

HB

221

Alaska State Legislature



House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

April 6, 1987

FOR TODAY'S MEETING YOU HAVE:

A FOLDER ON HB 221 THAT INCLUDES:

- * a copy of HB 221
- * a zero fiscal note from the Dept. of Commerce and Economic Development
- * a position paper from the Alaska Railroad Corp.
- * a copy of the statutes impacted by HB 221

SECTIONAL ANALYSIS OF SSHB 221:

Title 42 refers to the Alaska State Statutes on Public Utilities and Carriers.

Chapter 40 refers to the Alaska Railroad Corporation (ARRC).

Entry #260(b) is part of Article 4 regarding powers and duties of the ARRC and has to deal with ARRC's annual report.

Section 1 of SSHB 221 has to do with a report that would analyze potential sale arrangements whereby ARRC may be transferred into private ownership.

SSHB 221 specifies that the first report to the effect of selling the railroad would be due in ARRC's annual report for fiscal year 1991. THE FISCAL YEAR REFERRED TO IN SSHB 221 IS THE FISCAL YEAR OF THE ALASKA RAILROAD CORPORATION.

The ARRC operates on a fiscal year that extends from January 1 through December 31. The legislature operates on a fiscal year that extends from July 1 through June 30. By including the required information in its 1991 annual report, ARRC would be providing the legislature with the required information during legislative fiscal year 1992.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: _____
 Title: An Act Suspending Requirements for Reports on Arrangements and Offers to Sell the Alaska Railroad
 Sponsor: Rep. Cato
 Requestor: House Transportation Committee
 Bill Version: HB 221
 Publish Date: 3-27-87
 Agency Affected: Alaska Railroad Corporation
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-					
CAPITAL	-0-					
REVENUE	*					

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER						
TOTAL	-0-					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

*As the position paper submitted by the Alaska Railroad Corporation explains, delaying efforts to sell the railroad beyond January 5, 1987, will mean that the State of Alaska, not the United States, will enjoy any sale profits.

Prepared by: Larry D. Wood, General Counsel Phone: 265-2461
 Division: Alaska Railroad Corporation Date: 4-6-87
 Approved by Commissioner: _____ Date: 4-6-87
 Agency: F.G. Turpin, President & CEO *M.G. [Signature]*

Distribution (by preparer):

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- Impacted Agency(ies)
- Senate Secretary

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

VIA TELECOPIER

April 3, 1987

APR 6 1987

Honorable Bette Cato, Chairman
House Transportation Committee
House of Representatives
P.O. Box V, Room 15
Juneau, Alaska 99811

Re: HB No. 221, An Act Suspending Requirements for Reports
on Arrangements and Offers to Sell the Alaska Railroad

Dear Representative Cato,

Thank you for providing this opportunity for the Alaska Railroad Corporation ("ARRC") to comment on HB No. 221. As you know, the bill proposes to amend the Alaska Railroad Corporation Act and will require that the first analysis and documentation of potential railroad sale arrangements appear in the corporation's annual report for fiscal year 1992. We understand that "1990" in the present version of the bill is a typographical error.

For the reasons stated in enclosed position paper, we strongly support this legislation. Should the railroad be sold, delay of mandatory sale arrangements beyond 1990 will avoid federal legal requirements that sale profits be paid to the United States. This action will clearly serve the State's best interests.

Thank you also for your sponsorship of this important legislation.

Sincerely,

F. G. Turpin
President and Chief Executive Officer

cc: James C. Campbell, Chairman

4112L

HOUSE BILL NO. 221

AN ACT SUSPENDING REQUIREMENTS FOR REPORTS
ON ARRANGEMENTS AND OFFERS TO SELL THE
ALASKA RAILROAD

I. INTRODUCTION

HB No. 221 proposes that the first analysis and documentation required under AS 42.40.260(b) (part of the Alaska Railroad Corporation Act ("ARCA")) be included in the corporation's annual report for fiscal year 1992.

The Alaska Railroad Corporation ("ARRC") strongly supports this legislation.

II. DISCUSSION

When the State of Alaska purchased the Alaska Railroad in January, 1985, it agreed to many sale terms. These terms include a provision in the federal Alaska Railroad Transfer Act ("ARTA") which requires the State to turn over any profits of a subsequent sale or transfer of the railroad to the United States, if the sale occurs within the first five years of state ownership. 45 USC § 1209(e). This period expires on January 5, 1990.

In the face of this restriction, ARCA presently requires ARRC to include in its annual report an analysis of potential arrangements to sell the railroad every five years, including documentation of at least three offers to sell the railroad. These offers must be bona fide attempts by the state-owned railroad to sell all or part of its assets and operations.

The combination of ARTA's requirement that the State turn over any profits to the federal government if the railroad is sold before January 5, 1990, and the great cost of researching, preparing, soliciting, and negotiating meaningful sale offers does justify delay of ARCA's mandate that sale offers be solicited by ARRC before 1990. This will be simply accomplished by HB No. 221.

The bill extends the due date for the first analysis of potential sale arrangements to fiscal year 1992 which is outside the federal protection period. This action will guarantee that the State will properly enjoy the entire

proceeds of any sale or transfer of the line. The modification of ARCA will clearly serve the State's best interests.

Finally, although out-of-pocket expenses associated with the preparation and negotiation of meaningful offers to sell the railroad may be deducted from sale proceeds which must be paid to the United States, there is less certainty about the deductibility of sale costs directly attributed to hundreds of hours of State and Railroad staff time. In light of that uncertainty, it is most prudent to delay such activities until all costs associated with State disposal of the railroad can be fully realized by its sale.

III. CONCLUSION

ARRC views HB 221 as an important modification of the Alaska Railroad Corporation Act and urges that it be favorably considered.

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Alaska Statutes

Title 1. General Provisions.

Chapter

10. Laws and Statutes (§§ 01.10.030, 01.10.055, 01.10.060, 01.10.070)

Chapter 05. Alaska Statutes.

Sec. 01.05.006. Adoption of Alaska Statutes.

Cross references. — For exception to provision that section headings are not a part of the law, see AS 45.01.109.

NOTES TO DECISIONS

Cited in Schnabel v. State, Ct. App. Op. No. 250 (File No. 7273), 663 P.2d 960 (1983).

Sec. 01.05.031. Revision of statutes.

NOTES TO DECISIONS

Quoted in Schnabel v. State, Ct. App. Op. No. 250 (File No. 7273), 663 P.2d 960 (1983).

Chapter 10. Laws and Statutes:

Article

2. General Rules of Statutory Construction (§§ 01.10.030, 01.10.055, 01.10.060)
3. Effect of Statutes (01.10.070)

Article 1. Common Law.

Sec. 01.10.010. Applicability of common law.

NOTES TO DECISIONS

Quoted in Wells v. State, Ct. App. Op. No. 401 (File Nos. 7479, 7663), 687 P.2d 917 (1984); Beran v. State, Ct. App. Op. No. 506 (File Nos. A-535, A-629, A-630, A-679), 705 P.2d 1280 (1985); Balentine v. State, Ct. App. Op. No. 538 (File No. A-381), 707 P.2d 922 (1985); State v. Burke, Ct. App. Op. No. 583 (File No. A-908), 714 P.2d 374 (1986).
Cited in Jackson v. State, Ct. App. Op. No. 211 (File No. 6664), 657 P.2d 405 (1983); Stiegele v. State, Ct. App. Op. No. 382 (File No. A-399), 685 P.2d 1255 (1984).

(10) "property" includes real and personal property;

(11) "real property" is coextensive with land, tenements, and hereditaments;

(12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;

(13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing. (§ 4 ch 62 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968; am § 19 ch 74 SLA 1985)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms. Effect of amendments. — The 1985 amendment added paragraph (4).

NOTES TO DECISIONS

Quoted in Hull v. Alaska Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 2605 (File No. 6346), 658 P.2d 122 (1983).

Article 3. Effect of Statutes.

Section

70. Time statutes become law and take effect

Sec. 01.10.070. Time statutes become law and take effect. (a) All bills passed by the legislature become law upon the governor's signature or upon the governor's veto being overridden or, when the governor allows a bill to become law without signature, on the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution. Acts become effective 90 days after becoming law, unless the legislature, by concurrence of two-thirds of the membership of each house, provides for another effective date.

(b) The actual effective date of an Act having no effective-date provision is determined by starting with the day after it is signed by the governor or the day after the governor's veto is overridden or the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution, and counting 90 calendar days, the Act becoming effective at 12:01 a.m., Alaska Standard Time on the 90th day.

(c) The actual effective date and time of an Act having an immediate-effective-date provision is 12:01 a.m., Alaska Standard Time, on

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the day after it is signed by the governor or on the day after the governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by art. II, § 17 of the Alaska Constitution.

(d) An Act which specifies a definite effective date becomes effective at 12:01 a.m., Alaska Standard Time on the date specified.

(e) When the governor allows a bill to become law without signature, the governor shall give written notice of that fact to the legislature. The date of this notice has no effect upon the date the bill becomes law nor upon the date the Act takes effect.

(f) In this section

(1) "Act" means a bill which has become law;

(2) "bill" means a legislative document proposing an Act;

(3) "becomes effective" means becomes applicable; "effective date" does not mean date of enactment (or date of becoming law), although the two will coincide when a bill which has an immediate-effective-date provision is allowed to become law without the governor's signature;

(4) "becomes law" means is enacted; "enactment" occurs when any one of the following takes place:

(A) a bill which is passed by the legislature is signed by the governor;

(B) the period specified in art. II, § 17 of the Alaska Constitution expires without gubernatorial action;

(C) the legislature overrides the governor's veto of a bill;

(5) "passed by the legislature" means that the required majority of each house of the legislature has taken final action in approving the same version of a bill. (§ 5 ch 62 SLA 1962; am § 8 ch 126 SLA 1966; am § 1 ch 115 SLA 1974; am §§ 1—3 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "Alaska" for "Pacific" near the end of subsection (b), near the beginning of subsection (c), and in subsection (d).

NOTES TO DECISIONS

Applied in *Atlantic Richfield Co. v. State*, Sup. Ct. Op. No. 2695 (File No. S-52), 666 P.2d 1031 (1985).

Sec. 01.10.080. Computation of time.

NOTES TO DECISIONS

Quoted in *Fairbanks N. Star Borough v. Tundra Tours, Inc.*, Sup. Ct. Op. No. 3052 (File Nos. S-524, S-554), P.2d (1986).

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Alaska Statutes

Title 42. Public Utilities and Carriers.

Chapter

- 05. Alaska Public Utilities Commission Act (§§ 42.05.141, 42.05.251, 42.05.361, 42.05.365, 42.05.381, 42.05.385, 42.05.431, 42.05.651, 42.05.711, 42.05.720)
- 06. Pipeline Act (§§ 42.06.160 — 42.06.200, 42.06.280, 42.06.340, 42.06.610, 42.06.630)
- 07. Alaska Transportation Commission Act (Repealed)
- 10. Alaska Motor Freight Carrier Act (Repealed)
- 30. Miscellaneous Regulations Governing Public Utilities and Carriers (§§ 42.30.200, 42.30.225, 42.30.380)
- 40. Alaska Railroad Corporation (§§ 42.40.010 — 42.40.990)

Chapter 05. Alaska Public Utilities Commission Act.

Article

- 2. Powers and Duties of the Commission (§ 42.05.141)
- 3. Certificate of Public Convenience and Necessity (§ 42.05.251)
- 5. Rates and Rate Schedules (§§ 42.05.361, 42.05.365, 42.05.381, 42.05.385, 42.05.431)
- 9. Miscellaneous Provisions (§ 42.05.651)
- 10. General Provisions (§§ 42.05.711, 42.05.720)

Article 2. Powers and Duties of the Commission.

Section

- 141. General powers and duties of the commission

Sec. 42.05.141. General powers and duties of the commission.

(a) The Alaska Public Utilities Commission may

(1) regulate every public utility engaged or proposing to engage in such a business inside the state, except to the extent exempted by AS 42.05.711, and the powers of the commission shall be liberally construed to accomplish its stated purposes;

(2) investigate, upon complaint or upon its own motion, the rates, classifications, rules, regulations, practices, services and facilities of a public utility and hold hearings on them;

(3) make or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for a public utility;

(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)

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)



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

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 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

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

The Federal Transfer Act has several provisions:

- a. If the state sells all or any part of the railroad during the first 5 years the monies from this sale will revert to the Federal Government.
- b. After the 5 years the state may not sell any land which is needed to operate the railroad (rights of ways) etc. The state may sell land that is not necessary for the railraod to operate, BUT it may not sell any of the approximate 18,000 acres required for the railraod to operate.
- c. After the ten years, the state may sell the entire Corporation is so desired.

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;

Ms. Penelope Weyhrauch
January 12, 1987
Page 3

- (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 loaning credit or

Ms. Penelope Weyhrauch
January 12, 1987
Page 4

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.

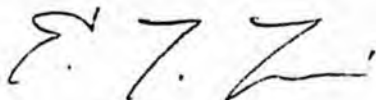
Title 38 states that the lands of the state are to be managed by the Department of Natural Resources. Exemption from Title 38 conforms to ARTA's and ARCA's mandate that ARRC manage railroad real estate.

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.

Section	Section
10. Establishment of the corporation	40. Vacancies
20. Board of directors	50. Compensation and expenses
30. Term of office	60. Board officers

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 - RR auth. to issue tax exempt 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;

(29) 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;

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

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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 grants for port facilities constr*
- (3) AS 35; - *Public Buildings, Works & Improvements*
- (4) AS 36.30, except as specifically provided in that chapter; - *Public Contract*
- (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 Corporation 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.

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(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;

STATE OF ALASKA
THE LEGISLATURE

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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1988

SUBJECT: Solicitation of offers to purchase
the Alaska Railroad (W.O. 5-1769)

TO: Representative Bette Cato
Chairperson
House Transportation Committee

FROM: George Utermohle
Legislative Counsel

Enclosed is the draft bill relating to solicitation of offers to purchase the Alaska Railroad requested by Wendy Chamberlain of your staff.

The bill establishes a schedule for the Governor to solicit offers for the purchase of the Alaska Railroad and then to report back to the legislature on the results of the solicitation. The bill achieves its purpose by imposing the duty upon the Governor under his authority under AS 42.40.940, rather than upon the Board of Directors of the Alaska Railroad under the provisions of AS 42.40.260(b).

The contents of the solicitation is left to the discretion of the Governor. The bill takes this approach rather than list all the things that must be included in the solicitation, because it would be difficult to anticipate all of the kinds of information that a prospective buyer may need in order to make a decision whether to pursue the issue further. Also a detailed listing of the contents of a solicitation for offers would require the assistance of experts familiar with privatization of government enterprises, and the sale of large corporations. In the absence of such expertise, the bill relies on the Governor to develop a meaningful solicitation for offers and gives the Governor ample time in which to develop and release the solicitation.

If I can provide further assistance, please advise.

Enclosure
GU:bb
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. TRANS.

4-6-87

1:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/3/87

FURTHER REFERRALS: Finance

DATE: April 6, 1987

The Transportation Committee has considered SSHB 221

"An Act suspending requirements for reports on arrangements and offers to sell the Alaska Railroad; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

M.W. Miller

Heinrich Springs

Bette Cato

Bill Hudson

Ed B. Parker

SIGNING OTHER RECOMMENDATIONS:

Bette Cato

 Chairman's signature

