

**ALASKA STATE LEGISLATURE**  
**HOUSE TRANSPORTATION STANDING COMMITTEE**

March 12, 2009

1:07 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Craig Johnson, Vice Chair  
Representative John Harris  
Representative Kyle Johansen  
Representative Cathy Engstrom Munoz  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Mike Doogan

**COMMITTEE CALENDAR**

HOUSE BILL NO. 114

"An Act relating to availability of state transportation facilities and state-owned or state-operated transportation modes for delivering compassionate aid during a disaster emergency."

- MOVED CSHB 114(TRA) OUT OF COMMITTEE

HOUSE BILL NO. 127

"An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act and providing that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 133

"An Act relating to traffic control devices on highways and claims related to those devices; relating to designation of highway systems; making conforming amendments; and providing for an effective date."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 114

SHORT TITLE: USE STATE TRANS FACILITY FOR DISASTER AID  
SPONSOR(s): REPRESENTATIVE(s) RAMRAS

02/04/09 (H) READ THE FIRST TIME - REFERRALS  
02/04/09 (H) TRA, FIN  
02/17/09 (H) TRA AT 1:00 PM CAPITOL 17  
02/17/09 (H) Heard & Held; Assigned to Subcommittee  
02/17/09 (H) MINUTE(TRA)  
03/12/09 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 127

SHORT TITLE: ALASKA RAILROAD BUDGET  
SPONSOR(s): REPRESENTATIVE(s) STOLTZE

02/13/09 (H) READ THE FIRST TIME - REFERRALS  
02/13/09 (H) TRA, FIN  
03/12/09 (H) TRA AT 1:00 PM CAPITOL 17

**WITNESS REGISTER**

DANA STROMMEN, Staff  
Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented changes to HB114, on behalf of the prime sponsor, Representative Jay Ramras.

REPRESENTATIVE BILL STOLTZE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified and answered questions as prime sponsor of HB 127.

JOHN BITNEY, Staff  
Representative John Harris  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified at the request of the prime sponsor of HB 127, Representative Bill Stoltze.

BILL O'LEARY, Chief Financial Officer  
Alaska Railroad Corporation (ARRC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of HB 127.

JASON BRUNE, Executive Director

Resource Development Council  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition of HB 127.

BOB THOMAS  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 127.

DON LOWELL, President  
Alaska Transportation Consultants  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 127.

DONALD CALLAHAN, Member  
Rail Safety and Development Group  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 127.

PAT DAVIDSON, Legislative Auditor  
Division of Legislative Audit  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified and provided audit information during the discussion of HB 127.

PATRICK GAMBLE, President, and CEO  
Alaska Railroad Corporation (ARRC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of HB 127.

#### **ACTION NARRATIVE**

[1:07:31 PM](#)

**CHAIR PEGGY WILSON** called the House Transportation Standing Committee meeting to order at 1:07 p.m. Representatives Johnson, Gruenberg, Munoz, and Wilson were present at the call to order. Representatives Johansen and Harris arrived as the meeting was in progress.

[1:07:35 PM](#)

HB 114-USE STATE TRANS FACILITY FOR DISASTER AID

[1:08:20 PM](#)

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 114, "An Act relating to availability of state transportation facilities and state-owned or state-operated transportation modes for delivering compassionate aid during a disaster emergency."

[1:09:12 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt HB 114, Version 26-LS0505\P, Kane, 3/10/09.

[1:09:54 PM](#)

DANA STROMMEN, Staff, Representative Jay Ramras, Alaska State Legislature, speaking on behalf of the prime sponsor, Representative Jay Ramras, offered changes to the bill since its last hearing. She explained the Transportation subcommittee chaired by Representative Munoz reported that the proposed provision of HB 114 was removed from AS 26.23.020 and was added as a new section to AS 44.19 under the Office of the Governor. She stated that the purpose and the mechanism of the bill remains the same. However, by removing it from AS 26.23.020, the governor would not need to declare a disaster before using state owned or operated transportation modes when delivering compassionate aid at the time the governor determines that public safety and health conditions in an area of the state require emergency assistance. This would provide the governor the flexibility not to declare a disaster. Additionally, subsection (b) is amended to remove liability from the state, the ARRC and subsequent officers, agents, and employees in the event of injury or death of a person or property damage resulting from providing assistance.

[1:11:34 PM](#)

CHAIR WILSON announced that there being no objection, Version P was before the committee.

REPRESENTATIVE JOHNSON moved to report HB 114, Version 26-LS0505\P, Kane, 3/10/09, out of committee with individual recommendations and the accompanying fiscal note.

There being no objection, CSHB 114(TRA) was reported from the House Transportation Standing Committee.

[1:12:14 PM](#)

The committee took an at-ease from 1:12 p.m. to 1:13 p.m.

HB 127-ALASKA RAILROAD BUDGET

1:13:30 PM

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 127, "An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act and providing that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date."

1:14:07 PM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, as prime sponsor of HB 127, explained that the bill would address a major policy issue. However, he opined this is not a new issue and is one that has often been debated. He pointed out the Alaska Railroad Corporation (ARRC) is the only state entity not under the Executive Budget Act. He remarked that he is glad the ARRC is under state ownership since it serves his community and traverses many communities in the state. He emphasized he would like to maintain state ownership of the ARRC. He stressed that he does not want the ARRC "cannibalized" by private party wishing to buy it. He pointed out that he is not an enemy of the ARRC, but is a staunch supporter of the ARRC. He pointed out that his own property lies adjacent to the ARRC property. He related that while he does not have any specific concern, he has overall general policy concerns. He observed the current happenings in the federal government led to his belief that the corporate veil over the ARRC should be removed. He noted Congressmen can grill the chief executive officers and professed he does not want to model that behavior with the railroad. However, he said he does want to ask tough questions, to inquire about bonuses and financial questions to avoid the embarrassment that faces other corporations in the U.S. He offered that he has no interest in micromanaging the ARRC. He remarked the Alaska Housing Finance Corporation is a model corporation that was once exempt, but has been under the Executive Budget Act for 14 years. He further opined that AHFC has thrived and prospered, has won national awards, and has improved its bond ratings. He stated that this bill is not an economic death sentence or a shackle for the entity. He further opined that the legislature should have broad authority over a corporation the size and scope of the ARRC.

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REPRESENTATIVE STOLTZE offered the criticism that the ARRC at times displays a corporate arrogance, which he said is not a healthy attitude for a public corporation. He concluded that the ARRC could mature under the Executive Budget Act without constraining its ability to operate as a critical corporate business and transportation entity in the state.

[1:20:32 PM](#)

REPRESENTATIVE MUNOZ inquired as to whether the autonomy of the ARRC would be affected by being under the authority of the Executive Budget Act.

REPRESENTATIVE STOLTZE surmised that the ARRC will express concerns to state that such a change will affect its relationships with private contractors. However, he opined the Executive Budget Act will provide the appropriate oversight. He related his understanding that some changes will happen, but it is appropriate for the state to examine the railroad's business relationships. He stated that prior to the legislative session, "there was a lot of talk about the railroad buying Flint Hills Refinery." He related that this matter has quieted down, and may or may not resurface, but ultimately the legislature should have a role in these types of decisions.

[1:22:45 PM](#)

REPRESENTATIVE GRUENBERG offered that he was not involved in the federal transfer of the railroad to the state. He inquired as to whether anything in the federal law would prohibit this action.

REPRESENTATIVE STOLTZE answered that he thought he had taken down a note on the matter.

REPRESENTATIVE GRUENBERG suggested that if it is necessary to make any changes, the legislature would need a joint resolution to ask the Congress to change the law. He recalled a bill came before the House State Affairs Standing Committee that would allow employees to take unpaid leave to work on disaster matters, but the ARRC asked for a specific exemption from the bill. He highlighted that other such exemptions might already be in place for the ARRC and suggested the sponsor may wish to investigate that matter.

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REPRESENTATIVE STOLTZE agreed to work with Representative Gruenberg to review and research the laws. Representative Stoltze related his understanding that the bill would provide sufficient flexibility. However, he suggested that HB 127 will offer many issues to debate.

[1:25:57 PM](#)

CHAIR WILSON inquired as to how the bill would affect ARRC employees' status.

REPRESENTATIVE STOLTZE explained that the employees would have the same status as other corporate entities such as the AHFC. He characterized the status as a hybrid status, but the ARRC is more complicated due to the union status. He related that HB 127 does not intend to change an employee's status.

[1:27:43 PM](#)

JOHN BITNEY, Staff, Representative John Harris, Alaska State Legislature, stated that he currently works for Representative John Harris, but Representative Stoltze asked him to help assist him with background issues for HB 127. However, he stated that he is not speaking in favor of the bill.

MR. BITNEY related that various state statutes define state agencies. He pointed out that the ARRC is exempted from the State Procurement Act and the Administrative Procedures Act. He related his experience, noting that his AHFC service time did not count as credited service, and when he returned to work for the administration his time at AHFC did not count. He opined that HB 127 is intended to subject the ARRC to the Executive Budget Act under AS 37.07, which outlines the procedures for the budget process including the responsibilities of agencies to submit their revenues and expenditures to the governor's office and to the Office of Management & Budget, and the timeline for the governor to announce his/her budget on December 15th as well as other timelines. He reiterated that this bill would bring the ARRC in as a public corporation.

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REPRESENTATIVE GRUENBERG said he appreciated Mr. Bitney's presence and that he could point out agencies in similar status. He characterized HB 127 as an extremely important bill.

CHAIR WILSON related her understanding that the purpose of HB 127 is to prevent what happened in Washington from happening in Alaska.

REPRESENTATIVE STOLTZE related that as anecdotal comment. He stated that the ARRC should not have a veil of secrecy over a public entity. He highlighted that he does not want to micro-manage the ARRC, but offered he would not want to hear that bonuses were paid or vacations were paid. He opined that HB 127 will help to ensure basic good government and is long overdue. In further response to Chair Wilson, Representative Stoltze said that the administration should have oversight of the ARRC. He recalled conversations with some undisclosed sources that related the bill is long overdue.

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CHAIR WILSON asked if the purpose was to understand the activities of the ARRC.

REPRESENTATIVE STOLTZE related he would like the legislature to have the same thorough, transparent, and professional relationship with the ARRC as with the AHFC. He opined that the AHFC has thrived and prospered.

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MR. BITNEY concurred with Representative Stoltze's remarks. He offered that the AHFC has been fully subject to the Executive Budget Act and has had two credit rating upgrades. He surmised the same was true with AIDEA and the Alaska Commission on Postsecondary Education (ACPE). He related that the credit agencies became comfortable over time with the AHFC's status. He referred to the language in the section of the budget that contains appropriations for corporations. He offered his belief that the state's corporations have received unlimited appropriation authority from the legislature in terms of their ability to receive and expend funds. He opined the Executive Budget Act process is more of a codification of a process to participate in overall policy decision-making in establishing a corporation's budget.

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CHAIR WILSON related that she has reviewed the commentary contained in members' packets. She inquired as to whether the state would be liable for the ARRC under the current bill.

REPRESENTATIVE STOLTZE stated that he does not think liability would change under HB 127. He acknowledged that the ARRC has raised the issue of torts and liabilities. However, he offered his belief that the state would have the same liability under the bill.

[1:39:22 PM](#)

MR. BITNEY explained that the reason why corporations or authorities are set up as enterprise funds is an effort to try to separate the liabilities from the state. He remarked that the state does not want the debts, such as AIDEA bonds since those bonds are not state debts.

CHAIR WILSON recalled the student loan program under the Alaska Commission on Postsecondary Education (ACPE), and related that the ACPE can not buy bonds due to the downturn in the economy. She asked for clarification about what would change under HB 127.

[1:41:07 PM](#)

MR. BITNEY explained that the Executive Budget Act was passed in 1970. He related his understanding that after the 1969 lease sale, the legislature formalized the budget process. He remarked that the ARRC's act outlines the budget process and identifies each agency's responsibilities in the budget process. He stated that in practical terms, the ARRC would need to receive an appropriation in the annual budget to authorize expenditure of their funds. He remarked that nothing is currently in the operating budget for the ARRC budget. He surmised that this is the only public corporation in Alaska not in the operating budget. He related that the remaining state enterprises have a line item in the operating budget. He indicated the biggest difference would be there would be a section in the budget for the ARRC. In further response to Chair Wilson, Mr. Bitney stated the ARRC is a public corporation of the state.

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REPRESENTATIVE STOLTZE offered that the state will not have any input in which projects are funded in the stimulus package funding. He stated that the ARRC funding from the stimulus funding should be part of a comprehensive discussion of all of

the transportation needs in the communities of Anchorage, Fairbanks, and any community along the Railbelt.

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CHAIR WILSON inquired as to whether the ARRC should give dividends.

REPRESENTATIVE STOLTZE answered no. He noted that all of the other public corporations do pay dividends. He recalled that the ARRC said it was not planning on issuing dividends. He offered his belief that some arrogance within the ARRC exists. He pointed out that the Department of Transportation & Public Facilities has safety crossing projects that compete with funding projects, yet the ARRC will not consider assisting in funding. He said he hopes those are the types of things that might be considered. He opined that it would not be micro-management, but rather responsible interaction of a major corporation that transects our communities. In further response to Chair Wilson, Representative Stoltze agreed that if a community existed and the ARRC wanted to build a railroad in those instances the ARRC would accept the responsibility.

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REPRESENTATIVE MUNOZ inquired as to whether AHFC employees are considered state employees.

MR. BITNEY surmised that technically, they are not. However, he surmised the AHFC employees are subject to the Public Employees Retirement System (PERS), but are partially exempt so the employees are not part of the Supplemental Benefits System (SBS). In further response to Chair Wilson, Mr. Bitney offered that the University of Alaska also has a different retirement system. He remarked that a small block of AHFC employees are part of a union.

[1:48:00 PM](#)

REPRESENTATIVE MUNOZ asked if ARRC employees qualify for Public Employees Retirement System (PERS).

MR. BITNEY said he was not certain, although he knew that many of the ARRC's employees participate in labor union organizations.

BILL O'LEARY, Vice President, Finance, Alaska Railroad Corporation (ARRC), mentioned that Patrick Gamble, President, ARRC is also available for questions. He related that the employees of the ARRC are not state employees, but are Alaska Railroad Corporate employees. The ARRC is responsible for the benefit packages for its employees, he stated.

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MR. O'LEARY addressed the question relating to procurement rules. He stated that the ARRC is not subject to AS 36.30 but has substantially equivalent procurement rules. He related with respect to federal stimulus package funding, that the ARRC will hope to receive funding, but the funding will not detract from funds of other agencies. He stated that the ARRC is enshrined in formula programs of the federal Transit Administration and the federal stimulus funds are due to the ARRC's participation in the formula programs.

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CHAIR WILSON related that the sponsor was concerned about expenditures of the stimulus funding. She asked for clarification.

MR. O'LEARY answered that the only restrictions on the federal funding are constraints by the federal agencies including timelines, eligibility of projects, primarily related to the ARRC's passenger service. He mentioned that one source of federal stimulus package funding is from the Federal Highways Administration's Rail Fixed Guideway System, which is designated for railroads.

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MR. O'LEARY, in response to Chair Wilson, opined that currently the ARRC's liabilities by statute are the ARRC's liabilities. He expressed concern that the more control exerted over the ARRC, the greater the chance the state will assume liabilities. He pointed out that he is not an attorney. In further response to Chair Wilson, Mr. O'Leary expressed some concern with respect to long-term contracts as they relate to the ARRC's ability to serve its customers, as well as serve its citizens. Additional concern exists on debt obligations of the ARRC, since initially the debt was not incurred subject to legislative appropriation. He expressed another concern that it may be more expensive to borrow future funds.

1:57:16 PM

CHAIR WILSON asked whether HB 127 would hamper the ARRC since the bill represents a major policy shift.

MR. O'LEARY referred to ARRC comments in the committee members' packet that outline the impact of HB 127. He opined that the bill would be a radical shift for the ARRC.

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REPRESENTATIVE HARRIS inquired as to the effects on the ARRC if it operated under the Executive Budget Act.

MR. O'LEARY reiterated that the ARRC prepared a briefing memo that outlines some concerns. He expressed concern that it could be more difficult for the ARRC to respond to customers' needs.

REPRESENTATIVE HARRIS asked for an explanation of how it would be more difficult for the ARRC to respond to customers' needs.

MR. O'LEARY offered that one area would be the hiring of employees. He related the ARRC's budget is approved by its board, which is reforecast given changes in customer needs. He related a scenario in which the ARRC anticipates in November the equipment and staffing in its budget process to transport a certain amount of gravel. However, in the event that the ARRC realizes in May or June that the Department of Transportation & Public Facilities let additional contracts and significantly more gravel will need to be moved, the ARRC must react quickly to expend additional resources to meet customer needs, he explained.

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REPRESENTATIVE HARRIS opined that other state agencies must do so. He acknowledged that the ARRC is somewhat similar to a private sector business. He related his understanding that Mr. O'Leary is relating that the ARRC would be hamstrung by the Executive Budget Act in terms of hiring employees.

MR. O'LEARY answered that it is unclear how the process would work for the ARRC. He stated that it appears as though it would be problematic. He related his understanding that much would depend on the structure the legislature would set, and whether it would have a fixed budget.

2:01:53 PM

REPRESENTATIVE HARRIS recalled that a number of people have expressed that the ARRC is arrogant, that it does not need to listen to anyone. He offered that he is not stating that the ARRC represents that culture, but rather that it has that reputation. He reiterated that the generally held viewpoint is that the ARRC does not answer to anyone. He recognized that the ARRC is a wholly owned subsidiary of the state. He inquired as to whether Mr. O'Leary understands the viewpoint.

MR. O'LEARY related that he understands the concern. He offered his belief that under Mr. Gamble's leadership, the ARRC has taken extraordinary efforts to listen to the various community concerns, its customers, and the public. He acknowledged that any number of issues can spark controversy since the ARRC covers 650 miles of track and is bound to impact people. He opined that some people will not always be pleased with the decisions that the ARRC makes. However, he further opined that the ARRC has come a long way in terms of the ability of management to listen and act in the best interests of the ARRC and the state. He commended Mr. Gamble's leadership of the ARRC.

2:04:37 PM

MR. O'LEARY related that the venue for public input is a seven member board, appointed by the governor. He mentioned that two commissioners serve on the ARRC board, that it holds public meetings that take public comment. Aside from the formal board process, the ARRC has undertaken outreach to entities that have expressed concern, he stated.

REPRESENTATIVE HARRIS maintained that he is expressing the views that he has heard in the legislature.

MR. O'LEARY answered that he understands Representative Harris's concern.

2:05:31 PM

MR. O'LEARY, in response to Representative Gruenberg, answered that in terms of legal issues that the ARRC legal team has identified a number of issues that it believes would require analysis as to the impacts of HB 127 on the federal transfer act, the Alaska Railroad Transfer Act of 1982 (ARTA), prior to moving forward.

REPRESENTATIVE GRUENBERG requested that all public legal documents concerning HB 127 be made available to the committee. He inquired as to whether Mr. O'Leary was aware of the ARRC employees' position on the bill.

MR. O'LEARY answered that he can not purport to speak for the employees, many of whom belong to five separate unions.

[2:07:47 PM](#)

MR. O'LEARY, in response to Representative Gruenberg, answered that during the discussions prior to passage of the Alaska Railroad Transfer Act of 1982 (ARTA), placing the railroad under the Executive Budget Act was considered, but significant work and studies were performed and a decision was made to exclude the ARRC to allow it to be flexible and serve its customer base.

MR. O'LEARY recalled that during the federal government ownership, using a federal process that was equivalent to the state's Executive Budget Act proved problematic for the ARRC. He surmised that the railroad also had significant deferred maintenance, and that funding and resources were not always available under the federal process to serve customers well. He opined that the legislature determined that the preferred model was one that would be a self-sustaining entity, yet would be flexible enough to change with business fluctuations.

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REPRESENTATIVE GRUENBERG expressed concern that HB 127 would have a major impact on the legal framework of the ARRC. He opined that not all of the issues have yet arisen. He stated that he was very interested in the bill.

CHAIR WILSON offered that some additional questions may be answered by other testimony on the bill.

[2:11:10 PM](#)

REPRESENTATIVE GRUENBERG inquired as to whether circumstances have significantly changed that would require the legislature to make a change. He expressed interest in not just reviewing whether the decision to transfer the railroad to a public corporation was appropriately made, but if circumstances warrant making a change at this time.

MR. O'LEARY commented that the ARRC is trying to figure out "what is broken" that requires a change. He opined that from the ARRC's perspective, the railroad is operating on a good model, and while many things have changed, the model has withstood time. He further opined that this is not the first time the question has been raised, but each time the legislature has considered making changes, the consensus has been that the model in place is the most appropriate model.

[2:13:19 PM](#)

REPRESENTATIVE HARRIS inquired as to whether anyone at the ARRC has contacted the sponsor of HB 127 to determine the reason for the bill.

MR. O'LEARY related his understanding that conversations have been held with the sponsor's office. In further response to Representative Harris, Mr. O'Leary indicated that the ARRC is willing to hold discussions with Representative Stoltze.

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REPRESENTATIVE JOHNSON recalled that at the time of the transfer to the ARRC, the state was not interested in the railroad. He opined that the federal government did not manage the entity, that it was losing money, and the state did not want the railroad under the Executive Budget Act since it would assume the responsibility for potential cleanup and liabilities. Thus, the entity was established so the state would not have that responsibility. He further opined that he was not sure the state would do a better job. He surmised that the history provides some reasons why the state did not place the railroad under the DOT&PF, just as it hosts the Alaska Marine Highway System (AMHS). He offered his belief that the ARRC works, and he is not sure the state should backtrack. He acknowledged that he has experienced the arrogance. He said, "If that's the situation, maybe we don't want to throw the baby out with the bathwater, but this is a conversation that's very important that we start having." He offered that it may be the best solution but highlighted that the legislature should explore all possibilities prior to bringing government into running what has been a fairly successful business model. He said, "I'd like to spin off some more of our agencies as opposed to bringing more in."

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CHAIR WILSON inquired as to overall budget for the ARRC.

MR. O'LEARY answered in 2008 the ARRC expenditures were \$140 million, and it had a net income of \$12.5 million. He offered that the 2009 Capital Budget is approximately \$138 million, which he stated is larger this year. Mr. O'Leary, in response to Chair Wilson, answered that the ARRC is preparing for federal stimulus projects and has a list of projects ready to meet the federal deadlines. In further response to Chair Wilson, Mr. O'Leary explained that depending on the project, the ARRC partners with the private sector. He described one project in which the ARRC will provide management, but the private sector will provide contractors. Another project is to rebuild the railroad track between Anchorage and Fairbanks, which is a project that is in its fourth of five years and the ARRC is using almost exclusively using ARRC labor union employees. He characterized the labor sources as a mix.

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CHAIR WILSON inquired as to whether all ARRC employees are union employees.

MR. O'LEARY answered that three-fourths of its workforce is union labor, which is comprised of five unions.

[2:19:33 PM](#)

REPRESENTATIVE HARRIS recalled the legislature's concern over the status of the Flint Hills - Alaska North Pole Refinery (Flint Hills). He further recalled that the refinery produces approximately 40 percent of the ARRC's freight. He inquired as to whether if passage of HB 127 will have any effect on the ARRC, with respect to the Flint Hills refinery.

MR. O'LEARY acknowledged that Flint Hills refinery represents 40 to 45 percent of the ARRC's revenue stream. He stated that the ARRC has no plan to purchase the refinery. He offered that the Department of Natural Resources is having an ongoing dialogue with Flint Hills, and the ARRC has had peripheral involvement. However, he surmised that any major capital expense for the ARRC would need to be financed through public debt. Thus, currently, the ARRC would need to request authorization to issue bonds, if it were to purchase the refinery. He said he was not certain how that would work if the ARRC were under the Executive Budget Act.

MR. O'LEARY offered to provide the information to the committee.

[2:22:27 PM](#)

JASON BRUNE, Executive Director, Resource Development Council (RDC), stated that he is testifying in opposition of HB 127. He explained that the RDC is statewide nonprofit membership funded organization founded in 1975. He offered that its membership is comprised of individuals and companies from Alaska's oil and gas, mining, timber, tourism, and fisheries industries, as well as Alaska's Native corporations, local communities, organized labor, and industry support firms. He noted that RDC's purpose is to link these diverse interests together to encourage a strong diversified private sector in Alaska. Additionally, RDC hopes to expand the state's economic base through the responsible development of its natural resources.

MR. BRUNE opined that HB 127 seeks to make a fundamental change in the operation of the railroad despite that fact that the current operational structure has served the state well for over 20 years and has produced substantial benefits to Alaska since it was acquired from the federal government in the 1980s. He further opined that the ARRC is a well run self-sustaining entity that provides safe, economical transportation services to residents, visitors, the military, and many of RDC's members. Since the ARRC has fallen under state ownership, it has been profitable for over 20 years and has made hundreds of millions of dollars in capital improvements. He related that an in-depth assessment conducted before the transfer to state ownership determined that most of the financial problems encountered under federal ownership resulted from following federal budgeting procedures rather than allowing its management to develop operating and capital programs on the same basis as a privately owned railroad. He offered his belief that it is imperative to heed advice of this assessment and not doom the railroad to the same fate. He opined that the current business model works well for the ARRC. Although the ARRC is exempt from the Executive Budget Act, it has significant state oversight over operation and management practices. He noted that the RDC's members believe the ARRC provides a valuable and efficient service. He said, "We are proud of the fact that it pays its own way and has a good relationship with its customers, nearly all of whom are members of the RDC. In our view it makes no sense to make sweeping changes when something isn't broken."

[2:25:39 PM](#)

BOB THOMAS stated that he worked on issues with the railroad six years ago, but since then a change in management has brought a new attitude, which seems to embody "the end justifies the means." He opined that the ARRC puts special interests and political influence above the community's and public needs. He further opined that the ARRC has shown a complete disregard for regulations and has deliberately tried to mislead the public in Fairbanks. He said, "They show the willingness to even compromise their own operations to satisfy special needs."

[2:28:29 PM](#)

CHAIR WILSON asked if he could provide details that would demonstrate the ARRC's inability to listen.

MR. THOMAS answered that an ARRC project in Fairbanks would have rerouted the railroad line through Fort Wainwright instead of following the Parks Highway. The latter route would have eliminated all of the railroad crossings. He maintained that instead, the ARRC attempted to route the track around Fort Wainwright for political purposes. He related that the ARRC informed the community that it could not parallel the Parks Highway since it would need to "double track" the line. He advised that the ARRC board verified that was not a requirement. Additionally, a Freedom of Information Act (FOIA) request did not provide most of the information which he surmised was due to the security nature. He stated the ARRC dropped the project routed through Fort Wainwright due to the community's inability "to get their act together." However, he noted that resolutions were provided by every local government requesting the ARRC to include in its studies the route that would have eliminated all crossings.

[2:32:11 PM](#)

DON LOWELL, President, Alaska Transportation Consultants, and a member of the Rail Safety and Development Group. He stated that he forwarded an earlier statement. He asked to testify in support of HB 127. He related that main goal is to place the ARRC under the Executive Budget Act, which essentially would require the ARRC to seek legislative approval prior to expending federal funds. He opined that the ARRC needs to do so. He offered that the ARRC is a state owned system, which is one of four vital transportation modes, yet it operates without legislative oversight. All state and local governments require legislative approval, including the DOT&PF which receives authority for its expenditures. He further opined that the ARRC

operates with impunity, and has misused millions of dollars on a fatally flawed study to reroute the railroad on Fort Wainwright. Last year, the community reported to the House Transportation Standing Committee that the ARRC did not have legislative authority to reroute the railroad. He related that the committee informed the Federal Railroad Administration and the ARRC dropped the project.

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MR. LOWELL stated that \$36 million was budgeted on the flawed Fort Wainwright project. Since its transfer from the federal government the ARRC has spent hundreds of millions on projects without legislative approval or public hearings. He opined that HB 127 would ensure that all publically owned agencies will receive the same public scrutiny and approval on their budgets and expenditures of federal and state funds. He surmised that since the ARRC misled his community that legislative oversight is imperative. He referred to the ARRC program and projects and specifically to the Seward coal loading facility. He pointed out that the ARRC spent \$9.5 million to purchase a 20-year-old Korean facility, anticipates it will spend \$650,000 this year in repairs, and will require several million dollars to modernize the obsolete facility. He highlighted that the ARRC purchased the facility without legislative approval or public hearings. He further opined that if the ARRC had been under the Executive Budget Act that it is questionable that the legislature would have approved the purchase, considering that the Matanuska-Susitna port will eventually be the coal-loading facility. He asked what would happen to Seward's coal-loading facility when that occurs. This bill is very important to the state since it will require complete oversight and public hearings, he stated.

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DONALD CALLAHAN, member, Rail Safety and Development Group, stated that his community is interested in energy problems in Fairbanks. He opined that a number of entities are "not happy with the Alaska Railroad." He acknowledged that the ARRC is in the business of making money. However, he opined that the ARRC should not do so to "the detriment of the overall good of the people of the State of Alaska." He maintained that the ARRC is often to the detriment of the state. He highlighted that some properties that are leased could be better used by state entities. He surmised that the "railroad makes deals that perhaps benefit major shippers." He offered examples such as the Usibelli Coal Mine, Inc. and ExxonMobil Corporation. He

pointed out that the legislature should be familiar with the agreements and the details of any agreements. He opined that the ARRC, as a semi-private corporation is a good model but it needs oversight. He offered the Rail Safety and Development Group's strong support for HB 127.

CHAIR WILSON commented that she wished the Alaska Marine Highway System had a similar system so it could lease land adjacent to the waterways.

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PAT DAVIDSON, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, explained to members that an audit report ten years ago commented that the ARRC could be brought under the Executive Budget Act. She related that the division performed seven or eight audits in the 1990s. The auditors observed poor decision-making on the part of the ARRC's executives, non-adherence to their own procurement requirements, and potential ethics violations. She emphasized those reports were ten years ago. However, the impetus for providing the comment, and not a recommendation, that the ARRC be brought under the Executive Budget Act is the view that the Executive Budget Act gives the opportunity of the legislature to evaluate the financial activities of the ARRC. Additionally, besides the Executive Budget Act, the Fiscal Procedures Act, the Personnel Act, and a series of statutes impose requirements on agencies. She offered that the auditors viewed the Executive Budget Act as an opportunity for the legislature and the governor to have some input due to the ARRC's past problems.

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CHAIR WILSON inquired as to whether any recent audits have been performed.

MS. DAVIDSON answered no, that the audits were specific legislative requests that came before the Legislative Budget & Audit Committee (LB&A). She related that the division has not had more recent audit requests. Thus, she related she cannot speak to the current status of the ARRC with respect to prior issues and management of the ARRC.

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CHAIR WILSON inquired as to whether she could provide more details about the "unwise decisions" mentioned in the audit.

MS. DAVIDSON offered to provide copies to the committee. She recalled some issues had to do with the Ship Creek development, and the lack of cost benefit analysis in the decision to sell heavy equipment and enter into lease agreements for new equipment. She related in various contracts that the ARRC entered into, that it used a first come first served approach without consideration for open competitive business opportunities. She highlighted that the ARRC has assets such as land. She said, "There's a lot of business opportunities for the railroad and it was in those things that we saw the problems."

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PATRICK GAMBLE, President and CEO, Alaska Railroad Corporation (ARRC), offered to provide additional details on questions posed to Mr. O'Leary. He highlighted that an opportunity exists since it has been ten years since the legislature has considered bringing the ARRC under the Executive Budget Act. He agreed that the review needs to be done periodically, since conditions change and if the legislature's expectations have not been fully met, it is important to determine the reasons it did not meet expectations and the ARRC should provide a remedy. He offered his support for that process. He said that this process necessitates that the corporate act, AS 42.40 needs to be reviewed in great detail. He related that during his initial review he found 50 items that will need to be examined to determine the effect of placing the ARRC under the Executive Budget Act.

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MR. GAMBLE related the history of the Alaska Railroad such that the federal government wanted to divest itself or shut down the railroad. However, he offered that the state decided it needed a railroad. He surmised that the state wanted to change the federal model to avoid similar problems and underwent a wholesale rewrite which resulted in the corporate act that the ARRC currently operates under. He opined that the fundamental principle was for the ARRC to operate as an entrepreneurial business except for certain elements of control that the state needed to maintain. He related about eight pertinent items, such as board membership and audits. He emphasized the single most repeated statement in Alaska Railroad Transfer Act of 1982 (ARTA), is the overriding concern that in selling bonds, that the Alaska Railroad not over obligate.

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MR. GAMBLE opined that the provisions that pertain to bonds were carefully written into the enabling act. However, he pointed out that some provisions were relaxed, such as the need for the ARRC to act independently. He said, "It doesn't say in there that the railroad should act arrogantly. And of course I'm struck by that term. I heard that a lot when I first came on the railroad and we've worked very, very hard to try to understand what that means and then get rid of it."

MR. GAMBLE said that what he's found over eight years is that arrogance is in the eyes of the beholder. He said, "If I don't contact anybody, if I won't talk to anybody, if I won't go to their office or go visit or whatever and simply look the other way, close the drapes, that gives pretty good evidence of a conscientious desire to be aloof and arrogant."

MR. GAMBLE noted that the ARRC has demonstrated a good record of speaking publically in every possible forum. He said, "I cannot recall a single time that I have ever refused to meet in a public forum or contact a legislator. And so I hope that some of that kind of talk doesn't say otherwise because that simply is not true." He opined what is true is that the railroad is an operating entity "with wheels turning, with smoke belching, with ripping up tracks and moving through people's property that families owned many, many years ago." He stressed the natural friction that occurs when encountering noise nuisances and land issues. He stressed in instances in which a person who wishes to purchase property that he/she is leasing, and the ARRC denies the request, that the ARRC is sometimes accused of arrogance. Instead, he emphasized that the ARRC has listened very carefully, but has a fiduciary responsibility to manage the land and cannot sell it. Thus, it is sometimes necessary to say no. He offered that if it is the intent of the legislature that the ARRC should sell state land, it may be one of the conditions that have changed that needs to be examined. He offered his belief that the problem will not be solved solely by placing the ARRC under the Executive Budget Act.

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MR. GAMBLE highlighted that he has a concern about what is not working and why the ARRC should be under the Executive Budget Act. He stressed the ARRC's record. He offered that the ARRC has nearly \$1 billion in capital improvements from a little

railroad that was purchased for \$22 million. He further noted that the ARRC's assets have grown to nearly \$900 million. He explained that the ARRC has experienced a 21 percent combined average growth rate for its capital program. He pointed out the ARRC has won awards for passenger service and safety. He opined that there is not a shred of evidence that the ARRC would work better under a plan that is similar to federal ownership.

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MR. GAMBLE offered his belief that the issue is not just this bill, which would place the ARRC under the Executive Budget Act for budget approval, but the likelihood that other bills would be introduced that could affect the ARRC, depending on routine constituent complaints or rate issues. He indicated that instead of contacting the ARRC Board in a public meeting to voice his/her concern, that a person would take the matter to his/her legislator for resolution. He surmised that type of model would not be a model that would improve the ARRC. He highlighted that with respect to the source of current discontent in Fairbanks, the issue had often been discussed, including discussions held in public forums before the assembly and the mayor. He opined that the community and ARRC simply disagree. He said, "That's business." He further opined that it is a stretch to suggest the ARRC does not care.

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MR. GAMBLE offered his belief that when issues become heated comments are made about arrogance. He highlighted that the ARRC must say no sometimes and that can be perceived as unfeeling or uncaring. He said:

I've told my staff we have to learn how to say no without saying no. That my policy is when we have to say no, we've got to do it with full knowledge and background, that we owe an explanation, that we have put the facts forward, that our documents are open to the public - that we say no in a public forum on the record, just like I've done time and time again. Because that's the way we show people that it's not a case of being unfeeling or uncaring, but it's a case of as a business or as a fiduciary holders of the state's responsibility in land management, there are times when we are simply going to have to say no. I'm sorry if it comes across as arrogance and I will continue to work that very, very hard because I do not

want this railroad, whether I'm still here or not, to have a reputation like that. And if I can take some suggestions, specifically, on how to get rid of that reputation, which continues to kind of bother us, I would be very happy to take suggestions from the committee.

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CHAIR WILSON announced that the committee would continue testimony at a subsequent meeting.

MR. GAMBLE offered to meet with the bill sponsor to discuss some of the issues.

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**ADJOURNMENT**

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:59 p.m.