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8501 SENATE TRANSPORTATION

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, an audit of various aspects of the Alaska Railroad Corporation's (ARRC) Ship Creek Redevelopment project was conducted. The objectives, scope, and methodology of our review were as follows.

Objectives

The objectives of the review were to determine if ARRC exercised sound business judgement, complied with applicable statutes and legislative intent language, and acted in good faith with regard to specific aspects of the Ship Creek Redevelopment project.

Scope and Methodology

Our examination included reviewing, as they related to the Ship Creek Redevelopment, Alaska Statutes, ARRC procurement regulations, procurement files, lease agreements, requests-for-proposals (RFPs), responses to RFPs, proposal evaluations, contracts, funding requests, consultant reports, correspondence between relevant parties, court complaints, procurement protests, press releases, media reports, legislative meeting minutes, board minutes of both ARRC and the Anchorage Economic Development Corporation (AEDC), an opinion of the Attorney General's Office, an ARRC financial analysis, and pertinent loan documentation.

Additionally, we conducted various interviews with management and staff of ARRC, the Alaska Industrial Development and Export Authority, AEDC, the Anchorage Assembly, the Attorney General's Office, the Department of Labor, the Department of Administration, the Department of Transportation and Public Facilities, the Municipality of Anchorage, the Downtown Anchorage Association, private real estate developers/consultants, and a representative of a local trade union.

ORGANIZATION AND FUNCTION

The Alaska Railroad Corporation (ARRC) was established by AS 42.40 after the railroad was purchased by the State from the federal government in January 1985 for \$22.3 million. ARRC is a public corporation and an instrumentality of the State within the Department of Commerce and Economic Development, but by statute, it has a legal existence independent of, and separate from, the State. The corporation's board of directors is responsible for its management, but has delegated the powers and duties necessary for the administration of daily affairs and operations of the corporation to the chief executive officer (CEO). In turn, the CEO has designated other executive officers to oversee the various departments.

ARRC maintains 661 miles of track stretching from Seward to Fairbanks and provides both passenger and freight service. The railroad also has title to substantial land holdings. While the railroad carried almost 500,000 passengers in 1991, the majority of its revenue since transfer from the federal government has been derived from freight transportation and real estate activities.

The site of the redevelopment project that is the subject of this audit is located north of downtown Anchorage and includes both ARRC's corporate headquarters and the corporation's railyards, as well as adjacent ARRC land that had been leased to private businesses and the Municipality of Anchorage. The expanse is currently either undeveloped or used for commercial and industrial purposes. However, based upon a consultant's study completed in 1989, ARRC envisions redeveloping the land into a multi-use, tourist-oriented, waterfront center. The Ship Creek Redevelopment project is the outgrowth of that plan.

REPORT CONCLUSIONS

Background

The Alaska Railroad Corporation (ARRC), seeking to determine the best use for its extensive land holdings in the Ship Creek area of downtown Anchorage, commissioned a land use study of the district in 1988. The resulting report, the Original Townsite Study, was completed the subsequent year and was predicated on the premise that the site could be successfully used by tenants with a mixture of commercial and tourism interests. Based upon the study's findings, ARRC worked with the nonprofit Anchorage Economic Development Corporation (AEDC) to obtain funding from the Legislature in 1990 for infrastructure needs in the area; the Municipality of Anchorage (MOA) received a grant for \$2.5 million.

In April 1990, ARRC and AEDC entered into an agreement for AEDC to solicit a private group to act as master developer for approximately 120 acres of Ship Creek land, with the goal being the creation of a tourist-oriented, mixed-use development. As approximately half of the land in the proposed development was then being leased by ARRC to MOA, discussions began regarding plans to include the land leased to MOA within the project.

AEDC completed and distributed the master developer request-for-proposal (RFP) to prospective developers worldwide in December 1990; responses were due by August 1, 1991. Throughout 1991, AEDC and ARRC met with various development interests and made numerous presentations to introduce the project. Additionally, with ARRC support, AEDC succeeded in gaining an additional \$5.5 million in Ship Creek infrastructure funding for MOA from the 1991 Legislature.

By the due date, two proposals from United States developers and one letter of interest from a local team of architects were received. Both developers submitting proposals had nationwide experience and had worked on a number of large projects.

Also during 1991, but prior to the proposal deadline, ARRC decided to move forward with the new ARRC headquarters building project and a 96-room hotel project, both located within the development area. Ground breaking began in July 1991 on the new headquarters complex and in September 1991 for the hotel project. Both projects were scheduled to be completed in early summer 1992.

Master Developer Selection

The Ship Creek Redevelopment project was envisioned as an integrated, mixed-use commercial development utilizing an urban waterfront setting that would attract both local and visitor interests and provide ARRC with substantial revenues. To achieve these goals, ARRC entered into an agreement with AEDC whereby the nonprofit corporation prepared

and marketed an RFP to prospective developers. The professional services contract with AEDC was not competitively offered and ARRC was unable to provide adequate documentation to justify this sole source procurement. The agreement provided that AEDC would be given a master lease option on the Ship Creek property in question that would, in turn, be assigned to the successful developer for unspecified consideration from the developer upon the execution of the development agreement. This option was to expire if not exercised prior to December 31, 1991.

By the submittal deadline August 1, 1991, two proposals were received. The Ship Creek Project Committee of AEDC was charged with evaluating the proposals and was comprised of representatives from ARRC, AEDC, and MOA. The evaluation process commenced and the highest rated offeror, Intergroup Development Incorporated (IDI) of Houston, Texas, was notified of the committee's intent to enter into non-binding negotiations; ARRC was to negotiate the financial terms while AEDC would negotiate the remainder of the agreement.

After ARRC and a real estate consultant under contract to the railroad reviewed the initial financial proposal made by IDI, it was rejected by ARRC. The railroad then requested that IDI develop a fee proposal rather than the master lease proposal initially requested; this would essentially place the successful proposer more in the role of a consultant or marketing agent than that of a developer. ARRC, after review with its advisor, also rejected IDI's second proposal, stating it was overly generous to the offeror. In November 1991, ARRC suspended negotiations with IDI and soon after began discussing options with the other proposer, LoPatin and Company of Southfield, Michigan (LoPatin). IDI subsequently filed a lawsuit alleging, among other items, that ARRC violated its own procurement rules and did not fairly and honestly negotiate with IDI.

ARRC and LoPatin came to terms on a master lease, effective February 21, 1992. Of the original 120 acres discussed in the RFP, this lease agreement places 37 acres of ARRC land and 25 acres of MOA-leased land under LoPatin's control. LoPatin's master development plan is required to consider the entire 120 acres constituting the Ship Creek Redevelopment area. The term of the lease is for five years, with two additional five-year options available. Nominal rent is to be paid to ARRC on a per acre basis until a certificate of occupancy (or equivalent) is issued for individual structures; rents increase at that time either to fair market value, a percentage of fair market value plus a negotiated percentage of gross revenues, or a negotiated percentage of net profits where ARRC has elected to participate in an equity position. Rents from existing ARRC lessees will be assigned to LoPatin. In early April 1992, the initial master development plan was unveiled by LoPatin and included a planetarium, a historical museum, a major hotel, a hovercraft launch, upscale residential housing, and an outdoor amphitheater, among other projects. Ground breaking is not anticipated until 1993.

The ability to include MOA's leased acreage in the master lease is contingent upon ARRC and MOA reaching an agreement on the proposed exchange of leased lands in the Ship Creek area. ARRC wants to regain control of approximately 60 acres of Ship Creek acreage

currently leased at a nominal cost to MOA; in 1997 the annual lease payment is scheduled to be adjusted to fair market value, a considerable increase. This leased land desired by the developer includes Ship Creek Point, the site of a small boat launch operated by MOA, and is thought to be among the most promising of the sites for development. As of the date of this report, negotiations between ARRC and MOA are continuing and it appears that, in principle, an agreement has been reached that will allow the waterfront land to be included in the master lease.

As is to be expected, a project of this magnitude has attracted the attention of many interested groups, public and private sector alike. Through correspondence and a lawsuit, parties have voiced their concerns that ARRC's handling of the process of selecting and negotiating with the master developer has violated internal ARRC procurement rules, Alaska Statutes, and the principles of good faith bargaining. As this agreement was for the lease of land, ARRC was not required to competitively bid it. While the railroad's decisions to utilize both an RFP process and AEDC were not required by its procurement rules, we agree that it was to the project's benefit that a competitive environment be fostered and that substantial input be received from the area's local development organization. However, if an RFP process is to be used, it must be accomplished in a structured, defensible manner; well-promulgated guidelines must be followed to ensure fairness and impartiality in both fact and appearance. As such, the obvious structure to follow would be ARRC's procurement rules. AEDC's handling of the development, solicitation, and evaluation of the RFP and ARRC's negotiations with the highest rated offeror should have been accomplished in strict compliance with the ARRC's procurement rules; documented adherence to requirements related to responsiveness of proposals, negotiations, etc., lessens the likelihood of lawsuits and protests.

In ARRC management's opinion, the lease granted to LoPatin was not awarded through the RFP issued, but rather as an ordinary land lease not required to be competitively offered. As the AEDC master lease option that was to be transferred to the successful RFP respondent expired as of December 31, 1991, ARRC has stated that it could not make an award under this RFP. This appears to be a reasonable interpretation.

However, a somewhat troubling feature of the timing of the lease with LoPatin is that the developer had not introduced the proposed master development plan prior to the execution of the lease with ARRC. Good business practices dictate that negotiations and agreement on the proposed development's scope and features would be completed prior to consummating the lease agreement that commits the land.

As noted above, the lawsuit filed by Intergroup alleged that ARRC, among other things, did not negotiate with IDI. ARRC maintains that neither of IDI's proposals were advantageous enough to ARRC and were, therefore, rejected. ARRC appears to have seriously considered each proposal and certainly has the right to reject proposals they determine not to be in the railroad's best interest. ARRC may be faulted for not communicating its intentions

adequately, but discussions and correspondence between ARRC and IDI indicate that some degree of negotiation did occur.

A project the magnitude of the proposed Ship Creek Redevelopment faces many obstacles in its path to success, not the least of which is that the site is owned by a public corporation, ARRC. Due to the railroad's unique stature as a public agency mandated to operate on a self-sustaining basis, ARRC at times finds itself in the awkward position of balancing public perceptions about how an instrumentality of the State should act and its valid self-interest requirements. To be successful, the Ship Creek Redevelopment project will require cooperation from a number of interested parties, including both the public and private sector, none of whom may necessarily have a common agenda. To ensure the success of the project, ARRC and the developer must work with these organizations in an open, communicative manner, and ensure that the spirit and the letter of all applicable requirements are met.

Inn-Vestment Associates of Alaska/Comfort Inn Hotel Project

Inn-Vestment Associates of Alaska (IAA) is a partnership comprised of ARRC and four groups of husband and wife investors from Spokane, Washington. The alliance was formed for the purpose of financing, constructing, operating, and maintaining a 96-room Comfort Inn hotel currently being constructed on a site within the Ship Creek basin owned by ARRC. According to ARRC management, the Spokane investors, who own and operate a number of Comfort Inns in the Pacific Northwest, approached the railroad about the project in early 1991.

The partnership agreement was approved by ARRC's board of directors in July 1991 and signed in August 1991. The contract provided that ARRC be given a 40% interest in the hotel project in return for the railroad providing a 35 year lease of approximately 1.6 acres upon which the building would be constructed. The term of the partnership is 35 years and all partners have unlimited liability to third parties for the debts and obligations of the partnership. Major decisions regarding partnership matters are subject to a 61% majority vote, ensuring that ARRC has full veto power. The accord appointed a managing partner to oversee the daily operations of the development. The agreement also provides for additional capital contributions by the partners, in the ratio of their respective equity interests, as considered necessary by the managing partner; requiring these contributions is subject to approval by the other partners.

The other investors were initially scheduled to contribute cash and development/construction services to the partnership in return for their 60% capital interest; however, a \$250,000 cash requirement was subsequently reduced to zero. Their initial contribution was amended to be development/construction services only. The railroad has declined to provide partnership financial statements for our review.

Also in August 1991, the partnership entered into a contract with Hospitality Associates, Incorporated to provide management services for the daily operation of the hotel. The president of this hotel management company is also IAA's managing partner. Ground breaking was in September 1991, with the primary contractor on the construction being a firm owned by one of IAA's partners.

The partnership obtained interim financing for the initial stages of the project, including construction and start-up phases, from an Alaskan bank. While the same bank also has provided a commitment to IAA for permanent financing, as of the date of this report, the partnership has not accepted the offer. Discussions with the Alaska Industrial Development and Export Authority (AIDEA) regarding funding options culminated with IAA rejecting AIDEA's offer of a commitment to provide permanent financing. The partnership is currently examining its options for securing long-term financing from institutions based outside of Alaska.

AIDEA's commitment was offered based upon the financial strength of ARRC and was contingent upon the railroad maintaining its 40% interest in the project throughout the term of the loan. As the partnership agreement provides that all partners have unlimited liability for partnership debts, we reviewed the financial documentation of the Spokane partners provided by ARRC that served as the basis for the railroad's decision to enter into the partnership. As the data was somewhat limited and unaudited, positive verification of the other partners' capacities was not possible; however, the information that was available did not indicate that ARRC should have rejected the partnership. However, neither does the available information clearly justify ARRC's decision to enter the partnership.

When it was initially announced, the hotel development attracted the attention of local trade unions who felt, due to the substantial involvement of the railroad, it should be considered public construction, as defined in AS 36.95.010 and, therefore, be required to comply with prevailing wage standards as stated in AS 36.05, commonly referred to as the state Little Davis-Bacon Act. In essence, this law requires that a contractor or subcontractor performing work on public construction must pay at least the current prevailing wage for work of a similar nature in the region in which the work is done. The state Department of Labor (DOL) is charged with monitoring compliance with, and enforcement of, this Act.

The partnership did not consider the Comfort Inn project construction work to be subject to this law and, consequently, the contractor and subcontractors have not been paying prevailing wages. DOL asked for a formal opinion from the Attorney General (AG). The AG's response was that, due to their belief that the construction was being performed under contract for the State and that the involvement of the State in the project is significant, the project is subject to the provisions of AS 36.05. However, this opinion was not released until mid-April 1992, approximately six months after ground breaking, and the hotel is scheduled to open by June 1, 1992. Discussions with DOL indicate that the partnership, its contractor, and its subcontractors will all be made aware of this determination and these parties will be required to demonstrate compliance with the law; this will entail submission

of certified payrolls to DOL showing prevailing wages have been, or will retroactively be, paid for the entire project from inception through completion.

As the AG concluded that AS 36.05 applies, portions of AS 36.10, requiring a local hire employment preference, were determined by DOL to also be applicable. As such, DOL will also be monitoring compliance with this through the receipt of the certified payrolls that include workers' home addresses. However, due to the late date at which the determination was released, enforcement of the statute will likely be limited to compiling data on previously completed work and ensuring that the current work is in compliance.

LAA has provided a listing of subcontractors utilized on the project and a breakdown of construction labor and materials between Alaskan and non-Alaskan laborers and suppliers. The amounts in the following table have not been audited by us and, accordingly, we do not express any opinion on them.

Non-Alaskan laborers were used for framing and for sheetrock work. According to ARRC management, these individuals had previously worked on other Comfort Inn hotels in the Pacific Northwest and were employed for the sake of efficiency to ensure the hotel would open on schedule.

Comfort Inn Construction Labor and Materials			
Description:		Estimated Cost	Percentage
Alaskan Labor and Purchases		\$3,741,720	80%
Non-Alaskan Labor and Purchases		958,230	20%
Total		\$4,699,950	100%

Like the master developer selection and negotiations, the Comfort Inn hotel project and the IAA partnership have generated a certain amount of controversy. There is a significant concern of whether the project should have been undertaken prior to in-depth land use and feasibility studies to determine if this type of hotel fits into the Ship Creek Redevelopment master plan and, if it does, where it should be located within the basin. While it is impossible to say that expediting the Comfort Inn project has hurt the redevelopment process, removing a significant portion of developable land from the control of the holder of the master lease does limit options and opportunities. While ARRC wanted to proceed with the hotel project to accelerate the redevelopment process, it should not have done so to the extent that the overall project could be adversely affected.

Also, we are concerned with the potential impact of ARRC's equity investments. Given the profit-oriented nature of this public corporation, the power to invest in equities, granted by AS 42.40.250, is appropriate. However, if ARRC is able to exercise significant influence over the operations of a private company doing business in Alaska, our concern is whether Alaskans should be given the benefits of the public process such as procurement and open meetings. This issue arises from the railroad's involvement in the Comfort Inn partnership and ARRC's ability to participate in future redevelopment projects as an equity investor. This is similar to the relationship between the State and ARRC in which the State is able to exercise absolute control over railroad operations through its 100% ownership and the accompanying ability to appoint the board of directors; appropriately, the State's public policies were extended to ARRC's operations. In the railroad's situation, 100% equity investments allowing absolute control will not likely be acquired; yet, lower equity levels may still allow the railroad to exercise significant influence over a company's operations. If this ownership and influence substantially equates to public corporation activity, an extension of ARRC's public policies to the daily operations of such a company may be appropriate.

ARRC Headquarters Building

ARRC had been concerned about the condition of the building it owns and its overall office space requirements in Anchorage for a number of years. Shortly before the release of the RFP for the master developer, the railroad decided to obtain new leased space. This was to be accomplished by ARRC providing a land lease in the Ship Creek area upon which a structure would be constructed to the railroad's specifications. The proposed design/build agreement was presented in an RFP released in December 1990. The request required a custom class-A building to be built by the offeror, which would then be leased to ARRC for 20 years. During this lease period, the building owner would provide "turn-key" service to ARRC, meaning such items as parking, utilities, and maintenance would be included in the monthly lease payment. ARRC would provide a long-term ground lease to the successful offeror. The new building was also required to comply with the development guidelines established in the Original Townsite Study in order to ensure it "fit" into the planned Ship Creek Redevelopment motif.

A total of six proposals were received prior to the January 31, 1991 deadline. The proposals were rated by the ARRC evaluation committee based upon the evaluation criteria delineated in the RFP, including price, offeror capabilities and capacities, theme of building and architecture, and economic benefit to the community and the project. The price evaluation consisted of ranking proposed ARRC cash outflow over the life of the project using a present value methodology. However, subsequent to the evaluation committee's work, ARRC was displeased with the proposals received. Though not explicitly stated in the RFP, ARRC requested a monthly lease payment that would remain fixed over the term of the lease; however, all six offerors proposed a payment with both a fixed and a variable component. Through discussions, the offerors convinced ARRC that this type of payment would be the only kind acceptable to the development community. ARRC decided that it was necessary

to declare the price portions of the proposals as non-responsive. The railroad issued an addendum to the RFP requesting new price proposals and describing new evaluation criteria for the price proposals received; no design or other changes were permitted. The addendum also required the submission of Alaska business licenses in accordance with ARRC's procurement rules; this requirement had inadvertently been left out of the RFP.

In April 1991, the new price proposals were evaluated and the results combined with the existing ratings to produce the successful offeror. In late April, an unsuccessful offeror formally protested the ranking and proposed award. Through counsel, the offeror alleged that, among other items, ARRC violated its own procurement rules, the state procurement code, and state procurement regulations. ARRC responded to the protest, denying all claims and in late May issued an Intent to Award to the highest-rated offeror. The unsuccessful offeror filed two protest appeals in June, which were denied by ARRC's manager of procurement in a letter dated August 1, 1991. No protest appeal hearing was requested by the offeror and none was held. In late August the offeror filed a complaint in state Superior Court alleging many of the same claims, but also that ARRC denied the offeror due process and the right to exhaust administrative appeals by not scheduling a hearing. No trial date has been set as of the date of this report.

Many of the unsuccessful offeror's allegations appear to be either unfounded or within ARRC's discretion under the RFP process. Relative to an Invitation-to-Bid for fungible goods, an RFP for a design/build facility may allow greater latitude by the evaluators in determining whether each proposal conforms to the specifications contained in the request. Whether the successful proposal should have been considered nonconforming and dismissed is a matter of judgement and will be addressed by the courts. Based upon our review, we consider ARRC to be at risk with regard to carpeting and shower stall specifications contained in the RFP.

We also consider the railroad to be at risk regarding certain changes to the appearance of the building from the initial proposal submitted by the successful offeror. Finally, ARRC's refusal to resolicit the RFP after deeming the initial price proposals nonresponsive also heightened the railroad's exposure.

Similar to the Comfort Inn hotel project, the new ARRC headquarters building also caused controversy as to whether or not it was considered public construction and, therefore, subject to both local hire and prevailing wage requirements. State DOL determined that the project was subject to AS 36.05 and AS 36.10. DOL stated that it is receiving required documentation and that the project is in compliance with these labor laws.

However, a larger question remains as to whether the new building was necessary. A study done in 1986 by a space planning consultant recommended that ARRC obtain new facilities. However, upon closer inspection, this study provides little support for ARRC's current decision to relocate. The ARRC management prepared an abbreviated analysis for presentation to the ARRC board of directors. This document purportedly compared the cost

*I am also pretty sure significant remodeling
was done to the old building after 1986*

of remodeling, upgrading, and operating the existing building to the costs associated with a new facility. The study was not intended to be a true cost/benefit review, but did indicate basically a break-even situation.

However, our cursory review of the analysis indicated enough significant problems that the decision to move forward on the project certainly does not appear clear-cut. Within the analysis:

- inflation and present value techniques were not fully taken into account;
- within the new facility scenario in which the old headquarters building was leased out, certain occupancy costs (i.e. fire code, plumbing, roofing, and the like) were overlooked;
- there was no recognition given to the cost of the physical move and related administrative disruption;
- there was no recognition of the lost opportunity value of the site utilized for the new facility; and
- the assumption is made that the existing building will continuously be fully leased.

A complete analysis would need to be performed to determine whether it was in ARRC's best interest to relocate. However, with the new facility nearing completion, whether or not it was in ARRC's best interest is a moot point. It is sufficient to say that the railroad did not prepare an adequate analysis.

Similar to the Comfort Inn project, there is a significant risk in proceeding with the new headquarters building prior to the master developer being selected and the master plan being designed. Without land-use and feasibility studies, ARRC cannot say with surety that the present location of the new headquarters is optimal. Removing the acreage from the master developer's control has the potential to dilute the success of the project and should have been more carefully considered.

ARRC has currently listed the existing headquarters building with a local real estate company; the listing agreement markets the sale or lease of the facility, with the caveat that the first floor lobby is to be leased back to ARRC if sold. However, ARRC, in violation of its procurement rules, did not competitively offer the listing. This listing agreement is a professional services contract that will yield more than \$25,000 in commissions and, therefore, should be subject to competitive offering.

Legislative Intent and Grant Monies to MOA

The legislation granting MOA \$2.5 million in Chapter 208, SLA 1990 stated that the funding was contingent upon the execution of a long-term, no-cost lease between ARRC and MOA that designates ARRC's Government Hill bluff land as open space or for public use. The legislation continued that the monies should be used for road and bridge improvements for the Ship Creek Redevelopment project, including extending Warehouse Avenue, realigning C Street, and constructing a pedestrian bridge over Ship Creek.

ARRC executed the lease with MOA for the Government Hill Greenbelt on September 6, 1990. The agreement provides for the lease of two parcels for park development and trails for public use, creating a public amenity. The term of the lease is for thirty-five years and does not require payment of fair market rental value to ARRC, unless a tax is levied by MOA against ARRC, and the railroad is still owned by the State. As additional consideration, the agreement also requires MOA to construct certain infrastructure improvements as generally described in the Original Townsite Study. These improvements were specifically defined as design and construction of the Ship Creek Dam Pedestrian Bridge, North C Street Bridge and realignment of C Street, and the extension of Warehouse Avenue to C Street. Such improvements were to be funded from the \$2.5 million grant and were to be completed prior to December 31, 1991.

The current status of the projects is that all have been completed with the exception of the realignment of C Street and the North C Street Bridge; construction on these undertakings will begin this summer, according to MOA's Public Works Department. The intent of the legislature appears to have been met with regard to these monies.

Chapter 96, SLA 1991 provided \$5.5 million in state grant monies to MOA for access, tidelands fill, and utility upgrades for the Ship Creek Redevelopment project. This conditional appropriation states that receiving these funds was contingent upon a development agreement being approved by AEDC and ARRC that included private investment commitments equal to or exceeding the appropriated amount. Accompanying legislative intent language provides that if this agreement was not approved by AEDC and ARRC by April 30, 1992, the funds would then be available for reappropriation.

The development agreement between AEDC and ARRC was executed April 29, 1992 and was segregated into three sections: master developer, status of lands in the project area, and matching private investment.

The master developer portion discussed the master lease, the master plan, and the proposed uses of the grant monies to be received, which includes infrastructure improvements within the basin. The status of lands in the project area refers to the progress made on the objective of including the acreage leased by MOA from ARRC within the scope of LoPatin's master lease. As of the date of this report, ARRC and MOA have reached an agreement in principle, subject to ARRC board of directors' approval, whereby the MOA lease is

terminated with the condition that MOA will continue to maintain and operate the existing boat launch and dock and retain a small portion of the land around this area. A further condition of terminating the lease is that ARRC lease approximately 100 acres of South Tidelands to MOA. The effect of this agreement is that the waterfront land desired to be included in redevelopment is once again under ARRC control and is now includable in the master lease.

The matching private investment section of the development agreement is supposed to provide assurance that the contingency provision of the \$5.5 million conditional appropriation requiring private investment commitments has been met. However, this requirement has not been met. ARRC's master lease requires LoPatin to pursue commitments of not less than \$7 million within three years of the effective date of the lease. ARRC, in the development agreement, warrants that LoPatin will perform on the master lease agreement; the railroad agreed to reimburse the State for the difference between the \$5.5 million grant received and the actual private cash investment if LoPatin does not succeed. However, the development agreement provides that the developer is to be given until December 31, 1997 to gather these commitments. The appropriation language states that the \$5.5 million grant is

...contingent upon a development agreement being approved by both the [AEDC] and the [ARRC] that includes private investment commitments equal to or exceeding this appropriation.

Further, the accompanying intent holds that

...this appropriation be available for reappropriation if it is not encumbered by the approval of a development agreement by both the [AEDC] and the [ARRC] by April 30, 1992.

Over \$10 million in new construction has taken place recently, or is taking place currently, in the Ship Creek basin, including ARRC's headquarters, the Comfort Inn hotel, and a microbrewery project. A portion of this \$10 million could be considered to include some degree of private investment. However, ARRC and AEDC agreed that these projects are not to be included in determining if sufficient matching investment has occurred.

The provision in the development agreement stating that ARRC is, in effect, guaranteeing the State grant money by agreeing to repay to the State any shortfall in required private investment is not sufficient to provide for the release of the funds. As ARRC is wholly-owned by the State, the transaction would essentially be transferring public funds within a single public entity. The private commitment requirement helps ensure that someone, in addition to the State and its railroad, has a financial stake in this redevelopment.

The binding appropriation language is quite specific in that it requires an approved development agreement with sufficient matching private investment commitments to be in

place as a condition of the appropriation. The non-binding accompanying intent language states that the appropriation may be rescinded if this has not occurred by April 30, 1992.

The development agreement does not provide for \$5.5 million in private investment commitments as of the date of its execution; therefore, the grant monies should be available for reappropriation. While we do not recommend that these funds be reappropriated from the Ship Creek Redevelopment project, we do question their availability until the time that sufficient matching investment commitments are received and documented.

Summary of Auditor's Concerns

ARRC is owned by the State of Alaska. Although it operates in the private sector with a profit-making orientation, this public ownership necessarily places certain responsibilities and constraints on how ARRC makes decisions. The history of this development project to date, as set out in this report, raises serious concerns regarding this decision-making process when viewed in the context of ARRC's status as a publicly owned corporation. The points summarized below highlight our concerns regarding ARRC's decisions and actions involved with this project. When considered individually or strictly in the context of a privately held corporation, they may appear to be minor and niggling. However, in our opinion, when viewed as a series of events and decisions in the context of ARRC's corporate status, they indicate light regard for the responsibilities and accountability that are a necessary part of a publicly owned corporation.

- ARRC accepted full financial risk for the hotel partnership without documenting the financial capacity of the other partners; this was amplified as ARRC was the only partner to initially put tangible assets into the partnership.
- ARRC did not realize, until the proposals were received, that no design/build proposers for the new headquarters building would accept a fixed lease payment schedule. The RFP had to be amended after the responses were received.
- Construction on both the new headquarters building and the hotel began while negotiations were underway with the master developer but before a developer was selected. This pre-designation of land serves to limit the development options and opportunities.
- The lease agreement with LoPatin was executed before this developer provided the master development plan. This should have been completed before ARRC committed the land.
- ARRC only allowed four months from the master development RFP deadline to the expiration of the applicable lease option to accomplish the negotiations

and to obtain a signed contract. More time was needed, so the entire RFP process was abandoned.

- ARRC did not prepare an adequate cost/benefit analysis to justify their move to the new headquarters building.
- ARRC did not make the effort necessary to fully comply and clearly document compliance with their procurement code. This is discussed in more detail below, as a separate concern.

ARRC has difficulty complying with its own procurement rules. We noted the following in our review.

- ARRC was unable to provide adequate documentation for its sole source agreement with AEDC regarding the marketing of the master developer RFP.
- ARRC did not competitively offer the listing agreement to market the sale or lease of its existing headquarters building; the undocumented sole source professional services contract was given to a local real estate firm.
- Unsuccessful offerors for both the master developer RFP and the new ARRC headquarters complex filed lawsuits alleging numerous improprieties related to ARRC's procurement procedures.
- ARRC does not maintain detailed procurement regulations similar to those followed by executive branch agencies of the State. Such detailed guidelines help agencies ensure procurement compliance.

While this review did not focus on procurement, our results are consistent with those discussed in the Division of Legislative Audit's A Special Report on Statewide Procurement, January 1, 1991 - December 31, 1991, dated May 4, 1992. That report recommends that the legislature consider revocation of ARRC's procurement authority until such time that ARRC can demonstrate it can comply with its own substantially equivalent code.

We are also concerned that the \$5.5 million grant to MOA for infrastructure improvements is not available for use until, as required by the appropriation language, sufficient matching private investment commitments are received and documented. While this delay may cause problems in the redevelopment process, the appropriation language as written is clear; without sufficient commitments in place, the money is not accessible. If this is deemed to be a significant hinderance to the development, ARRC should consider petitioning the legislature to change the appropriation condition.

Finally, we are concerned with the potential impact of ARRC's equity investments. Given the profit-oriented nature of this public corporation, the power to invest in equities, granted

by AS 42.40.250, is appropriate. However, if ARRC is able to exercise significant influence over the operations of a private company doing business in Alaska, our concern is whether Alaskans should be given the benefits of the public process such as procurement and open meetings. This issue arises from the railroad's involvement in the Comfort Inn partnership and ARRC's ability to participate in future redevelopment projects as an equity investor. This is similar to the relationship between the State and ARRC in which the State is able to exercise absolute control over railroad operations through its 100% ownership and the accompanying ability to appoint the board of directors; appropriately, the State's public policies were extended to ARRC's operations. In the railroad's situation, 100% equity investments allowing absolute control will not likely be acquired; yet, lower equity levels may still allow the railroad to exercise significant influence over a company's operations. If this ownership and influence substantially equates to public corporation activity, an extension of ARRC's public policies to the daily operations of such a company is warranted. However, as the procedures and documentation required to administer this public policy would likely reduce the profitability of a company, we are concerned about such a company's obligation to its non-public owners. One possible solution would be to obtain consent for adoption of this public policy from all non-public owners of a given company. Perhaps the most practical solution to this problem is avoidance; ARRC could simply refrain from acquiring substantial equity ownership of private companies doing business in Alaska.

Events Subsequent to Report Date

Subsequent to the completion of audit fieldwork, two noteworthy events related to the audit's scope occurred:

- ARRC and IDI, in an out-of-court agreement, settled the lawsuit brought by IDI charging that ARRC violated its procurement rules and did not fairly and honestly negotiate with the developer. While no admission of liability, negligence, or responsibility was assumed by either party, ARRC did agree to pay IDI the sum of \$50,000.
- Inn-Vestment Associates of Alaska filed suit against the state Department of Labor, charging that the determination that the Comfort Inn hotel project is public construction and, therefore, subject to prevailing wage and local hire requirements was made in error. The partnership is requesting a declaratory judgement concluding that the project is not public construction and, therefore, is not subject to AS 36.05 and 36.10.

ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

July 1, 1992

JUL 1 1992
LEGISLATIVE AUDIT

Mr. Randy S. Welker
Legislative Auditor
State of Alaska
Legislative Budget & Audit Committee
Post Office Box W
Juneau, Alaska 99811-3300

Re: Department of Commerce & Economic Development, Alaska Railroad Corporation Ship Creek Redevelopment, May 1, 1992

Dear Mr. Welker:

Thank you for the opportunity to review your findings pertaining to the above referenced audit. While your audit made no recommendations which need to be addressed, your report contained several factual errors. In addition, several conclusions about the development were drawn by your auditors which could be classified as "sharpshooting" and provide little or no value to the uninformed reader. The following specific instances come immediately to mind.

First, on Page 10, the audit states, "...while it is impossible to say that expediting the Comfort Inn project has hurt the redevelopment process, removing a significant portion of developable land from the control of the holder of the master lease does limit options and opportunities." (Emphasis added) The land under lease to the Comfort Inn project totals 1.77 acres or a total developable acreage of 120 acres. This hardly classifies as a significant portion of developable land.

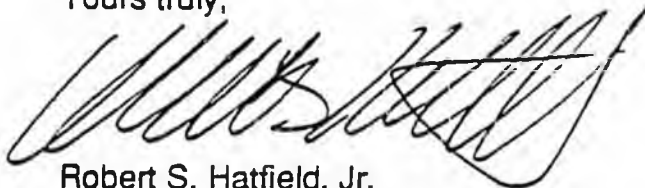
Secondly, on Page 16, one of the auditor's concerns is that ARRC accepted full financial risk for the hotel partnership which was amplified by ARRC being the only partner to initially put tangible assets into the partnership. We can only conclude the auditors believe that the land on which the hotel sits is now the property of the partnership. This is not correct and in fact, as required by statute, ARRC retains ownership of the land throughout the life of the lease.

I know a significant portion of time was spent by your staff in preparing this audit. I believe the conclusions drawn by the auditors were "minor and niggling

Mr. Randy S. Welker
July 1, 1992
Page Two

when viewed in the light of a privately held corporation" (Page 16). The Alaska Railroad Corporation is mandated by AS 42.40 to be a self-sufficient, for-profit company as well as to assist in the economic development of the State. The Ship Creek Development provides an excellent example of ARRC's ability to ensure its self-sufficiency as well as assist in the economic development of the State by generating over 35 full-time jobs during this past year alone. I believe we are doing what the Legislature mandated the Corporation to accomplish.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert S. Hatfield, Jr.", written in a cursive style.

Robert S. Hatfield, Jr.
President and Chief Executive Officer

cc: L. Lounsbury
ARRC Chairman of the Board

Marvin J. Yetter
ARRC V/P Finance

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

July 10, 1992

Members of the Legislative Budget and Audit Committee:

We have reviewed the Alaska Railroad Corporation's (ARRC) response to our preliminary audit report on the Ship Creek Redevelopment project. Nothing contained in their response gives us cause to reconsider our findings. ARRC states that the report contains "several factual errors"; however, they failed to identify these alleged mistakes. Further, the response indicates discomfort with several of our conclusions; however, only two specific instances are cited. Neither challenge has merit.

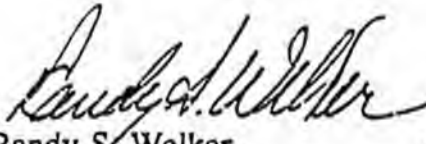
The first instance takes issue with our finding that ARRC's proceeding with the Comfort Inn hotel project prior to adequate land-use and feasibility studies limited the options and opportunities of the master development in whole. ARRC states that the land in the Comfort Inn project totalled only 1.77 acres of a total developable acreage of 120 acres and therefore should not be considered significant. Unfortunately, the railroad did not grasp the overriding concept behind this finding. It is not simply a ratio of the leased land to total developable land that determines whether or not options and opportunities of the total development have been impacted. The development of prime acreage with a theme or motif selected prior to a master plan being approved has considerably greater consequences. Further, the building of a hotel undeniably affects the prospects of other hotels that might be considered in Ship Creek. A facility's purpose, placement, and design can substantially affect the entire direction of subsequent development and should have been examined more closely before proceeding with both the Comfort Inn project and the new ARRC headquarters building.

The second instance pertains to our concern that ARRC accepted full financial risk for the hotel partnership without adequately documenting the financial capacity of the other partners; our concern was heightened as ARRC was the only partner to initially contribute specific assets to the partnership. While ARRC does not dispute our findings that they accepted full financial responsibility and that they did not adequately document the other partners' financial capacity, they do question the asset contribution finding. ARRC concludes that we believe that the land upon which the hotel sits is now the property of the partnership. This is incorrect; under the Inn-Vestment Associates of Alaska/Comfort Inn Hotel Project

subsection in the Auditor's Findings section of the report, we explicitly state that ARRC was granted a 40% interest in the project in return "for the railroad providing a 35 year lease... upon which the building would be constructed." We were well aware of the structure of this transaction; our finding that ARRC was the only partner to contribute a specific identified asset (in the form of a land lease) to the partnership was accurate.

The final paragraph of ARRC's response illustrates the underlying cause of many of the difficulties they encountered throughout this development. The railroad states that our conclusions were minor and niggling when viewed in the light of a privately held corporation. However, ARRC is not a privately held corporation. Alaska Statute 42.40.010 created ARRC as a public corporation and an instrumentality of the State within the Executive Branch. As such, the railroad is to be held to standards of responsibility and accountability that exceed those of privately held corporations. When, and if, ARRC is sold by the State, these standards will change accordingly; however, until that time, ARRC should ensure that they meet their public obligation.

In summary, we reaffirm our findings presented in the report.


Randy S. Welker
Legislative Auditor

Sectional Analysis

CS SB 148 (TRA)

Section 1:

Purposes section, self explanatory. *Several changes in CS, the bill sections below show changes.*

Section 2.

Provides that real property of the Alaska Railroad Corporation that is leased for fair value is taxable. *Note: Senate Finance Committee will look at this issue based on information provided by the Railroad.*

Section 3.

Provides that a municipality may sue the Alaska Railroad Corporation in superior court to compel the payment of property taxes. *Note: Senate Finance Committee will look at this issue based on information provided by the Railroad.*

Section 4.

Adds the board of directors and the chief operating officer of the Alaska Railroad Corporation to the conflict of interest statute, AS 39.50. *CS deletes references to vice-presidents, from March 27 worksession.*

Section 5.

Provides that the purpose of the Alaska Railroad Corporation is to provide railroad and railroad related transportation services, those services performed by the Alaska Railroad at the time of transfer to the state, and other services as may be authorized by law. *The underlined wording change in the CS, from March 27 worksession. same wording also appears in sections 10 and 13.*

Section 6.

Provides that members of the board of ARRC are subject to AS 39.50 (conflict of interest reports)

Section 7.

Provides that the chair or vice-chair of the ARRC board may not serve as the chief executive of the corporation. *Change in the CS from March 27 work session.*

Section 8.

Provides that the chief executive of the ARRC may not serve as the chair or vice-chair of the board. *Change in the CS, from March 27 work session.*

Section 9.

Provides that the ARRC board shall provide for teleconference participation in board meetings. *New section in CS , replaces Public Meetings Act compliance section.*

Section 10.

Adds the changes in the purposes of the corporation, as provided in Section 5, to the general powers of the corporation

Section 11.

Requires legislative approval of:

- any borrowing in excess of \$10 million in one year or \$50 million in the aggregate.
- use of corporate assets to obtain an equity position in a non transportation activity with certain exceptions.

New language in the CS from March 27 work session.

Section 12.

Refers back to Section 2, municipal taxation of leased land.

Note: Senate Finance Committee will look at this issue based on information provided by the Railroad.

Section 13.

Amends Ch 153 of SLA 1984 to add the purposes of the Alaska Railroad Corporation as stated in Section 5.

Section 14.

Defines "non transportation activity" *New provision in CS, from March 27 work session.*

Section 15.

Provides that the next person appointed to the board of the Alaska Railroad Corporation is a railroad experienced director. *New provision in the CS, from Senator Pearce.*

Section 16.

Effective date clause for taxation of railroad property, January 1, 1994.

INFORMATION REQUESTED AT SENATE TRANSPORTATION COMMITTEE WORK SESSION

1. Information on typical debt incurred in a year.

Attached is a cash flow history for ARRC that indicates a fairly broad range of long-term debt amounts. In only two years has the corporation exceeded the proposed \$10 million limit, once in 1985 and once in 1992. The 1992 amount arose due to conversion of 1991 short term debt to longer term, with favorable interest rates. In turn, the large 1991 short term debt was incurred to pay off older long term debt because the short term funds were available at lower interest rates. This illustrates the advantage of flexibility to take advantage of market rate variation. While it is clearly unusual to exceed \$10 million on an annual basis, it does occur. In light of ARRC's proposed 1993 capital improvements budget of \$12-14 million, the possibility exists that a \$10 million limit could be met this year. This possibility would be less likely if either the limit is raised to \$15 million annually, or if the expanded exemption for rolling stock and other "railroad" items is retained along with the \$10 million figure.

2. Quantify competitive advantage of current municipal tax exemption.

It is difficult to provide an overall figure for this perceived advantage, primarily because taxation by municipalities within the Railbelt is so disparate. Hopefully, some specific examples will illustrate the situation.

The Municipality of Anchorage ("MOA") taxes the so-called "rent savings" for leaseholds under its local ordinance. This is the aspect analogous to taxing the fee owner of the real estate. [It also taxes the improvements separately, and in this regard there is no competitive advantage for ARRC lessees.] As to the rent savings, the tax is calculated as follows: The municipality determines the appraised value of the fee simple interest in the land, the average lease rate within the municipality (currently, 8%), the lessee's annual rent and lease rate, the lease term, the municipality's discount rate (currently, 10%), and the municipality's tax mil rate (currently .01798 for Ship Creek area). It then performs a set of calculations with these figures as outlined on the attached sheet.

Applying this procedure to the Comfort Inn lease, MOA has assessed a tax of \$963 for this property (in addition to a substantial tax on the building). If the land were taxed as if in fee simple ownership, the mil rate of .01798 would be applied directly to the assessed value of \$211,200, for a tax of \$3,797.38.

The Fairbanks-North Star Borough ("FNSB") uses a different procedure called the "reversionary method". An outline of this procedure is also attached; in the case of a property appraised at \$100,000 with a 10-year lease term, the current leasehold tax would be \$679.16. If taxed as the full fee interest, the tax would be \$1,957.30.

We understand that the Kenai Peninsula Borough uses a method similar to that used by FNSB. We have been unable to contact the Matanuska-Susitna Borough today to determine its approach.

3. Top 10 revenue sources.

Attached is a summary from ARRC's December 31, 1992 financial statements that itemizes the corporation's revenue streams. In descending order, the top ten sources are petroleum, passengers, interline, TOFC/COFC, local coal, export coal, real estate, gravel, reimbursables, and miscellaneous local traffic.

MOA TAXATION PROCEDURE FOR LEASEHOLD INTERESTS

MOA property tax policy consists of two components: tax on personal property and tax on rent savings of the leasehold.

- 1) MOA tax on personal property is based on the appraised value of the property multiplied by a tax mil rate.
- 2) MOA tax on the rent savings of the leasehold is based on a multi-step analysis. The components of the analysis are as follows:
 - a. appraised value of fee simple interest of the land
 - b. average lease rate for the Municipality of Anchorage (8%)
 - c. Lessee's annual rent
 - d. Lessee's lease term
 - e. MOA's discount rate (10%)
 - f. MOA tax mil rate

STEP 1: Determine Market Rent For Land

(appraised value of land) x (MOA average lease rate) = market rent

STEP 2: Determine Rent Savings

(Market Rent) - (Lessee's Annual Rent) = Rent Savings
(if greater than Zero (0) taxable)

STEP 3: Determine Tax on Rent Savings

- a. Calculate Present Value of Rent Savings based on remaining Term of the Lease discounted at 10%
- b. (Present Value of Rent Savings) x (tax mil rate) = tax on leasehold

EXAMPLE: Inn-Investment Associates of Alaska (Comfort Inn)

a) Appraised value of land	\$211,200
Tax Appraised value of Bid.	\$3,712,200
b) MOA's average lease rate	8%
c) Lessee's annual rent	\$1.00
d) Lessee's lease term	4 years
e) MOA's discount rate	10%
d) MOA's tax mil rate	.01798

STEP 1: Determine Market Rent For Land

$\$211,200 \times 8\% = \$16,896$

STEP 2: Determine Rent Savings

$\$16,896 - \$1.00 = \$16,895$

STEP 3: Determine Tax on Rent Savings

- a. PV of \$16,895 for four years discounted at 10% = \$53,555
- b. $\$53,600 \times .01798 = \underline{\$963}$

Total Tax on Real Property and Rent Savings = \$67,708

Building Tax Value $\$3,712,200 \times .01798 = \$66,745$

Rent Savings $\$53,600 \times .01798 = \963

FAIRBANKS NORTH STAR BOROUGH TAX METHODSteps:

1. Appraise property.
2. Discount appraisal value 10%-this discount represents the fee simple rights retained by landlord.
3. Determine length of lease (including any option to extend) and life of the improvement (e.g. building) and take the greater of the two.
4. Determine present value of the discounted appraised value (the discounted appraised value is assumed to be value at expiration of lease).
5. Apply mil rate (19.573) against present value determined in Step 4.
6. Revised annually.

Example:

1. Appraised value = \$100,000.
2. Discount for interest retained by landlord 10% (\$100,000 - \$10,000 = \$90,000).
3. Length of lease, say 5 years plus 5 year option = 10 years.
4. Present value = \$34,699 (\$90,000 for 10 years at 10% discount).
5. Apply mil rate (\$34,699 x .019573) = \$679.16.

MAY 29 '93 17:45

CASH FLOW HISTORY

	1985	1986	1987	1988	1989	1990	1991	1992
Beginning Cash	10,978	1,911	3,133	1,915	1,862	814	2,346	5,934
Cash Generated By Operating Activities	2,040	4,053	7,775	9,699	10,176	5,468	11,194	5,917
Cash Generated By Short Term Loans	0	7,325	0	0	4,000	4,000	6,000	3,000
Cash Generated By Long Term Loans	11,269	8,155	2,939	2,402	4,837	6,633	798	10,455
Total Cash Available	24,287	21,444	13,847	14,016	20,875	16,915	20,338	25,306
Cash Used In Financing Activities	(858)	(3,504)	(6,908)	(4,252)	(3,433)	(8,138)	(10,656)	(10,758)
Cash Used In Capital Activities	(21,518)	(14,807)	(5,024)	(7,902)	(16,628)	(6,431)	(3,748)	(12,556)
Total Cash Used	(22,376)	(18,311)	(11,932)	(12,154)	(20,061)	(14,569)	(14,404)	(23,314)
Cash At Year End	1,911	3,133	1,915	1,862	814	2,346	5,934	1,992

Debt Analysis

Amount Borrowed	11,269	25,891	25,326	20,820	25,405	32,605	31,265	34,064
Amount Repaid During Year	(858)	(3,504)	(6,908)	(4,252)	(3,433)	(8,138)	(10,656)	(10,758)
Debt At December 31	10,411	22,387	18,418	16,568	21,972	24,467	20,609	23,306

APRC. LEGAL FNCH. BK

5070652413

ALASKA RAILROAD CORPORATION

REVENUE ANALYSIS

DECEMBER 31, 1992

(In Thousands)

Category	Month				Year To Date				Latest Annual Estimate			
	Actual	Budget	Variance	%	Actual	Budget	Variance	%	Estimate	Budget	Variance	%
Pipe	255	53	202	381%	1,228	1,085	143	13%	1,228	1,085	143	13%
Coal: Local	688	478	210	44%	5,826	5,930	(104)	-2%	5,826	5,930	(104)	-2%
Export	338	1,081	(743)	-69%	5,733	7,265	(1,532)	-21%	5,733	7,265	(1,532)	-21%
Petroleum	1,548	1,426	122	9%	19,608	19,870	(262)	-1%	19,608	19,870	(262)	-1%
Gravel	0	0	0	0%	3,922	2,865	1,057	37%	3,922	2,865	1,057	37%
TOFC/COFC	414	394	20	5%	5,916	6,805	(889)	-13%	5,916	6,805	(889)	-13%
Interline	376	612	(236)	-39%	8,418	9,905	(1,487)	-15%	8,418	9,905	(1,487)	-15%
Miscellaneous Local	61	127	(66)	-52%	1,580	1,420	160	11%	1,580	1,420	160	11%
Prior Periods	(59)	0	(59)	-100%	(23)	0	(23)	-100%	(23)	0	(23)	-100%
Total Freight	3,621	4,171	(550)	-13%	52,208	55,145	(2,937)	-5%	52,208	55,145	(2,937)	-5%
Passenger: North	16	20	(4)	-20%	5,050	6,150	(1,100)	-18%	5,050	6,150	(1,100)	-18%
South	23	19	4	21%	2,670	2,970	(300)	-10%	2,670	2,970	(300)	-10%
Other	13	8	5	63%	740	790	(50)	-6%	740	790	(50)	-6%
Total Pass.	52	47	5	11%	8,460	9,910	(1,450)	-15%	8,460	9,910	(1,450)	-15%
Reimbursable	116	100	16	16%	1,674	1,965	(291)	-15%	1,674	1,965	(291)	-15%
Misc. Operating	21	83	(62)	-75%	1,172	1,340	(168)	-13%	1,172	1,340	(168)	-13%
Total Railroad	137	183	(46)	-25%	2,846	3,305	(459)	-14%	2,846	3,305	(459)	-14%
Real Estate	346	340	6	2%	4,043	4,000	43	1%	4,043	4,000	43	1%
All Other	32	59	(27)	-46%	507	695	(188)	-27%	507	695	(188)	-27%
Total Other	378	399	(21)	-5%	4,550	4,695	(145)	-3%	4,550	4,695	(145)	-3%
TOTAL	4,188	4,800	(612)	-13%	68,064	73,055	(4,991)	-7%	68,064	73,055	(4,991)	-7%

[N.B. Figures are unaudited.]

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB-148

Revision Date: _____ Dept. Affected: _____
 Title: An Act Relating to the SAU: _____
Alaska Railroad Corporation Components: _____
 Sponsor: _____
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: John O'Meara
 Division: _____
 Approved by Commissioner: Robert S. Harris

Phone: (907) 265-2574
 Date: March 19, 1993
 Date: March 19, 1993

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Dept. Affected: None
 Title: SB 148:Relating to the BRU: _____
Alaska Railroad Corp. Component: _____
 Sponsor: Sen. Finance
 Requestor: Senate Transportation Comte. COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL	*	*	*	*	*	*
REVENUE FUND SOURCE:	*	*	*	*	*	*

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	::					
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	*	*	*	*	*	*

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	*	*	*	*	*	*

Estimate of current year (FY93) impact \$ _____

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: Senate Transportation Comte
 Division: Alaska State Senate by CWT
 Approved by Commissioner: _____
 Agency: Senator Sharp, Chair, Sen. Trans Comte

Phone: X 3004
 Date: 4/1/93
 Date: 4/1/93

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FISCAL NOTE ANALYSIS SENATE BILL 148

The provisions of Senate Bill 148 will likely have a significant impact on the profitability of the Alaska Railroad Corporation (ARRC) because the bill will reduce the ARRC's revenue and increase its expenses. As a result, the ARRC will not continue to meet one of its intended purposes, that is, operate on a self-sustaining basis. In addition, state subsidies will be required to support the current level of capital programs and the employment provided by those programs.

The railroad has operated under state ownership for eight years. The average profit during this period is \$3.7 million annually. This profit is generated mainly from the railroad's real estate. For example, while the average net profit during the eight year period was \$3.7 million, the average real estate income during the period was \$4.4 million.

The ARRC uses this profit, its borrowing capability and other cash flow items to perform its capital programs. During the eight year period, the ARRC has invested nearly \$100 million, or slightly more than \$12 million annually, in the railroad. Railroad's are capital intensive industries. The State was able to purchase the railroad for a mere \$22 million because of the years of deferred maintenance and capital dollars needed to modernize the railroad. Without a profit these expenditures and the resulting jobs created by them would only be possible through a State subsidy.

Time did not permit the detailed analysis required to determine how much SB 148 would reduce the ARRC's net income and thus its capital programs. There is no question that the bill's passage would reduce the ARRC's net income. The ARRC's position paper on this bill cites the major areas of the bill that would affect the railroads net income.

8-LS0583R
Utermohle
3/31/93

CS FOR SENATE BILL NO. 148(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to legislative approval of certain acts of the Alaska Railroad
2 Corporation; taxation of certain property of the Alaska Railroad Corporation;
3 members of the board and chief executive officer of the Alaska Railroad
4 Corporation; meetings of the board of directors of the Alaska Railroad
5 Corporation; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1. PURPOSE.** This Act provides that

8 (1) the Alaska Railroad Corporation shall obtain approval of the legislature
9 before

10 (A) incurring debt, except in certain circumstances, in excess of
11 \$10,000,000 in a year or in excess of a total of \$50,000,000; or

12 (B) obtaining an equity position in certain nontransportation activities;

13 (2) the real property of the Alaska Railroad Corporation that is leased to an

1 agency or a person for fair value is subject to real property taxes imposed by municipalities;
2 the real property of the corporation that is subject to municipal property taxes is excepted from
3 the exemption from taxation granted to property of the state by art. IX, sec. 4, Constitution
4 of the State of Alaska;

5 (3) members of the board of directors and chief executive officer of the Alaska
6 Railroad Corporation are subject to AS 39.50 (Conflict of Interest);

7 (4) the chair or vice-chair of the board of directors may not serve as chief
8 executive officer of the Alaska Railroad Corporation;

9 (5) the board of directors of the Alaska Railroad Corporation shall provide for
10 meetings of the board by teleconference during legislative sessions.

11 * Sec. 2. AS 29.45.030(a) is amended to read:

12 (a) The following property is exempt from general taxation:

13 (1) municipal property, including property held by a public corporation
14 of a municipality, or state property, except that

15 (A) a private leasehold, contract, or other interest in the
16 property is taxable to the extent of the interest;

17 (B) notwithstanding any other provision of law, property
18 acquired by an agency, corporation, or other entity of the state through
19 foreclosure or deed in lieu of foreclosure and retained as an investment of a
20 state entity is taxable; this subparagraph does not apply to federal land granted
21 to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land
22 granted to the university by the state to replace land that had been granted
23 under AS 14.40.380 or 14.40.390;

24 (C) an ownership interest of a municipality in real property
25 located outside the municipality acquired after December 31, 1990, is taxable
26 by another municipality; however, a borough may not tax an interest in real
27 property located in the borough and owned by a city in that borough;

28 (D) the real property of the Alaska Railroad Corporation
29 that is leased for fair value to a municipal, state, or federal agency or a
30 person is taxable;

31 (2) household furniture and personal effects of members of a

1 household;

2 (3) property used exclusively for nonprofit religious, charitable,
3 cemetery, hospital, or educational purposes;

4 (4) property of a nonbusiness organization composed entirely of persons
5 with 90 days or more of active service in the armed forces of the United States whose
6 conditions of service and separation were other than dishonorable, or the property of
7 an auxiliary of that organization;

8 (5) money on deposit;

9 (6) the real property of certain residents of the state to the extent and
10 subject to the conditions provided in (e) of this section;

11 (7) real property or an interest in real property that is exempt from
12 taxation under 43 U.S.C. 1620(d), as amended;

13 (8) property of a political subdivision, agency, corporation, or other
14 entity of the United States to the extent required by federal law; except that a private
15 leasehold, contract, or other interest in the property is taxable to the extent of that
16 interest;

17 (9) natural resources in place including coal, ore bodies, mineral
18 deposits, and other proven and unproven deposits of valuable materials laid down by
19 natural processes, unharvested aquatic plants and animals, and timber.

20 * Sec. 3. AS 29.45.295 is amended to read:

21 Sec. 29.45.295. COLLECTION OF DELINQUENT TAXES ON CERTAIN
22 GOVERNMENTAL PROPERTY. AS 29.45.300 - 29.45.490 do not apply to property
23 taxable under AS 29.45.030(a)(1)(B) - (D) [AS 29.45.030(a)(1)(B) OR (C)] or to
24 federal property not exempted under AS 29.45.030(a)(8). A municipality may bring
25 an action in the superior court to compel payment of property taxes due from the state,
26 municipal, or federal entity if the entity does not pay the amount due within six
27 months after the date that the taxes are due. In this section, "state entity" includes
28 the Alaska Railroad Corporation.

29 * Sec. 4. AS 39.50.200(b) is amended by adding a new paragraph to read:

30 (55) the board of directors and the chief executive officer of the Alaska
31 Railroad Corporation (AS 42.40.010).

1 * Sec. 5. AS 42.40.020 is amended by adding a new subsection to read:

2 (c) Members of the board are subject to AS 39.50.

3 * Sec. 6. AS 42.40.060(a) is amended to read:

4 (a) The board shall elect from its membership a chair [CHAIRMAN] and
5 vice-chair [VICE-CHAIRMAN] and prescribe their duties by rule. The chair or vice-
6 chair of the board may not serve as the chief executive officer of the corporation.

7 * Sec. 7. AS 42.40.110(a) is amended to read:

8 (a) The board shall appoint the chief executive officer of the corporation who
9 serves at the pleasure of the board. The board shall fix compensation for the chief
10 executive officer. The chief executive officer of the corporation may not serve as
11 chair or vice-chair of the board. The chief executive officer of the corporation is
12 subject to AS 39.50.

13 * Sec. 8. AS 42.40.150 is amended by adding a new subsection to read:

14 (d) The board shall provide for attendance and participation at meetings by
15 members of the board by teleconference during legislative sessions. Materials that are
16 to be considered at a meeting must be available at teleconference locations. The vote
17 at a meeting held by teleconference shall be taken by roll call.

18 * Sec. 9. AS 42.40.285 is amended to read:

19 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the
20 legislature approves the action by law, the corporation may not

21 (1) exchange, donate, sell, or otherwise convey its entire interest in
22 land;

23 (2) issue bonds;

24 (3) incur debt in an amount exceeding \$10,000,000 in any fiscal
25 year or have at any time an outstanding aggregated debt exceeding \$50,000,000;
26 this paragraph does not apply to debt incurred for the acquisition and
27 maintenance of railroad rolling stock, locomotives, construction and maintenance
28 equipment, track structure, and other railroad related physical plant;

29 (4) extend railroad lines; this paragraph does not apply to a spur,
30 industrial, team, switching, or side track;

31 (5) [(4)] lease land for a period in excess of 35 years unless the

1 corporation reserves the right to terminate the lease if the land is needed for railroad
2 purposes;

3 (6) use assets of the corporation to obtain an equity position in a
4 nontransportation activity; this paragraph

5 (A) does not apply to

6 (i) the purchase of stocks or other forms of equity
7 participation by the pension funds of the corporation; or

8 (ii) specific activities in which the corporation is
9 engaged on the effective date of this section of this Act, or to
10 routine maintenance and upkeep for those activities or to routine
11 appreciation in value of those existing activities;

12 (B) applies to increases in the corporation's respective share
13 of equity in a specific activity in which the corporation is engaged on the
14 effective date of this section of this Act and to substantial physical
15 expansions of that activity.

16 * Sec. 10. AS 42.40.910(a) is amended to read:

17 (a) The exercise of the powers granted by this chapter shall be in all respects
18 for the benefit of the people of the state, for their well-being and prosperity, and for
19 the improvement of their social and economic conditions. Except as provided in
20 AS 29.45.030(a)(1) and in [SUBJECT TO] (b) of this section, the real and personal
21 property of the corporation and its assets, income, and receipts are exempt from all
22 taxes and special assessments of the state or a political subdivision of the state.

23 * Sec. 11. AS 42.40.980 is amended by adding a new paragraph to read:

24 (11) "nontransportation activity" means

25 (A) a hotel or other lodging facilities; or

26 (B) an activity not

27 (i) related to the movement, handling, or distribution of
28 people or personal property; or

29 (ii) conducted by the railroad on the date of transfer to
30 the state.

31 * Sec. 12. Sections 2, 3, and 10 of this Act take effect January 1, 1994.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 148(TRA)

Page 5, after line 30:

Insert a new bill section to read:

"* Sec. 12. LEGISLATIVE APPROVAL. In accordance with AS 42.40.285(6), the Alaska Railroad Corporation is authorized to acquire an equity position in a regional sanitary land fill at mile 388 of the Alaska Railroad or at Totchaket Road west of Nenana."

Renumber the following bill section accordingly.

SENATE FINANCE
COMMITTEE
Amendment Number: ①
Bill Number: CSSB 148(TRA)
Sponsor: FRANIK Date: 4/7/93
Logged In By: BM

SB

157

Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421



Senate

White in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

SPONSOR STATEMENT FOR CS SB 157

TO: Senator Bert Sharp, Chairman
Senate Transportation Committee

FROM: Senator Steve Frank, Co-Chairman
Senate Finance Committee

DATE: 9 February, 1994

Senate Bill 157 would allow certain restricted exceptions to the State's limitations on outdoor advertising, thereby addressing the need for improved directional signage to accommodate the State's travelling public.

These changes would facilitate efforts by roadside businesses to direct motorists to available services and products. In response to suggestions made by members of the Senate Transportation Committee last session, I have drafted a CS for the consideration of the committee.

This CS for SB 157 would allow one new exception to the State limitation on outdoor advertising signs, displays and devices; directional signs could be placed in zoned/unzoned commercial or industrial areas along a State highway, subject to stringent restrictions. The draft bill would also codify two existing DOT/PF programs in statute: the airspace leasing program and the TODS (Tourist Oriented Directional Signing) program.

The changes proposed by CS SB 157 would help many small business owners while not negatively impacting the scenery visible from Alaska's highways. I strongly encourage your support for this bill.

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421

Alaska State Legislature



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

MEMORANDUM

Senate

SUBJECT: Sectional Summary of CS SB 157

TO: Senator Steve Frank

FROM: David Skidmore

In conformity with federal law as found in 23 U.S.C. 131, Section 1 of the Bill amends AS 19.25.105(a) to allow one additional exception to the State prohibition on outdoor advertising **within 660 feet** of a highway right-of-way. This exception would allow directional signage to be placed in zoned/unzoned industrial or commercial areas along a State highway if it meets the following criteria:

- * It must be for an individual business entity that is of significant interest to the traveling public as evidenced by documentation that at least 75 percent of the entity's gross business receipts are from motorists residing more than 20 miles from the business;
- * Each business is limited to four or fewer off-premises signs;
- * Each sign must be located on private property;
- * Each sign must provide directional information;
- * Each sign must indicate the specific business entity;
- * Each sign must be located within 50 miles of the physical location of the business entity; and
- * Each sign must not exceed 8 feet by 12 feet in size.¹

Section 2 of the Bill amends AS 19.25.105(d) to allow two additional exceptions to the State prohibition on outdoor advertising **within the right-of-way** of a State highway. Both of these new exceptions codify existing DOT/PF programs. The language added in Paragraph (2) establishes a statutory basis for the department's airspace leasing program. The language added in Paragraph (3) establishes a statutory basis for the federally designed TODS (Tourist Oriented Directional Signing) program.

Section 3 of the Bill repeals and reenacts AS 19.25.180 to provide for the right of a municipality to enact more restrictive ordinances to control outdoor advertising, notwithstanding AS 19.25.091 - 19.25.180, except that a

¹ By way of comparison, the maximum size allowed under the Federal-State Outdoor Advertising Agreement is a total area of 650 square feet with a maximum height of 20 feet and maximum length of 50 feet.

municipality may not further restrict directional signage allowed in zoned/ unzoned commercial or industrial areas.

Section 4 of the Bill amends AS 19.45.002 to exempt unlawful advertising from the penalty provisions pertaining to AS 19.05 - AS 19.25.

Section 5 of the Bill annuls 17 AAC 20.010 to allow for the operation of both the airspace leasing program and the TODS program.



TED SMITH

Matanuska-Susitna Borough Assembly
District 7

March 14, 1993

Senator Steve Frank
P. O. Box V
Juneau, AK. 00688

Dear Senator Frank:

I was pleased to see you file SB 157 "Prohibited Highway Advertising". Though this bill has limited impact its passage is very important to those in the tourism industry who will be affected by it. I hope you will be able to get either it or HB 26 through the legislature this season. I expect the DOT to continue its policy of tearing down non-conforming signs in advance of construction in the absence of this legislation.

I had hoped that control of political and other advertising in the right-of-way could be addressed in the same bill but I was told by DOT officials that the Federal Highway Administration would not permit use of the ROW without an "air-space" lease (which oddly enough includes the ground under the air by definition). State law (AS 19.25.200) allows issuance of a right-of-way encroachment permit and I felt that a temporary permit allowing placement of political signs with a bond to ensure removal would solve a long-standing problem. Again, I was told that FHA would not allow a permit.

When I researched Federal law, I found language that said the state could "permit or lease" right of way. Two weeks ago, I wrote Jeff Ottesen of DOT asking for a clarification of this apparent contradiction. I have received no answer to date. You might wish to pose the same question.

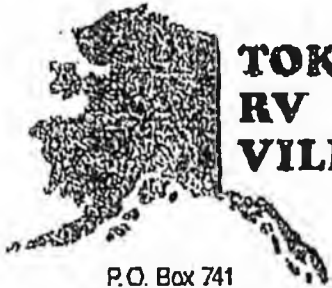
Please let me know if I can assist you in any way. I should add that I am not in the tourism business nor am I affected by the bill, but many of my constituents are.

Yours truly,

Ted Smith

cc: Sen. Halford
Sen. Kertulla
Rep. Menard

RECEIVED MAR 17 1993



**TOK
RV
VILLAGE**

P.O. Box 741
Tok, Alaska 99780
Phone (907) 883-5877
(800) 478-5878 In Alaska
Fax (907) 883-5878

March 22, 1993

Senator Steve Frank
Attn: David

Tok RV Village, Inc. wants to extend our support for SB 157. The relief that this bill will give in regards to outdoor advertising along our road system is very much encouraged.

Tok RV Village opened for business in 1986. From 1986 to 1991 we saw our highway traffic decline. Last year, we are happy to say that business increased and hope that it will continue in the years to come.

Now that the traffic is on the increase, it is equally important to properly inform the traveler of facilities they can find along the roadway. As a campground, we should be able to post signs for directional purposes in the same manner as the State Division of Parks. As you know, all State campgrounds are allowed highway roadsigns.

Can you please tell us if the Alaska Highway is included and if not may we ask that a provision be made to include the Alaska Highway?

Thank you for your help!

Sincerely,

Linda
Linda Jernigan

VILLAGE TEXACO
P.O. BOX 741
TOK, AK 99780

March 22, 1993

Senator Steve Frank
Attn: David

Subject: SB 157

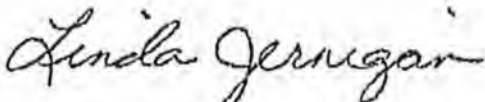
Village Texaco support SB 157. As a new business we are encouraged by the flexibility the bill gives in regards to outdoor advertising along our road system.

It is important to inform the traveler of services available to them and equally important for businesses to properly advertise their business.

If the bill does not include the Alaska Highway please consider a revision to do so.

Thank you for your help.

Sincerely,



Linda Jarnigan

**RITA'S POTPOURRI & CAMPGROUND
P.O. BOX 201
TOK, AK 99780**

March 22, 1993

**Senator Steve Frank
Attn: David**

We are writing you in support of SB 157. We have waited many years for this kind of bill to be introduced. An outdoor advertising sign can make or break a business!

As pioneers of Alaska and the builder/owner of the first private campground in Alaska we have fought for many years to get reasonable outdoor advertising laws. Years ago our directional sign at the Tok Jct. was removed by the Alaska State Troopers. In those days there wasn't a radio or television station, therefore we were faced with virtually no advertisement. Needless to say we saw our business drop significantly. To be specific, our business dropped 50% and we had to lay off our employees.

Most recently we have applied and received an "air space" lease for our on premise sign and had to receive permission for flowers in front of our business in the highway right-of-way.

We support SB157 as it will enable businesses to properly advertise their services and hopefully we will not have to continue struggling.

Sincerely,

DOUG & RITA EUERS



ALASKA CAMPGROUND OWNERS ASSOCIATION

P.O. Box 84884 Fairbanks, Alaska 99708 (907) 474-0286

Board Officers

President
Linda Colrud
*McKinley Campground
Healy*

Vice President
Doug Eilers
*Rita's Campground
Tok*

Secretary-Treasurer
Linda Jernigan
*Te:RV Village
Tok*

Regional Board Directors

Anchorage
Rick Bartler
*Golden Nugget RV Park
Anchorage*

Interior Region
Linda Anderson
*River's Edge RV
Fairbanks*

Mat-Su Region
Red Starr
*Mountain View RV
Palmer*

Copper River Region
Jeff Saxe
*Eagle's Rest
Valdez*

Southeast Region
Arnie Olsson
*Port Chilkot
Halnes*

Kenai Peninsula Region
Kathy Davidhizar
*Edgewater RV Park
Soldotna*

March 22, 1993

Senator Steve Frank
Attn: David

The Alaska Campground Owners Assoc. (ACOA) wants to extend our gratitude and support for SB157.

ACOA was established three years ago in an effort to create a more healthy environment for our growing private campground industry in the State of Alaska. Over the past three years, we have seen a number of new parks become established and join our organization. We originally were an organization of 13 campground members. Today, the ACOA has grown to include 56 campground owners state-wide, in addition to 43 associate members (supporting small businesses and organizations).

Our Association is one that is seriously impacted economically as a result of the State's restrictive statutes for outdoor advertising along our road system.

ACOA supports the relief that SB157 will give to our members in regards to outdoor advertising. As tourism facilities, we must be able to post signs for directional purposes in the same manner as the State Division of Parks. As you know, all State campgrounds are allowed highway roadsigns.

Sincerely,

Linda
Linda Jernigan
Secretary/Treasurer

Eagle's Rest RV Park

P.O. Box 610
Valdez, Alaska 99686
(907)835-2373

March 23, 1993

Senator Steve Frank
Juneau, Alaska
attn. David

Dear Sirs,

It has come to our attention that the subject of outdoor advertising is being supported by you in Senate Bill 157.

We would like to take this opportunity to let you know of our support of Senate Bill 157. This is an important issue not only to us, but to all businesses in Alaska - we just wish everyone knew of your efforts! We are spreading the word in Valdez.

We are new to all this! Please just give us a call if there is anything we can do to help. And, Thank-you for taking a moment of your time for us!

Sincerely,

JEFF SAXE
Pres. Eagle's Rest, Inc.



Alaska State Legislature

Please enter into the record my testimony to the senate transportation
 committee on SB 157, dated 3/23/93 at 3:30
 bill/subject committee name

I Support S.B. 157.

I worked at Mom & Pops all summer of 90-91-92
 I had lots of R.V. Travelers stop ask
 directions to Mt. Juneau R.V. Park. There biggest
 Complaint was not enough signing for the
 traveling public. (No directions)

Signed: Carol Kingery
 Testifier

Representing (Optional)
P.O. Box 3776
 Address Palmer, Alaska 99645 208.
 Phone No. 746-4076



Alaska State Legislature

senate transportation

Please enter into the record my testimony to the

committee name

committee on SB 157

dated 3/23/93 at 3:30

bill/subject

We support S.B. 157

The biggest complaint that MT. VIEW R.V. Park road users is that there isn't enough signs directing the traveling public to destinations that they are trying to locate. WE HAVE NO SIGNS AND CAN'T PUT ANY ON.

We have an investment of approximately \$1,000,000.00 that caters solely to the R.V. traveler. Our season is 90-120 days and we are faced with the dilemma of not being able to advertise our business with directional signs.

TODS TOURIST DIRECTIONAL SIGNING is a fairly basic experimental program that sounds like it has a lot of merit, it is self explanatory, it also sounded to us like it was written for us exclusively.

We applied for TODS signing and were rejected because of the intersection that we need to place our signs at. The TODS packet lists all intersections that are excluded for the placement of signs. The intersection that we asked to place our signs was not on the list but we were told that the intersection was not conducive to the placement of TODS signs.

I spoke with Bob Ruby (3-22-93) at approx. 4:30 P.M. and had quite a lengthy discussion with him.

Unless I misunderstood or misinterpreted what he explained to me, it appears that the state D.O.T.P.F. is going several steps beyond what they are being told by the Federal D.O.T. I understand Mr Ruby to say that the Fed. D.O.T. would not take any money away from the State of Ak. highway funds as long as we moved the signs out of the right of ways. Bob also said that signs could be placed on private property that did not have the actual business on it, if this property was a commercial use area and that no funds would be withheld for advertising of this type.

MAR 23 1993

Signed

F. K. Starns

Testifier

MT. VIEW R.V. PARK PALMIS, AK

Representing (Optional)

Mr. M. Smith, Rt. Palmis, AK 99645

Address

907-745-5747 FAX 907-745-1700

Phone No.

Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, was signed into law. Section 1046 of the ISTEA amended 23 U.S.C. 131 which deals with outdoor advertising control. This notice describes the impact of section 1046 on how States can provide for effective control of outdoor advertising in accord with regulations previously issued by the Federal Highway Administration (FHWA) in 23 CFR 750.705. This document is being issued to advise States that the ISTEA may require them to consider changes in their laws and administrative practices in order to remain eligible for full Federal-aid funding. The ISTEA itself provides no lead time for the States to come into compliance with these new provisions. A discussion of initiatives that will be considered in evaluating how "effective control" is maintained under the new requirements is a part of this notice.

Under section 1046, 23 U.S.C. 131 will continue to apply to the Interstate System and the Federal-aid primary system as they existed on June 1, 1991, and, when designated, all portions of the approved National Highway System. The three major amendments made to 23 U.S.C. 131 by section 1046 of ISTEA are: (1) An amendment prohibiting the erection of most new signs adjacent to

an Interstate or Federal-aid primary designated a Scenic Byway under a State Program; (2) a specific requirement that illegal signs be removed; and (3) a provision authorizing for the first time the use of Federal-aid highway funding to purchase signs that do not conform to outdoor advertising controls.

DATES: The ISTEA was signed into law on December 18, 1991, with the provision of new sections 131(s) and 131(r)(1) of title 23, U.S.C., effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Marlin E. Meese, Chief, Special Programs and Evaluation Branch, Office of Right-of-Way, HRW-12, (202) 366-2017; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 131 is the implementing authority within title 23, U.S.C., for the Highway Beautification Act of 1965, as amended. The basic principles of outdoor advertising control are in section 131. The original Act provided specific controls on the erection and maintenance of outdoor advertising signs and devices along the Interstate and Federal-aid primary highway systems. The Interstate and primary highway systems comprise only 306,000 miles of the 3.9 million miles of public roads and streets in the United States. Therefore, the outdoor advertising controls apply to less than 8 percent of the total national public road mileage. Statutory controls in section 131(c) limit signs which a State can permit to directional and official signs, sale or lease signs, on-premise signs, landmark signs, and free coffee signs. In addition, under section 131(d), States can permit signs in zoned or unzoned commercial or industrial areas adjacent to the controlled systems. Section 131(d) provides for an agreement between each State and the Secretary of Transportation regarding size, lighting, and spacing standards of signs in commercial and industrial areas.

Scenic Byway Prohibition

The ISTEA in section 1046(c) amended title 23, U.S.C., by adding section 131(s). The new section limits the erection of new advertising displays to those permitted under section 131(c) along road segments that are designated Scenic Byways which are on the Interstate System, the Federal-aid primary system (as it existed on June 1,

1991), or on the National Highway System, when designated. These routes, collectively, are referred to as the controlled systems for Highway Beautification Act purposes. Thus new signs which would have been permitted in commercial and industrial areas under section 131(d) are no longer permitted on scenic byway portions of the controlled system.

Based on the 1990 Scenic Byways Study (U.S. DOT/FHWA Publication No. PD-91-010, January 1991), all but 15 States have some form of scenic byways program. About 35,000 miles of roads had been designated as scenic as of December 1990, when the study was conducted. The study projected that only about 50,000 total miles would be designated. Of the total projected mileage, about 50 percent is located on the Interstate and Federal-aid primary systems. Almost all of the mileage already designated as scenic along a controlled highway system is on two lane roadways. Most scenic byways are two lane roadways in rural areas where commercial and industrial areas are fewer in number. Thus, while the scope of this new control is limited to only about 25,000 miles, it complements the actions already taken by the States in determining that these routes have particular scenic importance.

Removal of Illegal Signs

The ISTEA in section 1046(b) also added section 131(r) to title 23, U.S.C. This new section requires all owners of illegal signs to remove their illegal signs within 90 days. The section further states that in the event owners do not remove their illegal signs, the State, to exercise effective control, shall remove the signs. The section provides that States recover removal costs of unremoved illegal signs from the sign owner. This cost recovery provision is not part of "effective control" for purposes of the sanction provisions of the Highway Beautification Act (23 U.S.C. 131(b)).

The FHWA recognizes that most States have already caused the removal of a substantial number of the illegal signs within their boundaries. Some States, however, have significant numbers of illegal signs remaining. Based on State reports, a total of about 22,000 remaining illegal signs have been identified. The law gave sign owners only 90 days from the effective date of ISTEA on December 18, 1991, to remove their illegal signs. The short period given to the owners is an indication of the emphasis to be applied to remove illegal signs. In consideration of the period granted to the owners, and the specific

mandate to the States to conclude removals when the sign owner has not performed, the FHWA has set a goal of an additional 90 days through June 18, 1992, for the States to act on the removal of illegal signs as required by 23 U.S.C. 131(r)(2). The FHWA recognizes that State law or procedural impediments may have to be overcome before a State can fully comply with this objective. However, considering the short time frame stated in the legislation for the removal of illegal signs by the sign owners, and the specific tie of this action to effective control requirements, States must take immediate steps after March 18, 1992, to demonstrate reasonable progress in meeting the effective control responsibilities required by this amendment. Good faith efforts by a State, including efforts to seek legislative authority, to comply with the provisions quickly will be considered by the FHWA in deciding how to deal with a failure to achieve effective control. Cumbersome administrative or procedural requirements that do not provide for prompt removal of illegal signs are not consistent with the intent of this section.

Funding for Removal of Nonconforming Signs

A new funding source for outdoor advertising control was provided in section 1046(a) of the ISTEA. By amending 23 U.S.C. 131(m), highway trust funds apportioned under 23 U.S.C. 104 are now available for the removal of nonconforming signs (i.e., lawfully erected signs which do not conform to the control requirements of section 131 or stricter State laws). In addition, in section 1007 of the ISTEA, control and removal of outdoor advertising is identified as one of several eligible "transportation enhancement activities" under the new Surface Transportation Program (STP). This major new program requires that at least 10 percent of apportioned funds for the program must be directed toward "transportation enhancement activities."

Initially, Federal funds for the control of outdoor advertising came from the General Fund. Now, funds made available from the Highway Trust Fund for highway projects may be used for outdoor advertising control. This will have a profound impact on the ability and responsibility of States to remove outdoor advertising signs. Under section 131(n), the States are not required to remove nonconforming signs unless Federal funds are available to participate in the acquisition costs associated with their removal. In the years immediately following the passage of the Highway Beautification Act,

considerable sums were made available to inventory and remove nonconforming signs. However, funding was never sufficient to complete the acquisition process and no General Funds have been appropriated since 1983.

With this amendment made by the ISTEA, the States should have sufficient funds to remove nonconforming signs much more expeditiously. The change in the funding provided by the ISTEA, making available significant funds for the Federal share of just compensation payments and other control costs, will enable States to complete the removal of nonconforming signs in order to maintain effective control under Section 131(b). The timely removal of nonconforming outdoor advertising signs has always been part of "effective control." Failure to exercise effective control subjects a State to a 10 percent reduction of its Federal-aid highway apportionment, pursuant to 23 U.S.C. 131(b).

The FHWA estimates that about 92,000 nonconforming signs remain to be acquired. Most of these signs have been in place for over 20 years. Removal has been delayed, but now with increased Federal funding available to complete acquisition activities and ensure effective control, the law requires expedient removal.

The ISTEA authorizes \$121 billion over the next six years for highway programs, including the STP which is a block grant program designed to fund a wide range of transportation related projects. For Fiscal Year (FY) 1992 alone, over \$11 billion in Federal-aid under 23 U.S.C. 104 is being distributed to the States for highway construction and maintenance, and other transportation activities, including removal of outdoor advertising signs. The estimated total Federal share of the cost to acquire the remaining nonconforming signs is \$428 million. This amount represents just 4 percent of the total eligible Federal-aid funds available to the States in FY 1992. Thus, the FHWA considered requiring States to remove all nonconforming signs along controlled highways in the first year ISTEA funding is available.

However, the FHWA recognizes that while the ISTEA represents a dramatic increase in Federal-aid funding, the non-Federal share must come from State or local sources. Moreover, the impact on individual States in providing for immediate removal would vary. For example, a State with an inventory of just a few hundred nonconforming signs would have a more manageable acquisition task than a State with over 2,000 such signs.

In addition, the FHWA recognizes that other problems might hamper the immediate removal of all remaining nonconforming signs. First, many States have been inactive regarding a sign acquisition program, and might need to update their administrative tools and sign acquisition procedures. Second, we do not believe that the Congress intended that the removal of signs take precedence over all other title 23 projects and programs.

For these reasons, we believe the ISTEA requires States to begin immediate removal of nonconforming signs, and to make reasonable progress in completing their removal program expeditiously. The FHWA, however, has set a two year goal for complete removal of remaining nonconforming signs. The FHWA believes that 2 years provides States with adequate time to remove all nonconforming signs without unduly constricting Federally-funded highway construction and other projects. States should be prepared to justify any reason for concluding that this period would impose an undue hardship on their priorities and programs.

During the next two years period, more than \$24 billion Federal-aid dollars can be expected to be made available to the States for 23 U.S.C. 104 programs and projects. Considering the number of nonconforming signs remaining in the various States, most States could conclude their removal program using less than 2 percent of their 23 U.S.C. 104 funds within the two year period. Therefore, full acquisition and removal of the remaining nonconforming signs over the next two years would seem to be an achievable goal. By meeting this goal States will have removed all nonconforming signs on controlled Federal-aid highways by December 18, 1993.

The elements of removal programs will necessarily vary from State to State, and States should confer with the FHWA as to how best structure a removal program. In implementing removal programs, the States will have to review their existing priorities and formulate programs and processes that will maintain effective control. The States may wish to involve interested parties and affected entities such as other state and local agencies, sign owners, environmental groups and the business community, and establish priorities for sign removal.

This notice provides States and other interested parties a discussion of FHWA's goals and objectives to assure effective control is maintained to achieve the full implementation of the objectives expressed in the 1983

Highway Beautification Act, as amended, and to prevent interruption of Federal-aid funding. Each State should advise the FHWA by June 18, 1992, of its process, program, and timetable to ensure effective control is achieved and maintained. The FHWA intends to monitor and evaluate each State's progress in providing for the prompt removal of illegal and nonconforming signs on controlled systems.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-5287 Filed 3-5-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) as

amended by section 5(c) of Public Law 94-409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Ramada Renaissance Hotel, 999 9th Street NW., Washington, DC, on April 28, 1992. The session is scheduled to begin at 7:30 a.m. and end at 6 p.m. The meeting will be for the purpose of reviewing the progress of one on-going cooperative study in immunization in the prevention of infection, and three new clinical trials, one in the treatment of alcoholic cirrhosis, one in diabetes mellitus, and one in unstable angina.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on the relevance and feasibility of studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room, from 7:30 a.m. to 8 a.m., to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping

Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202-535-7154), prior to April 14, 1992.

The meeting will be closed from 8 a.m. to 6 p.m., for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92-463, as amended by section 5(c) of Public Law 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 26, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-5217 Filed 3-5-92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL HIGHWAY ADMINISTRATION
400 SEVENTH ST., SW
ROOM 4223, HCC-10
WASHINGTON, D.C. 20590

TITLE 23 -- UNITED STATES CODE
HIGHWAYS

Originally Compiled from GPO tapes by HNG-12 in Nov. 1987
with updates through 1988

Maintenance transferred to Office of the Chief Counsel
in January 1990

Please notify HCC-10 (202)366-1388, Sherie Abbasi
if errors are encountered in text

[text in WordPerfect 5.1]
[electronic file available on FEBBS for FHWA Staff]

UPDATED: 5/10/91: Pub. L. 101-427 (10/15/90).
 Secs. 333 and 336 of Pub. L. 101-516 (11/5/90).
1/8/92: Pub. L. 102-143 (10/28/91), Sec. 333.
 Pub. L. 102-240 (ISTEA of 1991, 12/18/91).

TITLE 23-UNITED STATES CODE
HIGHWAYS
CHAPTER 1.-FEDERAL-AID HIGHWAYS

- Sec.
101. Definitions and declaration of policy.
 102. Program efficiencies.
 103. Federal-aid systems.
 104. Apportionment.
 105. Programs.
 106. Plans, specifications, and estimates.
 107. Acquisition of rights-of-way-Interstate System.
 108. Advance acquisition of rights-of-way.
 109. Standards.
 110. Project agreements.
 111. Agreements relating to use of and access to rights-of-way Interstate System.
 112. Letting of contracts.
 113. Prevailing rate of wage.
 114. Construction.
 115. Advance construction.
 116. Maintenance.
 117. Certification acceptance.
 118. Availability of funds.
 119. Interstate maintenance program.
 120. Federal share payable.
 121. Payment to States for construction.
 122. Payment to States for bond retirement.
 123. Relocation of utility facilities.
 124. Advances to States.
 125. Emergency relief.
 126. Diversion.
 127. Vehicle weight limitations-Interstate System.
 128. Public hearings.
 129. Toll roads, bridges, tunnels, and ferries.
 130. Railway-highway crossings.
 131. Control of outdoor advertising.
 132. Payments on Federal-aid projects undertaken by a Federal agency.
 133. Surface transportation program.
 134. Metropolitan planning.
 135. Statewide planning.
 136. Control of junkyards.
 137. Fringe and corridor parking facilities.
 138. Preservation of parklands.
 139. Additions to Interstate System.
 140. Nondiscrimination.
 141. Enforcement of requirements.
 142. Public transportation.
 143. Economic growth center development highways.
 144. Highway bridge replacement and rehabilitation program.
 145. Federal-State relationship.
 146. Carpool and vanpool projects.

and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State highway department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) Survey and Schedule of Projects.- Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

(e) Special Rules.-

(1) Funds for Protective Devices.- At least 1/2 of the funds authorized and expended under this section shall be available for the installation of protective devices at railway-highway crossings.

(2) Set Aside for Public Information Programs.- \$250,000 of the amounts available for expenditure under this section in each fiscal year shall be expended for a public information program-

(A) which the Secretary determines will be effective in educating the public as to the hazards posed at

areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State subject to the

compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement: Provided, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this

to be paid upon removal of such sign, display, or device is not available to make such payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and aesthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) REMOVAL OF ILLEGAL SIGNS.--

(1) BY OWNERS.--Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) BY STATES.--If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 19, 1993

SUBJECT: Sectional Summary of SB 157. (Work Order No. 18-LS0814A)

TO: Senator Steve Frank
Attn: David

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill adds new sections to AS 19.25 that provide that outdoor advertising is permitted outside of the right-of-way of a state highway except as prohibited by federal law and that a person may not erect or maintain outdoor advertising not permitted by this statute.

Section 2 of the bill amends AS 19.25.105(d) to delete references to "interstate, primary, or secondary highway[s]" and to substitute the term "state highway."

Section 3 of the bill amends AS 19.25.130 to conform to Section 1 of the bill. AS 19.25.130 provides the penalty for an act of unlawful advertising.

Section 4 of the bill amends AS 19.25.150 to also conform to Section 1 of the bill. AS 19.25.150 defines an act of unlawful advertising as being a public nuisance and provides the procedure that the Department of Transportation should follow to abate the nuisance.

Section 5 of the bill repeals and reenacts AS 19.25.160 to provide minor changes to the definition of outdoor advertising and to delete unneeded definitions of department, interstate system, and primary/secondary system.

Section 6 of the bill amends AS 19.25.170 to delete unneeded references to interstate and primary systems. AS 19.25.170 provides the authority for the Department of

Senator Steve Frank
March 19, 1993
Page 2

Transportation to enter into agreements in conformity with the provisions of Title 19 with the U.S. Secretary of Transportation relating to the control of outdoor advertising.

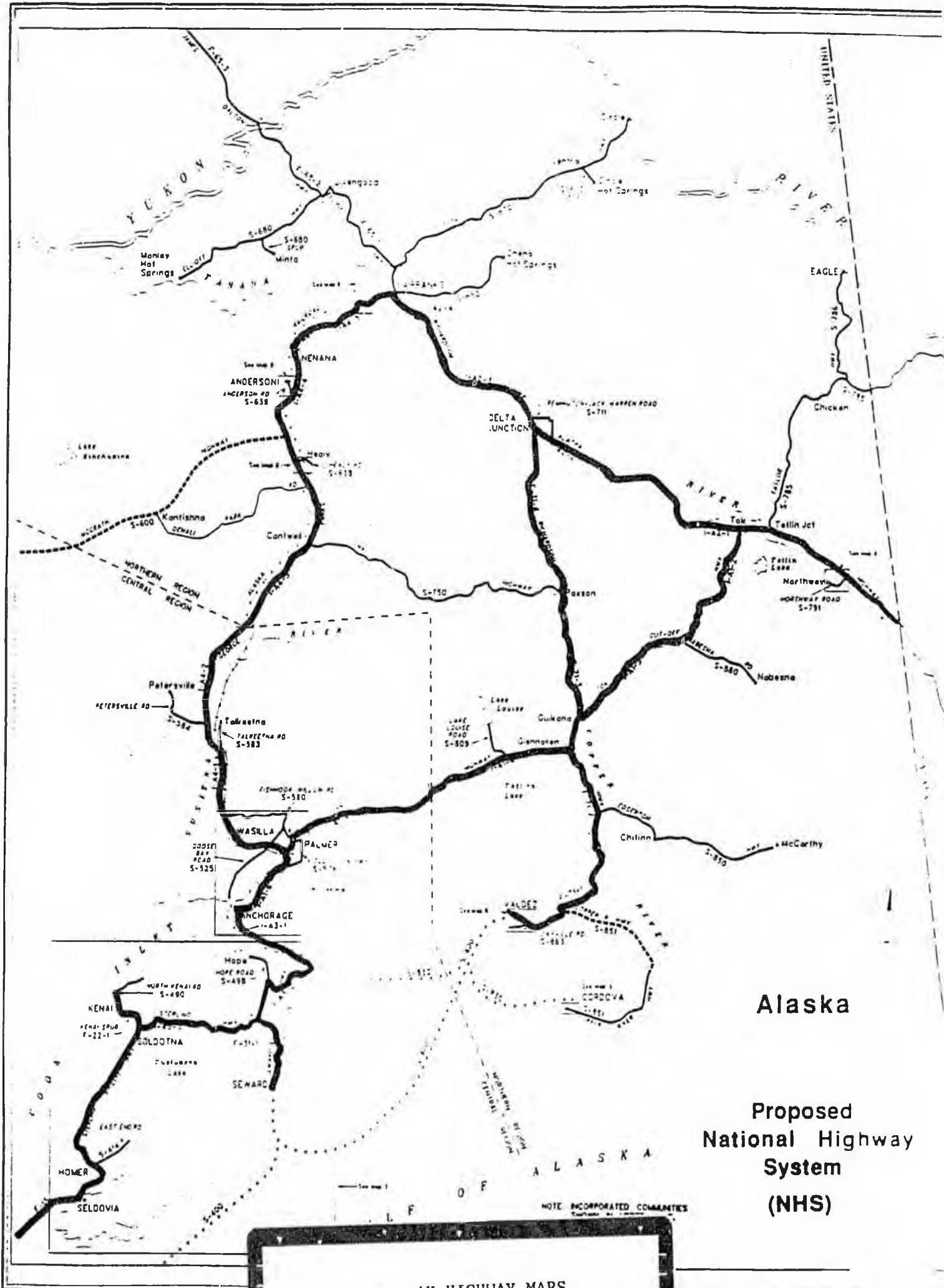
Section 7 of the bill repeals and reenacts AS 19.25.180 to provide for the right of a municipality to enact more restrictive ordinances to control outdoor advertising, notwithstanding AS 19.25.091 - 19.25.180.

Section 8 of the bill amends AS 19.45.002 to exempt unlawful advertising from the penalty provisions pertaining to AS 19.05 - AS 19.25.

Section 9 of the bill repeals AS 10.25.080, 19.25.090, 19.25.105(a), and 19.25.105(c) to delete references to state control of outdoor advertising made obsolete by this bill.

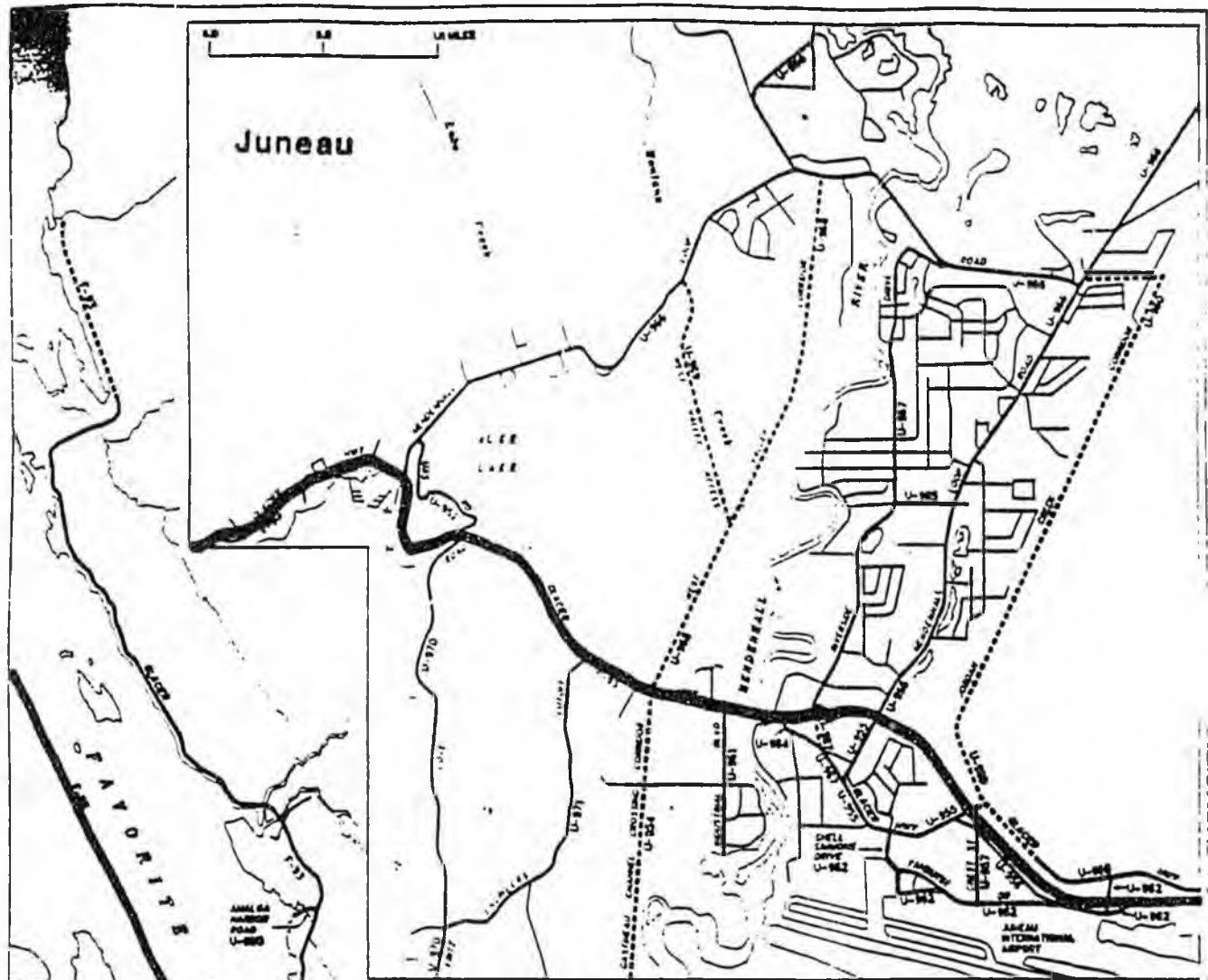
Section 10 of the bill annuls 17 AAC 20.010 to delete the reference to state control of outdoor advertising made obsolete by this bill.

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93-214.plm

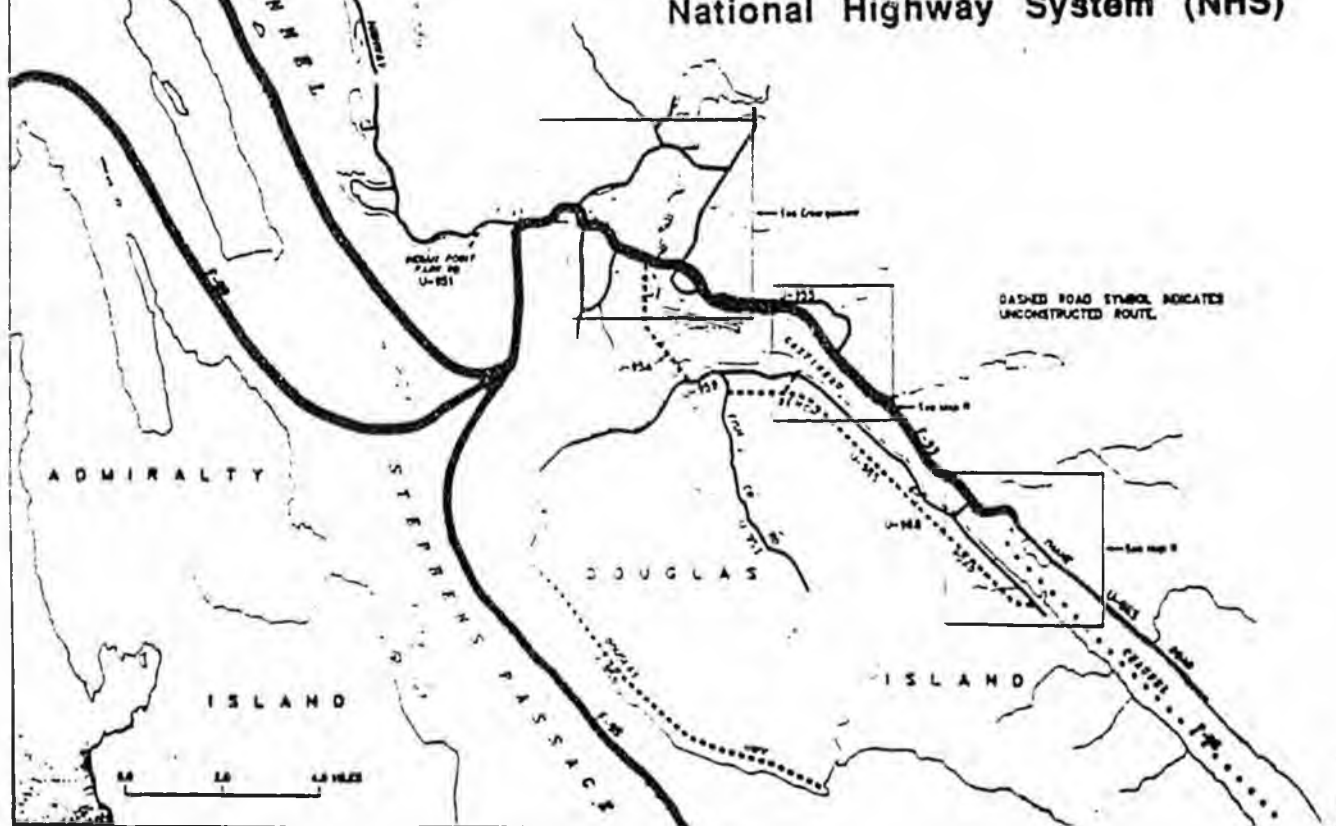


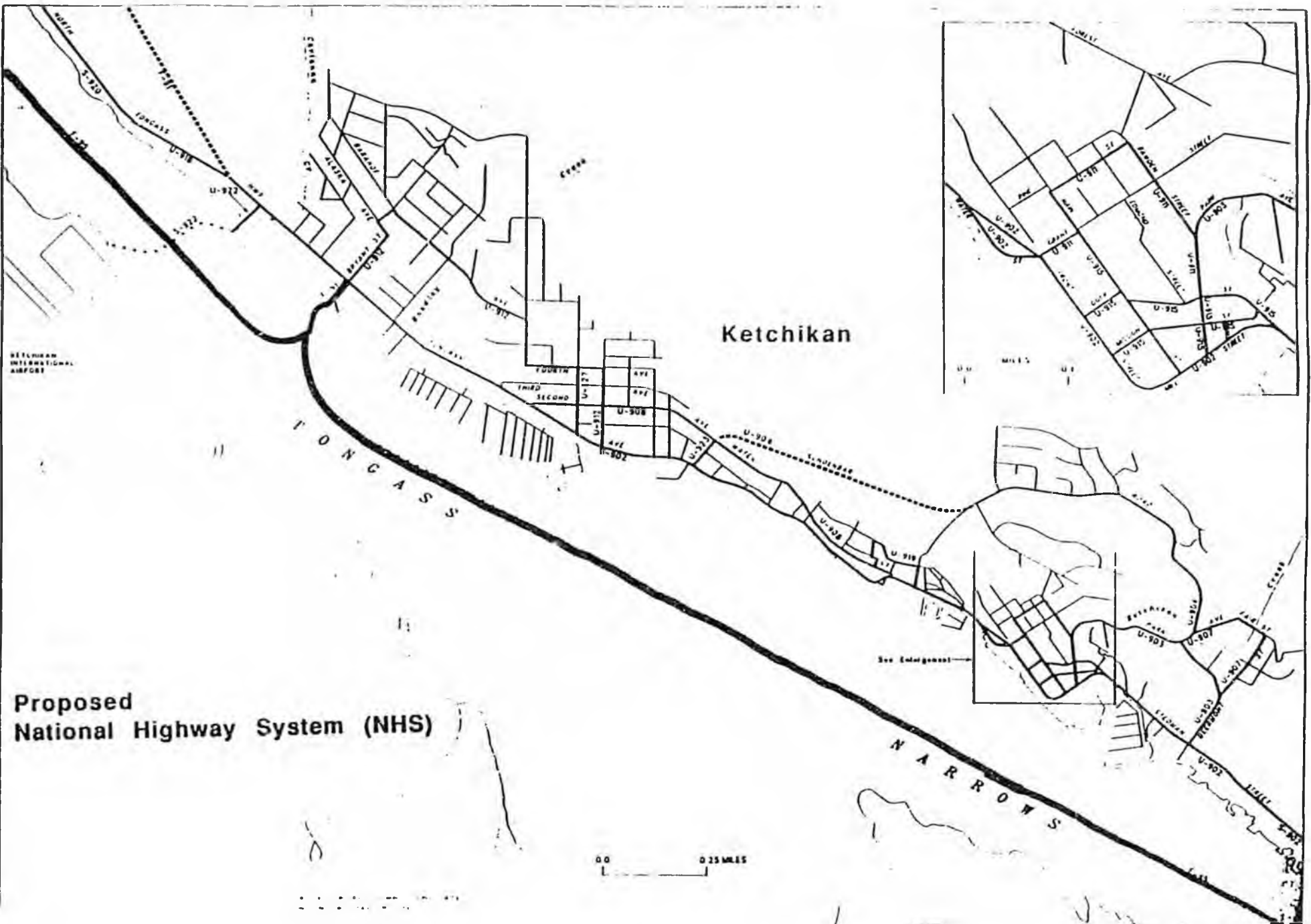
Alaska

Proposed
National Highway
System
(NHS)



**Proposed
National Highway System (NHS)**





Proposed National Highway System (NHS)

Ketchikan

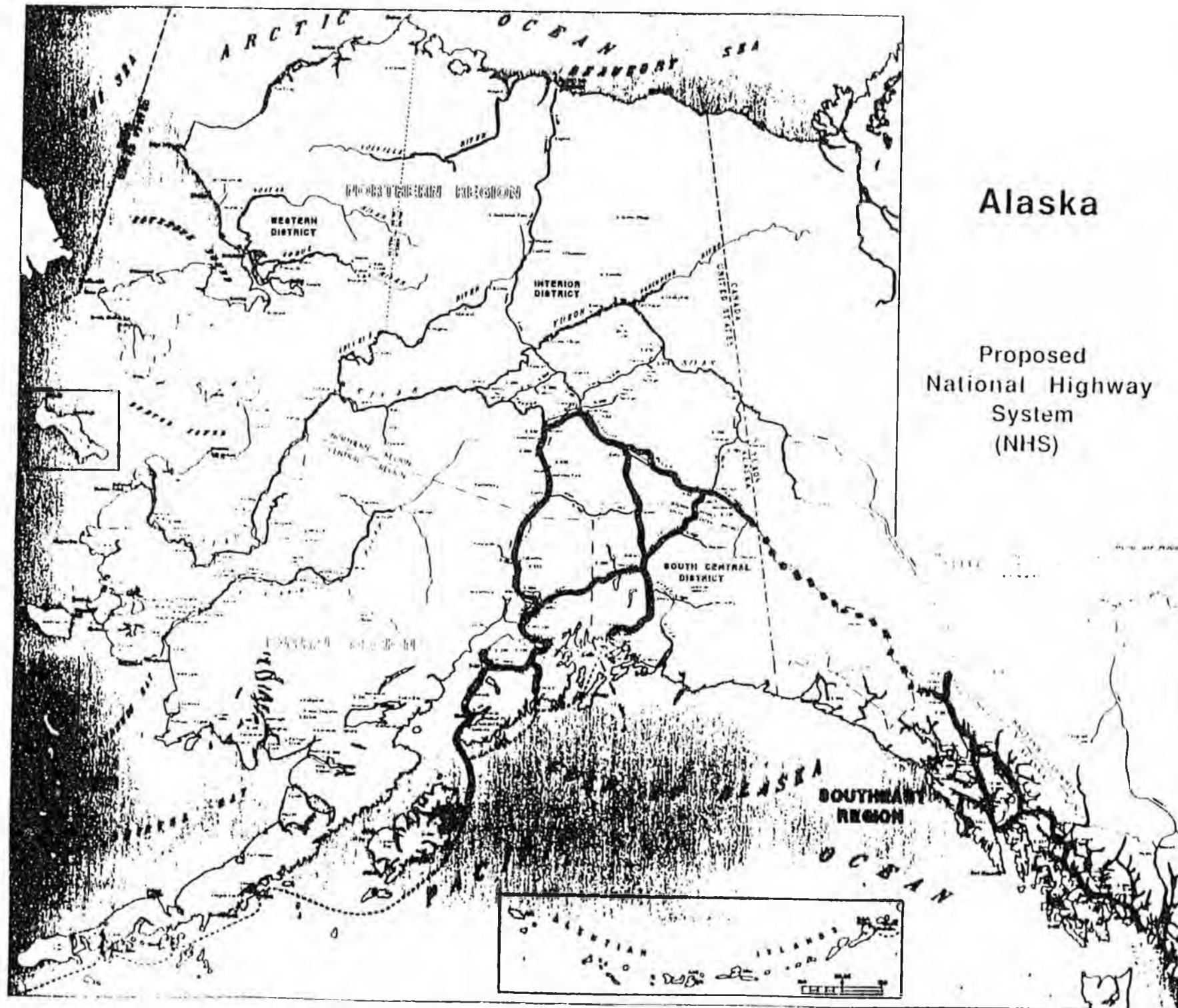
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KETCHIKAN INTERNATIONAL AIRPORT

See Enlargement



Alaska

Proposed
National Highway
System
(NHS)

Aishuyak

Bay

Kodiak

Munda-Aks Bay

Woody Island

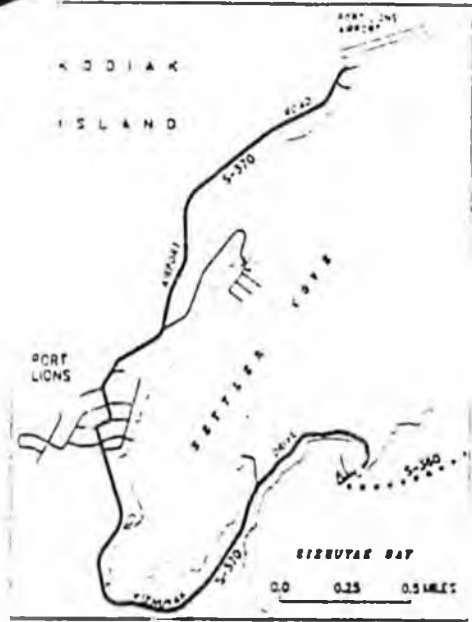
KODIAK ISLAND

BUNYAN Bay

Middle Bay

Kalain Bay

ISLAND



English Cove

Portage Cove

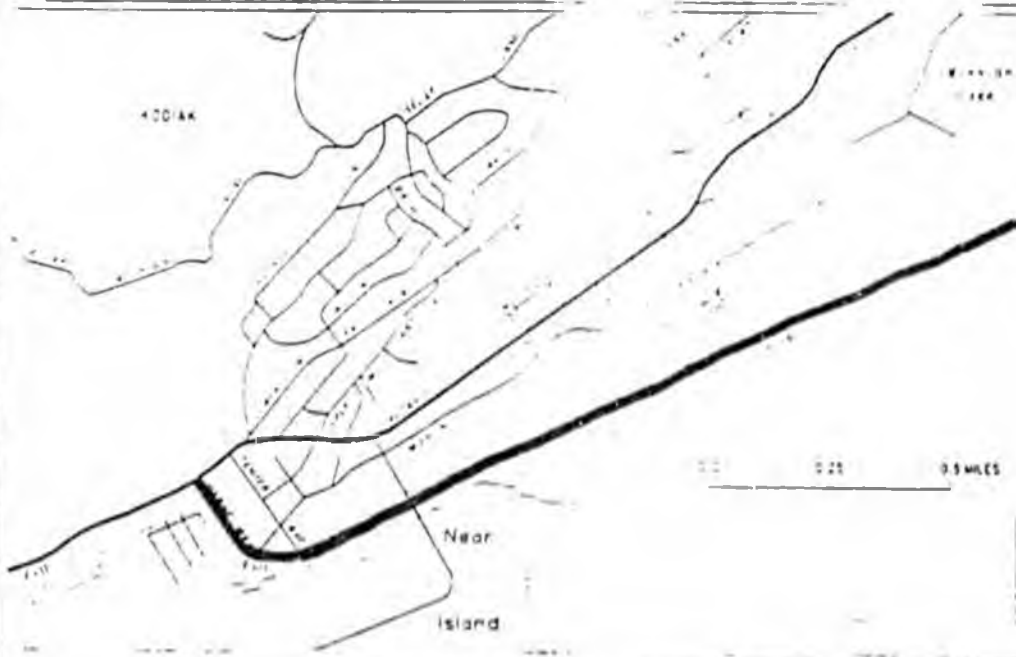
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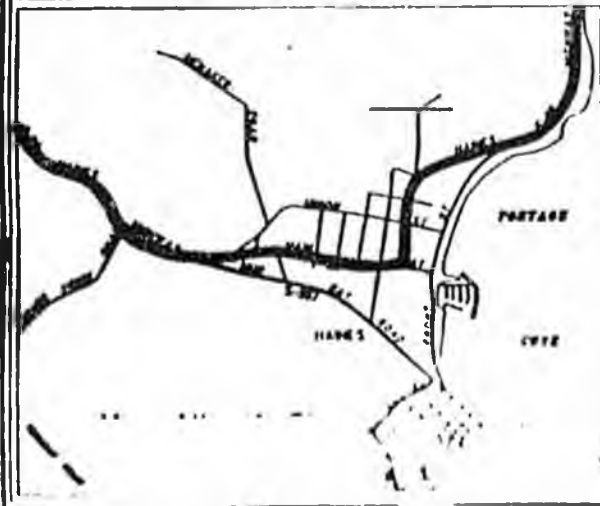
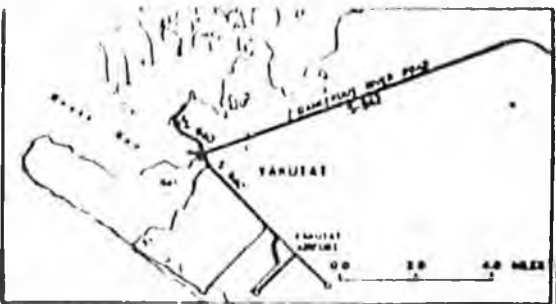
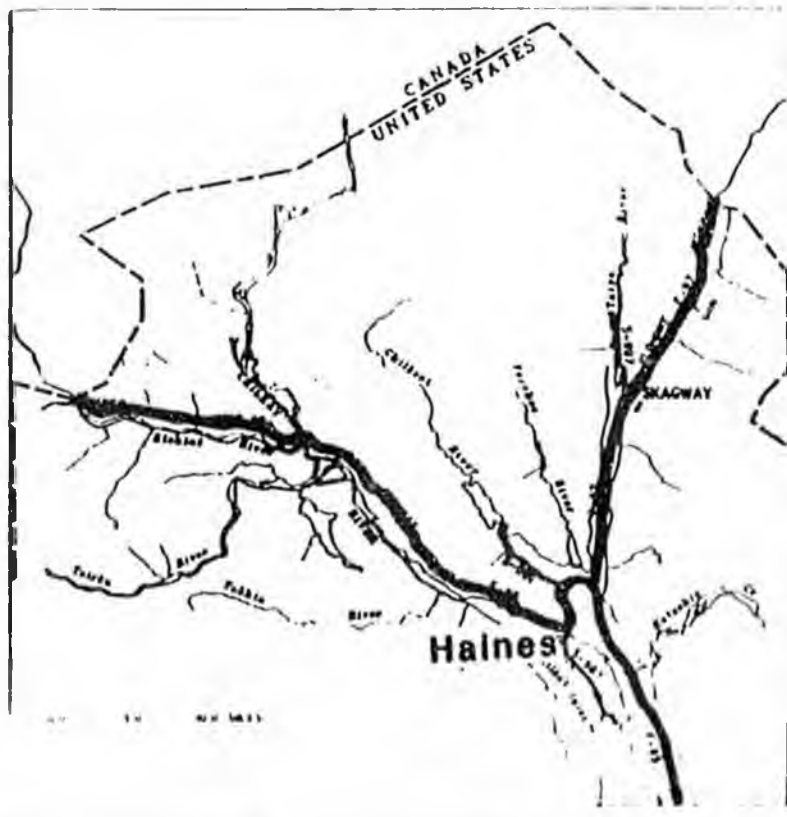
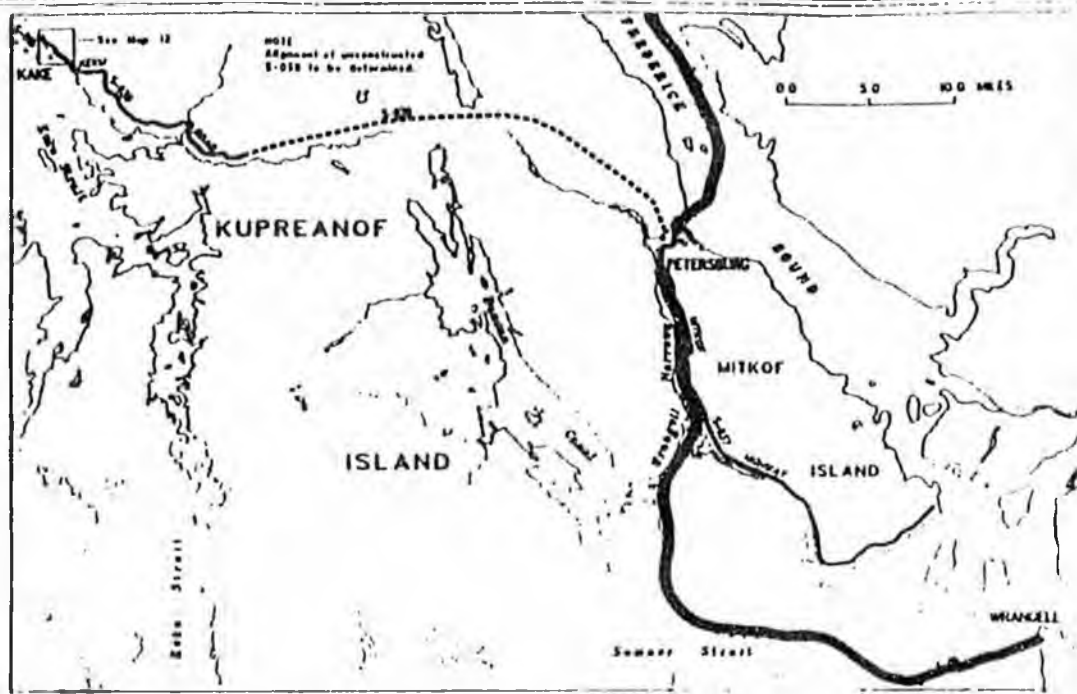
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Proposed National Highway System (NHS)

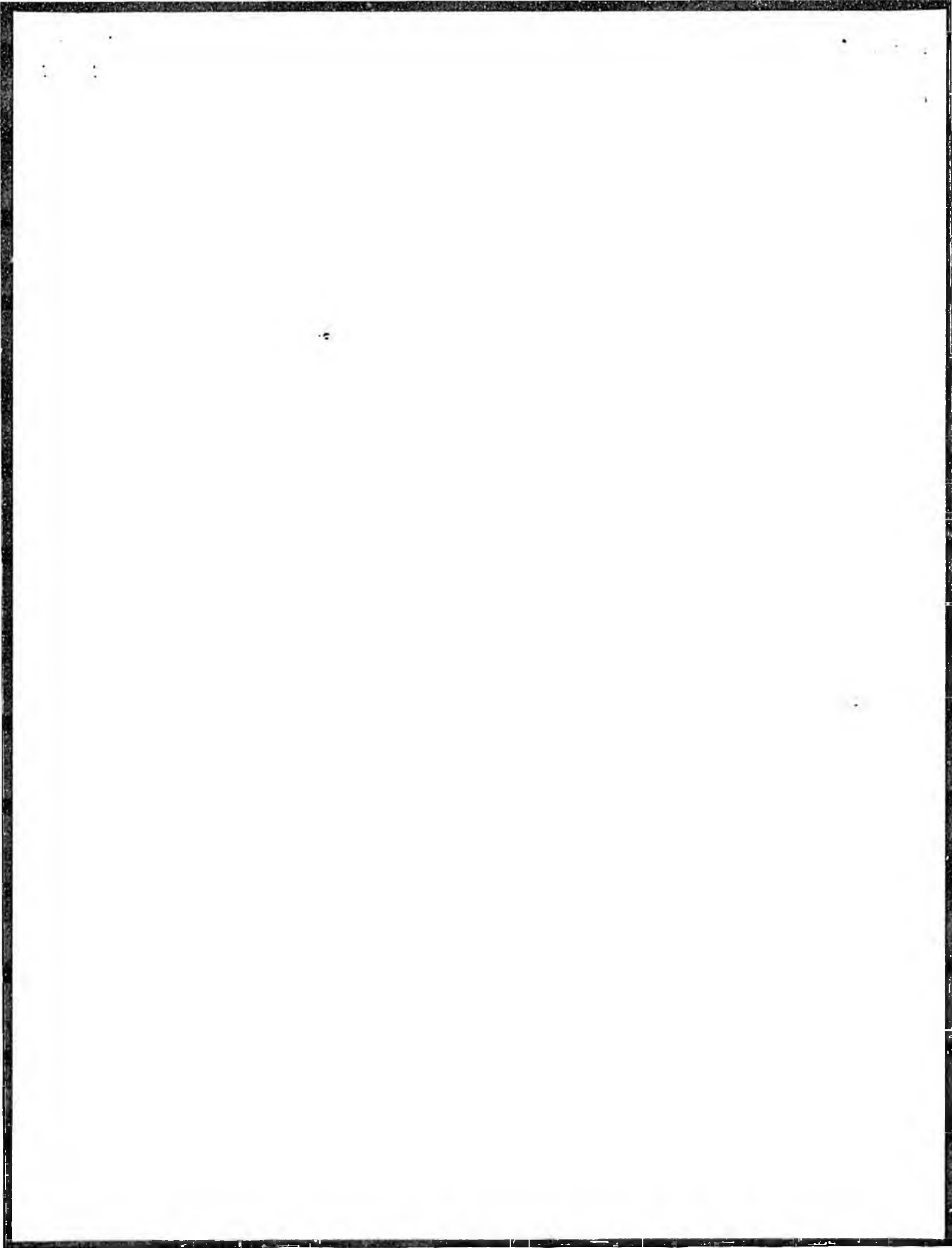
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Near Island





Proposed NHS



MATANUSKA-SUSITNA BOROUGH

RESOLUTION SERIAL NO. 93-___

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY IN SUPPORT OF HB 26 AND SB 157, RELATING TO THE CONTROL OF OUTDOOR ADVERTISING.

WHEREAS, highway travel is an important source of income for both on and off-highway businesses; and

WHEREAS, businesses with highway frontage may display on-premises signs under both Alaska and federal laws; and

WHEREAS, off-highway businesses are prohibited from using highway signs to advertise their businesses by Alaska law; and

WHEREAS, advertising of off-highway businesses in commercial or industrial areas is allowed by federal law; and

WHEREAS, House Bill 26 and Senate Bill 157 would each conform Alaska law to federal law, thus permitting controlled advertising by off-highway businesses in commercial and industrial areas, thus assisting highway travelers in locating needed services offered by local residents;

NOW, THEREFORE, BE IT RESOLVED that the Matanuska-Susitna Borough Assembly urges the legislature to speedily pass House Bill 26 or Senate Bill 157 in order that the needed changes may be implemented before the tourist and construction season arrives.

ADOPTED by the Matanuska-Susitna Borough Assembly this ___ day of _____, 19___.

ERNEST W. BRANNON, Mayor

ATTEST:

LINDA DAHL, Borough Clerk

LIMITATIONS ON OUTDOOR ADVERTISING: ALLOWABLE SIGNS

CURRENT LAW

SENATE BILL 157

CS FOR SENATE BILL 157

Within highway right-of-way:	Within highway right-of-way:	Within highway right-of-way:
<ol style="list-style-type: none"> 1. Bus bench/shelter advertising. 2. Official TODS signs. 3. Airspace lease program signs. 	<ol style="list-style-type: none"> 1. Bus bench/shelter advertising. 2. Official TODS signs. 3. Airspace lease program signs. 	<ol style="list-style-type: none"> 1. Bus bench/shelter advertising. 2. Official TODS signs. 3. Airspace lease program signs.

Within 660' of edge of right-of-way and visible from highway:	Within 660' of edge of right-of-way and visible from highway:	Within 660' of edge of right-of-way and visible from highway:
<ol style="list-style-type: none"> 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. 	<ol style="list-style-type: none"> 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. <u>*6. Signs advertising free coffee.</u> <u>*7. Signs in zoned/unzoned commercial or industrial areas; no restrictions.</u> 	<ol style="list-style-type: none"> 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. <u>*6. Signs in zoned/unzoned commercial or industrial areas with restrictions for the purpose of directional signage.</u>

Beyond 660' from edge of right-of-way and visible from highway:	Beyond 660' from edge of right-of-way and visible from highway:	Beyond 660' from edge of right-of-way and visible from highway:
<ol style="list-style-type: none"> 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. 	<ol style="list-style-type: none"> 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. <u>*6. Signs advertising free coffee.</u> <u>*7. Signs in zoned/unzoned commercial or industrial areas; no restrictions.</u> <u>*8. Signs in urbanized areas.</u> 	<ol style="list-style-type: none"> 1. Directional & other official signs. 2. On-premise signs advertising sale or lease of premises, or activities conducted on premises. 3. Landmark signs. 4. Signs pertaining to schools. 5. Bus bench/shelter advertising. <u>*6. Signs in zoned/unzoned commercial or industrial areas with restrictions for the purpose of directional signage.</u>



ALASKA VISITORS ASSOCIATION

3201 C Street, Suite 403 • Anchorage, Alaska 99503

Tel: (907) 561-5733 • Fax: (907) 561-5777

1993-94

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Steve Cockrell

Grand Aleutian Hotel

Robert Dindinger

Alaska Travel Adventures

Ken Dole

Ingersoll Hotel

Bill Elander

Anchorage CVB

Tom Garrett

Alaska Discovery

Laurie Herman

Alascom, Inc.

Richard Knapp

Alaska Railroad

Paul Landis

Era Aviation

Linda McLaughlin

Delta Air Lines

Gary Odle

Alaska Highway Cruises

Brad Phillips

Phillips Cruises & Tours

Tom Tougas

Kenai Fjords Tours

Brad Walker

Alaska Airlines

Andrew Wescott

Little El Dorado

Gold Camp

Karen Cuwart

Executive Director

#93-9

A RESOLUTION REQUESTING MODIFICATION OF THE STATE'S HIGHWAY DIRECTIONAL SIGN STATUTES

WHEREAS, due to the strict prohibitions on roadside signage many visitor-oriented businesses encounter difficulties when attempting to make their presence known to highway travelers; and

WHEREAS, the State Tourism Oriented Directional Sign Program (TODS) has many valuable features, but should be improved to allow for advanced signing and trail blazing signs in urban as well as rural areas; and

WHEREAS, the current state law prohibits nearly all outdoor signage along Alaska's highways, setting restrictions on Alaska's private tourism businesses while allowing State tourism endeavors such as historical sites and state campgrounds to be well signed; and

WHEREAS, this is an inequity that needs to be remedied in order for the private sector to enjoy the same signage advantages utilized by the government sector.

NOW, THEREFORE BE IT RESOLVED that the Alaska Legislature and the Governor of Alaska modify the TODS program to include the urban areas.

BE IT FURTHER RESOLVED that legislation to allow directional signs for the use of tourism businesses be passed.

BE IT FURTHER RESOLVED that Alaska's statutes be modified to be no more restrictive than Federal law.

*Adopted by the AVA Board of Directors
October 9, 1993*

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/12/93

FURTHER: JUDICIARY

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 INTO OFFICE: _____

TRANSPORTATION Committee considered SB 157

"An Act relating to the control of outdoor advertising."

and recommends:

replace with _____ CS _____ ()

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

same title
 new title
 technical
 title change
 (HB only)

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

Tim Kelly - No Rec
Carol E. [unclear] No Rec
[unclear] No Rec

Bob M. [unclear] Do Pass

 Chair: Signature and Recommendation

8-LS08140L
Luckhaupt
2/14/94

CS FOR SENATE BILL NO. 157()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS FRANK, Sharp, Miller

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to limitations on outdoor advertising signs, displays, and
2 devices."

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

4 * Section 1. AS 19.25.105(a) is amended to read:

5 (a) Outdoor advertising may not be erected or maintained within 660 feet of
6 the nearest edge of the right-of-way and visible from the main-traveled way of the
7 interstate, primary, or secondary highways in this state except the following:

8 (1) directional and other official signs and notices which include, but
9 are not limited to, signs and notices pertaining to natural wonders, scenic and historic
10 attractions, which are required or authorized by law, and which shall conform to
11 federal standards for interstate and primary systems;

12 (2) signs, displays, and devices advertising the sale or lease of property
13 upon which they are located or advertising activities conducted on the property upon
14 which they are located;

1 (3) signs determined by the state, subject to concurrence of the United
2 States Department of Transportation, to be landmark signs, including signs on farm
3 structures, or natural surfaces, of historic or artistic significance, the preservation of
4 which would be consistent with the provisions of this chapter;

5 (4) directional signs and notices pertaining to schools;

6 (5) advertising on bus benches or bus shelters if

7 (A) the state determines that the advertising conforms to local,
8 state, and federal standards for interstate and primary highways;

9 (6) directional signs whose size, lighting, and spacing, are approved
10 by the United States Department of Transportation, may be erected and
11 maintained outside of the right-of-way adjacent to interstate and primary
12 highways in areas zoned industrial or commercial or in unzoned commercial or
13 industrial areas as may be determined by agreement with the United States
14 Department of Transportation; under this paragraph, the directional signs must

15 (A) be for an individual business entity that is of significant
16 interest to the traveling public as evidenced by documentation that at least
17 75 percent of the entity's gross business receipts are from motorists
18 residing more than 20 miles from the business;

19 (B) consist of four or fewer off-premises signs for each
20 business, and each sign

21 (i) must be located on private property;

22 (ii) must provide directional information;

23 (iii) must indicate the specific business entity;

24 (iv) must be located within 50 miles of the physical
25 location of the business entity; and

26 (v) may not exceed 8 feet by 12 feet in size

27 [HIGHWAY SYSTEMS].

28 * Sec. 2. AS 19.25.105(d) is amended to read:

29 (d) Outdoor advertising may not be erected or maintained within the
30 right-of-way of an interstate, primary, or secondary highway except that

31 (1) outdoor advertising is allowed on bus benches and bus shelters

1 located within the right-of-way under the authority of a permit issued under
2 AS 19.25.200, if the bus benches or bus shelters are located within a borough or
3 unified municipality and the buses that stop at that location operate during the entire
4 year;

5 (2) signs, displays, and devices located on right-of-way property
6 leased from the state that advertise activities conducted on business property
7 adjacent to the highway may be erected and maintained;

8 (3) signs within the right-of-way that give specific business
9 information in the interest of the traveling public may be erected and maintained
10 to the extent permitted under federal law or regulation.

11 * Sec. 3. AS 19.25.180 is repealed and reenacted to read:

12 Sec. 19.25.180. APPLICABILITY OF MUNICIPAL ENACTMENTS.
13 Notwithstanding AS 19.25.080 - 19.25.180, a municipality may enact ordinances that
14 regulate outdoor advertising in a way that is more restrictive than the provisions of
15 AS 19.25.080 - 19.25.180, except that a municipality may not restrict directional signs
16 allowed under AS 19.25.105(a)(6).

17 * Sec. 4. AS 19.45.002 is amended to read:

18 Sec. 19.45.002. PENALTIES. A person who violates a [ANY] provision of
19 AS 19.05 - AS 19.25, except a violation of AS 19.25.080 - 19.25.180, is guilty of a
20 misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor
21 more than \$500; or by imprisonment in jail for a period not to exceed one year, or by
22 both.

23 * Sec. 5. 17 AAC 20.010 is annulled.

FISCAL NOTE

Revision Date:
Title: Prohibited Highway Advertising

Department Affected: DOT&PF
BRU:

Sponsor: Frank
Requestor:

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Jeffrey C. Ottesen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: February 8, 1994

Approved by Commissioner: *B.A. Campbell*

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: February 9, 1994

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ANALYSIS (cont. from page 1):

The proposed changes would not materially alter the work required to enforce outdoor advertising laws. Efforts to verify that signs are not located within the right-of-way would increase due to more signs placed along the highway system. Further, on Highways of National Significance, where off-premises outdoor advertising would remain illegal, there would be an increase in illegal signs as businesses try to "equalize" their visibility with businesses located along highways where the relaxed advertising standards would apply. These increases would be offset by the fact that many businesses could install legal outdoor advertising, reducing some enforcement activity.

In the long term, outdoor advertising signs may have to be acquired as property for highway expansion projects. Nationally, outdoor advertising signs can be worth substantial sums, which could cause some construction projects to be more expensive. These future costs are not estimable at this time.



Department of Transportation
and Public Facilities

POSITION PAPER

BILL NO: SB 157

APPROVED: H. K. Sullivan
DA. C. [unclear]

TITLE: Prohibited Highway Advertising DATE: February 9, 1994

This bill amends the prohibitions on off-premises, outdoor advertising, outside of the right-of-way, to the same degree as required by federal law. Alaska's current wholesale prohibition on off-premises, outdoor advertising would change in a number of ways:

Where Off-Premises Outdoor Advertising Would Be Permitted

Highway Characteristics	Interstate	Primary Roads	Secondary Roads
Urban Areas	Allowable, subject to local laws.	Allowable, subject to local laws.	Allowable, subject to local laws.
Rural, industrial or commercial areas.	Allowable, subject to local laws.	Allowable, subject to local laws.	Allowable, subject to local laws.
Rural, not industrial or commercial.	Not allowed.	Not allowed.	Allowable, subject to local laws.
Rural, designated Scenic Byway.	Not allowed.	Not allowed.	Allowable, subject to local laws.

In general, the department supports the proposed legislation as it would greatly reduce the pressure to place illegal advertising, which routinely taxes limited department resources to patrol and regulate. We do however, have a number of technical comments and suggestions to offer:

Advertising Within the Right-of-Way. There are currently two methods whereby business owners may place advertising within the state right-of-way. These are the TODS (Tourist Oriented Directional Signs) Program, and the air-space leasing program. The department believes the statute in question should be amended to specifically authorize these programs in order to establish them in a firmer legal foundation. We are working with staff of the bill's sponsors to accomplish this.

For Further Information at 465-3904.

BILL NO: SB 157

TITLE: Prohibited Highway Advertising

DATE: February 9, 1994

Enforcement. Enforcement of outdoor advertising laws is a perennial duty, and one the department must continue or face federal sanctions on highway funding. Accordingly, we believe Section 4 should clarify that illegal outdoor advertising that constitutes a hazard to the traveling public be subject to instant removal, without notice by certified mail.

Regulations and Fees. The bill removes the department's authority to establish regulations defining the program. This could create difficulties, since the latitude in federal law is not clearly defined, leaving many details up to state policy. Without the authority to establish these details in regulations the department would have not the means to create rules that are binding on the public. This would be especially acute with regard to the industrial/commercial exemption, the TODS program and airspace leasing program — all of which have or will provide a significant benefit to the public. Without the ability to enforce the rules applicable to these programs and collect the applicable operational costs through fees, we may lose the ability to offer them.