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Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 9, 1987

The Honorable Tim Kelly, Chair
Senate Committee on Labor & Commerce
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kelly:

I am enclosing for your review a Sponsor Substitute for Senate Bill 68. The original legislation was a companion bill to House Bill 47, introduced by Representative Kay Brown, and had a hearing in your committee on February 18.

The Alaska Railroad Corporation provided an analysis of both the original and the Committee Substitute of HB 47, and stated their opposition. In its analysis of the House Committee Substitute, the Alaska Railroad claimed that "the opportunity for public review of significant changes in land use is guaranteed by the legislative oversight and approval provisions which already exist in ARCA".

I introduce my Sponsor Substitute to address this very subject, because under ARCA (AS 42.40.285), the railroad is constrained without legislative oversight and approval, only when it proposes to

- "1) exchange, donate, sell, or otherwise convey its entire interest [emphasis added] 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".
[Emphasis added.]

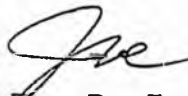
My substitute would provide the opportunity for public input regarding changes made within local municipalities. At worst, it would follow the current policy being executed by the Alaska Railroad (according to their own statements) and, at best, it would provide a safety net by ensuring those citizens, who may be affected by considerations of the railroad, an opportunity to give their input and testimony. As you will notice, all other sections of the original bill have been excluded.

I respectfully ask you to review the SS for SB 68, and would be grateful if you would schedule a hearing at the earliest possible date.

If you need any additional information or have any questions regarding this substitute, please do not hesitate to contact my office.

With best wishes, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe".

Joe P. Josephson
State Senator



1 IN THE SENATE

BY JOSEPHSON

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 68

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the management of land owned by
7 the Alaska Railroad Corporation and located within a
8 municipality."

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

10 * Section 1. AS 42.40.100 is amended to read:

11 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is respons-
12 ible for the management of the corporation but shall delegate certain
13 powers and duties to the chief executive officer in accordance with
14 AS 42.40.120. In managing the corporation the board shall

15 (1) be responsible for the management of the financial and
16 legal obligations of the Alaska Railroad;

17 (2) operate the Alaska Railroad as a common carrier subject
18 to the jurisdiction of the United States Interstate Commerce Commis-
19 sion consistent with 45 U.S.C. 1207;

20 (3) generally manage the corporation on a self-sustaining
21 basis;

22 (4) apply to the legislature for an appropriation with the
23 concurrence of the governor to be used to provide a particular service
24 that is not otherwise self-sustaining if a subsidy is required to
25 maintain that service;

26 (5) provide for safe, efficient, and economical transporta-
27 tion to meet the overall needs of the state;

28 (6) raise needed capital by issuing bonds of the corpo-
29 ration upon approval by the legislature while ensuring that borrowing

1 by the corporation does not directly or indirectly endanger the
2 state's own borrowing capacity;

3 (7) review all state and other land disposal proposals to
4 aid in planning for future development or expansion of transportation
5 services;

6 (8) ensure that the procurement procedures of the corpo-
7 ration meet accepted railroad industry standards;

8 (9) ensure that the accounting procedures of the corpo-
9 ration meet generally accepted accounting principles consistent with
10 industry standards for comparable railroads;

11 (10) manage land, interests in land, and natural resources
12 on land held by the corporation and located within a municipality in
13 the best interest of the municipality; in determining the best inter-
14 est of the municipality the corporation shall consider land use plans
15 and ordinances of the municipality where railroad land exists, adja-
16 cent land uses, the economic development and revenue generating poten-
17 tial of the land and natural resources, and public comment received on
18 proposed land management actions.

19 * Sec. 2. AS 42.40.350(c) is amended to read:

20 (c) The corporation may lease, subject to AS 42.40.285 and (d)
21 of this section, grant easements in or permits for, or otherwise
22 authorize use of portions of rail land. The board shall hold at least
23 one public hearing in a municipality before taking a land management
24 action under this subsection involving rail land within the municipal-
25 ity. However, the corporation may not convey its entire interest in
26 rail land except as provided in AS 42.40.285, 42.40.370(d), and 42.-
27 40.400.
28
29

FEB 06 '87

ACTION	INFO	ACTION	INFO
MJY	___	ATP	___
JBB	___	DAR	___
LDW	X	FCW	___
VMH	X	LJH	___
JDW	___	___	___
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Circ	___	Copy	___
Call Up	___	File	___

February 2, 1987

The Honorable Kay Brown
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Brown:

You recently requested information about moose mortality on the Alaska Railroad (ARR) and the guiding industry. In your discussion with Regional Game Supervisor Dan Timm he said that the department would provide more information on these subjects. This letter responds to your letter to Dan Timm of January 19 regarding the issue of moose mortality. I will follow-up with a letter on the guiding industry shortly.

With respect to moose mortality on the ARR, I have enclosed several documents which summarize the problem, actions we have suggested that the railroad take to help reduce mortality, and the railroad's response. I have also included information about road kills in the Matanuska/Susitna Valley.

Prior to state ownership of the ARR, moose mortality was notably under reported. As you can see from the enclosures, July 1, 1984 - June 30, 1985, was the worst year on record with 382 moose killed. The great majority of animals were killed between Houston and Chase between late-January and late-March. When the packed snow depth is 30 to 35 inches, the mortality rate increases markedly. At that point, moose are primarily looking for areas of minimal snow depth to conserve energy; because they are plowed, railroad and highway rights-of-way are highly attractive.

Many moose-railroad collisions result in unsalvageable meat. However, moose meat fit for human consumption is taken by ARR personnel to the nearest crossing and the location is reported to Fish and Wildlife Protection (FWP) officers. A list of needy families in the Matanuska/Susitna Valley is maintained by FWP, and when salvageable moose meat becomes available, a family is called. Other animals probably are picked up and used by residents living near the track. When

animals are unfit for salvage, the ARR removes the carcasses from the immediate right-of-way and puts them in heavy brush, ravines, or similar locations. Although we do not have records on the proportion of moose salvaged in prior years, as of January 3, 44 moose had been killed by train this winter and 10 were reported for salvage to FWP.

It is possible that some of the 34 unreported animals were utilized by local residents, but most were unfit for salvage. As of January 3, 60 moose have been killed by cars in the same area, and nearly all of these animals were salvaged.

Our interpretation of current regulations is that the ARR is not required to notify FWP when an animal is killed. You asked whether legislation should be introduced to require salvage. In our view the ARR, under state ownership, is being sufficiently cooperative in the salvage of most moose fit for human consumption, particularly considering the remoteness of the area, winter weather conditions, the relatively few workers on the line during winter months, and the relatively high cost of salvaging meat. With continuing public interest and concern for train-caused moose mortality, the ARR should remain very cooperative.

You also asked if the ARR has been cooperative in trying to reduce moose collisions. As you will see from the enclosed letters, the department has made a number of suggestions to reduce collisions, and we will make additional suggestions to the ARR after we have analyzed currently available data. Unlike the situation which existed when the railroad was federally owned, ARR officials have been very cooperative in letting us see their daily records and in openly discussing the problem.

Some of our suggestions have been adopted and likely reduced moose mortality in the latter part of the 1984-85 winter. Others have not been adopted because of federal regulations governing railroad operations, high monetary cost, or other reasons.

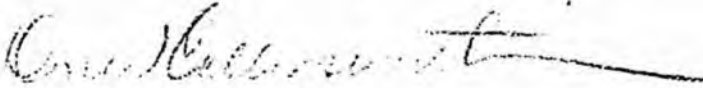
Nothing short of complete fencing on both sides of at least 65 miles of track with over- or underpasses to facilitate moose movements will reduce moose mortality to a bare minimum. However, fencing and maintenance of moose passage structures would cost several million dollars and even then would not eliminate mortality. Sweden, British Columbia, and other areas have problems such as ours, but they too have not found an adequate solution.

Following the high moose mortality in the winter of 1984-85 on the railroad and highways, the Board of Game acted to reduce hunter harvest in the affected area. The moose population has responded well. It is preferable that

hunters take moose during severe winters than for trains to kill them. However, hunting along the ARR right-of-way can also create problems because the ARR has concerns with people being on or near the right-of-way, or using the railroad right-of-way for access.

Thank you for the opportunity to provide you with background information and suggestions regarding moose mortality. If you have any questions on this material, please do not hesitate to contact us. Best wishes for success in your new role as state representative.

Sincerely,



Don W. Collinsworth
Commissioner

Enclosures

cc: William Nix, Acting Commissioner
Department of Public Safety

Lew Pamplin, Director
Game Division, Department of Fish and Game

bcc: Roland Shanks

DWC/LP/ama

ALASKA RAILROAD CORPORATION

Senator Kelly



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

January 28, 1987

M

Representative Dave Donley, Chairman
Labor & Commerce Committee
House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: HB 47, An Act Relating to the Alaska Railroad Corporation

Dear Representative Donley:

Thank you for allowing the Alaska Railroad Corporation ("ARRC") this opportunity to comment upon HB 47 which proposes significant changes to ARRC's enabling legislation.

We understand that your committee will conduct a work session on this bill and others today. I hope that our comments will be helpful as you review the legislation. Should questions arise which are not adequately addressed in our position paper, please feel to contact me. My phone number is 265-2461.

I do apologize for the length of our response and our delay in getting it to you. However, the bill recommends sweeping changes to a model of a public corporation created, as you know, by the 1984 legislature to operate the State-owned railroad. That model was intended to insure that the railroad would be a rail carrier generating, retaining, and managing its revenues to better serve Alaska's transportation and development needs. Although State leadership gave ARRC enough independence to conduct its activities as a separate and viable economic entity, a recognition of State ownership and essential governmental functions led to public accountability requirements manifested most clearly by open meetings, governor-appointed board members, financial and management audits, annual and oversight reports, legislative approval of land disposals, and long-range capital improvement and program plans. This blend of substantial financial and operational independence subject to State oversight has resulted in a quasi-public, quasi-private railroad armed with the flexibility it needs to react quickly to changing market, operational, and financial needs.

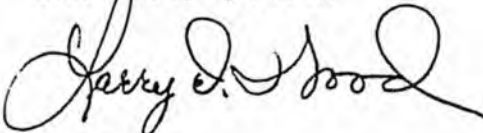
Representative Donley
January 28, 1987
Page 2

The model was created only after months, perhaps years, of research, study, discussion, and debate. If I had to choose one message to leave with you today, it would simply be that HB 47 proposes sweeping detrimental changes to the legislature's earlier vision of a financially independent, but publicly accountable, railroad only two years following transfer. The work reflected in the Alaska Railroad Corporation Act and ARRC's track record to date perhaps deserve the same commitment of time and careful deliberation before the Act's vision is in large part abandoned.

Our feeling is that in a number of ways HB 47 will restrict and curtail ARRC's ability to react meaningfully to changing freight and real estate markets to the detriment of its self-sufficiency and those many Alaskans who depend upon a viable rail transportation option in Alaska. Those who appear most likely to benefit by such changes are the railroad's water carrier, trucking, and real estate competitors.

Thank you very much.

Sincerely yours,



Larry D. Wood
General Counsel

cc: ~~Members of the House Labor & Commerce Committee~~
F. G. Turpin, President & CEO

3671L

House Bill 47: An Act Relating to
the Alaska Railroad Corporation

I. Introduction. House Bill 47, introduced by Representatives Brown, Ellis and Boyer, proposes numerous and substantial changes to the Alaska Railroad Corporation Act, AS 42.40.010 et seq. ("ARCA"). The issues raised by the bill fall into four categories, each of which has been the subject of at least some recent media attention. All, we believe, are adequately accommodated or protected by existing laws or Alaska Railroad Corporation ("ARRC") board rules. The proposed changes will also harm the economic viability of the railroad.

These are the first major revisions of ARCA which have been proposed since 1984 when the law was enacted. The following discussions explain the sweeping limitations to ARRC's original State charter suggested by this bill. The legislature has previously directed that ARRC operate as a self-sustaining business and has blended substantial financial and operational independence with public accountability requirements. Many of HB 47's abrupt and significant changes threaten to destroy those dynamic characteristics which give ARRC the flexibility it needs to survive economically in today's declining freight markets.

ARRC strongly opposes HB 47 and respectfully recommends that ARCA remain unchanged.

II. Major Provisions of the Bill.

A. Moose Kills. One area of concern addressed by HB 47 is the effect of railroad operations on wildlife, specifically moose. The bill requires that ARRC salvage meat and consult with the State Department of Fish and Game (ADF&G) to minimize adverse effects. We believe that these proposals only duplicate present laws and ignore ARRC/ADF&G cooperation.

As a consequence of railroad, truck, and automobile operations in Alaska, moose are unfortunately killed. We explain below that ARRC has already mitigated these losses by changing some equipment and operational techniques, repeatedly discussing remedial alternatives with State Fish & Game representatives, and insuring that, where possible, meat is salvaged.

B. Confidentiality. The bill restricts those subjects which may be protected as confidential and discussed by ARRC's Board at executive sessions. Freight divisions, contract rate agreements and discussions of land acquisitions

or disposals are targeted. As explained below, public discussion and disclosure of vital railroad market data will actually injure consumers by giving railroad competitors the opportunity to make rail transportation a less competitive option in Alaska.

C. Operations. Several sections of HB 47 require the railroad board to ensure that passenger and freight services are maintained at 1985 levels. Board approval will be required for any expansion or reduction of service. Present law requires involves Board approval only where a change in service levels is "major." Although inadequate financial resources may allow the Board to forego railroad expansions, it may not reduce the 1985 services levels for financial reasons. Presumably, any such reduction may require legislative approval.

Discussion which follows points out that railroad passenger service is a major drain on ARRC revenues: \$1.5 million annually. Although State tourism needs, resident access requirements, and tradition may justify ARRC's commitment to passenger service, economics do not. Save for a few excursion lines, Alaska's is the only unsubsidized rail passenger service in America. Present State law requires ARRC to report significant and permanent service reductions to the legislature. However, despite these losses, ARRC has not reduced services. They have been increased. Innovations in equipment, scheduling, and routes have helped mitigate the \$2 million annual loss which existed before transfer.

For its economic survival, however, ARRC depends upon the flexibility of its management to immediately respond to changing freight market conditions by expanding, modifying, or in some cases, reducing service levels. To the extent this bill will detract from ARRC's marketplace resiliency it will significantly defeat the State's earlier attempts to preserve rail freight service in Alaska.

D. Land Issues. HB 47's provisions also significantly affect ARRC's leasing, easements and permitting practices. The bill proposes that railroad managers may only enter into such land use agreements for one year or less; Board approval would be required for agreements of greater duration. The Board must hold at least one public hearing not less than 60 days before entering such agreements. In addition, it must make a written finding that these contracts are in the best interest of the people of the State, taking into consideration adjacent land uses, municipal land use plans and ordinances, economic development, revenue-generating potential, and public comment received.

The bill retains the current requirement that disposals be made at fair market value, but clarifies an exception for disposals to the State and municipalities. In addition, it

requires that any disposal of natural resources (e.g., gravel, timber) be made by competitive bid.

Finally, HB 47 would require legislative approval of all leases for over 35 years. ARCA presently allows longer leases so long as a right of termination is retained if the property is needed for railroad purposes after 35 years.

To the extent these significant modifications attempt only to underscore the need for public awareness of ARRC leasing decisions, we can applaud such concern. However, a discussion which follows points out that Board policies and rules already protect the public's need to know of railroad leasing activities. The ARRC, we believe, has already struck a careful balance between public involvement in its leasing decisions and its fundamental reliance upon real estate leasing practices which can adequately and quickly respond to market opportunities. Even a brief review of financial statements emphasizes the railroad's traditional and heavy reliance upon growing real estate revenues. HB 47's modifications promise to undermine railroad financial viability by seriously inhibiting marketing opportunities. The changes work to the advantage only of ARRC's competitors and, ironically, to the probable disadvantage of Alaska's public which, we believe, will increasingly depend upon aggressive development of private and public land resources.

III. HB 47's Impact.

A. Moose Kills. Like other Alaskans, ARRC is already subject to the requirements of AS 16.30 regarding salvage of big game. Moreover, the railroad has a history of cooperation with ADF&G, as attested by the attached article from that department's own in-house magazine. Corporation personnel continue to consult with ADF&G representatives and with fish and wildlife enforcement officers of the Department of Public Safety. Procedures are already in place to help insure killed moose are salvaged.

The unfortunate fact is that moose choose to use the cleared railroad track as well as public roads in years of heavy snowfall. For example, the winter of 1985-86 was extremely mild and only 17 moose were killed by railroad operations. In the 1984-85 snowy winter, more moose were killed on southcentral Alaska highways (319) than on the railroad right-of-way (316).

We believe the legislation is unnecessary. ARRC already abides by the State's salvage laws and it will continue to work with ADF&G personnel to mitigate moose losses.

B. Executive Session/Confidentiality. Sections 4 and 5 of HB 47 propose that confidential railroad marketing and

business data, including freight divisions and contract rate agreements, be disclosable to the public. The railroad's water carrier, trucking, real estate, and port competitors would reap the greatest benefit from this relaxation of the law. Using sensitive information related to railroad freight rates, developing markets, and business opportunities to their advantage, railroad competitors may successfully eliminate ARRC's capability to offer competitive freight rates and real estate in Alaska.

The State purchased the railroad in part to preserve a rail transportation option in Alaska. Therefore, it structured a public corporation which would vigorously pursue a market presence to best serve consumer needs and avoid State financial assistance. In ARCA the Alaska legislature recognized ARRC's need to protect its proprietary information from general public scrutiny to preserve that mandate of railroad self-sufficiency. HB 47 promises to largely undo this protection.

Rate divisions and contract rate agreements explain just how much ARRC charges to haul commodities. Divisions split freight revenues for particular shipments between the railroad and its connecting carriers; contract rate agreements establish freight charges between the railroad and its shippers. Armed with information collected from ARRC's files (or Board minutes since HB 47 would also eliminate freight divisions, contract rate agreements, and proposed land acquisitions and disposals as subjects which may be discussed in the Board's executive sessions), competitors may undercut railroad charges and contracts to their financial advantage in what are already highly competitive freight and real estate markets.

Federal law may also protect the freight rate information which railroad competitors seek through passage of this legislation.^{1/} After the transfer of the railroad into

1/ Please see 49 U.S.C. § 11910: "A common carrier . . . that knowingly discloses to another person, except the shipper or consignee, . . . (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier . . . without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than \$1,000." Because divisions and contract rate agreements will contain such information, legal counsel should opine whether HB 47 will inevitably conflict with this federal mandate. Note that the Interstate Commerce Commission requires only that minimal aspects of contract rate agreements be filed with that agency.

State ownership, the federal Alaska Railroad Transfer Act ("ARTA") specified that the State-owned railroad would be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the ICC and entitled to all of the business opportunities available to comparable railroads, including contract rate agreements. 45 U.S.C. § 1207.

Like federal deregulation in the airline, trucking, and telephone industries, deregulation of certain rail activities in the Staggers Rail Act of 1980 was meant to promote the viability of the rail transportation option in America. The Act was passed as a response to the financial difficulties then plaguing the nation's railroads. Congress felt that much of the problem lay with excessive governmental regulations. Hence, it granted rail carriers the privilege to conduct their operations by contract as other businesses do. Instead of charging uniform tariffs of general applicability, railroads would be able to negotiate individual contracts with their shippers.

For example, no longer bound by difficult and time consuming notice and rate-making regulations in its competition for TOFC ("trailer on flat car") traffic, railroads, including ARRC, may adjust rates quickly to changing market conditions, contract directly with shippers for the movement of their freight, and offer special services and accommodations to customers on a one-to-one basis. Special care is taken to ensure that contract rate agreement information is not disclosed to competitors. The overriding thrust of the Staggers Act is to protect the confidentiality of contract provisions and to ensure to the purchasers of transportation services and to railroads a degree of confidentiality similar to that of other businesses throughout the country.

HB 47 threatens to largely eliminate legislative directions that all business opportunities available to other railroads be afforded to ARRC and that the corporation be operated "according to sound business management practices" on a self-sustaining basis. To be successful, ARRC must continue to offer competitively-priced services in the marketplace. HB 47's demand that the railroad's shipper and carrier agreements be open for inspection by its competitors may also be an indication that ARRC has made its mark as a serious competitor for freight in a diminishing Alaska market.

HB 47 also eliminates confidential Board discussions of the details related to proposed land acquisitions or disposals. The prospect of public discussion of the confidential terms of proposed real estate transactions would have a significant chilling effect on ARRC market opportunities. The bill ignores the reality that most businessmen and women do not announce land acquisitions or

development plans until all options have been quietly researched, examined, and discussed. If ARRC should ever compete with other industrial landowners for this highly competitive trade, it must have the flexibility to honor requests that proposal information be protected. Public involvement at this early stage may even go beyond what is required of State agencies. The public interest is presently and adequately protected by the current law and Board rules that require all sales of land be acted upon and approved by the Board and legislature in public session.

C. Operational Restraints. The legislature's vision that ARRC be self-sustaining will be severely impacted by HB 47's directive that passenger and freight service levels be maintained at 1985 levels. Also, present law already requires a detailed oversight report to be provided to the governor and legislature before ARRC may undertake a significant reduction in services. The report, and public Board action which proceeds it, ensures adequate protection of the public's interest and provides ample opportunity for public involvement as a recent proposed sale of exhausted rail passenger equipment demonstrated.

Although some adjustments are naturally required by changing markets and developing innovations, the corporation's commitment to existing levels of freight and passenger services is evident. In fact, ARRC has dramatically improved passenger services since transfer and is committed to the purchase of new passenger coaches and two newly refurbished self-propelled railcars. Nonetheless, passenger service amounts to a \$1.5 million drain on ARRC's financial resources -(down from a \$2 million annual loss at transfer). However, to be economically viable, ARRC must have the ability to adapt to swings in the economic climate, particularly as freight markets change.

An examination of revenues from passenger service for the first 18 days of January 1987 demonstrates the need for flexibility in managing service levels. Total estimated revenues were \$12,504 while the estimated costs were \$59,900, for a loss of \$47,496. Such seasonal variations in market demand are expected and the corporation has not moved to eliminate these services.

Managerial flexibility to match the overall level of services to market demands is essential. HB 47 would eliminate that flexibility, to the marked disadvantage of ARRC's financial self-sufficiency and to the probable advantage of railroad competitors.

D. Land Issues. The corporation is the owner of a substantial amount of land (over 22,000 acres in addition to right-of-way) suitable for commercial leasing. Long-term

leases of that land are subject to the provisions of a Board policy which was developed only after significant public input. The Board's leasing policy is intended to accommodate the continued viability of competitive railroad leasing and adequate public awareness and involvement.

The additional requirements imposed by this bill would adversely affect the corporation's leasing program in many respects. In ARRC's commercial setting, its ability to act decisively is often necessary to capitalize on real estate market trends. HB 47's 60-day notice requirement would significantly destroy ARRC's marketing efforts in a highly competitive economy and seriously impact any opportunity to obtain the highest possible return on rail land.

The delay and intense public scrutiny suggested by this legislation would also discourage many potential lessees who are both eager to finalize a transaction and reluctant to prematurely reveal their financial affairs in public. The present Board policy requires public Board action to approve leases of more than three years and advance public notice of lease approvals. These public Board meetings allow concerned citizens ample opportunity to submit their comments. Proposed lease development of railroad Government Hill is a recent example of this process in action. It appears to provide an adequate balance between aggressive development of ARRC lease opportunities with public awareness and input. HB 47's attempts to significantly complicate railroad leasing procedures promises to undermine the railroad's self-sufficiency without meaningfully improving ARRC's own recognition and implementation of its public accountability obligations.

The bill's restriction of leases to 35 years in duration without legislative approval would also undermine leasing opportunities. Most long-term ground lease terms start at 55 years to allow high-quality improvements to be amortized over the entire lease term. ARRC's present policy was designed to accommodate commercial lessees who envision substantial improvements to railroad property. Financial institutions will not loan money to these lessees to build significant improvements unless a longer lease term is assured. After considerable discussions involving ARRC representatives, prospective and present lessees, and banks, ARCA's present restriction on long-term leases (they may be terminated if needed for railroad purposes after 35 years) has satisfied lending institutions. Lessees are on their way to improving lease parcels. Parenthetically, those improvements will also substantially add to the State's equity as the owner of rail property.

An additional impact of HB 47 is a logistic one. The corporation is presently lessor or permittor in some 1200

agreements. On the average, roughly two dozen such agreements are processed through the corporation's real estate department a month. Some of these transactions involve minor amendments, but a considerable number are substantial changes. Were the Board of Directors required to hold a public hearing before every agreement is made, it would be forced to devote an inordinate amount of attention to commercial, market-dictated decisions more appropriately left to the corporate officers hired to apply their experience and skill in real estate leasing. ARCA's honorariums may not begin to adequately compensate a largely volunteer Board for such new management responsibilities. On the other hand, long-term leases may require Board scrutiny, and provision has been made to present them, following public notice, to the Board for approval at its public meetings.

HB 47 also requires a detailed inventory of land and natural resources in ARRC's annual report to the legislature. This detailing of "present uses, future development plans, and known resource development potential for the land, interests in land, and natural resources" calls for extraordinary research, development and planning efforts which ARRC is presently not funded or staffed to provide. Of course, specific land use planning for large industrial areas must and is being developed to effectively respond to market needs, but the comprehensive land and natural resources planning called for here can only compel the commitment of dwindling personnel and financial resources to less vital activities.

HB 47 amends AS 42.40.350(d) to expressly permit leases to municipalities at less than fair market value. This change is also unnecessary; ARRC has consistently interpreted an existing exception for State leases to include leases to political subdivisions.

Finally, the bill proposes that any sale of railroad natural resources be made by competitive bid. This is also an unnecessary and undesirable limitation. Similar to the marketing of rail leases, ARRC needs the flexibility to establish the fair market value of any natural resources slated for sale by means in addition to competitive bid. This is particularly true when market conditions are greatly fluctuating and values are best established over time. The proposal also ignores the reality that sales of gravel and rock, for example, may not be conducive to the artificial structuring of a competitive sale format because of time constraints, remote locations, and market conditions.

ARCA already calls for the "prudent operation of the railroad according to sound business management practices" and directs ARRC's Board and management to "manage the corporation on a self-sustaining basis." A limitation on the types of

permitted sales of natural resources is at best a redundancy which also calls for prudent decision-making and, at the worst, a limitation which also threatens the railroad's financial vitality.

IV. Conclusion.

The Alaska Railroad Corporation opposes HB 47. The sweeping limitations it proposes upon railroad operations may not only undo the legislature's original vision of a quasi-private, quasi-public railroad armed with the flexibility it needs to survive in competitive freight and real estate markets, but seriously threaten its economic survival.

For all these reasons, we respectfully request that the bill's proposed amendments to the Alaska Railroad Corporation Act be rejected.

3654L

When Moose and Train Meet:



by Jack C. Didrickson and Raymond J. Kramer

On the last day of February 1985, Alaska Railroad Locomotive Number 3006N chugged its way out of the Anchorage railroad yards bound for Fairbanks. None of its crew realized that an unwanted record would be set before it arrived at its destination the next morning. Nineteen moose would die that trip, crushed by the locomotive, while the helpless crew watched, unable to save the victims. And, as the winter snows continued, more moose died on almost every run until the annual total for the entire length of the railroad came to 385.

Fortunately, not every year is a duplicate of the winter of 1984-85. This past winter (1985-86), 17 moose were killed along the entire length of the Alaska Railroad.

What causes these mortalities, and what can be done to lessen or prevent them? These are questions of primary importance to not only game biologists and railroad employees, but also to the public, some of whom see this as a shameful situation that could be easily remedied. Although many ideas have been proposed and tried, there is no one good solution.

Initially, both ADF&G and the Alaska Railroad presumed

that the high mortality in some years occurred simply because the moose population periodically fluctuated, with most kills occurring when the population was high. We now know this is not the case. By correlating the Alaska Railroad's daily records over the years with weather patterns which coincided with the chronology of high moose losses, we could see a pattern. In years of deep snow depth (three to five feet) for long periods of time, moose losses along the tracks drastically increased. Conversely, in winter periods of little snow, or when spring thaws decreased the snow depths, moose-train incidents significantly declined.

A majority of the 1984-85 mortalities occurred on the tracks between Willow and Talkeetna, in an area known as Game Management Unit (GMU) 14B. This is an area with a large moose population, most of which remains in the high reaches of the Talkeetna Mountains throughout the summer and fall. In winter, as snow and winds increase in these highlands, a large number of the moose move down the mountain slopes to their critical winter food supply of willows along the Susitna River.

Unfortunately, both the railroad and the main highway from Anchorage to Fairbanks bisect their migration path.

When snows exceed three feet, the moose find these man-made "trails" a convenient place to walk or rest, and therein lies the cause of the mortality. Moose are somewhat reluctant to leave these cleared areas and they have not, for the most part, learned to fear trains or autos. As a result, an additional 77 animals were killed by highway vehicles during the 1985 season. Also, many become stressed by deep snow and the lack of nearby browse. In residential areas along the highway, stressed moose belligerently chased dogs, children, and adults, with the result that another 40 were killed in defense of life and property, bringing the total loss of moose in GMU 14B to 502. Hunters, on the other hand, took only 216 animals in the following 20-day September season, before the deep snows set in.

Although a large percentage of mortalities for all years occurs between Willow and Hurricane, with a few other "hot spots," mortalities are otherwise fairly uniformly distributed along the entire length of the tracks; therefore, the problem is not merely a local one. A solution must be provided that works along the entire railroad corridor from Seward to Whittier to Fairbanks.

Meetings have been held between the Alaska Railroad personnel and ADF&G game biologists to seek answers and actions, and members of the public have enthusiastically offered innovative ideas, but no single, concrete solution has been found.

There are certain realities which must be faced where "compromise" simply won't work. The trains must run and they must run on or near schedule; too many people and businesses are dependent on the products delivered to interrupt service. Closing down the railroad in winter is no solution. Scheduling the trains to run only in daylight hours won't work, with only four to five hours of daylight present during the critical months. Accurately predicting where and when deep snows will occur is beyond human technology. We must look to the tracks and trains themselves for solutions.

Perhaps the most "far-out" solution offered so far was that of a giant cushioned rubber bumper attached to the front of the locomotive. Here, laws of physics and elasticity come to bear, causing visions of a moose being hit at 40 mph, sinking into this giant cushion, and then being sprung out in front of the train again, only to be picked up and thrust again, endlessly bouncing down the tracks.

Another more realistic attempt was to mount sonic whistles on the locomotive which might alert the animals. The experiment failed, however. When the train moved comparatively slowly, the whistles didn't whistle, and when it was very cold they froze into silence.

Slowing the train from 40 to 20 mph in "hot spot" areas was another idea. Not only did scheduling dif-

In times of heavy snow, moose make use of the cleared areas on the tracks of the Alaska Railroad for walking and resting. Here, a train has stopped for a moose bedded down on the tracks during a snowstorm in the winter of 1985.



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difficulties make this impossible, but the trains couldn't climb certain grades on the icy tracks if momentum was lost.

Decking or covering the ties on trestle bridges to permit moose to safely cross was suggested, but this idea was denied because speed sensors on the train wheels reportedly will not work properly in the presence of the coverings.

One of the major problems in deep snow is that of the "tunnel" effect which trains create with their own snow plow on the front. In this situation, once a moose is on the track, after struggling in deep snow, it won't leave even with a train bearing down on it. There is little room between the train and the wall of snow and the moose are often sideswiped. "Wing plowing," where special equipment plows 20 feet on either side of the tracks seems to have merit in certain areas where topography permits, but this is not the complete answer. When the railroad bed is significantly higher than surrounding terrain, moose still prefer the track bed to jumping down into deep snow.

The best, but perhaps most complicated, scheme offered so far is to allow permit hunters to harvest moose along the railway corridor, at times when heavy snowfall occurs. Logistically, this would prove difficult. First, permits would have to be fairly allocated and there would be no guarantee in any particular year that a hunt would be held. The hunt would occur only in areas determined to be "hot spots" and then only within a narrow corridor along the tracks. When snows are deep, snowmachines bog down and would prove worthless. Furthermore, hunters riding snowmachines, or even walking down the railroad right-of-way, simply would not be safe; eventually someone would be hit by a train.

The only apparent method of getting hunters afield would be to run a "hunter train" which could stop in designated areas, let hunters off for a period of time, and pick them up later, with their harvested moose. This plan, too, offers tremendous logistical problems and would require a great deal of common sense and wintercraft knowledge on the part of each hunter. If regular train schedules were to continue, each hunter would have to be back at his designated pickup point precisely on time, as the train could not delay its schedule. A hunter who took an animal too far away would perhaps have to leave all or part of his moose behind; this is a violation of wanton waste laws and would defeat the purpose of obtaining the meat.

Based on random permit drawing, there is a chance that some inexperienced hunters might be drawn who would have no idea of the severity of camping out in -40° weather. To leave them out in these conditions overnight could prove disastrous, particularly if a storm occurred. Inevitably, someone would get lost, frostbitten, or hypothermic.

For lack of a workable solution, the problem is far from resolved. We would all like to see a harvest shift from trains to hunters. In Canada, Sweden, Norway, and Russia, game managers are also seeking answers to this problem, but as yet no economically feasible solution has been found. Fencing both sides of the railway would not only be exorbitantly expensive, but would also cut the moose off from their winter habitat. Overpasses or underpasses, with wing fences to funnel the animals onto these routes, have shown promise in Europe, but



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Frank Box, boilermaker for the Alaska Railroad, welds one of two lights that were attached to the locomotives to chase moose off the tracks.

because of the great mileage involved would require literally millions of dollars to accomplish effectively in Alaska. Just such an underpass has been proposed outside Anchorage under the Glenn Highway; the results of this experiment will tell us much over the next few years.

Can our railbelt moose populations sustain these losses? The answer is a cautious "yes," with the adjustment of seasons and bag limits, but game managers would prefer to see a better use for the tons of meat that are spoiled by a train's crushing impact.

As Alaska moves into the 21st century, answers to this vexing problem may be found. In the meantime, game biologists must continue to obtain basic biological information to justify attempts at possible solutions.

Jack C. Didrickson, who has been with the department since 1959, serves as Area Game Biologist with the Division of Game, ADF&G, Palmer.

Raymond J. Kramer serves as Game Biologist, Division of Game, ADF&G, Anchorage.

FACSIMILE COVER SHEET

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FROM: Larry D. Wood, Esq.

General Counsel's Office
Alaska Railroad Corporation

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