

SENATE FINANCE COMMITTEE
March 5, 2018
9:02 a.m.

[9:02:54 AM](#)

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Anna MacKinnon, Co-Chair
Senator Click Bishop, Vice-Chair
Senator Peter Micciche
Senator Donny Olson
Senator Gary Stevens

MEMBERS ABSENT

Senator Natasha von Imhof

ALSO PRESENT

Senator John Coghill, Sponsor; Rynniva Moss, Staff,
Senator John Coghill; Bill O'Leary, President and CEO,
Alaska Railroad Corporation; Jon Cook, Chairman, Board of
Directors, Alaska Railroad Corporation.

PRESENT VIA TELECONFERENCE

Brad Pickett, Appointee, State Assessment Review Board;
Curtis McQueen, CEO, Eklutna Inc, Eagle River; Evelyn
Arnott, President, Greater Fairbanks Board of Realtors; Tim
Worthen, Owner, Premier Alaska Tours; Andy Behrend, Chief
Legal Counsel, Alaska Railroad Corporation.

SUMMARY

SB 86 ALASKA RAILROAD CORPORATION LAND

SB 86 was HEARD and HELD in committee for further
consideration.

STATE ASSESSMENT REVIEW BOARD APPOINTMENT: BRAD PICKETT

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9:03:47 AM

Co-Chair MacKinnon explained that the State Assessment Review Board consisted of five persons appointed by the governor to serve at the pleasure of the governor. She announced that each person must be knowledgeable of assessment procedures. She furthered that specifically, the department shall assess property for the tax levied under the statutes.

9:04:35 AM

BRAD PICKETT, APPOINTEE, STATE ASSESSMENT REVIEW BOARD (via teleconference), discussed his qualifications and desire to serve on the board. He stated that he was an assessor in the Mat Su. He stated that he had lived in Alaska since 1998. He announced that he had worked at the Mat Su Borough for sixteen years, and eight of those years he was the commercial appraiser. He furthered that he had been the assessor for the past four years. He felt that his background would help him to make fair and equitable decisions on the board. He shared that his cost approach would help value the oil and gas property. He felt that serving on the board would give him an opportunity to serve the community and the state.

Co-Chair MacKinnon wondered whether the Mat Su assembly or its government in a lawsuit or had joined in challenging Federal Energy Regulatory Commission (FERC) for the movement of the pipeline location. Mr. Pickett replied that he did not believe that there was a lawsuit, but there was a request that the Regulatory Commission of Alaska review Point McKenzie again as a viable location for the new pipeline. He stated that the attorney had most recent said that Regulatory Commission of Alaska agreed to review it as a possible site.

Co-Chair MacKinnon wondered whether that had been filed with FERC. Mr. Pickett replied in the affirmative.

Co-Chair MacKinnon wondered whether there was a conflict of interest. Mr. Pickett felt that it would not be a conflict of interest.

Co-Chair MacKinnon queried specific projects that may be similar to a pipeline tariff. Mr. Pickett replied that he had not done any valuations for pipelines, with the exception of water utilities. He understood that those may not be comparable. He remarked that he had valued the water and sewer utility for the new prison.

[9:10:03 AM](#)

AT EASE

[9:10:25 AM](#)

RECONVENED

[9:10:32 AM](#)

Co-Chair MacKinnon stressed that it would be a valuation of the pipeline and not the tariffs.

Vice-Chair Bishop MOVED to FORWARD the appointment of Bradley Pickett to a joint legislative session for consideration of the State Assessment Review Board. There being NO OBJECTION, it was so ordered.

[9:11:21 AM](#)

AT EASE

[9:13:11 AM](#)

RECONVENED

#sb86

SENATE BILL NO. 86

"An Act relating to the sale or other disposal, leasing, or encumbrance of Alaska Railroad Corporation land; and providing for an effective date."

[9:13:38 AM](#)

SENATOR JOHN COGHILL, SPONSOR, discussed the reason for the bill. He shared that the railroad was significant in his community. He stated that the Port of Anchorage and the Port of Seward supplied the interior. He shared that he had been historically critical of the railroad about some of their leasing policies. He noted that the issue came up of disposing land into private hands, so the bill attempted to give the railroad the right to deal with real estate that

they were currently barred from addressing. He stated that the bill would repeal a position that barred the railroad from selling real estate, and gave a three-year window to sell that real estate. The benefit to the state would be greatly significant, especially beneficial to interior Alaska. He stated that there were a couple of parcels of land that were leased, so allowing the purchase of the land made it financeable.

Senator Olson noted that there was historically a tension between the railroad and the landowners. He queried any opposition to the bill. Senator Coghill responded that there was not much opposition to the bill. The issue related to right of way along the more populated corridors.

Senator Olson wondered whether the funds would be put into the general fund, or whether the railroad would have control of that money. Senator Coghill replied that there was an examination of the original act that brought the railroad to Alaska from the federal government. He stated that the funds would be intended for railroad use. He felt that Ms. Moss could provide further research on the subject.

[9:20:16 AM](#)

RYNNIEVA MOSS, STAFF, SENATOR JOHN COGHILL, discussed the Sectional Analysis and the Explanation of Changes (copies on file). She stated that Sections 1, 3, 6, 8, 10, and 12 eliminated the statutory requirement for legislative approval of land sanctions affecting utility corridors, land leases, or land disposal if it was a land sale or lease longer than 95 years. She noted that Sections 2, 4, 7, 9, 11, and 13 were added in the Senate Resource Committee substitute that repealed Sections 3, 6, 8, 10, and 12 in three years; and reinstated the statutory requirement for legislative approval. She announced that Section 12 required the right of first refusal for current leases. She recommended that the committee consider an amendment that would give the lessee 90 days to exercise that right. She stated that Section 12 had added verbiage that allowed for first right of refusal. The two changes were the three year sunset and the right of first refusal. She shared that Section 5 reenacted legislative approval required in three years.

Co-Chair MacKinnon queried a historical perspective or other comments on the bill. Ms. Moss read under State Operation of Public Law 97.468, which was enacted January 14, 1983:

The revenues generated by the state-owned railroad shall be retained and managed by the state-owned railroad for railroad and related purposes.

Ms. Moss referenced the congressional record, under which Senator Ted Stevens explained the Railroad Act:

The public law specifies that the state-owned railroad shall retain and manage its own revenues. The purpose of this provision was to avoid the need for annual appropriations by the state for the railroad.

Ms. Moss stated that it was state land, but under state and federal law the proceeds were generated directly to the railroad. She furthered that under state law there was a separate accounting system set up by the railroad.

Senator Olson noted that there were current financial struggles for the railroad and the state. He felt that the state had a revenue stream from the railroad. He wondered how to avoid a future financial problem. Ms. Moss replied that the reason for the three-year sunset was to provide an opportunity to prove to be good property managers.

Senator Stevens wanted to ensure that the money derived from the sale were not used to run the daily operation of the railroad resulting in no land. Ms. Moss commented that she had heard lengthy discussions with the railroad and Senator Coghill.

[9:25:29 AM](#)

Co-Chair Hoffman wondered how much land the railroad owned in the non-corridor real estate portfolio, and requested a map of the locations. Ms. Moss replied that 36,000 acres were appropriated by federal law; approximately on-half was used in the corridor; so there was approximately 18,000 acres of land. She agreed to provide a map.

Co-Chair Hoffman queried the valuation of the acreage. Ms. Moss replied that she did not know that value, but felt other testifiers could provide an estimate.

Co-Chair MacKinnon wondered whether that were any encumbrances on the titles of the property that was transferred from the federal government. She recalled a lawsuit where the university began moving through land that resulted in suing related to leases. Ms. Moss deferred to authorities from the railroad.

[9:27:49 AM](#)

BILL O'LEARY, PRESIDENT AND CEO, ALASKA RAILROAD CORPORATION, introduced himself.

[9:27:59 AM](#)

JON COOK, CHAIRMAN, BOARD OF DIRECTORS, ALASKA RAILROAD CORPORATION, stated that he had been on the board since late 2009. He shared that he had served on the Real Estate Committee the entirety of his tenure on the board; and had served three years as chair. He shared that the railroad had prided itself from an operational perspective of being self-sufficient and self-sustaining. He remarked that there was some economic decline with freight revenues decreasing from a peak of \$100 million in 2011 to an unaudited figure in 2017 of \$72 million dollars. Therefore, there was a 28 percent decline in freight revenues driven largely by the closure of Flint Hills Refinery and the elimination of coal export out of the Usibelli Mine. He remarked that there was also general economic slowdowns in the North Slope and other areas. He remarked that the railroad had remained profitable, but struggled trying to offset the declines in revenue. He stated that in his tenure, the railroad had seen three restructurings. He shared that 300 employees had been cut from a peak of approximately 800 employees to 500 employees. He shared that there had been a restructuring of business in terms of reducing freight service from to five days a week to Fairbanks, and the organization had been flattened. He remarked that, from a cost perspective, there had been an overall significant decrease, with little left on the cost side. He shared that when the railroad was established in the state, the federal government had given the Railroad Endowment to provide revenues to shield the railroad through some of the economic cycles. He remarked that the railroad was over 500 miles with minimal density and a small population with a cyclical commodities market. The real estate portfolio had provided significant revenue stream to the railroad. He shared that over the recent 10

years the real estate net income provided 86 percent on average of total net income. He stressed that it was critical to ensuring operation of the company and invest enough necessary capital.

[9:33:46 AM](#)

Co-Chair MacKinnon queried the valuation of the available land. Mr. Cook replied he did not have a value, because it was extremely expensive to appraise the parcels. He furthered that the value of the 18,000 acres was hundreds of millions of dollars.

Co-Chair Hoffman queried the last time the railroad came to the legislature for a approval to sell land, and wondered how much land had been sold in the recent five years. Mr. Cook replied that he had a list of transactions. He stated that in the last five years there were no sales.

Co-Chair MacKinnon announced that the legislature had approved many sales, but most recently the approvals were mostly transfers.

[9:35:29 AM](#)

Co-Chair Hoffman queried the process to identify parcels that were up for sale, or would that be left to individuals interested in parcels. He wondered whether the disposal process would be a competitive bid. Mr. Cook replied that most of the sales were to Department of Transportation and Public Facilities (DOT/PF) and other municipal entities. He noted that there were very few sales with the private sector. He shared that Chena Landing were lots on the Chena River that were too shallow for commercial purchases, so they could be used as single family residences.

Co-Chair Hoffman surmised that it was possible for the railroad, under the legislation, to negotiate a sale without the land being subject to a competitive bid process. Mr. Cook replied in the affirmative, because that was in existing statute. She stressed that it would not change. It would either be appraisal or competitive bid. He stressed that there was a public noticing requirement with any transaction.

Senator Micciche stressed that there was no land sold since 2009. He felt that the logic for the need for the board

having tools similar to DOT/PF and the Alaska Mental Health Trust Authority (AMHTA) was to make the land more leasable. He wondered why there was an examination of property that was already leased. He felt that the first right of refusal could result in a loss of value for the railroad. Mr. Cook replied that because the railroad was a public corporation, so there was a requirement to respond to the tenant and the state. He shared that there was some activity predating some of his time on the board, when the federal government had extremely low lease rates. He remarked that when the state took over, the state attempted to obtain fair market value. He felt that the attempt was slightly misleading, because the appraisal was fair market value, but there was pressure on the legislature to limit those increases. He understood that limitation, because of business needing to provide for cash flow. He stressed that there was a process to reappraise lands every five years. He noted that many of the leases were subject to caps at no more than 25 to 35 percent in any five year period.

Senator Micciche remarked specifically about the lack of competitive bid process. He wondered whether there was a vision like the AMHTA land office. He wondered what would occur should there be an offer from someone on a piece of property without competitive bid. He asked whether there would be a lock in the sale price with the public notice. Mr. Cook responded that he did not intend to pursue policy that would sell currently leased land, unless it was from the existing lease holder. He shared that there was also a fair market value appraisal process that would be utilized without a clamor for the lot.

Senator Micciche surmised that there could be an offer from an entity that wanted to purchase a piece of property, so public notice occurred, would there be an opportunity for the railroad to legally change its mind to a higher bidder at that point. He noted that the process would be streamlined, so there would be no more legislative oversight. He understood the worry related to working between legislative sessions, but asked whether the sale went to the highest bidder. Mr. Cook felt that there would not be transactions without the belief that the railroad would receive full value. He remarked that it would depend on the purchase and sale agreements.

[9:45:32 AM](#)

Senator Micciche stressed that there would be a relinquishment of the tool of the excuse of the legislature. Mr. Cook replied that there was a fear at the board level that there would be a run on the land. He stressed that he did not want to operate from a position of fear. He felt that the railroad needed to evolve, and understood bearing the market on what was reasonable in attempting to sell the lands. He understood that the legislature could be an "out", but he never had a problem saying no. He remarked that three years was not much time in the real estate developing world, but felt that it was a reasonable amount of time to show that the sales and proceeds could be managed by the railroad.

Senator Stevens understood that the funds from sales would not be used for the day to day operations of the railroad, rather would be reinvested in the railroad. Mr. Cook replied in the affirmative. He explained that the intent was not to take the one-time money for a one-time expense. He stated that there was a tentative award to put a road into the subdivision.

Co-Chair Hoffman queried the intent of the board and administration, should the legislature not pass the bill, related to the Chena parcels. Mr. Cook responded that that the thirteen acres had been rezoned and up for sale with the caveat that it was subject to the legislative authority. He stated that there would be a refund of the earnest money.

Co-Chair Hoffman felt that the railroad should have asked for the approval before offering to sell the land. He wondered whether there had been other dialogs with individuals or corporations about selling land upon passage of the legislation. Mr. Cook noted that the list of transactions showed a lack of private sector names. He felt that the legislative process was a daunting task for potential homeowners.

[9:51:26 AM](#)

Co-Chair Hoffman surmised that there were no other dialogs with individuals or corporations for potential sale through the legislation. Mr. Cook replied that there had been several transactions that were either signed subject to the bill or in discussions. He stated that there were some firm deals.

Co-Chair Hoffman queried the property value. Mr. Cook replied that the exchanges did not bring revenue to the corporation. He asserted that the land value of all the parcels were close to between \$7 million and \$9 million.

[9:53:52 AM](#)

CURTIS MCQUEEN, CEO, EKLUTNA INC, EAGLE RIVER (via teleconference), spoke in support of the bill.

[9:59:37 AM](#)

EVELYN ARNOTT, PRESIDENT, GREATER FAIRBANKS BOARD OF REALTORS (via teleconference), spoke in support of the legislation.

[10:01:13 AM](#)

TIM WORTHEN, OWNER, PREMIER ALASKA TOURS (via teleconference), spoke in support of the bill.

Co-Chair MacKinnon CLOSED public testimony.

Co-Chair Hoffman queried the status of the subsurface rights. Mr. Cook deferred to Mr. Behrend.

[10:07:24 AM](#)

ANDY BEHREND, CHIEF LEGAL COUNSEL, ALASKA RAILROAD CORPORATION (via teleconference), replied the railroad held the entire federal interest in right-of-way in the transfer from the federal railroad, including mineral rights. He remarked that those rights could be sold where they were located.

Co-Chair Hoffman wondered whether the mineral rights would be specifically identified of which ones were assumed to be transferred. Mr. Behrend replied that it was a determination to be made by the board when the transactions were approved. He noted that it was typical to identify whether it was full fee simple, which would include the mineral rights.

Co-Chair Hoffman wondered whether gravel was considered surface or subsurface rights. Mr. Behrend replied that typically gravel would be considered subsurface rights. The

standard approach to gravel was that an license would be issued for excavation with public notice. The prices were set based off of DOT/PF prices.

[10:10:18 AM](#)

Co-Chair Hoffman noted that an individual could bypass the process, and receive the gravel to sell. Mr. Behrend agreed. He assumed it would be part of the appraised value of the property.

Vice-Chair Bishop wondered how much of the remaining 18,000 acres of the 36,000 acres would be fee simple. Mr. Cook replied that the vast majority of the railroads property was fee simple.

Co-Chair MacKinnon queried more information about fair market value, best interest finding, and "or" versus "and" in the appraisal process. She asked for a restated of the process as a board to determine value for the railroad. Mr. Cook replied that there were two different paths. He stated that there would be advertised property. He furthered that folks would approach the railroad looking to purchase properties. He stated that under either scenario, the railroad would enter into a purchase and sale agreement with the individual. He explained that there would be an appraisal on an unadvertised parcel, or a competitive bid process. He stressed that once a purchase and sale agreement was signed it would trigger the public notice requirements, and assuming no adverse public comment the sale would be closed. He stressed that there must be a best interest finding.

Co-Chair MacKinnon understood that the board would approve the best interest findings. Mr. Cook replied in the affirmative.

[10:15:12 AM](#)

Co-Chair MacKinnon surmised that it was the intent to sell fee simple property with subsurface rights. Mr. Cook replied in the affirmative. He stated that there was gravel potential at Eklutna, so there may be an examination during the land exchange to value those rights. He stressed that for a single family home there would be a fee simple bundle.

Co-Chair MacKinnon asked whether that would occur for the Healy Reserve, which was the largest railroad reserve in the state. Mr. Cook replied in the affirmative. He stressed that the transactions in Healy had nothing to do with the mineral value of those properties.

Co-Chair MacKinnon announced that the Denali Borough comments spoke to multiple layers of land situations across the state. She stated that it specifically pointed to the Tri-Valley Community Center sitting on leased land. Mr. Cook agreed.

Co-Chair MacKinnon wondered whether there would be a proposal to sell that property. Mr. Cook replied that there were discussions. He stated that it was the intent of the railroad to sell the land, and then there would be sales to individual landowners.

Co-Chair MacKinnon wondered whether there would be a rider on the sales agreements, rather there would be a fee simple sale to keep out of the transaction. Mr. Cook agreed.

Co-Chair MacKinnon wondered whether the federal government retained any restriction on the properties. Mr. Cook replied in the negative. He stated that the only barring in statute was right of way, and essential for railroad operations.

Co-Chair MacKinnon wondered whether non-essential right of way could be sold. Mr. Cook replied in the negative. He stressed that right of way could not be sold.

[10:20:11 AM](#)

Senator Micciche wondered whether there were sales of Alaska Railroad land in the past. Mr. Cook replied that he was not aware of any sales of land to private entities.

Senator Micciche stressed that he had been warned about the life lesson of never touching the principal. He noted that the no other transfers had not resulted in a loss of subsurface. He queried any indication of the value of the minerals on the land. Mr. Cook replied that he was not aware of any other mineral potential other than gravel and hard rock reserves.

[10:25:32 AM](#)

Vice-Chair Bishop surmised that "hard rock" referred to the aggregate and not hard rock mineral potential such as gold or silver. Mr. Cook agreed.

Senator Micciche noted that the railroad had compared themselves to the other agencies, but the other agencies did not relinquish subsurface rights. He wanted to research that issue further.

Co-Chair MacKinnon stated that she would follow up with determining whether that was an accurate comparison.

Co-Chair MacKinnon wondered whether ninety days was an adequate timeline to exercise first right of refusal for a current lease holder. Mr. Cook replied that there was no intent to unwillingly sell land that was currently leased. He noted that the ninety day number was for those who had potentially already had financing. He felt that ninety days would seem reasonable for the finance process.

Co-Chair MacKinnon understood that Mr. Cook had the best intentions, but noted that he would not always be the chair of the board.

Co-Chair MacKinnon wondered whether the \$17 billion of bonding authority from the stranded gas pipeline was still on the books, and whether there was a stipulation on the language to not allow for use. Mr. O'Leary replied that the \$17 billion authorization was designed so the railroad could access its abilities to gain advantage for the gas pipeline through tax exempt financing. There was a stipulation in the current language that said it could only be used if there was an agreement with a third party to pay that debt service over the term of those bonds.

[10:31:20 AM](#)

Co-Chair MacKinnon wondered whether the third party could be a partner that was currently in negotiations with the state to trigger the bonding authority. Mr. Cook replied in the affirmative.

Co-Chair MacKinnon cautioned the committee about the lack of oversight. She wondered whether the bonding authority existed with or without the legislature's approval. Mr.

O'Leary replied that the bonding authority could be used subject to the third party agreement.

Co-Chair MacKinnon wondered whether the title could incorporate the elimination of the bonding authority. She was concerned, because giving away rights for a pilot period could trigger the bonding authority by the governor. She wondered whether there was a loss of revenue from the lost coal contracts from Healy. Mr. Cook replied in the affirmative.

[10:34:15 AM](#)

Co-Chair MacKinnon understood that there was huge support from her community about commuting into Anchorage by commuter rail. She wondered how commuter rails functioned on the same track with the moved aggregate. She queried the timing and safety issue. She felt that there would be unique timing to accommodate a commuter rail, and provide the revenue for the aggregate. Mr. O'Leary replied that commuter rail had been discussed for decades, and there was a recent resurgence of interest with the development of a Commuter Rail Task Force. He remarked that commuter rail would require funding that was outside what the railroad would provide, because it was heavily subsidized. He noted that there was some double track, but it was mostly single tracked. He stated that the commuter rail would compete with the other activities. He stated that there would be a seasonal demonstration project, so it would not compete with the gravel moves. He noted that there would be some organizing around other Anchorage freight activities.

Co-Chair MacKinnon stated that she had not been invited to the task force meeting, but she had been an advocate so she might have some value to add to the conversation about how the commuter rail was not cost effective.

Vice-Chair Bishop wondered whether there was any outstanding land transfers from the federal government to the state. Mr. O'Leary responded that he did not believe that there was anything left to be transferred. He believed that there may be some final paperwork on the patents. He deferred to Mr. Behrend.

Mr. Behrend furthered that, through interim conveyances, all of the property had been conveyed. The process, under the federal statute, required for the areas that had not

been surveyed that the surveys be issued before the final patents. He stated that it was almost complete, with between 1 and 3 percent of the property that was waiting for final patents.

Vice-Chair Bishop discussed the fiscal note.

Co-Chair MacKinnon announced that amendments were due by 5pm the upcoming Wednesday. She also discussed the week's schedule.

SB 86 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

10:41:06 AM

The meeting was adjourned at 10:41 a.m.