

# COMMITTEE MEETING:

REPORT ON

AK. RAILROAD

1-21-87

JAN 6 1987

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 11, 1986

SUBJECT: Alaska Railroad Corporation Act  
(Work Order No. 15-0271)

TO: Representative Bette Cato

FROM: George Utermohle *GU*  
Legislative Counsel

You have asked a number of questions regarding the Alaska Railroad Corporation (ARR). This memorandum is in answer to those questions.

ONE: WHAT ARE THE LEGAL AND ECONOMIC EFFECTS OF THE EXEMPTIONS CONTAINED IN AS 42.40.920?

AS 42.40.920 specifically exempts ARR from compliance with eleven parts of the statutes.

(1) AS 19

AS 19 addresses highways and ferries. Generally AS 19 is irrelevant to ARR, however there are some sections that could affect railroad operations. In AS 19.05 - 19.40 "utility" is defined to include railroads, so that those provisions of AS 19 addressing the interactions between the Department of Transportation and Public Facilities (DOTPF) and utilities also apply to railroads. In particular AS 19.25.010 - 19.25.020 provides that utilities may be located in highway right-of-ways with the approval of DOTPF and that utilities can be removed from highway right-of-ways if necessary to construct or repair highways.

The economic effect of this provision is to free ARR from the obligation to consult with DOTPF before locating its tracks within a highway right-of-way or to remove tracks from a highway right-of-way. The exemption puts ARR in a better position to negotiate with DOTPF for relocation of tracks from highway right-of-ways, so that DOTPF may have to

bear a larger portion of the cost of relocation. If ARR did not have this exemption, it would be in the same position as other utilities such as power companies, gas companies, and other railroads.

(2) AS 30.15

AS 30.15 provides for state participation in port development projects by authorizing grants to municipalities. The selection and support of port development projects is subject to some control by DOTPF. ARR is exempted from this process for port development.

This exemption enhances the autonomy of ARR more than it promotes economic efficiency of the railroad. Without the exemption ARR may have its port development projects complicated by cooperation with municipalities and DOTPF, but the economic cost of the cooperation should not be significant.

(3) AS 35

AS 35 relates to the construction of public facilities. ARR is exempt from several significant provisions of this title.

AS 35.05.010 designates DOTPF as the agency responsible for construction of public works in the state.

AS 35.10.015 delegates responsibility for enforcement of regulations for handicapped access to public buildings to DOTPF.

AS 35.10.025 requires that state facilities comply with local building codes.

AS 35.10.090 - 35.10.120 makes DOTPF responsible for establishing priorities for port development and for applying for federal funds for harbor facilities.

AS 35.10.160 makes DOTPF responsible for the planning, design, and construction of public facilities. This section also requires that life-cycle costing be used in estimating the total cost of proposed public facilities.

AS 35.27.020 requires that one per cent of the construction cost of public facilities be allocated to art in public places.

AS 35.30 requires that DOTPF and University of Alaska building projects receive the approval of municipal planning authorities.

ARR receives a considerable economic benefit from the exemptions from state handicapped access regulations, participation in the one-per cent-for-art program, and compliance with municipal building codes and planning ordinances.

The exemption from state handicapped access regulations may not mean any real economic benefit to ARR. ARR is still subject to federal regulations regarding handicapped access to federally licensed common carriers and to demands of the market that the railroad serves.

(4) AS 37.05

AS 37.05 is the Fiscal Procedures Act. The act requires that state agencies submit annual financial reports and statements. The act also makes the Department of Administration responsible for accounting, public records, purchasing, and space leasing for state agencies. AS 37.05.230 requires competitive bidding for goods and services purchased by state agencies and grants a bidder's preference to Alaskan businesses. AS 37.05.230 will be repealed on July 1, 1987 and replaced by provisions of the State Procurement Code (AS 36.30).

This exemption gives greater autonomy to ARR, but does not confer a measurable economic benefit on ARR.

(5) AS 37.07

AS 37.07 is the Executive Budget Act. The act requires the governor to prepare and the legislature to review budgets for state agencies. The effect of this exemption is to assure the autonomy of ARR. There is no significant economic benefit to ARR as a result of this exemption.

(6) AS 37.10.010 - 37.10.060

AS 37.10.010 - 37.10.060 requires the Department of Administration to disburse money for state agencies and the Department of Revenue to deposit in the state treasury all money received by state agencies. The exemption from these provisions assures autonomy for ARR without conferring an economic benefit.

(7) AS 37.10.085

AS 37.10.085 prohibits the state from subscribing to capital stock of corporations, from lending credit to corporations, and from borrowing money for the use of a corporation. This exemption permits ARR to invest its funds in corporations and enhances the autonomy that ARR has over its own capital.

(8) AS 37.20

AS 37.20 establishes procedures for receipt of money, property, and land from the federal government. This exemption allows ARR to receive aid from the federal government without having to receive the aid through the governor, Department of Administration, or the Department of Natural Resources. This exemption enhances the autonomy of ARR by freeing ARR from having to cooperate with other agencies in order to receive federal aid. There is no particular economic benefit to ARR associated with this exemption because ARR could still receive federal aid through the processes established in AS 37.20.

(9) AS 37.25

AS 37.25 establishes the lapse date for one year appropriations and for capital appropriations. This exemption makes it necessary for an appropriation to ARR to specifically designate a lapse date.

(10) AS 38

AS 38 relates to the management of state lands. Under AS 38 land in the public domain is managed by the Department of Natural Resources. The disposal of state land to private owners and to municipalities and the exchange of land between state, federal, and municipal governments and private landowners is also controlled under AS 38.

Most provisions of AS 38 would affect ARR only indirectly by establishing procedures for the use and management of railroad lands. However AS 38.35.020 provides for pipeline right-of-ways across state lands including railroad lands. By exempting ARR from the pipeline right-of-way provisions a pipeline company must negotiate a right-of-way across railroad lands just as if ARR was a private company.

The exemption from AS 38 enhances the autonomy of ARR by allowing ARR to manage its own land. The exemption does not confer a direct economic benefit on ARR, but may indirectly result in savings for land management costs associated with the detailed notice and public hearing requirements of AS 38.

(11) AS 44.62.040 - 44.62.320

AS 44.62.040 - 44.62.320 relates to the procedures for the adoption of regulations and for public meetings. The operation of ARR is controlled by rules adopted by the Board of the corporation in accordance with the procedures set out in AS 42.40.180. The procedures under AS 42.40.180 are analogous to the procedures required by the Administrative Procedures Act (AS 44.62) but are much less detailed regarding the notice required and the timing of the process.

The Railroad Labor Relations Agency, however, must fully comply with the Administrative Procedures Act.

ARR is also exempt from the "open meetings" law (AS 44.62.310). However ARR is subject to AS 42.40.150 and 42.40.170 which are analogous to the open meetings law. Unless the board of the corporation is discussing privileged or confidential information, the board must discuss its business in public.

The exemption from the provisions of the Administrative Procedures Act relating to adoption of regulations simplifies the process for making rules governing the railroad. The economic impact of this exemption is that ARR does not incur the costs associated with the complex procedures required to adopt regulations under AS 44.62.

The exemption from the "open meetings" law enhances the autonomy of ARR by freeing the railroad's decision-making process from the statute applicable to other government agencies. However, since ARR is required to hold open meetings under its own legislation, there is no real difference between ARR and other state agencies.

(12) AS 36.30

Effective July 1, 1987 ARR will be exempt from the State Procurement Code. However, ARR must adopt procurement procedures which are substantially equivalent to the procedures contained in the State Procurement Code and the regulations adopted under the authority of the Code. (AS 36.30.015(e))

Since ARR must adopt procurement procedures equivalent to the State Procurement Code, ARR is not truly exempt.

The only effect of this exemption is that it reflects the legislature's acknowledgement of the relatively independent status of ARR.

TWO: YOU HAVE STATED THAT YOU WOULD LIKE TO SEE ARR PROVIDE MORE INFORMATION ON ITS REVENUES, RATES, FINANCES, AND OPERATIONS. THE FOLLOWING IS A SUMMARY OF REPORTS REQUIRED OF ARR.

Ninety days after the end of ARR's fiscal year on December 31 ARR must prepare an annual report relating to the operations and financial conditions of the corporation. (AS 42.40.260) Every five years the annual report must contain a report on offers to sell the railroad. The annual report is subject to restrictions on the release of confidential information (AS 42.40.220); these restrictions may limit the informational value of the annual report.

ARR must prepare an oversight report when a significant and permanent expansion, reduction, or diversification is made in the level and nature of services provided and when the ARR applies to the legislature for a subsidy to provide rail service. (AS 42.40.280) The report must include discussions on the financial impact the railroad, on the impact of the action on the level and nature of services, on the reasons for the action, on whether and when the project will be self-supporting, and on whether the subsidy has been calculated in accordance with the standards of the Interstate Commerce Commission. ARR has not been required to prepare an oversight report to date.

ARR must prepare a five year capital improvement plan and update it annually. (AS 42.40.290) The plan must explain the manner in which the ARR will achieve the purposes of the Alaska Railroad Corporation Act. ARR must submit the report to the legislature by December 1 of each year. ARR has prepared the five year plan and at least one annual update. The update for 1986 has not been released yet.

The governor is required to contract with a private consultant for a special report on the long term operations of the railroad that are in the best interest of the state. The report must include specific recommendations on operational alternatives and on transfer of all or part of the railroad

operations to the private sector. The report is due February 1, 1987. The funds for this report lapsed without being spent. The consultant was never hired. This report has not been and is not likely to be completed.

THREE: WHAT ARE THE REQUIREMENTS FOR THE SALE OF THE RAILROAD? WHAT IS THE TIME FRAME? WHAT HAS BEEN DONE TO DATE? WHAT HAPPENS IF ARR DOES NOT COMPLY WITH THE STATUTE?

There is no specific requirement that the railroad be sold. AS 42.40.940 authorizes the governor to sell or lease the railroad and dissolve the Alaska Railroad Corporation if

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

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

The legislature must approve any sale.

AS 42.40.260(b) requires ARR to include in its annual report once every five years

an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The analysis shall include documentation of at least three offers to sell the corporation initiated by the corporation during the last five years.

This language can be construed as a requirement that ARR make three offers to sell the railroad every five years, but this language does not require the railroad to be sold.

There is no time period in which the railroad must be sold. The only time period involved is the requirement that ARR report on three offers to sell the railroad every five years.

To date ARR has made no offers to sell the railroad. The annual report containing information on offers to sell the railroad is due by 1990.

AS 42.40 contains no sanctions for failure to sell the railroad or to make the offers to sell the railroad. If ARR does not make the offers to sell the railroad, the only result will be that the railroad will not be sold.

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Please contact me if you have further questions regarding  
the Alaska Railroad Corporation Act.

GU:mkr  
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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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January 16, 1987

MEMORANDUM

TO: Representative Bette Cato

ATTN: Wendy Chamberlain

FROM: Penelope Weyhrauch  
Legislative Analyst

RE: Exemptions to and Sale Provision of the Alaska Railroad Act  
Research Request 87.057

You asked for a discussion of the Alaska Railroad Act exemptions and what effect repealing the exemptions might have on the Alaska Railroad Corporation. You also asked for a discussion of the requirement relating to offering the railroad for sale, and whether or not the Alaska Railroad Corporation is complying with this requirement.

Alaska Railroad Act Exemptions

I contacted the Alaska Railroad Corporation (ARRC) and asked them to discuss how the corporation would be affected by repealing the exemptions listed in AS 42.40.920. I asked Tad Lewis, General Counsel for the ARRC, what specific effect on the corporation's revenue and operations the repeal of each of the statutory exemptions would have. Mr. Lewis' letter of response is attached. You will note that the response is very general.

Offering the Alaska Railroad for Sale

Alaska Statutes 42.40.260(b) states that "Every five years the [corporation's] annual report shall include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The analysis shall include documentation of at least three offers to sell the corporation initiated by the corporation during the last five years."

According to Jack McGee, Assistant Alaska Attorney General, AS 42.40.260(b) provides all the guidelines available for ARRC to follow to meet the offer-to-sell requirement. Mr. McGee said that the first five-year period began on January 5, 1985, at the time ownership for the railroad passed from the

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federal government to the State. The ARRC is required to offer the railroad for sale three times before January 5, 1990.

Mr. McGee said that he interprets the statutory offer-to-sell requirement to mean that the ARRC must actively solicit offers and not just advertise that the railroad is for sale. Mr. McGee said that if the corporation does not comply with the statutory requirement, the legislature would probably take action, the severity of which would depend on how strongly they believed that the railroad should be transferred to private ownership.

I asked Mr. Lewis if the ARRC has taken any steps to begin complying with the statute. He said that at the last corporation board meeting, the board asked the ARRC's legal counsel to begin looking at different ways the corporation could approach complying with the requirement. Mr. Lewis mentioned that the board discussed the form in which offers should be conducted and how a sale will be most advantageous to the State. Mr. Lewis said that an offering to sell will probably be in the form of a solicitation of proposals to buy the railroad.

Mr. Lewis referenced federal restraints (included in the Alaska Railroad Transfer Act) in regard to selling the railroad. He said that one restraint is that if the railroad were sold within five years of the transfer of the railroad to State ownership, any profit from the sale reverts to the federal government. This restraint was included in the act because the federal government wanted the State to operate the railroad for at least five years. Mr. Lewis said that this restraint makes it more beneficial for the State to retain the railroad until after 1990.

\* \* \* \*

I have attached the Alaska Railroad Corporation Act (AS 42.40.010-980) for your information. If you would like the ARRC to provide more specific information on each of the exemptions, please let me know and I will write a second letter to the corporation.

PW

Attachments

# ALASKA RAILROAD CORPORATION



Pouch 7-2111 • Anchorage, Alaska 99510-7069

January 12, 1987

Ms. Penelope Weyhrauch  
Legislative Analyst  
Alaska State Legislature House of  
Representatives Research Agency  
P.O. Box Y  
State Capital  
Juneau, Alaska 99811-3100

Dear Ms. Weyhrauch:

Your letter dated December 4, 1986 to Mr. Larry Wood, General Counsel of the Alaska Railroad Corporation, was referred to me for response.

You have asked for our assessment of negative impacts that the Alaska Railroad Corporation ("ARRC") might experience if the statutory exemptions in AS 42.40.920 were repealed. Unfortunately, your question does not avail itself of a simple response.

In order to answer your question, it is important to understand the various laws and agreements which circumscribe ARRC's existence and operations. The federal Alaska Railroad Transfer Act ("ARTA"), 45 U.S.C. §§1201-1214, authorized the transfer of the Alaska Railroad to ARRC and established the ground rules for the State's purchase of the Railroad. As part of that act, the State was required to make certain declarations and agreements to abide by the sale terms. The state Alaska Railroad Corporation Act ("ARCA"), AS 42.40.010-.990, implemented the State's commitments all within the requirements of ARTA through the creation of a public corporation to own and operate the Alaska Railroad.

ARTA, the State's own declarations and agreements to abide by those sale terms, and ARCA insure that the State-owned railroad shall be a rail carrier generating, retaining, and managing its own revenues for railroad purposes to better serve Alaska's transportation and development needs. In framing the operating characteristics of the public corporation to conform to this expectation, Alaska's leadership, both federal and state, gave ARRC enough independence to conduct its activities as a

separate and viable economic entity. Exemptions from laws which apply to state agencies mean generally that ARRC promotes, receives, and manages its own revenues, supplies, equipment, facilities, and real estate, establishes its own personnel policies, compensation systems, and employment agreements, promulgates its own rules and regulations to govern internal and external affairs, and manages its own purchasing, financing, and budgeting needs. On the other hand, a desire for public accountability requires open meetings, appointments by the Governor to the railroad board, procurement and ethical codes substantially equivalent to State models, financial and management audits, annual and oversight reports, legislative approval of certain real estate transactions, and long-range capital improvement and program plans. This wise blend of financial and operations independence with State oversight requirements results in a quasi-public, quasi-private railroad armed with the flexibility needed to quickly react to changing market, financial, and legal needs and with the accountability mechanisms necessary to satisfy the governmental aspects of its operations.

As a result of the dual legislative desires of self-sufficiency and public accountability all within the confines of ARTA, the Alaska legislature created a public corporation unlike any other public corporation in Alaska. This is reflected in the legislative findings and purposes which accompanied ARCA. See 1984 Alaska Session Laws, Chapter 153, Section 1. The findings and purposes clauses state that the public corporation is to be exclusively responsible for the management of the financial and legal obligations of the Alaska Railroad, carry out its responsibilities on a self-sustaining basis, and provide for the prudent operation of the railroad according to sound business management practices. Also, ARCA creates a "viable economic entity with the powers and duties necessary to operate and manage the Alaska Railroad pending eventual transfer of the Railroad to the private sector." ARCA and its legislative history reflect a legislative desire that the railroad operate as independently as possible from the State to facilitate the smooth transfer of its business and assets to a private owner. Indeed, AS 42.40.260 requires that ARRC's annual report contain every five years an analysis of potential sale arrangements, including documentation of at least three offers to sell ARRC.

Under AS 42.40.920, ARRC is exempt from the following statutes:

- (1) AS 19;
- (2) AS 30.15;
- (3) AS 35;
- (4) AS 37.05;
- (5) AS 37.07;
- (6) AS 37.10.010 37.10.060;
- (7) AS 37.10.085;
- (8) AS 37.20;

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- (9) AS 37.25;
- (10) AS 38;
- (11) AS 44.62.040 - 44.62.320.

A careful review of these statutes demonstrates how each conflicts with ARCA or ARTA. Titles 19 and 35 set forth the powers and duties of the Department of Transportation and Public Facilities ("DOT/PF") to plan, construct, maintain and operate transportation facilities, including state ferries, airports and water and harbor facilities, and to plan and construct public buildings, boat harbors, dikes and breakwaters. Since ARRC operates as a self-sustaining public corporation, exemptions from Titles 19 and 35 insure that ARRC is responsible for its own facilities and operations.

AS 30.15 provides for state grants of monies and land for construction of local port facilities. ARRC's exemption precludes municipalities from using ARRC funds or lands for port facility development.

Exemptions from portions of Title 37 are required by ARTA which states that "revenues generated by the state-owned railroad shall be retained and managed by the state-owned railroad for railroad and related purposes." 45 U.S.C. §1207(a)(5). AS 37.05, the Fiscal Procedures Act, establishes uniform accounting, purchasing, post auditing, and related financial provisions for all "state agencies" and requires state agencies to submit reports, documents, and statements to the Department of Administration for accounting purposes, requires federal funds received by state agencies to be deposited in the state treasury, makes the Department of Administration responsible for all accounts and purchases of state agencies, requires competitive bidding procedures, and imposes other financial and reporting requirements. The exemption from AS 37.05 conforms to ARTA by allowing ARRC to maintain and control its own accounts and to act as its own purchasing agent.

The exemption from AS 37.07, the Executive Budget Act, also conforms to ARTA by allowing the ARRC to budget and manage its revenues as a separate economic entity.

AS 37.10.010 - .060 designates the Department of Administration as the custodian of state funds and requires all officers, boards and commissions to account to the Department of Revenue for moneys received. Again, an exemption from AS 37.10.010 to 37.10.060 allows ARRC to manage its own revenues.

AS 37.25 determines which unexpended appropriations lapse and which do not. This exemption insures that all ARRC's monies are available to it from year to year.

AS 37.10.085 prohibits political subdivisions from subscribing to the stock of a corporation and from joining credit of

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borrowing money for a corporation's use. Exemption from AS 37.10.085 permits ARRC to manage its revenues by placing its funds in a wide range of investments, including lending its credit and borrowing money for the use of a corporation.

AS 37.20 authorizes the governor to accept federal grants and transfers of property. Transferred land falls within the jurisdiction of the Department of Natural Resources. ARRC's exemption from AS 37.20 insured that federal railroad property, including land, building, monies, personnel property and structures, would be directly conveyed to ARRC rather than to the Departments of Administration, Natural Resources and Transportation and Public Facilities.

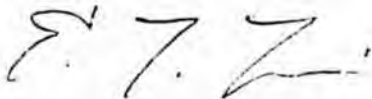
Title 38 states that the lands of the state are to be managed by the Department of Natural Resources. Exemption from Title 38 conforms to ARTA's and ARCA's mandate that ARRC manage railroad real estate.

AS 44.62.040 to 44.62.320, much of the Administrative Procedures Act, provide procedures for adopting and implementing regulations in state government. These provisions are supplanted by ARCA's AS 42.40.170 - .270, which call for publicly adopted rules by ARRC's board of directors.

The eradication of one or more of the ARCA exemptions will substantially change the model of a self-sufficient, competitive and accountable public railroad corporation that was created by Alaska's state and federal leadership. Furthermore, through the development of its own personnel, procurement, surplus property, budget, accounting, and land and lease plans, policies, and procedures, ARRC stands ready for expeditious transfer to the private sector. The short history of ARRC operations have underscored the wisdom of the legislature's original direction. We very much support that mission and would most appreciate the opportunity to comment upon proposed legislation to change or amend it.

I hope this adequately answers your question. Please feel free to call if you have any further questions.

Yours very truly,



E. Thaddeus Lewis  
Associate General Counsel

cc: F. G. Turpin  
L. D. Wood, Esq.

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### Chapter 40. Alaska Railroad Corporation.

#### Article

1. Establishment and Organization (§§ 42.40.010 -- 42.40.060)
2. Management (§§ 42.40.100 -- 42.40.120)
3. Administrative Provisions (§§ 42.40.150 -- 42.40.230)
4. Powers and Duties (§§ 42.40.250 -- 42.40.310)
5. Corporation Property (§§ 42.40.350 -- 42.40.450)
6. Financial Provisions (§§ 42.40.500 -- 42.40.540)
7. Bonds (§§ 42.40.600 -- 42.40.700)
8. Personnel and Labor Relations (§§ 42.40.705 -- 42.40.890)
9. General Provisions (§§ 42.40.900 -- 42.40.990)

**Cross references.** — For legislative findings and purpose in enacting this chapter, see § 1, ch. 153, SLA 1984 in the Temporary and Special Acts; for special reports required, see § 3, ch. 153, SLA 1984 in the Temporary and Special Acts.

**Legislative history reports.** — For legislative letter of intent relating to ch. 153, SLA 1984 (SCS CSHB 512 (Fin) am S), see 1984 Senate Journal, p. 3221

#### Article 1. Establishment and Organization.

<p><b>Section</b></p> <p>10 Establishment of the corporation</p> <p>20 Board of directors</p> <p>30 Term of office</p>	<p><b>Section</b></p> <p>40 Vacancies</p> <p>50 Compensation and expenses</p> <p>60 Board officers</p>
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**Sec. 42.40.010. Establishment of the corporation.** There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state within the Department of Commerce and Economic Development. The corporation has a legal existence independent of and separate from the state. The continued operation of the Alaska Railroad by the corporation as provided in this chapter is considered an essential government function of the state. (§ 2 ch 153 SLA 1984)

*For purposes of liab (R or tort) the RR is separate indiv. can sue RR. - cannot go after other state assets. restricts liability*

*state owns the RR - auth. to issue bonds.*

**Sec. 42.40.020. Board of directors.** (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the commissioner of transportation and public facilities, and five members appointed by the governor. The five appointed members must be registered voters in the state except as provided in (1) and (2) of this subsection. Except for the commissioners and the member appointed under (5) of this section, a member may not be a state officer or employee. Appointed members shall have the following qualifications:

(1) one member of the board shall be a person who has at least 10 years of experience in railroad management; a person who is not a resident of the state may be appointed under this paragraph.

Article 4. Powers and Duties.

Section

- 250. General powers
- 260. Annual report
- 270. Audits
- 280. State oversight reports
- 285. Legislative approval required

Section

- 290. Long-range capital improvement and program plan
- 300. Use of corporation assets
- 310. Indemnification

Sec. 42.40.250. General powers. In addition to the exercise of other powers authorized by law, the corporation may

- (1) adopt a seal;
- (2) adopt bylaws governing the business of the corporation;
- (3) sue and be sued;
- (4) appoint trustees and agents of the corporation and prescribe their powers and duties;
- (5) hire legal counsel to represent the corporation;
- (6) make contracts and execute instruments necessary or convenient in the exercise of its powers and duties;
- (7) acquire by purchase, lease, bequest, devise, gift, exchange, the satisfaction of debts, the foreclosure of mortgages, or otherwise, personal property, rights, rights-of-way, franchises, easements, and other interests in land, and acquire by appropriation water rights that are located in the state, taking title to the property in the name of the corporation;
- (8) hold, maintain, use, operate, improve, lease, exchange, donate, convey, alienate, encumber, or otherwise grant a security interest in, or authorize use or dispose of, land or personal property, subject to other provisions of this chapter;
- (9) contract with and accept transfers, gifts, grants or loans of funds or property from the United States and the state or its political subdivisions, subject to other provisions of federal or state law or municipal ordinances;
- (10) undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all land and personal property of the Alaska Railroad transferred under 45 U.S.C. 1203(a) and described in the report dated July 14, 1983, as amended, submitted to Congress and the legislature under 45 U.S.C. 1204(a);
- (11) recommend to the legislature and the governor any tax, financing, or financial arrangement the corporation considers appropriate for expansion or extension and operation of the Alaska Railroad;
- (12) maintain offices and facilities at places it designates;
- (13) apply to the state, the United States, and foreign countries or other proper agencies for the permits, licenses, rights-of-way, or approvals necessary to construct, maintain, and operate transportation and related services, and obtain, hold, and reuse the licenses and permits in the same manner as other railroad operators;

(14) prescribe rates to be charged for services provided by the Alaska Railroad consistent with 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982);

(15) determine the routes, schedules, and types of service to be provided by the Alaska Railroad;

(16) enter into contracts, leases, and other agreements with connecting carriers, shippers, and other persons concerning the services, activities, operations, property, and facilities of the corporation, including agreements that contain provisions to preserve and expand the railroad's traffic base;

(17) plan for and undertake expansion of the railroad and railroad activities, including extension of the rail system, and contract with other modes of transportation service connecting to the rail system;

(18) hire and discharge railroad personnel and determine benefits and other terms and conditions of employment;

(19) assume all rights, liabilities, and obligations of the Alaska Railroad in accordance with 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982);

(20) maintain a security force to enforce municipal ordinances, state laws, and the corporation's rules with respect to violations that occur on or to property owned, managed or transported by the corporation;

(21) issue its bonds upon approval of the legislature and provide for and secure their payment, provide for the rights of their holders and hold or dispose of them;

(22) purchase the corporation's bonds at a price not more than the principal amount of them plus interest;

(23) cancel bonds of the corporation purchased by the corporation;

(24) secure the payment of its bonds by pledge, mortgage, or other lien on its contracts, revenues, income, or property;

(25) consent to the modification of the rate of interest, time of payment of an installment of principal or interest, or other term of a loan, contract, or agreement to which the corporation is a party;

(26) borrow money, including the amounts necessary to establish reasonable reserves, and pay financing charges and interest on bonds for a reasonable period after which the corporation estimates other money will be available to pay the interest, consultant, advisory, and legal fees, and other expenses necessary or incident to borrowing;

(27) acquire, hold, and dispose of stocks, memberships, contracts, bonds, general or limited partnership interests or other interests in another corporation, association, partnership, joint venture, or other legal entity, and exercise the powers or rights in connection with these interests that are provided in contracts or agreements and that are allowed by law concerning the satisfaction of debts;

(28) undertake and provide for the acquisition, construction, maintenance, equipping, and operation of connecting, switching, terminal, or other railroads and railroad facilities;

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(29) enter into agreements with a state agency or other instrumentality of the state; and

(30) do all things necessary or desirable to carry out the powers and duties of the corporation granted or necessarily implied in this chapter or other laws of the state or the laws or regulations of the federal government. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.260. Annual report.** (a) Within 90 days following the end of the fiscal year of the Alaska Railroad the board shall distribute to the governor and to the legislature a report describing the operations and financial condition of the corporation during the preceding fiscal year. The report may include suggestions for legislation relating to the structure, powers or duties of the corporation or to the operation or facilities of the corporation. Subject to AS 42.40.220, the report shall itemize the cost of providing each category of service offered by the railroad and the income generated by each category.

(b) Every five years the annual report shall include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The analysis shall include documentation of at least three offers to sell the corporation initiated by the corporation during the last five years. (§ 2 ch 153 SLA 1984)

*Jack Meyer, AG  
most specific*

**Sec. 42.40.270. Audits.** (a) The board shall have the financial records of the corporation audited annually by an independent certified public accountant experienced in railroad accounting. The board shall have an annual performance audit conducted by a recognized railroad management expert to assure that the railroad is being managed and operated effectively and efficiently in accordance with the requirements of this chapter and that each appropriation is used to directly support those services for which the appropriation was requested. Auditors shall use the standards required under AS 42.40.100(9) and determine whether appropriations received for a service that is not self-sustaining were calculated in accordance with United States Interstate Commerce Commission standards for determining rail service subsidies.

(b) The corporation shall make all of its financial records available to an auditor appointed by the governor and to the legislative audit division for examination. Disclosure to the public by the auditor or legislative audit division of this information is subject to AS 42.40.220 and rules implementing that section. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.280. State oversight reports.** (a) The board shall provide a state oversight report to the governor and the legislature before undertaking

(1) expansion, reduction, or diversification of services provided by the railroad upon the date of transfer or as provided under this chapter that the board determines would represent a significant and permanent change in the level and nature of services provided; or

(2) an application for an appropriation to be used for providing any service that is not self-sustaining.

(b) The report under (a) of this section shall be in writing, describe the proposed undertaking in detail, and specify

(1) its financial impact on the corporation;

(2) its impact on the level and nature of services provided by the corporation;

(3) the reasons the action is necessary or desirable to achieve the purposes of this chapter;

(4) whether and when the undertaking or service is expected to be self-sustaining financially; and

(5) if the undertaking requires an appropriation to be used for providing a service that is not self-sustaining, that the amount of the appropriation has been strictly calculated in accordance with United States Interstate Commerce Commission standards for determining rail service subsidies. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.285. Legislative approval required.** Unless the legislature approves the action by law, the corporation may not

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

(2) issue bonds;

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

(4) lease land for a period in excess of 35 years unless the corporation reserves the right to terminate the lease if the land is needed for railroad purposes. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.290. Long-range capital improvement and program plan.** (a) The corporation shall prepare and the board shall adopt a long-range capital improvement and program plan. The plan shall explain the manner in which the corporation intends to accomplish the purposes of this chapter and the corporation's anticipated capital improvements during each of the five years after the plan is adopted.

(b) The board shall annually review and approve revisions to the long-range capital improvement and program plan. The board shall provide copies of the updated plan to the governor and the legislature by December 1 of each year. (§ 2 ch 153 SLA 1984)

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**Sec. 42.40.905. Notice of legal actions.** (a) The corporation shall notify the Department of Law within 30 days before initiating legal action unless special circumstances exist that require immediate legal action to protect the corporation assets or to continue existing service.

(b) If notice of legal action is not given under (a) of this section, within seven days of taking action the board shall notify the Department of Law of the action taken and of the special circumstances that exempted the action from the requirements of (a) of this section. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.910. Exemption from taxation.** (a) The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the state, for their well-being and prosperity, and for the improvement of their social and economic conditions. Subject to (b) of this section, the real and personal property of the corporation and its assets, income, and receipts are exempt from all taxes and special assessments of the state or a political subdivision of the state.

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

(c) This section does not affect or limit an exemption from license fees, property taxes, or excise, income or other taxes, provided under any other law, nor does it create a tax exemption with respect to the interest of any business enterprise or other person, other than the corporation. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.920. Application of existing laws.** (a) The corporation is not subject to the jurisdiction of the Alaska Transportation Commission.

(b) [Effective July 1, 1987] Unless specifically provided otherwise in this chapter, the following laws do not apply to the operations of the corporation:

*sets up DOT*

- (1) AS 19; - *Highways & Ferries*
- (2) AS 30.15; - *Navigation, Harbors + Shipping - State's ports facilities constr.*
- (3) AS 35; - *Public Buildings, Utilities & Improvements*
- (4) AS 36.30, except as specifically provided in that chapter; - *Public Contracts*
- (5) AS 37.05; *Public Finance* : *financial reports - uniform accounting*
- (6) AS 37.07; - *Exec. Budget Act*
- (7) AS 37.10.010 - 37.10.060, *Public Funds*
- (8) AS 37.10.085; - *Fin. Aid to Communities by State or political subdiv.*
- (9) AS 37.20; - *Acceptance of federal funds.*

(10) AS 37.25; - *Misc provisions re appropriations*

(11) AS 38; - *Public Lands*

(12) AS 44.62.010 — 44.62.320. (§ 2 ch 153 SLA 1984; am § 41 ch 106 SLA 1986) - *Admin Procedures Act. - applies primarily to developing regulations*

**Effect of amendments.** — The 1986 amendment, effective July 1, 1987, inserted paragraph (4) of subsection (b) and redesignated the following paragraphs accordingly

**Editor's notes.** — Prior to July 1, 1987, subsection (b) read as follows: "(b) Unless specifically provided otherwise in this chapter, the following laws do not apply to the operations of the corporation:

"(1) AS 19;

"(2) AS 30.15;

"(3) AS 35;

"(4) AS 37.05;

"(5) AS 37.07;

"(6) AS 37.10.010 — 37.10.060;

"(7) AS 37.10.085;

"(8) AS 37.20;

"(9) AS 37.25

"(10) AS 38;

"(11) AS 44.62.040 — 44.62.320"

**Sec. 42.40.930. Conflicting laws inapplicable.** If provisions of AS 42.40 conflict with the provisions of other state law, the provisions of AS 42.40 prevail. Provisions of AS 42.40 shall be construed so that they do not conflict with 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982). (§ 2 ch 153 SLA 1984)

**Sec. 42.40.935. Railroad facilities code compliance.** (a) Not later than two years after the date of transfer the corporation in consultation with the Department of Labor shall develop and adopt a plan to achieve compliance with AS 18.60. The plan shall be implemented and compliance achieved within five years after it is adopted.

(b) No later than two years after the date of transfer, the corporation in consultation with the Department of Public Safety and appropriate municipal officials, shall develop and adopt a plan to achieve compliance with building and related safety codes applicable to facilities of the corporation. The plan shall be implemented and compliance achieved within five years after it is adopted. In the sole determination of the commissioner of public safety, any existing building owned or controlled by the corporation that does not present a serious safety hazard and for which compliance would be uneconomical in consideration of its remaining useful life shall be exempted from compliance with state or municipal safety codes (§ 2 ch 153 SLA 1984)

**Sec. 42.40.940. Sale or lease of the railroad.** (a) The governor may provide for the sale or lease of the Alaska Railroad and dissolve the corporation if

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

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

(b) A sale under this section is subject to approval by law. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.950. Reversion of assets.** Except as provided in AS 42.40.940, if the corporation ceases to exist its assets revert to the state. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.980. Definitions.** In this chapter unless the context otherwise requires,

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

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

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

(4) "corporation" means the Alaska Railroad Corporation;

(5) "date of transfer" means the date on which the United States Secretary of Transportation delivers the transfer documents under 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982);

(6) "employees" means all persons employed by the corporation including executive officers;

(7) "executive officer" means the corporation's chief executive officer, assistant chief executive officer, assistant to the chief executive officer, chief of administration, superintendent of transportation, manager of marketing and sales, chief engineer, chief mechanical officer, manager of industrial development and real estate, manager of budget and accounting, manager of planning, manager of personnel, manager of supply and procurement, chief of security, manager of operating rules, manager of data processing, manager of strategy, manager of operations planning, manager of supply, manager of procurement, manager of safety, manager of administrative procedure, chief counsel, or, if so designated by the board, any employee who fulfills these management functions under a different title or who exercises a similar or comparable level of responsibility or supervision;

(8) "land" means any interest in real property, including tide and submerged land, and any right appurtenant to the interest.

## HOUSE TRANSPORTATION ALASKA RAILROAD OVER REPORT

On January 5th, 1985 the Alaska Railroad was transferred from Federal to State ownership. The railroad has been operating in Alaska 62 years. Over the past 12 months, many questions, inquiries and concerns been raised regarding the states involvement in the railroad, and the operations of the railroad.

Since the Committee Chairman, Representative Cato has been directly involved with the railroad and railroad issues over the past several years, this oversight and information report is being prepared under the Chairmans constant supervision and direction.

The State purchased the railroad from the Federal government for a cost of \$22.3 million dollars. This purchase price did not include any receiveables or cash and therefore an additional \$10.9 million dollars was appropriated by the Legislature to Alaska Railroad - (\$4.9 million for operating and \$6 million for capital.) Additional costs associated with the transfer totalled \$1.2 million. Therefore, the total cost to the State to purchase, transfer and begin operation of the Alaska Railroad was \$34.4 million.

Effective January 6th, 1985 the Alaska Railroad Corporation became responsible for operating the Alaska Railroad. This is a "quasi-public" corporation with a seven member board of directors appointed by the Governor. The Corporation operates more along the lines of a private for profit corporation and therefore many of the decisions made by the Corporation Directors are made from a business/profit approach. The statutes enacted for guidelines under which the Coporation operates state: Sec. 42.40.010 - The Coporation is a public corporation and is an instrumentality of the state within the Department of Commerce and Economic Development. The corporation has a legal existence independent of and separate from the state

The powers of the coporation are vested in the seven member board of Directors. Five of these members are appointed by the Governor and confirmed by the Legislature. These members serve for staggered five year terms, each at the pleasure of the Governor. The Commissioners from the Department of Transportation and Department of Commerce and Economic Development make up the remaining 2 board members.

Many questions have been asked regarding the running of the Alaska Railroad Corporation. These questions asked were on a variety of areas from the financial management of the Coportation to land owned by the Corporation.

Under the direction of the Chairman, House Transportation met with the Alaska Railroad staff on two occassions in Anchorage and attended two Board of Directors meetings. At the request of the Chairman, railroad management came to Juneau to discuss railroad issues and answer any questions. House Transportation, the Office of Management and budget, and the Speaker's office were present at this meeting.

During these meetings many questions were raised to the railroad. The following is a list of many of the questions asked. The

answers help to clarify many areas that were not fully understood previously and also identify areas that may need further consideration or clarification.

The Federal Transfer Act and the Alaska Statutes governing the Railroad placed different requirements on the Alaska Railroad Corporation, therefore it was necessary to refer to these laws to answer many of the questions raised.

1. SINCE ACQUISITION OF THE RAILROAD ON JANUARY 5TH, 1985, WHAT STATE MONIES HAS THE RAILROAD RECEIVED?

The State of Alaska originally purchased the Alaska Railroad from the Federal Government on January 5th, 1985 for \$22.4 million. This did not include any accounts receivable or working capital. The Legislature appropriated \$10.9 million to the Alaska Railroad - (\$4.9 million for operating money and \$6 million for capital money).

The \$4.9 million was used for the first few months operating costs as the transfer did not include any monies in accounts for operation. The \$6 million dollars was used to purchase new locomotives, computer equipment, intermodal cars etc. The Alaska Railroad has not received any state funds since this time.

2. WHAT DEBT SERVICE PAYMENTS DOES ALASKA RAILROAD HAVE?

The railroad has debt service on equipment and locomotives that were purchased by the railroad corporation shortly after the transfer to state ownership. Much of this equipment was purchased to enable the railroad to provide more efficient, cost effective services. Five new locomotives were purchased at a cost of \$1 million dollars each, 45 new intermodal and flat cars were purchased, new computer equipment and various other items were purchased by the railroad. As of August 31, 1985 the Alaska Railroad long term liabilities were \$7.2 million.

Several inquiries have arisen regarding the Corporations repayment of the original \$34.2 million investment. As both the \$22.4 million and the \$10.9 million were appropriations made by the Legislature, no repayment of these monies was required.

There is specific language in the Alaska Railroad Corporation Act AS 42.40.530 Chapter 153 SLA 84 which states:

Revenue generated by or appropriated to the corporation shall be retained and managed by the corporation for railroad and related purposes in accordance with 45 USC 1207 (a) The Alaska Railroad Transfer Act of 1982.

Legal services has defined this language as being very broad, however, both the language in the state and federal act does preclude any form of debt service on any monies appropriated to the railroad from the state.

3. HOW MANY ACRES OF LAND DOES THE CORPORATION OWN?

The Alaska Railroad Corporation owns 38,000 acres of land. The railroad's real estate department is currently working on forming a report outlining all railroad owned land, railroad leases and any right of way or land conveyed to cities, municipalities or non-profit organizations. A 7 member lease committee has been formed by the railroad. These people are members from various communities who will work toward setting guidelines and policy pertaining to railroad land.

The lease committee will establish a policy for the railroad on leasing land to public entities and private entities. The committee will also establish guidelines for short and long term leases, and when, and if it would be appropriate for the railroad to convey any land.

The railroad is required to lease land at fair market value, however, this committee will decide what other considerations may be given by the railroad with regard to land leasing. Railroad management hope these written policies will help overcome some of the concerns raised regarding acquisition or lease of railroad property. It should also insure all real estate transactions involving railroad land are consistent.

4. WHAT IS THE VALUE OF THE CORPORATIONS LAND?

This questions has actually two answers. The actual value of the land is currently being assessed by the ARR land management department. This amount will hopefully be available in the next few months.

Several independent reports available estimate the railroad land assets current market value to be in excess of \$190 million, however, this is an estimate.

The amount the state purchased the railroad for (\$22.4 million) was the actual worth given the the Alaska Railroad assets at the time of the transfer. Although in fact the actual value of the railroad was much higher, (approx. half to one billion dollars) the land and properties were given values totalling \$22.4 million in order for the books to balance (otherwise the Corporation would have posted a tremendous profit the first month of operation from assets valued at \$22.4 million to assets worth 1/2-1 billion)

The Corporations assets were defined on January 6th, 1985 as	
** Current Assets	\$15,755 million
Properties	\$4,462 million
Land	\$15,414 million
Other	\$1,443

\* \* This figures includes the \$10.9 million Legislative appropriation for operating and capital funds.

5. WHAT % OF RAILROAD LAND IS LEASED AND WHAT IS THE INCOME FROM THESE LEASES? .

The land management department is currently working on all aspects of the land owned by the Alaska Railroad. This information should be available in the next few months.

This is an area where very little information is available. Information available estimates the income from the corporations land leases to be in excess of \$3.5 million, however this may not be an accurate estimation. The railroad is not required to comply with many of the same financial requirements placed on all other state agencies, example: executive budget act, accounting of public funds, fiscal procedures act etc., therefore no information is available on how or where this income is spent.

6. WHAT IS THE RAILROADS POLICY ON CONVEYING OR LEASING LAND TO MUNICIPALITIES, CITIES OR CORPORATIONS?

Section 42.40.350 (c) Chapter 153 SLA 84 states:  
"The corporation may lease subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285 (see below) 42.40.370 (natural resources state land) and 42.40.400 (vacation of easements).

Sec. 42.40.285 states that unless the Legislature approves the action by law, the corporation may not exchange, donate, sell or otherwise convey its entire interest in land. This section also states the corporation may not lease land for a period in excess of 35 years unless the corporation reserves the right to terminate the lease if the land is needed for railroad purposes.

Several communities in which the railroad owns considerable land have become very frustrated at the "lack of co-operation by the railroad in working toward land exchanges." While railroad management agrees the corporation may not need this land in the foreseeable future, they do not have the ability to exchange or transfer title of this land.

Mr. Marvin Yetter stated that the railroad would consider all requests to obtain long term leases over railroad land. The railroad feel this in essence will accomplish and satisfy many of the requests.

In talking with city officials from Seward it appears that their requests for acquisition and/or leasing of railroad owned land have been somewhat ignored by the Railroad. Railroad management state the requests from the City of Seward have not been acted upon due to lack of communications between the parties. Management also acknowledge the addition of new staff and new job descriptions and responsibilities has caused some confusion and frustration for those parties dealing with the railroad.

The City of Whittier also approached the railroad to lease land for the purpose of a city trailer park. The railroad granted the City of Whittier a small protion of their request. The lease is currently being looked at but it has been made clear to the City of Whittier that the lease will be at fair market value for this land.

Management states that unless circumstances dictate otherwise, all land owned by the corporation will be leased at fair market value.

7. DOES ALASKA RAILROAD PAY PROPERTY TAXES?

All land owned by the Corporation is exempt from property taxes.

AS. 42.40.910 (b) the real and personal property of the Corporation and its assets, income and receipts are exempt from all taxes and special assessments of the state or a political subdivision of the state.

8. DOES INCOME FROM LEASES HELP SUBSIDIZE ANY OF THE RAIL TRANSPORTATION SERVICES?

The only train service that does not run at a profit is the passenger service. The passenger service is currently loosing approximately \$2 million dollars per year, this is subsidized by income from the freight services. Lease income does not subsidize any of the train services.

9. IS THE ARTIC FOX OVERNIGHT RUN TO FAIRBANKS COVERING ITS EXPENSES? ARE THERE ANY OTHER MONIES SUBSIDIZING THIS RUN?

The Artic Fox is not subsidized in any way. This is one of the railroads most profitable runs. The Artic Fox has the capacity to hall 30 trailers from Anchorage to Fairbanks. The average number to date has been 22 trailers per night.

The reason the Artic Fox rates are so competitive is the overhead on the Fox is very low because:

- a. The Artic Fox uses two locomotives instead of the 5 that had been used in the past. The purchase this year of 10 new rail cars has allowed updated and more efficient locomotives and equipment to be used on the Artic Fox.  
There is no cabose used on the Artic Fox. This, along with the decrease in the number of locomotives has helped cut costs drastically. The cost of using the cabose on this run was approximately \$0.80c/mile.
- b. Because of the reduced number of locomotives there is also reduced staff required for this run.  
The Artic Fox leaves Anchorage with approximately 22 trailers and two crew members. (originally 5 ).  
The Fox has the capacity to carry 30 trailers, it usually runs about 80-85% capacity carrying approximately 22 trailers nightly.
- c. The attached sheet shows what expenses and costs are considered when setting rates for Artic Fox.  
Capital costs for new equipement
  - a. locomotives and rail cars
  - b. van lifts and hostler trucksRoad costs
  - a. crews
  - b. track repairs
  - c. locomotive and rail car fuel/servicingTerminal costs
  - a. crews
  - b. locomotive repairs, fuel, and service
  - c. van lift labor and fuel
  - d. hostler truck fuel

The expenses and costs considered when setting rates for the Artic Fox are similiar to those used by any private carrier with two exceptions:

- a. Most private carriers must included a high yearly debt service amount - For most carriers this is the amount borrrowed to purchase their vehicles and set up their business. In many cases this amount is very high due to the cost of the equipment needed to set up their business.
- b. Private carriers also calculate the costs of fuel taxes, property taxes and other road taxes into their rate structure.

10. WHAT ABOUT OFFERING THE RAILROAD FOR SALE?

Section 3. Chapter 153 SLA 84 states.

"The Governor shall contract with a private consultant for the preparation of a report on the long-term operation of the Alaska Railroad that are in the best interests of the state. The report shall be submitted to the governor and the legislature by February 1, 1987. It shall contain specific recommendations on operation alternatives and the transfer of all or part of the railroad operations to the private sector." Mr. Ron Walt, Department of Commerce, Division of Enterprise, has been given the responsibility to oversee this report. Request for proposals will be sent out within two weeks and a contract for the preparation of this report should be awarded by the end of January, 1986.

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IN REPORT*

Sec. 42.40.260 (b) Chapter 153 SLA 84 states:

Every 5 years the annual report by the railroad to the Governor and the Legislature shall include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The analysis shall include documentation of at least three offers to sell the corporation initiated by the corporation during the last 5 years. This report will be due in 1989.

A bill has been drafted by Representative Pettyjohn for consideration. This work draft proposes to transfer the Alaska Railroad into private ownership and allowing shares of stock to be purchased at \$50.00 per share. A person may elect to designate \$50.00 of their 1987 permanent dividend to purchase of a share of stock. If additional shares are available after this process, employees of the Alaska Railroad Corporation may elect to purchase up to 20 shares of stock at \$50/share. Any additional shares will be offered at \$50.00/share to persons who have resided in Alaska 30 days. The remaining shares will be available to the general public.

11. WHAT POWERS OF OVERSIGHT DOES THE LEGISLATURE HAVE OVER ALASKA RAILROAD?

AS 42.40.030 provides that, with the exception of the Commissioners of Commerce and Economic Development and Transportation and Public Facilities, an appointment to The ARR Corporation's Board of Directors must be confirmed by the Legislature.

AS 42.40.280 requires the Board of Directors to provide an oversight report to the legislature before undertaking expansion, reduction or diversification of services that the Board feels will amount to a significant and permanent change and before requesting an appropriation for providing a service that is not self-sustaining.

AS 42.40.290 requires the corporation to prepare a long-range capital improvement and program plan. The updated plan is to be provided to the legislature every year.

AS 42.20.260 states an annual report must be made by the Board of Directors to the Legislature describing the operations and financial condition of the corporation.

AS 42.40.270 (b) requires the corporation to make its financial records available to the Legislative Audit Division for examination. The Governor may also appoint an auditor to review the financial records of the corporation

State law requires Alaska Railroad be audited by an independent auditor every year.

While the Corporation is required to provide the above information and reports, certain exemptions apply to the Corporation that do not apply to other state agencies.

Sec. 42.40.920(b) states that unless provided otherwise in this chapter, the following laws do not apply to the operations of the corporation

- AS 19 Highways and Ferries.
- AS 30.15 State participation in Port Facilities and development
- AS 35 Public Buildings, Works, and Improvements  
(This includes construction procedures, acquisition and disposition of property, consistency with local government plans and ordinances).
  
- AS 37.05 Fiscal Procedures Act  
Administration  
Uniform Accounting  
Uniform purchasing  
General provisions
  
- AS 37.07 Executive Budget Act
  
- AS 37.10.010 - 37.10.060 - Public Funds  
Accounting of public funds
  
- As 37.10.085 - Financial aid to corporations by state or political subdivisions

AS 37.20 Acceptance of Federal Funds

AS 37.25 Miscellaneous Provisions  
This includes sections relating to unexpended  
balances of one year appropriations.  
Unexpended balances of appropriation for capital  
projects.

AS 38 Statutes relating to Public Lands

AS 44.62.040 -44.62.320 Relating to submission, filing  
and publication of regulations.  
The Alaska Administrative Register and Code  
Judicial Review  
Agency meetings public

12. WHAT ABOUT AUDITING AND AVAILABILITY OF THE CORPORATIONS  
RECORDS TO STATE AUDITORS?

NOTE: AS 42.40.220 (b) states: Records of the corporation are,  
in general, public. However, the corporation may designate by  
rule and withhold public disclosure of matters of a privileged  
or proprietary nature. These matter include personnel,  
records, communications with and work product of legal counsel,  
and, consistent with the standards and practices of the United  
States Interstate Commerce Commission for the protection of  
these matters, other information including proprietary  
information associated with specific shippers, divisions and  
contract rate agreements.

This is an area that has received a great many inquiries and  
a great deal of comment. Many complaints have arisen regarding  
competitive rates set by Alaska Railroad.

While the auditors must be allowed access to all ARR financial  
records for the purpose of the audit, information designated  
by the Corporation under the Public Disclosure section may  
not be released by the auditors. The auditors report may  
include a summary and facts and findings, however no specific  
reference to any information designated to be withheld from  
public disclosure may be released.

13. WHEN QUESTIONS ARISE REGARDING THE RATE STRUCTURE SET BY ARRC, WHAT METHODS OF INSURING THAT RATES SET FOR SHIPMENTS ARE NOT PREDATORY ARE AVAILABLE?

This question was discussed with Legislative Legal Services. With Alaska Railroad aggressively competing for the freight business, many private carriers have expressed frustration and anger about the rates set by Alaska Railroad. Some carriers feel that the rates are subsidized in some way.

Alaska Railroad publishes a rate schedule which is available to anybody wishing to obtain this information. However, as many freight customers frequently transport large volumes of freight, individual price contracts and rates are offered by Alaska Railroad to these customers. Various factors are considered before a rate is quoted to a shipper. These include: the amount of freight to be transported, the frequency of the shipments, whether the goods are perishable, what arrangements have been made for pick up and delivery of the goods, how long before departure the freight can be loaded, etc.

Any information pertaining to freight contracts and rates set in these contracts have been designated by the Corporation to be held from public disclosure due to the proprietary nature of this information.

The Interstate Commerce Commission will investigate any complaints they feel may constitute predatory pricing. As the railroad industry is deregulated, it is difficult to interfere in the rate structure set by the railroad.

Several inquiries have been made by House Transportation staff regarding operations and rates set by railroads in other states. The following information was received:

New Mexico - This state has 4 privately owned railroads. The state has a Corporation Commission which has many departments and is responsible for oversight of most private industry from transportation to insurance. The Corporation Commission for transportation is responsible for regulating many areas including rates, exiting and abandonment.

All carriers must provide the Commission with a copy of tariff charges for customers, this includes contract rates. The Commission has the power to deny any contract rate submitted. Carriers are required to appear before the Commission to "show cause" if any questions arise regarding their rate structure. Heavy penalties and fines up to \$10,000/offence apply for violations involving predatory pricing.

Inquiries were made by House Transportation staff regarding railroad operations in other states such as California, Washington and Oregon. In several states the railroad is owned by the state, however the operation of the railroad is leased to a railroad firm. While lease revenues are received by the state the overall operating responsibilities belong to the railroad firm. Freight rates are set by the firm who must consider their expenses, their lease payments and their profit margin. Other than regulation by the Interstate Commerce Commission, no other agency regulates these carriers.

14. ARE THERE ANY PROJECTIONS AVAILABLE ON THE AMOUNT OF PROFIT/LOSS ANTICIPATED BY THE CORPORATION FOR THE FIRST YEAR?

Alaska Railroad Corporation anticipates a \$7.1 million profit for the first year of operations. This represents a 19.88% return on the state's total investment of \$34.2 million.

Corporation management state many costs are now absorbed by the railroad that were not an expense under Federal ownership: Example:

Accounting, payroll and financial recordkeeping, fleet purchases and maintenance, and insurance were expenses paid for by the Federal Government and not costs charged directly to the railroad. This year the Corporation has expensed many items that were previously depreciated under the Federal system.

15. DOES ALASKA RAILROAD CONTRIBUTE TO THE COMMUNITIES?

The railroad does not contribute financially to the rail communities.

Several communities have expressed concern that the railroad has a definite impact on their community, and yet does not contribute in any way to the community. The City of Seward and the City of Whittier both have expressed the feeling that while a great deal of revenue is generated by the railroad through the community, none of this benefits the community.

The Railroad Corporation Board of Directors held their October 17th meeting in Seward. Time was set aside on the agenda to receive public input and discuss concerns and issues with the Board of Directors.

Representatives from the City of Seward as well as various local businessmen and community residents voiced their concerns to the Railroad Board.

The City of Seward has written several letters to Mr. Turpin and the Railroad Board requesting the railroad meet with them to discuss issues such as: acquisition or long term lease of land within the City's boat harbor, Railroad contribution to projects financed by the City for the direct benefit of the Railroad, procurement policies as they pertain to the Seward Dock, more co-operation by the Railroad in dealings with the Sun eel Coal Corporation and SeaWay Shipping Company. A copy of the letter written by Mayor Cripps of Seward to Mr. Frank Turpin is attached.

Railroad management states that many of these concerns were in existence before the transfer took place. Management admit with new personnel some confusion regarding follow-up has arisen. The information and correspondence available (attached) does indicate there are many areas and concerns that need to be addressed by the railroad. The lack of any action or response from the railroad regarding these matters is also an area of concern.

The Corporation will endeavour to hold public board meetings in all rail communities on a rotating regularly scheduled timetable. This should provide the opportunity for the communities to voice their concerns and discuss any recommendations or suggestions they may have.

16. IS THE RAILROAD SPENDING A CONSIDERABLE SUM OF MONEY ON ADVERTISING THIS YEAR? IF SO, WHERE IS A MAJORITY OF THIS ADVERTISING BEING DONE, AND WHAT AREAS IS THIS ADVERTISING TARGETED TO?

The Alaska Railroad recently contracted with an advertising firm to work with the railroad on marketing the services they provide to "potential" customers in other states. A lot of this advertising will be done in the newspapers, professional journals, hand outs and radio stations. This campaign is designed to attract new freight customers for the railroad as well as promote real estate opportunities for the railroad. Some of this advertising will also focus on the passenger services provided by the Alaska Railroad. This years advertising budget for Alaska Railroad is approximately \$500,000 which reflects a 60% increase over the advertising budget for last year.

17. THE AMOUNT ORIGINALLY BUDGETED FOR CAPITAL PROJECTS WAS \$14.2 MILLION. FROM THE PERIOD JANUARY THRU AUGUST ONLY \$4.2 MILLION HAS BEEN EXPENDED, WHAT IS THE STATUS OF CAPITAL EXPENDITURES?

Using much of the capital project list available from the Federal government upon transfer, the Alaska Railroad budgeted \$14.2 million for capital expenditures. Since this time the method of approving funds for capital expenditures has changed.

The Railroad reviewed and reprioritized all capital projects to consider the feasibility of undertaking the project. This is the rationale considered before approving a capital expenditure:

Why do the project?

Why do it now?

Rate of return

cost

priority

Economic analysis.

With the financial statement being one of the major interests and concerns of the Corporation, this method of evaluating all projects enables the railroad to prioritize the projects and evaluate and justify the need for the project while considering the overall finances of the Corporation.

18. IN THE FINANCIAL STATEMENT, WHAT ARE THE CURRENT LONG TERM LIABILITIES LISTED?

The railroad purchased 5 new locomotives in 1985 at a cost of \$1 million dollars per locomotive. 45 new intermodal cars have also been purchased and equipment such as computer equipment has been purchased by the railroad. Long term contracts with yearly payments were arranged for the purchase of these items.

19. WHAT IF ANY CHANGES HAVE BEEN MADE, OR ANY PROPOSED FOR PASSENGER SERVICES?

In September, 1985 the railroad proposed changes in passenger services from Hurricane to Fairbanks.

Currently, passenger service is available from Anchorage to Fairbanks on Saturday and return service from Fairbanks to Anchorage on Sunday. Many of the persons using this service live in the area between Anchorage and Hurricane. As few as 10 persons usually travel the entire distance.

The railroad estimate savings of approximately \$500,000 by use of these cars.

The railroad is also proposing to offer daily excursion trips to Seward during the summer, this will be a 3 hour trip. The new RDC cars will be used on this run.

During December, the railroad management held a public meeting in Whittier. Input and comments were received from local residents on ways the railroad could change or improve existing services. The railroad is currently reviewing the information they received and plan to meet again in the next few months with the local Whittier residents to discuss possible changes.

20. HAS THE RAILROAD RECENTLY ADOPTED A NEW PROCUREMENT POLICY?

Alaska Railroad management recently looked at the procurement policies of the state and those of private industry. A new procurement policy has been adopted by ARR with provisions for Alaska preference and minority hire.

The procurement policy also provides that public notification will be given on all contracts or request made for services or purchases over \$25,000

The policy does not mandate that the contract be awarded to the low bidder. Management has the flexibility to award the contract to any proposal if they consider the services to be provided offer advantages over other contracts received.

21. HAS ALASKA RAILROAD MADE ANY CHANGES IN THEIR INSURANCE COVERAGE?

Immediately following State purchase, the Railroad was able to utilize State insurance coverage for both liability and property coverage with a deductible of \$200 thousand and a \$50 million ceiling. Premium for this coverage was \$475,000 annually.

Renewal of this coverage could not be obtained. Therefore, there has been a substantial increase in ARR self-insured risk.

The liability insurance has been restructured to have a \$2 million deductible with a \$30 million ceiling. The property insurance has a \$10 million deductible and a \$20 million ceiling. The costs, even with this drastic reduction in coverage have increased to \$1.4 million annually.

The Board of Directors of ARRC have approved this risk management plan and have also requested management to procure a \$10 million line of credit as a contingency fund with stipulations placed on the fund to prevent depletion without proper cause.

22. WHAT IS THE CURRENT STATUS OF TITLE 5 AND UNITED TRANSPORTATION UNION.

The transfer Act and the Statute forming the ARR Corporation, all labor agreements are to be renegotiated within 2 years from the date of transfer.

There are 5 unions within the ARRC. However, there are 7 union agreements in existence as several unions have white collar and blue collar agreements.

ARRC is currently negotiating with all 5 unions in an attempt to come up with a master agreement. To this master agreement appendices will be attached for each union.

The Railroad is currently in a dispute with UTU (United Transportation Union). This is the union that represents the trainmen and enginemen (approximately 180 employees.) The UTU and the Railroad have initiated suits to resolve the impact of Federal Law (Title 5, U.S. Code) on the validity of collective bargaining agreement that was in existence when the transfer took place. Both the union and the railroad agree that this dispute must be resolved before union negotiation can be completed.

The question the court will have to decide is: Since Title 5 made it illegal for the Federal railroad management to negotiate away its authority to assign work, is it legal for corporate railroad management to accept and abide by an unlawful agreement?

Alaska Railroad legal counsel strongly feel that ARRC may be in violation of Alaska law since, in recent cases, Alaska courts have also held that management rights cannot be delegated or negotiated away by public institutions. ARRC Counsel strongly recommended that the Corporation immediately cease paying the Title 5 "arbitraries".

The Corporation is keeping a record of all employee claims and depositing all payments due in an interest bank account. This money will be paid to the affected employees should the courts find the bargaining agreement unlawful. The amount being escrowed averages about \$20,000/week.

"Arbitraries" are specific pay rules and special pay conditions for certain types of work, such as hooking up engines or operating trains more than a certain length. The Corporation would like to resolve this question out of court by negotiating an agreement with the union that will satisfy Title 5 requirements, but minimize the financial impact to employees.

If no solution can be reached, the question may have to be resolved in court, which should take approximately 90 days.

ALASKA RAILROAD CORPORATION  
Statement of Income  
Through the Period Ending August 31, 1985  
(In Thousands of Dollars)\*

	August			Year-To-Date		
	1985	Budget	Variance	1985	Budget	Variance
<u>Revenues</u>						
Railroad	6,184	7,213	(1,029)	39,259	44,876	(5,617)
Other	<u>1,051</u>	<u>750</u>	<u>301</u>	<u>7,586</u>	<u>6,000</u>	<u>1,586</u>
Total	7,235	7,963	(728)	46,845	50,876	(4,031)
<u>Cost and Expenses</u>						
Railroad						
Transportation	2,227	2,809	(582)	14,558	18,044	(3,486)
Ways and Structures	1,504	1,496	8	9,508	8,656	852
Equipment	929	1,137	(208)	7,076	8,251	(1,175)
General and Administrative	<u>1,524</u>	<u>764</u>	<u>760</u>	<u>8,288</u>	<u>5,766</u>	<u>2,522</u>
Total	6,184	6,206	(22)	39,430	40,717	(1,287)
Other						
Total	<u>5</u>	<u>393</u>	<u>(388)</u>	<u>185</u>	<u>3,001</u>	<u>2,816</u>
	6,189	6,599	(410)	39,615	43,718	(4,103)
Operating Surplus	1,046	1,364	(318)	7,230	7,158	72
Interest Expense	37	0	37	196	0	196
Corporate Expense	<u>286</u>	<u>161</u>	<u>125</u>	<u>1,703</u>	<u>1,217</u>	<u>486</u>
Net Surplus	723	1,203	(479)	5,331	5,941	(610)
Depreciation	<u>132</u>	<u>400</u>	<u>(268)</u>	<u>816</u>	<u>3,200</u>	<u>(2,384)</u>
Net Income (Loss)	<u>591</u>	<u>803</u>	<u>(212)</u>	<u>4,515</u>	<u>2,741</u>	<u>1,774</u>

\* Figures rounded to nearest thousand dollars

ALASKA RAILROAD CORPORATION  
 Summary Balance Sheet  
 Comparison of Federal and State Ownership  
 (In Thousands of Dollars)

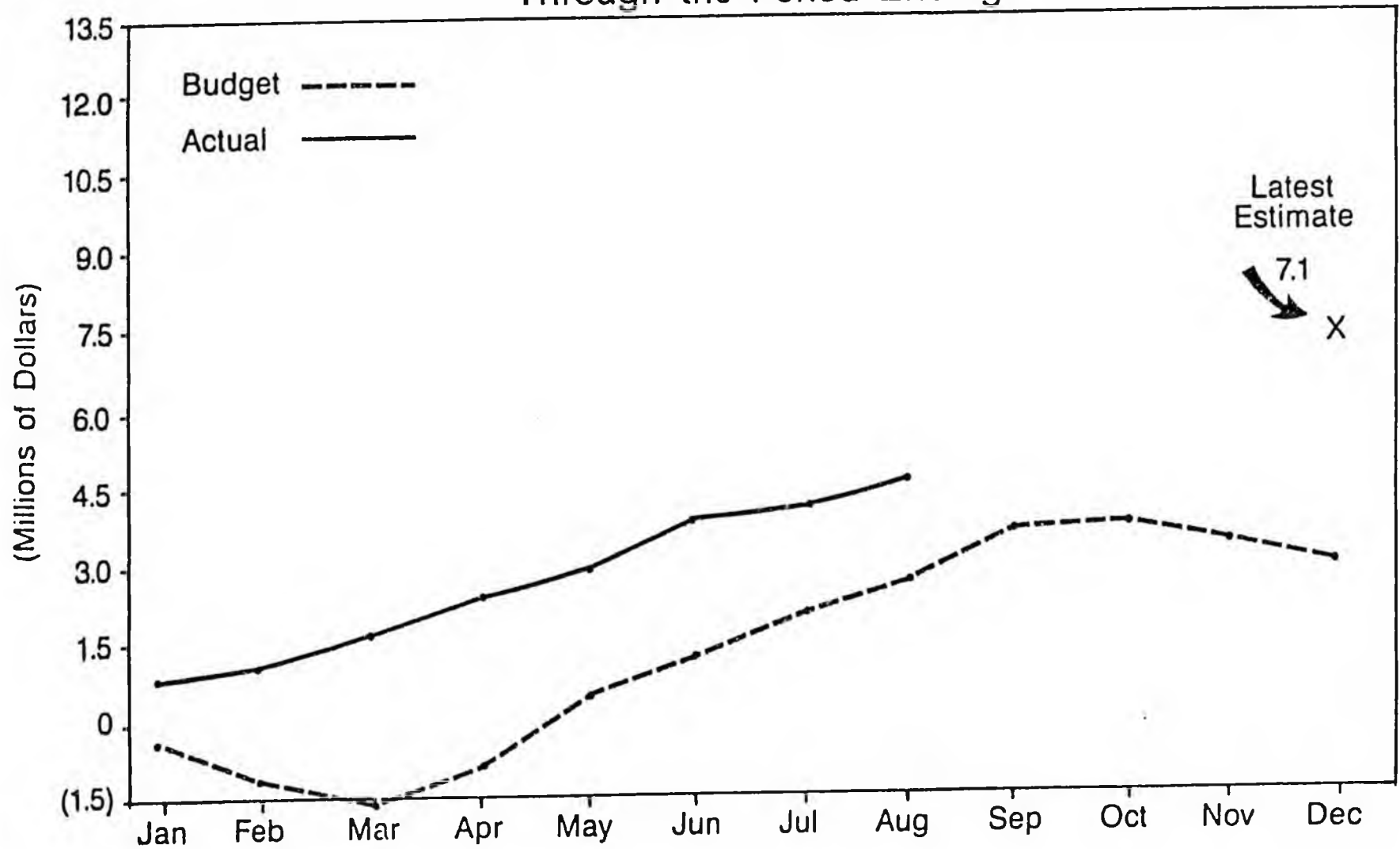
	Federal	<u>State Ownership</u>	
	<u>Year-End 1984</u>	<u>Jan. 6, 1985</u>	<u>Aug. 31, 1985</u>
<u>Assets</u>			
Current Assets	29,296	15,755	23,197
Properties	154,141	4,562	13,171
Land	265	15,414	15,414
Other	<u>3,460</u>	<u>1,443</u>	<u>6,093</u>
Total Assets	<u>187,162</u>	<u>37,174</u>	<u>57,875</u>
<u>Liabilities and Owners Equity</u>			
<u>Liabilities</u>			
Current Liabilities	7,828	1,500	8,722
Long Term Liabilities	0	272	7,273
Other Liabilities and Deferred Credits	<u>4,156</u>	<u>2,153</u>	<u>3,234</u>
Total Liabilities	11,984	3,925	19,229
<u>Owners Equity</u>			
Investment by Federal Government *	200,591	0	0
Investment by State of Alaska	787	33,249	34,131
Retained Earnings	<u>(26,200)</u>	<u>0</u>	<u>4,515</u>
Total Owners Equity	175,178	33,249	38,646
Total Liabilities and Owners Equity	<u>187,162</u>	<u>37,174</u>	<u>57,875</u>
Annualized Return on Investment		0.0	19.88

\*Whittier Shuttle Annual Funding

# Alaska Railroad Corporation

## 1985 Income (Loss)

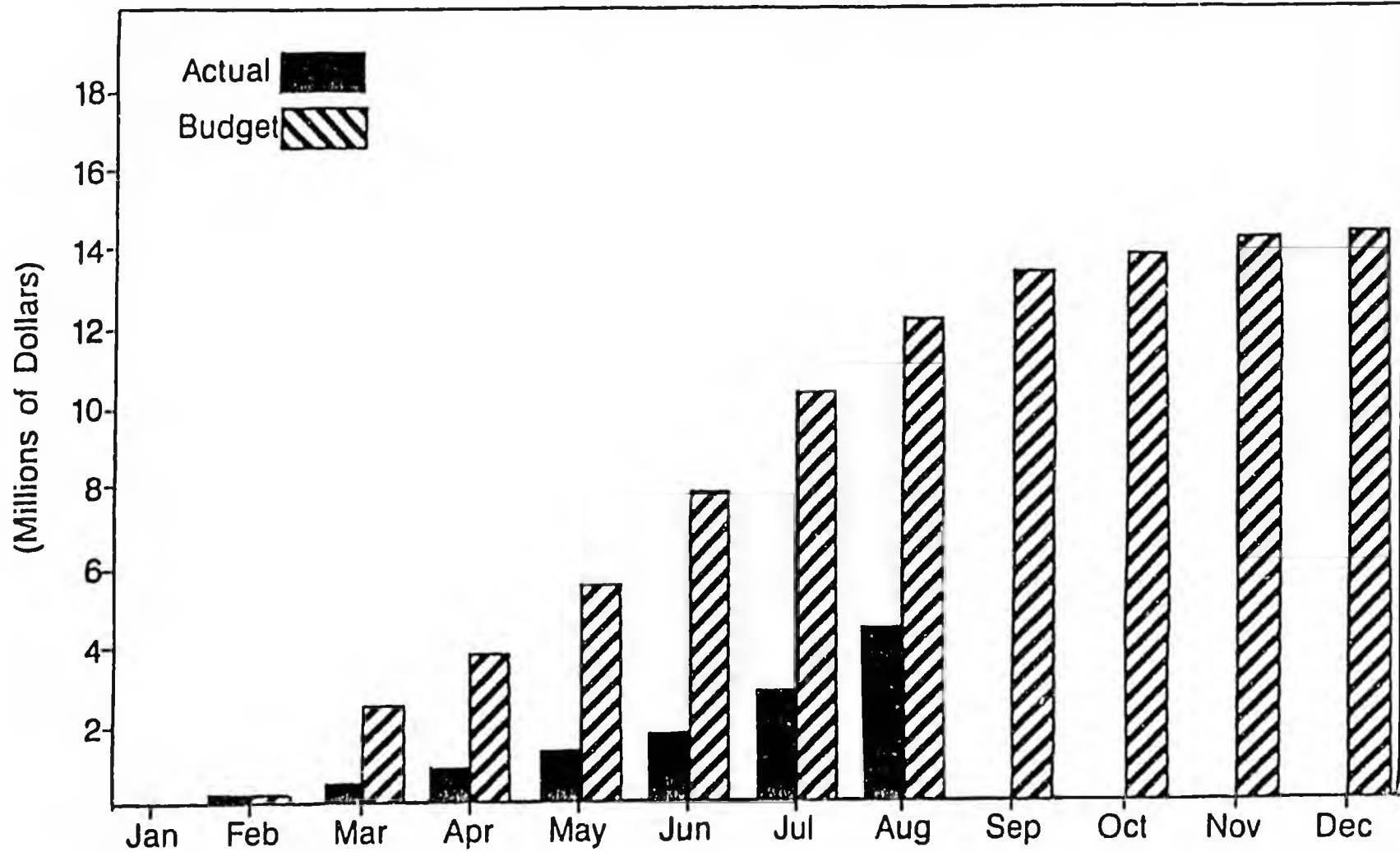
### Through the Period Ending



Budget	(.8)	(1.3)	(1.6)	(1.0)	.3	1.0	1.9	2.7	3.5	3.6	3.2	2.9
Actual	.3	.5	1.3	2.1	2.9	3.5	3.9	4.5				7.1(LE)

# Alaska Railroad Corporation

## 1985 Capital Expenditures Through the Period Ending

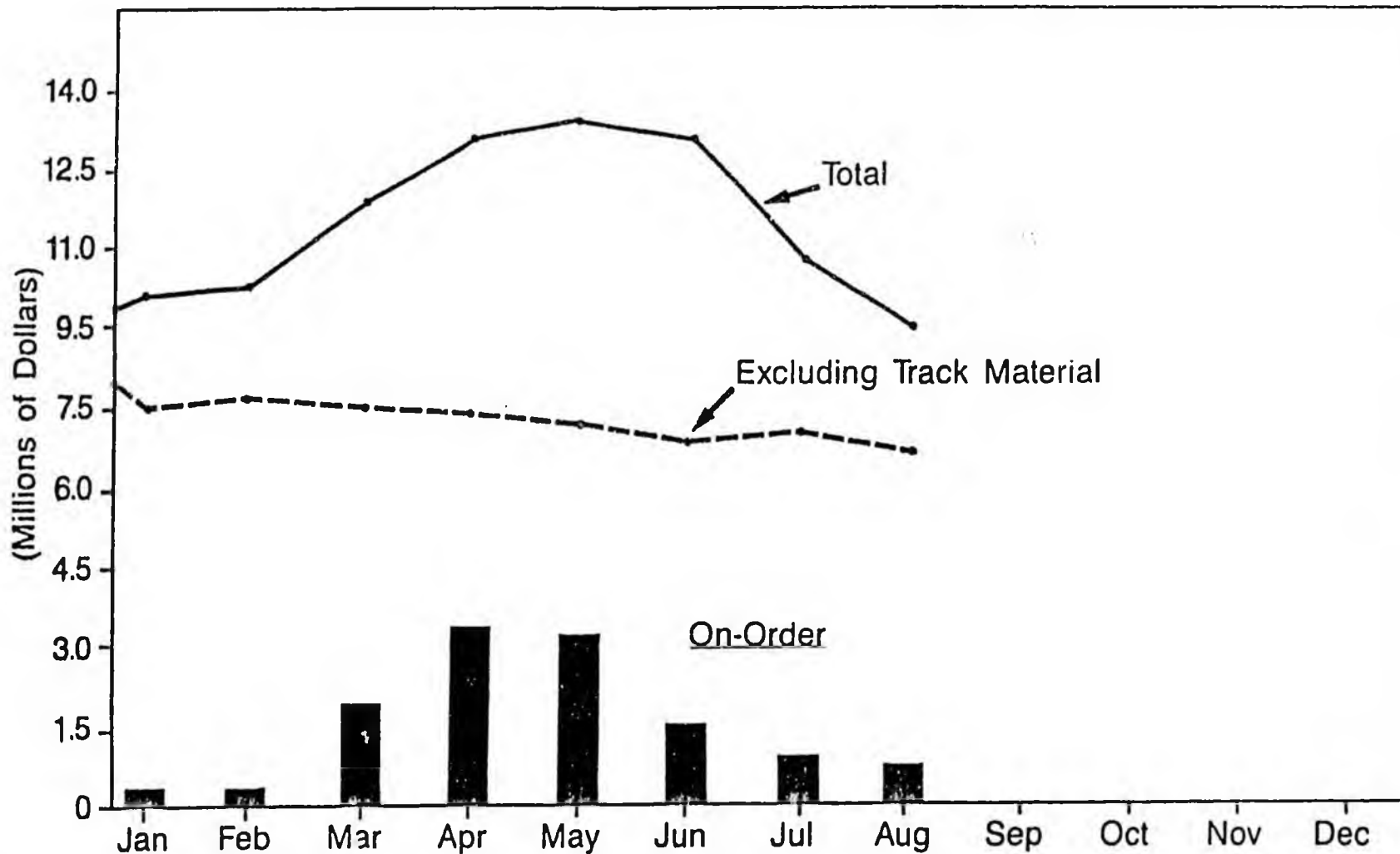


Budget	0	.2	2.4	3.9	5.8	7.9	10.3	12.1	13.6	13.9	14.1	14.2
Actual	0	.2	.5	.7	1.2	1.7	3.0	4.2				

# Alaska Railroad Corporation

## Inventory Level

### 1985



Total	10.0	10.2	11.9	12.8	13.2	12.8	10.5	9.5
On-Order	.4	.4	2.2	3.2	3.1	1.4	1.0	.9
Excls. Track Material	7.5	7.6	7.5	7.3	7.1	6.8	6.9	6.5

ALASKA RAILROAD CORPORATION  
 PROJECT-TO-DATE CAPITAL PERFORMANCE SUMMARY  
 Budget vs Actual  
 Through the Period Ending August 31, 1985  
 (In Thousands of Dollars)

	<u>Approved Budget</u>	<u>Amount Approp.</u>	<u>Latest Estimate</u>	<u>1985 YTD Expend.</u>	<u>Remainder of 1985</u>	<u>1986</u>
1984 Carryover	2,063	2,063	2,028	1,612	285	131
1985 Projects	13,187	6,650	15,807	2,606	7,542	7,113
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
TOTAL	<u>15,250</u>	<u>8,713</u>	<u>17,835</u>	<u>4,218</u>	<u>7,827</u>	<u>7,244</u>
State Funded (Cap. & Exp.)						
Transfer Funds	268	268	268	268	0	0
Shuttle Equipment - 528	925	0	925	0	0	925
Records Management - 529	<u>15</u>	<u>15</u>	<u>15</u>	<u>3</u>	<u>12</u>	<u>0</u>
Total State Funded	<u>1,208</u>	<u>283</u>	<u>1,208</u>	<u>324</u>	<u>12</u>	<u>925</u>

ALASKA RAILROAD CORPORATION

ADDITIONAL EXPENSES

RISK MANAGEMENT	\$ 1,000,000
INTEREST EXPENSE ON EQUIPMENT	500,000
PENSION PLAN	400,000
LOSS OF TRANSFER FUNDS	280,000
ADDITIONAL EXEMPT PERSONNEL	600,000
LOSS OF FRA COLLECTION FEE	250,000
MOPAC CAR TRACKING SYSTEM	<u>150,000</u>
TOTAL ADDITIONAL COSTS	<u>\$3,180,000</u>

ALASKA RAILROAD CORPORATION

ANNUAL HARD DOLLAR SAVINGS

COMPUTER RELATED EQUIPMENT	\$ 470,000
• WANG SYSTEM (\$175,000)	
• IBM MAINFRAME (\$70,000)	
• BURROUGHS (\$225,000)	
FREIGHT HOUSE	500,000
LIGHT VEHICLE REDUCTION	100,000
ENERGY SYSTEM PROJECT	300,000
HEALY HOTEL COMPLEX	300,000
WINTER PASSENGER SERVICE	300,000
PERSONNEL	2,000,000
NON-RECURRING DATA PROCESSING COSTS	600,000
NON-RECURRING CONSULTING CONTRACTS	<u>200,000</u>
TOTAL SAVINGS	<u>\$4,770,000</u>

## ARCTIC FOX FAST FREIGHT SERVICE

- SCHEDULED FREIGHT SERVICE
  - FAST AND DEPENDABLE
- TWO-PERSON CREW VS FIVE-PERSON CREW
- TWO LOCOMOTIVES VS FIVE
- NO CABOOSE (80 CENTS PER MILE)
- NEW EQUIPMENT
  - LIGHTER AND CHEAPER TO MAINTAIN
- RATE STRUCTURE CONSIDERS:
  - CAPITAL COSTS FOR NEW EQUIPMENT
    - LOCOMOTIVES AND RAIL CARS
    - VAN LIFTS AND HOSTLER TRUCKS
  - ROAD COSTS
    - CREWS
    - TRACK REPAIRS
    - LOCOMOTIVE AND RAIL CAR FUEL/SERVICING
  - TERMINAL COSTS
    - CREWS
    - LOCOMOTIVE REPAIRS, FUEL, AND SERVICE
    - VAN LIFT LABOR AND FUEL
    - HOSTLER TRUCK FUEL
- SUBSTANTIAL RATE REDUCTIONS ARE STILL POSSIBLE

# ALASKA RAILROAD CORPORATION



Area 7-2111 • Anchorage, Alaska 99510-7069

September 11, 1985

The Honorable Don Bennett  
President, Alaska State Senate  
P. O. Box 2801  
Fairbanks, AK 99707

Dear Senator Bennett:

Thank you for your letter of August 19, 1985, inquiring about the dispute the Railroad is currently having with the UTU (United Transportation Union). This is the union that represents our trainmen and enginemen (approximately 180 employees).

The UTU and the Railroad have initiated suits to resolve the impact of Federal Law (Title 5, U.S. Code) on the validity of the collective bargaining agreement the Corporation inherited on the day of transfer. Both the union and railroad management agree that this issue must be resolved before effective labor negotiations can be completed. Our Counsel estimates that court resolution will take 60 to 90 days.

The question is straight forward. Since Title 5 made it illegal for the Federal Railroad management to negotiate away its authority to assign work, is it legal for corporate railroad management to accept and abide by an unlawful agreement? My concern, of course, is that an audit of our management could very well charge that we were in violation of Alaska law since, in recent cases, Alaska courts have also held that management rights cannot be delegated or negotiated away by public institutions.

Unfortunately, we found that actual railroad practice conflicted with our legal position. We were, in effect, raising serious legal issues, but at the same time continuing to accept the Title 5 portions of the contract in actual practice. Our Counsel noted that this inconsistency was difficult to defend and strongly advised that we immediately cease paying the Title 5 "arbitraries." We accepted this recommendation and notified the union that this action was taken. However, we are also keeping a record of all employee claims and depositing all payments due in an interest bearing bank account. This money will be paid to the affected employees should the courts find the bargaining agreement lawful.

To help you understand what we mean by "arbitraries," I have enclosed a list of the specific pay rules that are impacted by Title 5. Other management rights such as crew size, work assignment, etc., would also be impacted but there is no financial loss to the employee for these items. The amount being escrowed averages about \$20,000 per week.

The Honorable Don Bennett  
September 11, 1985  
Page Two

Incidentally, the UTU filed with State court for an injunction against the Railroad for withholding payment of the "arbitraries." The court denied their request on September 3.

While the most direct manner of resolving the question is in the courts, we would prefer to negotiate an agreement with the union that will satisfy the Title 5 requirements, but minimize the financial impact to our employees. We have made this known to the union leadership and have received an encouraging response that they, too, are willing to explore the negotiation route. We are hoping to initiate our meetings in the near future and hopefully can reach an amicable resolution.

Please let me know if you have further questions or any comment.

Sincerely,



F. G. Turpin  
President & Chief Executive Officer

Enclosure

cc:

The Hon. J. B. Coghill, Chairman, Senate Transportation Committee w/encl.  
The Hon. Ben Grussendorf, Speaker of the House w/encl.  
The Hon. Bette Cato, Chairman, House Transportation Committee w/encl.  
Mr. J. O. Campbell, Chairman, ARRC Board w/encl.

## TITLE 5 DELETIONS

Switching at Whittier - Rule 6. Employees on road freight jobs who do switching work in Whittier are paid a minimum of 4 hours for switching work performed.

Example: A road crew departs Anchorage for Whittier to pick up cars loaded with trailers for Anchorage. While at Whittier, the crew switches the unloading ramp from the barge track to the storage track, approximately 10 minutes work. By performing this work, the crew is entitled to payment of 4 hours' work or a minimum of \$56.70 per crew member in addition to the \$140.16 earned for road miles run.

All Initial and Final Terminal Delays - Rule 6. These are delays that road freight crews may incur at the originating or terminating terminal. Delays may be waiting for another train to arrive at the terminal, switching out a defective car, or other reasons.

Example: Crew A is called to take a freight from Anchorage to Seward at 1:00 p.m. Prior to departure, the train is held in the Anchorage yard until a gravel train returns from south Anchorage to a yard track. The train departs for Seward at 2:30 p.m. Crew A is paid a minimum of \$14.25 each for initial terminal delay in addition to their regular earnings for the trip. Crew A departs for Seward and arrives at 7:00 p.m. Upon arrival at Seward, cars from their train need to be switched to the dock so a pipe ship can unload in the morning. Crew A places 15 cars to the dock for pipe loading which takes 30 minutes. Crew A is paid for a minimum of two hours for final terminal switching or a minimum of \$28.50 per employee in addition to their regular earnings which are at least \$125.60 per employee. Crew A ties up at 9:45 p.m. after being on duty a total of 6 hours and 45 minutes.

Hooking up Engines - Rule 6. Road freight crews, if required to set out locomotives in their consist or pick up locomotives, will be paid one hour for such work.

Example: A northbound loaded freight train departs Anchorage for Fairbanks without enough locomotives to ascend the grade between Canyon and Hurricane. A southbound empty freight from Fairbanks to Anchorage has extra locomotives and sets out two locomotives at Gold Creek for the northbound train to pick up, which will enable them to ascend the grade between Canyon and Hurricane.

The southbound crew is paid a minimum of \$14.20 each for setting out the locomotives and the northbound crew is paid \$14.20 each for picking up the locomotives in addition to their regular earnings for the trip. Setting out and picking up locomotives takes approximately 15 minutes.

Two Classes of Service - Rule 7. Employees perform a class of work different from which they are assigned or called to perform. There are four major classes of work assignments: 1) yard - this is normally switching done in a terminal area such as Anchorage, Fairbanks, or Seward; 2) freight - this is normally movement

of freight trains between terminals such as Anchorage to Fairbanks, Seward to Anchorage, etc.; 3) passenger - this is movement of passengers between terminals such as Anchorage to Fairbanks; and 4) work service - this is normally special service such as trains for spreading ballast, rail, hauling material for engineering projects, etc.

Example: Crew A is called in passenger service to take a passenger train from Anchorage to Fairbanks. Crew A departs Anchorage for Fairbanks. Near Talkeetna, a work train dumping ballast develops engine trouble and cannot get to a siding one mile away to enable the passenger train to pass them on their run to Fairbanks. The passenger train shoves the work train to the siding so they can continue on to Fairbanks. Crew A is then paid for another class of service--work service--for shoving the work train one mile to the siding. The entire crew A is paid a day's pay for work service, or a minimum of \$492.08 for the entire crew, in addition to their regular earnings for the passenger trip from Anchorage to Fairbanks.

Automatically on Duty - Rules 3, 4, and 6. Pay for employees on regularly assigned road freight jobs must begin on the calendar day of their assignment.

Example: Crew A is assigned to road freight service between Anchorage and Healy to work northward to Healy on Sunday and southbound from Healy to Anchorage on Monday. Crew A leaves Anchorage late on Sunday night, 11:00 p.m., and arrives at Healy at 8:00 a.m. on Monday morning and goes off duty for rest. The train is moved to Fairbanks by Crew B from Healy. The southbound train from Fairbanks is late departing because of shipper requirements and departs Fairbanks at 11:00 p.m. Monday night. Crew B arrives at Healy at 2:30 a.m. Tuesday morning with the southbound train from Crew A to take to Anchorage.

Crew A is paid from 11:59 p.m. Monday until 2:30 a.m. Tuesday because they are automatically on duty for pay purposes on Monday as their assigned day to work. They are paid a minimum of \$30.08 each for the 2-1/2 hours waiting for their train in addition to their regular pay. If the train had arrived at 11:59 p.m. Monday, they would not receive any additional payment.

Initial Terminal Switching or Delay at Portage - Rule 7(c). Crews in Shuttle train receive payment for delay time at Portage in excess of 30 minutes while loading passengers and vehicles in addition to their regular earnings.

Example: Specific delay time of over 30 minutes is incorporated into the Whittier Shuttle schedule to allow for passenger and vehicle loading and unloading. Thirty three (33) minutes is scheduled at Portage for three operations.

Payment of 33 minutes or a minimum of \$36.70 per crew member is made for loading and unloading time in addition to the regular earnings of at least \$214.00 per crew member.

Guarantee for Gravel Trains - Rule 7(d). Crews assigned in gravel service between pits near Palmer and south Anchorage dump sites are guaranteed 11 hours' pay regardless of actual time on duty.

Example: Crew A's assignment is to depart Anchorage with an empty train for loading, return to Anchorage, dump the cars, and then go off duty. Crew A completes their cycle in 9 hours 30 minutes but is paid for 11 hours' time.

9 hours 30 minutes minimum earnings equals	\$146.62 each
11 hours minimum earnings equals	<u>\$178.12</u>
Payment for not actually working per employee	\$ 32.19

Extra Board Guarantee - Rule 9. Employees assigned to the extra board at Anchorage are guaranteed not less than 700 miles per week in earnings. Extra boards are used to fill jobs that are not regularly scheduled and are termed "extra jobs" such as freight trains to Whittier to work barge arrivals, special passenger trains, or extra switching jobs in the Anchorage yard when business is heavy. These boards also cover vacancies that may arise on regularly assigned jobs for sickness, short vacations, etc. Extra boards are maintained for engineers, firemen, conductors, and brakemen in Anchorage.

Example: Employee A is working the brakemen's extra board in Anchorage. Business has slowed slightly and Employee A works three Anchorage yard jobs and one round trip to Seward and earns 579 miles or a minimum of \$734.51 from Sunday through Saturday. Employee A is paid an additional 121 miles or a minimum of \$138.22 because 700 miles were not earned in a seven-day period.

Run Arounds - Rule 9. Employees on extra boards must be called in proper turn, i.e., "first in-first out" basis.

Example: Employees A, B, and C are on the brakemen's extra board in Anchorage and available for work. Vacancies arise on the Whittier Shuttle at 11:00 a.m., an Anchorage switching job at 11:30 a.m. and a freight to Fairbanks at 12:00 noon.

Brakeman A is first out on the board and is called for the Whittier job since it goes to work first. Brakeman C is third out on the extra board and is called for the Anchorage yard job starting at 11:30 a.m. and Brakeman B, who is second out, is called for the job starting at 12:00 noon to go to Fairbanks. The crew dispatcher has made an error in calling the brakeman, as Brakeman B should have been called for the Anchorage yard and Brakeman C for the freight to Fairbanks.

Brakeman B is paid a runaround of a minimum of \$57.11 because he was not called in turn for the yard job. However, earnings for the Anchorage-Healy freight for the one-way trip is a minimum of \$379.36 whereas the minimum pay for the yard job was \$132.08.

Other than Shuttle Equipment - Rule 14. When the crew assigned to Whittier Shuttle service is required to handle freight cars that are not part of the regular shuttle equipment (passenger coaches and flat cars for vehicle loading), they receive additional compensation.

Example: Crew A works Whittier Shuttle performing the usual service between Whittier and Portage. The fish processing plant in Whittier needs to have refrigerator cars switched at the plant so they can continue operating. Crew A, while in Whittier, pulls three loaded cars from the plant and respots three empty cars. The switching takes 20 minutes. Crew A is paid for four hours' switching or a minimum of \$60.80 per crew member in addition to their regular earnings of at least \$214.00 per employee.

If Crew A were to bring the loaded fish cars back to Anchorage at the end of their trip, they would receive an additional payment of 50 miles or at least \$60.80 each for handling other than shuttle equipment.

Used on Off Day - Rule 15. Employee performs service on a regularly scheduled off day.

Example: Employee A is assigned to a yard job in Anchorage that has Saturday and Sunday as days off. There is a shortage of brakemen on Saturday and employee A is called to work a yard switching job in Anchorage from 9:00 a.m. to 4:00 p.m. Employee A is paid a minimum of \$132.08 for yard brakeman from 9:00 a.m. to 4:00 p.m. and is paid an additional \$132.08 for being used on regular off day.

Used Off Assignment - Rule 15. Employees works on a job that is different from the one that is their regular job. Employees bid and are assigned to regularly scheduled jobs on a seniority basis.

Example: Conductor A bid on and was assigned to work an Anchorage yard switching job working 8:00 a.m.-4:00 p.m., Monday through Friday. On Wednesday, a shortage of conductors on the extra board exists and a train is scheduled to go to Seward to move pipe to Anchorage at 6:00 a.m. The Crew Dispatcher determines Conductor A is rested and available and calls Conductor A to take the train to Seward and return rather than work the regular 8:00 a.m. Anchorage yard assignment.

Conductor A takes the train to Seward and back on Wednesday and earns a minimum of 228 miles (114 miles one way) or \$264.35. In addition to the Seward earnings, Conductor A is also paid \$138.56 for the regularly assigned 8:00 a.m. Anchorage yard job not worked because he was used off his regular assignment. The penalty applies even though he earned more on the Seward trip than the yard earnings.

Used on Layover Day - Rule 15. Employee performs service on regularly scheduled layover day. Crews in regularly assigned road service have what is called a layover day. This is the same as a scheduled day off.

Example: Employee A is assigned to a road freight job working between Anchorage and Fairbanks on Monday, Tuesday, Wednesday, and Thursday. Friday is a layover day and Saturday and Sunday are days off. Assume that on Friday a shortage of brakemen arises for the Whittier Shuttle. Employee A is rested and

available and is called for the Whittier Shuttle. Employee A earns at a minimum of \$194.44 for the shuttle service on Friday. Additionally, employee A is paid a minimum of \$114.23 for being used on the layover day.

Air Pay - Rule 43. Yardmen (conductors or brakemen) who couple up air brake hoses between freight cars in a terminal where carmen (Mechanical Department employees - different craft) are also employed are paid one hour's pay.

Example: At Anchorage if a yard switching crew couples air brake hoses between cars they are switching for any reason (shoving a track to make more room, setting a defective car out of a train, or any other reason), the conductor is paid \$17.32 and the brakeman \$16.51. Their payment is made only once if air hoses are connected once or twenty (20) times during the shift. Coupling an air hose takes approximately five (5) seconds.

Overlength Train - Crew Consist Agreement. The number of freight cars and length of the train determines how many brakemen are required as a crew.

Example:	<u>Cars Per Train</u>	<u>Length of Train</u>	<u>Brakemen Required</u>
	1-71	Less than 4015'	1
	71-121	Less than 6840'	1 or 2*
	121 or more	Over 6840'	2

\* may be operated with one (1) brakeman if UTU agrees.

Length of train, not work to be performed, determines crew size.

A train of 75 cars running straight through from Anchorage to Fairbanks would need two (2) brakemen, whereas a train of 70 cars would require only one (1) brakeman. Work to be performed enroute should determine crew size, not train length.

# CITY OF SEWARD

EST. 1897  
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3341
- Teletypewriter (907) 224-2243

April 5, 1985

MR. FRANK J. TURPIN, PRESIDENT  
AND CHIEF EXECUTIVE OFFICER  
ALASKA RAILROAD CORPORATION  
Pouch 7-2111  
Anchorage, AK 99510

Dear Mr. Turpin:

Attached is Resolution 85-14, approved by the Seward City Council at its March 27 meeting. I think this Resolution reflects the continued frustrations of the Seward Council at Alaska Railroad's seeming unwillingness to respond to our concerns regarding the railroad port facility and uplands in Seward.

Attached are copies of our prior correspondence dated January 25, 1985, and November 1, 1984. You will note that most of the issues raised have never been seriously pursued. On January 28 we began a dialogue that could do much to improve city/railroad relations. Since that time, we have seen no action to deal with the concerns expressed in any of our prior correspondence. I understand that the press of business places large demands upon you, but the concerns of the Council need to be addressed by you or a senior member of your staff.

Clearly, it is the wish of this community to have the maximum degree of control possible over our port facilities. We do not in any way want to harm the railroad or its operations; in fact, our efforts to promote the coal project, fisheries related shipping, pipe traffic, and general cargo shipping are all evidence of our interest in enhancing rail traffic.

In conclusion, I would hope this Resolution will serve to encourage further dialogue toward greater local involvement in this community's greatest asset - its maritime facilities. These issues need to be addressed, rather than ignored and I respectfully request your assistance to that end.

Respectfully,

CITY OF SEWARD, ALASKA

*(Handwritten signature)*  
DONALD W. CRIPPS  
MAYOR

DWC:RAG:am

CITY OF SEWARD, ALASKA  
RESOLUTION NO. 85-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SEWARD, ALASKA, REQUESTING THE TRANSFER OF REAL PROPERTY  
FROM THE ALASKA RAILROAD TO THE CITY OF SEWARD

WHEREAS, decisions relative to Alaska Railroad operations affecting the City of Seward are made in Anchorage with little or no consultation with Seward; and

WHEREAS, there are no Alaska Railroad executives with decision making powers immediately on hand in Seward to resolve operational problems; and

WHEREAS, the Railroad's exclusive contracting policies excluding other bona fide stevedoring companies mitigates against full utilization of the Port of Seward; and

WHEREAS, Alaska Railroad has assessed tariffs to assure the protection of rail traffic rather than to encourage full utilization of the Port; and

WHEREAS, this assessment policy has resulted in the assignment of prohibitive tariffs for offloading cargo destined for road transportation; and

WHEREAS, maximum utilization of the dock would benefit the City of Seward by providing jobs, increasing the tax base and enhancing the local economy;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, that:

Section 1. The State of Alaska is hereby requested to transfer all real property located within the City of Seward, with the exception of the rail line, from the Alaska Railroad to the City of Seward.

Section 2. A certified copy of this resolution shall be forwarded to the Honorable Governor Bill Sheffield.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, this 27th day of March, 1985.



SEATTLE, ANCHORAGE, FAIRBANKS and SEWARD ; CALL TOLL-FREE 1-800-762-2000 ! IN WASHINGTON STATE (206) 783-3330

SEATTLE OFFICE  
7814 Eighth Avenue South  
Seattle, WA 98108  
(206) 763-3330

January 22, 1985

The Alaska Railroad  
Pouch 7-2111  
Anchorage, Alaska 99510-7069

Attention: John T. Gray  
Manager, Marketing & Sales

Dear John:

Your letter of January 17, 1985, addressed to SeaWay Express Corporation is not only disturbing, but it is contrary to the agreements between The Alaska Railroad and SeaWay Express Corporation.

1) The only reason that SeaWay is trucking between Seward, Anchorage and Fairbanks is our effort to keep the Seward corridor open. The ARR has continuously prevented SeaWay from remaining competitive in a large portion of the marketplace by refusing to accept competitive pricing in accordance with the division of revenue sheet of our Operating Agreement. We have explained that continuation of ARR policies can only cause the end of service through Seward. Likewise, your pressing for a wharfage charge when we load/unload across our own ramps (not across your pier) would not only be contrary to our contract, but it would also cause the end of service through Seward. With the present ARR pricing policy, the only way service can proceed through Seward is by trucking a large portion of the freight.

If the ARR would react to competitive pricing in a timely manner in accordance with our Operating Agreement, so SeaWay Express could maintain a competitive price to our customers, then we would use the railroad for as much freight as possible. As you know, to move freight by SeaWay and then by rail to Anchorage and Fairbanks, together we must be competitive or we will have no customers. Therefore, the ARR has to sign competitive pricing agreements with our customers, and the division of

Mr. John T. Gray  
January 22, 1985  
Page Two

revenue between SeaWay and The Alaska Railroad must be in accordance with the terms of the split of revenue (between us) as called for in our signed Operating Agreement, if freight is to move by rail. The ARR penalizing or harassing SeaWay or our Alaska customers in an attempt to force them on the railroad will not work, but will only force SeaWay out of Seward and/or the customers to use other routes (which has been the case).

Our customers also demand and deserve timely service, which our Operating Agreement calls for and SeaWay is dedicated to provide. Your excuse is your lack of railcars (for which you somehow blame SeaWay Express), instead of dedicating existing cars and equipment to maximize performance. As you know, the ARR wanted to purchase these new type cars from PACCAR and negotiated with them to do so. SeaWay was a means for the ARR to get the cars they wanted from PACCAR and we reluctantly agreed to be of assistance. When PACCAR pulled out on the promised financing, the project fell apart; in good faith SeaWay endeavored long and hard to put it back together for everyone's sake by trying to find other financing or lease arrangements. As a result of State ownership, you now have the ability to perfect your own purchase, and you have informed us that you no longer need SeaWay as a intermediary.

2) We will continue to provide your agent "one copy of ship's manifest indicating all cargo to be interchanged with the ARR . . . for each trailer and all other types of shipment which will be moving by rail" [emphasis added], as provided in the Operating Agreement.

3) Our Alaska General Manager, Mr. William T. Abbott, has informed me of your statement that if we were to consummate negotiations with Pac West to move our SeaWay terminal to their Anchorage property (which Pac West leases from the ARR), that you will raise their cost or terminate their lease to inhibit our move.

Again, our proposed move from Seward is only necessitated because of interference and lack of cooperation on the part of The Alaska Railroad in our endeavors to maintain a competitive corridor through Seward.

We believe in the free enterprise system and the need to serve the community, provide job opportunity and, hopefully, make a profit from our investments. I again remind you that SeaWay Express Corporation, not The Alaska Railroad, put up the venture capital for this project. The railroad only leased a portion of their Seward property to us at fair market value to build our northern terminal. We do not lease or use your Seward dock contrary to your promises to permit us access.

Mr. John T. Gray  
January 22, 1985  
Page Three

Your attempts to control, regulate, direct, interfere or otherwise influence our business affairs (other than that agreed on between SeaWay and the ARR), is totally unacceptable. Further, this type of action does not benefit anyone, especially the residents of Alaska. In fact, your actions would require the Alaska consumer to pay more.

To make a new venture of this magnitude work, it takes cooperation from both the private and public sector working together for a common goal to increase the economic base. If it is the intention of The Alaska Railroad to force our cost of operation to the point where we cannot use Seward, and now Anchorage, then I believe that there are ports that would still welcome a good competitor like SeaWay.

4) In short, the railroad's emotional and arbitrary actions, particularly in not allowing SeaWay to react to market conditions and customer's needs, is causing SeaWay to lose present and prospective customers. Alternative service in lieu of rail (such as trucking) has been our only choice in order to continue through Seward. If the ARR now tries to fine us or our customers for using Alaska trucking by charging wharfage or such other tactics, then everyone loses.

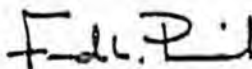
Alaskans will not and should not pay more or wait longer to use the railroad or the Port of Seward.

It remains our sincere desire to work with The Alaska Railroad. We would only truck when the railroad is not satisfied with your share of revenue a customer will pay. There are two parties to this agreement - SeaWay Express Corporation and The Alaska Railroad. However, many Alaska and Washington citizens will be directly impacted in varying degrees as a result of our acts.

We request that you put your intentions in writing concerning SeaWay's operation in Seward and/or Anchorage, so we may take appropriate action.

Very truly yours,

SEAWAY EXPRESS CORPORATION



Fred L. Peil  
General Manager

FLP:js

cc: Governor William F. Sheffield  
James Campbell  
Frank G. Turpin  
Secretary - The Alaska Railroad Commission  
Mayor Donald W. Cripps  
Ronald A. Garzini



Official Business

# Alaska State Legislature

## House

Pouch V  
State Capitol  
Juneau, Alaska 9

### MEMO

To: All Legislators  
Board of Directors, The Alaska Railroad

From: Rep. Fritz Pettyjohn *FJP*

re: Transferring the Alaska Railroad into private ownership

Who should own the Alaska Railroad? The State of Alaska or the people of the State of Alaska??

If you are inclined toward the latter, please review the enclosed bill and memorandum. I solicit your suggestions and criticism.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE LAMTOR  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 25, 1985

SUBJECT: Transfer of the Alaska Railroad into private ownership (Work Order 14-1397)

TO: Representative Fritz Pettyjohn

FROM: Tamara Brandt Cook *TC*  
Legislative Counsel  
Division of Legal Services

Here is a draft of the bill you requested transferring the Alaska Railroad into private ownership and incorporating details you requested concerning the amount of stock to be issued by the private corporation and distribution of the stock. However, specific details about how the private corporation would be formed and the public corporation would be dissolved were not supplied with your request, so please review this draft to determine whether this approach accomplishes your purpose.

Please note that the legislation establishing the Alaska Railroad Corporation included a provision requiring the preparation of a report by a private consultant containing recommendations on operational alternatives and the transfer of the railroad to the private sector. (Ch. 153, SLA 1984, section 3) The report would have been due by February 1, 1987. I have provided for the repeal of this provision in this draft, since the report seems to serve no purpose in view of the fact that the transfer of the railroad is accomplished under the terms of the draft.

Note also that I have included a provision requiring the private corporation to agree not to convert real property to a use that would prevent the railroad from operating for a period of ten years after the transfer of the railroad to the state. This is an attempt to avoid the possibility of triggering the reversion provision in 45 USC 1209(a) of the Alaska Railroad Transfer Act which states

October 25, 1985

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

The federal Alaska Railroad Transfer Act contains other provisions that may pose problems in transferring the railroad from state to private ownership. Favorable tax treatment is extended under 45 USC 1207(a)(6) to the railroad, but only if it is operated by the state.

- (A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 115(a)(1)). Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 103(a)(1)), but not obligations within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 103(b)(2)).
- (B) Nothing in this title shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

45 U.S.C. 1209(e) provides that, under certain circumstances, money realized by the state from the sale of the railroad would go to the United States government. It is impossible to determine whether the sale of stock provided for in this draft would result in any profit to the

Representative Fritz Pettyjohn

Page 3

October 25, 1985

state that would be subject to subsection (e) of the federal law, since it is not known what relationship the price of \$50 per share bears to the actual value of the stock or how much stock will be sold. For your information, however, subsection (e) states

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

This draft does not address another potential problem which could arise if the railroad is transferred into private ownership. The Alaska Railroad Corporation has the power to issue bonds with legislative approval. If bonds are issued and depending upon the terms of the bonds themselves, it may be necessary to entirely redeem these bonds before the state may give up ownership of the railroad, since the bonds will have been marketed as obligations of a public corporation. You may wish to look into this problem further before introducing legislation transferring the railroad into private ownership.

Lastly, there is a possibility that the sale of stock in the private corporation to certain classes of people on a preferential basis may violate federal securities law. Securities law, like bonding, is a very specialized field. This draft should probably be referred to an expert in the field for review prior to introduction as legislation.

Please let me know if there are changes you would like made to this draft or if I can be of further assistance to you in this project.

TBC:mkr  
M1:059

Enclosure

14-1397  
Cook  
10-25-85

1 IN THE HOUSE

BY PETTYJOHN

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad; and provid-  
7 ing for an effective date."

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

9 \* Section 1. ALASKA RAILROAD PURCHASE FUND. The Department of Revenue  
10 shall establish a fund to be known as the Alaska Railroad purchase fund.  
11 Fifty dollars from each permanent fund dividend designated for payment to  
12 the Alaska Railroad purchase fund under sec. 2 of this Act shall be depos-  
13 ited in the fund for the credit of the person for whom the dividend was  
14 paid.

15 \* Sec. 2. ELECTION OF PERMANENT FUND DIVIDEND PAYMENTS. In 1987 the  
16 permanent fund dividend application form shall be prepared to allow an  
17 applicant to indicate whether the entire permanent fund dividend payment  
18 should be paid to the applicant or whether \$50 from the dividend should be  
19 paid to the Alaska Railroad purchase fund to reserve a share of stock in a  
20 private corporation when it is formed to replace the Alaska Railroad  
21 Corporation. The Department of Revenue shall pay the dividend as directed  
22 on the form. If an applicant does not indicate a preference for the  
23 payment of the permanent fund dividend on the application form, the entire  
24 dividend shall be paid to the applicant.

25 \* Sec. 3. RESERVATION OF ADDITIONAL SHARES OF STOCK. (a) As soon as  
26 possible after the permanent fund application deadline for 1987 the board  
27 of directors of the Alaska Railroad Corporation shall calculate the number  
of shares of stock in the successor private corporation reserved for dis-  
tribution under sec. 5(b) of this Act. If all of the shares of stock

1 authorized to be issued under sec. 5(a) of this Act are not reserved for  
2 distribution under sec. 5(b) of this Act, the board of directors shall  
3 offer each employee of the Alaska Railroad Corporation the option of re-  
4 serving remaining shares of stock by paying \$50 per share to the Department  
5 of Revenue for deposit in the Alaska Railroad purchase fund to the credit  
6 of the employee. An employee may not reserve more than 20 shares of stock  
7 under this subsection and payment for the reservation of stock must be  
8 received by the Department of Revenue within 30 days after the board of  
9 directors makes the offer under this subsection.

10 (b) As soon as possible after the period for the receipt of payments  
11 for the reservation of stock by employees of the Alaska Railroad Corpo-  
12 ration has elapsed the board of directors shall calculate the number of  
13 shares of stock reserved for distribution to the employees. The board of  
14 directors shall offer the option of reserving remaining shares authorized  
15 under sec. 5(a) of this Act to individuals who have resided in the state  
16 for at least 30 days. A resident may reserve stock offered under this  
17 subsection by paying \$50 per share to the Department of Revenue for deposit  
18 in the Alaska Railroad purchase fund to the credit of the resident.  
19 Payment for the reservation of stock must be received by the department  
20 within 30 days after the board of directors makes the offer under this  
21 subsection.

22 (c) As soon as possible after the period of the receipt of payments  
23 for the reservation of stock by residents under (b) of this section has  
24 elapsed the board of directors shall calculate the number of shares of  
25 stock reserved for distribution to the residents. The board of directors  
26 shall offer the option of reserving remaining shares authorized under  
27 sec. 5(a) of this Act to members of the general public. A person may  
reserve stock offered under this subsection by paying \$50 per share to the  
Department of Revenue for deposit in the Alaska Railroad purchase fund to

1 the credit of the person. Payment for the reservation of stock must be  
2 received by the department before stock is issued under sec. 5(a) of this  
3 Act and on or before a date fixed by the board of directors.

4 \* Sec. 4. FORMATION OF SUCCESSOR CORPORATION. (a) Before January 1,  
5 1988 the board of directors of the Alaska Railroad Corporation shall form a  
6 successor private corporation under AS 10.05 and direct the Department of  
7 Revenue to transfer money in the Alaska Railroad purchase fund into the  
8 general fund in payment for the railroad. The board of directors of the  
9 Alaska Railroad Corporation shall serve as the board of directors for the  
10 successor private corporation until a new board is elected by the stock-  
holders. The board of directors shall enter into an agreement with the  
state on behalf of the successor private corporation not to convert, for  
ten years after the date of transfer of the railroad to the state, all or  
14 part of the real property transferred to the state under 45 U.S.C. 1201 -  
15 1214 (Alaska Railroad Transfer Act of 1982), except that portion of prop-  
16 erty that lies within the Denali National Park and Preserve, to a use that  
17 would prevent the railroad from continuing to operate. Upon entering into  
18 this agreement, the state shall designate the private successor corporation  
19 as the entity to own, operate, and manage the Alaska Railroad and all  
20 assets and liabilities of the Alaska Railroad Corporation shall be trans-  
21 ferred to the successor private corporation.

22 (b) Violation of the agreement entered into under (a) of this section  
23 shall result in the reversion to the state of all assets transferred by the  
24 state to the private successor corporation.

25 \* Sec. 5. ISSUANCE AND DISTRIBUTION OF STOCK. (a) The board of direc-  
26 tors shall issue 1,000,000 shares of stock in the successor private cor-  
27 poration formed under sec. 4 of this Act. The stock shall represent the  
entire value of the corporation. Shares that remain, after distribution  
under (b) and (c) of this section shall be retained by the corporation or

1 disposed of according to terms and conditions established by the corpo-  
2 ration.

3 (b) One share of stock shall be distributed to each person qualified  
4 to receive a permanent fund dividend in 1987. Each person who reserved a  
5 share of stock on the permanent fund dividend application form for that  
6 year shall receive an additional share.

7 (c) Stock shall be distributed to each person who has reserved stock  
8 under sec. 3 of this Act based upon the amount credited to that person in  
9 the Alaska Railroad purchase fund.

10 \* Sec. 6. STOCKHOLDERS' MEETING. (a) At the time of issuing stock  
11 under sec. 5 of this Act, the board of directors shall notify each stock-  
12 holder of the time and place of the first stockholders' meeting. The  
13 meeting shall be held within 90 days after the stock is issued.

14 (b) At the stockholders' meeting the board of directors shall resign  
15 and the stockholders shall elect nine individuals to serve as the new board  
16 of directors of the successor private corporation.

17 \* Sec. 7. Section 3(a), ch. 153, SLA 1984 is repealed.

18 \* Sec. 8. AS 42.40 is repealed.

19 \* Sec. 9. Sections 1 - 7 of this Act take effect immediately in accor-  
20 dance with AS 01.10.070(c).

21 \* Sec. 10. Section 3 of this Act takes effect on the date a private  
22 successor corporation for the Alaska Railroad Corporation is formed under  
23 sec. 4 of this Act.  
24  
25  
26  
27