

CS FOR HOUSE BILL NO. 136(FIN) am(efd fld)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/4/96

Offered: 4/29/96

Sponsor(s): REPRESENTATIVE MARTIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the establishment and operation of the Alaska Railroad
2 Commission to determine whether sale of the Alaska Railroad is in the best
3 interest of the state."

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

5 * Section 1. ALASKA RAILROAD COMMISSION. (a) The Alaska Railroad
6 Commission is established as an agency of the legislative branch. The commission consists
7 of five members. One member shall be appointed by the governor, one member shall be
8 appointed by the president of the senate, one member shall be appointed by the speaker of the
9 house of representatives, one member shall be appointed jointly by the governor, president of
10 the senate, and speaker of the house of representatives from among the employees of the
11 Alaska Railroad Corporation who are members of a bargaining unit representing employees
12 of the railroad, and one member shall be appointed jointly by the governor, president of the
13 senate, and speaker of the house of representatives who is a representative of the major
14 customers of the Alaska Railroad Corporation. The persons making appointments to the

1 commission shall give consideration to the appointment of at least one person who has
2 experience involving corporate mergers and acquisitions. A vacant seat on the commission
3 shall be filled in the manner that the seat was originally filled.

4 (b) A member of the Alaska Railroad Commission who is a public member is entitled
5 to compensation at a rate of \$250 for each day the member is engaged in the actual
6 performance of duties as a commission member. The commission may provide for
7 compensation for partial days during which a member who is a public member is engaged in
8 actual performance of duties as a commission member. In addition, a member who is a public
9 member is entitled to per diem and travel expenses authorized for boards and commissions
10 under AS 39.20.180. A member of the commission who is not a public member is entitled
11 to the member's usual compensation and travel and per diem expenses as a legislator, state
12 employee, or employee of the Alaska Railroad. In this subsection, a public member of the
13 commission is a member who is not a legislator, state employee, or employee of the Alaska
14 Railroad.

15 (c) Subject to appropriations for the purpose, the Alaska Railroad Commission may
16 contract for professional services as the commission considers necessary. Contracts for
17 professional services under this subsection are exempt from AS 36.30.

18 (d) The Alaska Railroad Commission shall contract for preparation of an evaluation
19 of the Alaska Railroad as a going concern by a qualified railroad appraiser. The commission
20 shall give a preference to a private entity based in the state for the contract to perform the
21 evaluation. The evaluation shall be submitted to the governor and the Legislative Budget and
22 Audit Committee before February 1, 1997. The Alaska Railroad Corporation shall pay for the
23 evaluation from corporate receipts of the Alaska Railroad Corporation. The contract for the
24 evaluation under this subsection is exempt from AS 36.30.

25 (e) On September 1, 1996, and December 1, 1996, the Alaska Railroad Commission
26 shall submit a report to the Legislative Budget and Audit Committee detailing the progress
27 of the commission in implementing this section and the problems encountered by the
28 commission. The Legislative Budget and Audit Committee may request that the commission
29 appear before the committee to brief the committee on the progress of the commission in
30 performing the commission's functions under this section.

31 (f) By March 1, 1997, the Alaska Railroad Commission shall determine whether or

1 not it is in the best interest of the state to sell the Alaska Railroad and all other assets of the
2 Alaska Railroad Corporation classified as necessary for the operation of the railroad and shall
3 evaluate the prospects for and effects of operation of the Alaska Railroad under private
4 ownership. In reaching its determination under this subsection, the commission shall

5 (1) identify all assets, real and personal and tangible and intangible, of the
6 Alaska Railroad Corporation and classify those assets as necessary for the operation of the
7 railroad or as other assets of the corporation;

8 (2) consider the effect of a sale of the Alaska Railroad on the state, on
9 customers, lessees, and employees of the railroad, and on municipalities served or affected by
10 the railroad;

11 (3) consider the effect of privatization of the Alaska Railroad and the
12 conditions of a sale upon the long-term profitability of the railroad;

13 (4) consider the ability of the state to obtain enforceable assurances of
14 continued operation of the railroad at necessary levels of service;

15 (5) consider foreseeable economic effects of a sale of the railroad; and

16 (6) consider the value to the state of direct oversight of operations of the
17 Alaska Railroad Corporation as currently provided under law.

18 (g) Notwithstanding the determination of the commission under (f) of this section,
19 before March 1, 1997, the Alaska Railroad Commission shall also

20 (1) recommend specific conditions to be attached to a sale of the Alaska
21 Railroad, including requirements that the purchaser of the railroad agree to

22 (A) continue operation of the railroad, as an active and functioning
23 transportation system, for a minimum of 20 years following the date of sale of the
24 railroad;

25 (B) accept assignment of all contracts, including agreements with
26 connecting carriers, shippers, or other persons concerning services, operation, property,
27 and facilities of the Alaska Railroad Corporation, entered into by the Alaska Railroad
28 Corporation and in effect on the date of the sale of the Alaska Railroad, provided that
29 the contracts are assignable under terms of the contract or that the other parties to the
30 contract consent to the assignment; this subparagraph does not apply to executive
31 employment contracts;

1 (C) accept assignment of collective bargaining agreements with labor
2 organizations that represent employees of the Alaska Railroad that are in effect on the
3 date of transfer of ownership of the Alaska Railroad until expiration of the agreements;

4 (D) as a condition of the sale and before the transfer of ownership of
5 the Alaska Railroad, negotiate collective bargaining agreements, including provisions
6 for future retirement benefits if appropriate, to take effect upon the expiration of the
7 collective bargaining agreements that are in effect on the date of transfer of ownership
8 of the Alaska Railroad;

9 (E) accept assignment of the retirement obligations owed to employees
10 of the Alaska Railroad at the time of transfer of ownership of the Alaska Railroad;

11 (F) extend to the State of Alaska a first right of refusal or option to
12 purchase all or part of the railroad, if the purchaser offers to sell all or part of the
13 railroad;

14 (G) purchase the Alaska Railroad for an amount that is equal to or
15 exceeds the fair market value of the Alaska Railroad and the assets of the Alaska
16 Railroad Corporation that are necessary for the operation of the railroad; and

17 (H) provide proof of financial ability to abide by the terms of sale and
18 to operate the railroad as an active and functioning transportation system;

19 (2) recommend specific procedures and a schedule of events to be followed
20 in selling the Alaska Railroad;

21 (3) inventory real property and contracts of the Alaska Railroad Corporation
22 that are not necessary for operation of the Alaska Railroad and make recommendations for
23 their disposition;

24 (4) identify measures necessary to assure continued use of the railroad right-of-
25 way corridor for transportation, communication, and transmission purposes and support
26 functions associated with these purposes; and

27 (5) identify conditions or terms of a sale of the Alaska Railroad that may be
28 necessary for consistency with the Alaska Railroad Transfer Act of 1982 (P.L. 97-468, Title
29 IV) and AS 42.40 (Alaska Railroad Corporation Act).

30 (h) The Alaska Railroad Commission shall submit a comprehensive report of its
31 determination, recommendations, identifications, and evaluations made under (f) and (g) of this

1 section and of the evaluation of the Alaska Railroad under (d) of this section to the governor,
2 the president of the senate, the speaker of the house of representatives, and the Legislative
3 Budget and Audit Committee before March 1, 1997. The commission shall make copies of
4 the report available to the public.

5 (i) Except as provided under this subsection, the meetings of the Alaska Railroad
6 Commission shall be open to the public and shall provide an opportunity for public comment.
7 A subject may not be considered at an executive session unless the subject is mentioned in
8 the motion calling for the executive session or is auxiliary to a subject mentioned in the
9 motion. An action may not be taken at an executive session. Only the following subjects
10 may be discussed in an executive session:

11 (1) matters, the immediate knowledge of which would clearly have an adverse
12 effect upon the finances of the Alaska Railroad Corporation;

13 (2) unless the person has requested to have the subjects discussed in public,
14 subjects that tend to prejudice the reputation and character of a person;

15 (3) matters that, by law or municipal charter or ordinance, are permitted to be
16 kept confidential from public disclosure;

17 (4) matters pertaining to personnel;

18 (5) matters pertaining to current or potential litigation involving the Alaska
19 Railroad Corporation; and

20 (6) proprietary or other information of a type treated as confidential under the
21 standards and practices of the United States Interstate Commerce Commission, including
22 practices that protect information associated with specific shippers, divisions, and contract rate
23 agreements.

24 (j) Notwithstanding AS 42.40.220 and other provisions of AS 42.40, the Alaska
25 Railroad Commission shall have access to financial records, contracts, legal documents, and
26 other records and documents of the Alaska Railroad Corporation that the commission
27 determines are necessary to perform the commission's functions under this section. The
28 members and staff of the commission shall maintain the confidentiality of confidential records
29 and documents provided by the corporation to the commission.

30 (k) The Alaska Railroad Commission may not expend more than a total of \$250,000
31 to perform the commission's functions under this section.

1 * **Sec. 2.** This Act is repealed June 30, 1997.