

ALASKA LEGISLATIVE COMMITTEE FILES 1903-1904

3200 ST SB 315 - SB 352

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

(4) a resolution of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each legal owner of record of real property within the special assessment district;

(7) a resolution confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 per cent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 per cent, except upon approval of not fewer than three-fourths of the assembly or council.

(b) If the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in §§ 20--70 of this chapter. (§ 2 ch 118 SLA 1972)

Sec. 29.63.020. Decision and notice. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution whether (1) the improvement request is necessary and should be made, and (2) the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council passes a resolution approving an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan. The assembly or council shall publish a notice at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district. (§ 2 ch 118 SLA 1972)

Section is mandatory.—As the provisions of this section are mandatory, full compliance with due process otherwise is not sufficient. *Ashley v. City of Anchorage*, 13 Alaska 168, 95

F. Supp. 189 (D. Alas. 1951).
And steps must be taken in order.—The steps to be taken by the council must be followed in the order provided in this section without substitution.

tial deviation, and one council is not permitted by ratification to validate the acts of a previous council. *Ashley v. City of Anchorage*, 13 Alaska 168, 95 F. Supp. 189 (D. Alas. 1951).

Levy of assessment must be made when petition heard.—See *In re Kotlikan Delinquent Tax Roll*, 293 F. 577 (9th Cir. 1924); *Ashley v. City of Anchorage*, 13 Alaska 168, 95 F. Supp. 189 (D. Alas. 1951).

And assessment may not be made by another council.—Most assuredly one city council cannot make an improvement, and some other city council, at some later day, exercise the discretion to impose a part of the burden upon abutting property owners. *Ashley v. City of Anchorage*, 13 Alaska 168, 95 F. Supp. 189 (D. Alas. 1951).

When defect in proceedings prior to assessment may be raised.—Where no opportunity was afforded objectors prior to the assessment to protest against the work, no notice was given them that their property would be assessed for any part of the cost of the improvement, there was no showing by the city to the testimony

that they had knowledge that the city contemplated assessing the cost of the improvement, and there was no showing that they had any knowledge of the defect in the proceedings, they had the right to object and insist upon any defect in the proceedings anterior to the assessment. *In re Kotlikan Delinquent Tax Roll*, 6 Alaska 654 (1921).

Am. Jur., ALR and C.J.S. references.—18 Am. Jur., Special or Local Assessments, § 37 (C. req.)

Denying right of property owners to defeat street improvement by protest, 62 ALR 861

Lump sum assessment for improvements against property owned in undivided shares, 80 ALR 862

Sufficiency of statutory provisions for hearing, 81 ALR 1028

Petition of property owner for local improvement, 95 ALR 116

Withdrawal of signer of petition, 126 ALR 1001

Classification of streets as repair source of payment for improvements, 127 ALR 1090

61 C.J.S. Municipal Corporation, § 1097

Sec. 29.63.025. Record owner. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment may be made against "an unknown owner." (§ 2 ch 118 SLA 1972)

Sec. 29.63.030. Objections and revision. (a) Objections to the improvement plan may be filed not less than 30 nor more than 60 days after publication of notice on a date specified by the assembly or council. The assembly or council may by resolution approve the plan and proceed with the improvement if the owners of one-half in value of the property to be benefited do not object in writing.

(b) If objections are made by the owners of property bearing one-half of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan. (§ 2 ch 118 SLA 1972)

Sec. 29.63.040. Assessment roll. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against tracts in proportion to benefit received. Assessments may not exceed actual costs.

(b) The special assessment roll contains property descriptions, names of owners of record and assessment amounts.

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(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing. (§ 2 ch 118 S.L.A. 1972)

Right to object may be waived. - A party may be held to have waived all right to a remedy by a course of conduct which renders it unjust and inequitable to others that he should be allowed to complain of the illegality. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922).

Am. Jur. and ALR references - 18 Am. Jur., Special or Local Assessments, § 57 et seq.

Assessment by front foot rule, 56 ALR 941.

Classification of streets as regards source of payment for improvements, 127 ALR 1690.

Sec. 29.63.050. Hearing and settlement. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. When the roll is corrected, the clerk shall so certify. (§ 2 ch 118 S.L.A. 1972)

Sec. 29.63.060. Payment. (a) The assembly or council shall fix the times of payment, rate of interest on unpaid installment delinquency of assessments. Payment may not be required more than 60 days after assessment. Payment may be in one sum or by installments, but a sum or installment may not exceed 25 per cent of the assessed value of the property affected. Penalty and interest are the same as for real property taxes.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, the time of delinquency, and penalties.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.266 - 29.53.390 for enforcement of property tax liens. (§ 2 ch 118 S.L.A. 1972)

Property must be described with certainty. To create a lien on real estate, the property must be described with reasonable certainty, sufficient for identification. In re Ketchikan Delinquent Tax Roll, 6 Alaska 653 (1922).

Am. Jur., ALR and C.I.S. references - 29 Am. Jur., Notice and Notices, § 27; 18 Am. Jur., Special or Local Assessments, § 191 et seq.

Priority as between lien for public improvement, 5 ALR 1491, 39 ALR 1176.

Transfer or assignment of lien, 55 ALR 667.

Priority of lien for improvement and preexisting contractual lien, 75 ALR 543.

Duration of lien, 111 ALR 79.

C.I.S. Municipal Corporation, § 1501 et seq.

Sec. 29.63.070. Reassessment. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedure.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure. (§ 2 ch 118 S.L.A. 1972)

C.I.S. references - 61 C.I.S. Municipal Corporation, § 1501 et seq.

Sec. 29.63.080. Objection and appeal. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects. (§ 2 ch 118 S.L.A. 1972)

Sec. 29.63.085. Special assessment bonds. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest on bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. Interest on the guarantee fund shall be a cost of the improvement district. (§ 2 ch 118 S.L.A. 1972)

Article 2. Service Areas.

Section

29. Service areas

Sec. 29.61.090. Service Areas. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law; in a second class borough an exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval. (§ 2 ch 118 SLA 1972)

Chapter 68. Alteration of Boundaries.

Article

- 1. Annexation and Exclusion (§§ 29.68.010)
- 2. Merger and Consolidation (§§ 29.68.020 - 29.68.110)
- 3. Partition of Local Governments (§§ 29.68.210 - 29.68.410)
- 4. Dissolution (§§ 29.68.500 - 29.68.590)

Article 1. Annexation and Exclusion.

Section

10. Local boundary commission

Sec. 29.68.010. Local boundary commission. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the

legislature during the first 10 days of any regular session. The change shall become effective 15 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include:

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 2 ch 118 SLA 1972)

Defining boundaries is a legislative function. The creation of municipalities and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. Town of Fairbanks v. Barak, 282 P. 417 (9th Cir. 1924); In re Annexation to City of Anchorage, 16 Alaska 549, 116 P. Supp. 98 (D. Alaska, 1956).

Expansion of municipal boundaries is a matter of statewide concern. Those who own or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimized by the consent of the state as a whole, and not just that of the local community. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. 61 (Alaska, Nov. 69, 541, 568 P.2d 440 (1964)).

Annexation procedure may be changed. The date may permit a merger of local communities to determine one status question at an election, but when that has been done, the date is not irrevocably con-

cluded to that arrangement. If the citizens of the state, in addition to a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. 61 (Alaska, Nov. 69, 541, 568 P.2d 440 (1964)).

The procedure for annexing several tracts, see In re Town of Fairview, 14 Alaska 291 (1960).

Areas in public utility district may be annexed. The Fairview Pub. Util. District within a public utility district constitutes no bar to annexation. In re Annexation to City of Anchorage, 16 Alaska 291, 125 P. Supp. 551 (D. Alaska, 1956), 285 Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, Sup. Ct. Op. 61 (Alaska, Nov. 69, 541, 568 P.2d 440 (1964)).

Consent of voters in district required if annexation proceeds under this article. The provisions of AS 29.68.010 provide for the dissolution of a public utility district with the consent of the voters when "the effect of the municipal part of a boundary change

SENATE BILL 315
AN ACT RELATING TO ROAD IMPROVEMENT DISTRICTS

SB 315 establishes a mechanism through which municipalities may receive state funds to improve subdivision roads within established Road Improvement Districts. Funds will be available on a 50/50 match basis with one-half the funds being state dollars, and the other half matched by assessments from the Road Improvement District.

Under the legislation, a municipality would be allocated funds based on the total road mileage in each Road Improvement District. Each participating municipality will prepare a Needs Assessment for expenditure of the funds. The municipality will be responsible for maintenance of the roads.

The bill was introduced June 15, 1983 by Senator Jan Faiks and is pending in the Senate Transportation Committee with a further referral to Finance.

SENATE BILL 315
AN ACT RELATING TO ROAD IMPROVEMENT DISTRICTS

Sectional Analysis

Section 1. Adds a new Article, Road Improvement Districts, under the existing Local Service Roads and Trails chapter.

PURPOSE

To facilitate funding for improving subdivision roads within a road improvement district established with municipal ties or under AS 29.63 (Special Assessments and Service Areas).

ALLOCATION OF FUNDS

(a) Each fiscal year a municipality shall receive funds based on the total road mileage in each road improvement district, subject to a 50% match by each road improvement district.

(b) A municipality shall disburse the funds based on a needs assessment (which shall include the level of use, quality of road surface and sub-surface, amount of traffic per day, and maintenance costs).

(c) Funds allocated to a specific road improvement district under this chapter shall be available for use for five years. Should the monies not be spent or obligated, they become available for use in other road improvement districts within that municipality. Should there not be other eligible road improvements within that municipality, the funds shall be remitted back to the state and shall lapse into the general fund.

(d) 50% of the construction costs shall be covered through assessments within the road improvement district.

ELIGIBILITY

After establishing a road improvement district, a municipality may apply for funds. DOT/PF may require the municipality to submit a five-year plan for road improvement districts by October 1.

ADMINISTRATION

(a) A municipality shall establish road design and construction standards which will be approved by DOT/PF.

(b) Construction contracts shall be awarded to the lowest bidder who meets an established criteria of responsibility.

(c) Construction projects shall be administered by the municipality.

MAINTENANCE

A municipality will be responsible for the maintenance of roads improved under this program either through a road maintenance service area or on a contractual basis with DOT/PF or the municipality.

REPORT

By October 1 of each year, a participating municipality shall submit a report to DOT/PF showing how the money was used in the preceding 12 months. By the following December 1, the department shall submit a report to the Governor showing the allocation of funds.

DEFINITIONS

Includes the following:

(1) "construction" or "road improvement" is the same as that defined in AS 14.001 (construction, reconstruction, alteration, improvement or major repair) and includes utility and drainage costs, but excludes financial and right-of-way costs; and

(4) "road improvement district" means a special assessment area established under AS 29.63 for road improvements (AS 29.63 provides for the establishment Special Assessments and Service Areas);

(5) "road maintenance service area" means a service area established under AS 29.63 for road maintenance (AS 29.63 enables a municipality to establish service areas to provide special services and levy assessments or taxes to finance the special services);

(6) "subdivision" is defined in AS 50.15.190(2) and means, in part, (A) "the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development" and (B) does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of the state.

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SENATE TRANSPORTATION
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SENATE SPECIAL AGRICULTURE
COMMITTEE

MEMBER
HEALTH, EDUCATION AND
SOCIAL SERVICES
COMMITTEE
LEGISLATIVE COUNCIL
REAA BUDGET OVERSIGHT
COMMITTEE

Alaska State Legislature



State Senate

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February 1, 1984

John P. Coghill
Municipality of Nenana
Nenana, Alaska 99760

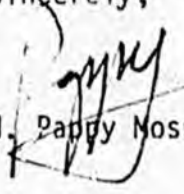
Dear Jack:

I am enclosing a copy of the amended version of SB 315, which is on its way through the system. This could aid in correcting part of the problem we have with the low allocations due to population factors.

We are trying to put a larger sum in the Local Service Roads and Trails Program. As you know, the Department of Transportation and Public Facilities had attempted in the past to completely eliminate the program. Last session we were successful in passing a \$10 million appropriation through the Legislature. This brought the program back to life. Unfortunately, the Governor cut 30%, leaving us a total of only \$7 million for the entire State.

We are asking for more funds this year, and can use whatever support you can give us.

Sincerely,


H. Pappy Moss

cc: Clyde Stoltzfus

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Alaska State Legislature

H. PAPPY MOSS, CHAIRMAN
BETTY FAHRENKAMP, VICE CHAIRMAN
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Senate Committee on Transportation

Checklist of State Government Oversight Provisions
in CS for Senate Bill No. 352
(Finance) Work Draft 5/2/84

Senate Transportation Committee Staff
May 4, 1984

- (1) Two commissioners remain on the board even if the constitutional amendment passes (see 42.40.020).
- (2) An annual report is required to the governor and the legislature describing the operations and financial condition of the corporation during the preceding fiscal year (see 42.40.260).
- (3) An annual financial records audit is required by an independent certified public accountant experienced in railroad accounting. Standards of the ICC for a Class I railroad are to be used (see 42.40.270(a)).
- (4) An annual performance audit is required to be conducted by a recognized railroad management expert. Standards of the ICC for a Class I railroad are to be used (see 42.40.270(a)).
- (5) The corporation is required to make available to an auditor appointed by the governor or to the legislative audit division all financial records (see 42.40.270(b)).
- (6) A state oversight report is required before the corporation undertakes any activity which would alter services provided by the railroad or if they are applying for an appropriation for a service which is not otherwise self-sustaining (see 42.40.280).
- (7) Specific legislative approval is required by law for any conveyance of the corporation's entire interest in land, any issuance of bonding, major extensions of the rail lines or leasing of land for over 20 years if the corporation does not reserve a right to terminate the lease (see 42.40.285).

- (8) The corporation is required to prepare a long range capital improvement and program plan. The plan is required to be submitted every five years but updated every year for the governor and the legislature.
- (9) In addition to the specific legislative approval required in 42.40.285 for conveyance of land section 42.40.350 restricts all land sales and restricts certain dispositions of land in the railroad utility corridor.
- (10) The Department of Administration may participate in labor negotiations between the corporation and the labor organizations (see 42.40.860).
- (11) A railroad labor relations agency appointed by the governor oversees all labor disputes.
- (12) Notice of legal action by the corporation is required to be given to the Department of Law (see 42.40.902).
- (13) The governor may force sale of the of the railroad (see 42.40.940).

Alaska State Legislature

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in
CS for House Bill No. 512 (Transportation)*

March 29, 1984

Title

Includes a brief description of the main elements of the bill. The list of statutes the corporation is exempt from is also included in the title.

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of the Department of Transportation and Public Facilities with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270

and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

*Section 1 This is a statement of legislative findings and purpose. In (a) the Legislature finds that the Alaska Railroad is an essential part of the state transportation network that may cease to be an option without state action. It also states that the railroad is necessary for long-term economic growth of the state and an essential part of the state transportation network. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. That it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity. It is also charged with protecting the railroad utility corridor.

*Section 2
Section 42.40.010

The Alaska Railroad is established as a public corporation within the Department of Commerce and Economic Development. However, Section 3 would remove the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 42.40.020

The corporation is run by a board with nine members including the Commissioner of Commerce and Economic Development, the Chief Executive Officer of the Corporation and one appointed member who is a representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the Commissioner of Commerce and Economic Development and the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

However, see Section 4 where 42.40.020 is amended if the Constitutional Amendment passes. Under this amendment the Commissioner of Commerce and Economic Development is removed from the board and the board is increased to eight appointed members.

The House version, [CSHB 512(Trsp)], is slightly different in that it gives the governor more discretion in naming public members to the board. In the Senate Bill the two railroad experts are mandatory members but in the House version they are optional. In addition, the Senate Bill requires all members of the board, except for the railroad experts, to be registered voters but in the House Bill the two non-registered voters may be any two of the seven public members. The House Bill also differs slightly in its description of the work experience requirements of board members. It allows work experience if it relates to fields relevant to this Act while the Senate Bill just requires five years of business experience. The Senate requirement is limited to business experience in Alaska while the House does not have a similar limitation.

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms and serve at the pleasure of the Governor. Section 10 sets up how the first board of directors will serve which results in staggered terms for members that follow.

However, see Section 6 and Section 7 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its power if it has a quorum of members.

Section 42.40.050 An appointed member of the board received \$250 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.

Sec. 42.40.060 The board is to elect a chairman and vice-chairman from its membership and appoint a secretary.

Section 42.40.100 - The board is to manage the corporation according to the guidelines provided in this section. This corporation is to be generally self-sustaining, subject to the ICC consistent with the Transfer Act and provide safe, efficient and economical transportation. The board must apply to the legislature for appropriations if a service is provided which is not self-sustaining. In addition, the board is responsible for reviewing all land disposals so that future expansions of the railroad are not restricted.

The House Bill, [CSHB 512(Trsp)], does not include the provision requiring the corporation to apply for an appropriation if it provides a service which is not self sustaining.

Section 42.40.110 The board appoints the Chief Executive Officer of the corporation and fixes his compensation. The Chief Executive Officer of the corporation appoints other executive officers. The salaries of the executive officers appointed by the Chief Executive Officer are subject to board approval.

The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action.

In addition to the delegated activities which require board approval found in the Senate version, the House Bill, [CSHB 512(Trsp)], requires specific board approval to begin capital projects with an estimated completion cost of \$500,000 or on estimated completion time of more than one year.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the meetings shall be given. The board is required to keep minutes of the meetings.

In addition to the requirement that minutes be kept of the meetings the House Bill, [CSHB 512(Trsp)], requires that a certified copy of the public portion of the minutes of each meeting be sent to the governor and the legislature.

Section 42.40.160 A quorum is established as five and an affirmative action by the board also requires five votes. The board may confer and vote by teleconferencing but may not vote by proxy.

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

In the House Bill, [CSHB 512 (Trsp)], the list of subjects to be covered in an executive session is more general in nature than the list in the Senate Bill. In addition, the list is permissive rather than an exclusive list. There is no majority vote requirement to call an executive session nor is there a prohibition against taking action in an executive session. There is no restriction to discuss only the topic contained in the motion.

Section 42.40.180 The board is to adopt rules to carry out the purposes of this chapter. It is required to give public notice 15 days before it adopts, amends or repeals a rule. Public notice consists of publishing in at least three newspapers of statewide circulation and to persons requesting notice. Every interested party must be given one hour to testify and all relevant matter must be considered.

But see Section 8 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board

The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.

Section 42.40.190 The board is required to set up a process for adopting emergency rules. Emergency rules are to be limited to situations where they are necessary for the orderly operation of the corporation's facilities or programs. The requirements of 42.40.180 need not be followed but within 10 days public notice is to be given of the action. Rules adopted under this section remain in effect for no more than 120 days unless the procedures of 42.40.180 are followed.

The House Bill, [CSHB 512(Trsp)], has no similar restrictions or requirements for emergency rules. In the preceding section, the board is given full authority to set up a procedure for adopting emergency rules but the question of what topics may be covered by the emergency rules is not addressed.

Section 42.40.200 Sets up a procedure for challenging a rule adopted under 42.40.180(a) and 42.40.190(a) but restricts the ability to declare a rule invalid for procedural deficiency.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.210 The board may, by resolution, adopt the existing rules without following the rule making procedure of 42.40.180.

The rules adopted by resolution may not be inconsistent with this chapter or other state law. The House Bill also contains a

provision whereby the substance of previous federal rules may be adopted however the operative effect of this provision is unclear.

Section 42.40.220 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure by rule if they are of a nonpublic, privileged, or proprietary nature.

The House Bill, [CSHB 512 (Trsp)], requires that the board must by rule identify the records as confidential before they are withheld from the public.

Special Note: The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

Special Note: The House Bill, [CSHB 512(Trsp)], contains a section requiring an oversight report to the governor and the legislature before certain action is taken (Sec. 42.40.280). The Senate Bill contains no similar provision.

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

The House Bill, [CSHB 512 (Trsp)], also includes a provision that the report may include suggestions for legislation relating to the structure, powers or duties of the corporation or to operate facilities of the corporation.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

In the House Bill, [CSHB 512 (Trsp)], the performance audit is to be conducted by a qualified professional performance auditing firm rather than a railroad management expert as provided in the Senate Bill.

Section 42.40.280 The board must adopt a long-range program and capital improvement plan. The plan covers a five year period and must be updated annually. Copies of the updated plan are to be provided to the governor and the legislature by December 1 of each year.

The House Bill, [CSHB 512 (Trsp)], requires separate reports for each subject area. In addition, the board is required to consult with other state agencies when they develop the plans if another state agency is affected by their plans.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may sell or lease rail land however, none of the railroad utility corridor may be sold.

The House Bill, [CSHB 512(Trsp)], requires legislative approval for sale of rail land.

Section 42.40.360 The board may nominate federal land for state selection for a railroad purpose. The Commissioner of Natural Resources would acquire the land through the federal land selection process.

In addition, the board may request any state land from the Department of Natural Resources. Upon receipt of the written request the Commissioner of the Department of Natural Resources must reserve the land in the railroad's name for 180 days.

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

The House Bill, [CSHB 512 (Trsp)], does not contain a provision allowing transfer to the corporation for less than fair market value.

Section 42.40.380 The corporation is authorized to relocate rail facilities to state land when an emergency exists. The Chief Executive Officer makes the determination that it is necessary to relocate for safe and adequate rail operations. After the relocation the corporation is required to notify the Department of Natural Resources.

The House Bill, [CSHB 512 (Trsp)], does not require an emergency condition, rather it says simply that a physical condition must require relocation. However, the House Bill requires concurrence of Department of Natural Resources before the move.

Section 42.40.390 The board may develop rules governing land used by a third party. The rules are to protect the common health, safety, and welfare of the public and may not be limited by leases, contracts or other transaction.

No comparable provisions in House Bill.

Section 42.40.400 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.410 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.420 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.430 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

The House Bill, [CSHB 512(Trsp)], allows the granting of a right-of-way on any rail property for use of a pedestrian walkway or trail. It does not contain a provision protecting parallel uses of the railroad corridor nor does it state who shall determine when the municipality shall vacate the right-of-way if it interferes with rail use.

Section 42.40.440 The corporation may acquire surplus property from either the federal government or the state.

Special Note: The House Bill contains a provision requiring compliance with state law if pesticides or herbicides are used by the corporation.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation is required to keep in force all manners of insurance to protect its assets, services, and employees from any potential liability. It may, however, provide for certain self-insurance retentions.

The corporation must provide public liability insurance under the House Bill. It is not authorized to self-insure.

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.49.600 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The proceeds from the bonds may not be used for any other purpose than that for which the instruments were originally issued. There is also a list of mandatory requirements that the instruments must comply with.

Special Note: The House Bill, [CSHB 512(Trsp)], sections on bonds and notes is substantially different from the Senate version. However, the powers, duties and obligations, of the corporations in relation to its ability to raise money through bonding ostensibly remains the same.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Payment of the principal or interest on lands may be made from assets or revenue of the corporation regardless of the source.

Section 42.40.640 This section authorizes the board to enter into certain agreements with holders of the bonds or bond anticipation notes and provides for a general authority to enter into additional agreements in the absolute discretion of the board if an agreement will make bonds or notes more marketable.

Section 42.40.650 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.660 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.670 The board is required to retain a financial advisor independent of an underwriter who is negotiating with them for a bond sale.

Section 42.40.680 The signatures of corporation officers on bonds or notes are valid regardless of the officers' current relationship to the corporation.

Section 42.40.690 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.700 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.710 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.720 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.750 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.760 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.770 The board or the employees organization may request the Department of Administration to participate in their contract negotiations. Any labor agreement accepted by the two parties must have a grievance procedure which has binding arbitration as its last step.

The House Bill, [CSHB 512(Trsp)], provides that the Department of Administration may participate in labor negotiations without stating at whose invitation or if in fact they need to be invited to participate. In addition, the corporation is required to confer with the Department of Administration before entering into labor negotiations.

Section 42.40.780 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees.

It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bill does. Those provisions can be found in the House Bill at; 42.40.740 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.

Section 42.40.790 Railroad employers have a full right to strike if a collective bargaining unit votes to do so by secret ballot. However, the parties may agree in writing to submit interpretation or application disputes to an arbitrator. Under this provision the railroad employees clearly fall under 23.40.200(a)(3) which are commonly referred to as "class 3" employees.

The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2

employees and class 1 employees (see AS 23.40.200). In the House version the employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

Section 42.40.800 Prohibits use of corporation money, assets or property for political activity except lobbying on matters which directly affect the corporation. It provides for a \$5000 penalty for violation of this section.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.810 Prohibits requiring or coercing employees to undertake activities, or restrain from activities, except as directly related to the performance of their official duties.

The House Bill, [CSHB 512(Trsp)] has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. The corporation board members and employees have the same immunities from liability for claims against the corporation as do other state officers. Claims against the corporation must first go through an administrative appeal process to the Department of Administration before going to court action.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 The corporation is exempt from the jurisdiction of the Alaska Transportation Commission. In addition, it is exempt from the following statutes:

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of DOT&PF with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270 and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 42.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

Section 42.40.930 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of the Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, [CSHB 512(Trsp)], has a substantially different list of positions under executive officer.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

Section 3 Amends 42.40.010 by removing the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 4 Amends 42.40.020(a) if the Constitutional Amendment passes by removing the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development if the Constitutional Amendment passes.

Section 6 Amends 42.40.030 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

Section 7 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

Section 8 Repeals 42.40.180 if the Constitutional Amendment passes and replaces it with a new section. The new section gives the board discretion in adopting a rule making process.

Section 9 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

Section 11 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

Section 12 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

Section 13 The effective date of Section 3-8 and 12 is the effective date of the Constitutional Amendment should it pass. Section 12 sections 1,2 and 9-11 take effect immediately.

Alaska State Legislature

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Finance)

April 30, 1984

Title

Includes a brief description of the main elements of the bill. The list of statutes the corporation is exempt from is also included in the title.

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of the Department of Transportation and Public Facilities with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (c)(11); 42.40.260; 42.40.270.

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duties related to Public Funds.

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AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

*Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that may cease to be an option without state action. It also states that the railroad is necessary for long-term economic growth of the state and an essential part of the state transportation network. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. That it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity. It is also charged with protecting the railroad utility corridor.

*Section 2
Section 42.40.010

The Alaska Railroad is established as a public corporation within the Department of Commerce and Economic Development. However, Section 3 would remove the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 42.40.020

The corporation is run by a board with nine members including the Chief Executive Officer of the Corporation and one appointed member who is a

representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

However, see Section 4 where 42.40.020 is amended if the Constitutional Amendment passes. Under this amendment, the Commissioner of Commerce and Economic Development is removed from the board and the board is increased to eight appointed members.

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms, and can only be removed for cause. Section 10 sets up how the first board of directors will serve which results in staggered terms for members that follow.

However, see Section 6 and Section 7 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its power if it has a quorum of members.

Section 42.40.050 An appointed member of the board received \$400 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

Sec. 42.40.060 The board is to elect a chairman and vice-chairman from its membership and appoint a secretary.

Section 42.40.100 - The board is to manage the corporation according to the guidelines provided in this section. This corporation is to be generally self-sustaining, subject to the ICC consistent with the Transfer Act and provide safe, efficient and economical transportation. The board must apply to the legislature for appropriation if a service is provided which is not self-sustaining. In addition, the board is responsible for reviewing all land disposals so that future expansions of the railroad are not restricted.

Section 42.40.110 The board appoints the Chief Executive Officer of the corporation and fixes his compensation. The Chief Executive Officer of the corporation appoints other executive officers. The salaries of the executive officers appointed by the Chief Executive Officer are subject to board approval.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must

delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action. Specific board approval is required for projects with an estimated completion cost of \$500,000 or more or an estimated completion time of more than one year.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the meetings shall be given. The board is required to keep minutes of the meetings.

Section 42.40.160 A quorum is established as five and an affirmative action by the board also requires five votes. The board may confer and vote by teleconferencing but may not vote by proxy.

Section 42.40.170 Executive sessions are limited to matters listed. No action may be taken at an executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

Section 42.40.180 The board is to adopt rules to carry out the purposes of this chapter. It is required to give public notice 15 days before it adopts, amends, or repeals a rule. Public notice consists of publishing in at least three newspapers of statewide circulation and to persons requesting notice. Every interested party must be given one hour to testify and all relevant matter must be considered.

But see Section 8 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board.

Section 42.40.190 The board is required to set up a process for adopting emergency rules. Emergency rules are to be limited to situations where they are necessary for the orderly operation of the corporation's facilities or programs. The requirements of 42.40.180 need not be followed but within 10 days public notice is to be given of the action. Rules adopted under this section remain in effect for no more than 120 days unless the procedures of 42.40.180 are followed.

Section 42.40.200 Sets up a procedure for challenging a rule adopted under 42.40.180(a) and 42.40.190(a) but restricts the ability to declare a rule invalid for procedural deficiency.

Section 42.40.210 The board may, by resolution, adopt the existing rules without following the rule making procedure of 42.40.180.

Section 42.40.220 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure by rule if they are of a nonpublic, privileged, or proprietary nature.

Sec 42.40.230 A board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt

rules to further define conflict of interest and ethical rule 120 days after its first meeting.

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section. The corporation does not have the power of eminent domain nor may it sell land.

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends. An analysis of at least three corporation initiated attempts to sell the railroad to private enterprise must be included every five years.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division. In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

Section 42.40.280 The board must adopt a long-range program and capital improvement plan. The plan covers a five year period and must be updated annually. Copies of the updated plan are to be provided to the governor and the legislature by December 1 of each year.

Section 42.40.310. Requires a written report to the governor and the Legislature before a major change in service or extension of over 25 miles. In addition, a written report is also required for bonding. Over \$5,000,000 or for an appropriation if it is required for a service which is not self-sustaining.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may lease rail land for fair market value.

Section 42.40.360 The board may nominate federal land for state selection for a railroad purpose. The Commissioner of Natural Resources would acquire the land through the federal land selection process.

In addition, the board may request any state land from the Department of Natural Resources. Upon receipt of the written request the Commissioner of the Department of Natural Resources must reserve the land in the railroad's name for 180 days.

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

Section 42.40.380 The corporation is authorized to relocate rail facilities to state land when an emergency exists. The Chief Executive Officer makes the determination that it is necessary to relocate for safe and adequate rail operations. After the relocation the corporation is required to notify the Department of Natural Resources.

Section 42.40.390 The board may develop rules governing land used by a third party. The rules are to protect the common health, safety, and welfare of the public and may not be limited by leases, contracts or other transaction.

Section 42.40.410 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.420 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.430 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

Section 42.40.440 The corporation may acquire surplus property from either the federal government or the state.

Section 42.40.450 No land of the railroad may be claimed under adverse possession.

Section 42.40.460 Requires that the railroad comply with all state pesticide and herbicide laws or regulations.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation is required to keep in force all manners of insurance to protect its assets, services, and employees from any potential liability. It may, however, provide for certain self-insurance retentions.

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.49.600 - 42.49.700 Contains standard bonding provisions.

Section 42.40.710 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.750 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.720 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.730 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees and are listed in this bill as 42.40.740 - 42.40.840.

Section 42.40.850 Employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. The corporation board members and employees have the same immunities from liability for claims against the corporation as do other state officers. Claims against the corporation must first go through an administrative appeal process to the Department of Administration before going to court action.

Section 42.40.904 The corporation is required to give advance notice of any legal action.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 The corporation is exempt from the jurisdiction of the Alaska Transportation Commission. In addition, it is exempt from the following statutes:

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of DOT&PF with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270 and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See

sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 3); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

Section 42.40.930 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of the Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

*Section 3 Amends 42.40.010 by removing the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

*Section 4 Amends 42.40.020(a) if the Constitutional Amendment passes by removing the Commissioner of Commerce and Economic Development from the Board and increases the appointed members of the board from seven to eight.

*Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

*Section 6 Amends 42.40.020 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

*Section 7 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

*Section 8 Repeals 42.40.180 if the Constitutional Amendment passes by adding a new section. The new section gives the board discretion in adopting a rule making process.

*Section 9 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

*Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

*Section 11 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

*Section 12 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

*Section 13 The effective date of Section 3-8 and 12 is the effective date of the Constitutional Amendment should it pass. Section 12 sections 1, 2 and 9-11 take effect immediately.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 19, 1984

SUBJECT: Alaska Railroad (SB 352)

TO: Senator Pappy Moss
Chairman,
Senate Transportation Committee

FROM: Tamara Brandt Cook
Legislative Counsel

TBC

Here is the section by section analysis of SB 352 that you requested.

* Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that will cease to be an option without state action and that extending the railroad into natural resource areas is necessary for long-term economic growth. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. In (c) the legislature finds that it is necessary to create a public corporation to operate the railroad and that the corporation should be created so that it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations, may carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity.

* Section 2

Section 42.40.010 The Alaska Railroad Corporation is established as a public corporation outside the executive branch of government but considered a principal department for the

purposes of art. III, sec. 26 of the state constitution. This last provision is an apparent effort to justify legislative confirmation of members of the board of directors.

The Alaska Supreme Court has found that the power to appoint executive officers is solely an executive function. While Article III, sections 25 and 26 of the state constitution requires legislative confirmation of the appointments of heads of departments and members of quasi-judicial or regulatory agencies, the court has held that those sections represent the outer limits of the legislature's power to confirm. (Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976)) Despite the effort at characterizing the board as a ". . . board or commission . . . at the head of a principal department or a regulatory or quasi-judicial agency. . . ." (Article III, Section 26, Constitution of the State of Alaska), I am certain that the court would find that the board does not fit within the terms of Article III, Section 26 and that legislative confirmation on that basis is inappropriate.

There is a basis for arguing in support of the confirmation requirement. It could be argued that Bradner applies only to appointments of officers of the executive branch and does not apply to appointments of officers of public corporations that have an independent legal status from the executive branch of government. Confirmation of appointments to independent public corporations does not directly invade the governor's power of appointment, because the governor has no duty to administer the corporation that is similar to his duty to administer the executive branch. Nevertheless, it must be stressed that the provision regarding confirmation of board members is subject to constitutional attack.

Section 42.40.020 Five voting members who are voters in the state are appointed to the board of directors by the governor. No more than two members may be from one judicial district and two members must have at least five years experience as owners or managers of a business in the state. A member may not be a state officer or employee. However, the governor may appoint one person who is not a voter if he has at least 10 years of experience in management of railroads. In addition to voting members, the governor shall appoint a nonvoting member who is an employee of the corporation and the chief executive officer of the corporation shall serve as another nonvoting member. The voting members are to be confirmed by the legislature.

The board is to elect a chairperson and appoint a secretary. The chairperson must call a meeting at least every three months and may call other meetings. The governor is authorized to remove a member from the board for incapacitation, failure to attend meetings, conviction of a felony, or conviction of a misdemeanor involving moral turpitude.

Section 42.40.030 The appointed members of the board serve for staggered five year terms.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its powers if it has a quorum of members.

Section 42.40.050 An appointed member of the board receives \$200 for each day he is engaged in the performance of duties as a board member. In addition, he is entitled to per diem and travel expenses.

Section 42.40.070 The board must provide by rule for the method of voting and representation of persons absent from a meeting.

Section 42.40.100 The board appoints the chief executive officer of the corporation and fixes his compensation. The chief executive officer of the corporation appoints other executive officers and fixes their compensation subject to board approval.

Section 42.40.110 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the chief executive officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation.

Section 42.40.200 Meetings of the board are public with the exception of executive sessions. These may be called as authorized under the Administrative Procedure Act or to consider matters pertaining to personnel, the corporation's legal position, land acquisition or disposal, or proprietary information as defined in a manner consistent with the practices of the Interstate Commerce Commission.

Section 42.40.220 The board must keep minutes of each meeting.

Section 42.40.230 The board must establish a procedure for adopting rules, including a procedure for adopting emergency rules.

Section 42.40.240 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure if they are of a nonpublic, privileged, or proprietary nature.

Section 42.40.250 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 42.40.260 A report describing the operations and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

Section 42.40.300 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

Section 42.40.310 The board must adopt a long-range expansion plan and capital improvement plan. The plans cover five year periods and must be updated annually. These plans are to be prepared by employees of the corporation. Copies of the updated plans are to be provided to the governor and the legislature by December 1 each year.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out

of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.400 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements shall be classified as railroad utility corridors. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be of other width as designated by the corporation. Portions of the utility corridor may be leased or rented for other transportation services.

Section 42.40.420 The board may request conveyance of land owned by or subject to selection by the state. Upon receipt of a request the commissioner of natural resources shall temporarily classify the land for railroad purposes and vacate a classification allowing disposal or lease of that land under other laws. The temporary classification remains in effect for 180 days. Within 90 days after receiving a request, the commission must convey the state's interests in the land to the corporation or notify the corporation of reasons for refusal to classify the land for railroad purposes. A conveyance under this section vests in the corporation the right to extract and use construction materials on the land without regard to whether the resources are part of the surface or subsurface estate.

The corporation may reconvey to the state land that the corporation and the commissioner identify as unnecessary for the corporation's purposes. When physical conditions require that track or fixtures be moved to state-owned land to maintain safe rail operations, the relocation may be made with concurrence of the Department of Natural Resources.

Section 42.40.430 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.450 The corporation may acquire interests in federal land and property that is available under federal law and may acquire property that is available from the state.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.520 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.530 The corporation must keep in force public liability insurance naming the state as an additional insured.

Section 42.40.540 Claims involving activities of the railroad shall be brought against the corporation and not against the state. (b) provides that if the railroad corporation prevails in a legal action, the other party is liable for full costs and legal fees incurred by the corporation in defending the action. This subsection is flawed in that it ignores the possibility that the corporation will be a prevailing plaintiff rather than a prevailing defendant in many cases.

Aside from that minor consideration, this subsection raises a severe constitutional question. Under the Civil Rules of Court there are situations where a prevailing party has only a limited right to attorney's fees and cost. (see Civil Rule 72 (k)) In any case, Civil Rule 82 provides for payment of attorney's fees to a prevailing party according to a schedule that, in general, provides less than the full cost incurred in fees. Singling out the railroad corporation for different treatment from any other prevailing party creates equal protection problems under both the federal and state constitutions that need to be considered. Furthermore, since Article IV, Section 15 of the state constitution grants the supreme court the power to promulgate rules governing practice and procedure in civil cases, it appears that this subsection will have to be approved by two-thirds of the members elected to each house of the legislature. Uniform Rule 39(e) requires that if a bill contains a section changing a court rule the bill must have a section citing the rule and noting what change is made. The fact that the bill changes a court rule must also be noted in the title of the bill. SB 352 does not comply with these technical requirements.

Under (c) the corporation enjoys certain legal rights which the state has. Provisions dealing with the administrative handling of claims against the state do not apply to the corporation.

Section 42.40.550 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation. This raises a question concerning the application of Article IX, Section 7, of the constitution. As interpreted in State v. Alex 646 P. 2d 203 (Alaska, 1982), that prohibition against dedicated funds extends to all sources of public revenue, so it would apply to money generated by the Alaska Railroad. (See also 1982 Op. Att'y Gen., Nos. J66-785-81 and J66-649-80.) This legislation requires that revenue generated by the railroad corporation be retained for railroad purposes in contravention of the prohibition against dedicated funds. However, the federal law providing for the transfer of the railroad to the state requires that revenues generated by the state-owned railroad be kept by the railroad and used for railroad purposes. (45 U.S.C. 1207 (a)(5)) Faced with this requirement in federal law, it is likely that the Alaska Supreme Court will strain to fit this into the exception to the prohibition against dedicated funds as being ". . . required by the federal government for state participation in federal programs." (Article IX, Section 7, Constitution of the State of Alaska) In any case, there appears to be little the legislature can do to resolve the conflict between the federal railroad transfer law and the state constitution.

Section 42.40.560 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.40.570 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The board is authorized to enter into certain agreements with the holders of the bonds or bond anticipation notes listed in (f).

Section 42.40.580 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.590 If an officer whose signature appears on bonds, notes, or coupons attached to them ceases to be an officer before delivery of the bonds, notes, or coupons, the signature is valid.

Section 42.40.600 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.620 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.630 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.640 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.650 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.660 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.670 An officer or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.680 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and

notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.690 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.700 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply. The collective bargaining agreements between the corporation and its employees remain in effect until they expire or are renegotiated. The corporation may not enter into a collective bargaining agreement with an organization representing the corporation's chief executive official or other executive officials appointed by him.

Section 42.40.710 Assets of the corporation may not be used for political activity. Board members and employees may on request appear before Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation. A board member or employee who violates this section is subject to a civil penalty not to exceed \$5,000.

Section 42.40.900 Certain state laws listed in this section do not apply to the corporation. The railroad is not subject to the jurisdiction of the Alaska Transportation Commission.

Section 42.40.950 Definitions for the chapter are provided.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

* Section 3 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of this Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

* Section 4 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

* Section 5 The Act takes effect immediately.

A M E N D M E N T

Offered in the SENATE

By Josephson

TO: CSSB 352 (Trsp)

Page 2, line 12:

Delete "and"

Page 2, line 14:

Delete "." and insert "; and" in its place

Page 2, after line 14 insert the following new paragraph:

"(5) railroad freight traffic within certain portions of the Alaska Railroad right-of-way create or may create damage to existing buildings or facilities and may present potential or immediate hazards to the public health and welfare, life or safety, especially at or near locations affected by the earthquake of March 27, 1964."

Remember that your lead in reads: (a) The legislature finds that (than put in the amendment). If you read this in context I think the amendment invites lawsuits with legislative blessing. Very bad public policy because it places blame on the railroad before it reaches the judicial process.

Page 12, after line 1 insert a new section to read:

"Sec. 42.40.230. COMPLAINT PROCEDURE. The board shall provide by rule for a formal procedure for the receipt and consideration of complaints or suggestions regarding activities of the corporation."

Page 15, line 9, after "category." insert:

"The report shall list all complaints and suggestions received by corporation during the previous fiscal year and describe the act taken on the complaint or suggestion."

42.40.230. Creates a complaint procedure. Poor wording because it should also include a frivolous complaint penalty or other restriction. Rule of thumb - any provisions like this will be used more by competitors or environmentalists attempting to tie up railroad activities for purposes other than the actual complaint. Therefore any complaint procedure must put the burden of proof for validity of the complaint or cost of taking advantage of the procedure, on the complainant. In this regard page 15, line 9 add on is especially costly for the railroad.

Page 15, line 24, after "plan." insert:

"The board shall consult with affected municipalities
in preparing plan."

Page 15, line 24, requirement of consulting with affected municipalities. Policy call. My reaction is that it is a premature involvement of the municipality in the railroad planning process. I say this because this is a long range plan and therefore prior to the community input stage. I think the railroad should have a chance to present their optimal plan before other agencies have a chance to delete them. The political process will kick in after they have the opportunity to present their best scenario.

Page 36, line 25:

Delete "REPORT." and insert "REPORTS. (a)"

Page 37, after line 2, insert the following new subsection:

"(b) The corporation shall study the problems created by vibrations, noise and other environmental degradation due to operating the railroad from Ship Creek to the south end of Potter's Marsh and prepare a report. The report shall also include consideration of the potential for additional problems that may be created by hauling coal and larger quantities of gravel along that portion of the rail line. By February 1, 1986, the corporation shall present a report to the legislature on the study containing recommendations for correcting the problems identified."

Page 37, after line 2, requires a special report on the vibration problem. Probably the least obnoxious of all the proposed amendments in that it does not go into permanent law. However, it still should be reworded to remove the positive statements about the actual existence of a problem. This amendment seems to be making a statement that (1) a problem exists (2) thus the railroad is at fault. A good case can be made that homeowners took it upon themselves to locate in an inappropriate area and therefore the problem is artificial.

Page 37, after line 23, insert the following new bill section:

"* Sec. 12. Until November 1, 1987, railroad freight traffic within the Municipality of Anchorage shall proceed at rates of speed not exceeding rates approved by the Assembly after receiving advice from the Municipal Geotechnical Advisory Committee."

Re-number following sections accordingly.

Page 37, line 25:

Delete "12" and insert "13"

Page 37, line 28:

Delete "9 - 11" and insert "9 - 12".

Page 37, after line 23 this amendment would require the railroad to set speed limits of their trains through Anchorage according to the wishes of the Anchorage assembly. The testimony given at the Transportation hearing related to the Bootlegger Cove vibrations seemed to indicate that the speed of the train relates to several safety variables. (1) obviously excessive speed creates a safety related problem. (2) reduced speed causes a safety related problem in that children may be more inclined to hitch rides on the train. Under this amendment I would suppose the municipality would be looking at lowering the speeds. My caveat - who then assumes the liability for any injury caused by children hitching rides: If Anchorage can set speed rates then they should also accept responsibility for accidents related to lower speeds.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

SIDE-BY-SIDE SUBJECT COMPARISON

OF SB-10 and

SB-352 (HB-512)

WITH

COMPARATIVE ANALYSIS BY
LEGISLATIVE AFFAIRS AGENCY,
DIVISION OF LEGAL SERVICES

PREPARED BY:
Senate Transportation
Committee Staff

January 23, 1984

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

March 12, 1984

SUBJECT: Alaska Railroad
(CSSB 352 (Trsp))

TO: Senator Pappy Moss
Chairman, Senate Transportation
Committee

FROM: Tamara Brandt Cook *TBC*
Deputy Director
Division of Legal Services

Here is a draft of CSSB 352 (Trsp) that you requested. Due to the general complexity of the bill and the fact that provisions were submitted to the Senate Transportation Committee from many sources, I have found a great many redundancies, ambiguities, and conflicts in this bill. In resolving these problems I have tried to conform to the apparent intent of the committee, but may have misconstrued some provisions. For this reason it is critical that you carefully review this draft and let me know if there are changes that should be made to it.

In addition, be alerted that I have reorganized portions of the bill, primarily by dividing very long sections into several smaller sections or moving sections from inappropriate articles and placing them elsewhere. I have changed certain wording so that it is consistent. For example, since "land" is defined to be all real property including tide and submerged land, I have replaced references to "real property" with "land" and removed superfluous references to tide and submerged land. Likewise, since "executive officer" and "executive official" appear to be interchangeable, I have consistently used the term "executive officer".

Section 42.40.020(e) provides for confirmation of board members. It is my understanding that you wish to retain this provision and that you understand that it can only function as a request to the governor to submit the members for confirmation, as has been done with certain other boards and

Senator Pappy Moss
Page 2
March 12, 1984

commissions. It is not, however, constitutionally enforceable under Article III, sections 25 and 26 of the state constitution as construed in Bradner v. Hammond, 553 P.2d 1 (Alaska, 1976).

Section 42.40.390 appears to be an attempt to grant the power of land use regulation, such as platting and zoning, to the railroad corporation, which would contravene the requirement contained in Article X, section 2 that all local government powers shall be vested in boroughs and cities. If, on the other hand, the purpose of the section is to exclude rail property from municipal land use regulation, that should be done specifically. I would recommend that the section be clarified or eliminated.

Section 42.40.720 grants protection from liability resulting from the execution or issuance of bonds or notes to employees and executive officers. Both these terms are defined and neither includes members of the board of directors. Should they be specifically included within this section?

Section 42.40.900(b) provides that in claims brought against the corporation in which it is the prevailing party, it is not an abuse of discretion for a court to award full costs and attorney's fees. I note that, for some reason, actions brought by the corporation are not included within this section. More importantly, this appears to be an attempt to overrule the line of cases that overturns awards of full attorney's fees by trial courts as abuses of discretion. Continental Ins. Co. v. U.S. Fid. & Guar. Co., 552 P.2d 964 (Alaska 1976); Davis v. Hallett, 587 P.2d 1170 (Alaska 1978). An award of attorney's fees is always subject to review for possible abuse of discretion. To the extent that this section treats the railroad corporation differently from other litigants similarly situated by shielding an award of full attorney's fees from review, it may constitute a denial of equal protection of the law under both the state and federal constitutions. To the extent that this section can be construed not to discriminate in favor of the corporation, it serves no purpose. I would recommend that it be eliminated.

Please let me know if I can be of further assistance with this draft.

TBC:ojb

J4/066

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

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

ARTICLE 8 APPLICATION OF OTHER LAWS

Sec. 42.40.800. CONFLICTING LAWS

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

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

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

Sec. 42.40.810. REPEAL AND AMENDMENT OF EXISTING STATUTES.

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

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

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

[Full-crew law]

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

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

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

finding

ARTICLE 4. 2. CREATION AND ORGANIZATION

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

February 1, 1984

John Riley, Administrator
Federal Railroad Administration
U.S. Dept. of Transportation
400 7th St. SW
Washington, D.C. 20590

Dear Mr. Riley;

As you know, the Alaska State Legislature is currently involved in a decision which may lead to the State of Alaska purchasing the Alaska Railroad from the Federal government. In this regard, the Governor has introduced legislation which would authorize him to negotiate, on behalf of the State, for the final transfer of the Alaska Railroad to the State of Alaska. As I am sure you are aware, the Federal Transfer Legislation, P.L. 97-468, 45 U.S.C. 1201-1214, stipulates certain requirements the state must meet before the transfer can be certified. For this reason, I have enclosed a copy of SB 370 for your response as whether or not this legislation, in your estimation, will meet the necessary requirements for the Department of Transportation certification of the transfer requirements.

In advance, let me express my thanks for your time and effort with this matter. I respectfully await your reply.

Sincerely yours,

Senator H. Pappy Moss, Chairman
Senate Transportation Committee

enclosure

SB 352

Editor's note. — Section 1, Executive Order No. 39 (1977) provides: "FINDINGS AND PURPOSE. As governor, I find that the diverse transportation needs of the state would best be served by the creation of a single department for the planning, study, development, management and operation of integrated, intermodal transportation systems. The purpose of this department is to evaluate, plan, design, construct, manage, operate and maintain all state transportation modes and systems, relying on analysis of the relative advantages of different modes and systems and considering their social, economic, and environmental consequences."

Section 8, Executive Order No. 39 (1977) provides: "All litigation, hearings, investigations and other proceedings pending under a law amended or repealed by this Order, or in connection with functions transferred by this Order, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Order. Certificates, orders, and regulations issued or adopted under authority of a law amended or repealed by this Order remain in effect for the term issued, until revoked, vacated, or otherwise modified under the provisions of this Order. All contracts, rights, liabilities, and obligations created by or under a law amended or repealed by this Order, and in effect on the effective date of this Order, remain in effect notwithstanding this Order's taking effect. Records, equipment, and other property or agencies of the state whose functions are transferred under this Order shall be transferred commensurate with the provisions of this Order."

Section 9, Executive Order No. 39 (1977) provides: "(a) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Public Works

relating to planning, construction, maintenance and operation of transportation facilities, including state ferries, airports and water and harbor facilities, and for design and construction of buildings and appurtenant structures, and specifically including all powers and duties formerly held by the Department of Public Works under AS 02, AS 30.05, AS 30.15, AS 35, AS 41.20 and AS 44.65.

"(b) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities including state highways, roads, bridges, traffic signs and signals, the supervision and maintenance of state automotive and mechanical equipment, the control of outdoor advertising visible from state highways and all other duties and powers of the Department of Highways, and specifically including powers and duties formerly held by the Department of Highways under AS 19, AS 28.01, AS 28.05, and AS 44.57."

Section 10, Executive Order No. 39 (1977) provides: "The commissioner of transportation and public facilities shall replace the commissioner of highways on the state Geographic Board, the Alaska Toll Bridge Authority, and all other boards and commissions."

Section 12, Executive Order No. 39 (1977) provides: "During Fiscal Year 1978, all appropriation items made for that fiscal year and prior years for the Department of Highways and the Department of Public Works may, upon approval of the governor, be appropriately transferred to implement the purposes of this Order."

Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 1 et seq.

39A C.J.S. Highways § 1 et seq.

Attachment #1

Sec. 44.42.010. Commissioner of transportation and public facilities. The principal executive officer of the Department of Transportation and Public Facilities is the commissioner of transportation and public facilities. (Executive Order No. 39 § 2 (1977))

Sec. 44.42.020. Powers and duties, (a) The department shall

(1) plan, design, construct and maintain all state modes of transportation and transportation facilities, communication facilities, and all docks, floats, breakwaters, buildings and similar facilities;

(2) study existing transportation modes and facilities and communication facilities in the state to determine how they might be improved or whether they should continue to be maintained;

(3) study alternative means of improving transportation and communication in the state with regard to the economic costs of each alternative and its environmental and social effects;

(4) develop a comprehensive, long-range intermodal transportation plan for the state;

(5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;

(6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties;

(7) manage, operate, and maintain state transportation facilities, communication facilities, and all docks, floats, breakwaters and buildings, including all state highways, vessels, railroads, pipelines, airports, and aviation facilities;

(8) study alternative means of transportation in the state, considering the economic, social, and environmental impacts of each alternative;

(9) coordinate and develop state and regional transportation systems, considering deletions, additions, and the absence of alterations;

(10) develop facility program plans for transportation and communication facilities and state buildings, docks and breakwaters required to implement the duties set out in this section, including but not limited to (A) functional performance criteria; and (B) schedules for completion;

(11) supervise and maintain all state automotive and mechanical equipment, aircraft, and vessels, except vessels and aircraft used by the Department of Fish and Game or the Department of Public Safety; and

(12) supervise aeronautics and communications inside the state, under AS 02.10.

(13) complete and maintain a current inventory of public facilities, including a projection of the serviceability of the facilities and projections of replacements and additions to facilities needed to provide the level of services programmed by the various user agencies, for municipalities with populations of less than 12,000 and for unincorporated communities, and perform those duties on a cooperative basis with larger municipalities.

(14) adopt energy performance standards for public facilities of the state, the construction of which begins after July 1, 1980; the standards shall be based on thermal and lighting energy standards established by

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COMMITTEE REPORT
SENATE

FURTHER: FINANCE

1/13/84

Date: 1/13/84

Mr. President:

The Committee on TRANSPORTATION has had SB 352

establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; eid.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 352 (Amended) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

George Johnson Kamp

Don Gilman

Janet

MEMBERS HAVING
OTHER RECOMMENDATIONS:

H. Poppy

CH. IRMAN

Do Pass

GUIDELINES FOR STATE OVERSIGHT OF RAILROAD FISCAL PROCEDURES

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

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

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

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

Alaska State Legislature

H. PAPPY MOSS, CHAIRMAN
BETTYE FAHRENKAMP, VICE CHAIRMAN
JAN FAIKS
DON GILMAN
JALMAR KERTTULA



STATE CAPITOL
POUCH V
JUNEAU, ALASKA
99811
(907) 465-4797
(907) 465-4921

Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
Staff Analysis
CS for Senate Bill No. 352 (Transportation)

*with italicized reference to major differences found in
CS for House Bill No. 512 (Transportation)*

March 29, 1984

Title

includes a brief description of the main elements of the bill. The list of statutes the corporation is exempt from is also included in the title.

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of the Department of Transportation and Public Facilities with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270

and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

*Section 1 This is a statement of legislative findings and purpose. In (a) the legislature finds that the Alaska Railroad is an essential part of the state transportation network that may cease to be an option without state action. It also states that the railroad is necessary for long-term economic growth of the state and an essential part of the state transportation network. In (b) the purpose of the Act is stated to be the creation of an entity to operate and manage the railroad pending the transfer of the railroad to the private sector. That it will be responsible for the management of the financial and legal obligations of the railroad, will constitute a common carrier under the Interstate Commerce Commission, will have the ability to issue tax exempt obligations carry out its responsibilities on a self-sustaining basis, and so that the best transportation can be provided supported by state investment when necessary, the railroad may be operated prudently, and borrowing by the corporation does not endanger the state's own borrowing capacity. It is also charged with protecting the railroad utility corridor.

*Section 2
Section 42.40.010

The Alaska Railroad is established as a public corporation within the Department of Commerce and Economic Development. However, Section 3 would remove the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 42.40.020

The corporation is run by a board with nine members including the Commissioner of Commerce and Economic Development, the Chief Executive Officer of the Corporation and one appointed member who is a representative of the corporation's organized labor. In addition, there are six public members who may not be state employees. One of the public members must have 10 years experience and one shall have been an executive official of a U.S. railroad. Except for the two public members just mentioned, all public members must be registered Alaskan voters. With the exception of the Commissioner of Commerce and Economic Development and the chief executive officer, the board shall be confirmed by the majority of the members of each house of the legislature in joint session.

However, see Section 4 where 42.40.020 is amended if the Constitutional Amendment passes. Under this amendment the Commissioner of Commerce and Economic Development is removed from the board and the board is increased to eight appointed members.

The House version, [CSHB 512(Trsp)], is slightly different in that it gives the governor more discretion in naming public members to the board. In the Senate Bill the two railroad experts are mandatory members but in the House version they are optional. In addition, the Senate Bill requires all members of the board, except for the railroad experts, to be registered voters but in the House Bill the two non-registered voters may be any two of the seven public members. The House Bill also differs slightly in its description of the work experience requirements of board members. It allows work experience if it relates to fields relevant to this Act while the Senate Bill just requires five years of business experience. The Senate requirement is limited to business experience in Alaska while the House does not have a similar limitation.

Section 42.40.030 All members required to be confirmed by the Legislature serve for staggered five year terms and serve at the pleasure of the Governor. Section 10 sets up how the first board of directors will serve which results in staggered terms for members that follow.

However, see Section 6 and Section 7 which amend 42.40.030 if the Constitutional Amendment passes. Under these amendments a board member could be removed only for cause.

Section 42.40.040 A vacancy on the board is filled by the governor and the appointment must be confirmed by the legislature. Despite a vacancy the board may exercise its power if it has a quorum of members.

Section 42.40.050 An appointed member of the board received \$250 for each day he is engaged in the performance of duties as a board members and partial day provisions may be established by the board. In addition, he is entitled to per diem and travel expenses.

The House Bill, [CSHB 512(Trsp)], provides for a \$400 per day compensation rate.

Sec. 42.40.060 The board is to elect a chairman and vice-chairman from its membership and appoint a secretary.

Section 42.40.100 - The board is to manage the corporation according to the guidelines provided in this section. This corporation is to be generally self-sustaining, subject to the ICC consistent with the Transfer Act and provide safe, efficient and economical transportation. The board must apply to the legislature for appropriations if a service is provided which is not self-sustaining. In addition, the board is responsible for reviewing all land disposals so that future expansions of the railroad are not restricted.

The House Bill, [CSHB 512(Trsp)], does not include the provision requiring the corporation to apply for an appropriation if it provides a service which is not self sustaining.

Section 42.40.110 The board appoints the Chief Executive Officer of the corporation and fixes his compensation. The Chief Executive Officer of the corporation appoints other executive officers. The salaries of the executive officers appointed by the Chief Executive Officer are subject to board approval.

The House Bill, [CSHB 512(Trsp)], requires that the board approve all executive officers appointed by the Chief Executive Officer.

Section 42.40.120 By rule the board delegates duties necessary for the management of daily affairs of the corporation to the Chief Executive Officer. Within 60 days after it is established, the board must delegate certain specified activities of the corporation. Some activities are delegated but require specific board approval for final action.

In addition to the delegated activities which require board approval found in the Senate version, the House Bill, [CSHB 512(Trsp)], requires specific board approval to begin capital projects with an estimated completion cost of \$500,000 or on estimated completion time of more than one year.

Section 42.40.150 Meetings of the board are public with the exception of executive sessions. The board provides by rule how notice of the meetings shall be given. The board is required to keep minutes of the meetings.

In addition to the requirement that minutes be kept of the meetings the House Bill, [CSHB 512(Trsp)], requires that a certified copy of the public portion of the minutes of each meeting be sent to the governor and the legislature.

Section 42.40.160 A quorum is established as five and an affirmative action by the board also requires five votes. The board may confer and vote by teleconferencing but may not vote by proxy.

Section 42.40.170 Executive sessions are limited to matters listed and must be called by a majority vote. No action may be taken at an

executive session and discussion must be limited to the topic of the motion or an auxiliary subject.

In the House Bill, [CSHB 512 (Trsp)], the list of subjects to be covered in an executive session is more general in nature than the list in the Senate Bill. In addition, the list is permissive rather than an exclusive list. There is no majority vote requirement to call an executive session nor is there a prohibition against taking action in an executive session. There is no restriction to discuss only the topic contained in the motion.

Section 42.40.180 The board is to adopt rules to carry out the purposes of this chapter. It is required to give public notice 15 days before it adopts, amends or repeals a rule. Public notice consists of publishing in at least three newspapers of statewide circulation and to persons requesting notice. Every interested party must be given one hour to testify and all relevant matter must be considered.

But see Section 8 which repeals the rule making procedure if the Constitutional Amendment passes. In its place, the new section would give all powers to adopt a rule making procedure to the board.

The House Bill [CSHB 512 (Trsp)], leaves the development of a procedure for providing notice and an opportunity to testify up to the board. It shall establish this procedure within 90 days after its first meeting. The board is also given the responsibility of developing an emergency rule making procedure but the 90 day rule does not apply to the development of this procedure.

Section 42.40.190 The board is required to set up a process for adopting emergency rules. Emergency rules are to be limited to situations where they are necessary for the orderly operation of the corporation's facilities or programs. The requirements of 42.40.180 need not be followed but within 10 days public notice is to be given of the action. Rules adopted under this section remain in effect for no more than 120 days unless the procedures of 42.40.180 are followed.

The House Bill, [CSHB 512(Trsp)], has no similar restrictions or requirements for emergency rules. In the preceding section, the board is given full authority to set up a procedure for adopting emergency rules but the question of what topics may be covered by the emergency rules is not addressed.

Section 42.40.200 Sets up a procedure for challenging a rule adopted under 42.40.180(a) and 42.40.190(a) but restricts the ability to declare a rule invalid for procedural deficiency.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.210 The board may, by resolution, adopt the existing rules without following the rule making procedure of 42.40.180.

The rules adopted by resolution may not be inconsistent with this chapter or other state law. The House Bill also contains a

provision whereby the substance of previous federal rules may be adopted however the operative effect of this provision is unclear.

Section 42.40.220 Records of the corporation are open to public inspection except the corporation may withhold certain matters from disclosure by rule if they are of a nonpublic, privileged, or proprietary nature.

The House Bill, [CSHB 512 (Trsp)], requires that the board must by rule identify the records as confidential before they are withheld from the public.

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a provision on conflict of interest. No similar provision is contained in the Senate Bill. The conflict of interest section in the House Bill, 42.40.210, says a board member or executive officer may not participate in a decision of the corporation if he, or an immediate family member, has an interest unless their interest is remote. Interest and remote are defined and a procedure is set out for situations where the application of the section is not clear. In addition, the board shall adopt rules to further define conflict of interest and ethical rules 120 days after its first meeting.*

Section 42.40.250 In addition to other powers authorized by law, the corporation may exercise certain specified general powers listed in this section.

In addition to slight drafting changes found in numbers (10), (11), (19) and (20) the House Bill, [CSHB 512 (Trsp)], contains two additional powers. Number (27) of the House Bill provides the power to own subsidiary companies or enter into agreements where part ownership or a similar interest in another corporation is part of the agreement. Number (28), of the House Bill seems to allow additional railroad activity which could technically be beyond the powers to extend the current railroad facility.

Special Note: *The House Bill, [CSHB 512 (Trsp)], contains a section requiring an oversight report to the governor and the legislature before certain action is taken (Sec. 42.40.280). The Senate Bill contains no similar provision.*

Section 42.40.260 A report describing the operation and financial condition of the corporation during the preceding fiscal year of the railroad shall be distributed to the governor and the legislature within 90 days after the fiscal year ends.

The House Bill, [CSHB 512 (Trsp)], also includes a provision that the report may include suggestions for legislation relating to the structure, powers or duties of the corporation or to operate facilities of the corporation.

Section 42.40.270 The board must have the records of the corporation audited annually. Corporation records will be made available to an auditor appointed by the governor or to the legislative audit division.

In addition, the board is required to have an annual performance audit conducted by a recognized railroad management expert.

In the House Bill, [CSHB 512 (Trsp)], the performance audit is to be conducted by a qualified professional performance auditing firm rather than a railroad management expert as provided in the Senate Bill.

Section 42.40.280 The board must adopt a long-range program and capital improvement plan. The plan covers a five year period and must be updated annually. Copies of the updated plan are to be provided to the governor and the legislature by December 1 of each year.

The House Bill, [CSHB 512 (Trsp)], requires separate reports for each subject area. In addition, the board is required to consult with other state agencies when they develop the plans if another state agency is affected by their plans.

Section 42.40.320 The corporation may not issue stock, pay dividends, make private distributions of assets, make loans to board members or employees or engage in business for private benefit. The corporation may defend and indemnify a current or former employee, agent, or board member against costs incurred in connection with a civil or criminal action if the person acted in good faith on behalf of the corporation and within the scope of his official duties or powers. The corporation may purchase insurance to protect its employees, agents, and board members for actions arising out of the performance or failure of performances of duties for or employment with the corporation.

Section 42.40.350 Land acquired by the corporation is under the control of the corporation. Railroad rights-of-way or easements are railroad utility corridors. Land other than right-of-way or easements is rail land. Future railroad utility corridors must be at least 100 feet wide on both sides of the center line of the extended main or branch line, or may be less if adjoining land does not belong to the corporation. Portions of the utility corridor may be leased or rented for other transportation services if the use does not restrict other parallel uses of the utility corridor. The corporation may sell or lease rail land however, none of the railroad utility corridor may be sold.

The House Bill, [CSHB 512(Trsp)], requires legislative approval for sale of rail land.

Section 42.40.360 The board may nominate federal land for state selection for a railroad purpose. The Commissioner of Natural Resources would acquire the land through the federal land selection process.

In addition, the board may request any state land from the Department of Natural Resources. Upon receipt of the written request the Commissioner of the Department of Natural Resources must reserve the land in the railroad's name for 180 days.

Section 42.40.370 When the railroad requests state land under the preceding section the Commissioner has 90 days to reply in writing

whether or no the request has been denied, denied in part or if the request has been granted. A conveyance under this section may be for less than fair market value and, absence a reservation to the contrary, vest full ownership of surface and subsurface rights. The land may be reconveyed back to the state if it is no longer necessary for the corporation's purposes.

The House Bill, [CSHB 512 (Trsp)], does not contain a provision allowing transfer to the corporation for less than fair market value.

Section 42.40.380 The corporation is authorized to relocate rail facilities to state land when an emergency exists. The Chief Executive Officer makes the determination that it is necessary to relocate for safe and adequate rail operations. After the relocation the corporation is required to notify the Department of Natural Resources.

The House Bill, [CSHB 512 (Trsp)], does not require an emergency condition, rather it says simply that a physical condition must require relocation. However, the House Bill requires concurrence of Department of Natural Resources before the move.

Section 42.40.390 The board may develop rules governing land used by a third party. The rules are to protect the common health, safety, and welfare of the public and may not be limited by leases, contracts or other transaction.

No comparable provisions in the House Bill.

Section 42.40.400 The corporation is authorized to exercise the power of eminent domain and declaration of taking.

Section 42.40.410 The corporation may vacate land acquired for railroad purposes by filing in the appropriate recording district.

Section 42.40.420 The corporation may acquire interests in federal land on its own behalf.

Section 42.40.430 The corporation may authorized municipal use of rail land. It may also authorize a walkway or trail on the utility corridor so long as parallel uses are not restricted. Before authorizing the use of either rail land or the utility corridor, the municipality must sign a hold harmless agreement and indemnify the corporation for any judgment against it for use related to the municipal use. When the corporation determines the use is inconsistent with expansion or replacement of railroad facilities the municipal use must be stopped.

The House Bill, [CSHB 512(Trsp)], allows the granting of a right-of-way on any rail property for use of a pedestrian walkway or trail. It does not contain a provision protecting parallel uses of the railroad corriaor nor does it state who shall determine when the municipality shall vacate the right-of-way if it interferes with rail use.

Section 42.40.440 The corporation may acquire surplus property from either the federal government or the state.

Special Note: The House Bill contains a provision requiring compliance with state law if pesticides or herbicides are used by the corporation.

Section 42.40.500 A liability incurred by the corporation may be satisfied only from the assets of the corporation and no creditor has a right of action against the state.

Section 42.40.510 The corporation must obtain a fidelity bond for its board members and officers responsible for finances.

Section 42.40.520 The corporation is required to keep in force all manners of insurance to protect its assets, services, and employees from any potential liability. It may, however, provide for certain self-insurance retentions.

The corporation must provide public liability insurance under the House Bill. It is not authorized to self-insure.

Section 42.40.530 Revenue generated by or appropriated to the corporation shall be retained and used for railroad purposes by the corporation.

Section 42.40.540 With the concurrence of the governor, the corporation may request an appropriation from the legislature to assist it in carrying out its general powers and preparing long-range expansion and capital improvement plans.

Section 42.49.500 The corporation may issue bonds and bond anticipation notes. The principal and interest are payable from corporation assets. The board shall by resolution establish the form and manner of execution of bonds or bond anticipation notes. They may be sold as determined by the board and shall mature at the time, not exceeding 50 years from their date, determined by the board. The proceeds from the bonds may not be used for any other purpose than that for which the instruments were originally issued. There is also a list of mandatory requirements that the instruments must comply with.

Special Note: The House Bill, [CSHB 512(Trsp)], sections on bonds and notes is substantially different from the Senate version. However, the powers, duties and obligations, of the corporations in relation to its ability to raise money through bonding ostensibly remains the same.

Section 42.40.610 Bonds and notes issued by the corporation are negotiable instruments.

Section 42.40.620 Bonds and notes issued by the corporation are securities in which all public bodies of the state and other financial entities may invest funds.

Section 42.40.630 Payment of the principal or interest on lands may be made from assets or revenue of the corporation regardless of the source.

Section 42.40.640 This section authorizes the board to enter into certain agreements with holders of the bonds or bond anticipation notes and provides for a general authority to enter into additional agreements in the absolute discretion of the board if an agreement will make bonds or notes more marketable.

Section 42.40.650 The corporation may issue interim receipts or temporary bonds or bond anticipation notes exchangeable for bonds or bond anticipation notes once they have been executed.

Section 42.40.660 The corporation may issue refunding bonds. They may be sold or exchanged for outstanding bonds and the proceeds applied to the purchase, redemption or payment of outstanding bonds.

Section 42.40.670 The board is required to retain a financial advisor independent of an underwriter who is negotiating with them for a bond sale.

Section 42.40.680 The signatures of corporation officers on bonds or notes are valid regardless of the officers' current relationship to the corporation.

Section 42.40.690 The pledge of assets of the corporation to the payment of bonds or notes is valid and the assets are subject to the lien of the pledge without physical delivery or other act. The corporation is not prohibited from selling assets subject to a pledge.

Section 42.40.700 A holder of bonds or notes or a trustee may enforce all rights under this chapter, the trust agreement or resolution, or any other contract executed by the corporation relating to the bonds or notes and may compel the performance of duties of the corporation required by law or the trust agreement or resolution.

Section 42.40.710 The state is not liable for the debts of the corporation. Bonds and notes are payable solely from the revenue or assets of the corporation and are not a liability of the state or a pledge of the faith and credit of the state. Each bond and note issued by the corporation must contain a statement that the corporation is not obligated to pay it except from the revenue or assets pledged for it and neither the faith and credit nor the taxing power of the state is pledged to the payment of it.

Section 42.40.720 An officer, board member, or employee of the corporation is not subject to personal liability because of the execution or issuance of bonds or notes.

Section 42.40.750 Employees of the railroad are employees of the corporation and not of the state. Laws relating to public employees do not apply.

Section 42.40.760 The provisions of the Public Employee Relations Act do not apply. However, non-executive officials may organize and engage in collective bargaining.

Section 42.40.770 The board or the employees organization may request the Department of Administration to participate in their contract negotiations. Any labor agreement accepted by the two parties must have a grievance procedure which has binding arbitration as its last step.

The House Bill, [CSHB 512(Trsp)], provides that the Department of Administration may participate in labor negotiations without stating at whose invitation or if in fact they need to be invited to participate. In addition, the corporation is required to confer with the Department of Administration before entering into labor negotiations.

Section 42.40.780 There is created a railroad labor relations agency made up of three members appointed by the governor. The agency shall perform the functions described in AS 23.40.090 - 23.40.190 which are the functions currently carried out by the state personnel board for all state employees.

It should be noted that the House Bill, [CSHB 512(Trsp)], has spelled out the provision of AS 23.40.090 - 23.40.190 rather than cite them as the Senate Bill does. Those provisions can be found in the House Bill at; 42.40.740 which is cited as AS 23.40.090 in the Senate Bill; 42.40.750 which is cited as AS 23.40.100 in the Senate Bill; 42.40.760 which is cited as AS 23.40.110 in the Senate Bill; 42.40.770 which is cited as AS 23.40.120 in the Senate Bill; 42.40.780 which is cited as AS 23.40.130 in the Senate Bill; 42.40.790 which is cited as AS 23.40.140 in the Senate Bill; 42.40.800 which is cited as AS 23.40.150 in the Senate Bill; 42.40.810 which is cited as AS 23.40.160 in the Senate Bill; 42.40.820 which is cited as AS 23.40.170 in the Senate Bill; 42.40.830 which is cited as AS 23.40.180 in the Senate Bill; and 42.40.840 which is a slightly modified version of AS 23.40.190 cited in the Senate Bill. The difference between the Senate cite and 42.40.840 is that the railroad labor relations agency acts on its own to initially name the mediator while the Senate cite allows one of the parties to request a mediator. In addition, the House version requires that the mediator be mutually agreeable to both parties and shall be chosen from a list of seven qualified mediators/arbitrators knowledgeable in railway labor agreements. The Senate cite has no similar provision.

Section 42.40.790 Railroad employers have a full right to strike if a collective bargaining unit votes to do so by secret ballot. However, the parties may agree in writing to submit interpretation or application disputes to an arbitrator. Under this provision the railroad employees clearly fall under 23.40.200(a)(3) which are commonly referred to as "class 3" employees.

The House Bill has a substantial rewrite of this section. Basically the House has the employees somewhere between class 2

employees and class 1 employees (see AS 23.40.200). In the House version the employees are permitted to strike for a limited time and may be enjoined by a court of law at the request of the corporation. After being enjoined the dispute is automatically sent to binding arbitration. The arbitrator is the same person as was the original mediator chosen under 42.40.840.

Section 42.40.800 Prohibits use of corporation money, assets or property for political activity except lobbying on matters which directly affect the corporation. It provides for a \$5000 penalty for violation of this section.

The House Bill, [CSHB 512(Trsp)], has no similar provision.

Section 42.40.810 Prohibits requiring or coercing employees to undertake activities, or restrain from activities, except as directly related to the performance of their official duties.

The House Bill, [CSHB 512(Trsp)] has no similar provision.

Special Note: In addition to the provision found in the Senate Bill, the House Bill contains two additional provisions; 42.40.870 and 42.40.880. 42.40.870 allows the deduction of union dues from an employee's wages, it should be noted that the power to make such an agreement exists under 42.40.760(b)(2) which is cited as AS 23.40.110 under the Senate Bill. 42.40.880 provides for a religious exception from the payment of union dues.

Section 42.40.900 Claims involving activities of the railroad shall be brought against the corporation and not against the state. The corporation board members and employees have the same immunities from liability for claims against the corporation as do other state officers. Claims against the corporation must first go through an administrative appeal process to the Department of Administration before going to court action.

Section 42.40.910 The property of the corporation and its assets are exempt from taxes and special assessments of the state or a political subdivision of the state. Bonds and notes issued by the corporation are exempt from taxation except for inheritance, transfer, and estate taxes.

Section 42.40.920 The corporation is exempt from the jurisdiction of the Alaska Transportation Commission. In addition, it is exempt from the following statutes:

The statutes are:

AS 19 - Title 19 is the statute which sets out the duties of state agencies in regard to highways and ferries and related activities.

AS 23.40 - Chapter 40 deals with the relationship between state entities and labor organizations. But see Article 8 of this legislation for Personnel and Labor Relations provisions.

AS 30.15 - Chapter 15 is concerned with state participation in port facilities and development.

AS 35 - Title 35 sets out the duties and powers of DOT&PF with regard to public facilities.

AS 37.05 - Chapter 05 is the Fiscal Procedures Act. For provisions in this legislation which replace similar provisions in the Fiscal Procedures Act, see Section 1, 3(A) and (F); 42.40.100(1) and (8); 42.40.120(b)(4), (C)(11); 42.40.260; 42.40.270.

AS 37.07 - Chapter 07 contains the Executive Budget Act. For similar provisions in this legislation see 42.40.260; and 42.40.270 and 42.40.280.

AS 37.10.010 - 37.10.060 - Give the Department of Administration duties related to Public Funds.

AS 37.10.085 prohibits financial aid to corporations by state or political subdivisions.

AS 37.20 sets out a method for the state to receive federal property. Sec. 42.40.360; 42.40.420 and 42.40.440 for comparable provisions.

AS 37.25 is the miscellaneous provisions of the public finance title.

AS 38 - Title 38 is the Public Lands statute. For similar provisions see 42.40.350; 42.40.360; 42.40.370; 42.40.380; 42.40.390; 42.40.400; 42.40.410; 42.40.420 and 42.40.430.

AS 39 - Title 39 is the public officer and employees statute. See sections 112.40.020; 42.40.030; 42.40.040; (see also Sections 3,4,5, and 6); 42.40.050; 42.40.060 and Article 8 of this Act.

AS 44.62.040 - 44.62.320 - is the Administrative Procedures Act. But see 42.40.150; 42.40.160; 42.40.170; 42.40.180; (see also Section 8); 42.40.200; 42.40.210; 42.40.220 for similar provisions contained in this Act.

Section 42.40.930 If provisions of this Act conflict with the provisions of other law, the provisions of this Act prevail. Where possible, provisions of the Act shall be construed so that they do not conflict with the Alaska Railroad Transfer Act of 1982.

Section 42.40.940 The assets of the corporation revert to the state if it ceases to exist.

Section 42.40.980 Definitions of the chapter are provided.

The House Bill, [CSHB 512(Tresp)], has a substantially different list of positions under executive officer.

Section 42.40.990 The short title of this chapter is the Alaska Railroad Corporation Act.

Section 3 Amends 42.40.010 by removing the corporation from the Department of Commerce and Economic Development if the Constitutional Amendment passes.

Section 4 Amends 42.40.020(a) if the Constitutional Amendment passes by removing the Commissioner of Commerce and Economic Development from the board and increases the appointed members of the board from seven to eight.

Section 5 Amends 42.40.020(e) by removing reference to the Commissioner of Commerce and Economic Development if the Constitutional Amendment passes.

Section 6 Amends 42.40.030 if the Constitutional Amendment passes by removing reference to the Commissioner of Commerce and Economic Development and by removing the ability of the governor to remove board members at his pleasure.

Section 7 Amends 42.40.030 if the Constitutional Amendment passes by adding a new section which would state specific reasons for which a governor may remove board members.

Section 8 Repeals 42.40.180 if the Constitutional Amendment passes and replaces it with a new section. The new section gives the board discretion in adopting a rule making process.

Section 9 The corporation must prepare a report on the long-term operations of the railroad that is due January 1, 1988. The report shall include recommendations on the transfer of railroad operations to the private sector.

Section 10 Members of the first board of directors serve terms that differ in length and will result in staggered terms for members that follow.

Section 11 Existing collective bargaining agreements are to be adopted by the corporation and remain in effect for two years. Within 180 days of the first meeting the board and the unions shall establish a procedure for renegotiating the existing collective bargaining agreements.

Section 12 Repeals 42.40.190 and 42.40.200 if the Constitutional Amendment passes.

Section 13 The effective date of Section 3-8 and 12 is the effective date of the Constitutional Amendment should it pass. Section 12 sections 1,2 and 9-11 take effect immediately.

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February 22, 1984

MEMORANDUM

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

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

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

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

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

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

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

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

Sec. 26 of the same article states that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The factors that the court cited were as follows:

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

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

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

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

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

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

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

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

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