

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

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

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

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

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

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

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

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

Sec. 42.40.900. DEFINITIONS.

(1) through (6) Self-explanatory.

(7) "Immediate family" is defined for purposes of Sec. 42.40.300 CONFLICTS OF INTEREST.

(8) Self-explanatory.

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

(10) Self-explanatory.

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

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

Sec. 42.40.910. SEVERABILITY. Self-explanatory.

Sec. 42.40.920. CONSTRUCTION. Self-explanatory.

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

ARTICLE 10. APPLICATION OF OTHER LAWS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA
THE LEGISLATURE

POUGH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1981

SUBJECT: Sectional analysis of Alaska Railroad
Authority Bill (Work Order Number 12-0866)

TO: Senator M. E. Dankworth

FROM: Randolph G. Berry *RGB*
Legislative Counsel

In accordance with your request, the following is a section-by-section analysis of your bill establishing the Alaska Railroad Authority (Work Order No. 12-0093).

Sec. 1 of the bill:

Sec. 42.40.010 establishes the Alaska Railroad Authority as a public corporation within the Department of Transportation and Public Facilities.

Sec. 42.40.020 provides that the authority shall be governed by a board of directors.

Sec. 42.40.030 sets out the membership of the board of directors, the method of appointment, and qualifications of the members.

Sec. 42.40.040 provides for a four year term of office for directors and provisions for filling of vacancies.

Sec. 42.40.050 sets out procedures to be followed in the event of a conflict of interest by a member of the board of directors.

Sec. 42.40.050 provides for per diem and travel expenses for the directors.

Sec. 42.40.070 establishes the quorum for the board of directors.

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Sec. 42.40.080 provides that board meetings are public meetings.

Sec. 42.40.090 requires board to keep minutes of its meetings.

Sec. 42.40.100 allows the board to employ a president to manage the authority and sets out certain qualifications for the president.

Sec. 42.40.110 sets out the general powers of the authority, including operating authority and financial powers.

Sec. 42.40.120 provides that the authority shall provide for the operation of the Alaska Railroad, either operating the railroad itself or otherwise, and allows the authority to expand the operations of the railroad.

Sec. 42.40.130 provides that the board shall adopt and issue regulations pertaining to its operations and the operations of the railroad.

Sec. 42.40.140 requires the board to prepare and distribute an annual report.

Sec. 42.40.150 requires an annual audit of the authority by the legislative auditor or by an independent auditor acceptable to the legislative auditor.

Sec. 42.40.160 allows the authority to issue and sell bonds and notes to provide money for corporation purposes, including the operation, maintenance and expansion of the railroad; provides that these bonds and notes are payable from funds and assets of the corporation; allows the authority to determine the number, denomination and other matters relating to the issuance of bonds and notes; allows the authority to make pledges and guarantees with respect to the security for the bonds and notes; the payment of interest and principal, the redemption of the bonds, and the establishment of special funds for payment or redemption of the bonds or notes; and allows the

authority to make pledges with regard to the appointment and powers of a trustee or trustees to protect the interests of the holders of the bonds and notes issued by the authority.

Sec. 42.40.170 requires the authority to retain the services of an independent financial advisor when negotiating for the private sale of bonds or notes.

Sec. 42.40.180 provides that pledges of assets or revenue made by the authority as security for the payment of principal or interest on bonds or notes are binding on the authority.

Sec. 42.40.190 grants the holders of authority bonds or notes, or trustees appointed to protect the holder's interests, to enforce the rights granted under this chapter and pledges made under the trust agreement or resolution of the board.

Sec. 42.40.200 provides that bonds and notes of the corporation are negotiable instruments.

Sec. 42.40.210 provides that bonds and notes of the authority are securities which are eligible for investment of state funds and qualify for investment of reserves and other funds by insurance companies, bank and other companies maintaining reserve accounts.

Sec. 42.40.220 allows the authority to issue refunding bonds to replace previously issued and outstanding bonds and notes of the authority.

Sec. 42.40.230 provides that the authority is not allowed to pledge the taxing power of the state or assets of the state other than the assets of the authority.

Sec. 42.40.240 protects the officers and employees of the authority from personal liability for the issuance of bonds or notes by the corporation.

Sec. 42.40.250 grants tax exempt status to the authority and to bonds and notes issued by the authority.

Sec. 42.40.270 allows the board of directors to dissolve the authority after provision for repayment of all its bonds and notes, but requires legislative approval of the dissolution.

Sec. 42.40.280 provides that personnel of the authority are in the exempt state service.

Sec. 42.40.990 defines various terms used in the previous sections.

Sec. 2 establishes the terms for initial members of the board of directors appointed under sec. 42.40.030.

Sec. 3 provides for the board of directors of the Alaska Railroad Authority to enter into negotiations with representatives of the federal government for the transfer of the Alaska Railroad to the authority.

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SECTION-BY-SECTION EXPLANATION TO CS FOR SENATE BILL 212

Sec. 1. LEGISLATIVE FINDINGS, POLICY AND DECLARATION. 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.

Sec. 2. Amends AS 42 to add a new chapter as follows:

ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY. The Alaska Railroad Authority is established in this section. To comply with the state Constitution, the authority is established as an instrumentality of the state within the Department of Transportation and Public Facilities but it clearly has a legal existence independent of and separate from the state.

Sec. 42.40.020. 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. 42.40.030. BOARD OF COMMISSIONERS. Subsection (a) provides that the board consists of seven voting members, 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 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 for confirmation of board members by the legislature but also provides that appointed members have full powers and responsibilities until rejected.

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

Sec. 42.40.040. TERM OF OFFICE; VACANCIES. Other than initial board members who serve staggered terms as provided in Section 7 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. 42.40.050. 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. 42.40.060. 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. 42.40.070. VOTING. This section provides that the board rules will prescribe the manner of voting and any representation of absent members.

Sec. 42.40.080. MANAGEMENT OF AUTHORITY. 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.

Subsection (b) provides that the board may provide for the management and operation of the railroad by a third party contractor, subject to state review under Sec. 42.40.600(g).

Sec. 42.40.090. 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 2. ADMINISTRATIVE PROVISIONS

Sec. 42.40.200. 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 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 or participation in violation of Sec. 42.40.200 was necessary to the decision. Otherwise, the board may ratify action taken after a separate vote without participation by the interested person. An intentional violation of Sec. 42.40.200 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 authority executive officials 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. 42.40.210. 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 personnel, the authority's legal position, land acquisition or disposal or proprietary information.

Sec. 42.40.220. 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. 42.40.230. 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, as modified in Sec. 42.40.210, applies to the authority's meetings. The authority is required to make its rules and regulations available to the public. The legislature may 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. 42.40.240. 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 3. POWERS AND DUTIES

Sec. 42.40.300. 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. 42.40.310. 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. 42.40.320. 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 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. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS. 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 under this section 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. The section also 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. 42.40.600(b) for projects subject to state review.

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

Subsection (f) and Section 10 provide that, three years after the preparation of the first program plan, the governor and legislative auditor may conduct performance and efficiency audits of the authority's compliance with its plan.

Sec. 42.40.330. 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 4. RAIL PROPERTIES

Sec. 42.40.400. RAIL PROPERTIES. Sec. 42.40.400 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, coal 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. 42.40.410. CLASSIFICATION, ACQUISITION AND USE OF STATE LAND FOR RAILROAD PURPOSES. Sec. 42.40.410 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 either to 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, other construction materials and coal useful for railroad purposes, unless the Commissioner reserves them to the state.

Subsection (d) 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 (e) elaborates on the nature of the authority's interest in surface estate conveyed to it by the state.

Subsection (f) 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.

Subsection (g) permits the authority to use coal on its lands for operational purposes (e.g., generation of electrical power) if the Department of Natural Resources first finds the coal is located on authority land and is not owned by another party. Use of coal for operational purposes includes payment in kind of a contractor engaged to extract the coal.

Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LAND. 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 unless undertaken by the state itself. 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. 42.40.420. LAND USE REGULATION. This section authorizes the authority to promote the common health, safety, and welfare of the public by adopting exclusive regulations governing land use by private parties having interests, such as leases or permits, in lands owned or managed by the authority.

Sec. 42.40.430. 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 insure control of activities on the surface estate, the authority must reconvey the subsurface to the state.

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

Subsection (d) 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 (e) to vacate land, or any part of it, and reconvey title to the state, if compensation was paid for it.

ARTICLE 5. FINANCIAL PROVISIONS

Sec. 42.40.500. 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. 42.40.510. 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. 42.40.515. 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. 42.40.520. 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. 42.40.525. NEGOTIABLE INSTRUMENTS. Self-explanatory.

Sec. 42.40.530. 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. 42.40.535. 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. 42.40.540. 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. 42.40.545. NO PERSONAL LIABILITY. Self-explanatory.

Sec. 42.40.550. 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. 42.40.555. INSURANCE. In addition to requiring the authority to maintain adequate insurance, this section requires that the state be named as an additional insured.

Sec. 42.40.560. SAFEGUARDING OF MONEY. Self-explanatory.

Sec. 42.40.565. FIDELITY BOND. Self-explanatory.

Sec. 42.40.570. REVERSION OF ASSETS. Self-explanatory.

ARTICLE 6. STATE OVERSIGHT

Sec. 42.40.600. 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 (g), 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 or provision for the management and operation of the railroad by a third party contractor.

Subsection (h) provides that this section is satisfied if the authority has been directed to proceed with a project through the Sec. 42.40.610 action forcing mechanism or in the event the legislature has funded a project independently.

Sec. 42.40.610. 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. 42.40.615. INTERVENTION. This section provides that the governor, when so authorized by the legislature, must 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. 42.40.620. 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 7. MISCELLANEOUS PROVISIONS

Sec. 42.40.700. 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) precludes organization of the authority's executive officials.

Sec. 42.40.710. 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. 42.40.720. 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. 42.40.730. UNAUTHORIZED REPRESENTATION. Self-explanatory.

Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY. Subsection (a) requires that all legal claims involving the authority be brought against the authority and not against the State of Alaska. This requirement reaffirms that the debts of the authority are not the debts of the state.

Subsection (b) extends certain rights, privileges and immunities of the state and state officers to the authority and its board members and employees. Among these are requirements relating to statutes of limitations, immunity from suit, and exemptions from giving bond.

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

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

Sec. 42.40.755. EXEMPTION FROM TAXATION. This section exempts the authority from state and political subdivision taxation. Subsection (c) provides that authority property is considered taxable for the limited purposes of computing state aid to local school districts.

Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID. This section authorizes the authority to provide, in its discretion and under certain circumstances, partial payments in lieu of local real property taxation by communities in which the authority has substantial land holdings. The authority also is allowed to provide discretionary impact aid to localities for public education and other facilities required to be developed as a result of expanded authority activities in such areas.

ARTICLE 8. GENERAL PROVISIONS

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE. This section provides for an authority security force to enforce state laws and authority regulations with respect to violations of the laws or regulations that occur on or to authority property. Security force members have the same enforcement powers granted by law to state law enforcement officers.

Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION. This section makes a violation 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. The authority is expected to be able to deal with the problem of violations by employees incidental to and within the scope of their employment in regulations implementing this section.

Sec. 42.40.890. CONSTRUCTION. Self-explanatory.

Sec. 42.40.900. DEFINITIONS.

(1) through (6) Self-explanatory.

(7) "Immediate family" is defined for purposes of Sec. 42.40.200 CONFLICTS OF INTEREST.

(8) Self-explanatory.

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

(10) Self-explanatory.

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

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

Sec. 3. Amendment to A.S. 09.55.310(a)(4)

Sec. 4. Amendment to A.S. 09.55.350

Sections 3 and 4 amend A.S. 09.55.310(a)(4) and A.S. 09.55.350 respectively to exempt the authority from any requirement that it pay for or erect fences and cattleguards along right-of-way it condemns.

Sec. 5. Amendment to A.S. 39.50.200(b)

Section 5 amends A.S. 39.50.200(b) to add the authority to the list of state commissions and boards whose officials are subject to the conflict of interest and reporting requirements of A.S. 39.50.

Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY. This section provides that the authority's legal existence commences when the governor appoints all of its initial members.

Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD OF COMMISSIONERS. This section provides for the appointment of the initial members of the board. The governor may exercise his power of appointment only upon acceptance by the legislature of the closing report prepared under the federal transfer legislation. The section also directs the governor to designate the terms of the initial public members and staggers the terms to ensure long-term continuity on the board.

Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION. The closing report prepared under the transfer legislation is to include a specific accounting of the assets and

liabilities being transferred. This section also provides that the legislature may not condition its acceptance of the report on its modification but may only accept or reject it.

Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT. 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.

Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS. This section requires the authority to prepare and the board to adopt initial long-range program and capital improvement plans within 18 months of the date of transfer.

Sec. 11. 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. 12. COLLECTIVE BARGAINING AGREEMENTS BETWEEN ALASKA RAILROAD AUTHORITY AND EMPLOYEES. This section requires the authority, as soon as practicable after transfer of the railroad, to adopt collective bargaining agreements with its employees that continue the provisions of the agreements in effect immediately prior to the date of transfer. The agreements are to remain in effect until they expire by their terms or as required under the transfer legislation, they are renegotiated, subject to board approval.

Sec. 13. CONFLICTING LAWS INAPPLICABLE. Self-explanatory.

Sec. 14. APPLICATION OF EXISTING STATUTES.

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

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

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

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

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

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

A.S. 37.05 -- the Fiscal Procedures Act establishes uniform accounting, purchasing, post auditing, and related financial provisions for all "state agencies" and

requires state agencies to submit reports, documents, and statements to the Department of Administration for accounting purposes, requires federal funds received by state agencies to be deposited in the state treasury, makes the Department of Administration responsible for all accounts and purchases of state agencies, requires competitive bidding procedures, and imposes other financial and reporting requirements;

A.S. 37.07 -- Executive Budget Act;

A.S. 37.10.010 - .060 -- these sections make the Department of Administration the custodian of state funds and require all officers, boards, commissions, etc., to account to the Department of Revenue for all moneys received;

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

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

A.S. 37.25 -- determines which unexpended appropriations lapse and which do not.

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

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

Sec. 15. EFFECTIVE DATE. This section provides that the chapter becomes effective upon acceptance by the legislature of the closing report submitted under the federal transfer legislation or upon approval by the legislature of operation of the federal Alaska Railroad by the authority.

ALASKA STATE SENATE BILL NO. 212 - RAILROAD AUTHORITY

1) Article 1, Page 2. Findings.

Sec. 42.40.100 - Legislative Findings and Policy.

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

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

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

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

Sub-paragraph (2)

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

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

3) Paragraph (c), Page 3.

Sub-paragraph (2)

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

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

4) Paragraph (c), Page 3.

Sub-paragraph (2)

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

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

H.L. Schuyler

Sea-Land Service, Inc.

5) Article 2, Pages 4 and 5.

Sec. 42.40.215. Appointment and Composition of Council.

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

6) Sec. 42.40.250, Page 7.

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

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

7) Article 2, Page 9.

Sec. 42.40.250. Executive Officials and Limited Delegation.

Paragraph (c). The general manager of the Authority manages the daily affairs and operations of the Authority.

Sub-paragraph (8) establishment of rates.

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

8) Sec. 42.40.310, Pages 11 and 12.

Paragraph (6). Public Council Meetings.

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

9) Article 3, Page 14.

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

Change: Delete second sentence.

10) Article 4, Page 15.

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

Change: Delete this paragraph.

11) Article 4, Page 16.

Sec. 42.40.400
Sub-paragraph (16)

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

12) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (24)

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

13) Article 4, Page 17.

Sec. 42.40.400
Sub-paragraph (26)

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

14) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (27).

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

15) Article 4, Page 18.

Sec. 42.40.400
Sub-paragraph (28).

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

16) Article 5, Page 27.

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

Change: Delete entirely.

17) Article 6, Page 28.

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

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

18) Article 7, Page 26.

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

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

19) Article 8, Pages 43 and 44.

Sec. 42.40.855. Exemption from Taxation.

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1981

SUBJECT: Sectional analysis of Alaska Railroad
Authority Bill (Work Order Number 12-0866)

TO: Senator M. E. Dankworth

FROM: Randolph G. Berry *RGB*
Legislative Counsel

In accordance with your request, the following is a section-by-section analysis of your bill establishing the Alaska Railroad Authority (Work Order No. 12-0093).

Sec. 1 of the bill:

Sec. 42.40.010 establishes the Alaska Railroad Authority as a public corporation within the Department of Transportation and Public Facilities.

Sec. 42.40.020 provides that the authority shall be governed by a board of directors.

Sec. 42.40.030 sets out the membership of the board of directors, the method of appointment, and qualifications of the members.

Sec. 42.40.040 provides for a four year term of office for directors and provisions for filling of vacancies.

Sec. 42.40.050 sets out procedures to be followed in the event of a conflict of interest by a member of the board of directors.

Sec. 42.40.050 provides for per diem and travel expenses for the directors.

Sec. 42.40.070 establishes the quorum for the board of directors.

FEB 26 1981

Sec. 42.40.080 provides that board meetings are public meetings.

Sec. 42.40.090 requires board to keep minutes of its meetings.

Sec. 42.40.100 allows the board to employ a president to manage the authority and sets out certain qualifications for the president.

Sec. 42.40.110 sets out the general powers of the authority, including operating authority and financial powers.

Sec. 42.40.120 provides that the authority shall provide for the operation of the Alaska Railroad, either operating the railroad itself or otherwise, and allows the authority to expand the operations of the railroad.

Sec. 42.40.130 provides that the board shall adopt and issue regulations pertaining to its operations and the operations of the railroad.

Sec. 42.40.140 requires the board to prepare and distribute an annual report.

Sec. 42.40.150 requires an annual audit of the authority by the legislative auditor or by an independent auditor acceptable to the legislative auditor.

Sec. 42.40.160 allows the authority to issue and sell bonds and notes to provide money for corporation purposes, including the operation, maintenance and expansion of the railroad; provides that these bonds and notes are payable from funds and assets of the corporation; allows the authority to determine the number, denomination and other matters relating to the issuance of bonds and notes; allows the authority to make pledges and guarantees with respect to the security for the bonds and notes; the payment of interest and principal, the redemption of the bonds, and the establishment of special funds for payment or redemption of the bonds or notes; and allows the

authority to make pledges with regard to the appointment and powers of a trustee or trustees to protect the interests of the holders of the bonds and notes issued by the authority.

Sec. 42.40.170 requires the authority to retain the services of an independent financial advisor when negotiating for the private sale of bonds or notes.

Sec. 42.40.180 provides that pledges of assets or revenue made by the authority as security for the payment of principal or interest on bonds or notes are binding on the authority.

Sec. 42.40.190 grants the holders of authority bonds or notes, or trustees appointed to protect the holder's interests, to enforce the rights granted under this chapter and pledges made under the trust agreement or resolution of the board.

Sec. 42.40.200 provides that bonds and notes of the corporation are negotiable instruments.

Sec. 42.40.210 provides that bonds and notes of the authority are securities which are eligible for investment of state funds and qualify for investment of reserves and other funds by insurance companies, banks and other companies maintaining reserve accounts.

Sec. 42.40.220 allows the authority to issue refunding bonds to replace previously issued and outstanding bonds and notes of the authority.

Sec. 42.40.230 provides that the authority is not allowed to pledge the taxing power of the state or assets of the state other than the assets of the authority.

Sec. 42.40.240 protects the officers and employees of the authority from personal liability for the issuance of bonds or notes by the corporation.

Sec. 42.40.250 grants tax exempt status to the authority and to bonds and notes issued by the authority.

Sec. 42.40.270 allows the board of directors to dissolve the authority after provision for repayment of all its bonds and notes, but requires legislative approval of the dissolution.

Sec. 42.40.280 provides that personnel of the authority are in the exempt state service.

Sec. 42.40.990 defines various terms used in the previous sections.

Sec. 2 establishes the terms for initial members of the board of directors appointed under sec. 42.40.030.

Sec. 3 provides for the board of directors of the Alaska Railroad Authority to enter into negotiations with representatives of the federal government for the transfer of the Alaska Railroad to the authority.

RGB:ljb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1981

SUBJECT: Alaska Railroad Authority
(Work Order No. 12-1364)

TO: Senator Bill Ray

FROM: Thomas A. Sofo *TAS*
Legislative Counsel

You have requested that this office undertake a section-by-section analysis of SB 212 and SB 221 with notations of any differences which exist between the two bills. Both bills create an Alaska Railroad Authority. SB 212 and SB 221 share more parallel provisions than they do differences. In the interest of economy of time and effort, I have attempted to summarize the main differences which exist between the two bills since this seems to be most salient feature of your request. I do not believe that one will encounter much difficulty in understanding what a given section of either bill says, but I am aware that there is some need to be able to compare differences between the two bills. I have undertaken that comparison in narrative form below. You may find that future reference would be facilitated if the format of this memo is changed into some sort of graphic presentation.

Both bills create the Alaska Railroad Authority as a public corporation of the state. However, the composition of the governing board varies. Under SB 212, the board consists of at least one banker, one attorney, one economist, one transportation person, and one business person [sec. 42.40.030]. Under SB 221, the board consists of the commissioner of transportation and public facilities, two senators, two representatives and two members of the general public [sec. 44.87.015]. Only SB 212 specifically sets out a conflict of interest section [sec. 42.40.050]. SB 221 calls for the employment of an executive director to manage the authority [sec. 44.87.025], while SB 212 gives this job to

the president [sec. 42.40.100]. The general powers of the authority under both bills are practically identical. One of the purposes of the authority under SB 221 is to enter into talks with the federal government and Canadian provinces regarding an international rail connection [sec. 44.-87.030]. Nowhere is this expressly mentioned in SB 212 although this purpose could be implied easily under sec. 42.40.120. Only SB 212 expressly calls for an annual report [sec. 42.40.120], and audit [sec. 42.40.150].

The financial provisions of both bills are similar. SB 212 differs as it provides for bond anticipation notes [sec. 42.-40.160(b)]. SB 221 provides for a maximum forty year maturity for authority bonds [sec. 44.87.040(b)], while SB 212 calls for a fifty-year maximum [sec. 42.40.150(c)]. SB 212 goes into much more detail when describing the resolution which authorizes the issuance of bonds [sec. 42.40.160(f)], than does SB 221 [sec. 44.87.040(b)]. Only SB 212 calls for an independent financial advisor [sec. 42.40.170]. SB 221 specifically refers to trust indentures and trust agreements and provides that an issue of bonds may be secured by such instruments while SB 212 is silent on this point [sec. 44.-87.045]. SB 212, unlike SB 221, provides for the issuance of refunding bonds [sec. 42.40.220]. Only SB 212 provides for the dissolution of the authority [sec. 42.40.270], and for the exemption of authority personnel from the State Personnel Act [sec. 42.40.280]. The last substantive difference in the financial provisions of these two bills is that only SB 221 expressly states that income from investments of the authority is limited to maintenance or improvement of railroad facilities [sec. 44.87.075].

Call me at your convenience if you have any problems with understanding the content of a specific section beyond the differences identified by this comparison.

TAS:ljb



TOTEM OCEAN TRAILER EXPRESS, INC.

619 WAREHOUSE AVENUE, SUITE 242 / ANCHORAGE, ALASKA 99501

PHONE: (907) 276-5868

Proposed Amendments to S.B. 212

2/5/82

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Anchorage, Alaska
May 11, 1982

*Mulcahy, Thors
Outcliffe
Zieroff*

Alaska State Legislature
Juneau, Alaska

Gentlemen:

Legislation effecting transfer of The Alaska Railroad into State ownership presents major challenges, largely because of the conflict inherent in trying to operate a publicly-held corporation as a profit-making business.

We have been long-term supporters of transfer of ownership, having spent the last year and a half analyzing legislation regarding the transfer introduced in both the Congress and the State Legislature. We feel the last version of SB212 drafted May 4, 1982, presently before you, fails in several important regards to provide an adequate framework for State ownership and operation of the Railroad.

We believe there are areas of direct conflict between SB212 and the current version of S1500, now before Congress.

We believe the present version of SB212 provides for an inherently inefficient operation.

We believe the State should not, at the moment, go any further than establishing an independent Alaska Railroad authority, leaving details of its operation to be defined after the Federal bill becomes law.

42.40.400, entitled "Rail Properties", provides for conveyance by the authority to the State of the subsurface estate and mineral rights on Railroad lands, yet S1500 mandates reversion of Railroad lands back to Federal ownership if such lands are not used solely for Railroad purposes. Not only will the ownership be difficult or impossible to recombine, it seems to us the authority should be free to use its enterprise assets to maximize its income.

42.40.700, titled "Personnel"; drafts of S1500 have all contained the mandate that employees may join the State personnel system. This provision prohibits it. This conflict can be avoided by having no provision in the State law until the Federal legislation is adopted.

42.40.740, "Claims Against the Authority", says, in essence, that claims must be brought against the authority, not the State. The language in S1500 provides specifically that the word "State" includes an entity designated by the State to own, operate, or manage The Alaska Railroad.

Concerning those provisions of SB212 which will make the operation of the Railroad inherently inefficient:

42.40.010: We believe the interests of the people of Alaska are best served by preserving the maximum possible amount of independence under which the Railroad now operates. The authority should not be established within an existing department, but should be a separate division of government under Article III, Section 22 of the Alaska Constitution; or should be established by constitutional amendment; or as a Title 10 corporation under Alaska Statutes.

Any of these methods assures the authority of more independence from existing government, assures the Railroad of a place in State government to match its potential impact, and eliminates another layer of administrative procedure.

The rule making and public hearing procedures in 42.40.230, 42.40.330, and 42.40.420 provide for six separate sets of rules to be promulgated by the Railroad to operate under this law. Each of these sets individually reduces the operating efficiency of the Railroad. Collectively, they represent an onerous burden.

Business must be able to move quickly to capture profit opportunities. The Railroad is in competition with other carriers. It cannot be "telegraphing its punches", but must have the speed inherent in an independent board and management, not burdened by a complex and lengthy hearing process.

In addition, every utterance of the Railroad can be classified as a regulation by the reference in 42.40.500, Paragraph (11) to AS 44.62.640. The Railroad now has 143 volumes of orders, with 469 supplements.

The Railroad would limit its own ability to attract operating and management talent under 42.40.080, Paragraph (5), which limits salaries of employed executive officials. We believe prudent business practice should dictate compensation levels.

In closing, let me restate that we feel SB212 is overlong, and that the State should, for the moment, not try to fully implement as-yet-unadopted Federal legislation, but should merely create the authority. Full definition can then be made in light of Federal law.

Sincerely,

Anchorage Chamber of Commerce

(Anchorage Legislative Information Office 3/11/82;
Sent per request of Jan Falks, Legislative Chairman,
Anchorage Chamber of Commerce)

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

SECTION-by-SECTION ANALYSIS of RAILROAD BILL

By BETTSWORTH

SECTION 1

FINDINGS: The individual findings are self-explanatory. Findings are necessary to establish the legislature's expectations with respect to the authority.

SECTION 2

ARTICLE I, CREATION & ORGANIZATION

Section 42.40.010

Establishment of the Authority -- The Alaska Railroad Authority is established in this section. Its existence begins after the appointment of the Board which will take place after the legislature approve the closing report (or its equivalent) presumably next session.

Section 42.40.020

LIMITATION OF LIABILITY--The authority's liabilities are exclusively its own and not the state's.

Section 42.40.030

BOARD OF COMMISSIONERS--The powers of the Authority are in the Board.

APPOINTMENT AND COMPOSITION OF THE BOARD--This section provided that the board consists of the Commissioner of Transportation and Public Facilities and six "public" members, who may not be state officers or employees. Additionally, the authority's chief executive officer and a union representative are non-voting members. All public members must be confirmed by the legislature.

Section 42.40.040

TERMS OF OFFICE-- Board members serve 5 year staggered terms.

Section 42.40.050

COMPENSATION AND EXPENSES--Compensation in the amount of \$300/day for public board members plus per diem and travel expenses.

Section 42.40.060

QUORUM AND NOTICE OF MEETINGS--A quorum of four voting members is established in this section. Public notice of meetings is required.

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Section 42.40.070

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

Section 42.40.080 .

MANAGEMENT OF THE AUTHORITY--This section provided for appointment of authority officials and personnel. The board appoints a chief executive officer and legal counsel. Appointment of legal counsel is subject to approval of the Governor for competence. No executive official may receive more compensation than the state departmental commissioners. This section also allows the board to provide management by a 3rd party contractor.

Section 42.40.090

DELEGATION-- This section provides that the daily affairs and operations of the railroad are the responsibility of the chief executive officer.

ARTICLE II, ADMINISTRATIVE PROVISIONS:

Section 42.40.200

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. This section also allows the board to provide management by a third party contractor. Board members and executive employees are required to submit a financial disclosure statement and to comply with existing conflict of interest laws.

Section 42.40.210

PUBLIC BOARD MEETINGS--This section requires that the board meetings be public and that the executive sessions be used only when permitted by the state open meetings statute or when discussing proprietary information.

Section 42.40.230

ADMINISTRATIVE PROCEDURE-- This section provides that the state's Administrative Procedures Act does not apply to the Authority. The legislature may annul or temporarily suspend an authority regulation.

This section also 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.

Section 42.40.240

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 non-public or privileged nature.

ARTICLE III, POWERS & DUTIES:

Section 42.40.300

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 non exclusive.

Section 42.40.310

ANNUAL REPORT-- A report generally describing the operation and financial condition of the authority is required to be submitted to the Governor and each member of the legislature.

Section 42.40.320

ANNUAL AUDIT-- The authorities financial records will be audited annually by an independent certified public accountant. The records will be available for audit by the legislature or the Administration.

Section 42.40.325

LONG RANGE PROGRAM AND CAPITAL PLANNING--This section obligates the authority to prepare long-range program and capital plans.

Section 42.40.330

USE OF AUTHORITY ASSETS--This section requires use of authority asset for activities authorized by this chapter. It also precludes the issuance of stock and loans to board members or employees.

ARTICLE IV, RAIL PROPERTIES:

Section 42.40.400

RAIL PROPERTIES-- This section provides that the authority will own the properties of the Alaska Railroad. The subsurface rights will be conveyed to the State and managed by DNR. The authority may reserve the right to use sand, gravel and other construction materials.

Section 42.40.410

CLASSIFICATION, ACQUISITION AND USE OF STATE LANDS FOR RAILROAD PURPOSES--This section provides a mechanism allowing the authority to acquire state lands for railroad purposes with the concurrence of the Commissioner of Natural Resources. The procedure is initiated by a resolution of the authority identifying specific lands. Within 180 days the Commissioner is required to either 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. Subsection (c) also allows the authority and the Commissioner to engage in joint management of railroad lands, and periodically review both state and railroad lands to determine their suitability for railroad purposes. This section also allows the railroad to use coal from railroad lands for non-income producing purposes.

Section 42.40.415

DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LANDS-- The Department of Natural Resources may develop resources on authority lands only after a review procedure involving both the Department and the Authority has been completed. The review procedure requires an agreement approved by the authority as to suitable reimbursement for any costs incurred by the authority. Subsection (c) requires DNR to maintain records and annually report to the legislature concerning the income received from the subsurface of railroad lands. 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.

Section 42.40.420

LAND USE REGULATIONS-- This section authorized the authority to adopt regulations governing land use by private parties having interests, such as leases in land owned or managed by the authority.

Section 42.40.430

EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS-- This section confers eminent domain power on the authority. When the authority acquires a fee simple interest the authority must reconvey

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the subsurface to the state. Subsection (e) clarifies that the authority may exercise eminent domain to obtain materials as well as land and access necessary to develop them.

ARTICLE V, FINANCIAL PROVISIONS:

Section 42.40.500

BONDS AND NOTES--This section authorizes the authority to issue bonds and bond anticipation notes. It is intended that the board have the maximum flexibility in financing its activities.

Section 42.40.510

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.

Section 42.40.515

VALIDITY OF PLEDGE-- This procedural section facilitates the pledge of assets or revenues to the payment of the authority debt.

Section 42.40.520

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.

Section 42.40.525

NEGOTIABLE INSTRUMENTS-- Bonds and notes issued are negotiable instruments.

Section 42.40.530

BONDS AND NOTES ELIGIBLE FOR INVESTMENT-- This section authorizes public and private entities and individuals, including the state, and its other political subdivisions, to invest in authority securities.

Section 42.40.535

REFUNDING BONDS-- The issuance of refunding bonds to refund outstanding bonds is authorized by this section.

Section 42.40.540

CREDIT OF STATE NOT PLEDGED-- 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.

Section 42.40.545

NO PERSONAL LIABILITY-- No board member or employee is personally liable for bonds.

Section 42.40.550

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

Section 42.40.555

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

Section 42.40.560

SAFEGUARDING OF FUNDS--The authority will deposit all funds in acceptable depository and maximize revenue from the funds.

Section 42.40.565

FIDELITY BONDS-- The authority will obtain fidelity bonds for board members and officials.

Section 42.40.570

REVERSION OF ASSETS-- If the authority ceases to exist its assets revert to the state.

ARTICLE VI, STATE OVERSIGHT:

Section 42.40.600

STATE REVIEW-- Prior to undertaking a significant and permanent change in services or borrowing in excess of \$5 million the Board must notify the Governor and legislature and give public notice. The governor may either disapprove the proposal, suspend it or approve it. Approval or disapproval are final. If the Governor suspends the proposal, he transmits his decision 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. Extensions 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 require specific authorization by the legislature. This section also requires state review of any proposal to contract management of the railroad to a third party.

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Section 42.40.610

ACTION-FORCING MECHANISM-- This section requires the authority to respond formally to a request for consideration of a proposal by either the Governor or legislature within 30 days. The legislature may then direct the authority to proceed, if the legislature also provide funds to plan and implement the proposal.

Section 42.40.615

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. For example, by request of the board or illegal activities of the authority. The intervention mechanism permits the Governor to correct the deficiencies and is to cease as soon as the necessary corrections have been made.

Section 42.40.620

TRUSTEESHIP-- This section provides that the legislature may also authorize the Governor to petition the State Superior Court in Anchorage to impose a trusteeship over the authority under specific circumstances, including insolvency, misapplication of resources or impairment of the state's credit worthiness.

ARTICLE VII, MISCELLANEOUS PROVISIONS

Section 42.40.700

PERSONNEL-- This section provides that the employees of the authority are not employees of the state. It also directs the authority to adopt collective bargaining agreements which continue the provisions of the agreements in effect immediately prior to transfer.

Section 42.40.710

POLITICAL ACTIVITIES-- This section precludes use of authority funds in political activities.

Section 42.40.720

LICENSES AND PERMITS-- The authority will comply with local, state and federal licensing and permitting requirements.

Section 42.40.740

CLAIMS AGAINST THE AUTHORITY-- All legal claims involving the authority must be brought against the authority and not against the State of Alaska. The State may not be named in an action against the authority and the Dept. of Law is not required to bring or defend actions

concerning the authority. .

Section 42.40.755

EXEMPTION FROM TAXATION-- This section exempts the authority from state and political subdivision taxation. It does provide that authority property is considered taxable for the limited purpose of computing state aid to local school districts.

Section 42.40.770

PAYMENT IN LIEU OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID-- This section authorized the authority to provide partial payments in lieu of property taxes to communities in which the authority has substantial land holdings.

ARTICLE VIII, GENERAL PROVISIONS

Section 42.40.870

ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE-- The authority security force have the same enforcement powers as state law enforcement officers for both state law and regulation on authority property.

Section 42.40.880

PENALTY FOR VIOLATION OF DESIGNATED REGUALTION-- This section makes a violation of any of the authority's regualtions designated as necessary to protect life, health, or property a misdemeanor..

ARTICLE IX,

Section 42.40.900

DEFINITIONS-- This provided definitions of terms used in the bill.

SECTION 3 and SECTION 4 exempt authority from requirements to pay for or erect fences and cattleguards along right-of-way it condemns.

SECTION 5: amends full crew law with respect to yard crews only, and represents original CS for SB 849 *.

SECTION 6: adds the authority to the list of State boards and commissions for conflict of interest and reporting requirements.

SECTION 7: deals with commencement of the authority's legal existence, which occurs following appointment of all board members.

SECTION 8: details the length of terms for the first board members.

SECTION 9: addresses the closing report requirements under the federal transfer legislation.

SECTION 10: speaks to the assets and liabilities to be reported during the audits.

SECTION 11: mandates the time requirement of 18 months for the preparation of the first long-range program and capital improvements plan.

SECTION 12: pre-existing rule, regulations and order 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.

SECTION 13: requires the authority to continue in effect the current collective bargaining agreements for a period of two years.

SECTION 14: declares conflicting laws inapplicable.

SECTION 15: deals with the application of existing statutes: The Authority is considered a "political subdivision" for state wage and hour statute. The full crew does not apply to the authority. Authority activities are not subject to A.S. title 35 which deals generally with public works. The authority is exempt from public bidding requirements. The following provisions of A.S. title 37 do not apply to the authority's operation: The Fiscal Procedures Act, Executive Budget Act. The Authority is not subject to the jurisdiction of the Alaska Transportation Commission.

SECTION 16: provides that the chapter becomes effective upon acceptance by the legislature of operation of the federal Alaska Railroad by the authority.

*This amendment to the full crew law deals with the Yukon-White Pass Railroad as the Alaska Railroad Authority is exempt from the law.

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: Fred J. Seeger
Deputy Commissioner
Standards & Statewide Programs
DOT&PF

DATE: September 26, 1983

FILE NO:

TELEPHONE NO: 364-4331

FROM: Jon Scribner *12 9/28/83*
Deputy Commissioner
Southeast Region
DOT&PF

SUBJECT: Governor's Mansion &
Conference Room

Pursuant to our conversation, we are requesting funds in the amount of \$117,000 from Chapter 107, SLA 83, page 80, line 16 for completion of historic renovation and interior decorating of the Governor's Mansion.

We are also requesting an additional \$12,000 from the same source for upgrading the Governor's Conference Room in the Capitol Building.

PDA's reflecting this request are attached for your approval.

Attachments

OB/rc

Project Statewide Project Development Alternatives	Type T	Local Statewide	Agency ID #	Elect Dist 00	Start Date 7/83	Complete Date
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Cash Flow		Operating Impact		First Op. Yr.	Ult. Annual Yr.	Funding Information		Funding Information			
FY		Funding Source	Fed. Rec.			Agency	FY	Gov. FY	FY	FY	
FY 84	15,000.0						1002	Fed. Rec.	25,000.0		
FY 85	10,000.0			Gen. Fund			1004	Gen. Fund	3,000.0		
FY 86	3,000.0			Other				G.O. Bonds			
FY				Total				Total	28,000.0		
FY		Positions (FTE)				Priority:	Prior Year	Agency	Governor		
TOTAL	28,000.0										

Special Features:	One of Several Phases <input type="checkbox"/>	External Funding Source <input type="checkbox"/>	Funds to Enable Completion <input type="checkbox"/>	Contingent Upon Other Projects <input type="checkbox"/>	Site Owned? <input type="checkbox"/>	Utilities Available? <input type="checkbox"/>	Access Available? <input type="checkbox"/>
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Project Description:

This project will provide additional federal authority to receive and expend and state matching funds for the following:

(Boniface Int Glenn Highway, Minnesota Drive phase II, Dimond Blvd, Alaska Highway Yerrick area, Richardson Highway Milepost 138-148, South Fairbanks Expressway Parks to Peger, Lutak Road, Old Glacier Highway, Statewide Safety Improvements, Statewide Bridge Program, Project Contingencies, Emergency Projects, Preliminary Engineering, and additional Federal Authority)

Project Justification:

35a PROPOSED PROJECT
 Statewide Project Development Alternatives
 Project Title

CATEGORY Transportation
 AGENCY DOT&PF
 PROGRAM Statewide All Modes
 PROPOSED FUNDING YEAR 84

Page 1 of 1
 Revised Date 4/4/83

FY 84

September 30, 1983

SENATE TRANSPORTATION COMMITTEE
SECTION BY SECTION ANALYSIS
of
SENATE BILL NO. 10
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Railroad; and providing for an effective date."

Section 1. LEGISLATIVE FINDINGS, POLICY, AND DECLARATIONS.

Contains a statement of legislative findings regarding the status of the Alaska Railroad, a statement of state policy concerning the ownership of the Alaska Railroad and a statement of declarations regarding the management and fiscal responsibility of the railroad after state acquisition. The value of this section is to establish the legislature's expectations with respect to the Authority and how it will operate. In addition, some findings are required by the constitution while others may strengthen the ability of the Authority to obtain tax-exempt bonding.

CHAPTER 40. ALASKA RAILROAD AUTHORITY.
ARTICLE 1. ESTABLISHMENT AND ORGANIZATION.

Sec. 42.40.010. ESTABLISHMENT OF AUTHORITY.

Establishes the Alaska Railroad Authority. To comply with Art.III, Sec.22, of the constitution, see page 32-38, VIII. CONSTITUTIONAL LIMITATIONS, the Authority is established as an instrumentality of the State by placing it within the Department of Transportation and Public Facilities but with legal existence independent of and separate from the state. [See page 6-7, Appendix I, II. I.C.C. JURISDICTION]

Sec. 42.40.020. LIMITATION OF LIABILITY.

Clearly states that the assets and liabilities of the Authority are exclusively its own and that creditors have no right to other state assets. [See page 5-6, Appendix I, I. STATE LIABILITY]

Sec. 42.40.030. BOARD OF COMMISSIONERS.

Sets out the membership of the Board of Directors, the method of appointment, and qualifications. There are seven voting members of the board including the Commissioner of DOT/PF. The public voting members are made up of at least four members from the geographic areas served by the

railroad and, if possible, one former railroad official from a railroad other than the Alaska Railroad.

There are two non-voting members of the board, the chief executive officer of the Authority and a labor representative who is appointed by the governor. All public members are appointed by the governor and confirmed by the legislature. [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.040. TERM OF OFFICE; VACANCIES.

Provides for staggered five year terms for all public board members and provisions for filling of vacancies.

Sec. 42.40.050. COMPENSATION AND EXPENSES.

Provides for a \$300 per day compensation for all public board members and per diem and travel expenses for all directors.

Sec. 42.40.060. QUORUM AND NOTICE OF MEETINGS.

Establishes the quorum for the Board of Commissioners and a required list of individuals and organizations to receive notice of a meeting. Members of the general public receive notice when it is requested.

Sec. 42.40.070. VOTING.

Sets out voting procedures and excludes proxy voting except where the proxy vote is for a specific topic.

Sec. 42.40.080. MANAGEMENT OF AUTHORITY.

This section provides for the appointment and compensation of the executive officers of the Authority by the board. The legal counsel is subject to a review of his or her competence by the governor. This section also provides for the management and the operation of the railroad by a third party subject to the approval of the governor whose decision is binding on the Authority unless the legislature acts to disapprove of the third party manager (See also Sec. 42.40.600). The board also has authority to appoint third party management assistants which are not subject to review of the governor or the legislature.

Sec. 42.40.090. DELEGATION.

Requires the board to delegate, within 180 days, certain of its powers necessary for the operation of the Authority to the chief executive officer or other officers, by formal rule.

ARTICLE 2. ADMINISTRATIVE PROVISIONS.

Sec. 42.40.200. CONFLICTS OF INTEREST.

Provides guidelines for determining a conflict of interest for a board member or an Authority employee. Generally, an employee or a board member may not participate in a decision making process where they, or their immediate family, gains more than the general public will gain unless their interest is remote. Remote is defined.

Sec. 42.40.210. PUBLIC BOARD MEETINGS.

With the exception of legally convened executive sessions, all board meeting must be open to the public.

Sec. 42.40.220. MINUTES OF MEETINGS.

Requires that minutes be kept of all public meetings and that copies of the minutes must be sent to the governor and the leadership of the legislature.

Sec. 42.40.230. ADMINISTRATIVE PROCEDURE.

This section removes the Authority from the requirement of the Administrative Procedure Act except that it must meet the requirements of holding open public meetings unless the meeting is a legally convened executive session of the Board of Commissioners. This makes the regulations promulgated by the Authority free from review by other state entities except in certain situations defined in section (c) where the Authority is required to submit proposed actions to the Attorney General for review and the Authority is required to submit its regulations 45 days after they are adopted to the Regulation Review Committee. Subsection (b) requires the Authority to adopt rules which will provide advance notice and opportunity for the public to comment on regulations that are likely to have a substantial impact on the public or which will be used by the Authority's dealings with a significant segment of the public. However, subsection (d) exempts certain specific subjects from the requirements of subsection (b). [See page 20-21, Appendix I, V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT]

Sec. 42.40.240. PUBLIC DISCLOSURE OF INFORMATION.

Provides that information held by the Authority is public information except that the Authority may by rule or regulation designate and withhold disclosure of matters of a nonpublic, privileged, or proprietary nature.

ARTICLE 3. POWERS AND DUTIES

Sec. 42.40.300. GENERAL POWERS.

This section delineates the general powers conferred to the Authority to carry out duties, including obtaining state appropriations [see page 16-20, IV. STATE SUBSIDY, STATE CONTRACTS FOR RAILROAD SERVICE, AND STATE INVESTMENT IN RAILROAD CAPITAL IMPROVEMENTS], inherent in operating the railroad. The general powers include provisions associated with the powers of both government agencies and powers associated with corporate structures.

Sec. 42.40.310. ANNUAL REPORT.

Requires the board to prepare and submit for review by the governor and the legislature an annual report on the operations and financial condition of the Authority. The report may contain suggestions for revisions of the Authority or its operations.

Sec. 42.40.320. ANNUAL AUDIT.

Requires an annual audit by a certified auditor experienced in railroad accounting. The Authority is also required to make available its financial records for review by the governor or the legislature whenever necessary.

Sec. 42.40.325. LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT.

This section requires the Authority adopt both a five year operating and a five year capital plan be revised annually.

Sec. 42.40.330. USE OF AUTHORITY ASSETS.

This section restricts the use of the Authority's property or other assets to the the activities authorized by this Act. [See page 13, Appendix I, 3. Industrial Development Bond Prohibition]

ARTICLE 4. RAIL PROPERTIES.

Sec. 42.40.400. RAIL PROPERTIES.

This section gives the Authority clear authority to hold, transfer or legally litigate all rights to real property transferred as railroad property under federal transfer legislation, except that the subsurface estate and mineral rights must be transferred to DNR within 120 days of receipt. The Authority does, however, retain the right to use, for the purposes of the railroad, sand, gravel, and other construction material without further clearance, and coal if permission is granted by DNR and

it is used for non-income producing activity. The Authority may not obtain property by adverse possession or prescription. With certain exceptions, the Authority must give public notice when it intends to dispose of an interest in real property.

Sec. 42.40.410. CLASSIFICATION, ACQUISITION, AND USE OF STATE LAND FOR RAILROAD PURPOSES.

This section provides guidelines for the Authority to obtain land needed for its operations from the Department of Natural Resources.

Sec. 42.40.415. DEVELOPMENT OF OIL, GAS, MINERALS AND GEOTHERMAL RESOURCES ON AUTHORITY LAND.

Provides a mechanism whereby the Department of Natural Resources may lease or otherwise develop oil, gas, minerals and geothermal resources located on Authority lands. The conditions established by this section require consultation with the Authority regarding all negative impact the potential development may have and a joint agreement as to acceptable methods of mitigating the negative aspects of development. This section also creates an Alaska Railroad income fund into which all proceeds from development must go for later appropriation by the legislature. DNR is required to provide annual reports to the Legislature regarding income produced from the development of natural resources on Authority lands.

Sec. 42.40.420. LAND USE REGULATION.

This section give the Authority authorization to adopt regulation governing land use by private parties acquiring an interest in railroad property.

Sec. 42.40.430. EMINENT DOMAIN AND ACQUISITION OF PROPERTY AND MATERIALS.

This section provides guidelines for acquisition by eminent domain. The Authority has full eminent domain powers but must relinquish all sub-surface rights to the state. [See page 8-10, Appendix I, 1. Political Subdivision]

ARTICLE 5. FINANCIAL PROVISIONS.

Sec. 42.40.500. BONDS AND NOTES.¹

Gives the Authority full bonding authority to issue bonds or bond anticipation notes to carry out its purpose. Money obtained by bonding must be used for the specific purpose for which it was issued. Bonds are

1. There are eight existing public corporations with bonding capability:
 - Alaska Gas Pipeline Financing Authority: A public corporation administratively located within the Department of Revenue but with a

not to exceed a 50 year maturity term. The board possess wide discretionary powers to enhance the marketability of bonds.

Sec. 42.40.510. INDEPENDENT FINANCIAL ADVISOR.

Requires the board to retain a financial advisor for negotiating private sale of bonds or notes independent from the underwriter.

.....
legal existence separate from the State. It was created in 1978 for the purpose of financing the gas pipeline.

Alaska Commercial Fishing and Agriculture Bank: A public corporation administratively located within the Department of Commerce and Economic Development but with a legal existence separate from the State. It was created in 1978 for the purpose of loaning funds to commercial fishermen and farming industries.

Alaska State Housing Authority: A public corporation of the State authorized to: construct, operate and manage low income housing projects; finance rental housing projects; engage in urban renewal programs; and construct and acquire public buildings for lease to the State.

Alaska Municipal Bond Bank: A public corporation administratively located within the Department of Revenue but with a separate and independent legal existence. It was established in 1975 in order to loan funds for capital construction to cities and boroughs in the State.

Alaska Industrial Development Authority: A public corporation administratively located in the Department of Commerce and Economic Development but with a separate and independent legal existence. AIDA was created in 1980 as the successor to the Alaska State Development Authority. AIDA promotes economic development within the State by providing low interest loans to industrial and commercial projects.

Alaska Medical Facility Authority: A public authority administratively located in the Department of Revenue with a separate and independent legal existence. The Authority was created by the legislature in 1978 to finance construction and improvements to medical facilities in the State.

Alaska Housing Finance Corporation: A public corporation administratively located within the Department of Revenue but which has a separate and independent legal existence. AHFC was chartered in 1971 to provide financing for low- and moderate-income housing and housing located in remote, underdeveloped, or blighted areas of the State.

Alaska Power Authority: A public corporation of the State situated for administrative purposes in the Department of Commerce and Economic Development but with separate and independent legal existence. The APA was created to finance, construct, and operate power production and transmission facilities.

Sec. 42.40.515. VALIDITY OF PLEDGE.

This section establishes the validity of a pledge of assets or revenues for the sale of bonds. It also provides guidelines for the disposition of pledged assets if there are legal claims against the assets or if the pledged assets are subsequently sold.

Sec. 42.40.520. REMEDIES.

Establishes the right to legal recourse for any party at interest for transactions authorized by this Act either as a contractual agreement or a security agreement with the Authority.

Sec. 42.40.525. NEGOTIABLE INSTRUMENTS.

Subject to applicable state laws regarding proper registration, all bonds or notes authorized by this Chapter are negotiable interests.

Sec. 42.40.530. BONDS AND NOTES ELIGIBLE FOR INVESTMENT.

Investment in bonds or notes issued by the Authority by all state officials, public or private, is proper and does not constitute a conflict of interest.

Sec. 42.40.535. REFUNDING BONDS.

This section authorizes the sale of refunding bonds to pay back previously issued bonds.

Sec. 42.40.540. CREDIT OF STATE NOT PLEDGED; REQUIRED DISCLAIMER.

Bonds or notes issued by the Authority are solely the liability of the Authority and do not constitute an obligation of the state. Words to this effect must appear on all bonds issued by the Authority.

Sec. 42.40.545. NO PERSONAL LIABILITY.

No officer or employee is personally liable for bonds issued by the Authority.

Sec. 42.40.550. REVENUES.

Revenues generated by the Authority are directly controlled by the Authority and not the State.

Sec. 42.40.550. INSURANCE.

Requires the Authority to carry reasonable insurance coverage naming the State as an additional insured.

Sec. 42.40.560. SAFEGUARDING OF MONEY.

The Authority is instructed to maximize revenue from deposited money which is to be deposited in depositories acceptable to the governor.

Sec. 42.40.565. FIDELITY BOND.

Requires the Authority to obtain a fidelity bond for all board members and officials.

Sec. 42.40.570. REVERSION OF ASSETS.

Assets of the Authority revert to the state if for any reason the Authority ceases to exist.

ARTICLE 6. STATE OVERSIGHT

Sec. 42.40.600. STATE REVIEW.

Requires the board to publish and give notice to the governor, leadership of the legislature, at least two newspapers of statewide circulation and members of the general public upon request, prior to undertaking a significant and permanent change in services or borrowing in excess of \$5 million for longer than a one year payback. The published report must detail the financial impact on the Authority, the impact on services, why the action is necessary or desirable, and whether the action is expected to support itself financially. The governor has 45 days to approve or disapprove or he may suspend and defer to the legislature for final disposition. In all cases the legislature has 60 days to enact legislation binding the Authority to either continue or cease the action. Extensions 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 requires specific authorization by the legislature. This section also requires state review of any proposal to contract management of the railroad to a third party (See Sec. 42.40.080). [See page 22-29, Appendix I, VI. STATE OVERSIGHT OF MAJOR FINANCIAL TRANSACTIONS AND POLICY DECISIONS]

Sec. 42.40.610. ACTION-FORCING MECHANISM.

Provides a mechanism for the governor or the legislature to either initiate or require cessation of Authority action by requiring a formal response outlining the Authority position. If they are compelled to initiate action, funding must be provided for both planning and implementation. [See page 29, Appendix I, Action Forcing Mechanism]

Sec. 42.40.615. INTERVENTION.

Under certain extreme circumstances, as delineated, this section provides that the governor may be directed by specific legislation to take control of the Authority to correct specific purposes of this Act. [See page 25-67, Appendix I, Financial Concerns]

Sec. 42.40.620. TRUSTEESHIP.

This section authorizes the governor to petition the Superior Court to appoint trustees when directed by legislation. The trusteeship would then possess unilateral powers enabling it to take whatever measures are necessary to restore the capability of the Authority to perform the functions and activities for which it was established.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Sec. 42.40.700. PERSONNEL.

Employees of the Authority are not to be considered state employees but the Authority is considered a public employer under the Public Employment Relations Act except that the provisions for a merit system does not apply. The Authority's executive officials may not enter into a collective bargaining agreement with the Authority. [See page 30-31, Appendix I, VII. EMPLOYEE]

Sec. 42.40.710. POLITICAL ACTIVITIES.

Prohibits use of the Authority's resources for partisan political activities except where necessary to carry out the purposes of the Authority. Provides for civil liability for violation by individuals employed by the Authority.

Sec. 42.40.720. LICENSES AND PERMITS.

The Authority must comply with local, state, or federal licensing or permitting requirements to the same degree as the state must comply.

Sec. 42.40.730. UNAUTHORIZED REPRESENTATION.

Provides for personal liability for unauthorized persons acting on behalf of the Authority.

Sec. 42.40.740. CLAIMS AGAINST THE AUTHORITY.

The State may not be named a co-defendant in any railroad related claims against the Authority. Provisions for administrative appeal for claims against a state agency to the Department of Administration do not apply to the Authority.

Sec. 42.40.755. EXEMPTION FROM TAXATION.

Except for computing state aid to local school districts, the Authority's property and assets are considered the property of a political subdivision and are exempt from taxation. [See page 8-10, Appendix I, 1. Political Subdivision and page 38-41, Appendix I, 2. Financial Limitations - Article IX. Finance & Taxation]

Sec. 42.40.770. PAYMENTS IN PLACE OF LOCAL REAL PROPERTY TAXATION AND IMPACT AID.

The Authority may adopt regulations setting out criteria whereby it can give voluntary impact aid to local political subdivisions in lieu of real property taxes.

ARTICLE 8. GENERAL PROVISIONS

Sec. 42.40.870. ENFORCEMENT OF LAW AND AUTHORITY REGULATIONS BY AUTHORITY SECURITY FORCE.

Enforcement officers of the Authority may enforce regulations adopted by the Authority with the same authority as state law enforcement officers. [See page 8-10, Appendix I, 1. Political Subdivision]

Sec. 42.40.880. PENALTY FOR VIOLATION OF DESIGNATED REGULATION.

Violation of a regulation which is designated by the Authority as a regulation necessary to protect life, health or property is a Class B misdemeanor.

Sec. 42.40.890. CONSTRUCTION.

Provides for liberal interpretation of the provisions of this Chapter.

Sec. 42.40.900 DEFINITIONS.

Provides definitions for various delineated terms found in this Chapter.

Sec. 3. AS 09.55.310(a)(4).

Exempts the Alaska Railroad from paying for fences and cattle guards for property condemned by the Authority.

Sec. 4. AS 09.55.350.

Exempts the Alaska Railroad from the time limits provided for paying for railroad fences and cattle guards.

Sec. 6. COMMENCEMENT OF LEGAL EXISTENCE OF ALASKA RAILROAD AUTHORITY.

Deals with commencement of the Authority's legal existence, which occurs following appointment of all board members.

Sec. 7. APPOINTMENT OF FIRST MEMBERS OF THE BOARD.

Details the term lengths for the first board members and gives the governor power to fill the positions to create the Authority after the legislature has acted to accept the transfer of the Alaska Railroad from the federal government.

Sec. 8. CLOSING REPORT SUBMITTED UNDER FEDERAL TRANSFER LEGISLATION.

Requires that the closing report submitted under federal legislation provide for all assets and liabilities to be transferred to the state which must be accepted in all material aspects by the state.

Sec. 9. ASSETS AND LIABILITIES TO BE NOTED IN AUDIT.

Requires that assets and liabilities identified by the closing report be noted in the annual audit for five years after transfer.

Sec. 10. INITIAL LONG-RANGE PROGRAM AND CAPITAL IMPROVEMENT PLANS.

Requires the preparation and adoption of a long range program and capital improvement plan 18 months after the transfer. Three years after the first long range plan an annual performance audit may be conducted.

Sec. 11. 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. 12. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD AUTHORITY AND EMPLOYEES.

Requires the Authority to continue in effect the current collective bargaining agreements for a period of two years.

Sec. 13. CONFLICTING LAWS INAPPLICABLE.

Any laws which conflict with this Act are overruled by this Act.

Sec. 14. APPLICATION OF EXISTING STATUTES.

Deals with the application of existing statutes: for the purposes of state wage and hours the Authority is considered a political subdivision, the Authority is exempt from all regulations promulgated by DOT/PF concerning public buildings, works, and improvements, it is also exempt from the confines required to receive money for Port facilities construction. The following provisions of A.S. Title 37 do not apply to the Authority: The Fiscal Procedures Act, Executive Budget Act, and it is released from the prohibition forbidding lending from or for a corporation. In addition, the Department of Administration and the Department of Revenue do not have jurisdiction over the fiscal matters of the Authority. Moreover, the Authority may receive money directly from the federal government rather than through the governor's office. [See page 32-38, Appendix I, VIII. CONSTITUTIONAL LIMITATIONS and page 20-21, V. INDEPENDENT AND EFFECT RAILROAD MANAGEMENT]

Sec. 15. SUBSEQUENTLY ENACTED STATUTES.

Only subsequent statutes specifically stating its applicability to the Authority will be construed to apply to the Authority.

Sec. 16. EFFECTIVE DATE.

This Act takes effect upon acceptance of the transfer of the Alaska Railroad to the State of Alaska in whatever manner it is ratified by the legislature.

SEN. MOSS CALLS TRANSPORTATION HEARINGS
ON ALASKA RAILROAD'S 'FAIR MARKET VALUE'

DELTA JUNCTION, AK. -- The fair market value of the Alaska Railroad, as determined by the United States Railway Association (USRA), will be analyzed and discussed at public hearings hosted by the state Senate Transportation Committee in Fairbanks and Anchorage this month, according to state Sen. H. "Pappy" Moss, Transportation Committee chairman.

Moss also said that the state's Alaska Railroad Transfer Team will make a presentation to the committee members on the "Valuation of the Alaska Railroad", the report prepared by the USRA, at the hearings.

The hearings will be held in Fairbanks on Monday, October 10, from 10 a.m. to 5 p.m. in Suite 101 of the Fairbanks Legislative Information Office, located at 315 Barnett Street.

In Anchorage, the hearings will be held on Thursday and Friday, October 27 and 28, in the first floor conference room of the Anchorage Legislative Information Office, located at 1024 West 6th Avenue. The hearings will run from 10 a.m. to 5 p.m. both days, with a statewide teleconference hook-up from 1 p.m. to 4 p.m. on Friday, October 27.

"When Congress approved the Alaska Railroad Transfer Act in January this year, the act stipulated that the fair market value of the railroad be ascertained. This is what the U.S. Railway Association has attempted to do in its report entitled 'Valuation of the Alaska Railroad'", Moss said.

"That report is largely responsible for the federal government's asking price of \$22.2 million to transfer the Alaska Railroad from federal to state ownership, and during the hearings that I have called this month we will

(more)

review and analyze the background information used in the USRA's report", Moss explained.

The Delta Junction democrat said the members of the state's Railroad Transfer Team will present their evaluation of the USRA report at the hearings in Fairbanks and Anchorage. The members of that team include Mark Hickey, the state's railroad coordinator; Dave Walsh, an Anchorage attorney and member of the Municipal Assembly; Jack McGee, of the state Attorney General's Juneau office; and Jack Day, of Anchorage.

In addition to the transfer team's presentation, Moss said that Department of Transportation Commissioner Dan Casey and Revenue Commissioner Robert Heath will also make reports to the committee members regarding the railroad transfer to state ownership.

Moss said the hearings are open to the public and that all Alaskans are urged to attend. "We have a situation where the federal government is asking the state to pay a lot of money for the Alaska Railroad. It is important that the public attend and participate in these hearings so they can tell their Legislature whether or not they think the price is a fair one", Moss said.

Other members of the Senate Transportation Committee include Sens. Bettye Fahrenkamp (D-Fairbanks), Jan Faiks (R-Anchorage), Don Gilman (R-Kenai), and Jay Kerttula (D-Palmer).

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For further information, contact:
Clyde Stoltzfus, Tel.: 465-4921

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Official Business

Alaska State Legislature

Senate

Office of the President

Pouch V
State Capitol
Juneau, Alaska 99811

October 15, 1983

Honorable Jan Faiks
Chair
Senate Rules Committee
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Faiks:

Thank you very much for your letter of September 30th expressing some of your concerns over the establishment of a state owned and operated railroad should the Alaska Railroad transfer to the State.

I share many of your concerns and feel your suggestions are carefully conceived and I assure you will be seriously considered. I believe we are in basic agreement concerning the inevitable role which the state must play in rail ownership and operation after transfer from the federal government.

Before addressing your points individually, I think it helpful to develop a basic understanding of how Senate Bill 10 came to be. I participated, as part of Governor Hammond's Railroad Policy Task Force, in the preparation of SB 212 from the 12th Legislature. As you know SB 212 became SB 10 with no substantive changes. Representatives from the Legislature, the Office of the Governor, the Departments of Law, Transportation and Public Facilities and Natural Resources worked together toward establishing a workable bill which would accomplish a smooth, efficient transfer of the railroad to the State at no loss in service delivery with as little of liability falling to the State as possible. I hope that we will be able to once again establish such a working, cooperative relationship with all parties interested in the railroad transfer.

Many of your concerns stem from policy decisions made by Governor Hammond's task force and I feel it appropriate to discuss them individually.

On the establishment of a separate State department for the ARR, we felt it to be not in the state's best interest to limit itself by "using" one of the remaining departments for the ARR. This is not to suggest that we did not consider the ARR as a potential department. We did feel the Department of Transportation and Public Facilities was the logical choice since the ARR is a most important part component in our statewide transportation system. I share your opposition to allowing the ARR to become a line-agency of the DOT/PF. SB 10 "pigeon-holes" the ARR within

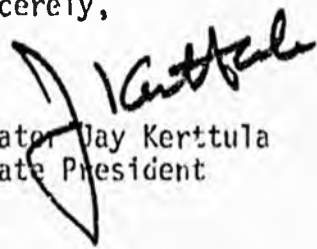
DOT/PF for regulatory and taxation purposes as well as to preserve a department for future needs. At the same time, the Alaska Railroad would be an independent public authority, insulated from the state legally, financially and operationally. As SB 10 is structured, the only input the DOT/PF would have in the affairs of the ARR would be through Commissioner, who sits on the board of commissioners of the Alaska Railroad Authority. He or she would have no more influence and power than the other members of the board of commissioners. I am not devoted to the issue that the railroad authority must be pigeon-holed in the DOT/PF. It could as easily be placed in the Office of the Governor, responsive immediately to his office, a separate department as you suggest, or within the Department of Commerce and Economic Development. Whatever, the outcome, it is imperative that we have a vision far beyond the personalities and leaders in the departments at present.

Senate Bill 10 is long and extraordinarily complex and it came to be so in direct response to decisions by the task force. We felt it important to deal with all railroad issues, regulation, organization of the Alaska Railroad Authority, conflicts of interest, public meeting policy, public domain and land concerns, financial considerations, taxation, state oversight, and personnel agreements in the acceptance and enabling legislation, rather than to deal with these issues in separate legislation or through litigation. I agree, when we let the legal counsel "go" with the bill, it was expanded tremendously. However, I believe the provisions in the bill are well conceived and it is in the public's interest to quickly resolve the many questions which face the state.

I appreciate your interest in this most important issue. I look forward to working to accommodate your concerns that the railroad be a separate entity from the Department of Transportation and Public Facilities. I sincerely believe we can establish an efficient, accountable entity that will best serve all Alaskans.

Thank you again for initiating discussion on the railroad acceptance legislation. I look forward to spending time working with you.

Sincerely,


Senator Jay Kerttula
Senate President

JMK:rjr

Alaska State Legislature

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JUNEAU, ALASKA 99811

Senate

September 30, 1983

OCT 7 RECD

Senator Jalmar Kerttula
Alaska State Senate
Post Office Box Z
Palmer, Alaska 99645

Dear Senator *Jalmar* Kerttula:

I want to take this opportunity to share with you my thoughts on Senate Bill 10 which will establish the state's role in the operation of the Alaska Railroad.

In a previous session, a similar bill to SB 10 -- namely SB 212 -- was introduced, reviewed, discussed, argued and rejected. The rejection, in my opinion, was caused not so much by the concepts set forth in SB 212, but by the fact that the prospect of the State of Alaska taking over the Railroad was entirely new and everybody had a different idea of how it should be done. The rejection was also partially caused by the fact that SB 212 was so detailed having what seemed to be all sorts of pet projects set forth in the bill. It was as if everyone in State Government had put a phrase in the bill.

The concept of the State of Alaska receiving and owning and operating the Alaska Railroad is no longer new. It is, however, new to translate that concept into a workable arrangement which will take the dynamics of the existing Federal Railroad and integrate that railroad into a State structure workable and efficient from the start.

In this vein, I am sharing with the committee members what I believe to be a proper format for a railroad structure within State Government. It consists of two parts. The first is a general blueprint for the railroad, and the second part is the general criticisms of Senate Bill 10 as I see them now. I do propose to make more detailed suggestions regarding the wording of SB 10 at a later time.

The single most important aspect of the State of Alaska ownership of the Railroad is the structure, both corporate and governmental, that is developed for the management of the Railroad. Judged on the basis of importance to the State, the Railroad