

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
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1 required by this chapter or by the trust agreement or resolution.

2 Sec. 42.40.690. CREDIT OF STATE NOT PLEDGED. (a) The state and
3 its political subdivisions are not liable for the debts of the corpo-
4 ration. Bonds issued under this chapter are payable solely from the
5 revenue or assets of the corporation and do not constitute a

6 (1) debt, liability, or obligation of the state or of a
7 political subdivision of the state; or

8 (2) pledge of the faith and credit of the state or of a
9 political subdivision of the state.

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

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

15 (2) neither the faith and credit nor the taxing power of
16 the state or of a political subdivision of the state is pledged to the
17 payment of it.

18 Sec. 42.40.700. LIMITATION ON PERSONAL LIABILITY. A board
19 member or employee of the corporation is not subject to personal
20 liability or accountability because of the execution or issuance of
21 bonds.

22 ARTICLE 8. PERSONNEL AND LABOR RELATIONS.

23 Sec. 42.40.705. POLITICAL ACTIVITIES. (a) Money, assets, or
24 property of the corporation may not be used for political activities.
25 However, board members and employees may communicate with and appear
26 before committees of Congress, the state legislature, and municipal
27 governing bodies in connection with matters directly affecting the
28 corporation.

29 (b) A board member or employee who violates the provisions of

1 this section is personally subject to a civil penalty assessed by a
2 judge of the superior court in an amount not to exceed \$5,000. An
3 action to enforce this section may be brought by any person.

4 Sec. 42.40.710. CORPORATION EMPLOYEES. Employees of the Alaska
5 Railroad are employees of the corporation and not of the state. The
6 provisions of AS 39 do not apply to employees of the corporation.

7 Sec. 42.40.720. COLLECTIVE BARGAINING RIGHTS. The provisions of
8 AS 23.40.070 - 23.40.260 do not apply to the corporation or to its
9 employees. However, employees who are not executive officers may
10 organize and form, join, or assist an organization to engage in col-
11 lective bargaining through representatives of their own choosing and
12 engage in concerted activities for the purpose of collective bargain-
13 ing or other mutual aid or protection.

14 Sec. 42.40.730. RAILROAD LABOR RELATIONS AGENCY. (a) There is
15 established a railroad labor relations agency that consists of three
16 members appointed by the governor. One member shall be a member of
17 the state personnel board. Members serve at the pleasure of the
18 governor.

19 (b) The railroad labor relations agency shall carry out the
20 provisions of AS 42.40.710 - 42.40.890.

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

24 Sec. 42.40.740. COLLECTIVE BARGAINING UNIT. The railroad labor
25 relations agency shall decide in each case, in order to ensure employ-
26 ees the fullest freedom in exercising the rights guaranteed by AS 42.-
27 40.710 - 42.40.890 the unit appropriate for the purposes of collective
28 bargaining, based on such factors as community of interest, wages,
29 hours and other working conditions of the employees involved, the

1 history of collective bargaining, and the desires of the employees.
2 Bargaining units shall be as large as is reasonable, and unnecessary
3 fragmenting shall be avoided.

4 Sec. 42.40.750. REPRESENTATIVES AND ELECTIONS. (a) The rail-
5 road labor relations agency shall investigate a petition if it is
6 submitted in a manner prescribed by the railroad labor relations
7 agency by

8 (1) an employee or group of employees or an organization
9 acting in their behalf alleging that 30 percent of the employees of a
10 proposed bargaining unit

11 (A) want to be represented for collective bargaining
12 by a labor or employee organization as exclusive representative;
13 or

14 (B) assert that the organization that has been certi-
15 fied or is currently being recognized by the corporation as
16 bargaining representative is no longer the representative of the
17 majority of employees in an appropriate unit; or

18 (2) the corporation alleging that one or more organizations
19 have presented to it a claim to be recognized as a representative of a
20 majority of employees in an appropriate unit.

21 (b) If the railroad labor relations agency has reasonable cause
22 to believe that a question of representation exists, it shall provide
23 for a hearing upon due notice. If the railroad labor relations agency
24 finds that there is a question of representation, it shall direct an
25 election by secret ballot to determine whether or by which organiza-
26 tion the employees desire to be represented and shall certify the
27 results of the election. Nothing in this subsection prohibits the
28 waiving of hearings by stipulation for the purpose of a consent elec-
29 tion in conformity with the regulations of the railroad labor

1 relations agency or an election in a bargaining unit agreed upon by
2 the parties.

3 (c) The railroad labor relations agency shall determine who is
4 eligible to vote in an election held under this section and shall
5 establish rules governing the election. In an election in which none
6 of the choices on the ballot receives a majority of the votes cast, a
7 runoff election shall be conducted, the ballot providing for selection
8 between the two choices receiving the largest number of valid votes
9 cast in the election. If an organization receives the majority of the
10 votes cast in the election it shall be certified by the railroad labor
11 relations agency as exclusive representative of all the employees in
12 the bargaining unit. An election may not be held in a bargaining unit
13 or in a subdivision of a bargaining unit if a valid election has been
14 held within the preceding 12 months.

15 (d) Nothing in this chapter prohibits recognition of an orga-
16 nization as the exclusive representative by the corporation by mutual
17 consent.

18 (e) An election may not be directed by the railroad labor rela-
19 tions agency in a bargaining unit in which there is in force a valid
20 collective bargaining agreement, except during a 90-day period preced-
21 ing the expiration date. However, a collective bargaining agreement
22 may not bar an election upon petition of employees in the bargaining
23 unit if

- 24 (1) the petitioners are not parties to the agreement; and
25 (2) more than three years have elapsed since the execution
26 of the agreement or its last timely renewal, whichever was later.

27 Sec. 42.40.760. UNFAIR LABOR PRACTICES. (a) The corporation or
28 its agent may not

- 29 (1) interfere, restrain, or coerce an employee in the

1 exercise of the rights guaranteed in AS 42.40.720;

2 (2) dominate or interfere with the formation, existence, or
3 administration of an organization;

4 (3) discriminate in regard to hire or tenure of employment
5 or a term or condition of employment to encourage or discourage mem-
6 bership in an organization;

7 (4) discharge or discriminate against an employee because
8 the employee has signed or filed an affidavit, petition or complaint
9 or given testimony under AS 42.40.710 - 42.40.890;

10 (5) refuse to bargain collectively in good faith with an
11 organization that is the exclusive representative of employees in an
12 appropriate unit, including the discussing of grievances with the
13 exclusive representative.

14 (b) Nothing in AS 42.40.710 - 42.40.890 prohibits the corpo-
15 ration from making an agreement with an organization to require as a
16 condition of employment

17 (1) membership in the organization that represents the unit
18 on or after the 30th day following the beginning of employment or on
19 the effective date of the agreement, whichever is later; or

20 (2) payment by the employee to the exclusive bargaining
21 agent of a service fee to reimburse the exclusive bargaining agency
22 for the expense of representing the members of the bargaining unit.

23 (c) An organization or its agents may not

24 (1) restrain or coerce

25 (A) an employee in the exercise of the rights guaran-
26 teed in AS 42.40.720; or

27 (B) the corporation in the selection of a representa-
28 tive for the purposes of collective bargaining or the adjustment
29 of grievances;

1 (2) refuse to bargain collectively in good faith with the
2 corporation, if it has been designated in accordance with AS 42.40.-
3 710 - 42.40.890 as the exclusive representative of employees in an
4 appropriate unit.

5 Sec. 42.40.770. INVESTIGATION AND CONCILIATION OF COMPLAINTS.
6 If a verified written complaint by or for a person claiming to be
7 aggrieved by a practice prohibited by AS 42.40.760 or a written accu-
8 sation that a person subject to AS 42.40.710 - 42.40.890 has engaged
9 in a prohibited practice, is filed with the railroad labor relations
10 agency, it shall investigate the complaint or accusation. If it
11 determines after a preliminary investigation that probable cause
12 exists in support of the complaint or accusation, it shall try to
13 eliminate the prohibited practice by informal methods of conference,
14 conciliation, and persuasion. Nothing said or done during this en-
15 deavor may be used as evidence in a subsequent proceeding.

16 Sec. 42.40.780. COMPLAINT AND ACCUSATION. If the railroad labor
17 relations agency fails to eliminate the prohibited practice by concil-
18 iation and to obtain voluntary compliance with AS 42.40.710 - 42.40.-
19 890 or before it attempts conciliation, it may serve a copy of the
20 complaint or accusation upon the respondent. The complaint or accusa-
21 tion and the subsequent procedures shall be handled in accordance with
22 the administrative adjudication portion of the Administrative Proce-
23 dure Act (AS 44.62).

24 Sec. 42.40.790. ORDERS AND DECISIONS. If the railroad labor
25 relations agency finds that a person named in the written complaint or
26 accusation has engaged in a prohibited practice, the railroad labor
27 relations agency shall issue and serve on the person an order or
28 decision requiring the person to cease and desist from the prohibited
29 practice and to take affirmative action that will carry out the

1 provisions of AS 42.40.710 - 42.40.890. If the railroad labor rela-
2 tions agency finds that a person named in the complaint or accusation
3 has not engaged or is not engaging in a prohibited practice, the
4 railroad labor relations agency shall state its findings of fact and
5 issue an order dismissing the complaint or accusation.

6 Sec. 42.40.800. ENFORCEMENT BY INJUNCTION. The railroad labor
7 relations agency may apply to the superior court in the judicial
8 district in which the prohibited practice occurred for an order en-
9 joining the prohibited acts specified in the order or decision of the
10 railroad labor relations agency. Upon showing by the railroad labor
11 relations agency that the person has engaged or is about to engage in
12 the practice, an injunction, restraining order, or other order that is
13 appropriate may be granted by the court and shall be without bond.

14 Sec. 42.40.810. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
15 For the purpose of the investigations, proceedings, or hearings that
16 the railroad labor relations agency considers necessary to carry out
17 AS 42.40.710 - 42.40.890, the railroad labor relations agency may
18 issue subpoenas requiring the attendance and testimony of witnesses
19 and the production of relevant evidence.

20 (b) The railroad labor relations agency may administer oaths,
21 examine witnesses, and receive evidence.

22 (c) The attendance of witnesses and the production of evidence
23 may be required from any place in the state at any designated place of
24 hearing.

25 (d) If a person refuses to obey a subpoena issued under AS 42.-
26 40.710 - 42.40.890, the superior court in the district in which the
27 person resides or is found may, upon application by the railroad labor
28 relations agency, issue an order requiring the person to comply with
29 the subpoena.

1 Sec. 42.40.820. REGULATIONS. The railroad labor relations
2 agency shall adopt regulations under the Administrative Procedure Act
3 (AS 44.62) to carry out AS 42.40.710 - 42.40.890.

4 Sec. 42.40.830. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
5 person who violates a provision of an order or decision of the rail-
6 road labor relations agency is guilty of a misdemeanor and is punish-
7 able by a fine of not more than \$500.

8 Sec. 42.40.840. MEDIATION. (a) If, after a reasonable period
9 of negotiation over the terms of a collective bargaining agreement, an
10 impasse as determined by the railroad labor relations agency exists
11 between the corporation and an organization, the railroad labor re-
12 lations agency shall appoint a person mutually agreeable to the
13 parties from a list of seven qualified mediators or arbitrators knowl-
14 edgeable in railway labor agreements to act as mediator in the dis-
15 pute.

16 (b) Before the determination of an impasse under this section,
17 the parties may also select a mediator by mutual consent.

18 (c) It shall be the function of the mediator to bring the
19 parties together to effectuate a settlement of the dispute, but nei-
20 ther the mediator nor the railroad labor relations agency has any
21 power of compulsion in mediation proceedings.

22 Sec. 42.40.850. STRIKES. (a) Following a decision by the
23 mediator to end the mediation proceedings, employees of a collective
24 bargaining unit may engage in a strike for a limited time if a major-
25 ity of the employees in that collective bargaining unit vote by secret
26 ballot to do so. The limit of the strike is determined by the interest
27 of the health, safety, or welfare of the public.

28 (b) The corporation may apply to the superior court in the
29 judicial district in which the strike is occurring for an order

1 enjoining the strike. A strike may not be enjoined unless it can be
2 shown that it has begun to threaten, or is about to threaten, the
3 health, safety, or welfare of the public. A court, in deciding wheth-
4 er to enjoin the strike, shall consider the total equities in the
5 particular case, including the impact of a strike on the public and
6 the extent to which an employee organization and the corporation have
7 met their statutory obligations.

8 (c) If an impasse or deadlock still exists after the issuance of
9 an injunction, the parties shall submit the dispute to binding arbi-
10 tration. The arbitrator shall be the same person selected under
11 AS 42.40.840 and shall fashion the award the arbitrator considers
12 equitable.

13 (d) Notwithstanding (a) - (c) of this section, an organization
14 and the corporation may mutually agree to submit a dispute to binding
15 arbitration at any time.

16 Sec. 42.40.860. AGREEMENTS. (a) The Department of Administra-
17 tion may participate in labor negotiations between the corporation and
18 an organization. The corporation may seek advice of the Department of
19 Administration before entering into a collective bargaining agreement
20 concerning wages, hours, and other terms and conditions of employment.
21 However, the final decision regarding collective bargaining agreements
22 shall be made by the board.

23 (b) Upon the completion of negotiations between an organization
24 and the corporation, if a settlement is reached, the corporation shall
25 reduce it to writing in the form of an agreement. The agreement shall
26 include a grievance procedure that shall have binding arbitration as
27 its final step. Either party to the agreement has a right of action
28 to enforce the agreement by petition to the railroad labor relations
29 agency.

1 (c) The parties to an agreement under this section may agree to
2 terms that specify an expiration date for the agreement.

3 Sec. 42.40.870. ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUC-
4 TION AND AUTHORIZATION. Upon written authorization of an employee
5 within a bargaining unit, the corporation shall deduct from the pay-
6 roll of the employee the monthly amount of dues, fees, and other
7 employee benefits as certified by the secretary of the exclusive
8 bargaining representative and shall deliver it to the chief fiscal
9 officer of the exclusive bargaining representative.

10 Sec. 42.40.880. EXEMPTION. Notwithstanding the provisions of
11 AS 42.40.870, a collective bargaining settlement reached, or agreement
12 entered into, under AS 42.40.860 that incorporates union security
13 provisions, including a union shop or agency shop provision or agree-
14 ment, shall safeguard the rights of nonassociation of employees having
15 bona fide religious convictions based on tenets or teachings of a
16 church or religious body of which an employee is a member. Upon
17 submission of proper proof of religious conviction to the railroad
18 labor relations agency, the agency shall declare the employee exempt
19 from becoming a member of an organization. The employee shall pay an
20 amount of money equivalent to regular organization dues, initiation
21 fees, and assessments to the organization. Nonpayment of this money
22 subjects the employee to the same penalty as if it were nonpayment of
23 dues. The receiving organization shall contribute an equivalent
24 amount of money to a charity of its choice not affiliated with a
25 religious, labor, or employee organization. The organization shall
26 submit to the railroad labor relations agency proof of contribution.

27 Sec. 42.40.885. PROHIBITED ACTS. (a) The corporation or an
28 employee may not directly or indirectly

29 (1) require or coerce an employee to participate in any way

1 in any activity or undertaking unless the activity or undertaking is
2 related to the performance of official duties;

3 (2) require or coerce an employee to make any report con-
4 cerning an activity or undertaking of the employee unless the activity
5 or undertaking is related to the performance of official duties;

6 (3) except, as directly related to the performance of offi-
7 cial duties, require or coerce an employee to submit to an interro-
8 gation, examination, or psychological test that is designed to elicit
9 information concerning

10 (A) a personal relationship with a person connected
11 with the employee by blood or marriage;

12 (B) the employee's religious beliefs or practices;

13 (C) sexual matters;

14 (D) the employee's political affiliation or philoso-
15 phy;

16 (4) coerce an employee to invest or contribute earnings in
17 any manner or for any purpose;

18 (5) restrict or attempt to restrict after-working-hour
19 statements, pronouncements or other activities, not otherwise prohib-
20 ited by law or personnel rule, of an employee, if the employee does
21 not purport to speak or act in an official capacity.

22 (b) The provisions of (a) of this section do not diminish the
23 authority of an authorized law enforcement agency to conduct criminal
24 investigations of employees suspected of being involved in criminal
25 activity or to investigate other activity directly related to official
26 railroad business.

27 Sec. 42.40.890. DEFINITIONS. In AS 42.40.710 - 42.40.890

28 (1) "election" means a proceeding conducted by the labor
29 relations agency in which the employees in a collective bargaining

1 unit cast a secret ballot for collective bargaining representatives,
2 or for any other purpose specified in AS 42.40.710 - 42.40.890;

3 (2) "organization" means a labor or employee organization
4 of any kind in which employees participate and that exists for the
5 primary purpose of dealing with the corporation concerning grievances,
6 labor disputes, wages, rates of pay, hours of employment and condi-
7 tions of employment.

8 ARTICLE 9. GENERAL PROVISIONS.

9 Sec. 42.40.900. CLAIMS. (a) All claims and lawsuits involving
10 activities of the railroad, including suits in contract, quasi-con-
11 tract, or tort, shall be brought against the corporation and not
12 against the state.

13 (b) For the purposes of actionable claims, undertakings, pay-
14 ments of judgments, execution, interest, punitive damages, statutes of
15 limitations, bonds, costs, and similar matters related to the pres-
16 entation and prosecution of claims by and against the corporation, the
17 corporation and its board members and employees enjoy the same rights,
18 privileges, and immunities as the state and state officers.

19 (c) Claims against the corporation are not subject to the pro-
20 visions of AS 44.77 regarding claims against the state.

21 (d) The corporation is not subject to the provisions of AS 44.-
22 80.010, regarding the state as a party to an action.

23 Sec. 42.40.905. NOTICE OF LEGAL ACTIONS. (a) The corporation
24 shall notify the Department of Law within 30 days before initiating
25 legal action unless special circumstances exist that require immediate
26 legal action to protect the corporation assets or to continue existing
27 service.

28 (b) If notice of legal action is not given under (a) of this
29 section, within seven days of taking action the board shall notify the

1 Department of Law of the action taken and of the special circumstances
2 that exempted the action from the requirements of (a) of this section.

3 Sec. 42.40.910. EXEMPTION FROM TAXATION. (a) The exercise of
4 the powers granted by this chapter shall be in all respects for the
5 benefit of the people of the state, for their well-being and prosper-
6 ity, and for the improvement of their social and economic conditions.
7 Subject to (b) of this section, the real and personal property of the
8 corporation and its assets, income, and receipts are exempt from all
9 taxes and special assessments of the state or a political subdivision
10 of the state.

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

18 (c) This section does not affect or limit an exemption from
19 license fees, property taxes, or excise, income or other taxes, pro-
20 vided under any other law, nor does it create a tax exemption with
21 respect to the interest of any business enterprise or other person,
22 other than the corporation.

23 Sec. 42.40.920. APPLICATION OF EXISTING LAWS. (a) The corpo-
24 ration is not subject to the jurisdiction of the Alaska Transportation
25 Commission.

26 (b) Unless specifically provided otherwise in this chapter, the
27 following laws do not apply to the operations of the corporation:

- 28 (1) AS 19;
29 (2) AS 30.15;

- 1 (3) AS 35;
- 2 (4) AS 37.05;
- 3 (5) AS 37.07;
- 4 (6) AS 37.10.010 - 37.10.060;
- 5 (7) AS 37.10.085;
- 6 (8) AS 37.20;
- 7 (9) AS 37.25;
- 8 (10) AS 38;
- 9 (11) AS 44.62.040 - 44.62.320.

10 Sec. 42.40.930. CONFLICTING LAWS INAPPLICABLE. If provisions of
11 AS 42.40 conflict with the provisions of other state law, the pro-
12 visions of AS 42.40 prevail. Provisions of AS 42.40 shall be con-
13 strued so that they do not conflict with 45 U.S.C. 1201 - 1214 (Alaska
14 Railroad Transfer Act of 1982).

15 Sec. 42.40.935. RAILROAD FACILITIES CODE COMPLIANCE. (a) Not
16 later than two years after the date of transfer the corporation in
17 consultation with the Department of Labor shall develop and adopt a
18 plan to achieve compliance with AS 18.60. The plan shall be imple-
19 mented and compliance achieved within five years after it is adopted.

20 (b) No later than two years after the date of transfer, the
21 corporation in consultation with the Department of Public Safety and
22 appropriate municipal officials, shall develop and adopt a plan to
23 achieve compliance with building and related safety codes applicable
24 to facilities of the corporation. The plan shall be implemented and
25 compliance achieved within five years after it is adopted. In the
26 sole determination of the commissioner of public safety, any existing
27 building owned or controlled by the corporation that does not present
28 a serious safety hazard and for which compliance would be uneconomical
29 in consideration of its remaining useful life shall be exempted from

1 compliance with state or municipal safety codes.

2 Sec. 42.40.940. SALE OR LEASE OF THE RAILROAD. (a) The gover-
3 nor may provide for the sale or lease of the Alaska Railroad and
4 dissolve the corporation if

5 (1) it can be assured that the railroad will continue to
6 operate after the sale or lease; and

7 (2) under the terms of the sale or lease, the state will
8 receive the amount of money it has spent in connection with the Alaska
9 Railroad.

10 (b) A sale under this section is subject to approval by law.

11 Sec. 42.40.950. REVERSION OF ASSETS. Except as provided in
12 AS 42.40.940, if the corporation ceases to exist its assets revert to
13 the state.

14 Sec. 42.40.980. DEFINITIONS. In this chapter unless the context
15 otherwise requires,

16 (1) "board" means the board of directors of the Alaska
17 Railroad Corporation;

18 (2) "bonds" means bonds, bond anticipation notes, notes,
19 refunding bonds, or other obligations;

20 (3) "collective bargaining" means the performance of the
21 mutual obligation of the corporation or its designated representatives
22 and the representatives of the employees to meet at reasonable times,
23 including meetings in advance of the budget making process, and nego-
24 tiating in good faith with respect to wages, hours, and other terms
25 and conditions of employment, or the negotiation of an agreement, or
26 negotiation of a question arising under an agreement and the execution
27 of a written contract incorporating an agreement reached if requested
28 by either party, but these obligations do not compel either party to
29 agree to a proposal or require the making of a concession;

- 1 (4) "corporation" means the Alaska Railroad Corporation;
- 2 (5) "date of transfer" means the date on which the United
3 States Secretary of Transportation delivers the transfer documents
4 under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);
- 5 (6) "employees" means all persons employed by the corpo-
6 ration including executive officers;
- 7 (7) "executive officer" means the corporation's chief
8 executive officer, assistant chief executive officer, assistant to the
9 chief executive officer, chief of administration, superintendent of
10 transportation, manager of marketing and sales, chief engineer, chief
11 mechanical officer, manager of industrial development and real estate,
12 manager of budget and accounting, manager of planning, manager of
13 personnel, manager of supply and procurement, chief of security,
14 manager of operating rules, manager of data processing, manager of
15 strategy, manager of operations planning, manager of supply, manager
16 of procurement, manager of safety, manager of administrative proce-
17 dure, chief counsel, or, if so designated by the board, any employee
18 who fulfills these management functions under a different title or who
19 exercises a similar or comparable level of responsibility or super-
20 vision;
- 21 (8) "land" means any interest in real property, including
22 tide and submerged land, and any right appurtenant to the interest;
- 23 (9) "rule" means a standard of general application or the
24 amendment, supplement, revision, or repeal of a standard adopted by
25 the corporation to implement, interpret, or make specific the law
26 enforced or administered by it or to govern its procedure;
- 27 (10) "terms and conditions of employment" means the hours of
28 employment, the compensation and fringe benefits, and the employer's
29 personnel policies affecting the working conditions of the employees,

1 but does not mean the general policies describing the function and
2 purposes of an employer.

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

5 * Sec. 3. SPECIAL REPORTS. (a) The governor shall contract with a
6 private consultant for the preparation of a report on the long-term op-
7 erations of the Alaska Railroad that are in the best interest of the state.
8 The report shall be submitted to the governor and the legislature by
9 February 1, 1987. It shall contain specific recommendations on operational
10 alternatives and the transfer of all or part of the railroad operation to
11 the private sector.

12 (b) The corporation shall study any problems created by vibrations
13 due to operating the railroad from Birchwood through Inlet View to the
14 Turnagain Area and extending to Potter's Marsh. The study shall include
15 consideration of any potential for problems that may be created by hauling
16 coal and larger quantities of gravel along that portion of the rail line.
17 By February 1, 1986, the corporation shall present a report to the legisla-
18 ture on the study containing recommendations for correcting any problems
19 identified.

20 * Sec. 4. APPOINTMENT OF FIRST BOARD OF DIRECTORS OF ALASKA RAILROAD
21 CORPORATION. Notwithstanding AS 42.40.020 enacted in sec. 1 of this Act,
22 the terms of the appointed members of the first board of directors of the
23 Alaska Railroad Corporation are as follows:

- 24 (1) one shall serve a term of two years;
25 (2) one shall serve a term of three years;
26 (3) one shall serve a term of four years; and
27 (4) two shall serve a term of five years.

28 * Sec. 10. COLLECTIVE BARGAINING AGREEMENTS. (a) As soon as practi-
29 cable before transfer of the Alaska Railroad to the state, the Alaska

1 Railroad Corporation and its employees shall adopt collective bargaining
2 agreements that continue the provisions of the agreements in effect between
3 the Alaska Railroad and its employees on the date of transfer of the rail-
4 road. The collective bargaining agreements adopted under this section
5 between the corporation and its employees shall remain in effect to the
6 extent required under 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act
7 of 1982).

8 (b) The board of directors of the Alaska Railroad Corporation shall
9 on or before the date of transfer of the Alaska Railroad to the state adopt
10 personnel rules necessary to prevent an interruption of services of the
11 railroad.

12 (c) Subject to 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of
13 1982), within 180 days after the first meeting of the board of directors of
14 the Alaska Railroad Corporation, the board and representatives of employee
15 bargaining units shall establish procedures for the renegotiation of bar-
16 gaining agreements adopted under (a) of this section. The board shall
17 renegotiate all agreements adopted under (a) of this section within two
18 years after the date of transfer of the Alaska Railroad to the state unless
19 the parties agree to the contrary.

20 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10
21 070(c).

ALASKA RAILROAD TRANSFER LEGISLATION
SECTION-BY-SECTION ANALYSIS

SECTION 1 -- TITLE

This section provides that the legislation may be cited as "Alaska Railroad Transfer Act of 1982."

SECTION 2 -- FINDINGS

This section states the reasons that the Alaska Railroad should be transferred to the State of Alaska. While the Railroad has served the interest of the Federal Government in the past, today it primarily serves residents and businesses of the State. Further, the transfer is consistent with the Federal Government's efforts today to transfer programs to the states whenever appropriate. Finally the transfer is necessary in order to insure that in the future the Railroad will be operated and its services expanded to meet the needs of the State and the Railroad users.

SECTION 3 -- DEFINITIONS

This section defines the major terms used in the legislation. Among those described is "rail properties of the Alaska Railroad." This definition is important because it describes the rail properties to be transferred. As defined in the legislation, rail properties means all right, title and interest in real and personal properties held by or for the Alaska Railroad as of the date of enactment with limited exceptions, as follows: (1) The unexercised reservation to the United States in all patents to lands as provided for the construction of future rights-of-way; (2) the right of the Secretary of Transportation to exercise the power of eminent domain; (3) any money in the Alaska Railroad Revolving Fund that the Secretary and the State agree is needed to pay certain Federal obligations arising from operation of the Railroad, which are not assumed by the State; (4) certain properties that the Secretary determines, with the consent of the State, to be necessary to carry out Federal functions after the transfer; and (5) certain properties in Denali National Park and Preserve.

This section defines "exclusive-use easement" as a surface easement for transportation, communication and transmission purposes and support functions together with the right to use the subsurface if necessary for such purposes. The definition further guarantees adjacent and lateral support and entitles the easement holder to fence, affix track fixtures and structures on and exclude persons from the land subject to the easement.

This section also defines the terms "State" and "State-owned Railroad." The definitions are broadly worded to give the State maximum flexibility in

designating an appropriate organization for State ownership, operation and management of the Railroad after the transfer.

SECTION 4 -- TRANSFER AUTHORIZATION

This section establishes the primary transfer components. Under subsection (a), the Secretary of Transportation is required to transfer the rail properties of the Alaska Railroad to the State as soon as possible after five specified certifications are made.

Subsection (b) requires the Secretary of Transportation after consultation with the Secretary of the Interior to simultaneously deliver to the State the following documents on the date of transfer; (1) a bill of sale conveying title to all personal rail properties of the Alaska Railroad; (2) an interim conveyance of the real properties of the Alaska Railroad which are not subject to unresolved claims of valid existing rights; (3) an exclusive license to use rail properties not conveyed above pending resolution of claims of valid existing rights in accordance with the review, settlement and final adjudication procedures established in section 6 (b); (4) an exclusive-use easement for Railroad purposes and other existing uses to right-of-way lands located with the Denali National Park and Preserve and title to the improvements within the right-of-way. All other rail properties located in the park are transferred to the Department of the Interior for administration as part of the park.

Lands subject to an interim conveyance (including lands to be conveyed following the review, settlement and adjudication process discussed above), must be surveyed by the Department of the Interior within five years after the date of enactment pursuant to section 606 (b)(2). Following completion of the survey, the Secretary is required to issue a patent to the State.

Subsection (c) provides that interim conveyances and patents issued to the State must transfer all U.S. reservations for the Alaska Railroad except unexercised reservations for future rights-of-way under the 1914 Alaska Railroad Act. In addition, there shall be reserved to the Secretaries of the Interior, Defense and Agriculture as appropriate existing easements for administration identified in the closing report. The appropriate secretary may also obtain future easements with State consent. Existing and future easements may not interfere with operations and support functions of the Alaska Railroad.

The Park Service will continue to use and occupy through the Secretary of the Interior a small tract at Talkeetna, Alaska, currently used for certain park activities so long as this use or occupation does not interfere with Railroad operations.

With respect to the required certifications, subsection (d) directs the Secretary of Transportation to find that the State will operate the

Railroad as a carrier in intrastate and interstate commerce. In addition, the Secretary is to certify that the State will assume the rights, liabilities and obligations of the Railroad. However, the State will not be responsible for claims or causes of action accruing on or before the date of transfer, or judgements rendered before the transfer, except those tort actions which result in claims of less than \$2,500.

The Secretary must also find the State has established specified employee protection arrangements to apply during the two year period after the date of transfer. For those employees who are not officers and who choose to transfer to the State-owned Railroad, the State must ensure that they are retained in their same position, and unless otherwise agreed to, at least at the same level of compensation in effect at the time of transfer. These provisions are not to apply to those employees who are reassigned, retired or separated for cause or lack of work.

Under this subsection, the State is to continue existing collective bargaining agreements during this two year period unless otherwise agreed to. This subsection further provides that these agreements are to be renegotiated during this period unless otherwise agreed to, and that they are to expire at the end of the two year period.

Finally, with respect to these employees, the State is to ensure that certain Federal benefits are retained. These include accrued leave, insurance, seniority rights and cost of living increases. Also those employees who are transferred to the State-owned Railroad but terminated or laid off, during the transition period, shall be entitled to priority of reemployment in the railroad and prior Federal service is to be counted in determining seniority for such purposes.

For officers of the Railroad including the General Manager, Assistant General Manager, Assistant to the General Manager, Chief of Administration and Chief Counsel, the Secretary must also certify that the State has agreed to retain those officers for at least one year from the date of transfer (except where separated for cause, resignation, retirement or lack of work), at or above their base salary in effect on the date of transfer in such positions as the State may determine. As an alternative, the State may remove these employees upon payment of lump sum severance pay equal to their base salary for one year diminished pro-rata for employment by the State-owned Railroad within one year of the date of transfer prior to separation. Benefit guarantees discussed above for officers are in effect for one year only.

The fifth certification requires the Secretary to find that the State has agreed to compensate the U.S. at the value, if any, determined under Section 605 (b) below.

SECTION 5 -- TRANSITION PERIOD

This section sets forth the activities which are to occur, or are not to occur, during the period of enactment of the legislation and the date of transfer. Subsection (a) provides for joint submission by the Secretary of Transportation and the Governor of Alaska, no later than six months after enactment, of a report that describes in detail the rail properties of the Railroad, the liabilities and obligations to be assumed by the State, and the sum of money, if any, in the Alaska Railroad Revolving Fund to be used by the Federal Government in carrying out its remaining responsibilities.

Under subsection (b), the State shall have access to properties of, and records pertaining to the Railroad in order to evaluate and prepare for the transfer. Also the Secretary is directed not to take certain actions such as transfer, sale or lease of the Railroad properties or the obligation of Railroad monies, without the consent of the State.

Subsection (c) directs the Secretary prior to transfer to ensure that the Railroad's accounting practices and systems conform to reporting standards set by the ICC. This action will facilitate the transition of the Railroad to its status as a regulated carrier in intrastate and interstate commerce.

Finally, subsection (d) provides that within nine months after the date of enactment the United States Railway Association must determine the fair market value of the Railroad applying generally accepted procedures, methods and standards. This determination must include an appraisal of the real and personal property to be transferred to the State which considers the current fair market value and potential future value of this property if used in whole or in part for other purposes. The determination must also take into account all obligations imposed by this act and other applicable law upon operation and ownership of the Railroad.

SECTION 6 -- LANDS TO BE TRANSFERRED

This section sets forth the status of the rail properties to be transferred and provides for the orderly adjudication of claims of valid existing rights to those properties. Subsection (a) specifies that the property to be transferred is excluded from selection or conveyance provided under amendments to ANCSA relating to the Cook Inlet Region, Inc., the Chugach Natives, Inc. and certain future Eklutna Village Corporations selections provided for ANILCA.

Subsection (b) reinforces the Department of the Interior's existing responsibility to adjudicate third party claims and to issue written opinions and appropriate documents of title. Specifically, the Secretary of the Interior is directed to complete the determination of "smallest practicable tract" under section 3(e) of ANCSA within three years of the enactment of this legislation. Prior to initiating these adjudications, a ten month

period is provided whereby all affected parties are directed to make a good faith effort to review and settle as many of these claims as possible. This subsection specifies that until settlement or final adjudication, interim management of the Railroad lands subject to claims of valid existing rights shall be in accordance with standards agreed to in the Memorandum of Understanding between the FRA, the State, Cook Inlet Region, Inc. and village corporations. In recognition of the importance of maintaining exclusive control over right-of-way lands to ensure sufficient protection for safe and economic operation of the Railroad, the final part of this subsection provides a process whereby village corporations are allowed to relinquish any claims to railroad lands within the right-of-way for subsequent transfer to the State. This provision further provides that failure to make such a relinquishment shall result in the conveyance to the State of all right, title and interest of the United States in the right-of-way free and clear of such claims.

Under subsection (c), any decision by the Secretary of the Interior pursuant to this section is open to review only by an action brought in Federal District Court of Alaska and is to be expedited. The State is allowed to participate in such an appeal as well as in any agency proceeding. To ensure that the goals of this legislation are not frustrated, this section further provides that no injunctive or other relief can delay the transfer of the Railroad or impede its operations.

Lands among the rail properties are expressly excluded by subsection (d) from selection by Cook Inlet Region, Inc. (CIRI) and Chugach Natives, Inc. under 43 U.S.C. 1611 and sections 1425 and 1430 of P.L. 96-487 (ANILCA); although CIRI claims can be revitalized with State consent if the Railroad is transferred to Alaska. If there is no transfer, the State may still exercise "a public purpose" veto over lands proposed to be included in the selection pool. Federal DOT also has veto power so long as the Railroad is not under State ownership. Since the passage of P.L. 94-204 (ANCSA) in 1976, incorporating the Cook Inlet Land Exchange Agreement (exchange agreement), the Secretary of the Interior and the State of Alaska have been attempting to ensure the land entitlement of CIRI under that complex provision is fulfilled in a manner consistent with the interests of the State, environmental concerns and concerns of other public and private entities.

In one of the integral parts of the exchange agreement, the "in-region pool" provision, the Secretary of the Interior in conjunction with the General Services Administrator, was charged with promptly identifying and creating a selection pool of Federal lands within the Cook Inlet Region. The transfer of the Alaska Railroad through this legislation would exclude rail properties from possible placement in the "in region" selection pool, unless the State or Secretary of Transportation consent to its inclusion.

ANILCA amended ANCSA to allow for "in-region pool selections to occur out of State. Since the existing exchange agreement allows the Secretary of

the Interior discretion to enlarge the "in region pool" using out of region entitlement. The objective of this section is to reaffirm this secretarial discretion and to make clear that out-of-state properties can be placed into the "in region pool." This subsection also allows CIRI to negotiate with local governments to obtain the properties being selected.

Utilization of CIRI's current statutory rights to obtain Federal surplus property wherever located will be essential for fulfillment of its entitlement. Therefore, a more detailed provision is needed to insure the properties will be made available. This section adjusts CIRI's current statutory right by specifically requiring that both the Secretary of the Interior and CIRI obtain early notice of potentially available properties. The amendments also clarify the Secretary of the Interior's authority to offer properties under his jurisdiction to CIRI as partial fulfillment of CIRI's entitlements.

In addition, to increase to properties within Alaska that can be placed into the "in region pool," section 6 extends CIRI's "in-region" priority statewide.

The amount of property within the "in-region pool" has been for various reasons less than the minimum amount required. On three separate occasions the original deadline on January 15, 1978 has had to be extended to recognize this fact. To ensure fulfillment, section 6 lifts the deadline until the pool is complete but in no event later than July 15, 1987.

Subsection (e) expressly provides that the State shall be liable to a party receiving a conveyance of land among the rail properties for damage resulting in use by the State in a manner not authorized under the license provided in section 4.

SECTION 7 -- EMPLOYEES OF THE ALASKA RAILROAD

Subsection (a) of this section provides that those employees who transfer to the State-owned Railroad and who presently participate in the Federal Civil Service System, may continue to participate in this system for as long as they continue to work for the State-owned Railroad. However as an alternative, the State-owned Railroad may provide such employees either in or substantially equivalent to those benefits the State provides its employees under the State Retirement System. This section provides an exemption to the State alternative program for those transferred employees who are entitled to retire under the Federal retirement system within five years of the date of transfer. These employees may elect to remain participants in the Federal system even if the State chooses to provide other benefits.

Subsection (b) of this section provides that those Federal employees who choose not to transfer to the State-owned Railroad at the time the Railroad

is transferred to the State shall be entitled to all normal rights and benefits under Federal law for discontinued employees.

Subsection (c) provides for similar protections for transferred employees whose employment with the State-owned Railroad is involuntarily terminated during the two year period following the transfer.

SECTION 8 -- STATE OPERATION

Subsection (a) of this section provides that after the transfer, the State-owned Railroad shall be subject to the same Federal laws, with some limited sections, as are other railroads, including the Interstate Commerce Act, the Federal Antitrust Laws (unless the State acts otherwise to invoke an exemption), and the Railroad Safety Laws. The limited exemptions are the Railroad Retirement Act, the Railway Labor Act, the Federal Employer's Liability Act and the Railroad Unemployment Insurance Act. All FRA memoranda which sanction noncompliance with Federal railroad safety regulations ineffect on the date of transfer shall continue in effect according to their terms as "waivers of compliance."

In addition, subsection (a) exempts the State-owned Railroad from any state or local statute specifying a minimum number of crew members that must be employed in connection with the operation of its trains.

Subsection (a) specifies that the State-owned Railroad shall retain and manage its own revenues. The purpose of this provision is to avoid the need for annual appropriations by the State for the Railroad.

Subsection (b) of this section requires the ICC to promulgate an expedited, modified procedure for providing the State-owned Railroad a certificate of public need and necessity.

This subsection also exempts ICC actions under this subsection from the National Environmental Policy Act and the Energy Policy and Conservation Act in order to ensure an expeditious process.

Subsection (c) of this subsection provides that the State-owned Railroad shall be eligible to participate in Federal assistance programs on the same basis as other railroads, including that provided for by the Railroad Revitalization and Regulatory Reform Act.

Subsection (d) of this section provides that the railroad properties within the Denali National Park and Preserve and Chugach National Forest shall be subject to applicable Federal laws and regulations established for the protection of forest and park values. In making this determination, the appropriate secretary is to consult with the Governor of Alaska. Moreover, any determination by the Secretaries must be designed to avoid unreasonable interference with Railroad operations. This subsection also requires that

any decision to fence the right-of-way within Denali shall be subject to the concurrence of the Secretary of the Interior.

SECTION 9 -- FUTURE RIGHTS-OF-WAY

This section contemplates future rights-of-way for expansion of the Railroad. Subsection (a) provides that the State or State-owned Railroad may request the Secretary of the Interior, or the Secretary of Agriculture as appropriate, in consultation with the Secretary of Transportation to approve expeditiously pursuant to existing law, a right-of-way over Federal lands and applications for terminal and station grounds and material sites.

Subsection (b) specifies that any rights-of-ways and grounds and sites granted under this section must conform to the extent possible to the standards established in the Alaska Railroad Act of 1914.

Subsection (c) provides that a right-of-way granted under this section is subject to reversion in accordance with section 10 below.

SECTION 10 -- REVERSION

This section provides for the reversion to the United States of the properties of the Alaska Railroad if within 10 years of the transfer such properties are converted to a use that would prevent the State-owned Railroad from continuing to operate. As an alternative to the actual reversion of the properties, the State at its option, may pay the United States an amount determined to be the value of the properties at the time they were converted to a use preventing the Railroad from operating.

Subsection (b) specifically provides that if the State discontinues use of any land within the right-of-way for a continuous period of 18 years, or upon a formal notification of discontinuance from the State, the State's interest in these lands will revert to the United States.

Subsection (c) further states that upon such reversion, these lands will be conveyed by patent to abutting land owners, except as specified in subsection (d). This latter subsection provides that the portion of the right-of-way within the Denali National Park and Preserve and the Chugach National Forest will revert to the Department of the Interior and the Department of Agriculture, as appropriate, for administration as part of these units.

Subsection (e) provides that if the State sells or transfers the Railroad within five years after the date of transfer, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvements and any liabilities incurred by the State shall be paid to the United States.

SECTION 11 -- OTHER DISPOSITION

To ensure that the Railroad is transferred from Federal ownership, this section authorizes the Secretary of Transportation to otherwise dispose of the Railroad if satisfaction by the State of the five conditions under section 4 cannot be certified within a year of the delivery of the report mandated under section 5. Consistent with the concern for continued rail service, this section directs the Secretary to give preference to a prospective owner who will continue to operate rail service.

SECTION 12 -- DENALI NATIONAL PARK AND PRESERVE

All rail properties within the Denali National Park and Preserve are transferred to the Department of Interior for administration as part of the park subject to the exclusive-use easement discussed above.

SECTION 13 -- APPLICABILITY OF OTHER LAWS

This section exempts actions taken under the legislation from the requirements of a number of Federal statutes, including the National Environmental Policy Act and those provisions of the Administrative Procedures Act not pertaining to judicial review. The reasons for these exemptions is to ensure that the transfer process is not delayed.

This section also clarifies that actions taken under this legislation do not constitute a disposal of surplus Federal property or a revocation of withdrawals made from or confirmed for the Alaska Railroad under a number of specifically named and generally referenced land laws, including the Federal Land Policy and Management Act. These clarifications are necessary in order to ensure that the rail properties do not become available for entry or selection by third parties as a result of action taken under the legislation.

SECTION 14 -- CONFLICT WITH OTHER LAWS

This section provides that this legislation shall govern in the event in any conflict between this legislation and any other law.

SECTION 15 -- REPEAL AND AMENDMENT OF EXISTING LAWS

This section repeals the Alaska Railroad enabling act and other related laws, and makes conforming changes to other Federal laws that mention the Alaska Railroad. These changes would become effective at the times of transfer or other disposition or at the time of any other disposition of the Railroad pursuant to Section 11 of this legislation.

SECTION 16 -- SEPARABILITY

This section provides that if any section is held invalid, other sections shall not be affected.

Alaska Railroad Transfer Act of 1982

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(2) a person who is able to assure that adequate transportation will be provided over a substantial portion of the feeder line described in subsection (a) of this section for a period of not less than 8 years; or

(3) any combination of members of the classes of applicants described in paragraphs (1) and (2) of this subsection.

Alaska Railroad
Transfer Act of
1982

TITLE VI—ALASKA RAILROAD TRANSFER

BRIEF TITLE

46 USC 1301
note.

Sec. 601. This title may be cited as the "Alaska Railroad Transfer Act of 1982".

FINDINGS

46 USC 1301.

Sec. 602. The Congress finds that—

(1) the Alaska Railroad, which was built by the Federal Government to serve the transportation and development needs of the Territory of Alaska, presently is providing freight and passenger services that primarily benefit residents and businesses in the State of Alaska;

(2) many communities and individuals in Alaska are wholly or substantially dependent on the Alaska Railroad for freight and passenger service and provision of such service is an essential governmental function;

(3) continuation of services of the Alaska Railroad and the opportunity for future expansion of those services are necessary to achieve Federal, State, and private objectives; however, continued Federal control and financial support are no longer necessary to accomplish these objectives;

(4) the transfer of the Alaska Railroad and provision for its operation by the State in the manner contemplated by this title is made pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States;

(5) the State's continued operation of the Alaska Railroad following the transfer contemplated by this title, together with such expansion of the railroad as may be necessary or convenient in the future, will constitute an appropriate public use of the rail system and associated properties, will provide an essential governmental service, and will promote the general welfare of Alaska's residents and visitors; and

(6) in order to give the State government the ability to determine the Alaska Railroad's role in serving the State's transportation needs in the future, including the opportunity to extend rail service, and to provide a savings to the Federal Government, the Federal Government should offer to transfer the railroad to the State, in accordance with the provisions of this title, in the same manner in which other Federal transportation functions (including highways and airports) have been transferred since Alaska became a State in 1959.

DEFINITIONS

46 USC 1302.

Sec. 603. As used in this title, the term—

(1) "Alaska Railroad" means the agency of the United States Government that is operated by the Department of Transportation as a rail carrier in Alaska under authority of the Act of

March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the "Alaska Railroad Act") and section 6(i) of the Department of Transportation Act (49 U.S.C. 1655(i)), or, as the context requires, the railroad operated by that agency;

(2) "Alaska Railroad Revolving Fund" means the public enterprise fund maintained by the Department of the Treasury into which revenues of the Alaska Railroad and appropriations for the Alaska Railroad are deposited, and from which funds are expended for Alaska Railroad operation, maintenance and construction work authorized by law; Definitions.

(3) "claim of valid existing rights" means any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of the day before the date of enactment of this Act;

(4) "date of transfer" means the date on which the Secretary delivers to the State the four documents referred to in section 604(b)(1) of this title;

(5) "employees" means all permanent personnel employed by the Alaska Railroad on the date of transfer, including the officers of the Alaska Railroad, unless otherwise indicated in this title;

(6) "exclusive-use easement" means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

(7) "Native Corporation" has the same meaning as such term has under section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6));

(8) "officers of the Alaska Railroad" means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager, Assistant General Manager, Assistant to the General Manager, Chief of Administration; and Chief Counsel;

(9) "public lands" has the same meaning as such term has under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e));

(10) "rail properties of the Alaska Railroad" means all right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality

thereof as of the date of enactment of this Act, but excluding any such properties disposed of, and including any such properties acquired, in the ordinary course of business after that date but before the date of transfer, and also including the exclusive-use easement within the Denali National Park and Preserve conveyed to the State pursuant to this title and also excluding the following:

(A) the unexercised reservation to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska, as provided by the Act of March 12, 1914 (43 U.S.C. 975 et seq.);

(B) the right of the United States to exercise the power of eminent domain;

(C) any moneys in the Alaska Railroad Revolving Fund which the Secretary demonstrates, in consultation with the State, are unobligated funds appropriated from general tax revenues or are needed to satisfy obligations incurred by the United States in connection with the operation of the Alaska Railroad which would have been paid from such Fund but for this title and which are not assumed by the State pursuant to this title;

(D) any personal property which the Secretary demonstrates, in consultation with the State, prior to the date of transfer under section 604 of this title, to be necessary to carry out functions of the United States after the date of transfer; and

(E) any lands or interest therein (except as specified in this title) within the boundaries of the Denali National Park and Preserve;

(11) "right-of-way" means, except as used in section 609 of this title—

(A) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(B) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph;

(12) "Secretary" means the Secretary of Transportation;

(13) "State" means the State of Alaska or the State-owned railroad, as the context requires;

(14) "State-owned railroad" means the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operate or manage the rail properties of the Alaska Railroad or, as the context requires, the railroad owned, operated, or managed by such authority, agency, corporation, or other entity; and

(15) "Village Corporation" has the same meaning as such term has under section (j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(j)).

TRANSFER AUTHORIZATION

Sec. 604. (a) Subject to the provisions of this title, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. Such transfer shall occur as soon as practicable after the Secretary has made the certifications required by subsection (d) of this section and shall be accomplished in the manner specified in subsection (b) of this section.

48 USC 1502

(1) On the date of transfer, the Secretary shall simultaneously:

(A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property;

(B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights;

(C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights;

(D) convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station and (ii) title to railroad-related improvements within such right-of-way.

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of the date of enactment of this Act. In the event of reversion to the United States, pursuant to section 610 of this title, of the State's interests in all or part of the lands subject to such easement, such easement shall terminate with respect to the lands subject to such reversion, and no new exclusive-use easement with respect to such reverted lands shall be granted except by Act of Congress.

(2) The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 606 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

(3) The force and effect of an interim conveyance made pursuant to paragraphs (1)(B) or (2) of this subsection shall be to convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent by the United States. The

Secretary of the Interior shall survey the land conveyed by an interim conveyance to the State pursuant to paragraphs (1)(B) or (2) of this subsection and, upon completion of the survey, the Secretary shall issue a patent therefor.

(4) The license granted pursuant to paragraph (1)(C) of this subsection shall authorize the State to use, occupy, and directly receive all benefits of the railroad properties described in the license for the operation of the State-owned railroad in conformity with the Memorandum of Understanding referred to in section 606(b)(3) of this title. The license shall be exclusive, subject only to valid leases, permits, and other instruments issued before the date of transfer and easements reserved pursuant to subsection (c)(2) of this section. With respect to any parcel conveyed pursuant to this title, the license shall terminate upon conveyance of such parcel.

(c)(1) Interim conveyances and patents issued to the State pursuant to subsection (b) of this section shall confirm, convey and vest in the State all reservations to the United States (whether or not expressed in a particular patent or document of title), except the unexercised reservations to the United States for future rights-of-way made or required by the first section of the Act of March 12, 1914 (43 U.S.C. 975d). The conveyance to the State of such reservations shall not be affected by the repeal of such Act under section 615 of this title.

(2) In the license granted under subsection (b)(1)(C) of this section and in all conveyances made to the State under this title, there shall be reserved to the Secretary of the Interior, the Secretary of Defense and the Secretary of Agriculture, as appropriate, existing easements for administration (including agency transportation and utility purposes) that are identified in the report required by section 605(a) of this title. The appropriate Secretary may obtain, only after consent of the State, such future easements as are necessary for administration. Existing and future easements and use of such easements shall not interfere with operations and support functions of the State-owned railroad.

(3) There shall be reserved to the Secretary of the Interior the right to use and occupy, without compensation, five thousand square feet of land at Talkeetna, Alaska, as described in ARR lease numbered 69-25-0003-5165 for National Park Service administrative activities, so long as the use or occupation does not interfere with the operation of the State-owned railroad. This reservation shall be effective on the date of transfer under this section or the expiration date of such lease, whichever is later.

(d)(1) Prior to the date of transfer, the Secretary shall certify that the State has agreed to operate the railroad as a rail carrier in intrastate and interstate commerce.

(2)(A) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, and accounts payable, except as otherwise provided by this title.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the United States shall be solely responsible for—

(i) all claims and causes of action against the Alaska Railroad that accrue on or before the date of transfer, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of

any tort claim, only be responsible for any such claim against the United States that accrues before the date of transfer and results in an award, compromise, or settlement of more than \$2,500, and the United States shall not compromise or settle any claim resulting in State liability without the consent of the State, which consent shall not be unreasonably withheld; and

(ii) all claims that resulted in a judgment or award against the Alaska Railroad before the date of transfer.

(C) For purposes of subparagraph (B) of this paragraph, the term "accrue" shall have the meaning contained in section 2401 of title 23, United States Code.

"Accrue."

(3XA) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has established arrangements pursuant to section 607 of this title to protect the employment interests of employees of the Alaska Railroad during the two-year period commencing on the date of transfer. These arrangements shall include provisions—

(i) which ensure that the State-owned railroad will adopt collective bargaining agreements in accordance with the provisions of subparagraph (B) of this paragraph;

(ii) for the retention of all employees, other than officers of the Alaska Railroad, who elect to transfer to the State-owned railroad in their same positions for the two-year period commencing on the date of transfer, except in cases of reassignment, separation for cause, resignation, retirement, or lack of work;

(iii) for the payment of compensation to transferred employees (other than employees provided for in subparagraph (E) of this paragraph), except in cases of separation for cause, resignation, retirement, or lack of work, for two years commencing on the date of transfer at or above the base salary levels in effect for such employees on the date of transfer, unless the parties otherwise agree during that two-year period;

(iv) for priority of reemployment at the State-owned railroad during the two-year period commencing on the date of transfer for transferred employees who are separated for lack of work, in accordance with subparagraph (C) of this paragraph (except for officers of the Alaska Railroad, who shall receive such priority for one year following the date of transfer);

(v) for credit during the two-year period commencing on the date of transfer for accrued annual and sick leave, seniority rights, and relocation and turnaround travel allowances which have been accrued during their period of Federal employment by transferred employees retained by the State-owned railroad (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer);

(vi) for payment to transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, including for one year officers retained or separated under subparagraph (E) of this paragraph, of an amount equivalent to the cost-of-living allowance to which they are entitled as Federal employees on the day before the date of transfer, in accordance with the provisions of subparagraph (D) of this paragraph; and

(vii) for health and life insurance programs for transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, substantially

equivalent to the Federal health and life insurance programs available to employees on the day before the date of transfer (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer).

(B) The State-owned railroad shall adopt all collective bargaining agreements which are in effect on the date of transfer. Such agreements shall continue in effect for the two-year period commencing on the date of transfer, unless the parties agree to the contrary before the expiration of that two-year period. Such agreements shall be renegotiated during the two-year period, unless the parties agree to the contrary. Any labor-management negotiation impasse declared before the date of transfer shall be settled in accordance with chapter 71 of title 5, United States Code. Any impasse declared after the date of transfer shall be subject to applicable State law.

(C) Federal service shall be included in the computation of seniority for transferred employees with priority for reemployment, as provided in subparagraph (A)(iv) of this paragraph.

(D) Payment to transferred employees pursuant to subparagraph (A)(vi) of this paragraph shall not exceed the percentage of any transferred employee's base salary level provided by the United States as a cost-of-living allowance on the day before the date of transfer, unless the parties agree to the contrary.

(E) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has agreed to the retention, for at least one year from the date of transfer, of the offices of the Alaska Railroad, except in cases of separation for cause, resignation, retirement, or lack of work, at or above their base salaries in effect on the date of transfer, in such positions as the State-owned railroad may determine; or to the payment of lump-sum severance pay in an amount equal to such base salary for one year to officers not retained by the State-owned railroad upon transfer or, for officers separated within one year on or after the date of transfer, of a portion of such lump-sum severance payment (diminished pro rata for employment by the State-owned railroad within one year of the date of transfer prior to separation).

(4) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to allow representatives of the Secretary adequate access to employees and records of the Alaska Railroad when needed for the performance of functions related to the period of Federal ownership.

(5) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to compensate the United States at the value, if any, determined pursuant to section 605(d) of this title.

TRANSITION PERIOD

Sec. 605. (a) Within 6 months after the date of enactment of this Act, the Secretary and the Governor of Alaska shall jointly prepare and deliver to the Congress of the United States and the legislature of the State a report that describes to the extent possible the rail properties of the Alaska Railroad, the liabilities and obligations to be assumed by the State, the sum of money, if any, in the Alaska Railroad Revolving Fund to be withheld from the State pursuant to section 603(8)(C) of this title, and any personal property to be withheld pursuant to section 603(8)(D) of this title. The report shall separately identify by the best available descriptions (1) the rail properties of the Alaska Railroad to be transferred pursuant to

Report to
Congress
and State
legislature.
45 USC 1204.

section 604(b)(1) (A), (B), and (D) of this title; (2) the rail properties to be subject to the license granted pursuant to section 604(b)(1)(C) of this title; and (3) the easements to be reserved pursuant to section 604(c)(2) of this title. The Secretaries of Agriculture, Defense, and the Interior and the Administrator of the General Services Administration shall provide the Secretary with all information and assistance necessary to allow the Secretary to complete the report within the time required.

(b) During the period from the date of enactment of this Act until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law. During that period, the Secretary and the Alaska Railroad shall not, without the consent of the State and only in conformity with applicable law and the Memorandum of Understanding referred to in section 606(b)(3) of this title—

(1) make or incur any obligation to make any individual capital expenditure of money from the Alaska Railroad Revolving Fund in excess of \$300,000;

(2) (except as required by law) sell, exchange, give, or otherwise transfer any real property included in the rail properties of the Alaska Railroad; or

(3) lease any rail property of the Alaska Railroad for a term in excess of five years.

(c) Prior to transfer of the rail properties of the Alaska Railroad to the State, the Alaska Railroad's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to the jurisdiction of the Interstate Commerce Commission.

(d)(1) Within nine months after the date of enactment of this Act, the United States Railway Association (hereinafter in this section referred to as the "Association") shall determine the fair market value of the Alaska Railroad under the terms and conditions of this title, applying such procedures, methods and standards as are generally accepted as normal and common practice. Such determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this title. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential future value if used in whole or in part for other purposes. The Association shall take into account all obligations imposed by this title and other applicable law upon operation and ownership of the State-owned railroad. In making such determination, the Association shall use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the report prepared pursuant to subsection (a) of this section.

(2) The determination made pursuant to paragraph (1) of this subsection shall not be construed to affect, enlarge, modify, or diminish any inventory, valuation, or classification required by the Interstate Commerce Commission pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.).

45 USC 712

(e) Section 202(a) of the Regional Rail Reorganization Act of 1973 is amended—

- (1) by striking "and" at the end of paragraph (9);
- (2) by striking the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and
- (3) by adding at the end thereof the following new paragraph:

"(11) determine the value of the Alaska Railroad, as required by section 605 of the Alaska Railroad Transfer Act of 1982."

LANDS TO BE TRANSFERRED

45 USC 1205.

Sec. 606. (a) Lands among the rail properties of the Alaska Railroad shall not be—

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(1) available for selection under section 12 of the Act of January 2, 1976, as amended (43 U.S.C. 1611, note), subject to the exception contained in section 12(b)(8)(i)(D) of such Act, as amended by subsection (d)(5) of this section;

(2) available for conveyance under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2515);

(3) available for conveyance to Chugach Natives, Inc., under sections 1429 or 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2531) or under sections 12(c) or 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c) and 1613(h)(8), respectively); or

(4) available under any law or regulation for entry, location, or for exchange by the United States, or for the initiation of a claim or selection by any party other than the State or other transferee under this title, except that this paragraph shall not prevent a conveyance pursuant to section 12(b)(8)(i)(D) of the Act of January 2, 1976 (43 U.S.C. 1611, note), as amended by subsection (d)(5) of this section.

(b)(1)(A) During the ten months following the date of enactment of this Act, so far as practicable consistent with the priority of preparing the report required pursuant to section 605(a) of this title, the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims as possible. Any agreement to settle such claims shall take effect and bind the United States, the State, and the Village Corporation only as of the date of transfer of the railroad.

(B) At the conclusion of the review and settlement process provided in subparagraph (A) of this paragraph, the Secretary of the Interior shall prepare a report identifying lands to be conveyed in accordance with settlement agreements under this title or applicable law. Such settlement shall not give rise to a presumption as to whether a parcel of land subject to such agreement is or is not public land.

(2) The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this title. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after the date of enactment of this Act, and shall complete the survey of all lands to be conveyed under this title not later than five years after the date of enactment of this Act, and after consulting with the Governor of the State of Alaska to determine priority of survey with

regard to other lands being processed for patent to the State. The Secretary of the Interior shall give priority to the adjudication of Village Corporation claims as required in this section. Upon completion of the review and settlement process required by paragraph (1)(A) of this subsection, with respect to lands not subject to an agreement under such paragraph, the Secretary of the Interior shall adjudicate which lands subject to claims of valid existing rights filed by Village Corporations, if any, are public lands and shall complete such final administrative adjudication within two years after the date of enactment of this Act.

(3) Pending settlement or final administrative adjudication of claims of valid existing rights filed by Village Corporations prior to the date of transfer or while subject to the license granted to the State pursuant to section 604(b)(1)(C) of this title, lands subject to such claims shall be managed in accordance with the Memorandum of Understanding among the Federal Railroad Administration, the State, Eklutna, Incorporated, Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), and Toghotehe Corporation, executed by authorized officers or representatives of each of these entities. Duplicate originals of the Memorandum of Understanding shall be maintained and made available for public inspection and copying in the Office of the Secretary, at Washington, District of Columbia, and in the Office of the Governor of the State of Alaska, at Juneau, Alaska.

(4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:

(A)(i) Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 604(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 604(b)(1)(B) or (2) of this title.

(ii) With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished prior to final administrative adjudication, the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 604(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

(B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to

the date of enactment of this Act, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 604(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 604(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to the date of enactment of this Act, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

(c)(1) The final administrative adjudication pursuant to subsection (b) of this section shall be final agency action and subject to judicial review only by an action brought in the United States District Court for the District of Alaska. Review of agency action pursuant to this title shall be expedited to the same extent as the expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

(2) No administrative or judicial action under this title shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this title, or substantially impair or impede the operations of the Alaska Railroad or the State-owned railroad.

(3) Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this title. If transfer to the State does not occur pursuant to section 604 of this title, the State shall not thereafter have standing to participate in any such determination or review.

43 USC 1611
202.

(d)(1) Section 12(b)(7)(i) of the Act of January 2, 1976 (Public Law 94-204) is amended—

(A) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b)(5) and (6)";

(B) by striking "12(b)(7)(ii)" and inserting in lieu thereof "12(b)(7)(iv)";

(C) by striking "crediting" and inserting in lieu thereof "using";

(D) by striking "this subsection 12(b)(7)(i)(b)" and inserting in lieu thereof "these subsections 12(b)(7)(i)(b) or (ii)";

(E) by striking "State" in the last sentence and inserting in lieu thereof "state"; and

(F) by striking the penultimate sentence.

(2) Section 12(b)(7) of such Act is amended—

(A) by redesignating subsections (ii) through (iv) as subsections (iv) through (vi), respectively; and

(B) by inserting immediately after subsection (i) the following:

"(ii) Subject to the exceptions stated in section 12(b)(9), and notwithstanding the foregoing subsection 12(b)(7)(i) and any provision of any other law or any implementing regulation inconsistent with this subsection, until the obligations of the Secretary and the Administrator of General Services under section 12(b)(5) and (6) are otherwise fulfilled:

"(A) concurrently with the commencement of screening of any excess real property, wherever located, for utilization by Federal agencies, the Administrator of General Services shall

notify the Region that such property may be available for conveyance to the Region upon negotiated sale. Within fifteen days of the date of receipt of such notice, the Region may advise the Administrator that there is a tentative need for the property to fulfill the obligations established under section 12(b) (5) and (6). If the Administrator determines the property should be disposed of by transfer to the Region, the Administrator or other appropriate Federal official shall promptly transfer such property.

43 USC 1611
note.

"(B) no disposition or conveyance of property under this subsection to the Region shall be made until the Administrator, after notice to affected State and local governments, has provided to them such opportunity to obtain the property as is recognized in title 40, United States Code and the regulations thereunder for the disposition or conveyance of surplus property; and

"(C) as used in this subsection, 'real property' means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

"Real
property"

"(iii) If the Region accepts any conveyance under section 12(b)(7) (i) or (ii), it shall be in exchange for acres or acre-equivalents as provided in subparagraph I(CX2)(e) of the document referred to in this section, except that, after the obligation of the Secretary and the Administrator under subparagraph I(CX2)(g) of that document has been fulfilled, the acre-equivalents under subparagraph I(CX2)(e)(iii)(A) shall be one-half the valued increment therein stated. The entitlement of the Region under section 12(b) of this Act shall be reduced by the number of acres or acre-equivalents attributed to the Region under this subsection. The Secretary and the Administrator are directed to execute an agreement with the Region which shall conform substantially to the 'Memorandum of Understanding Regarding the Implementation of Section 12(b)(7)', dated September 10, 1982, and submitted to the Senate Committee on Commerce, Science, and Transportation. The Secretary, the Administrator and the Region may thereafter otherwise agree to procedures to implement responsibilities under this section 12(b)(7), including establishment of accounting procedures and the delegation or reassignment of duties under this statute."

(3) Section 12(b)(7)(iv) of such Act, as so redesignated by paragraph (2) of this subsection, is amended—

43 USC 1611
note.

(A) by striking "surplus" the first place it appears therein;

(B) by inserting immediately before the period at the end of the first sentence the following: "or paying for the conveyance of property pursuant to subsections (i) or (ii)";

(C) by inserting immediately after "account shall be" the following: "the sum of (1)";

(D) by striking "I(CX2)(e)" and inserting in lieu thereof "I(CX2)(e)(iii)(A)";

(E) by striking "the effective date of this subsection", and inserting in lieu thereof "December 2, 1980";

(F) by striking "and shall be adjusted" and inserting in lieu thereof "and (2) one-half the acre or acre-equivalent exchange value under subparagraph I(CX2)(e)(iii)(A) of ten townships fewer than the unfulfilled entitlement of the Region on the same date to acres or acre-equivalents under paragraph I(CX1)

of the document referred to in this section. The balance of the property account shall be adjusted in accordance with subsection 12(b)(7)(iii); and

(G) by striking "subsection 12(b)(6)" and inserting in lieu thereof "section 12(b)(5) and (6)".

49 USC 1611
note.

(4) Section 12(b)(7)(v) of such Act, as so redesignated by paragraph (2) of this subsection, is amended by striking "subsection (ii)" and inserting in lieu thereof "subsection (iv)".

49 USC 1611
note.

(5) Section 12(b)(8) of such Act is amended to read as follows:
"12(b)(8). Subject to the exceptions stated in section 12(b)(9), and notwithstanding any provisions of law or implementing regulation inconsistent with this section:

"(i) The deadlines in subparagraphs I(CX2)(a) and (g) of the document referred to in this section shall be extended until the Secretary's obligations under section 12(b)(5) and (6) are fulfilled: *Provided, That:*

"(A) the obligation of the Secretary under subparagraph I(CX2)(a) of such document shall terminate on such date, after July 15, 1984, that the Secretary has fulfilled his obligation under subparagraph I(CX2)(g) of that document: *Provided, That* the obligation of the Secretary under subparagraph I(CX2)(g) of such document shall be fulfilled at such date, after July 15, 1984, that the sum of the acres or acre-equivalents identified for and placed in the pool and the acres or acre-equivalents used by the Region in purchasing property under section 12(b)(7) equals or exceeds 138,240 acres or acre-equivalents;

"(B) the authority of the Secretary under subparagraphs I(CX2)(b) and I(CX2)(g)(ii) of such document to contribute to the pool created under subparagraph I(CX2)(a) of such document shall terminate (a) on July 15, 1984, if, by that date, the Secretary has fulfilled his obligation under subparagraph I(CX2)(g), or (b) if not, on such date after July 15, 1984 as such obligation is fulfilled, or (c) if such obligation remains unfulfilled, on July 15, 1987;

"(C) the concurrence by the State as described in subparagraphs I(CX2)(a)(vi) and I(CX2)(c) of the document referred to in this section shall be deemed not required after the Secretary has fulfilled his obligation under subparagraph I(CX2)(g) of that document, but in no event after July 15, 1987. In lieu of such concurrence, after 1984 as to military property, and after the Secretary has fulfilled his obligation under subparagraph I(CX2)(g) of that document or July 15, 1987, whichever is earlier, as to any other property, except property of the Alaska Railroad which is governed by subsection 12(b)(6)(i)(D) of this Act, the Secretary shall not place any lands in the selection pool referred to in subparagraphs I(CX2)(a) and (g) of the document referred to in this section without the prior written concurrence of the State. Such concurrence shall be deemed obtained unless the State advises the Secretary within ninety days of receipt of a formal notice from the Secretary that he is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or municipality, and

"(D) notwithstanding section 606(a)(2) of the Alaska Railroad Transfer Act of 1982, the Secretary may include property of the Alaska Railroad in the pool of lands to be made available for selection to the extent that he is authorized to do so under a provision of section 12(b) of this Act if the State consents to its inclusion, which consent is not subject to any limitation under subsection 12(b)(8)(XC) herein: *Provided*, That, while the Alaska Railroad is the property of the United States, the Secretary shall obtain the consent of the Secretary of Transportation prior to including such property: *And provided further*, That, if the transfer of the Alaska Railroad to the State does not occur pursuant to the terms of the Alaska Railroad Transfer Act of 1982 or any amendments thereto, the State's consent shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that he is considering placing such property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question, requires the property for a public purpose of the State or the municipality.

Ann. p. 2544.

Ann. p. 2544.

Ann. p. 2556.

"(ii) In addition to the review required to identify public lands under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), the Secretary shall identify for inclusion in the pool all public lands (as such term is used under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e)), as described in subparagraph I(C)(2)(a)(v) of the document referred to in this section, and shall, in so doing, review all Federal installations within the boundaries of the Cook Inlet Region whether within or without the areas withdrawn pursuant to section 11 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610) or by the Secretary acting under authority contained in that section: *Provided*, That no such additional review under such subparagraph shall be required of military installations or of such other installations as may be mutually excluded from review by the Region and the Secretary: *And provided further*, That the Secretary shall not review any property of the Alaska Railroad unless such property becomes available for selection pursuant to subsection 12(b)(8)(i)(D).

"(iii) The concurrence required of the State as to the inclusion of any property in the pool under subparagraph I(C)(2)(b) of the document referred to in this section shall be deemed obtained unless the State advises the Secretary in writing, within ninety days of receipt of a formal notice from the Secretary that the Secretary is considering placing property in the selection pool, that the State, or a municipality of the State which includes all or part of the property in question requires the property for a public purpose of the State or the municipality.

"(iv) The deadlines in subparagraph I(C)(1)(b) of the document referred to in this section shall be extended for an additional twenty-four months beyond the dates established in the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947).

"(v) On or before January 15, 1985, the Secretary shall report to the Congress with respect to:

"(A) such studies and inquiries as shall have been initiated by the Secretary and the Administrator of General Services, or have been prepared by other holding agencies,

Report to Congress.

to determine what lands, except for lands held by the Alaska Railroad or the State-owned railroad, within the boundaries of the Cook Inlet Region or elsewhere can be made available to the Region, to the extent of its entitlement;

"(B) the feasibility and appropriate nature of reimbursement of the Region for its unfulfilled entitlement as valued in subsection 12(b)(7)(iv) of this Act;

"(C) the extent to which implementation of the mechanisms established in section 12(b)(7) promise to meet such unfulfilled entitlement;

"(D) such other remedial legislation or administrative action as may be needed; and

"(E) the need to terminate any mechanism established by law through which the entitlement of the Region may be completed."

48 USC 1611
note.

Ann. p. 2568.

48 USC note
prec. 21.
48 USC 1635.
48 USC 1611,
1615, 1621
48 USC 1611
note
94 Stat. 2499,
2501-2515,
2518-2544, 2546.
48 USC 1611
note.

(6) Section 12(b) of such Act is amended by adding at the end thereof the following:

"12(b)(9). No disposition or conveyance of property located within the State to the Region under section 12(b)(6), 12(b)(7) and 12(b)(8), as amended, shall be made if the property is subject to an express waiver of rights under the provisions of subparagraph I(C)(2)(f) of the document referred to in this section, or if such disposition or conveyance violates valid rights, including valid selections or valid authorized agreements, of Native Corporations (as such term is used in section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6)) or the State existing at the time of such disposition or conveyance under section 6 of Public Law 85-508, as amended (excepting section 906(e) of the Alaska National Interest Lands Conservation Act), sections 12(a), 12(b), 16(b) or 22(f) of the Alaska Native Claims Settlement Act, section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1154), or sections 1416, 1418 through 1425 (inclusive), 1427 through 1434 (inclusive), or 1436 of the Alaska National Interest Lands Conservation Act: *Provided, however,* That nothing within this subsection 12(b)(9) shall diminish such rights and priorities as the Region has under section 12(b) of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1151), as amended by section 4 of the Act of October 4, 1976 (Public Law 94-456; 90 Stat. 1935), section 3 of the Act of November 15, 1977 (Public Law 95-178; 91 Stat. 1369), section 2 of the Act of August 14, 1979 (Public Law 96-55; 93 Stat. 386), the Act of July 17, 1980 (Public Law 96-311; 94 Stat. 947), and section 1435 of the Alaska National Interest Lands Conservation Act.

"12(b)(10). For the purpose of its incorporation into this section, paragraph I(C)(1) of the document referred to in this section is amended as follows: (1) by striking 'withdrawn' and inserting in lieu thereof 'withdrawn or formerly withdrawn'; (2) by striking '17(d)(1)' and inserting in lieu thereof '17(d)(1) and (2)'; and (3) by striking the last sentence of subparagraph I(C)(1)(a) and inserting in lieu thereof the following: 'Cook Inlet Region, Incorporated shall not nominate any lands within the boundaries of any conservation system unit, national conservation area, national recreation area, national forest, defense withdrawal, or any lands that were made available to the State for selection pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972.'

"12(b)(11). Notwithstanding the provisions of section 906 of the Alaska National Interest Lands Conservation Act and section 6(i) of the Alaska Statehood Act (72 Stat. 839):

43 USC 1625.
45 USC 1205
PROC. 21.

"(i) The State is hereby authorized to convey to the United States for reconveyance to the Region, and the Secretary is directed to accept and so reconvey, lands tentatively approved for patent or patented to the State, if the State and the Region enter into an agreement that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph 1(CX1) of the document referred to in this section: *Provided*, That the acreage of lands conveyed to the United States under this provision shall be added to the State's unfulfilled entitlement pursuant to section 6 of the Alaska Statehood Act, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph 1(CX1) of the document referred to in this section shall be reduced accordingly.

"(ii) The Secretary is directed to convey to the Region lands selected by the State prior to July 18, 1973 or pursuant to sections 2 and 5 of the State-Federal Agreement of September 1, 1972, if the State relinquishes such selections and enters into an agreement with the Region that such lands shall be reconveyed to the Region to fulfill all or part of its entitlement under paragraph 1(CX1) of the document referred to in this section, and the number of townships to be nominated, pooled, struck, selected and conveyed pursuant to paragraph 1(CX1) of the document referred to in this section shall be reduced accordingly.

"(iii) The Secretary, in the Secretary's discretion, is authorized to enter into an agreement with the State and the Region to implement the authority contained in this section 12(b)(11), which agreement may provide for conveyances directly from the State to the Region. Conveyances directly conveyed shall be deemed conveyances from the Secretary pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)."

(e) The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 604(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

45 USC 1205.

EMPLOYEES OF THE ALASKA RAILROAD

Sec. 607. (a)(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of title 5, United States Code) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5, United States Code, and shall contribute to the Civil Service Retirement and Disability

45 USC 1206.

5 USC 8331.

Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5, United States Code) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5, United States Code. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection—

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336 (a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred, notwithstanding the provisions of section 8334 of title 5, United States Code.

(b) Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

(c) Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 604(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Any employee who transfers to the State-owned railroad under this title shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the State with the unused annual leave balance at the time of transfer.

STATE OPERATION

Sec. 608. (a)(1) After the date of transfer to the State pursuant to section 604 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1906 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this title shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

45 USC 1207.

(2) The transfer to the State authorized by section 604 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of title 49, United States Code, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 202(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

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

State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 115(a)(1)). Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 103(a)(1)), but not obligations within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(b)(2)).

(B) Nothing in this title shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) As soon as practicable after the date of enactment of this Act, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of title 49, United States Code (49 U.S.C. 10781 et seq.) shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code.

(d) After the date of transfer to the State pursuant to section 604 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this title.

FUTURE RIGHTS-OF-WAY

45 USC 1208.

Sec. 609. (a) After the date of enactment of this Act, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the

Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 103(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.

(c) Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 610 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the "date of transfer".

REVERSION

Sec. 610. (a) If, within ten years after the date of transfer to the State authorized by section 604 of this title, the Secretary finds that all or part of the real property transferred to the State under this title, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

45 USC 1209.

(b) If, after the date of transfer pursuant to section 604 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

Publication in
Federal
Register.

(c) Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States. Where land abutting the reverted right-of-way is owned by different persons or entities, the conveyance made pursuant to this

subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

(d) If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad (transferred to the State pursuant to this title which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

(e) Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 604 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

(f) The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

OTHER DISPOSITION

45 USC 1210

Sec. 611. If the Secretary has not certified that the State has satisfied the conditions under section 604 within one year after the date of delivery of the report referred to in section 605(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that—

(1) such preference shall not diminish or modify the rights of the Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1150)), pursuant to such section, as amended by section 606(d) of this title; and

Act, p. 2564.

(2) this section shall not be construed to diminish or modify the powers of consent of the Secretary or the State under section 12(b)(8) of such Act, as amended by section 606(d)(5) of this title.

Any disposal under this section shall be subject to valid existing rights.

DENALI NATIONAL PARK AND PRESERVE LANDS

45 USC 1211.

Sec. 612. On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), that portion of rail properties of the Alaska Railroad within the Denali National Park and Preserve shall, subject to the exclusive-use easement granted pursuant to section 604(b)(1)(D) of this title, be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve, except that a

transferee under section 611 of this title shall receive the same interest as the State under section 604(b)(1)(D) of this title.

APPLICABILITY OF OTHER LAWS

Sec. 613. (a) The provisions of chapter 5 of title 5, United States Code (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this title, except to the extent that such laws may be applicable to granting of rights-of-way under section 609 of this title.

45 USC 1212.
5 USC 500 et seq.

(b) The enactment of this title, actions taken during the transition period as provided in section 605 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this title shall be deemed not to be the disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94-204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371), and the general land and land management laws of the United States.

(c) Beginning on the date of enactment of this Act, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5, United States Code, shall not apply to the Alaska Railroad.

(d) Nothing in this title is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

(e) With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this title, nothing contained in this title shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

CONFLICT WITH OTHER LAWS

Sec. 614. The provisions of this title shall govern if there is any conflict between this title and any other law.

45 USC 1213.

REPEAL AND AMENDMENT OF EXISTING STATUTES

Sec. 615. (a) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are repealed:

- (1) The Act of March 12, 1914 (43 U.S.C. 975 et seq.).

16 USC 252a.

48 USC 201a.

(E) The Act of June 24, 1946, to authorize certain expenditures by the Alaska Railroad (60 Stat. 304).

(F) The Act of July 19, 1932, concerning mining of coal adjacent to the Alaska Railroad (30 U.S.C. 208a).

(4) Section 6(i) of the Department of Transportation Act (49 U.S.C. 1655(i)).

(b) On the date of transfer to the State (pursuant to section 604 of this title) or other disposition (pursuant to section 611 of this title), whichever first occurs, the following provisions are amended as follows:

(1) Title 5, United States Code, is amended—

(A) in section 305(a), by striking paragraph (3), and by redesignating paragraphs (4)–(8) as paragraphs (3)–(7), respectively;

(B) in section 3401(1), by striking clause (iii), and by redesignating clauses (iv)–(viii) as clauses (iii)–(vii), respectively;

(C) in section 5102(a)(1), by striking clause (iii), and by redesignating clauses (iv)–(ix) as clauses (iii)–(viii), respectively;

(D) in section 5342(a)(1), by striking subparagraph (C), and by redesignating subparagraphs (D)–(J) as subparagraphs (C)–(I), respectively; and

(E) in section 7327, by striking subsection (a), and by striking the subsection designation "(b)".

(2) Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)) is amended by striking "and the Alaska Railroad".

(3) Section 10749(b) of title 49, United States Code, is amended—

(A) by inserting "or" at the end of paragraph (1)(B);

(B) by striking "; or" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking paragraph (3).

(4) Section 324(a)(1) of the Public Health Service Act (42 U.S.C. 251(a)(1)) is amended by striking "employees of the Alaska Railroad and".

(5) Section 202(3)(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 410hh-1(3)(a)) is amended by striking the third sentence.

(6) Section 1(o) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(o)) is amended by inserting immediately after "National Transportation Safety Board," the following: "the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska,".

SEPARABILITY

48 USC 1214.

Sec. 616. If any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

TRANSFER OVERVIEW

This overview summarizes the basic statutory scheme for the proposed transfer of the Alaska Railroad to the State of Alaska, describes the anticipated timetable for the transfer and discusses a series of major issues that were considered in the development of ARTA.

The Act was signed into law by President Reagan on January 14, 1983. It authorizes transfer of the Alaska Railroad to the State of Alaska subject to several specified conditions, including the requirement that the State compensate the United States for the value, if any, of all rail properties transferred. Other important conditions include State commitments to continue railroad operations, to assume existing obligations, to provide employee protection for at least two years, and to protect retirement benefits.

Two key provisions, each tied to the date of enactment, establish an orderly process for State consideration of the transfer offer. Within six months from the date of enactment, this Report is required to be prepared by the Governor of Alaska and the Secretary of Transportation and submitted to the Alaska State Legislature and the Congress. Within nine months from the date of enactment, the railroad's fair market value must be determined by USRA.

Following delivery of this Report, the Secretary of Transportation has 12 months within which to certify that the

State has agreed to all conditions for transfer specified by ARTA. Actual transfer of the railroad is to take place "as soon as practicable" after these certifications are made. Within three months of certification, the Secretary and the State will agree on the actual date of transfer, which the parties hope will be no later than six months following certification. Although both parties are committed to proceeding expeditiously, a longer period may be needed to ensure an orderly process. If the State has been unable to satisfy the transfer conditions within the 12-month time period, ARTA permits the Secretary to dispose of the railroad and to give preference to a buyer or transferee who will continue to operate rail services.

Certification Process.

As noted, ARTA sets out a series of conditions that the State must meet to allow transfer certification by the Secretary. The legislation does not, however, attempt to specify how the State is to satisfy the conditions. Much will depend upon the State's decision concerning the nature of the entity it will designate or create to operate the railroad under State ownership. The working assumption of the State during development of ARTA was that State enabling legislation would be enacted to resolve this fundamental issue, and that such legislation would either satisfy the outstanding certification requirements or empower the operating entity to do so.

As a precondition to transfer, the Secretary is required to certify that the State has agreed:

- (1) to operate the railroad as a rail carrier in intrastate and interstate commerce;
- (2) to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, with some limited exceptions regarding claims and causes of action;
- (3) to protect retirement benefits and to establish acceptable arrangements for continued employment during a two-year period following date of transfer;
- (4) to allow representatives of the Secretary of Transportation adequate access to railroad employees and records when needed in relation to the period of Federal ownership; and
- (5) to compensate the United States at the value, if any, determined by the valuation exercise being performed by the USRA.

Reversion.

If transferred to the State under Section 604, the railroad may revert, in whole or in part, to the United States under three separate reversion provisions in ARTA:

- (1) Under Section 610(e), any proceeds in excess of the cost of any rehabilitation and improvement and any

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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- (1) Under Section 610(e), any proceeds in excess of the cost of any rehabilitation and improvement and any

net liabilities from the State's sale or transfer of "all or substantially all" of the railroad within five years of transfer to an entity other than a State instrumentality are to be paid to the United States Treasury.

- (2) Section 610(a) requires the reversion to the United States, or the payment by the State of the fair market value, of all or part of the railroad's real property "converted to a use that would prevent the State-owned railroad from continuing to operate" within ten years after transfer.
- (3) Section 610(b) requires reversion to the United States generally for conveyance to the abutting owners of any land within the right-of-way if its use for transportation, communication or transmission purposes is discontinued by the State for an uninterrupted period of 18 years.

Claims Against Railroad Lands.

Approximately 4,000 acres of the railroad's non-right-of-way lands are subject to claims by Native Village Corporations under the Alaska Native Claims Settlement Act. Article II and Appendix D of this Report provide more detail regarding the lands involved. During the ten month period following the date of enactment of ARTA, the State, the Department of the Interior, and all affected Native Village Corporations are

directed to undertake a good faith effort to negotiate settlements for as many outstanding claims as possible.

If any of these claims cannot be settled within the ten-month period, they must be adjudicated by the Secretary of the Interior within two years of the date of enactment of ARTA, or 14 months after completion of the review and settlement process. All other unresolved claims against railroad lands on record in the Department of the Interior, as of the day before the date of enactment must be adjudicated within three years from the date of enactment. Resolution of claims to railroad land is not a precondition to transfer.

Survey Requirement.

ARTA requires the Secretary of the Interior to survey within a five-year period all lands among the rail properties conveyed to the State. The parties emphasize the importance of meeting the deadline and will continue to work with the Department of the Interior to do so. Article II, Appendices B-E and Exhibit 1 of this Report provide more detail about the lands involved.

Railroad Right-of-Way.

ARTA requires the transfer to the State of all right, title, and interest of the United States to all rail properties of the Alaska Railroad, including all railroad rights-of-way. ARTA also provides that where lands or any interests within the right-of-way have been conveyed out of Federal

ownership prior to enactment, the State shall receive, at minimum, an exclusive-use easement. These two provisions are intended to ensure that the State will receive all of the interest necessary to maintain viable railroad operations.

Future Rights-of-Way.

ARTA provides for expeditious review of any future right-of-way requests by the State across Federal lands. The Act requires that such rights-of-way conform, to the extent possible, to the standards provided by the Alaska Railroad Enabling Act of 1914 and the exclusive-use easement definition contained in ARTA. Responsibility for reviewing and granting such future rights-of-way is vested by existing law in the Secretary of the Interior or the Secretary of Agriculture, with the participation of the Secretary of Transportation as appropriate, particularly with respect to the interest to be granted for operation and economic growth of the railroad.

Denali National Park and Preserve Lands.

On the date of transfer, the Secretary will deliver to the State a deed that conveys to the State (a) an exclusive-use easement for that portion of the rights-of-way within Denali National Park and (b) title to the railroad-related improvements within such right-of-way. All other railroad holdings and improvements within the Park are to be transferred to the Secretary of the Interior for administration as part of the Park. Rail properties within the boundaries of the Chugach

National Forest and the Denali National Park and Preserve will be subject to laws and regulations for the protection of forest and park values. Implementation of those regulations will be subject to prior consultation with the Governor and may not unreasonably interfere with continued or expanded operation of the State-owned railroad.

Real Property Conveyance.

Articles II and III, related to real and personal property and supported by lengthy appendices and exhibits, are the most detailed parts of this Report. The transfer from the Federal Government of its only commercial operating railroad present property questions of first impression. This transfer is further complicated by the peculiar status of many Federal lands located in Alaska. The impact of competing claims to such lands on the transfer process accounts for the complex statutory scheme provided in ARTA and for the detailed treatment of the railroad lands in Article II.

The Act provides for four different types of conveyance documents to be issued to the State on the date of transfer. Each document will convey interests in land based on the status of the affected parcel on that date.

First, the State will receive an "interim conveyance" of lands that, like the patented lands, are free of claims by others but, unlike the patented lands, are not yet surveyed. When these lands have been surveyed after the date of

transfer, the interim conveyances will be converted into patents.

Second, the State will receive a patent for railroad lands that are surveyed and are not subject to unresolved claims made by third parties under a variety of Federal laws.

Third, the State will receive an exclusive-use easement, as defined in ARTA, for right-of-way lands within Denali National Park and Preserve.

Fourth, the State will receive a license allowing it the exclusive right to use the railroad lands that are subject to claims of third parties (such as Native Corporations) on the date of enactment but which have not been resolved by the date of transfer. As these claims are settled or decided, the lands in the license category will either be placed in the interim conveyance category (if the third party's claim is denied) or conveyed to the claimant (if the claim is approved). The real property conveyance provisions of ARTA thereby require that certain railroad lands be held in escrow (i.e., under license) until their ultimate ownership is determined through settlement or by adjudication.

Employee Protection.

The work force of the Alaska Railroad (described in the "Profile" section) remains one of its most valuable assets. The employee protection provisions of ARTA, more fully discussed in Article VI, testify to the continuing interest

of the State and the United States in protecting the employees' well-being in the face of the proposed transfer to the State. The provisions also are intended to facilitate and indeed encourage the transfer of the Alaska Railroad work force to the State-owned railroad, in recognition of its critical importance to the ongoing viability of the railroad. Although care has been taken to preserve employee options to elect not to transfer and to protect their rights in the event they decide to separate from the railroad upon transfer, the Secretary and the Governor hope that the vast majority of employees will remain with the State-owned railroad.

ARTA REQUIREMENTS

Transfer Terms and Conditions

ARTA establishes a series of conditions the State must meet to obtain certification from the Secretary of Transportation. The legislation does not, however, specify how the State is to satisfy these conditions. Much depends on our decision about the mechanism we select to operate the railroad.

Prior to transfer, the Secretary is required to certify that the State has agreed:

- (1) to operate the railroad as a rail carrier in intrastate and interstate commerce;
- (2) to assume all rights, liabilities and obligations of the ARR on the date of transfer, except for some claims and causes of action;
- (3) to protect retirement benefits and to establish acceptable arrangements for continued employment for all employees during a two-year period following the date of transfer;
- (4) to allow representatives of the Secretary of Transportation adequate access to railroad employees and records; and
- (5) to compensate the United States at the fair market value, if any, as determined by the United States Railway Association.

Other chapters of this report explain some of these conditions in greater detail, particularly those relating to employee protection and retirement benefits.*

* Additionally, the first section of the Transfer Report, entitled "Transfer Overview," provides information about other key aspects of the federal transfer legislation. This includes those provisions dealing with reversion requirements, native claims against railroad lands, and the type of interest to be obtained in the railroad's right-of-way.

Provisions Affecting Continued Operations

The following discussion analyzes the effect of ARTA's requirements (other than employee protection obligations which are addressed elsewhere), on continued operation of the railroad following acquisition. Several observations should help eliminate confusion regarding ARTA's continued rail service requirements.

First, it is important to remember that most of the federal transfer statute was structured on a premise of the so-called "no-cost transfer." The compensation requirement was a last minute compromise to obtain Congressional passage, and was merely added to the already established conditions. Consequently, certain provisions are not consistent with the purchase provision of ARTA; particularly the reversion clauses which remain in effect for a certain period of time after acquisition.

Another important consideration is the requirement that the State agree to operate the railroad as a common carrier engaged in intrastate and interstate commerce. Some interpretations suggest that when read in context with the reversion clauses under Section 610 of ARTA, there is a prescribed ten-year period for ensuring continued rail operations. However, this is not the case. The State is not required to continue rail services for any specific period.

Some also suggest that ARTA requires all existing services be continued, including passenger service. This also is not the case. The reversion requirement under Section 610 merely states that if, within the first 10 years after transfer, the State converts all or part of the real property to "a use that would prevent the State-owned railroad from continuing to operate," then the State shall be subject to a requirement to repay the United States for these holdings, or revert such property at our option.

However, under full regulation by the Interstate Commerce Commission (ICC), the State will be subject to some ICC oversight in any abandonment proceedings. Generally, these proceedings are strictly based on economic considerations related to operating history. Assuming a history of highly marginal performance, it is doubtful that ICC oversight would prevent discontinuance of service at some point in the future.*

* The Transfer Team, however, is not suggesting that service be discontinued.

Other key ARTA provisions that have a bearing on continued rail operations are primarily located in Section 608, including the following:

- (1) full and formal regulation by the Interstate Commerce Commission as a rail carrier engaged in intrastate and foreign commerce;
- (2) full jurisdiction under federal antitrust laws, although the State may invoke by law any exemptions otherwise available;
- (3) exemption from the following laws so long as the State-owned railroad remains an instrumentality of the State of Alaska: the Railroad Retirement Act of 1974, the Railroad Tax Act, the Railroad Labor Act, the Federal Employers' Liability Act, and the Railroad Unemployment Insurance Act;
- (4) a clarification that ICC regulation is intended to confer on the State-owned railroad "all business opportunities available to comparable railroads, including contract rate agreements";
- (5) clarification that train operations by the State-owned railroad shall not be subject to any state or local laws specifying minimum crew size;
- (6) a specific requirement that all revenues generated by the State-owned railroad are to be retained and managed by the State-owned railroad for railroad and related purposes;
- (7) a statement by Congress that continued operation of the ARR by "a public corporation, authority or other agency of the State" is an exercise of an essential governmental function and qualifies under the Internal Revenue Code for tax-exempt status, which also would apply to obligations issued by this entity;
- (8) a requirement that rail operations within the boundaries of Chugach National Forest and Denali National Park will be subject to laws and regulations for the protection of forest and park values so long as such regulation does not "unreasonably interfere with continued or expanded operations and support functions";

- (9) guarantees that the State will receive the full federal interest in the right-of-way, but nothing less than an exclusive-use easement for transportation, communication and utility purposes in all areas, except within the Denali National Park, where the railroad is to receive an exclusive-use easement for rail purposes only; and
- (10) no guarantees for future rights-of-way across federal lands, but language which encourages the Secretary of the Interior to expeditiously review applications for that purpose.

CERTIFICATE OF APPRAISAL

CHARLES F. SEYMOUR, RUSSELL E SNYDER, AND ARNOLD S. TESH
DO HEREBY CERTIFY THAT UPON REQUEST FOR VALUATION BY:

THE UNITED STATES RAILWAY ASSOCIATION
955 L'ENFANT PLAZA NORTH, S.W.
WASHINGTON, DC 20599

THEY HAVE PERSONALLY EXAMINED THE FOLLOWING DESCRIBED PROPERTY:

ALASKA RAILROAD REAL ESTATE TO BE TRANSFERRED
UNDER THE ALASKA RAILROAD TRANSFER ACT

AND THAT THEY ARE OF THE OPINION THAT AS OF OCTOBER 1, 1983

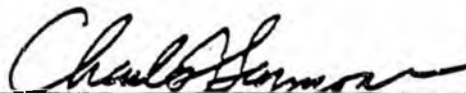
THE MARKET VALUE OF THE PROPERTY

MORE FULLY DESCRIBED HEREIN, WILL BE AS FOLLOWS:

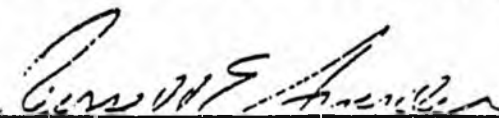
\$58,000,000

THIS MAY BE ALLOCATED AS FOLLOWS:

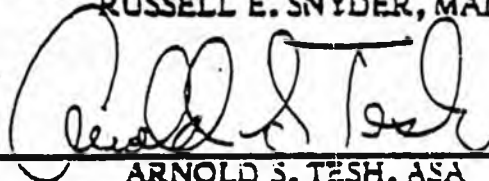
OPERATING PROPERTY:	\$ 7,000,000
NON-OPERATING PROPERTY:	\$51,000,000



CHARLES F. SEYMOUR, MAI, CRE



RUSSELL E. SNYDER, MAI



ARNOLD S. TESH, ASA

N-1

CERTIFICATION, ASSUMPTIONS,
LIMITING CONDITIONS, AND CONTINGENCIES

Your appraiser, whose signature appears on the Certificate of Appraisal, does hereby certify that, except as otherwise noted in this appraisal report:

1. He has no present or contemplated future interest in the real estate that is the subject of this appraisal report.
2. He has no personal interest or bias with respect to the subject matter of this appraisal report or the parties involved.
3. To the best of his knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct.
4. This appraisal report sets forth all of the limiting conditions imposed by the terms of the assignment or by the appraiser affecting the analyses, opinions and conclusions contained in this appraisal.
5. This appraisal report has been made in conformity with and is subject to the requirement of the Code of Professional Ethics and Standards of Professional Conduct of the American Institute of Real Appraisers of the National Association of Realtors.
6. No one other than the appraiser prepared the analyses, conclusions and opinions concerning real estate that are set forth in this appraisal report.
7. The American Institute of Real Estate Appraisers conducts a voluntary program of continuing education for its designated members. MAI's and RM's who meet the minimum standards of this program are awarded periodic educational certification. I am certified under this program through December 31, 1983.

This appraisal is to be used in whole and not in part. No part of it shall be used in conjunction with any other appraisal.

No responsibility is assumed by the appraiser for matters which are of legal nature, nor is any opinion on the title rendered herewith. Good title is assumed. Management is assumed to be competent and the ownership to be in responsible hands.

This property has been appraised as though free of liens and encumbrances, except as herein described.

The appraiser herein, by reason of this report is not required to give testimony in court with reference to the property appraised, unless arrangements have been previously made therefore.

Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Realtors.

Neither all nor any of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the American Institute of Real Estate Appraisers or to the M.A.I. or R.M. designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and approval of the appraiser(s)

**SPECIAL ASSUMPTIONS AND INSTRUCTIONS
UNDER THE ALASKA RAILROAD TRANSFER
ACT (ARTA)**

In accordance with the advice and counsel of the United States Railway Association, Jackson-Cross has assumed the following in its appraisal of the Alaska Railroad:

1. Fair market value of the railroad to the State of Alaska is the price the State, as a prudent purchaser, would pay for the rights transferred under ARTA. The State is constrained by all existing state law that would affect it or any other purchaser of the railroad's property. Accordingly, we do not consider potential actions which the State might take which would affect fair market value.
2. The purchaser will operate the railroad for ten years, at a level of service that approximates current projections and in its present configuration.
3. All real estate classified as operating property would be available for transfer for non-rail use in 10 years after the date of the appraisal on October 1, 1993.
4. Upon transfer, the State will acquire full title to only those portions of the property identified by USRA as owned in fee simple by the Alaska Railroad.
5. The purchaser will be permitted to make any use of the operating property immediately after transfer of the properties to the State as long as such uses do not interfere with rail operations.
6. All non-operating property would be available for disposition immediately after transfer of the properties to the State.
7. All revenues from real estate transactions during the first ten (10) years must be used for railroad or other related purposes. Other related purposes can include transportation budget items relating in some way to the Alaska Railroad.
8. There would be no added costs to a purchaser for environmental, subdivision or zoning actions beyond that which is reflected in comparable sales.
9. The purchaser is required to assume all existing leases on the property, but will renegotiate them at fair market value upon their expiration or at the earliest date permissible under the terms of such leases.
10. USRA has provided the appraiser with the inventory of Alaska Railroad property and with its allocation between operating and non-operating real estate.

11. The analysis of real estate taxes has been performed in accordance with the normal real estate market practices, i.e. the purchaser is responsible for normal real estate taxes during the holding period and for disposition taxes normally paid by the seller when sales are consummated.
12. The purchaser is entitled to utilize all financing instruments normally available, including mortgages.
13. The discount rate reflects the cost of money attributable to a typical acquisition in the private sector.
14. Theoretical social costs and benefits associated with the transferred property are not considered within the purview of fair market value.
15. The railroad is considered a single property to be owned and controlled by a single entity.
16. The date of the appraisal is October 1, 1983.
17. No special allocation is made in this report for parcels subject to Native claims. At USRA's request, Jackson-Cross supplied a total value for such parcels. That value is \$3,200,000.
18. Corridor value for the right-of-way is not considered.
19. The Section 605(a) Closing Report is considered to the extent that information contained therein affects the real estate value.
20. No specific studies are performed to determine the existence of semi-precious and precious minerals located within the subject. Mineral rights and their potential value are only considered to the extent as reported and reflected in the real estate market transactions in the private sector.
21. Income from leases located on property designated by USRA as operating property, pipeline permits, and trackage charges, are excluded from the real estate valuation. USRA advises that this income has been considered in its projections of railroad operating income.

PURPOSE AND FUNCTION OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the subject property, more fully described herein, as of October 1, 1983.

As used herein, market value may be defined as:

The price which a well-informed buyer acting intelligently, voluntarily, and without necessity would be warranted in paying, and a well-informed seller acting intelligently, voluntarily, and without necessity would be warranted in accepting for the property as of a certain date.

The function of this appraisal is to provide USRA with an estimate of market value of the real estate for incorporation in its report on the market value of the Alaska Railroad properties to be conveyed under the Alaska Railroad Transfer Act (A.R.T.A.).

The subject property is valued in fee simple, subject to A.R.T.A. restrictions as interpreted by USRA.

ACKNOWLEDGEMENT

All of the judgements and conclusions contained within this report are those of the appraisers for which they assume full professional responsibility. However, the appraisers wish to acknowledge the assistance of David W. Anderson, Douglas S. Butcher, Joseph R. Dugan, Alf Moody, and Frederick J. Williams of Jackson-Cross Company in the preparation of various facets of this report.

SUMMARY OF VALUATIONS BY MARKET AREA

Market Area	Operating Property			Non-Operating Property			Total Property
	Land	Improvements	Subtotal	Land	Improvements	Subtotal	
Anchorage	\$0,883,223	\$ 766,688	\$5,669,911	\$39,282,728	--	\$39,282,728	\$40,932,639
Palmbanks	527,001	132,132	639,373	6,186,760	--	6,186,760	6,809,337
Seward	188,618	83,660	272,278	1,393,082	--	1,393,082	1,667,355
Whittier	102,461	130,103	232,576	922,717	--	922,717	1,155,293
Unkita	--	--	--	353,431	--	353,431	353,431
Others	68,374	23,616	91,990	2,723,183	116,000	2,839,183	2,991,173
Totals	\$5,770,109	\$1,036,213	\$6,906,324	\$50,935,923	\$116,000	\$51,049,923	\$57,936,249
Reservoid	\$3,770,000	\$1,140,000	\$6,910,000	\$50,930,000	\$120,000	\$51,030,000	\$58,000,000

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROPERTY APPRAISED: All Alaska Railroad real estate holdings held in fee simple by the Alaska Railroad.

OWNER: The Alaska Railroad (United States Department of Transportation).

LAND: The total land area valued is 28,416.31 acres, based on maps and other documents provided to the appraisers by USRA and the Alaska Railroad. USRA has allocated 3,913.61 acres to Operating property and 24,502.7 acres to Non-operating property.

IMPROVEMENTS: Numerous structures located throughout the Alaska Railroad land holdings are more fully described herein. Improvements containing a total of 512,000+ square feet of building area owned by the Alaska Railroad have value consistent with the highest and best uses of the properties under the assumptions provided by USRA.

PRESENT USE: Operating property is devoted to rail operations. The uses of Non-Operating properties range from undeveloped wilderness to land leases for industrial, commercial, residential, agricultural, institutional, and recreational.

HIGHEST AND BEST USE: A separate highest and best use conclusion was made for each of the Valuation Units described herein. With respect to Operating property, highest and best use conclusions are based on the assumption, provided by USRA, that rail operations will cease on October 1, 1993.

<u>MARKET VALUE OF OPERATING PROPERTY:</u>	Land	\$ 5,770,000
	Improvements	<u>1,140,000</u>
	Total	\$ 6,910,000

<u>MARKET VALUE OF NON-OPERATING PROPERTY:</u>	Land	\$ 50,930,000
	Improvements	<u>120,000</u>
	Total	\$ 51,050,000

<u>TOTAL MARKET VALUE:</u>	Land	\$ 56,700,000
	Improvements	<u>1,250,000</u>
	Total	\$ 57,960,000
	Rounded to	\$ 58,000,000

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

PURPOSE AND FUNCTION OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the subject property, more fully described herein, as of October 1, 1983.

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	<u>Land</u>	<u>Improvements</u>	<u>Subtotal</u>	<u>Land</u>	<u>Improvements</u>	<u>Subtotal</u>	
Anchorage	\$0,883,223	\$ 766,688	\$3,649,911	\$39,282,728	--	\$39,282,728	\$66,932,639
Fairbanks	577,461	132,132	639,373	6,186,766	--	6,186,766	6,849,317
Seward	188,618	83,666	272,276	1,393,882	--	1,393,882	1,667,356
Whittier	102,461	130,113	232,376	922,717	--	922,717	1,153,293
Valdez	--	--	--	363,431	--	363,431	363,431
Other	<u>68,374</u>	<u>23,616</u>	<u>21,228</u>	<u>2,782,183</u>	<u>116,000</u>	<u>2,892,183</u>	<u>2,991,173</u>
Totals	\$3,770,109	\$1,136,213	\$6,906,124	\$38,938,923	\$116,000	\$31,049,923	\$37,936,249
Round	\$3,770,000	\$1,140,000	\$6,910,000	\$38,930,000	\$120,000	\$31,030,000	\$38,000,000

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

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Numerous structures located throughout the Alaska Railroad land holdings are more fully described herein. Improvements containing a total of 512,000+ square feet of building area owned by the Alaska Railroad have value consistent with the highest and best uses of the properties under the assumptions provided by USRA.

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Land	\$ 5,770,000
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Total	\$ 6,910,000

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Land	\$ 50,930,000
Improvements	<u>120,000</u>
Total	\$ 51,050,000

TOTAL MARKET VALUE:

Land	\$ 56,700,000
Improvements	<u>1,250,000</u>
Total	\$ 57,960,000
Rounded to	\$ 58,000,000

VALUATION

After considering all the facts and circumstances in connection with the subject property, it is our opinion that the market value of the land and improvements, as of October 1, 1983, will be:

--- FIFTY EIGHT MILLION DOLLARS ---
(\$58,000,000)

This may be allocated as follows:

Land	\$56,740,000	This is equivalent to 28,416.31 acres at \$1,997 per acre.
Improvements	\$ 1,260,000	This is equivalent to 512,002 square feet of building area at \$2.46 per square foot.

OBJECTIVE AND VALUATION METHODOLOGY

The final adoption of a methodology for appraising the non-rail use fair market value of the Alaska Railroad (ARR) real estate results from comprehensive consideration of the Alaska Railroad Transfer Act of 1982 (ARTA) which defines assumptions and limiting conditions. Market factors were also considered in formulating the process.

It has been the practice of the ARR to lease its real estate, rather than sell it. Jackson-Cross assumes a continuation of this practice regardless of ownership. Valuation theory assures that proper capitalization of an income stream results in a value conclusion synonymous with an appraisal assuming sale of the leased fee interests.

To arrive at a fair market value to the State of Alaska, the basic methodology comports with conventional real estate approaches and techniques.

Two major steps are required to estimate the fair market value of the Alaska Railroad.

First, the base values are determined. Each base value represents the estimated price for a single parcel as of October 1, 1983, assuming that it is sold on that date, that it is the only piece of Alaska Railroad property on the market in that area at the time, and that there are no restrictions or encumbrances preventing the sale.

Second, the net revenues, if any, likely to be received from non-rail use leasing of the subject property are estimated; the period of time it is likely to take to realize those net revenues are estimated; and, the present value is appraised as of October 1, 1983, of the expectation of those future net revenues, considering the cost of money over time and the risk of uncertainty that the projected net revenues will, in fact, be realized.

BASE VALUE

The first of two major valuation phases involves a determination of base value, or the total of all gross proceeds to be received for the real property if it were sold in marketable parcels on October 1, 1983. Base value assumes that each parcel is the only parcel being marketed at the subject property on October 1, 1983.

Property Categories

The Alaska Railroad property is comprised of both operating and non-operating property. The United States Railway Association supplies Jackson-Cross with the configuration between these categories. They are distinguished by the following assumptions:

1. Operating property is not marketable for non-rail use for a period of ten years.
2. Non-operating property is immediately marketable for non-rail use.

Both categories of property are appraised by Jackson-Cross under the aforementioned conditions, except where the railroad lacks title. Jackson-Cross relies upon USRA for instructions regarding the extent to which properties should be included or excluded due to title problems.

Market Areas

All Alaska Railroad real estate is examined by market area. Those parcels sharing economic, social, and geographic characteristics tend to have their values influenced by the same local phenomena. For instance, changes in population, real estate supply, industrial growth, property taxes and transportation, among other possibilities, may influence the property within a market area and have no direct measurable effect upon neighboring communities or jurisdictions. Most importantly, from a valuation standpoint, is that within a market area properties of similar utility compete for existing demand. Obviously, no market is totally immune to what occurs outside its borders, but whatever macro-economic impact may occur it is best to measure it with local market data if it exists.

Valuation Unit

For all of the Alaska Railroad real property assigned for valuation, Jackson-Cross analyzes each of the permissible uses and determines which uses are most profitable and likely as of the date the property can be marketed for non-rail use.

All property in each market area is divided into valuation units. Property within a unit is of consistent highest and best use and value level. The valuation unit is different from a marketable parcel. It is a method of reporting value results only. The valuation unit may consist of one or more marketable parcels.

A review of the subject property along with sales and leases identified in the market enables the appraiser to assign preliminary parcelization. During the base valuation phase it is often necessary to modify the valuation units.

Valuation Analysis

For each valuation unit a detailed study of market data is utilized to determine unit values. This analysis includes consideration for marketable parcel location, highest and best use, size, shape, topography, soil conditions, access, and any other variables which may have an impact on value.

The resulting base unit value for each valuation unit is multiplied by the size of the valuation unit to equal the total base value. For example, a 10,000 square foot valuation unit with a square foot value of \$2.00 results in a total Base Value of \$20,000.00. The unit value applied reflects the gross unit price likely to be received for the optimum sized marketable parcels within the valuation unit. To properly reflect market data, a 10,000 square foot valuation unit is not valued as a 10,000 square foot parcel if the standard marketable lot is 5,000 square feet. Instead, it is valued as two 5,000 square foot lots, each of which are assumed not to compete with the other.

Base Value Limitations

As mentioned earlier, Base Value for the Alaska Railroad real estate is the sum of all of the individual marketable parcel gross selling prices on October 1, 1983. It assumes that none of these parcels are encumbered by the requirement to operate a railroad, or by the existence of leases which are not in conformity with the market. It also assumes that no other property within the subject portfolio is available for sale or lease on that date.

PORTFOLIO MARKET VALUE

The second major phase of this valuation involves the discounting of future proceeds to a present worth. This discounted cash flow process arrives at a value for the entire Alaska Railroad real estate portfolio as a single property. The discounting technique's applicability to the subject assignment is explained below.

Applicability of Discounted Cash Flow Technique

The discounted cash flow technique is a standard valuation tool for determining the present value of cash flows to be realized over a period of time from the disposition or use of assets. In the subject case where it is likely a purchaser would continue the practice of the Railroad to lease the property, discounted cash flow analysis is an appropriate valuation practice. As a practical matter, the same present value should be realized from leasing property at market rates or from selling the assets free of encumbrances.

The discounted cash flow technique is necessary because the amount of the Alaska Railroad's real estate holdings, the different geographic markets where that property is located and the diversity of highest and best uses cannot be directly compared to a single "comparable" sale in the market.

The subject property is especially conducive to discounted cash flow due to the:

1. Long term nature of the existing leases.
2. Diversity of the real estate inventory.
3. Heterogenous nature of the business entity which includes operating a railroad and managing a real estate portfolio.
4. Lack of a stabilized income stream or level annuity.

The procedure of performing a discounted cash flow analysis involves a projection of:

1. Periodic actual gross income likely to be received.
2. The periodic management, marketing and holding costs likely to be incurred.
3. The relative risk and time-cost of money in realizing the projections.

Pace of Absorption

An important element of the discounted cash flow analysis is the time when the potential benefits (i.e., proceeds of sale or lease) are likely to be realized. A timetable for realizing lease income from the Alaska Railroad properties results from a detailed analysis in each of the major market areas.

Within each market area property is categorized by highest and best use. Each highest and best use category is then analyzed for quality characteristics which may affect the pace at which the property is likely to be leased. For major markets a study of existing market activity along with socio-economic factors supplies the appraiser with the basic data necessary to project the likely rate of absorption that would be predicted by an investor as of October 1, 1983.

With regard to non-operating property in Anchorage, approximately 80% of the dollar value is currently under lease; similarly, in Fairbanks approximately 60% of the dollar value of the non-operating railroad property is currently leased. Jackson-Cross considers these properties, and those under lease in other markets, to have been already absorbed into the market, and to remain under lease for the term of the existing contracts. The appraiser, using real estate market and other economic data, then estimates the rate at which the unleased property would be leased, including the effect of re-leasing property after the termination of existing contracts. While he considered that any terminating leases could be renewed immediately, because start-up time would be necessary for a new owner, Jackson-Cross assumed that no other new leases would be entered into for at least one year. The appraiser also estimates the rate at which the operating property could have been leased for alternative uses under the hypothetical assumption that railroad operations terminate after ten years.

Rents

A review of real estate practices in both Anchorage and Fairbanks reveals that land leases generally provide for the escalation (or reduction) of rents every five years. This five-year cycle, which is contained in most of the existing leases of Alaska Railroad property, is assumed to continue for new leases. Accordingly, rents would be set at new market rents only when:

1. The escalation is due;
2. The lease expires and a renewal at market rental value is anticipated;
3. A vacant property is leased.

Capitalization Factor

To determine market rent, a capitalization or rental factor is derived from rentals of parcels similar to subject marketable parcels. A study of property sold and leased indicates a range of 9% to 11%. An overall factor of 9.75% is considered appropriate for the individual subject properties. Both overall quality and diversity of the inventory constitute the prime consideration for the proposed factor.

Management and Leasing Expense

A study of the major market areas indicates management fees for income producing properties ranging between 4% to 6½% of gross income. This range does not include separate brokerage commissions paid when a lease is arranged. In light of the amount of property involved here, and the extent of management and leasing activity available to a competent firm, an overall figure of 5% of the effective gross income is considered adequate. This, of course, includes any reasonable combination of in-house costs and outside commissions.

Holding Expense

The ownership of the Alaska Railroad real estate carries certain expense obligations regardless of whether it is totally or only partially leased. The expenses include real estate taxes, administration, insurance, special legal and accounting functions, maintenance, security and supplies. The total estimated annual allowance for holding is 1½% of base value.

Terminal Value

Both Non-operating and Operating properties have ten year earnings projections. To take into account the perpetual nature of lease income, during the tenth year of each projection, values are stabilized and discounted to October, 1983. This is known as valuing the final reversion. The procedure takes into account that proceeds will be generated beyond the lease income projection period.

Discount Rate

Since the sum of all projected net income is not to be received on October 1, 1983 a rate for discounting the proceeds to that date is required.

A prudent investor demands a return for his investment including a real rate of interest, compensation for inflation factors and for risk associated with a proposed

investment. Also required in a real estate transaction is compensation for the relative non-liquidity of the investment. The discount rate represents the rate at which the market would take all of these factors into consideration with respect to future earnings and pay a fair price for the right to receive such future earnings.

There are no projects which can be compared directly with the valuation of approximately 23,416 acres of Alaska real estate. On individual transactions for parcels in the region, Jackson-Cross has determined that the market is currently demanding rates of return on equity before taxes of 15% to 20%. The size and complexity of the subject transaction lead to a conclusion that a higher rate of return would be necessary to attract equity capital. A prudent investor would likely structure the acquisition on the assumption of 75% debt and 25% equity mix and would require a 25% return for the equity component.

The cost of debt capital is a barometer of minimum requirements for discount. Major Alaska projects with tangible development plans are attracting mortgage capital at 1.5% to 2.5% above prime on a floating basis. Fixed rates require 13% to 14% and are subject to a typical 20 to 25 year term. Fixed rate mortgages are currently subject to call every five to six years. Mortgage constants range between 14% and 14.5%. Since the Alaska Railroad has a significant portion of undeveloped property, the portfolio as a whole would not meet prevailing standards for institutional investors. Since other lenders in such circumstances demand higher returns, it is concluded a debt cost of 16% would be appropriate.

Overall, therefore, a capitalization consisting of 75% debt at 16% cost and 25% equity at cost of 25% leads to an 18% total property return to acquire the portfolio.

Each major market area in the Alaska Railroad region has different investment characteristics. In this analysis the overall portfolio discount rate adequately considers these differences.

Special Considerations

How the market reacts today is the best indicator of its perception of the future. Current prices, rents and absorption reflect investors' anticipations of profit and use. Current financing practices are an excellent indication of that market's anticipation of future real and inflationary trends. For these reasons much weight was placed on market data. However, due to the twenty years required for realizing optimum proceeds, Jackson-Cross also takes into account

1. Trends in government sponsored economic programs which are likely to affect the real estate market in Alaska. These include, but are not limited to, public land sales, public financing, permanent fund projections, and legislation restricting expenditures.
2. Projections for production and revenues and their impact upon employment, price changes, and ultimately real estate supply and demand.
3. Demographics, including where in Alaska growth has occurred, and where it is expected in the future. How such growth may affect prices and absorption varies by ages, occupations, and income levels.
4. New or expanding industries, such as the recent influx of service and professional businesses. This is likely to contribute towards the continuing economic growth of the state.
5. Defense spending, which is likely to continue as a major contribution to the Alaska economy.

SUMMARY OF VALUATION PROCEDURE

Within the body of the report are computerized summaries of the valuation process. The steps taken in the appraisal calculation are as follows:

1. Total Base Value is determined for October 1, 1983.
2. For each period Total Base Value is escalated at a rate of 3% to 5% depending on the market area.
3. A rental factor of 9.75% is applied to each total periodic Base Value to arrive at a maximum potential gross income.
4. The maximum potential gross income is then modified to reflect:
 - a. Current leases which are not at market levels; and
 - b. Property which is not yet projected as leased.
5. Management and leasing expense is subtracted at a rate of 5% of effective gross income each period.
6. Holding expense is subtracted at a rate of $1\frac{1}{2}$ % of base value each period.
7. The period net income is calculated.
8. The net income is discounted at an annual rate of 18% each period.
9. During the tenth year for non-operating property and the twentieth year for the operating property a single reversion is calculated against the total of the capitalized value for each of those years' net incomes, plus the base value of property remaining unleased. The reversion factor applied is 18%.

United States Railway Association

VALUATION
OF THE
ALASKA RAILROAD

September 1983

United States Railway Association

955 L'Enfant Plaza North, S.W.
Washington, D.C. 20595
(202) 488-8777
Stephen Berger
Chairman of the Board

September 23, 1983

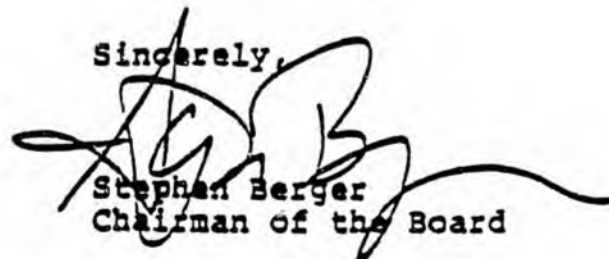
The Honorable George Bush
President
United States Senate
Washington, D.C. 20510

The Honorable Thomas P. O'Neill, Jr.
Speaker
United States House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

Pursuant to Section 605(d)(1) of the Alaska Railroad Transfer Act of 1982, P.L. 97-468, enclosed is the United States Railway Association's determination of the fair market value of the Alaska Railroad. Copies of the reports of consultants who assisted USRA in this analysis will be transmitted separately at a later date.

Sincerely,



Stephen Berger
Chairman of the Board