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this. The decision made to give the security officers for the authority the authority of other state law enforcement officials to enforce state and authority laws and regulations. With respect to violations of the laws or regulations that occur on or to the property owned, managed or transported by the authority. People can think that's a good idea or a bad idea. But are there any questions about what the effects of that would be.

The next section .800, it's clear I think, again you can think its good or bad.

The next section, .900. A series of definitions. We've probably talked about most of them as we went through. I'd be happy to answer any questions anybody might have about any of these definitions.

Ebert: I'm curious why you tie rail properties to the closing report as opposed to tying it to the property that you ultimately in fact receive.

Lewis: Those are the same thing. The closing report will describe the properties.

Ebert: Under the federal legislation, as it's presently written, the closing report is not intended to be a judicial declaration of what properties go in what direction. It's only a planning document. There's a provision for adjudication of valid existing rights with court appeal. It would seem more appropriate to give the rail authority jurisdiction over properties they in fact receive which might be greater or lessor than the closing report predicted they would receive.

Johnson: Which section?

Ebert: On page 45, item 10. If you're giving someone administrative jurisdiction you should give them jurisdiction over something they in fact get, not someone predicted they would or would not get.

Johnson: Actually, I think the identification of the closing report is not a useful concept in this concept. I think we should say transferred to the authority under the legislation.

Speaker: Could I suggest that maybe we just ask if there's any comments on this last article and deal with those specifically.

Lewis: I think that's an excellent suggestion. Are there any questions on this last article?

Gates: When does the definition for the leadership of the legislature come into play. The definition is really extensive: Speaker of the House, President of the Senate, minority leaders for each house, chairman of the senate and house transportation and finance committees and chairman of the legislative budget and audit committees. I forget when that becomes important. But that is going to be a real battle.

Lewis: I think that is not important and was deleted.

Johnson: For purposes of giving notices under the act, when the authority was required to inform the legislature of certain things the thought

was it was better to have it go to certain people rather than to all of them or one of them or something. That concept was removed.

Ebert: With this discussion of collective bargaining agreements, the discussion on page 47 and over to 48, that the state will continue in existence the existing contracts, until they expire by their terms or as required under the federal legislation, they are renegotiated. It seems to me the federal legislation contains a two year limit on this which is not expressed here. Are they really parallel?

Johnson: Yes. The federal legislation requires them to be renegotiated at the end of the period (indesc) basically within that period of time. Some of them expire sooner than that by their own terms. Others have no explanation date at all.

Speaker: I have a couple of general questions directed toward Adlum and Olson. The first one is regarding Article 4, Lands and it's a question of flexibility or the interrelationship of agencies and their impact on the authority. The Dept. of Natural Resources will have control over the subsurface rights on railroad land. Do you see that as a problem with the authority. Is that going to create a difficulty in its flexibility to carry out its operations?

Adlum: I don't see that its going to be a problem because any right of eminent domain there are still (indesc) in the courts in one manner or another. We have the right of eminent domain in the Port of Seattle but if we can't reach a price between their appraisers and our appraisers we end up going to court. What's decided there is whether have the right to take it and then deciding the fight (indesc)

Olson: I presume that this policy choice toward DNR will have control over the subsurface rights to place in parallel, the mandate of self sufficiency on the part of the rail line such that revenue generation comes from its mode of operation of the rail as opposed to its extractive capacity. To that extent you ought to build in, inducements to efficiency on the rail line itself. I happen to personally agree with that policy declaration if I understand it correctly that they're saying that the resources that lie in the subsurface rights will go to the DNR and the state general treasury and the railroad will attempt to achieve self sufficiency of its own operation. That is a powerful inducement to efficiency.

Adlum: If the government had done this when they alloted all those spaces to the railroad that came across the nation at the turn of the century, they might be in a lot better shape right now.

Speaker: One other question. On the article that deals with the make up of the board. What are the implications of having a union member on the board? Is that something that's common in other authorities?

Adlum: I'm the first union official to serve on the pacific coast that I know of.

Olson: The port commission currently has two of its members whose backgrounds are in organized labor. Informally, which 's what's

happening, that by elections, two of those members have come from organized labor. In other ports across the country, there is a formal slotting of positions. The Port of Milwaukee, for example, mandates that one of its members be drawn from organized labor. It also mandates one of its members from the south side of Milwaukee, one from the north side of Milwaukee, one from the Chamber of Commerce. MASSPORT, Boston's port has a similar slating of membership. My own analysis says that the greater the degree of formal slotting of positions to occupational groups, and this is not a criticism of organized labor because the slotting is going on the business side as well, or the residential basis, the more precise the slotting, the greater the attention to particularistic issues as opposed to universalistic issues. Let me get away from the academic jargon. What that means is: particularistic issues are those that are specific to the group or to the constituency that is being represented; universalistic issues are those that deal with larger questions of the operation of the entity. What you get is a function of how you orient yourself toward that question, of slotting or not slotting. As I read what this bill does there is a half way house that is struck. It does not, as the gentleman from Fairbanks suggested, draw a line for geographic representation. It does not give the vote to organized labor's representation on the board. So that it is once again a delicate compromise that is reflective of interests within the state and within the legislature and I suspect that set of compromises will continue forward as this bill is enacted. My point is that the kind of representation, the kind of policy orientation you get on the board, is partly a function of how you draw the criteria for membership on the board and you get very different things.

Adlum: I get the jeweler and the other guy's vote a helluva lot quicker than I get the other labor guys' votes.

Lewis: Are there any other questions about Article 8?

Gates: AS 23.10. 055. The Alaska Railroad Authority is considered a political subdivision for the state for the purposes of the section. I thought I had the rest of them figured out, but that one escaped me. Can you explain that for me? Why is the ARR Authority considered a political subdivision-

Lewis: I'll call you tomorrow. I don't remember which one that is.

Ebert: Workman's compensation, I think.

Gates: Cause you get into troubles of establishing a new form of government which is...

Lewis: I don't think we'll be able to help much cause I can't remember what that section is.

Chairman Swalling: If there are no more questions, these men have to catch an airplane. We're very grateful that they were able to come up. Now, I'd like to say that if any of you have a position paper or anything that you'd like to submit either today or at some future time we solicit your input. It will help us if it is in writing. Now we will

have a very short meeting to decide a little about our future. You're all welcome to stay. I'll tell you what we're going to discuss, is where do we go from here, because we are not in a position yet to prepare a report. Our request for funding for a word merchant has been frozen. So we don't know when our next meeting will be. We're going to take a few minutes and discuss where we go from here.

Harle: Mr. Chairman, I have a concept that is written and I would like to them to the commission for your consideration.

Chairman Swalling: We appreciate that very much.

Wright: Chairman Swalling, I have not a concept, but a position paper that I'd like to submit also from the Greater Fairbanks Chamber of Commerce. And I'd also like to formally request and invite the commission to at some point hold some of your meetings in Fairbanks so you can get more input from the people in the interior.

Chairman Swalling: It is doubtful that we are going to have another public meeting such as this for input. I thank you all for being very cooperative and very attentive as to presenting your views and we're gonna try to go from here and put a report together.

Speaker: The State Chamber has already submitted their position but we would also like to go on record in support of the Fairbanks Chamber position which they have submitted to you.

Chairman Swalling: Anyone is perfectly welcome to stay. We've got to stay and decide what we've got to do now.

ALASKA RAILROAD TRANSFER PROJECT

WORK PLAN OUTLINE

The Alaska Railroad Transfer Act of 1982 was signed into law by President Reagan on January 14, 1983. This legislation establishes a detailed process for assembling the specific information necessary to a thorough consideration by the state of the transfer proposal, while also specifying the time framework for effecting an eventual transfer. Date of enactment serves as a trigger for several key provisions which involve a great deal of work activity in order to accomplish a thorough addressing of the transfer question. The following discussion highlights the major work tasks confronting the state, along with some explanation of the state's response to satisfy these requirements.

TASK #1 - TRANSFER TEAM ORGANIZATION.

A detailed organization is in the process of being established to direct all state activities pertaining to the railroad transfer. Because of the diverse nature of tasks involved and limited time available for work performance, an interdisciplinary team of state officials and outside expertise is necessary to accomplish the mission. Governor Sheffield has designated the Department of Transportation and Public Facilities to serve as the lead agency for all matters regarding the railroad transfer. As a result, Commissioner Dan Casey will serve as the state official responsible for the conduct of this project.

Commissioner Casey has appointed a transfer team of three individuals to direct all work activity regarding the proposed transfer. Mr. Mark Hickey of DOT/PF will serve as the staff coordinator and contact point for transfer team activities. Mr. Dave Walsh and Mr. Jack Day, who are in the process of being placed under contract to the state, will be working with Mr. Hickey to direct these efforts and will provide special outside expertise on certain specific aspects of the project. Mr. Jack McGee of the Attorney General's Office will also be working with this group, directing the legal research portions of the work. In this regard, the special services of the law firm of Wickwire, Lewis, Goldmark & Schorr will remain available to the state as needed. Additional state personnel from various agencies will be involved with specific aspects of individual tasks.

TASK #2 - FRA COOPERATIVE PROCEDURES/INFORMATION ACCESS.

Section 605(b) of the transfer legislation specifies the means by which the state can monitor railroad operations and inventory and evaluate rail properties prior to a decision to accept transfer. As part of this effort, the state will have to ascertain the position of the Federal Railroad Administration (FRA) regarding confidentiality limitations as also noted in Section 605(b). Additionally, there needs to be established a general framework for coordination of transfer duties and information access. Important in this area will be clear delineation of FRA liaison and contact personnel, along with explicit definition of current railroad management's role relative to

transfer proceedings. It is anticipated that FRA will respond to this project through some overview arrangement which includes an equivalent transfer team of federal personnel primarily dedicated to transfer activities. Assistance from other federal agencies, particularly the Department of the Interior, will also be important to the successful performance of transfer work.

Several steps have already been taken to address aspects of this task. FRA has appointed Mr. F. Colin Pease, Special Assistant to the Administrator, to serve as the responsible federal official for transfer matters. Mr. Pease is in process of appointing Mr. John Cikota of FRA to serve as the liaison contact on temporary duty at the railroad in Anchorage. Railroad personnel will serve as technical support staff for various transfer duties, but will not be directly involved in any of the policy aspects of the transfer. The Alaska State Office of the Bureau of Land Management has been designated as the lead DOI agency for transfer matters and has already established an Alaska Railroad Project Staff under the direction of Mr. Gary Bauer. Preliminary meetings have also occurred between the key state and federal personnel regarding coordination of transfer duties and information access procedures.

TASK #3 - STATE CONSENT FOR ARR ACTIONS.

During the period between date of enactment of the federal transfer legislation and the date of actual transfer, or an official negative response by the state to the transfer offer, certain specific types of actions and decisions by the Alaska Railroad (ARR) will require state consent. Section 605(b) specifies that the following actions fall into this category: (1) make or incur any individual capital expenditure in excess of \$300,000; (2) sell, exchange, give or otherwise transfer any real property; and (3) lease any rail property for a term in excess of five years.

Governor Sheffield has formally designated Commissioner Dan Casey to serve as the state official responsible for dealing with this matter. The transfer team is responsible for reviewing these items and forwarding recommendations to the commissioner for action. Mr. Hickey has been designated the responsible official for coordinating this activity. Information about specific items involving state consent is available through Mr. Hickey's office.

TASK #4 - CLOSING REPORT.

Section 605(d) requires the Secretary of Transportation and the Governor to prepare and deliver a report, commonly referred to as "the closing report", within six months from the date of enactment. It is envisioned that the Alaska State Legislature will have to review this report prior to authorizing final acceptance of the transfer. This document, which is intended to provide the state greater specificity regarding transfer particulars prior to final action on the offer, will describe all rail properties of the Alaska Railroad and the liabilities and obligations to be assumed by the state under the proposed transfer. Although the legislation contemplates that the federal and state governments will jointly prepare the closing report, the state has a greater

interest in its accuracy and completeness since since it will be the basis for subsequent transfer documents.

The following categories represent the major components which will be addressed within the closing report: (1) real property; (2) personnel obligations; (3) personal property; and (4) commercial/contractual/legal obligations. Each of these components will involve a process of identification and detailed description for inclusion within the closing report document. In the case of real and personal property, the parties will have to review systematically ARR records and conduct physical inventories where such records are considered inadequate or unreliable. There will also be a need to identify which of the real properties of the ARR are subject to claims of valid, existing rights and which are not. Finally, it will be necessary to offer some sense of personal property condition and the value of the railroad as going concern operation.

The state and the FRA have already discussed a procedure for agreeing jointly to the appropriate form and content of the closing report, as well as the actual process for drafting the various portions of the report. It is clearly understood that the FRA has the lead responsibility for the federal agencies involved with the transfer. Agencies of the DOI will support the FRA as a technical resource for matters pertaining to real properties, but they will not make any final decisions regarding policy questions. It is currently envisioned that a final draft of the closing report will be available for agency circulation by early June.

The following lists depict the specific resources being used by the state to address properly each component of this task. It should be added that these activities represent a line share of transition activities for the first six months following passage of the federal legislation.

ARR Real Property Team

Mark Hickey, Staff Coordinator
Dave Walsh, ARR Transfer Team Leader
Jack Day, ARR Transfer Team Leader
Jack McGee, Attorney General's Office
Sarah Kavasharov, Attorney General's Office
Tom Koester, Attorney General's Office
Jim Sandberg, DOT/PF - Right-of-Way
Ted Richards, DOT/PF - Right-of-Way
Bud May, DNR - Technical Services
Clyde Duren, DNR - DTS (Cadastral)
Carol Shobe, DNR - DTS
Tony Braden, DNR - DTS
John Hanley, Wickwire/Lewis
Greg O'Leary, Wickwire/Lewis

ARR Personnel Team

Mark Hickey, Staff Coordinator
Jack McGee, AG's Office
Tom Brewer, Wickwire/Lewis
DOA - Division of Personnel*
DOA - Div. of Ret. & Benefits*
DOA - Div. of Labor Relations*

ARR Personal Property Team

Mark Hickey, Staff Coordinator
Jack Day, ARR Transfer Team Leader
Jack McGee, AG's Office
Dave Zugsberger, OMB (Management)
Dick Wiggins, DOT/PF - Planning
Gary Cox, DOT/PF - Facilities
Dick Meyer, DOT/PF - Facilities
John Alderson, DOT/PF - Facilities
John Hanley, Wickwire/Lewis

(* resource yet to be identified)

ARR Commercial/Contractual/Legal Obligations Team

Mark Hickey, Staff Coordinator
Dave Walsh, ARR Transfer Team Leader
Dick Wiggins, DOT/PF - Planning
Yale Lewis, Wickwire/Lewis
Tom Brewer, Wickwire/Lewis

Jack Day, ARR Transfer Team Leader
Jack McGee, AG's Office
Dave Zugsberger, OMB (Management)
Gerry Johnson, Wickwire/Lewis
DOA - Div. of Risk Management*

(* resource yet to be identified)

TASK #5 - USRA FAIR MARKET VALUE DETERMINATION.

Section 605(d) requires the United States Railway Association to determine the fair market value of the Alaska Railroad within nine months from the date of enactment. This value, if any, will then become the amount which the state would have to compensate the United States to receive the railroad under the transfer offer in Section 604. In performing this work, the USRA is instructed to perform an appraisal of all real and personal property with consideration for the current fair market value and potential future value if used in whole or in part for other purposes. The USRA is also to take into account all obligations imposed by the transfer legislation and other applicable law (e.g., Alaska Native Claims Settlement Act) upon the operation and ownership of the state-owned railroad. Finally, the USRA is directed to use all relevant data and information from the closing report document in making the fair market value determination.

Preliminary meetings between the transfer team and USRA officials have already occurred regarding project schedules and appraisal methodologies. The USRA intends to perform three types of assessment to reach their determination of the railroad's fair market value: (1) real estate appraisal; (2) facilities and equipment; and (3) continued operations valuation. A preliminary report on this activity is currently scheduled to be available in June. The USRA has agreed to keep the state apprised of ongoing activity and allow review of all draft products. Members of the state transfer team will also be available to research any information requests. Mr. Jack Day of the transfer team has been designated to serve as the point individual for staff activity under this task.

TASK #6 - NATIVE VILLAGE CLAIMS NEGOTIATION.

During the ten months following the date of enactment, there is a requirement for the state, the Department of the Interior, and all affected Native village corporations to enter into a good faith effort to negotiate settlements for as many outstanding claims as possible. Some 3,800 non-right-of-way acres of the ARR's total 38,000 acres are affected by village corporation filings under Section 2(e) of the Alaska Native Claims Settlement Act. Additionally, as many as 3,300 acres of right-of-way land may also be subject to similar filings. In the latter case, however, the transfer legislation structures a different procedure for this issue whereby the state will ultimately receive the railroad's right-of-way free and clear of any such encumbrances. With respect to the 3,800 acres of non-right-of-way land, the first step will be identification of the specific parcels involved, along with obtaining appropriate legal descriptions.

The state is in the process of organizing a negotiating team, while also determining an appropriate policy stance for each specific parcel. Information and recommendations is being collected from knowledgeable ARR officials regarding the railroad importance of each parcel. There is also the need to conduct some discussion and investigation with personnel from DNR and DOI regarding the availability of other state or federal land which might facilitate achievement of settlements. Mr. Dave Walsh has been assigned the role as point individual for staff activity for these negotiations. Mr. Walsh will have direct support from Mr. Hickey and members of the Attorney General's office.

TASK #7 - TRANSFER DOCUMENTS.

Section 604(b) details a series of legal documents which will effect the actual transfer assuming state acceptance. Specifically, the following four documents are required: (1) a bill of sale conveying title to all rail properties except real property; (2) an interim conveyance of real property of the Alaska Railroad not subject to unresolved claims of valid existing rights; (3) an exclusive license granting the state the right to use all real property not conveyed pending resolution in accordance with the review and settlement process or final administrative adjudication of claims of valid existing rights; and (4) an exclusive-use railroad easement for that portion of the railroad's right-of-way within Denali National Park and Preserve.

The content of these documents will require lengthy discussion and careful drafting by the state and FRA. Direct and extensive legal assistance will be needed to achieve this task. Mr. Hickey will direct these efforts with assistance from the Attorney General's Office and the state's special counsel, Wickwire, Lewis, Goldmark & Schorr. Actual completion of this work is contingent on state acceptance of the transfer offer. Preliminary work on this task should begin following completion of the closing report. The final documents do not have to be finished until after the Alaska State Legislature ratifies the transfer proposal and the Secretary of Transportation certifies the state has agreed to all of the required terms and conditions as specified in the transfer bill.

TASK #8 - ICC REQUIREMENTS.

Section 605(c) requires that prior to transfer the ARR's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to ICC jurisdiction. It will also be necessary to obtain an ICC certificate of public convenience and necessity to ensure continued operation of the railroad following transfer. As a result, it will be necessary to petition the ICC to promulgate proceedings to respond within the anticipated time period, along with preparing the necessary filings to provide for the operation of the state-owned railroad. A final ICC-related task involves rate-making authority for the new state entity. Although the transfer legislation provides a two-year hiatus, staff should probably engage in discussions with ICC officials regarding this matter, prepare preliminary filings, and direct background valuation work which will serve as the basis for future rate-making filings.

Efforts have already been initiated to accomplish some of these tasks. Work is in progress to review current accounting practices and systems in light of ICC requirements. Additionally, efforts are underway to petition the ICC for a promulgated proceeding for obtaining a certificate of public convenience and necessity. The remaining tasks, which are more substantive in nature, should be initiated within the next few months and will carry into the time period following transfer. Mr. Hickey will direct these efforts with assistance from the state's special counsel. Additional outside assistance will be needed from individuals knowledgeable with ICC procedures and railroad valuations.

TASK #9 - PRE-TRANSFER PREPARATIONS.

This task covers a range of duties related to ensuring an orderly and timely transfer. Much of this activity will be integrally tied to the creation and implementation of an appropriate entity to own and operate the railroad. The following list details the major task of this nature that can be identified: (1) legal research regarding appropriate state response to comply with the federal certification requirements under Section 604; (2) necessary state activity to allow assumption of current ARR collective bargaining agreements for the mandated two-year protection period; (3) further assessment of implications of anti-trust liabilities following transfer; (4) various planning activities related to required waivers of compliance with railroad safety laws and OSHA compliance requirements; (5) investigation of need for full-scale inventory and condition survey of ARR assets; (6) initiation of long-range capital planning effort for future railroad needs; and (7) anticipating and satisfying all other critical labor, administrative, regulatory, insurance and fiscal requirements prior to actual transfer.

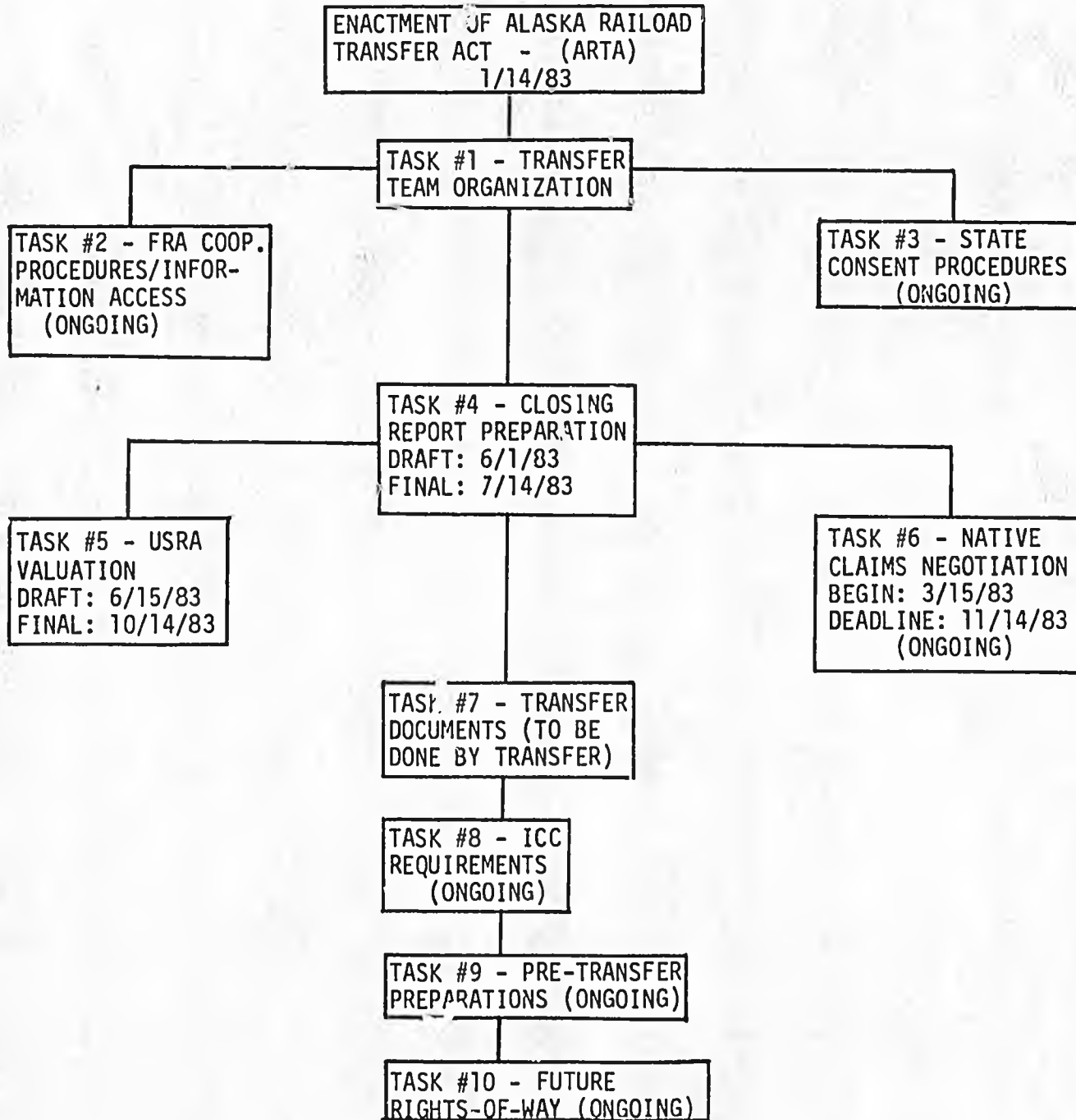
The time frame for the performance of these activities will span the entire period between enactment of the federal bill and formal completion of the transfer. Certain elements will be important in relation to the creation of a state entity to own and operate the railroad, which will be governed by the framework for action within the Alaska State Legislature. The state transfer team will be responsible for the performance of these tasks.

TASK #10 - FUTURE RIGHTS-OF-WAY.

Section 609 sets out the appropriate process whereby the state-owned railroad will be able to secure future rights-of-way across federal lands. In response to this provision, the state has initiated a process to develop an acceptable policy position for obtaining needed reservations in an intelligent and orderly manner. Once this activity is completed, work efforts will be undertaken to survey the selected routes and to prepare necessary application submittals for the federal and state portions. Additional funding will be needed to perform this effort.

ALASKA RAILROAD TRANSFER PROJECT

FLOW CHART



ALASKA RAILROAD TRANSFER PROJECT

SCHEDULE

TASKS

JAN. 14, 1983

JULY 14, 1983

OCT. 14, 1983

NOV. 14, 1983

JULY 14, 1984

CLOSING REPORT



FRAMEWORK FOR
STATE ACTION ON
TRANSFER OFFER



(TRANSFER TO OCCUR AS
SOON AS POSSIBLE AFTER
STATE ACTION)

-8-

U.S. RAILWAY
ASSOCIATION
VALUATION



NATIVE VILLAGE
CLAIMS NEGOTIATION



DRAFT

CONFIDENTIAL

STATE ORGANIZATIONAL ISSUES
INVOLVED IN THE PROPOSED TRANSFER
OF THE ALASKA RAILROAD FROM THE
UNITED STATES TO THE STATE OF ALASKA

January 15, 1982

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This memorandum addresses some of the issues involved in creating an entity to own and operate the Alaska Railroad after transfer from the federal government to the State of Alaska. The issues involved in determining the most appropriate organizational structure were treated preliminarily in two studies performed jointly by the State and an outside consultant (referred to hereafter as Bivens 1 and Bivens 2).¹ As stressed in Bivens 2, the issue is important because the railroad's organizational structure will directly affect the State's ability to meet its policy objectives for the railroad, see Bivens 2 at 81.

Bivens 2 predicated its analysis of different organizational structures on a set of specified assumptions, (See Appendix 2 enclosed). This memorandum adopts the same assumptions about the State's basic policy guidelines; most of which seem fully warranted by the State's actions and expressed policies to date. This memorandum further agrees with Bivens 2 that the twelve criteria it sets forth are extremely useful tools for evaluating the effectiveness of alternative structures for the railroad. However, as a result of decisions made by the Governor's Railroad Policy Committee in the fall of 1981, this memorandum is organized around a different set of ten goals that are, in substance,

¹ Statewide Rail Systems Study for the State of Alaska, Department of Transportation and Public Facilities Planning and Programming Division, December 1980, prepared by Bivens & Associates, Inc., et al. (Bivens 1); Assessment of the Alaska Railroad: Ownership and Operational Alternatives, July, 1981, prepared by John T. Gray II and Bivens & Associates, et al. (Bivens 2).

largely identical to the Bivens 2 criteria, but incorporate additional legal constraints that must be considered in setting up a railroad structure. As outlined in the following sections, the railroad entity should be organized in such a way as to:

1. Insulate the State from legal and financial liability for the railroad's tort, contractual, and debt liability;
2. Insulate the State from I.C.C. jurisdiction;
3. Have an independent capacity to obtain tax-exempt financing;
4. Preclude a State operating subsidy;
5. Permit both service contracts with the State and State investment in the railroad's capital improvements in facilities, rolling stock and track expansion, and rehabilitation;
6. Provide the best possible combination of high quality and low cost transportation;
7. Insulate railroad operations from political pressures generated by the railroad's competitors, suppliers, shippers, lessees, and lessors;
8. Be subject to State oversight and intervention power to:
 - (a) prevent insolvency;
 - (b) ensure continued service;
 - (c) require or preclude expansion or increased service; and

(d) disapprove borrowing that could endanger the State's borrowing capacity;

9. Cause the least possible disruption to the State's employee pay, benefits, and retirement systems; and

10. Conform to the State constitution.

The initial Bivens report (December 1980) considered four very broad approaches to organizing the Alaska Railroad, including continued federal ownership and totally private ownership. By the time the second Bivens study was completed in July 1981, the range of options had been considerably narrowed, and Bivens 2 presents three alternatives: (1) a state line agency, (2) a state public corporation or authority, or (3) a state-owned railroad operated by a private lessee. Bivens 2 at 85. Bivens 2 makes clear, however, that one option -- a public authority or corporation -- best satisfies all of the relevant criteria, whereas each of the other alternatives has serious, indeed potentially fatal, drawbacks or impracticalities. Although the criteria analyzed in this memorandum are somewhat different, and perhaps more legalistic, than those applied in Bivens 2, the conclusion reached is the same: a public corporation or authority provides the greatest opportunity to maximize the State's goals. Leasing to a private operator, for example, would probably preclude tax-exempt financing. Using a State line agency would subject the State itself to tort and contractual liability for railroad activities and probably to

I.C.C. supervision. It also would probably not afford the desired degree of management independence and flexibility.

As a result of the Bivens studies and of preliminary discussions regarding some of the legal concerns addressed below, the Governor's Railroad Policy Committee has tentatively decided to pursue only the possibility of creating a public authority or corporation² to operate the railroad. Accordingly, this memorandum, except as noted, focuses only on this one possibility, and considers whether and how a public authority can achieve each of the State's expressed goals, as outlined above.

As a caveat, it should be noted that the State's fundamental objectives -- to run the railroad both as a public service and as a sound business enterprise -- may conflict to some degree. It will therefore be necessary to create an organizational structure that strikes a balance between these goals, and between the means of achieving those goals discussed below. See Bivens 2 at 79, 89. Fundamental decisions must be made, in particular, on how best to balance autonomy and flexibility on the one hand with accountability and State oversight on the other.

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The terms "public corporation" and "public authority" are used interchangeably in this memorandum. The ramifications of any technical differences between these two structures can be resolved at a later date.

I. STATE LIABILITY.

An independent public authority can effectively insulate the State from legal and financial responsibility for the railroad's tort, contractual, and debt liabilities and can bear sole responsibility for railroad obligations. Public authorities are, in fact, often used for this purpose in other states and in Alaska. The State constitution contemplates and impliedly allows creation of public authorities with the power to issue bonds that are not supported by the full faith and credit of the State. See Alas. Const. Art. IX, Sec. 11 (exempting bonds of public authorities whose debts are not State debts from the credit limitations of Article IX, Section 8). See Section VIII below for further discussion of State constitutional restrictions on public authorities. Numerous other Alaska public authorities have been granted the power to issue bonds without pledging the credit of the State.³ The enabling legislations for these other authorities offers a model for appropriate language in the railroad's enabling legislation.

The acts creating the existing independent public authorities in Alaska appear silent on the issue of State contract and debt

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See, e.g., A.S. 44.81.010 et seq. (Alaska Commercial Fishing and Agriculture Bank); A.S. 44.82.010 et seq. (Alaska Gas Pipeline Financing Authority); A.S. 44.83.010 et seq. (Alaska Power Authority); A.S. 44.88.010 et seq. (Alaska Industrial Development Authority).

liability. The State has the power to provide that an independent public authority will bear exclusive liability for the railroad's contractual obligations and tort liabilities, and can, in fact, limit that liability if it chooses.⁴ To ensure State immunity, the enabling legislation should address the issue specifically.

II. I.C.C. JURISDICTION.

If the Interstate Commerce Commission (I.C.C.) considers the State, rather than a railroad entity, to be the "common carrier," the State itself would be subject to I.C.C. supervision. Such supervision would require the State to conform its accounting practices to I.C.C. requirements and to obtain I.C.C. approval for the issuance of all State securities. The obvious burdens imposed by such requirements appear to preclude direct State operation of the railroad.

Creation of a public authority will avoid such far-reaching I.C.C. jurisdiction. As indicated in Memorandum, Regulatory and Related Issues Involved in the Proposed Transfer of the Alaska

⁴ If the State owned and operated the railroad itself, it might technically have the power to limit its liability for the railroad's tort and contractual obligations. It is unclear whether a court would allow total immunity, however, or whether the railroad would be able to contract effectively with third parties if it denied all liability. Establishing a public authority is the clearest and most definite method of insulating the State itself from liability, while continuing effective and responsible railroad operations.

Railroad from the United States to the State of Alaska, October 3, 1981, prepared by Wickwire, Lewis, Goldmark & Schorr (hereafter "Regulatory Issues Memorandum"), the I.C.C. generally considers a state authority or corporation chartered to operate a railroad to be the "common carrier." See State of Vermont and Vermont Railway Inc., 320 I.C.C. 330, 334-35 (1963); Port Authority Trans-Hudson Corp., 317 I.C.C. 357, 362 (1962). The I.C.C. does not seem to have laid forth any standards, however, either through rule making or adjudication, as to how independent a state authority must be in order to be considered the common carrier.

III. TAX-EXEMPT FINANCING.

As discussed in Bivens 2, at 77-78, 80, one of the major problems with federal administration of the railroad has been inadequate capitalization. In the past, federal appropriations have been the sole source of capital. For reasons set out in the Bivens studies, as well as changes in federal policy, access to other public and private sources will be necessary in the future. Such investment might be easier to obtain if the railroad can issue federally tax-exempt bonds, and an entity to operate the railroad can probably be created that would qualify for tax-exempt financing.

For interest to be exempt from federal income tax, the obligation must be issued either (1) by a "political subdivision" of

a state, or (2) by an instrumentality of a political subdivision that issues obligations "on behalf of" a political subdivision. Internal Revenue Code (I.R.C.) § 103(a)(1), Regs. § 1.103-1(b). Even if the railroad authority qualifies as a political subdivision or an instrumentality thereof, any obligation it issues will nonetheless be taxable if it is considered an "industrial development bond."⁵

1. Political Subdivision.

For purposes of the Internal Revenue Code, a political subdivision is:

any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any State or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement and similar districts and divisions of any such unit.

Regs. §§ 1.103-1(b) (emphasis added).

For a political subdivision to exercise "the sovereign power" of the state, it must have more than an insubstantial amount of the state's sovereign powers: the power to tax, the power of

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There are a number of exceptions to the general rule that industrial development bonds are taxable. Although these exceptions are exceedingly useful in some circumstances and are often relied on for tax-free financing of municipal development, none of these exceptions appears to apply to the entire railroad operation.

eminent domain, or the police power. Estate of Shamberg v. Commissioner, 3 T.C. 131, aff'd, 144 F.2d 998 (2nd Cir.), cert. denied, 323 U.S. 792 (1944). It is not altogether clear whether one of these powers is enough, but all three are not required. If only one power is conferred, it may need to be an unrestricted power. In determining whether an entity has sufficient sovereign powers, the Internal Revenue Service ("the Service") considers "all the facts and circumstances . . ., including the public purpose of the entity and its control by a government." Rev. Rul. 77-165, 1977-1 C.B. 21.

The power of taxation is probably not a realistic alternative for the railroad entity. The State must therefore confer some eminent domain or police powers on the railroad entity if it is to qualify as a political subdivision. The Internal Revenue Service has ruled that an authority's ability to request a political subdivision to condemn property on the entity's behalf is not a substantial possession of unrestricted sovereign power and was not alone enough to make an entity a political subdivision. Rev. Rul. 77-164, 1977-1 C.B. 20. It is unclear whether power to condemn subject to state veto would be sufficient, but it might well not be considered an unrestricted exercise of the sovereign power.

Conferring police power upon the railroad entity may also be feasible, alone or in conjunction with eminent domain power. The law regarding police power is still developing, however, and it

is difficult to say how much police power is required. On the one hand, the Service has ruled that a state university possessed insubstantial police power where its police force was authorized only to enforce traffic regulations on campus and to arrest violators and detain them until city police arrive. Rev. Rul. 77-165, 1977-1 C.B. On the other hand, a regional urban transit authority has been deemed a political subdivision on the basis of its police powers, which included the power to set rates (after public hearings), determine routes, and enforce its regulations by maintaining a security force. The authority exercised these powers free from any regulation by the State Public Service Commission. Rev. Rul. 73-563, 1973-2 C.B. 24. If the State seeks a political subdivision exemption based on police power, it would be advisable to give the railroad entity as much regulatory and enforcement power as possible, perhaps including an independent security force with the ability to make arrests and issue summonses.

In short, the most promising avenue of achieving political subdivision status would be to grant the railroad the power of eminent domain to condemn property directly for railroad purposes, if the State considers this acceptable. A second, and less certain, alternative would be to confer substantial police power upon the railroad entity. A combination of both of these powers increases the likelihood that the railroad entity would be considered a political subdivision.

2. "On Behalf of" Issues.

If the railroad authority is not granted enough sovereign power to qualify as a "political subdivision," it may still be eligible for tax-exempt financing if it issues obligations "on behalf of a political subdivision." It appears that such obligations need not be backed by the full faith and credit or the taxing power of the state. Such an exemption is less certain, however, and subjects the railroad to greater restrictions.

Internal Revenue Service rulings indicate that certain tests must be met for an obligation to be issued "on behalf of" a political subdivision. These are:

(a) The issuer must engage in activities that are essentially public in nature;

(b) The issuer, except to the extent of retiring indebtedness must not be one which is organized for profit;

(c) Income must not inure directly or indirectly, or appear to be available to, any private person;

(d) The state or political subdivision must have a beneficial interest in the organization while the indebtedness remains outstanding and must obtain full legal title to the property when indebtedness is retired;

(e) The corporation must be approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation.

The first three requirements will probably not be difficult for the railroad entity to meet, especially if the enabling legislation takes account of these requirements and states that the railroad serves important public purposes, requires supervision of railroad books, and so on. The more significant difficulties for the railroad in achieving "on behalf of" status will be the requirement that property revert to the State after the indebtedness is retired and the necessity for State approval of each railroad obligation. On occasion the Service departs from its own established guidelines, and it is conceivable that the entity established to manage the railroad could obtain a favorable "on behalf of" ruling even if it does not comply with these two requirements. In similar situations, local public authorities have obtained "on behalf of" rulings where the property would continue to be held by the authority after the retirement of the indebtedness, but in those cases the political subdivision (a city) possessed substantial control over the issuer's governing body, and upon liquidation of the issuer the property would pass either to another entity of the same nature or revert to the political subdivision. It is impossible to assess the likelihood that the Service would confer "on behalf of" status to a railroad entity that does not comply with these two requirements.

In 1976, the Service published proposed regulations to significantly tighten the requirements for obligations issued "on

behalf of" political subdivisions. Although these regulations have not yet been adopted, the Service may in fact rely on them in making private rulings. Although a number of these requirements are the same as those enunciated above, they go further and require even tighter organizational and supervisory control by the governing unit (the State) over the issuer. For example, the proposed regulations require state approval of the issuer's obligations not more than sixty days before issuance, as well as substantial control over membership on an issuing authority's governing board.

The restrictions and potential restrictions over a public entity entitled to "on behalf of" tax-exempt status generally make an "on behalf of" exemption less desirable than a direct "political subdivision" exemption, as discussed above. If the State decides to rely on an "on behalf of" exemption, qualification of the railroad entity will necessarily impose certain restrictions, which must be analyzed in greater detail to make sure that the enabling legislation complies.

3. Industrial Development Bond Prohibition.

Even if the railroad entity achieves tax-exempt status as a "political subdivision" or as acting "on behalf of" a political subdivision, its bonds will nevertheless be taxable if the proceeds of the bonds benefit private persons in their trade or business. In such event, the bonds are considered taxable "industrial development bonds." Cf. footnote 5. A bond is

classified as an industrial development bond if (1) more than 25% of the proceeds of the obligation are used directly or indirectly in any trade or business carried on by non-exempt persons, and (2) the payment of principal or interest on the obligation is secured, in whole or major part, by any interest in property or payments made in respect of property used or to be used in a trade or business or derived from payments in respect to property, or borrowed money, used in a trade or business.

The industrial development bond regulations are not intended to preclude a state or political subdivision from operating a business. The regulations specifically state:

When publicly-owned facilities which are intended for general public use, such as toll roads or bridges, are constructed with the proceeds of a bond issue and used by non-exempt persons in their trades or businesses on the same basis as other members of the public, such use does not constitute a use in the trade or business of a non-exempt person for purposes of the trade or business test.

Regs. §§ 1.103-7(b)(3).

Based on the examples in the regulations and on public and private rulings issued by the I.R.S., a strong argument can be made that the mere fact that the railroad hauls the property of private (non-exempt) parties does not mean that the railroad would be using bond proceeds for the trade or business of "private persons," as defined by I.R.S. regulations. It would be necessary, however, to obtain an advance ruling on this issue.

On the other hand, if any part of the operation or the facilities of the railroad were leased to a private party for use in its trade or business, unless amounting to less than 25% of the obligation, the project would constitute an industrial development bond with the commensurate loss of tax exemption of its interest payments. The Service has indicated, in private rulings, that it will closely scrutinize any direct or indirect benefits to non-exempt persons. It seems likely that if the railroad were to contract with a private company for the management or operation of the railroad or various of its facilities, the Service would consider such a contract as a benefit to a non-exempt person which would render railroad obligations industrial development bonds. Thus if the railroad entity is to be eligible for tax-exempt financing, leasing operations to a private operator is not a realistic option, and even hiring a private operator could preclude tax-exempt financing. For this reason, it will be important to continue to monitor railroad operations to ensure that future actions do not cause the Railroad to lose its tax-exempt status.

This discussion of the industrial development bond prohibition is not intended to preclude further in-depth consideration of other sophisticated avenues of generating private investment. As pointed out in Bivens 2, several ways of using federal tax advantages to raise private investment funds may exist, including

limited partnerships, Bivens 2 at 90-91, and perhaps joint ventures or syndications. Use of the public authority structure to operate the railroad should leave these possibilities open, and may even give the State greater flexibility. Once some of the fundamental issues discussed in this memorandum have been resolved, more specific proposals for tax-exempt and other advantageous financing can be explored, and may well prove fruitful.

IV. STATE SUBSIDY, STATE CONTRACTS FOR RAILROAD SERVICE, AND STATE INVESTMENT IN RAILROAD CAPITAL IMPROVEMENTS.

Although the railroad currently is profitable, it is saddled with years of deferred maintenance attributable to inadequate federal appropriations. It is generally believed that the railroad's operating revenues will be insufficient to cover its full operating costs for all services and to finance overdue and future capital improvements, see Bivens 2 at 77-80, 98-99. Accordingly, it will be necessary to find other means of meeting capital requirements and such operating expenses as passenger service. The State wishes to avoid a direct general subsidy, but nevertheless recognizes the need to participate in certain operations that serve clear public purposes, such as passenger service or track expansion. The State can reconcile these competing interests by establishing an entity that is precluded from asking for general operating subsidies but is permitted to request State funds for purposes specified in the legislation establishing the entity.

Contracting. Contracting with the railroad authority for the provision of specific services would ensure that State funds are spent only for those purposes that the State has decided are important. Contracting appears legally permissible,⁶ so long as the expenditure of State funds is for a "public purpose." The Alaska constitution requires that State funds be spent only for "public purposes," Alas. Const., Art. IX, Sec. 6, but does not appear to otherwise prohibit or significantly restrict the State's ability to contract for desired railroad services. See discussion in Section VIII below. The public purpose requirement has been broadly construed, at least so far, by the Alaska Supreme Court. The court has, for example, upheld a State mortgage adjustment plan in which public monies were used to pay private mortgage obligations for dwellings that had been damaged by earthquake. Suber v. Alaska State Bond Committee, 414 P.2d 516 (Alas. 1966). It has also upheld the validity of municipal bonds issued to finance the construction of a manufacturing facility to be leased to a private business. Wright v. City of Palmer, 468 P.2d 326 (Alas. 1970).

The public purpose requirement of Article IX undoubtedly imposes some outside limitation on the nature of the contracts

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A.S. 37.10.085 prohibits the State from subscribing to corporate stock, or lending credit to or borrowing money on behalf of a corporation. It is not clear whether this provision would affect the financial dealings between the State and the railroad, but in the interest of caution, the enabling legislation might specifically provide that the railroad is exempt from this restriction. Cf. 18.26.150 (Medical Facilities Authority).

the State may make with the railroad, but contracts for the provision of services that benefit the public, such as passenger service, appear unexceptionable. To help ensure that such contracts would survive judicial review, the enabling legislation for the railroad authority should set forth specific legislative findings regarding the public purposes served by State-railroad contracts and could provide a non-exclusive list of permissible contracts. To make it more likely that the State would be exempt from potential antitrust liability, the enabling legislation should specifically address the State purpose to be served by any contracts that might be subject to antitrust challenge, and should indicate an affirmative intention to displace free competition. Direct oversight of these contracts by the governor or the executive department would also strengthen the State's claim that such contracts are exempt from the antitrust laws. It is impossible to predict, however, whether these efforts would be sufficient to exempt the State from antitrust coverage. See Regulatory Issues Memorandum, at 15-21.

The enabling legislation can adopt any degree of specificity as to the type of contracts authorized and the amounts, but as the legislation becomes more specific, the executive is less able to respond to new needs and changing circumstances. On the other hand, if significant discretion is vested in the executive branch, it is important to make sure that the department or

agency does not inadvertently become an additional tier of railroad management.

Capital Improvements. State expenditures for capital improvements are also subject to the broad public purpose limitation of the State constitution. Such investment is quite probably for a public purpose, especially if the enabling act contains convincing language to that effect. The technical question of who should hold title to railroad property that is acquired or constructed need not be addressed at this time. The question involves tax, financing, liability, and other issues that should be considered after other, more basic, decisions have been made.

Procedures. To regulate requests for appropriations for railroad projects, the State may wish to establish guidelines for the railroad to follow in requesting State funds. Requests for funds could be made directly to the Legislature (or to the relevant committee), cf. A.S. 144.83.080(16) (Alaska Power Authority), or the railroad could be required to appeal to the Governor or other member of the executive branch who could in turn request legislative appropriations. If desired, the legislation could also provide standards by which requests for appropriations are to be judged, which could range in severity from "appropriate to further railroad purposes" to "essential for the continued operation of the railroad." The legislation can set up as many, or as few, levels of review as the State feels is appropriate, so long as it does not become unduly burdensome,

expensive, or time-consuming. The trade-off, of course, is between the perceived need for State oversight of the railroad and the business advantages of independence and efficiency.

Instead of allowing the railroad to request appropriations as necessary, the legislation could require the railroad to include its appropriation request as part of an annual budget.

Alternatively, the Legislature could establish a railroad fund from which monies could be disbursed when the appropriate official found that the requisite standard had been met.

V. INDEPENDENT AND EFFECTIVE RAILROAD MANAGEMENT.

A management structure for the railroad that will foster the optimal combination of high quality and low cost transportation demands that railroad operations be insulated from the political pressures generated by the railroad's competitors, suppliers, shippers, lessees, and lessors. The Bivens 2 criteria, at 83-84, make clear that management freedom and authority (see criteria 2, 4, 5, 8, 9) and freedom from cumbersome bureaucratic restraints (see criteria 5, 7) are critical if the new railroad entity is to operate effectively. To meet these goals, the entity managing the railroad will probably need significant control of day-to-day railroad operations. Giving the railroad entity sufficient control of day-to-day operations to meet the State's goal of effective business management conflicts, however, with the

State's interest in retaining control over major financial and policy decisions for the railroad.

The railroad will be able to make managerial decisions more quickly, flexibly, and efficiently if it is free from most of the restrictions that normally encumber the action of governmental bodies. The railroad entity should be specifically exempted from most such restrictions, such as the State Administrative Procedure Act, A.S. 44.62 et seq., state public bidding and procurement requirements, state personnel requirements, and other restrictions to be identified by the Attorney General's office. If the railroad is to be free to set its own rates and make its own rules, an explicit exemption from regulation by the Alaska Transportation Commission would avoid any possible jurisdictional disputes over intrastate transportation.

It is also important to note that freedom from some of the restrictions that normally apply to line agencies will help give the railroad entity a sufficient degree of independence to justify insulation of the State from liability for the authority's debts.

The State can also use appointment and membership requirements for the entity's governing board to reduce political influence over the railroad board. The most common means of doing so include confirmation of appointments by the Legislature, requiring a bipartisan board, staggering terms so that no one governor appoints the entire board, setting qualifications for

board members (e.g., one member each who represents or has expertise in finance, law, railroads, labor, etc.), or allocating appointment power among different State officials.

VI. STATE OVERSIGHT OF MAJOR FINANCIAL TRANSACTIONS AND POLICY DECISIONS.

Although the day-to-day operations of the railroad can be left to the railroad entity, the State can retain oversight power to prevent the railroad from making major policy changes or taking actions that would threaten the railroad's financial stability. Conversely, the State may also wish to establish a mechanism for ensuring that the railroad's operator will seriously consider the State's ideas regarding railroad projects. In particular, the State is concerned with (a) preventing railroad insolvency, (b) ensuring continued railroad service, (c) having a major policy role in proposed changes in service levels and track expansion, and (d) preventing borrowing that could indirectly endanger the State's own borrowing capacity.⁷

In dealing with these concerns, the State must balance its desire for oversight against the railroad's legal and practical need for independence. If the railroad entity is to make most

⁷ Although the State of Washington is facing serious financial problems, the precarious position of the Washington Public Power Supply System, a creature of the State, is acknowledged to have contributed to the recent lowering of the State's own bond rating.

business decisions and be responsible for the railroad's performance, it will need significant control over its budget and over policy decisions, especially in relation to service changes and expansion. See Bivens 2 at 83, 85-89. It is therefore important to ensure that the State carefully consider the effect of forcing the railroad authority to take a particular action, perhaps by providing that the executive or the Legislature make detailed findings regarding the impact, financial and otherwise, of amending or overruling a decision made or recommended by the railroad. Requiring the State to fund projects it determines the railroad entity must undertake is another possible way to ensure that the State share in the consequences of its decisions.

The enabling legislation can provide generally that the State will retain power to oversee the railroad entity's activities. The State has a wide range of options as to who will be responsible for monitoring railroad performance. An existing body could be given this responsibility, or a new body could be created. Appropriate choices among existing bodies include the Department of Transportation, the Transportation Commission, the Governor's office, or the House and/or Senate committees with substantive jurisdiction over railroad affairs. It is possible to erect several layers of supervisory control and overlapping responsibilities, as has apparently been done in South Dakota, where state railroad activities involve the legislature, the governor, the department of transportation's division of

railroads, the director of railroads, the state railroad board, the railroad advisory commission, and the railroad authority. It is not clear that such a complex structure is necessary or desirable, and it might very well make it difficult for the railroad to operate efficiently and apolitically.

In establishing procedures for State oversight of major financial and policy decisions, the enabling legislation must (1) identify the class of actions or situations that will trigger State review, (2) establish procedures for determining when those situations have materialized, and (3) set forth the method for State review. The State has already identified several primary concerns, regarding both policy (cutbacks and expansion of service and undertaking non-railroad activities), and finance (railroad insolvency and indirect effect on State credit rating).

Policy Decisions. For the two policy concerns, the State needs to determine how large a change must be proposed before the State will step in and review it. For service cuts and expansions, this level could be defined either as a percentage of existing service or as a dollar amount. It is important to set the level high enough that routine changes in timetables and service do not require State approval. Changes of less than 5% or 10% are probably de minimis; changes of 33% are quite probably significant. Picking a figure between those two points may be relatively arbitrary. Since expansion and cutbacks will be conscious decisions for the railroad entity, requiring it to

notify the State within a specified period of time before acting will probably provide sufficient notice; there should be no thorny questions as to whether the "triggering event" has actually occurred. Similarly, the State can require that the railroad authority give notice before engaging in non-railroad activities, as defined in the legislation, and can require State approval for such activities.

Once the class and magnitude of decisions that the State wishes to oversee have been identified, the State should devise an oversight process to give it an effective voice, without making it impossible for the railroad entity to act. To facilitate State review, the railroad can be required to present written reasons for its proposed action. It would probably be most efficient for the report to be submitted to the appropriate legislative committees, but it is also possible for the report to be first submitted to the Governor. The Legislature could either be required to approve it (by resolution or by regular vote of one or both houses); alternatively, the Legislature could be given veto power, to be exercised within a specified time, and possibly requiring a supermajority. The latter approach ensures that a decision will be made promptly.

Financial Concerns. The financial concerns present more difficult issues of assessment and notice to make sure that the State does not step in prematurely. The traditional indicia of insolvency used in contracts between private parties tend to come

too late to be useful to the State (e.g., appointment of a receiver or filing a bankruptcy petition). Other alternatives need to be investigated, perhaps with the assistance of a financial analyst. Possible events to trigger State intervention to prevent insolvency might include an actual or projected budget deficit of a specified percentage or dollar amount, a serious drop in the railroad entity's bond rating, railroad inability to meet bills as they fall due, and so on. If the State retains significant discretion to decide when the railroad is "approaching insolvency," it will be important to ensure that the railroad entity has an opportunity to respond to the State's concerns and to demonstrate that the railroad's financial condition is acceptable. It may also be desirable to provide for review of the State's decision to intervene, either by the judiciary or by a specially constituted advisory board.

If the State determines that the railroad is in danger of becoming insolvent, it could provide for State management of the railroad, perhaps with the governor or other executive officers serving as trustee. A less intrusive alternative would be to replace the executive officers or board of directors of the railroad.

As in the case of impending insolvency, it will be important to establish a fair procedure to guide the State in deciding that the railroad's credit rating is indirectly injuring the State's own borrowing ability. A specific fact-finding process by the

governor or other government officer or body could be required. In making this determination, the State should also be required to consider the impact on the railroad if it is not permitted to continue borrowing. Railroad borrowing is perhaps simpler to oversee than insolvency. Once it has been determined that the State's credit rating, or the authority's credit rating, is in jeopardy, the railroad can be required to obtain State approval (by the Governor or the Legislature) before issuing further bonds. Again, this approval can be active or can be exercised through a veto power.

Other Forms of Oversight. As a general matter, most public authorities in Alaska are subject to annual legislative audit, are required to submit an annual report to the Governor and/or the Legislature, and are required to give the legislative auditor access to their books at all times. See, e.g., A.S. 44.82.180, 44.83.190, 44.85.100. Similar requirements can be imposed on the railroad entity. The State may also want to give the legislative auditor the power to prescribe the form and content of the authority's financial records, as is the case with some of the other public authorities, see, e.g., 44.82.180, 44.83.190, but this requirement could limit the railroad's flexibility or conflict with federal I.C.C. accounting regulations. Alternatively, an independent outside audit could be required, which has the advantage of being immune from the political considerations that sometimes impinge on legislative audits.

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concerns.

The procedures for appointing and removing members of the railroad's governing board are another source of State control over railroad activities. The power to remove board members without cause would give the State an effective check on the board's actions. If overused, however, this power could undermine the railroad's independence and make it more vulnerable to political pressures. Another effective tool for State control over the railroad is to require the railroad's governing board -- and not just its executive officers -- to retain actual control over specified important decisions. The legislation could accomplish this by specifying that the board must concur in specified decisions, such as expansion or reduction of service, contracting of debts or issuance of bonds or notes, sale of railroad property, all large expenditures or transactions (specified by dollar amount), filing of annual reports required by the State, adopting an annual budget, contracting with the State, requesting State appropriations, and so on.

An even more effective, although more intrusive, check on railroad decision-making would be to require the railroad to follow specific administrative procedures in making important decisions. The enabling legislation would need to identify what actions would be subject to such requirements, and would need to set forth specific procedures. The formal administrative procedures could allocate responsibility between railroad management

and the governing board, establish specific fact-finding processes (possibly including notice to specified parties and public hearings), and require the railroad to make adequately documented written findings. The State could participate at the decision-making level by contributing at hearings, submitting statements, or reviewing the railroad's files. It can also retain power to review the railroad authority's decisions, as discussed above. Alternatively, procedures for judicial review could be established. Such administrative requirements would, of course, undercut the railroad management's flexibility and independence, which Bivens 2 concluded were necessary, see Bivens 2 at 77-80, 82-83. The effects on railroad management should thus be carefully considered before such requirements are imposed. Cf. Section V above.

Action-Forcing Mechanism. The State may also wish to consider providing a mechanism that will guarantee that the entity in charge of the railroad considers actions proposed by the State, but that does not impose so much control over the railroad that the advantages of independent management are lost. One way to balance these competing interests would be to set up procedures for railroad review of legislative proposals. For example, the legislative committees with substantive jurisdiction over railroad matters, or the Governor, could be permitted to request the railroad to consider State proposals for railroad actions. Such consideration could require that the railroad entity hold

public hearings, conduct appropriate studies, and issue a written report of its findings and decision. The legislation can specify how much time the railroad entity has to reach its decision. After a decision is returned, the State can adopt, modify, or override it. A decision by the State to overrule or significantly modify a railroad decision will, of course, affect the railroad entity's plans and finances, and it may be necessary to require the State to fund any project that the railroad entity has rejected or to otherwise take responsibility for overriding the railroad entity's decision.

VII. EMPLOYEE ISSUES.

Concern has been expressed that State acquisition of the Alaska Railroad may disrupt the State's present employee pay, benefits, and retirement systems. In particular, there has been fear that if railroad employees continue to receive certain benefits comparable to those they receive as federal employees (treatment which may be necessary to induce them to continue working for the railroad), other State employees will feel unfairly treated. See generally, Memorandum, Employee-Related Issues Raised by the Proposed Transfer of the Alaska Railroad from the United States to the State of Alaska, September 25, 1981, prepared by Wickwire, Lewis, Goldmark & Schorr, at 16-17. It would be desirable to prevent such reverberations and dissatisfaction, if possible. Establishing an independent public

authority should largely resolve this problem, since the more independent the railroad entity is, the more it should be perceived as legally separate from the State, justifying differential treatment of railroad employees.

The federal transfer legislation may require that railroad employees be treated somewhat differently from other State employees. If so, the railroad authority will need some degree of independence and flexibility in deciding employee issues. It would therefore be advisable (1) for the State to review present State law to make sure that the railroad will have all of the necessary authority to permit it to comply with the requirements of the transition plan, and (2) that the railroad entity be freed from the restraints of State civil service requirements and that it not be required to conform to or participate in State employee benefit programs. See Section VIII(3) below. Freedom from state civil service system requirements will also make it possible for the railroad entity to adopt a performance-based personnel management system, with direct railroad responsibility for personnel decisions and with the ability to provide adequate performance incentives, as recommended in Bivens 2. The State will also need to decide whether the State itself or the railroad entity will be responsible for the obligations created by the federal transfer legislation.

VIII. CONSTITUTIONAL LIMITATIONS

A number of State constitutional provisions will have a bearing on the structure and powers of the railroad entity, but none appears to present insuperable obstacles to establishing an authority to meet the objectives discussed above.

1. Organizational Limitations - Article III: The Executive Section 22. Section 22 of Article III of the Alaska Constitution provides that "[a]ll executive and administrative offices, departments, and agencies . . . shall be allocated by law among and within not more than twenty principal departments," with the exception of "regulatory, quasi-judicial, and temporary agencies." Unless the legislature has made recent changes, there are currently 17 principal departments, plus the University of Alaska, a constitutional corporation that is not allocated among any of the principal departments. See University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alas. 1975).

It is not altogether clear whether an entity established to operate a proprietary enterprise such as a railroad is considered an executive or administrative office, department or agency. There appears to be no State case law on this point, perhaps because most other State proprietary ventures are administered by State line agencies. If "executive and administrative" is used in Article III merely to distinguish between the three branches of government, then the railroad entity would quite clearly be within the province of the executive branch.

Assuming in the interest of prudence that the entity established to operate the railroad is an executive or administrative body, it must constitute a new executive department, be allocated among one of the existing departments, or fall within the exception for regulatory, quasi-judicial, or temporary agencies. The three exceptions seem inapplicable. The railroad authority would quite clearly not be quasi-judicial or temporary. It is debatable whether it could be classified as a "regulatory" agency. Unfortunately, there is very little helpful Alaska case law interpreting this provision. The Alaska Supreme Court has upheld, without explanation, a superior court finding that the Alaska State Mortgage Association, a public corporation established to provide housing financing, is not a regulatory, quasi-judicial, or temporary agency. Walker v. Alaska State Mortgage Association, 416 P.2d 245, 249 N.11 (Alas. 1966). The State supreme court has also indicated that the Alaska State-Operated School System (a state-wide school system comprised of schools outside of organized boroughs and cities and operated by a State-appointed board) is not a regulatory, quasi-judicial, or temporary agency, a point not disputed by either of the parties. Alaska State-Operated School System v. Mueller, 536 P.2d 99 (Alas. 1975). Unless the history of the State constitution sheds light on the proper meaning of "regulatory" as used in this section, it would be wise to assume that the railroad entity would not be a regulatory agency, since it would have direct

responsibility for operating the railroad, and not merely for setting rates, rules, etc.

If the railroad does not fall within one of the exceptions, it must be established as a State department or allocated among one of the existing departments. Virtually every statutory independent public authority in Alaska has been placed within one of the principal departments (usually the Department of Revenue or the Department of Commerce and Economic Development). The only apparent exception is the Alaska State-Operated School System, which the Alaska Supreme Court has implied, without holding, is "functionally if not nominally within the Department of Education." Id. at 104.

While such an allocation may seem a purely formal matter, the issue can become important. Other independent public corporations have been challenged as unconstitutional on the theory that they were not actually "within" one of the executive departments as required by Section 22. The Alaska Supreme Court analyzed the enabling legislation of two of these authorities and concluded that there was sufficient executive department control to bring the authorities "within" the designated executive departments. In reaching its decision, the court relied on the facts that the head of the executive department sat on the board of the public authority, that all members of the authority's board were appointed by the Governor and subject to removal at his pleasure, that the authority was required to submit an annual

report to the Governor and the Legislature, that the authority was subject to a legislative audit, and, in one case, that the corporation submitted certified copies of all its meetings to the Governor. DeArmond v. Alaska State Development Corporation, 376 P.2d 717 (Alas. 1962); Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alas. 1966). In DeArmond the court also pointed out that the corporation was only temporary and could be dissolved by its members, and that the Legislature had set qualifications for board membership with the clear intent of keeping the board free from outside control. The court concluded:

The fact that the statute declares that the corporation shall have a legal existence independent of and separate from the state does not add weight to appellant's argument [that the corporation is unconstitutional]. This is nothing more than a declaration of the legal relationship that most corporations have with respect to their creators.

376 P.2d at 724.

The DeArmond and Walker cases tell us only what controls will be sufficient to keep a quasi-independent authority "within" a State department; they do not indicate which features are actually necessary. Most of the other Alaska public authorities are subject to similar controls, however, and it would be prudent to impose the same requirements on the railroad entity. Most of these provisions will not significantly limit the State's flexibility in establishing an entity to operate the railroad, with the possible exception of the board membership provisions.

It should be noted that the same features that saved the constitutionality of the mortgage association and the development corporation would have been the basis for finding that quasi-independent public bodies were State agencies for the purposes of other State statutes. In Alaska State-Operated School System v. Mueller, 536 P.2d 99 (Alas. 1975), the court compared the features that made the school system autonomous with those provisions, subjecting it to legislative and executive control, and concluded that for the purpose of procedural rules governing service upon and answers by State defendants, the school system was an instrumentality or agency of the State. In Alaska State Housing Authority v. Dixon, 496 P.2d 649 (Alas. 1972), the court cited DeArmond and Walker for the proposition that the Alaska State Housing Authority was an instrumentality of the State within the Department of Commerce, and held that it was therefore a "state agency" as defined by the State Administrative Procedure Act. The authority was thus required to comply with the provisions of the Administrative Procedure Act. In drafting legislation, the State should thus carefully consider all of the rules and statutes that govern or protect State "agencies," "departments," "instrumentalities," etc., and decide whether to exempt the railroad from any such regulations. See Section VI above. The cases are silent as to whether coverage as a State agency for these other purposes is constitutionally required by

Article III, Section 22, or was merely required by the enabling statutes under review.

Section 26. Section 26 of Article III provides:

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

According to Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alas. 1966), this provision does not apply to nonregulatory, nonjudicial agencies that are not the heads of principal departments. Thus, Section 26 will govern railroad appointments only if the railroad is considered a regulatory agency or is established as a new principal department.

The Alaska Supreme Court has held that Section 26 and Section 25 (governing the appointment of heads of principal departments) delimit the full extent of the Legislature's constitutional power over appointments. Bradner v. Hammond, 553 P.2d 1 (Alas. 1976). Accordingly, if the railroad authority is not a regulatory agency or a principal department, there appear to be no explicit constitutional restrictions on appointments.

Section 23. Section 23 of Article III provides that where the Governor makes changes in the organization of the executive branch and "these changes require the force of law," they shall be set forth in executive orders, subject to legislative veto. It is not at all clear what types of changes "require the force

of law." The case law is scanty and unhelpful, and the Attorney General's office should pursue the issue further if significant organizational changes are to be made by the executive.

2. Financial Limitations - Article IX: Finance & Taxation

Section 4. Section 4 of Article IX of the Alaska

Constitution governs exemption from state taxation. It provides:

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit, religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained unless otherwise provided by law.

It is possible that a public authority is not a "political subdivision" automatically entitled to an exemption from state property tax. See City of Nome v. Block No. H, Lots 5, 6, & 7, 502 P.2d 124 (Alas. 1972) (Alaska State Development Corporation, a public corporation within the Department of Commerce, is not identical to the State and is not entitled to tax exemption as a "political subdivision").

The Legislature can, however, specifically grant tax-exempt status to a public corporation. The Alaska Supreme Court has upheld the power of the Legislature to grant tax exemptions beyond those specifically enumerated in Section 4. DeArmond v. Alaska State Development Corp., 376 P.2d 717 (Alas. 1962); see City of Nome, supra. This power to legislate tax-exempt status

may be subject to an implicit requirement that only property used for public purposes be treated as tax-exempt. See City of Nome, supra, citing Evangelical Covenant Church v. City of Nome, 394 P.2d 882 (Alas. 1964).

The Legislature therefore seems to have the power to grant a state tax exemption to the authority operating the railroad. Most of the other public authorities in Alaska have been specifically granted such a tax exemption in their enabling legislation. See, e.g., A.S. 44.81.170; A.S. 44.82.150; A.S. 44.83.150; A.S. 44.85.160; A.S. 44.88.140. To avoid litigation or dispute over state tax issues, it would be advisable for the enabling legislation to specifically address the railroad's tax liability for all forms of State taxation.

Section 6. Section 6 of Article IX of the Alaska Constitution provides that:

No tax shall be levied or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

"Public purpose" has been interpreted very broadly in Alaska, at least so far. The State supreme court has indicated that it will defer to legislative findings regarding public purpose unless "it clearly appears that such findings are arbitrary and without any reasonable basis in fact." DeArmond v. Alaska State Development Corp., 376 P.2d 717, 721 (Alas. 1962). The court has also stated that the concept of "public purpose" is "not capable of precise definition," but will change with changing times. Id.

See Wright v. City of Palmer, 468 P.2d 326 (Alas. 1970); Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alas. 1966); Suber v. Alaska State Bond Commission, 414 P.2d 546 (Alas. 1966). The court's analysis in some of these cases indicates that explicit legislative findings regarding the public purpose to be served provide a basis for a court to uphold the challenged spending. See Walker, supra.

A more difficult question is whether Section 6 even applies to the expenditures and borrowing of a public authority. Most of the cases assume, without specific analysis, that it does. DeArmond seems to imply, however, that the borrowing of an independent corporation is not the use of "public credit." The Attorney General's office may wish to pursue this point, since the cases are not illuminating. In all probability, however, railroad spending is governed by the public purpose requirement, and the State should certainly proceed on this assumption.

Section 7. Section 7 of Article IX provides: .

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

The section has been broadly interpreted by the Attorney General's office in a series of opinions stating that the section applies not only to taxes and licenses, but to all sources of

revenue, including, for example, natural resources revenues. See May 2, 1975, Opp. A.G. It is not at all clear whether revenues of an independent public authority would be covered by Article IX, Section 7, or whether application of railroad revenues to railroad expenses would constitute a prohibited dedication. It seems doubtful that this constitutional provision would apply to railroad revenues, but it is an issue that is worthy of further investigation by the Attorney General's office. The railroad might also be able to fall within the "federal program" exception if the transfer legislation is drafted so as to require the use of railroad revenues for railroad expenses.

Sections 8 and 11. Section 8 of Article IX allows State debt to be incurred only for the purpose of capital improvement and only with voter approval. Section 11, however, exempts the bonds of public authorities whose debts are not State debts from the requirements of Section 8. If the railroad's debts are, by law, not the debts of the State, the railroad would not be subject to the requirements of Section 8.

3. Other Limitations.

Article XII, § 6. Article XII, Section 6 directs the Legislature to establish a merit system for State employees. It is not clear whether the constitution requires that the merit system cover employees of independent public authorities. The present merit system, A.S. 39.25.010 et seq., contains a number of exemptions (including employees of the Gas Pipeline Financing

Authority and unionized members of ferry crews); presumably
railroad employees could be similarly exempted.

AMENDMENTS TO HB 12

page 1

line 17 - Delete ", the commissioner of revenue, and the commissioner of commerce and economic development." and insert in its place "and four members of the public who represent the petroleum, mining, agriculture, or tourism industries or other railroad user groups. The four public members shall be appointed by the governor and shall serve staggered four-year terms."

line 20 - before "member" insert "public".

line 21 and 24 - change "two" to "three".

line 27 - Delete entire section and insert in its place new section "Qualifications, powers, and duties of officers and directors." (See attachment A.)

page 2

line 6 - Delete entire section and insert in its place "PURPOSE OF THE AUTHORITY. The purpose of the authority is to plan, acquire, construct, operate, and maintain, or sell railroad facilities in the state, as provided for by law."

page 3

after line 13 - insert

- "(15) recommend to the legislature
 - (A) methods of expanding and improving railroad facilities in the state, and
 - (B) financing proposals if the authority finds that a project cannot be financed by revenue bonds of the authority.
- (16) develop a long-range state rail transportation plan to assist development of the state's resources and provide for transportation between communities."

Include new sections:

Annual audit

Limitations on issuance of bonds by the authority

Annual report

Appropriations and reports

Public records; open meetings

(See attachment B.)

Include new section:

"Section 2. (a) A task force, consisting of the directors of the Alaska Railroad Authority, representatives of the Departments of Transportation, Commerce and Economic Development, Natural Resources, Community and Regional Affairs, Law, and Labor, the Division of Planning and the Development of Policy, and the University of Alaska, shall consider all the options for transfer of the Alaska Railroad to non-federal control. The task force shall present its recommendations to the legislature on or before April 1, 1982.

(b) The Alaska Railroad Authority shall construct railroad facilities between Fairbanks and Delta and shall plan railroad facilities between Delta and the Alaska border.

(c) The authority shall initiate discussions with the principals of the Whitepass and Yukon Railroad concerning state participation in the ownership and control of that railroad.

(d) The authority shall consider additional railroad extensions within the state and shall report its findings and recommendations to the legislature.

(e) The authority may purchase rolling stock, terminals, and any associated storage and transportation facilities, including but not limited to grain and coal handling facilities, as are needed to fulfill its purposes.

(f) The authority shall initiate dedication of corridor rights-of-way over federal, state, and private lands.

A

§ 44.83.040

ALASKA STATUTES

§ 44.83.070

Sec. 44.83.040. Officers and quorum. The director shall elect one of the directors at large as chairman and other officers they determine desirable. The powers of the authority are vested in the directors, and three directors of the authority constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at a meeting by the affirmative vote of at least three directors. The directors of the authority serve without compensation, but they shall receive the same travel pay and per diem as provided by law for board members (§ 1 ch 278 SLA 1976; am § 3 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "directors at large" for "public members" in the law sentence.

Sec. 44.83.045. Qualifications, powers, and duties of officers and directors. (a) The directors at large must be residents and qualified voters of Alaska and shall comply with the requirements of AS 39.50 (conflict of interests). The directors at large shall serve four-year terms. The four original directors at large have terms of one, two, three, and four years, respectively.

(b) A vacancy in a directorship occurring other than by expiration of a term shall be filled in the same manner as the original appointment but for the unexpired portion of the term only.

(c) The authority shall employ an executive director who may, with the approval of the authority, employ additional staff as necessary in addition to its staff of regular employees. The authority may contract for and engage the services of legal and bond counsel, consultants, experts, and financial and technical advisors the authority deems necessary for the purpose of conducting studies, investigations, hearings, or other proceedings. The board of directors shall establish the compensation of the executive director. The executive director of the authority is subject to the provisions of AS 39.25. (§ 1 ch 114 SLA 1978)

Sec. 44.83.050. Staff.
Repealed by § 23 ch 156 SLA 1978.

Editor's note. — The repealed section derived from § 1, ch. 278, SLA 1976.

Article 2. Purpose and Powers.

Section

70. Purpose of the authority
80. Powers of the authority

Section

00. Power contracts and the Alaska Public Utilities Commission

§ 44.83.080

STATE GOVERNMENT

§ 4

constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste conservation facilities. (§ 1 ch 278 SLA 1976; am § 5 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment substituted the language "hydroelectric and fossil fuel projects" at the end of the section beginning "power production facilities" for

Sec. 44.83.080. Powers of the authority. In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

- (1) to sue and be sued;
- (2) to have a seal and alter it at pleasure;
- (3) to make and alter bylaws for its organization and its management;
- (4) to make rules and regulations governing the exercise of its corporate powers;
- (5) to acquire, whether by construction, purchase, gift or lease, to improve, equip, operate, and maintain power projects;
- (6) to issue bonds to carry out any of its corporate purposes, including the acquisition or construction of a project owned or leased, as lessor or lessee, by the authority, or by any person, or the acquisition of any interest in a project or any part of the capacity of a project, the establishment or increase of reserves to pay the bonds or interest on them, and the payment of all costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers;
- (7) to sell, lease as lessor or lessee, exchange, donate, convey, or otherwise dispose of any real or personal property owned by it, or in which it has an interest, when, in the judgment of the authority, the action is in furtherance of its corporate purposes;
- (8) to accept gifts, grants or loans from, and enter into contracts and other transactions regarding them, with any person;
- (9) to deposit or invest its funds, subject to agreements with the bondholders;
- (10) to enter into contracts with the United States or any person, subject to the laws of the United States and subject to concurrent review by the legislature, with a foreign country or its agencies, for the financing, construction, acquisition, operation and maintenance of all or any part of a power project, either inside or outside the state, and for the sale or transmission of power from a project or any right to the capacity of a project.

State Government

B

(2) repair or reconstruction of a project; or
(3) design, acquisition or construction necessary to complete a project for which bonds have been issued. (§ 24 ch 83 SLA 1980)

Sec. 44.83.190. Annual audit. The authority shall have its financial records audited annually by a certified public accountant. The legislative auditor may prescribe the form and content of the financial records of the authority and shall have access to these records at any time. (§ 1 ch 278 SLA 1976)

Sec. 44.83.191. Limitations on issuance of bonds by the authority. The authority may not issue bonds except after 60 days notification of its intent to issue bonds is given to the governor and to the legislature, if the legislature is in session, or to the Legislative Budget and Audit Committee, if the legislature is not in session. (§ 24 ch 83 SLA 1980)

Sec. 44.83.195. Operation of projects. (a) When a project is operated by the authority, the authority shall enter into one or more contracts for the sale of electrical power from the project. A contract entered into under this section shall meet all requirements of AS 44.83.090.

(b) If, at the expiration of a contract entered into by the authority under (a) of this section, revenues earned by the authority under the contract exceed expenses of the authority for the project, an amount equal to the excess shall be used by the authority to reduce rates or improve services to consumers served by the power project. (§ 24 ch 83 SLA 1980)

Sec. 44.83.200. Annual report. Before March 1 of each year, the authority shall submit to the governor and the legislature a comprehensive report describing operations, income and expenditures for the preceding 12-month period. (§ 1 ch 278 SLA 1976)

Sec. 44.83.210. Appropriations and reports. (a) Notwithstanding any other provision in this chapter, the authority is subject to the provisions of the Executive Budget Act (AS 37.07).

(b) The authority shall, by the 15th day of each regular legislative session, present to the legislature a report detailing project status, original costs and projected costs, particularly highlighting any costs in excess of the original cost estimates submitted for each project when that project was originally approved by the legislature. (§ 1-ch 278 SLA 1976; am § 19 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment rewrote this section.

Sec. 44.83.220. Public records; open meetings. The provisions of AS 09.25.110 — 09.25.120 and AS 44.62.310 — 44.62.312 apply to the

authority. The authority shall publish a proposed agenda of its meetings and afford the public an opportunity to be heard in accordance with AS 44.62.312. (§ 1 ch 278 SLA 1976)

authority. The authority shall hold public meetings and afford the public an opportunity to be heard in accordance with AS 44.62.312. (§ 1 ch 278 SLA 1976)

Sec. 44.83.224. Long-term energy plan. The authority shall, after public hearings, prepare a long-term energy plan. The plan, and its amendments, shall be submitted to the commissioners of the department of Commerce and Economic Development for review and to the governor for approval. Before February 1 of each year. The plan shall include

(1) an "end-use" study examining the amount of energy used and the potential for energy conservation;

(2) an energy development plan, including thermal, electrical and transportation, at the lowest reasonable cost, including consideration as practicable to all energy sources (including nuclear fuels) which are consistent with acceptable standards for energy conservation goals, and the conservation of energy resources;

(3) an energy conservation commission to identify the region for which a conservation goal for energy to which the goals are applicable and to recommend (A) specific methods and means for achieving the conservation goal; and (B) specific methods and means for achieving the conservation goal;

(4) a component for emergency energy conservation applicable during times of emergency;

(5) a report on areas or subjects for demonstration projects involving energy sources, and energy conservation. (§ 25 ch 83 SLA 1980)

Effect of amendment. — The 1980 amendment rewrote the section.

Editor's note. — AS 44.83.180, referred to in this section, is repealed.

Sec. 44.83.230. Definitions. Unless otherwise provided, the definitions in this section apply to this chapter.

(1) "authority" means the Alaska Energy Authority established by this chapter;

(2) "bonds" means bonds, notes or debentures issued under this chapter;

February 24, 1961

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

Dear Ms. Cato:

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

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

Each of these points deserves a bit more detailed comment.

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

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

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

February 24, 1981

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

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

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

Mr. Cato

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

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

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

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

Ms. Gato
Page 5
February 24, 1981

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

Sincerely,

John T. Gray
Assistant Professor of
Transportation

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CS for House Bill 12 (2d Finance)
 Title An Act Relating to the Alaska Railroad
 Requested by Rep. Rogers Date 5-28-81

II. FISCAL DETAIL
 Agency Affected DOTPF
 Program Category Affected Transportation and Public Facilities
 BRU, Program, or Subprogram(s) Affected Transportation
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		SEE ATTACHED				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)		SEE ATTACHED				

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME		SEE ATTACHED				
TEMPORARY						

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

The attached fiscal note for HB 519 is applicable in terms of cost to the present Committee Substitute for HB 12, although there do exist procedural difference between the two measures.

IV. DATE 5-28-81 PREPARED BY Warren Sparks

AGENCY DOTPF
 PHONE 465-2470

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

MAY 3 - 1981

TRANSPORTATION PLANNING

FISCAL NOTE

REQUEST

Bill/Resolution No. HB 519

Title Establishing the Alaska Railroad Negotiating Commission

Requested by (Rep. Fanning)

Date 4/24/81

II. FISCAL DETAIL

Agency Affected Department of Transportation and Public Facilities

Program Category Affected Commissioner's Office

BRU, Program, or Subprogram(s) Affected Transportation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL		25.3	15.0			
300 CONTRACTUAL		159.0	79.5			
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		184.3	94.5			

FUNDING (Thousands of Dollars)

GENERAL FUND		184.3	94.5			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		-0-	-0-			
PART TIME						
TEMPORARY						

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

ASSUMPTIONS/EXPENDITURE BREAKDOWNS:

- A) Please note that this Fiscal Note presents the total anticipated costs of HB 519 rather than just the impact on DOT/PF.
- B) This estimate does not include the cost of support assistance from existing staff.
- C) All cost estimates are in FY 81 dollars.
- D) Expenditures will not commence prior to FY 82 and cover an eighteen month time span of activity. (The Act carries an immediate effective date.)

IV. DATE May 4, 1981

PREPARED BY Warren Sparks

AGENCY DOT/PF - S.E. Planning & Programming

PHONE 465-2470

Original: Legislative Finance

Budget and Management

Prime Sponsor (First Legislator Named)

FISCAL NOTE (Continued)

Page Two

E) 200 Travel: FY 82

Bimonthly meeting of the commission with an attendance of five members per meeting:

Round-trip air fare @ \$300 x 5 = \$1,500
Two days per diem @ \$67 per day x 5 = \$670
Incidental meeting expenses = \$50
Total per meeting = \$2,220 x 6 = \$13,320

Additional travel requirements of commission (including D.C. trips for negotiations):

10 trips per year @ \$1,200 air fare and per diem = \$12,000

FY 82 TOTAL = \$25,320

FY 83 travel budget reflects six months of activity, with adjustments for higher air fares: \$15,000

F) 300 Contractual: FY 82

Legal and investment counsel: \$150,000
Office Space Rental: 500 net square feet @ \$18 annual nsf cost = \$9,000

TOTAL: \$159,000

FY 83

Legal and investment counsel: \$75,000
Office Space Rental: Six months of 500 net square feet @ \$18 annual nsf cost: \$4,500

TOTAL: \$79,500

(Note: While HB 519 does not specifically provide authority for this type of professional assistance, these cost estimates have been included on the assumption that this assistance will be necessary for the commission to competently perform its mission.)

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7

Alaska State Legislature

SENATOR
H. PAPPY MOSS
P.O. BOX 182
DELTA JUNCTION, ALASKA 99737
907 895-4384



WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
907 465-4921

State Senate

MEMORANDUM

Date: April 11, 1983

Subject: SB 217, SB 201

To: All Committee Members
Senate Transportation Committee

From: Senator H. Pappy Moss, Chairman *moss*
Senate Transportation Committee *ARM*

Please find attached back-up material presented for your consideration of SB 217. The white packet entitled "Assessment of Jetfoil Service for Alaska" is to be orally presented to the Committee at the hearing. The blue booklet entitled "Economic Assessment of Jetfoil Service for Southeast Alaska" was prepared to show how the Jetfoil would fit into the Marine Highway System.

Also before the Committee will be SB 201, an appropriation bill for airport lighting at Tok. This appropriation is a follow-up on a previous appropriation for the purchase and upgrading of the airport in Chapter 82 SLA 1981. The Tok airport is a vital support facility for an extended population of 1800 people.

As you probably know, the community of Tok is centered on the junction of the Alaska Highway and the Tok Cut-off to the Glenn Highway, about 90 miles from the Canadian border and 200 miles from Fairbanks. Because of this central location, Tok has become the major support community for a geographic area extending from Mentasta Lake in the south to Chicken in the North. The Tok airport is especially important to this area as an air evacuation point to the Fairbanks hospitals.

At the present time, night flights are a very hazardous undertaking from and into the Tok airport. Currently, at least one air service from the Tok airport has an FCC exemption to allow it to offer night flight service from Tok using flare pots. With a routine flight, this type of lighting may be adequate but when an emergency exists, it is not always possible to make prior arrangements to have flare pots put out on the runway for an incoming flight. In addition, if the flight is expected, local residents will sometimes shine their car lights on the runway to assist incoming flights. As mentioned previously, this may be adequate in a normal situation, but where an emergency exists, it is woefully inadequate.

**Economic Assessment
of Jetfoil Service
for Southeast Alaska**

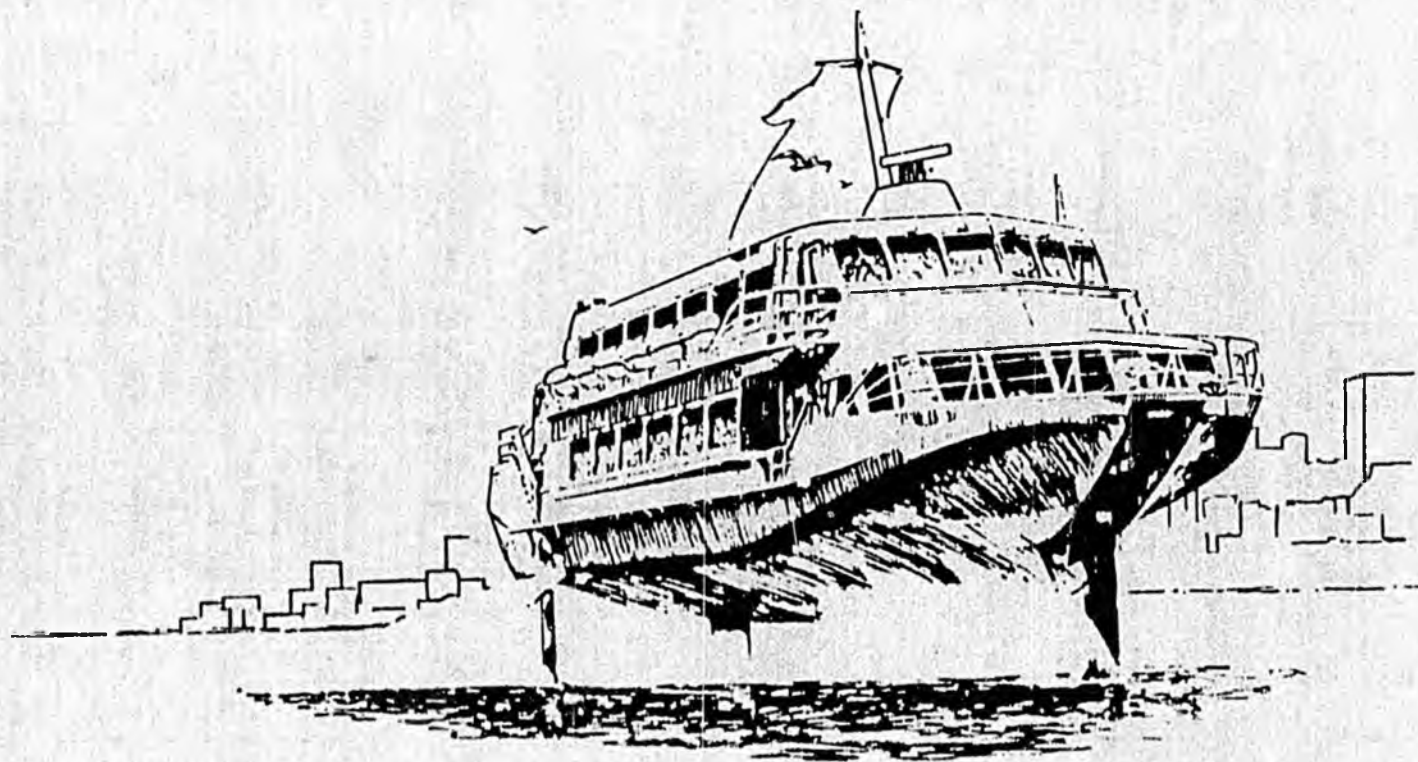
ECONOMIC ASSESSMENT OF
JETFOIL SERVICE
FOR SOUTHEAST ALASKA

STUDY NUMBER H-1400-201
MARCH 1983

PREPARED BY BOEING MARINE SYSTEMS
AND IN COOPERATION WITH ALASKA DEPARTMENT
OF TRANSPORTATION AND PUBLIC FACILITIES

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Introduction

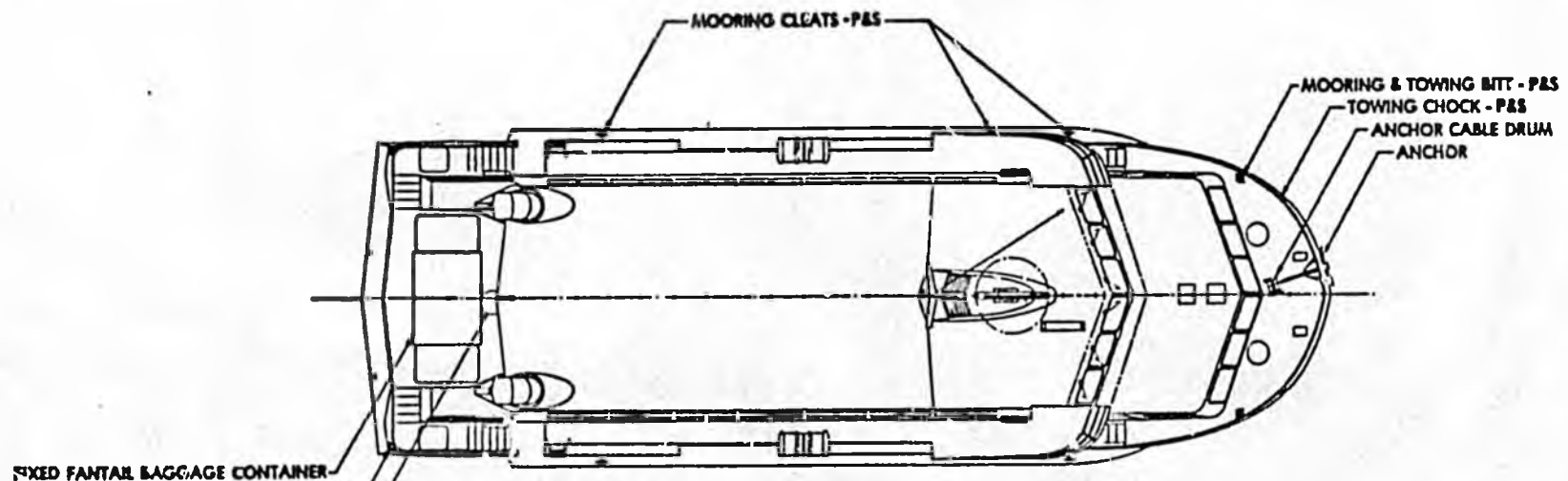
INTRODUCTION

THIS ASSESSMENT OF JETFOIL OPERATIONAL AND ECONOMICS FEASIBILITY IS PREPARED IN SUPPORT OF A PROPOSAL BY BOEING MARINE SYSTEMS TO THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR THE PURCHASE OF THREE BOEING JETFOILS (H-1100-LTRA-170, DATED MARCH 9, 1983). THE THREE JETFOILS OFFERED FOR DELIVERY IN 1985 AND 1986 HAVE BEEN CONFIGURATED SPECIFICALLY TO THE REQUIREMENTS OF THE SOUTHEAST ALASKA MARKET AND ENVIRONMENT.

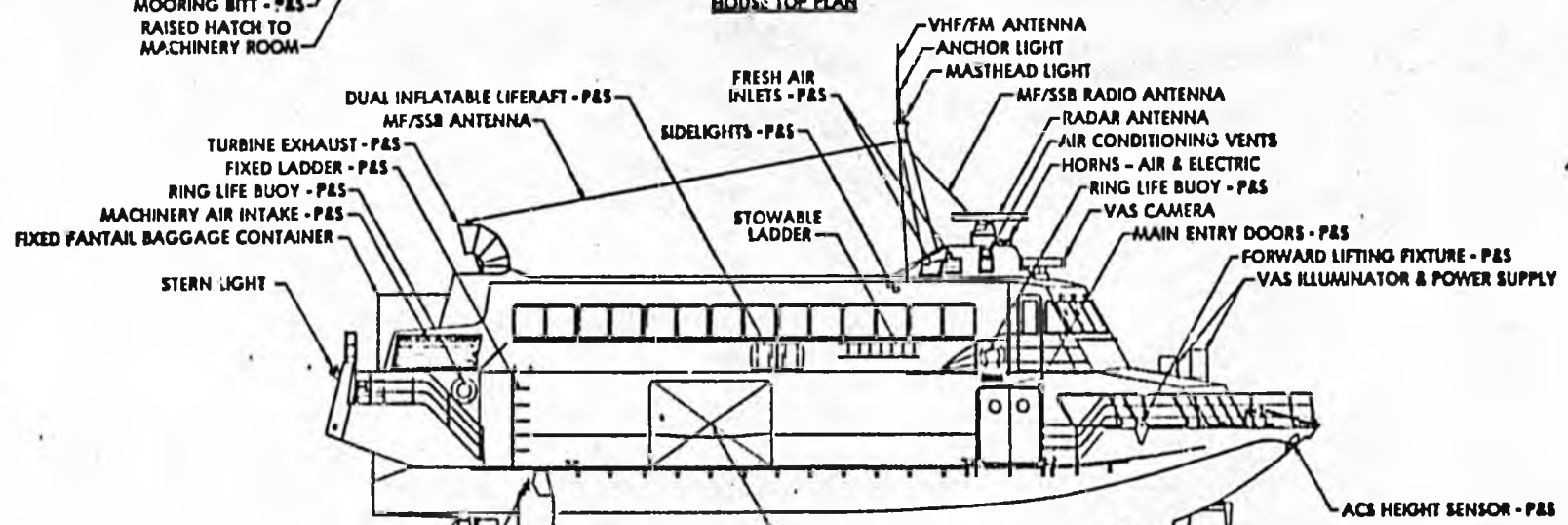
THIS REPORT ANALYZES THE MOST EFFECTIVE WAY TO UTILIZE JETFOIL CAPACITY AND CHARACTERISTICS AS WELL AS HOW JETFOIL SERVICE CAN COMPLEMENT FERRYBOAT SERVICE. CURRENT FERRY SERVICE IS REVIEWED AND REFINEMENTS TO THE FERRYBOAT SERVICE ARE PROPOSED SO THAT BETTER UTILIZATION CAN BE MADE OF THE FERRYBOATS IN CONJUNCTION WITH JETFOILS.

JETFOIL CONFIGURATION

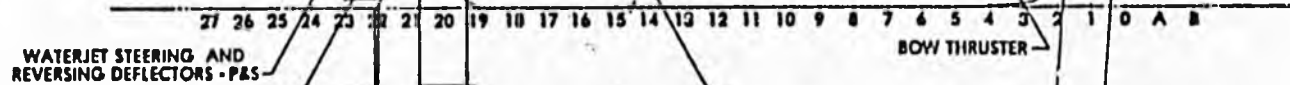
EACH JETFOIL HAS THE CAPACITY TO CARRY 135 PASSENGERS WITH BAGS IN CABIN ACCOMMODATIONS SIMILAR TO WIDE BODY JET AIRCRAFT. IT ALSO HAS THE ABILITY OF TRANSPORTING 25 TONS OF EITHER FREIGHT (CONTAINERIZED OR BULK) AND/OR PASSENGER VEHICLES (MAXIMUM 3). THE JETFOIL, LIKE AN AIRCRAFT, IS WEIGHT LIMITED SO RANGE, PASSENGERS, AND FREIGHT ARE TRADED TO STAY WITHIN THE MAXIMUM OPERATIONAL WEIGHT LIMIT. AS AN EXAMPLE, FOR A TYPICAL ROUTE LENGTH OF APPROXIMATELY 90 NAUTICAL MILES AND 135 PASSENGERS ONBOARD, THE FREIGHT CAPACITY IS APPROXIMATELY 19 TONS. MANY TIMES DURING THE YEAR WHEN THE PASSENGER SEATS ARE NOT COMPLETELY FILLED, ADDITIONAL FREIGHT COULD BE CARRIED UP TO THE LIMIT OF 25 TONS. THIS IS SIMILAR TO OPERATIONS BY ALASKA AIRLINES WITH THEIR 737 AIRCRAFT CONFIGURED FOR COMBINATION PASSENGER/FREIGHT LOADS. PASSENGERS AND FREIGHT ARE LOADED THROUGH DOORS ON THE MAIN DECK, PAGE 4.



HOUSE TOP PLAN



OUTBOARD PROFILE



ALASKA JETFOIL DEMO (SUMMER 1982)

LAST SUMMER'S JETFOIL DEMONSTRATION IN SOUTHEAST ALASKA IN ELEVEN COMMUNITIES FOR THE GENERAL PUBLIC PROVIDED AN EXCELLENT FORUM FOR DETERMINING THE PUBLIC PERCEPTION OF TRANSPORTATION NEEDS IN SOUTHEAST ALASKA AND THEIR REACTION TO THE JETFOIL ABILITY TO FULFILL THOSE NEEDS. GILMORE RESEARCH GROUP OF SEATTLE SURVEYED NOT ONLY THE 15,585 PASSENGERS ABOARD THE JETFOIL BUT ALSO RANDOMLY SAMPLED THE GENERAL POPULATION BEFORE AND AFTER THE DEMONSTRATIONS TO DETERMINE THEIR ASSESSMENT. THE FOLLOWING STATEMENTS HIGHLIGHT SOME OF THE MAJOR CONCLUSIONS FOUND IN THE FINAL REPORT, A STUDY OF PUBLIC ATTITUDES TOWARD THE JETFOIL IN SOUTHEAST ALASKA, GILMORE RESEARCH GROUP, OCTOBER 1982.

- o 90% OF RESIDENTS INDICATED INTEREST IN TRYING THE JETFOIL BECAUSE OF ITS PERCEIVED BENEFITS OVER CURRENT TRANSPORTATION (E.G., SPEED, FREQUENCY, SCHEDULING, ETC.)
- o JETFOIL DEMO RIDERS WERE REPRESENTATIVE OF ALL SOUTHEAST ALASKA RESIDENTS (51% FEMALE; 39% AGES 35-64; 44% WHITE COLLAR; 90% RESIDENTS)
- o 75% OF SOUTHEAST ALASKA RESIDENTS SAY THEY WILL LIKELY USE THE JETFOIL IF IMPLEMENTED. (92% OF JETFOIL DEMO RIDERS WILL USE IT)
- o 99% OF SMALL COMMUNITY RESIDENTS ON BOARD FAVOR JETFOIL INTRODUCTION AND 70% OF ALL SOUTHEAST ALASKA FAVOR INTRODUCTION (92% OF SOUTHEAST ALASKA RESIDENTS ON BOARD JETFOIL FAVOR INTRODUCTION)
- o 66% OF HEAVY FERRY USERS WILL USE JETFOIL MORE OFTEN THAN REGULAR FERRY IF IT IS IMPLEMENTED.

THE GENERAL CONSENSUS WAS VERY FAVORABLE INDICATING A HIGH SHARE OF THE MARKET WOULD USE THE JETFOIL AND IN FACT WOULD TRAVEL MORE FREQUENTLY. THUS, SHOWING CONSIDERABLE MORE TRAFFIC DEMAND THAN IS BEING MET WITH CURRENT SERVICES. IN ADDITION, IT WAS ALSO SUCCESSFULLY DEMONSTRATED THAT THE JETFOIL CAN OPERATE IN SUMMER DURING LOW VISIBILITY AND IN WINTER IN SEVERE WEATHER WHEN AIRCRAFT ARE GROUNDED. IT CAN PROVIDE A GOOD ALTERNATE TRANSPORTATION MODAL.

ANALYSIS BASE

ALL COST ANALYSIS HAVE BEEN DONE IN 1983 U.S. DOLLARS. THIS ALLOWED THE EVALUATION OF ALL COST ASPECTS IN CURRENT KNOWN DOLLARS USING 1983 FARES, MATERIAL COST, LABOR RATES, ETC. JETFOIL OPERATING COST ESTIMATES INCLUDE LABOR COSTS WHICH REFLECT LABOR RATES OF SIMILAR JOB CLASSIFICATIONS CURRENTLY IN THE ALASKA MARINE HIGHWAY.

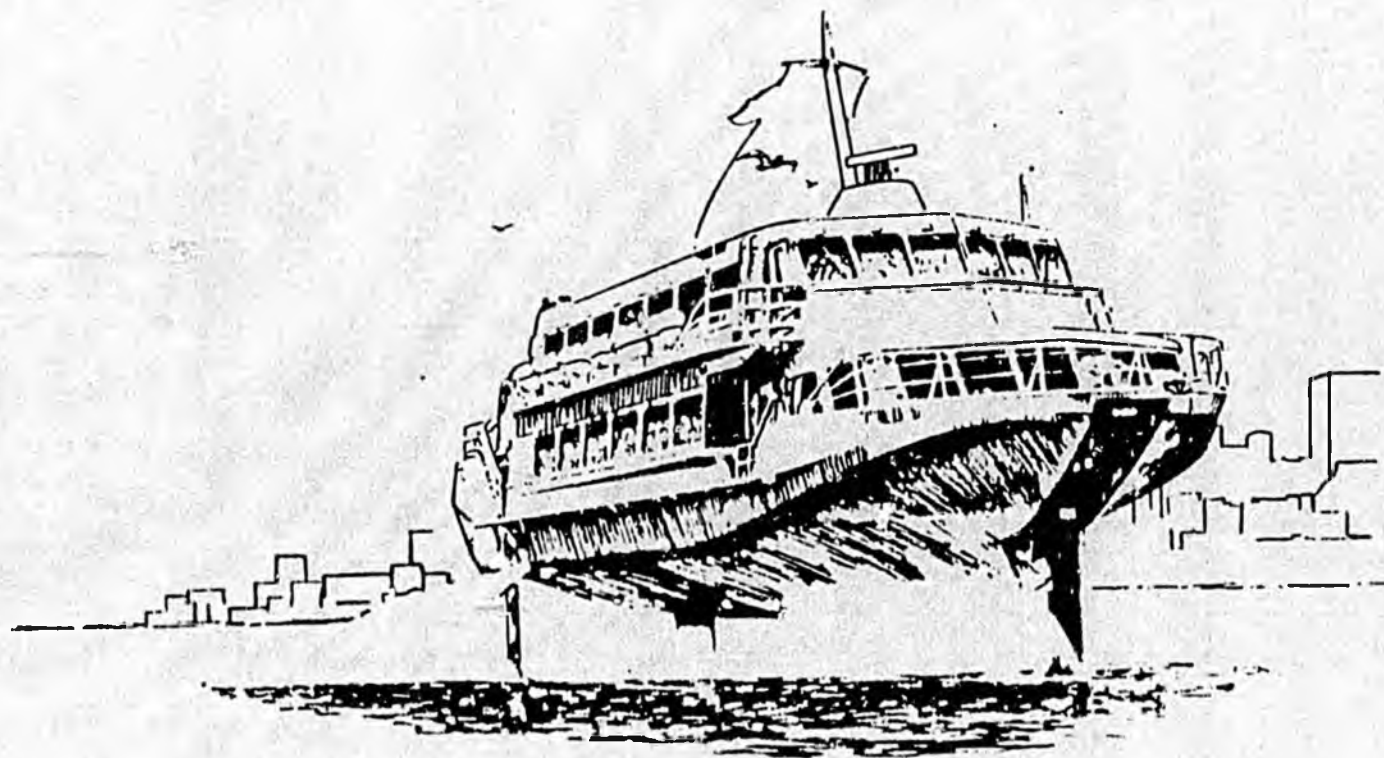
AN EXTENSIVE ANALYSIS WAS MADE OF THE PASSENGER MARKET IN SOUTHEAST ALASKA. THIS WAS BASED ON CURRENTLY AVAILABLE TRAFFIC DATA AS FOLLOWS:

- FERRY TRAFFIC - ALASKA D.O.T. MARINE HIGHWAY TRAFFIC VOLUMES REPORT, 1970-1982.

- JET AIRCRAFT TRAFFIC - CIVIL AERONAUTICS BOARD "SERVICE SEGMENT DATA", 1973-1981.

- AIR TAXI TRAFFIC - SCHEDULED SERVICE; ALASKA TRANSPORTATION COMMISSION REPORTS 1976: SOUTHEAST ALASKA TRANSPORTATION STUDY, 1979.

*ALL ASSESSMENTS IN THIS REPORT HAVE BEEN EXTENSIVELY DISCUSSED AND REVIEWED IN DETAIL WITH THE APPROPRIATE PERSONNEL IN THE ALASKAN DEPARTMENT OF TRANSPORTATION AND ALASKA MARINE HIGHWAY.



Summary of Results

SUMMARY OF RESULTS

THE FOLLOWING PAGES SUMMARIZE :

THE PROPOSED JETFOIL SERVICE AND ITS MERITS

PROPOSED FERRY BOAT SERVICE

IMPACT OF PROPOSED SERVICE

TRAFFIC ANALYSIS AND PROJECTION

JETFOIL FARES AND TRAFFIC

CAPITAL COSTS

OPERATING COSTS