTICE OF MEETINGS. Four members are a quorum for the transaction of business unless the bylaws require a larger number. Notice of a meeting of the board, including an agenda for the meeting, must be given to each member and to the public.

Sec. 42.40.080. PUBLIC BOARD MEETINGS. The meetings of the board are public, with the exception of executive sessions as permitted by AS 44.62.310.

Sec. 42.40.090. MINUTES OF MEETINGS. The board shall keep minutes of each meeting and send a certified copy to the governor.

Sec. 42.40.100. PRESIDENT. The board may employ a president to manage the authority. His selection is subject to the approval of the governor. The president may not have any financial or business interest that might conflict with the management of the authority in the public interest. The board may delegate all powers and duties to the president except the power to:

- (a) issue bonds or notes; and
- (b) to commit the authority to individual capital projects with an estimated completion cost greater than \$1,000,000.

ARTICLE 2. POWERS AND DUTIES.

Sec. 42.40.110. GENERAL POWERS. The authority may

- (1) exist continuously as an authority;
- (2) adopt a seal;
- (3) adopt bylaws and regulations governing the business of the authority;
- (4) sue and be sued;
- (5) appoint officers, employees, trustees, and agents, and prescribe their powers and duties;
- (6) hire legal counsel to represent the authority;
- (7) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;

(8) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, the foreclosure of mortgages, or eminent domain under AS 09.55.240 - 09.55.460, and hold, maintain, use, operate, lease, alienate, dispose of, and convey real or personal property;

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

(10) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property, except that it may not incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity, except endorsement of checks, bank drafts, or other commercial paper in the ordinary course of business;

(11) accept grants or loans from and contract with the federal government, the state, or its political subdivisions, and to that end comply with the provisions of federal, state, or local programs when necessary;

(12) acquire, hold and dispose of stocks, memberships, contracts, bonds, or other interests in another corporation or legal entity, and exercise the powers or rights in connection

with these interests which are provided in contracts or agreements and which are allowed by law concerning the satisfaction of debts;

(13) provide for the operation, maintenance, and control of the tracks and equipment transferred to it by the federal government or by any person;

(14) acquire, construct, maintain, equip, and operate connecting, switching, terminal, or other railroads and railroad facilities in the state;

(15) do what is necessary to carry out its powers and duties under this chapter or other laws of the state, or the laws and regulations of the federal government.

Sec. 42.40.120. OPERATION OF ALASKA RAILROAD. The authority shall provide for the operation of the Alaska Railroad after it is transferred to the authority by the federal government, and may extend the operations of the Alaska Railroad to the extent that the authority considers desirable in order to promote economic growth and development in the state.

Sec. 42.40.130. REGULATIONS. The board shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) to implement this chapter.

Sec. 42.40.140. ANNUAL REPORT. The board shall prepare and distribute to the governor and to each legislator by December 30 of each year a report describing the operations, financial condition, and short- and long-term plans of the authority. The board may include in the report suggestions for legislation relating to the structure, powers, or duties of the authority or relating to the operation of railroad facilities of the authority.

Sec. 42.40.150. ANNUAL AUDITS. The board shall have the financial records of the authority audited annually by the legislative auditor. If an audit is conducted by a private certified public accountant, the legislative auditor may accept that audit in satisfaction of the requirements of this section. The legislative auditor may prescribe the form and content of the financial records of the authority and may have access to those records at any time.

ARTICLE 3. FINANCIAL PROVISIONS.

Sec. 42.40.160. BONDS AND NOTES: (a) The authority, by resolution of the board, may issue bonds and bond anticipation notes to provide money to carry out its purposes.

(b) The principal and interest on the bonds or notes of the authority is payable from money or assets of the authority.

Bond anticipation notes may be payable from the proceeds of the

sale of bonds or from the proceeds of sale of other bond anticipation notes or, if bond or bond anticipation note proceeds are not available, the notes may be paid from other money or assets of the authority. Bonds or notes may be additionally secured by a pledge of a grant or contribution from the federal government, or a corporation, association, institution or person, or a pledge of money, income, or revenues of the authority from any source.

(c) Bonds or bond anticipation notes may be issued in one or more series and shall be dated, bear interest at the rate or rates per year or within the maximum rate, be in the denomination, be in the form, either coupon or registered, carry the conversion or registration provisions, have the rank of priority, be executed in the manner and form, be payable from the sources in the medium of payment and place or places inside or outside the state, be subject to authentication by a trustee or fiscal agent, and be subject to the terms of redemption with or without premium, as the resolution of the board may provide. Bond anticipation notes shall mature at the time or times as may be determined by the board. Bonds shall mature at the time, not exceeding 50 years from their date, as may be determined by the board. Before the preparation of definitive bonds or bond

anticipation notes, the authority may issue interim receipts or temporary bonds or bond anticipation notes, with or without coupons, exchangeable for bonds or bond anticipation notes when these definitive bonds or bond anticipation notes have been executed and are available for delivery.

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

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

(f) In a resolution of the board authorizing or relating to the issuance of bonds or bond anticipation notes, the board has power by provisions in the resolution which will constitute covenants of the authority, and contracts with the holders of the bonds or bond anticipation notes:

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

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

(3) to covenant as to establishment of reserves or sinking funds and the provision for and the regulation and disposition of the reserves or sinking funds;

(4) to covenant with respect to or against limitations on a right to sell or otherwise dispose of property of any kind;

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

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

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

(8) to provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;

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

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

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

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

(13) to covenant as to the custody of any of its properties or investments, their safekeeping and insurance, and the use and disposition of insurance money;

(14) to vest in a trustee or trustees inside or outside the state property, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of bonds or notes of the authority, and to limit or abrogate the rights of the holders of the bonds or notes of the authority to appoint a trustee under this chapter or limit the rights, powers and duties of the trustee;

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

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

(17) to appoint and provide for the duties and obligations of a paying agent or paying agents, or other fiduciaries as the resolution may provide inside or outside the state;

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

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

Sec. 42.40.170. INDEPENDENT FINANCIAL ADVISOR. In negotiating the private sale of bonds or bond anticipation notes to an underwriter, the board shall retain a financial advisor who is independent from the underwriter.

Sec. 42.40.180. VALIDITY OF PLEDGE. The pledge of assets or revenues of the authority to the payment of the principal or interest on bonds or notes of the authority is valid and binding from the time the pledge is made and the assets or

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

Sec. 42.40.190. REMEDIES. A holder of bonds or notes or of coupons attached to them issued under this chapter, and a trustee under a trust agreement or resolution authorizing the issuance of the bonds or notes, except as restricted by a trust agreement or resolution, either at law or in equity, may enforce all rights granted under this chapter or under the trust agreement or resolution, or under any other contract executed by the authority under this chapter, and may enforce and compel the performance of all duties required by this chapter or by the trust agreement or resolution to be performed by the authority or by an officer of it.

Sec. 42.40.200. NEGOTIABLE INSTRUMENTS. Bonds and notes and interest coupons attached to them issued under this

chapter are negotiable instruments under the laws of this state, subject only to applicable provisions for registration.

Sec. 42.40.210. BONDS AND NOTES ELIGIBLE FOR INVESTMENT. Bonds and notes issued under this chapter are securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds and notes may be deposited with a state or municipal officer of any agency or political subdivision of the state for any purpose for which the deposit of bonds or notes of the state is authorized by law.

Sec. 42.40.220. REFUNDING BONDS. (a) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under this chapter, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds. The issuance of the refunding bonds, the maturities and other details of them, the rights of the holders of them, and the rights, duties and obligations of

the authority in respect of them are governed by the provisions of this chapter which relate to the issuance of bonds, insofar as those provisions may be appropriate.

(b) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of the outstanding bonds. Pending the application of the proceeds of refunding bonds, with any other available money, to the payment of the principal, accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of the refunding bonds or in the trust agreement securing them, to the payment of any interest on the refunding bonds and any expenses in connection with the refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which mature or which will be subject to redemption, at the option of the holders of them, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended.

Sec. 42.40.230. CREDIT OF STATE NOT PLEDGED. (a)

The authority may not pledge the credit or the taxing power of the state or its political subdivisions. The state and its political subdivisions are not liable for the debts of the authority.

(b) Bonds and notes issued under this chapter do not constitute a debt, liability, or obligation of the state or of a political subdivision of the state or a pledge of the faith and credit of the state or of a political subdivision but are payable solely from the revenues or assets of the authority. Each bond and note issued under this chapter shall contain on its face a statement that the authority is not obligated to pay it nor the interest on it except from the revenues or assets pledged for it and that neither the faith and credit nor the taxing power of the state or of a political subdivision of the state is pledged to the payment of the principal of or the interest on the bond or note.

Sec. 42.40.240. OFFICERS NOT LIABLE. An officer or employee of the authority is not subject to personal liability or accountability because of his execution of bonds or notes or the issuance of them.

Sec. 42.40.250. TAX EXEMPTION. (a) The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of the state, for their well-being and

provision, and for the improvement of their social and economic conditions, and the authority is not required to pay a tax or assessment on any property owned by the authority under the provisions of this chapter or on the income from the property.

(b) Bonds and notes issued under this chapter are declared to be issued by a body corporate and public of the state and for an essential public and governmental purpose, and the bonds and notes, and the interest and income on and from the bonds and notes, and all fees, charges, funds, revenues, income and other money pledged or available to pay or secure the payment of the bonds and notes, or interest on the bonds and notes, are exempt from taxation except for inheritance, transfer and estate taxes.

Sec. 42.40.260. REVENUES. Revenues generated by the Alaska Railroad Authority do not become part of the general fund of the state but shall be held in an independent fund available to the authority for railroad expenditures.

ARTICLE 4. GENERAL PROVISIONS

Sec. 42.40.280. PERSONNEL EXEMPT FROM STATE PERSONNEL ACT. The personnel of the authority are in the exempt state service under AS 39.25.110.

Sec. 42-40-990. DEFINITIONS. In this chapter, unless the context clearly indicates otherwise,

- (1) "authority" means the Alaska Railroad Authority;
- (2) "board" means the board of directors of the Alaska Railroad Authority;
- (3) "railroad and railroad facilities" includes, but is not limited to, tracks, spurs, switches, terminals, terminal facilities, road beds, rights-of-way, bridges, stations, railroad cars, locomotives or other vehicles constructed for operation over railroad tracks, crossing signs, lights, signals, storage buildings, administration buildings, repair buildings, and all structures, materials and equipment which are deemed by the Board to be necessary for the operation of a railroad."

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

Institute of Public Administration

ESTABLISHING PUBLIC CORPORATIONS IN ALASKA

A GUIDE FOR LEGISLATIVE DECISION MAKING

A REPORT TO
THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

BY ANNMARIE WALSH AND DAVID MAMMEN

DECEMBER 15, 1982

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should the borrowing requirements generated by short term debt be reported and monitored? Are there adequate provisions for coordination with other capital programs?

How should legislative oversight be exercised?

*What procedures should the legislature use to monitor the agency's performance with respect to goals? Legislative performance audit? Periodic public hearings or committee investigations (special circumstances only)? Legislative veto of financial plans or budgets which will exceed spending ceilings?

Legislative oversight should not involve intervention in specific management applications of policy (e.g., approval of specific loan applications, personnel actions, contractor selections, detailed budget lines.) If legislative judgment dominates these types of administrative action, the advantages sought from using the corporate form in the first place are lost.

In order for legislative oversight to be effective, legislative staff reviewing and dealing with the corporations must be adequate to keep up with the material coming to it, to analyse, to summarize, and to help distill out the policy implications. Investment in the capacity to continue to evaluate the public corporations would be small in comparison to the state appropriations supporting them.

Legislative oversight tools that have been used Outside include public authority control boards, special investigations, assignment of a full-time performance auditor to individual corporations, and codified corporation control acts. In other states, recent initiatives concerning public corporations have been part of broader efforts to strengthen debt management policies generally.

4. Implications of the Guide for the Alaska Railroad

The framework described in this Guide has implications for proposals before the Legislature. This Guide suggests that no public corporation should be created without thorough consideration of the rationale for selecting the corporate form and consideration of government alternatives. For example, an assessment of organizational alternatives for state ownership of the Alaska Railroad was undertaken in July 1981 for the State Department of Transportation and Public Facilities (An Assessment of the Alaska Railroad: Ownership and Operational Alternatives, by John T. Gray and John A. Bivens), and concluded that the corporate form would be best. The analysis noted these 'disadvantages' to the railroad as a state line agency:

- lack of ability to obtain essential capital investment funds except by state appropriations;
- competitive issues related to marketing, management flexibility, state agency regulations and procedures;
- potential for even more direct political influence on operational decisions;
- the public service versus business orientation questions.

The report went on to note "[The state agency alternative] clearly does not meet most of the criteria established for a viable railroad organization. A state agency organizational structure is the least desirable of the three alternatives discussed."

That conclusion may be correct, but it should be noted that access to the bond market is possible through alternatives such as state transportation bond issues or departmental revenue bonds. In any case

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the experience of the Alaska Railroad as a federal agency indicates that two attributes should be sought above all others: 1) flexible, concentrated, business-like management and 2) policy control by state government, exercised in the interests of Alaska.

Regarding the corporate form, the study of organizational alternatives noted:

The principal advantages of the authority or public corporation alternative are an ability to obtain access to required capital funds and freedom to manage and operate the railroad within policies established by a board. Management could be given flexibility and responsibility for its decisions and could also be held accountable for its decisions. Passenger service could be accounted for separately and not subsidized by freight service. The Alaska governmental leadership could determine the appropriate levels, locations, and other parameters of passenger train service. Thus, under this scheme, it might be possible to reach a compromise between the public service and business purposes of the railroad.

That discussion raises two issues that are not resolved in the bill to establish the Alaska Railroad Authority (CS SB 212 [Transportation]). First, what decisions should be made or reviewed by state officials to assure the public service purposes, and what decisions and prerogative should be left to management to assure efficient and effective running of the railroad enterprise? Second, what volume and purposes of subsidy should be planned for the railroad?

This Guide suggests that legislative authorizations and mechanisms for supervising the corporations should be based clearly on the premise that the corporations are wholly owned subsidiaries of government. CS SB 212 [Transportation] makes the status of the corporation as a state agency clear:

Sec.42.40.330(e): "the authority is an agency of the State of

Alaska for purposes of jurisdictional determinations and judicial review...." Sec.42.40.100(c)(4): the authority shall act "on behalf of the State of Alaska". Sec. 42.40.200: the authority is an "instrumentality of the state within the Department of Transportation...,with legal existence independent of and separate from the state."

This Guide suggests that legislative intent for the goals and mission of the corporation should be sufficiently clear to provide policy guidance, criteria for performance evaluation and financial planning. But fundamental issues are unresolved in CS SB 212 [Transportation], which provides only that the Alaska Railroad should be operated to: "carry out its responsibilities on a self sustaining basis" and to "provide the best possible combination of high quality and reasonably low cost transportation", but be "supported where necessary by state investment in railroad capital improvements."

Is it or is it not to be self supporting? Are both freight and passenger services to be self supporting? Or are operating expenses to be paid for from the fare box, while capital investment is publicly provided? Is public investment to be repaid? On what schedule and with what interest? If it is not repaid, does it have implications for the competitiveness of other components of the state's transportation system?

If these decisions are not to be made by the legislature at the time of the creation of the authority, what process is established by the statute to make these basic public policy decisions over time? The railroad's fare structure, mix of services, and collective bargaining agreements will each affect the degree to which subsidies will be needed. According to this Guide, a procedure for governmental participation in these decisions is essential, whether it be legislative

fiat, review by the Department of Transportation and Public Facilities, review by the governor, and/or regulation.

Because of the ambiguity in the bill, basic issues of fare structure, subsidy levels, state investment and pay back may be left to the authority management to resolve and bargain over, with little clear guidance from the Legislature. Some forms of capital subsidy will be necessary; some form of operating subsidy may be necessary. According to what criteria; what limits; what procedures?

The Guide recommends that there be an orderly and timely process for assessing and controlling the impact of the corporation on state budget and credit. CS SB 212 [Transportation] implicitly permits subsidy of the railroad authority by state capital investments or revenues "from whatever source" to secure authority notes, but it is not clear about state or executive participation in, or review of, rates and fares, collective bargaining agreements, service expansions or contractions or debt ceilings which are crucial decision making points that will determine the volume and the effect of subsidies in the future. These decisions, plus the control over land (albeit in conjunction with the Department of Rural Resources), place very important policy powers in the hands of a council of six citizens with staggered terms.

Article 7 of the bill concerning state oversight provides procedures for gubernatorial veto, action forcing and intervention which are thorough. But by the time the specific undertakings described would be formally proposed and subject to these procedures, many options could be closed. Therefore review and approval of long range program and capital plans will be the more important process for purposes of policy

guidance and oversight. Proposed service changes and credit transactions should be required to conform to the approved long range plan. The opinion of the Commissioner of Transportation should be required for state review under Section 7, as well as for annual approval of the long range plan. Service improvement and performance targets should be included in the annual plan and used as criteria for performance audit by the legislative auditor.

One procedure that might be provided for would call for the authority to include in the required financial plan a recommended fare structure that would completely cover costs and investment payback. Government decision not to approve such a fare structure would then have to be accompanied by either specific commitments to provide compensating subsidies or specific cost cutting proposals. The active involvement of the Department of Transportation would be needed to carry this out. The importance of some such arrangement can be underscored by the inefficiency of public rail systems elsewhere in the country where disorderly annual negotiations over fares and subsidies have left corporate managements without financial stability or the capability to plan for improvements. Moreover, if these issues are not resolved by orderly public decisionmaking processes, they may be resolved unilaterally by corporate management through bond resolutions that guarantee certain revenue levels be maintained and collective bargaining procedures that determine cost levels.

The Guide suggests that responsible executive officials should be able to influence the major decisions of the corporation in order to provide coordinated and coherent state policy. Yet, as CS SB 212

[Transportation] is written, the Commissioner of Transportation is in an uncertain position with respect to the authority. The Commissioner is one of seven board members; there is no requirement that the Commissioner be chairman. Alternatives should be considered. The manager of the railroad corporation might report to the Commissioner, making the council an advisory and review board rather than a governing board. Or, the Commissioner could be named chairman of the governing board, which might be expanded to represent a wider range of interests.

The Guide notes that fixed management responsibility and concentrated executive leadership are important parts of the business model that public corporations are set up to take advantage of. Yet the bill divides management authority (Section 42.40.250) in ways that may involve the governing council in too much detail (\$11,000 real estate transactions; incurrence of debt, however small, and all changes of services). This may divert the council from policy issues such as program and capital plans and the establishment of rates.

In addition, the bill's provisions for appointment of railroad authority executives involve the council in appointing and removing personnel other than the general manager. This may make it more difficult to recruit a topflight railroad chief operating officer who will want to bring in his or her own management team. Accountability may be better served by giving the manager clear authority to manage, within the parameters of government policy, and holding him or her directly responsible for the results. The Legislature may therefore wish to consider whether the general manager should appoint, and have unhindered powers to dismiss, executive officials. Council involvement through

other executive appointments and the provision that executives serve "at the pleasure of the council" merely divides management responsibilities.

The Guide suggests that corporations be exempted from standard administrative procedures only as required. CS SB 212 [Transportation] AS 42.40.330 provides blanket exemption from the Administrative Procedures Act, except for public meetings and legislative review. There appear to be no criteria or standards for corporate personnel, accounting, contracting or procurement systems. While management flexibility will be served by these exemptions, management quality is not assured by them. The characteristics of the personnel system might be specified. (Will civil service rights be superimposed over collective bargaining rules? Must recruitment and promotion be on a merit basis?) In addition, the legislature should require that the corporation's accounting system be approved by the legislative auditor or that it accord with Generally Accepted Accounting Practices (GAAP).

The Guide recommends that corporations develop systematic procedures for dealing with public interests and opinions concerning the distribution of benefits among groups and localities. The Legislature may want to consider mechanisms for involvement by citizen advisory panels or regional organizations, or by local governments.

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Mr. Chairman, Members of the Transportation Committee:

I am Leonard Shapiro, Vice President of Pricing for Totem Ocean Trailer Express. Tote operates two new deep water Ro/Ro vessels between Tacoma, Washington, and Anchorage, Alaska, where we interline trailers to motor carriers and the Alaska Railroad for movement to the interior of Alaska.

We at Totem greatly appreciate this opportunity to express our views concerning the transfer of the Alaska Railroad to the State of Alaska. It should be noted that Totem is among the top five (5) customers of the Alaska Railroad and, therefore, we strongly support a financially strong railroad.

Totem has analyzed in great detail Senate Bill No. 212 and we wish to offer our support to most of the bill. We feel it enables the State of Alaska to smoothly handle the transfer of power from the federal to the State level. We specifically support the position which Senate Bill No. 212 takes on future expansion of the Alaska Railroad, inasmuch as the railroad would be the most economic means whereby the State can develop its extensive mineral resources.

Development of these resources will mean a significant increase in the economic activity of the State and, therefore an increase in the economic activity for all carriers.

Many of you have undoubtedly heard rumors concerning Totem's position on this takeover of the Alaska Railroad by the State of Alaska. I wish to assure all present today that rumors to the effect that "Totem opposes the takeover of the Alaska Railroad by the State and desires the Railroad to remain under Federal control" are totally untrue. Further we have absolutely no desire to "tie the hands of the Alaska Railroad" for rate purposes. Totem's sole desire, insofar as Senate Bill 212 is concerned, is to ensure that all participants in Alaska's intergrated transportations system "play by the same rules". As I mentioned above Totem is one of the top five customers of the Alaska Railroad and as such depends on the Alaska Railroad for a significant portion of the transportation service we need in order to reach the interior of the State. For Totem to oppose in any way legislation which would ensure a financially sound railroad, would be sheer business folly.

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

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

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

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

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

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

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

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

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

Anchorage

CHAMBER of COMMERCE

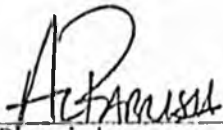


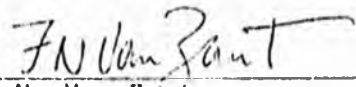
April 16, 1982

The Anchorage Chamber of Commerce believes S.B. 212, dealing with transfer of the Alaska Railroad from federal to state ownership, should not be passed by the Alaska Legislature in its present form.

The Chamber urges the Legislature to amend the current bill to:

1. Preserve the integrity of the railroad and its assets entirely, maintaining it as a unit to ease the early transition into private ownership, control, and operation. Both assets and liabilities should be transferred together, enabling the railroad to retain the basis of self-support.
2. Preserve the employment environment for all of the railroad's present employees, not making state ownership a relative penalty.
3. Establish the Alaska Railroad Authority as an independent entity, owned by the state, but not a part of any existing agency or department.
4. Include in the legislation only those elements of the state's open meeting, freedom of information, conflict of interest, and administrative procedures regulations and statutes which represent a departure necessary for conduct of the railroad's business.
5. Provide for an independent Board of Directors, not including representation of the administration other than by the Governor or Lieutenant Governor.


Al Parrish
President


Frank N. Van Zant
Executive Vice President

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

Executive Summary

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

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

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

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

Introduction

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

PAYMENT TO THE ALASKA RAILROAD REVOLVING FUND

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

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

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

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

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

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

Table 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Introduced: 2/4/81
Referred: Transportation
and State Affairs

BY MOSS, ROGERS, BROWN AND
BETTISWORTH

1 IN THE HOUSE

2 HOUSE BILL NO. 12

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska Railroad Authority."

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

8 * Section 1. AS 44 is amended by adding a new chapter to read:

9 CHAPTER 87. ALASKA RAILROAD AUTHORITY.

10 ARTICLE 1. CREATION AND ORGANIZATION.

11 Sec. 44.87.010. ALASKA RAILROAD AUTHORITY CREATED. There is
12 created the Alaska Railroad Authority. The authority is a public cor-
13 poration of the state in the Department of Transportation and Public
14 Facilities, but with a separate and independent legal existence.

15 Sec. 44.87.015. MEMBERSHIP OF THE AUTHORITY. The authority con-
16 sists of the following board of directors: the commissioner of trans-
17 portation and public facilities, the commissioner of revenue, and the
18 commissioner of commerce and economic development.

19 Sec. 44.87.020. OFFICERS AND QUORUM. The board shall elect one ^{insert}
20 member as chairman. Other officers may be elected as the board deter-
21 mines. The powers of the authority are vested in the board. ~~Two~~ ^{three}
22 directors of the authority constitute a quorum. Action may be taken
23 and motions and resolutions adopted by the authority at a meeting by
24 the affirmative vote of ^{at least three} ~~at least two~~ directors. The directors serve
25 without compensation, but they are entitled to the same travel expenses
26 and per diem provided by law for board members.

27 Sec. 44.87.025. STAFF. The authority shall employ an executive
28 director who may employ additional staff as necessary. In addition to
29 its staff of regular employees, the authority may contract for and

1 engage the services of the bond counsel, consultants, experts, and
2 financial advisors it considers necessary for the purpose of developing
3 information, or conducting studies, investigations, hearings, or other
4 proceedings.

5 ARTICLE 2. PURPOSE AND POWERS.

6 Sec. 44.87.030. PURPOSE OF THE AUTHORITY. The purpose of the
7 authority is to ^{plan} acquire, construct, operate and maintain ^{OR sell} railroad
8 facilities in the state, *as provided by law*

9 Sec. 44.87.035. POWERS OF THE AUTHORITY. In furtherance of its
10 corporate purposes, the authority may

- 11 (1) sue and be sued;
- 12 (2) have a seal and alter it at pleasure;
- 13 (3) make and alter bylaws for its organization and internal
14 management;
- 15 (4) adopt regulations governing the exercise of its corporate
16 powers;
- 17 (5) acquire by construction, purchase, gift or lease facili-
18 ties in the state;
- 19 (6) improve, equip and operate railroad facilities in the
20 state;
- 21 (7) issue revenue bonds for the acquisition, construction,
22 or improvement of railroad facilities in the state;
- 23 (8) sell, lease as lessor or lessee, exchange, donate,
24 convey or encumber by mortgage or by creation of any other security
25 interest, real or personal property owned by it, or in which it has an
26 interest, when, in the judgement of the authority, the action is in
27 furtherance of its corporate purposes;
- 28 (9) accept gifts, grants or loans from, and enter into con-
29 tracts with a federal agency or an agency of the state, a municipality,

1 a private organization or other source;

2 (10) deposit or invest its funds, subject to agreements with
3 bondholders;

4 (11) contract with any person for the improvement, construc-
5 tion, acquisition, operation and maintenance of its railroad facilities,
6 or for the security of bonds issued by the authority;

7 (12) establish, levy, and collect fares and other charges for
8 the use of its railroad facilities;

9 (13) enter into contracts or agreements with respect to the
10 exercise of any of its powers, and do all things necessary to carry out
11 its corporate purposes and exercise the powers granted in this chapter;

12 (14) exercise the power of eminent domain in accordance with
13 AS 09.55.250 - 09.55.410.

14 ARTICLE 3. FINANCIAL PROVISIONS.

15 Sec. 44.87.040. BONDS OF THE AUTHORITY. (a) The authority may
16 issue bonds in accordance with AS 44.87.035(7) on which the principal
17 and interest are payable

18 (1) exclusively from the income or other money derived from
19 its railroad facilities; or

20 (2) from its income and receipts or other assets generally,
21 or a designated part of them.

22 (b) Bonds shall be authorized by resolution of the authority, and
23 shall be dated and shall mature as the resolution may provide, except
24 that no bond shall mature more than 40 years from the date of its
25 issue. Bonds shall bear interest at the rate or rates, be in the
26 denominations, be in the form, either coupon or registered, carry the
27 registration privileges, be executed in the manner, be payable in the
28 medium of payment, at the place or places, and be subject to the terms
29 of redemption which the resolution or a subsequent resolution may

1 provide.

2 (c) All bonds, regardless of form or character, shall be negoti-
3 able instruments for all the purposes of the Uniform Commercial Code.

4 (d) All bonds may be sold at public or private sale in the manner,
5 for the price or prices, and at the time or times which the authority
6 may determine.

7 (e) The superior court has jurisdiction to hear and determine
8 actions or proceedings relating to the authority, including actions or
9 proceedings brought by or for the benefit or security of a holder of
10 its bonds or by a trustee for or other representative of the holders.

11 Sec. 44.87.045. TRUST INDENTURES AND TRUST AGREEMENTS. In the
12 discretion of the authority, an issue of bonds may be secured by a
13 trust indenture or trust agreement between the authority and a corporate
14 trustee (which may be a trust company, bank, or national banking
15 association, with corporate trust powers, located inside or outside the
16 state) or by a secured loan agreement or other instrument or under a
17 resolution giving powers to a corporate trustee by means of which the
18 authority may

19 (1) make and enter into any covenants and agreements with
20 the trustee or the holders of the bonds which the authority may deter-
21 mine to be necessary or desirable, including, without limitation,
22 covenants, provisions, limitations and agreements as to

23 (A) the application, investment, deposit, use and dis-
24 position of the proceeds of the bonds of the authority or of money
25 or other property of the authority or in which it has an interest;

26 (B) the terms and conditions upon which additional
27 bonds of the authority may be issued;

28 (2) pledge, mortgage or assign money, leases, agreements,
29 property or other assets of the authority; and

1 (3) provide for any other matters which affect the security
2 or protection of the bonds.

3 Sec. 44.87.050. VALIDITY OF PLEDGE. It is the intention of the
4 legislature that a pledge made in respect of bonds be valid and binding
5 from the time the pledge is made; that the money or property so pledged
6 and thereafter received by the authority be immediately subject to the
7 lien of the pledge without physical delivery or further act; and that
8 the lien of the pledge be valid and binding as against all parties
9 having claims of any kind in tort, contract or otherwise against the
10 authority irrespective of whether the parties have notice. Neither the
11 resolution, trust agreement nor any other instrument by which a pledge
12 is created need be recorded or filed under the provisions of the
13 Uniform Commercial Code to be valid, binding or effective against the
14 parties.

15 Sec. 44.87.055. NONLIABILITY ON BONDS. (a) Neither the members
16 of the authority nor a person executing the bonds is liable personally
17 on the bonds or subject to personal liability or accountability by
18 reason of the issuance of the bonds.

19 (b) The bonds issued by the authority do not constitute an
20 indebtedness or other liability of the state or of a political sub-
21 division of the state, except the authority, but are payable solely
22 from the income and receipts or other funds or property of the
23 authority. The authority may not pledge the faith or credit of the
24 state or of a political subdivision of the state (except the authority)
25 to the payment of a bond and the issuance of a bond by the authority
26 does not directly, indirectly or contingently obligate the state or a
27 political subdivision of the state to levy or pledge any form of
28 taxation to the payment of a bond.

29 Sec. 44.87.060. PLEDGE OF THE STATE. (a) The state pledges to

1 and agrees with the holders of bonds issued under this chapter that the
2 state will not limit or alter the rights and powers vested in the
3 authority by this chapter to fulfill the terms of any contract made by
4 the authority with the holders. The state also pledges to and agrees
5 not to impair the rights and remedies of the holders until the bonds,
6 interest on them, interest on unpaid installments of interest on them,
7 and all costs and expenses in connection with any action or proceeding
8 by or on behalf of the holders, are fully met and discharged.

9 (b) The state pledges to and agrees with a federal agency that
10 loans or contributes money for railroad facilities of the authority,
11 that the state will not limit or alter the rights and powers vested in
12 the authority by this chapter to fulfill the terms of any contract made
13 by the authority with the federal agency.

14 (c) The authority is authorized to include the pledge and agree-
15 ment of the state contained in (a) and (b) of this section, insofar as
16 it refers to holders of bonds of the authority, in a contract with the
17 holders, and insofar as it relates to a federal agency, in a contract
18 with a federal agency.

19 Sec. 44.87.065. EXEMPTION FROM TAXATION. The real and personal
20 property of the authority and its assets, income and receipts are de-
21 clared to be property of a political subdivision of the state and,
22 together with the railroad facilities under the jurisdiction of the
23 authority is exempt from all taxes and special assessments of the state
24 or a political subdivision of the state. The bonds of the authority
25 are declared to be issued by a political subdivision of the state for
26 an essential public and governmental purpose and the bonds, and the
27 interest on them, the income from them and the transfer of the bonds,
28 and all assets, and income pledged to pay or secure the payment of the
29 bonds, or interest on them, are exempt from taxation by or under the

1 authority of the state, except for inheritance and estate taxes and
2 taxes on transfers by or in contemplation of death.

3 Sec. 44.87.070. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The
4 bonds of the authority are securities in which all public officers and
5 bodies of the state and all municipalities, all insurance companies and
6 associations and other persons carrying on an insurance business, all
7 banks, bankers, trust companies, savings banks, savings associations,
8 including savings and loan associations and building and loan associa-
9 tions, investment companies and other persons carrying on a banking
10 business, all administrators, guardians, executors, trustees and other
11 fiduciaries, and all other persons who are or who may be authorized to
12 invest in bonds or other obligations of the state, may properly and
13 legally invest funds including capital in their control or belonging to
14 them. The bonds of the authority are also securities which may be
15 deposited with and may be received by all public officers of this state
16 and all municipalities for any purpose for which the deposit of bonds
17 or other obligations of the state is or may be authorized.

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 44.87.075. DEFINITIONS. In this chapter

- 20 (1) "authority" means the Alaska Railroad Authority;
21 (2) "board" means the board of directors of the authority;
22 (3) "railroad facilities" includes rights-of-way, trackbed,
23 engines, cars, freight and passenger terminals, and any other facili-
24 ties or equipment used for the operation of a railroad.

ALASKA



REVIEW OF SOCIAL AND ECONOMIC CONDITIONS

UNIVERSITY OF ALASKA, INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH, FEBRUARY 1982, Vol. XIX, No. 1

THE ALASKA RAILROAD: OVERVIEW AND OPERATIONAL ALTERNATIVES

INTRODUCTION

This Review takes a look at the federally owned Alaska Railroad in the context of its apparent pending transfer to the State of Alaska. After describing the history of the railroad—its present physical plant, rolling stock, and its operations—we analyze the most important issues with which the state must deal: railroad land, employees, finances, competition, environmental, and passenger service. We also review organizational structures that might be applied to the railroad following the end of federal control and make recommendations for further action. (See box on page 3 for a brief summary of study findings.)

The Alaska Railroad (ARR) is unique in that it is (1) the only railroad in North America that is a federal agency, (2) the farthest north railroad in North America, a frontier development history and has attracted intense criticism and conceived as a development of the Panama Canal. Its early equipment emerged as a military pauper to spoiled and an anonymity which day.

The Alaska Railroad the United States Federal Railroad Act subject to all the other such agencies, and both political and economic become an important

and a central element in the state's economic development process.

Changing Federal Policy

During the past decade, FRA has become increasingly interested in transferring ownership of the property to a nonfederal entity. The agency first introduced draft federal legislation to facilitate the transfer in 1971. However, the momentary prosperity of the ARR during the Alyeska pipeline construction project diminished federal interest in disposing of the property.

With the return of "normal" economic conditions in 1978, however, FRA was once again motivated to explore means of relieving itself of the ARR. economic downturn also coincided with a shift in FRA policy, mainly due to its increasing involvement with Conrail and Amtrak.¹ By 1979, it was evident that both organizations had become major financial and political liabilities for FRA, leading the agency to both a fear of and disinterest in attempts to operate any railroad. Thus, FRA's policy tended toward the dissolution of any rail property which

financially controlled railroad properties that had been unsuccessfully managed in the private sector.

This article was adapted from a report prepared for the Alaska Department of Transportation and Public Facilities, Division of Planning and Programming, by the Institute of Social and Economic Research and Bivens and Associates, Inc.

improve railroad property, and meet operational expenses.

6. The public's capital investments are to be protected.
7. The rail service rates are to remain competitive.
8. Public railroad operational subsidies are to be minimized.
9. Rail users are to receive good service, including adequate service frequency, an adequate number of cars, and appropriate car types.
10. The Alaska Railroad is to cooperate with the state, local governments, ports, businesses, industries, and other transportation modes within established policies and legal constraints.

Establishing criteria designed to meet the rail service needs of Alaska will enable the state administration and legislature to evaluate the organizational alternatives subsequently described. Each organizational structure can be measured by the extent to which it satisfies the following criteria:

1. Ability to obtain access to public and private capital funds.
2. Freedom of management to make the railroad's operational decisions within established policies.
3. Clear-cut lines of management responsibility and accountability for decisions.
4. Marketing freedom within established policies and budgetary constraints.
5. Clear decision-making authority without a cumbersome and bureaucratic process.
6. Separation of freight and passenger service functions and accounting.
7. Ability to efficiently procure necessary supplies, equipment, services, and materials within appropriate policies and budgetary authority.
8. Management capability to make long-term commitments within established policies.
9. Management freedom to negotiate solutions to problems and to take advantage of service opportunities.
10. Industrial development capability on Alaska Railroad land.
11. Performance-based personnel management, including the direct ability to hire, fire, promote, train, supervise, and direct required railroad employees.
12. Ability to provide financial and other incentives for performance.

We recognize that it may not be possible or

acceptable to have a state organization which fully meets all of these criteria. However, these criteria are important in defining the long-term objectives for the Alaska Railroad. The State of Alaska should seek an acceptable organizational structure which will enable the railroad to operate as effectively as possible within these areas.

Organizational Alternatives Considered

When we began this study, various alternatives were considered possible. Among these were:

- Keeping the status quo—letting the ARR continue to operate as a federal agency.
- Allowing the ARR to operate as a federal agency corporation like the Consolidated Railroad Corporation (Conrail) or Amtrak.
- Selling the ARR to private investors.

However, during the early stages of this study the federal government made clear its intention to divest itself not only of the ARR, but also of Conrail and Amtrak, which precluded the first two alternatives. Further, the difficulty a private investor would have in financing the marginally profitable ARR, in addition to the complex issue of unresolved land-transfer problems, effectively precluded the third alternative. Thus, there emerged but three remaining alternatives that seemed to offer workable opportunities for the ARR. These included the state (1) operating the ARR as a line agency of the state, (2) operating it as a state public corporation or authority, or (3) leasing it out for operation by a private party. We examine these three alternatives in the following paragraphs.

Three Possible Alternatives

The Railroad as a State Line Agency

Under this approach, the state would take title to the railroad in a manner similar to state ownership of such other transportation facilities as airports, the Marine Highway System, and state highways. However, we should note that the long-term availability of railroad assistance funding from the federal government, either for capital or operating purposes, is very uncertain. There currently exists no trust fund for railroads as there is for airports or highways.

Under this alternative, the Alaska Railroad would logically be made a division or some other unit of the Alaska Department of Transportation and Public Facilities. The railroad personnel would therefore become employees of the state with all of the benefits available to other state employees.

Policy direction for the Alaska Railroad as a

state line agency would come from the governor, from the legislature through normal legislative processes, and from the commissioner of the department involved.

There are several advantages to establishing the Alaska Railroad as a state line agency. The management lines of authority and responsibility would be clear. The institutional structures and resources of the State of Alaska could be readily available for use on the railroad. Alaska Railroad employees would have the fringe benefits and other advantages of state employment, including reasonable job protection. Since the railroad already has a cadre of experienced and trained operational personnel, the transition from federal agency status to state agency status would be easier than other alternatives.

However, there are also significant disadvantages in organizing the railroad as a state line agency. The ARR would encounter most of the same limitations as a state agency as it now does as a federal agency. One of the most critical limitations would be the inability to obtain essential capital investment funds except by state appropriations. The competitive issues related to marketing, management flexibility, state agency regulations, procedures and requirements; the potential for even more direct political influence on operational decisions; and the public-service-versus-business-orientation questions are all disadvantages of this approach.

While the state agency alternative should be considered, it clearly does not meet most of the criteria established for a viable railroad organization, if the Alaska Railroad is to adequately fulfill its transportation role within its technological limitations, a state agency organizational structure is the least desirable of the three alternatives discussed in this report. It would be unfortunate if the State of Alaska were to place the Alaska Railroad in an organizational structure that perpetuated the limitations of federal agency status.

The Railroad as a State Public Corporation or Authority

There are precedents for this approach, both nationally and internationally. The West Virginia Railroad Maintenance Authority and the British Rail Corporation, with some variations, will serve as examples.

The West Virginia Railroad Maintenance Authority. The State of West Virginia has since 1975 owned and operated a railroad¹⁷ similar in some ways to the ARR. The West Virginia Maintenance Authority (WVMA) consists of seven part-time

members, including the governor as an ex-officio member. The other six members are appointed by the governor, with the consent of the state senate, for staggered 6-year terms. The authority selects its own officers and appoints an executive director (the chief administrative officer). The employees of the authority in West Virginia work for the state and are non-union.

The WVMA has all the powers needed to own and operate a railroad. These powers include the ability to plan, carry out projects, acquire property, sell or transfer property, contracts, and sue or be sued. The WVMA may raise capital via railroad authority revenue bonds. It may also acquire railroad rights in other states. In addition, the authority has the power of eminent domain.

The railroad experience in West Virginia has been generally successful, and with some modification, lessons learned there may be applicable to Alaska.¹⁸

The British Rail Corporation. Since its inception in the late 1940s, British Rail has operated as a profit-oriented transportation company, providing both freight and passenger service. A government-appointed chairman and an autonomous board of directors provide general policy for running the corporation, with each director responsible for a particular facet of the operation (passenger, maintenance, capital investment, etc.).

British Rail's chief executive is responsible to the board and the chairman, at the same time serving as a member of the board. The principal officers of British Rail serve at the pleasure of the Chief Executive.

The levels and nature of British Rail's passenger service are negotiated between the government and the corporation, with the government paying for passenger service provided.

British Rail's capital investment package overseen by the Minister of Transport includes a 5-year plan, the first 3 years of which are fixed. This establishes the capital limits, within which investments must fall. British Rail can only borrow through the government, and major projects must be approved by the Minister of Transport.

The ministry of Transport through its Railways Division, oversees the capital investment program of British Rail. It also has some safety responsibilities. Regulation is not institutionalized. The marketplace drives most policy decisions of British Rail.

¹⁷The West Virginia Railroad carries no commercial passengers.

¹⁸A copy of the West Virginia Maintenance Authority Act is on file at the Alaska Department of Transportation and Public Facilities.

Like the West Virginia Railroad Authority, the British Rail Corporation offers a potential organizational model for the Alaska Railroad. If the Alaska Railroad, under state jurisdiction, were organized as an authority or public corporation under carefully worded state legislation, most of the federal agency limitations could be removed. Properly established under this approach, the Alaska Railroad could meet all of the criteria previously outlined for a state railroad organization.

The principal advantages of a public corporation or authority alternative are an ability to obtain access to required capital funds and freedom to manage and operate the railroad within policies established by a board. Management can be given flexibility and responsibility and can also be held accountable for its decisions. Passenger service can be accounted for separately and not subsidized by freight service. The state could determine the appropriate levels, locations, and other areas of passenger train service in accordance with their willingness to pay for the service selected. The freight rail service could be marketed and required to meet fully allocated costs. Thus, under this organizational scheme, it might be possible to reach a compromise between the public service and business purposes of the railroad.

A State Railroad with Private Operations

A third alternative would be for the State of Alaska to own the railroad and contract with private enterprise to provide for operations. The main difference between this and the other alternatives is the operation of the Alaska Railroad by a private organization.

Several states, such as South Dakota and Oklahoma, are using this approach. These states, among others, have experienced abandonment of significant rail lines that they considered essential to their economy and transportation systems. These are using state and federal funds to acquire and rehabilitate extensive rail lines. The Department of Transportation, as a representative of the state, takes title to the rail property (usually excluding rolling stock). The state then selects a private railroad with the required management experience, skills, and interest in operating its equipment over the line to furnish shippers and receivers with rail service. An operating agreement is negotiated with the private common carrier for rail service. The operational limitations of the railroad can be whatever the state and the railroad agree upon.

The negotiated operating agreement can include such provisions as the assignment of maintenance responsibilities; liabilities; frequency, level, and type

of rail service; car supply; revenues; and costs. Thus, all of the appropriate criteria for a state railroad organization can be reflected in the operational agreement. This can even extend to the provision of required capital.

A major advantage of this approach is that once the operating agreement has been negotiated, the state has only a supervisory or overseer responsibility, plus whatever financial requirements have been determined by the negotiations. The railroad operations can include public service rail requirements as well as being performance based.

A substantial difficulty with this alternative for the Alaska Railroad is that no private railroad carrier is operating within the state. Too, there is the problem of the existing Alaska Railroad personnel. While the present railroad employees have the necessary knowledge of railroad operational peculiarities in Alaska, these are federal agency employees, with long-term rights rather than private employees whose rights are subject to negotiation. This could present such a significant liability to prospective private operators that it might be difficult to find interested parties. This approach, therefore, may be impractical unless the responsibility for the current Alaska Railroad personnel is assumed by the Federal Railroad Administration, while a private carrier, with the necessary qualifications, can be attracted as the operator. However, no one knows at this time whether or not such a private operator exists.

One variation to the alternatives described above is a concept under consideration in Iowa. It is an old concept which has proved successful in other organizations but which is new in its application to railroading. It involves the use of a general partner and limited partnerships.

A limited partnership is a very flexible institutional arrangement which could potentially attract substantial private capital. A major consideration in developing this institutional approach is the designation of the general partner. In order to legally establish a limited partnership, at least one financially responsible general partner must be found or established. The State of Alaska could establish an organization which could become the general partner for this railroad venture. Although limited partners are not subject to liability beyond their investment in the partnership, there is usually no limit to the liability of the general partner.

A limited partnership is, by law, a nontaxable entity. All gains or losses from the venture flow directly back to the investors (partners) for tax purposes. Partnerships are thus attractive because (1) there is no double taxation of income as with

corporations and (2) partners can take full tax advantage of losses, depreciation allowances, and tax credits. The ability to take advantage of depreciation allowances will become more important if the Reagan Administration's accelerated depreciation proposal is enacted. It would be necessary, of course, to examine legal constraints in Alaska for public involvement in limited partnerships. In Iowa, there is no apparent constitutional prohibition against public involvement in such arrangements.

It may be possible in such a limited partnership to attract rail users, businessmen, private individuals, and Alaska Railroad employees, among others. Thus, it would be advantageous to those with direct rail interests to see the Alaska Railroad succeed as a business venture while offering only limited individual liability. The idea and concept may be worthy of further consideration.

Alaska Railroad Transition

Transition Legislation and Problems

As noted earlier, the Federal Railroad Administration (FRA) has determined that the original intent of the Enabling Act for establishing and operating the Alaska Railroad has been met and federal responsibilities discharged. Thus, for the past several years, several federal administrations and the Department of Transportation have discussed divestiture of the Alaska Railroad by the federal government. However, it has only been since January 1981 that the decision was made to prepare legislation for such a divestiture and implementation steps taken.

The FRA has shown some urgency in getting the transfer legislation introduced and passed. This urgency results from a reduction of employees in the Federal Railroad Administration, as well as desire to cut the capital fund request of the Alaska Railroad. FRA's schedule calls for passing the legislation this fiscal year. The legislation proposes that the State of Alaska meet the transfer conditions within one year of enactment of the legislation. The draft legislation also provides for transferring the Alaska Railroad to other interested parties should the State of Alaska not meet the conditions for transfer within this time period.

The proposed legislation further embodies a number of discretionary "strings" attached to the transfer which would enable the federal government to ensure that the State of Alaska own and operate the Alaska Railroad in a manner commensurate with FRA's preconceived ideas. Failure by the state to conform to the provisions of the Act would be grounds for the FRA to reclaim the railroad within a 10-year period. The rationale for the continuing

federal interest in the Alaska Railroad is predicated upon the offer of a no-cost transfer to the state.

In summary, there are numerous problems associated with the transfer of the Alaska Railroad from federal to state ownership. Federal transfer legislation will likely be passed by Congress before these problems have been resolved. The U.S. Department of Transportation has not determined the land, the structures, the right-of-way, nor equipment to be included in the transfer. Arrangements have not yet been made to provide for an orderly transfer of the employees from federal agency status. There is no organizational framework established within Alaska to accept the ownership, operation, or employees of the railroad. The FRA is anxious to relinquish ownership, operation, employee, and funding responsibilities of the Alaska Railroad. This could potentially result in postponement of major ARR operational decisions. Such postponement could jeopardize the smooth long-range operation of the railroad and perhaps result in lost traffic—an event not in the best interest of Alaska. In addition, the employees are left in a state of "limbo," not knowing for whom they will work, if they will have a job, how the transition will occur from federal employment, or what happens to the benefits received as a federal employee. The employees lack information, and many of their questions cannot be satisfactorily answered at this time.

State legislation will probably be required to accept the transfer of the Alaska Railroad. The state, however, has made no decision on the transfer question or on the organizational structure required to own and/or operate the railroad. The current railroad assets, obligations, and liabilities have not clearly been defined, which leaves the state with inadequate information on the short- and long-term financial and other requirements accompanying the proposed transfer.

The railroad needs to continue operation without disruption, since disruption would detrimentally affect the state's economy and economic development. And this would come when economic activity is quickly increasing.

These are some of the more important transitional problems. Unfortunately, these problems have not yet received the attention needed to determine their full implications. Time and additional efforts are required to provide the Alaska decision-makers with the information necessary to act in the best interest of the state. The complexities and extent of these transitional problems are likely to result in legal actions and court adjudication. A transitional bridge is needed to facilitate the smooth transfer of the Alaska Railroad from the federal government.

An Orderly Transition

Even if we assume that satisfactory federal legislation can be drafted and passed by Congress for the transfer of the Alaska Railroad from federal to state ownership, there will remain a significant period for transition. Along with land, employee, competition, and various obligation problems, the smooth transition to state ownership and operation is a most perplexing problem. How the transition is handled will have either a positive or adverse impact—long term as well as short term—on the railroad and its operations as well as on the State of Alaska.

During this transitional period, certain needs must be met if the railroad is to fulfill its important and special transportation function in Alaska. These include the need to:

- Continue the freight and passenger operation of the Alaska Railroad.
- Preserve as many potential operational and organizational alternatives for the state as possible.
- Provide adequate legal protection for the Alaska Railroad throughout the transitional period.
- Provide interim protection and transitional assistance for the employees of the Alaska Railroad.
- Provide adequate time for adjudicating the legal issues which have been raised by the

transfer question, such as land title, equipment and railroad property, employee rights and benefits; existing or pending court cases, railroad agreements, contracts, and obligations.

- Establish an orderly process and procedure for solving problems which have been identified or which may arise during the transition.
- Provide the time required for the state administration and the legislature to consider the issues, to seek solutions to problems, and to deliberate carefully on the implications of each proposed state legislative bill without being faced with a stringent schedule and a crisis-type atmosphere.

Given the general mood of the Reagan Administration and the Congress to reduce federal expenditures and the federal perception of great Alaskan wealth, it is quite possible that Alaska Railroad transfer legislation will be passed this year. The State of Alaska will probably be faced with the need for a package of legislation which sets the tone and organizational framework for state ownership of the railroad if Congress passes transfer legislation. Under these circumstances, there is a genuine need to provide for an orderly transition from federal to state ownership. Sufficient time must be allowed to work out the myriad transitional problems.

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AN ASSESSMENT OF THE ALASKA RAILROAD

OWNERSHIP AND OPERATIONAL ALTERNATIVES



**ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

**SOUTHEAST REGION, DIVISION OF
PLANNING AND PROGRAMMING**

JULY, 1981

In cooperation with
Federal Railroad Administration

Bivens & Associates, Inc.
ISER, University of Alaska

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FILE No. 2

February 24, 1981

Representative Bette M. Cato
House of Representatives -
Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Ms. Cato:

House Bill Number 12 appears to represent an initial attempt to address the issue of changing the status of the Alaska Railroad from that of a federal agency to a state controlled entity. As such, it is an applaudable effort to recognize the need for change and to take some type of action prior to having that change imposed from outside. However, in its present form the bill does not directly address the issue that is before the state. In particular, the following defects appear to be present:

- o It tries to do too much in a single piece of legislation. It establishes a body which has the authority to acquire, operate, and expand the Alaska Railroad and, through its rate setting power, becomes an economic regulation body;
- o It is premature in that it forecloses on a number of options for dealing with the railroad which may be more attractive for the state in terms of long-term operational considerations;
- o It does not address many of the problems of the railroad transfer which can be dealt with only on a legislative basis.

Each of these points deserves a bit more detailed comment.

In establishing an authority with the rather broad power to acquire, operate, expand, and regulate railroad operations in the state the bill combines within a single entity responsibilities which will probably be in conflict. Acquisition of the present railroad is a function which requires both a good deal of planning and a sensitivity to the long-term economic and political goals which may be held for the railroad. The body which plans and negotiates this transfer should at the same time be designing the organization which will operate the railroad to the best advantage of the state. It cannot do this if its form is already set by legislative mandate. Likewise, an organization which is required to operate the railroad in the manner of a private business (as is implied by the bonding provisions of the bill) will inevitably find itself in conflict with the political policy aspects of both its own operational and regulatory mandates and with the political control implied by the board membership. All of these areas offer serious opportunity for potential conflict both within the rail authority and with external organizations.

In an earlier review of this issue I identified at least fifteen major policy considerations which must be addressed in any change in rail status within the state. These are as follows:

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

. Cato

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The bill in its present form has selected a means for organizing any future rail activity in the state without investigating alternative operational forms which may be much more attractive options. There are at least six major alternative ways in which the Alaska Railroad (and any extensions or other acquisitions) may be organized in the future. None of these is clearly superior to any of the others at this time. They are as follows:

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

Clearly, these options can differ substantially in the range and size of their impacts upon the state. They also would provide considerable variation in the amount of state investment required although none of them would entirely eliminate state involvement. Finally, the organizational form which evolves will determine almost entirely the degree to which rail decision making in the state will be political rather than commercial. The important point is that it is not yet necessary or in the state's best interest to foreclose on any of these options.

February 24, 1981

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

Many of these are not addressed in the present bill and given the lack of information on most of the areas, it would be impossible to do so at this time.

In addition to the areas mentioned above it is important to remember that any future rail activity in the state will be largely shaped by the federal legislation which transfers control of the Alaska Railroad to the state. Given this reality, I would suggest that the most important direction that could be taken at this point in time would be to establish an organization which can negotiate transference of the railroad, can participate in the shaping of the federal legislation, can investigate the state's options in this matter, and can assist the legislature in preparing suitable legislation to address the organizational form of future state participation as well as other institutional and policy matters. I would suggest that this organization be set apart from present state agencies due to the fact that its concerns would necessarily span many of their individual interests. For example: the Departments of Transportation, Commerce and Economic Development, Natural Resources, Community and Regional Affairs, Attorney General and Labor all have concerns within their jurisdictions which would also be involved in rail transfer questions. An independent group would be better able to coordinate these concerns while still utilizing existing programs. The most important of these existing programs is the rail planning work presently being done within the Department of Transportation.

Most importantly, by taking this approach, the state would preserve all of its options. While it is clearly time to take action on this matter, it is not yet appropriate to commit the state to a particular and final course of action. House Bill 12 makes this commitment at a time when there is insufficient information to determine whether it is in the correct direction and at a time when the federal consideration is unclear. In view of this I would urge the members of the legislature to adopt a course of action which permits the state to play a major role in shaping future rail matters while postponing the details of rail operation, expansion, and regulation until an appropriate time and until the necessary information has been assembled.

S. Cato
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The transfer of the Alaska Railroad to state control represents a major change in the transport system and its institutions. Undoubtedly the most important change since statehood placed the highway and airport system within state jurisdiction. It is important that this change proceed in an orderly manner with clear understanding of the opportunities and liabilities of various courses of action. I hope these comments have helped to further this understanding.

Sincerely,

John T. Gray
Assistant Professor of
Transportation

and expand the Alaska Railroad and, through its rate setting power, becomes an economic regulation body;

- o It is premature in that it forecloses on a number of options for dealing with the railroad which may be more attractive for the state in terms of long-term operational considerations;
- o It does not address many of the problems of the railroad transfer which can be dealt with only on a legislative basis.

Each of these points deserves a bit more detailed comment.

In establishing an authority with the rather broad power to acquire, operate, expand, and regulate railroad operations in the state the bill combines within a single entity responsibilities which will probably be in conflict. Acquisition of the present railroad is a function which requires both a good deal of planning and a sensitivity to the long-term economic and political goals which may be held for the railroad. The body which plans and negotiates this transfer should at the same time be designing the organization which will operate the railroad to the best advantage of the state. It cannot do this if its form is already set by legislative mandate. Likewise, an organization which is required to operate the railroad in the manner of a private business (as is implied by the bonding provisions of the bill) will inevitably find itself in conflict with the political policy aspects of both its own operational and regulatory mandates and with the political control implied by the board membership. All of these areas offer serious opportunity for potential conflict both within the rail authority and with external organizations.

**
SECTION-BY-SECTION EXPLANATION TO ** DRAFT

ARTICLE 1. FINDINGS

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

ARTICLE 2. CREATION AND ORGANIZATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3. ADMINISTRATIVE PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. POWERS AND DUTIES

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

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

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

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

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

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

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

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

ARTICLE 5. RAIL PROPERTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. FINANCIAL PROVISIONS

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

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

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

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

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

Sec. 42.40.625. NEGOTIABLE INSTRUMENTS. Self-explanatory.

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

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

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

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

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

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

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

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

Sec. 42.40.665. FIDELITY BOND. Self-explanatory.

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

ARTICLE 7. STATE OVERSIGHT

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

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

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

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

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

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

ARTICLE 8. PERSONNEL AND GENERAL PROVISIONS

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

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

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

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

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

Sec. 42.40.830. UNAUTHORIZED REPRESENTATION. Self-explanatory.