

SB

160

# ALASKA RAILROAD CORPORATION



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

March 24, 1987

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Honorable Mitch Abood, Chairman  
Senate State Affairs Committee  
P.O. Box V  
Juneau, Alaska 99811

Re: SB No. 160, An Act Relating to Land Owned by the  
Alaska Railroad Corporation

Dear Senator Abood,

Thank you for this opportunity to present a position paper by the Alaska Railroad Corporation ("ARRC") on SB 160. The bill proposes to modify the Alaska Railroad Corporation Act ("ARCA"). As our position paper explains, we oppose the legislation. To the extent the bill's concerns are satisfied by existing ARCA provisions, management practices, and Board rules, the proposals are duplicative and, we believe, unnecessary. Other changes endanger the vision charted by state leaders of a self-sustaining railroad operated by an experienced board based upon sound business management practices.

Our fiscal note is still being developed and we hope to have it to you soon. In this regard, please note that the bill recommends new inventory, planning, and reporting requirements which we are not presently staffed to provide. In addition, limitations on the corporation's flexibility in the real estate marketplace will mean a loss of business which should also be projected.

Thank you very much.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Larry D. Wood".

Larry D. Wood  
General Counsel

cc: Senator Rick Uehling  
F. G. Turpin, President & CEO

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SENATE BILL NO. 160:  
AN ACT RELATING TO LAND OWNED BY  
THE ALASKA RAILROAD CORPORATION

I. Introduction

SB 160 is a modification of CSHB 47. Senator Uehling's bill emphasizes the public interest, hearings, land, and natural resources aspects of the House legislation originally sponsored by Representatives Brown, Ellis, and Boyer.

This proposal amends the Alaska Railroad Corporation Act ("ARCA") and:

1. Requires the Board of Directors of the Alaska Railroad Corporation ("ARRC") to manage rail land in "the best interest of the people of the state;"

2. Requires the Board to approve conveyances of interests in land which exceed one year;

3. Prohibits leases which exceed 35 years in duration unless they are approved by the legislature;

4. Prohibits Board discussion of land disposal proposals in executive session;

5. Requires the Board to conduct public hearings on lease proposals which exceed five years or land transactions which involve \$1,000,000 in corporate assets or receipts.

6. Requires the Board to annually inventory land interests and natural resources and to describe development plans, pending lease proposals, and proposed land and natural resources disposals.

ARRC is adamantly opposed to SB 160 and its parent legislation, CSHB 47. Both contain provisions which are duplicative and unnecessary in light of Board rules and management practices or significantly alter the legislature's original vision of a viable, self-sustaining public corporation operating the railroad according to sound business management practices.

II. Discussion

A. ARRC's Marching Orders

When the State of Alaska purchased The Alaska Railroad in January, 1985, it agreed to many sale terms. For instance, it

has ensured that the railroad is a rail carrier generating, retaining, and managing its own revenues to better serve Alaska's transportation and development needs. In framing the public corporation's operating characteristics in ARCA to conform to this expectation, state leadership 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 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 to govern all internal and external affairs; and controls its own purchasing, financing, and budgeting needs. On the other hand, a recognition of ARRC's state ownership and governmental functions led to public accountability requirements manifested by open meetings, governor-appointed Board members, financial and management audits, annual reports, oversight reports, legislative approval of land disposals, and long-range capital improvement and program plans.

This blend of substantial financial and operations independence subject to state oversight results in a quasi-public, quasi-private railroad armed with the flexibility it needs to quickly react to changing markets and operational and financial conditions pending its eventual transfer to the private sector.

The key to the success of this working model is ARRC's Board of Directors which is responsible for the management of the corporation and for the exercise of its powers. It must provide for that level of transportation service which best satisfies the needs of the people of the state and for the prudent operation of the railroad according to sound business management practices on a self-sustaining basis.

#### B. SB 160's Fundamental Modifications of the ARRC Model

The model of a publicly-accountable, but economically viable, railroad developed by committed state leaders is slated for change by SB 160. Despite an earlier delegation of rule-making authority to ARRC's Board to carry out its functions and purposes, including rules to safeguard corporate property, the bill proposes restrictions to legislate a particular point of view of rail land leasing and natural resources development.

This point of view is based upon a false premise. If the Railroad is to be economically independent, its land and natural resources cannot be managed in the same fashion as other publicly-owned properties in Alaska. As is especially

true with all western railroads, ARRC viability depends upon a healthy, aggressive land leasing program developed to support railroad operations. In turn, those operations provide the levels of safe, efficient, and economical transportation which will meet the state's overall needs.

Thus, to manage rail land "in the best interest of the people" and to require such determinations blindly adopts standards best reserved for state land agencies. The economic best interests of a self-sustaining railroad are not always identical with standards which are more pertinent to the "best interest" determinations applied to state-owned land. Since ARRC depends heavily upon the sensible and profitable development of its real estate to assure railroad economic viability, its focus is fixed upon careful, but decisive, marketing of its leaseable lands.

ARCA has previously directed that the corporation provide for the level of transportation service which best satisfies the needs of the people of the state. This emphasis underscores a statement which helps explain state motivations in purchasing the railroad: "the Alaska Railroad is an essential part of the state transportation network that may, unless preserved by state action, cease to be a transportation option in Alaska."

In searching out the transportation needs of Alaska and its people, ARRC's Board has not been insensitive to individual concerns and considerations. Management authority guides and Board leasing rules require public notice of leasing actions and Board approval of proposed leases which exceed 3 years in duration. Board meetings provide meaningful public hearing opportunities for individuals to voice comments or complaints. Yet, the mechanisms which provide those opportunities are carefully balanced with a corporate need to react quickly in changing real estate markets.

Without a careful balance of corporate and individual needs in the substantive and procedural aspects of rail land leasing activities, the early vision of a self-sustaining railroad will be largely defeated. SB 160 has not considered that this balance has already been struck in the comprehensive model of a quasi-public, quasi-private railroad framed by ARCA and managed by a seasoned Board, sensitive to individual needs but committed to a financially independent organization.

Finally, ARCA's requirement that leases be made at fair market value also insures that transactions will promote the state's ownership interest and achieve a fair return to ARRC.

### C. Other Concerns

SB 160 prohibits leases which exceed 35 years unless they are approved by the legislature. In contrast, ARCA allows ARRC to lease land for a period in excess of 35 years if the corporation reserves a right to terminate such leases if affected lands are needed for railroad purposes. The ARCA language must be preserved if the railroad corporation is to meaningfully compete with a majority of long-term leases which exceed 35 years in duration.

Anchor tenants and quality improvements depend upon long-term financing to amortize the cost of doing business in a competitive market environment. In turn, financial institutions require substantial tenant equity in leased properties before financing will be made available. Despite the handicap of a reservation of termination rights provision which concerns some tenants and banks, ARRC has found that its long-term leases can be competitive. However, experience demonstrates that a flat prohibition of lease periods which exceed 35 years is an artificial limitation which needlessly damages corporate vitality in the land leasing markets.

SB 160 also prohibits confidential Board discussions of land disposals and requires an extensive and expensive annual inventory of land interests and natural resources.

The delay and intense public scrutiny suggested by elimination of any discussion of land disposals in Board executive sessions would unnecessarily discourage potential land purchasers who are reluctant to prematurely reveal their financial affairs, ideas, and proposals in public. ARCA and Board requirements that any ultimate disposal decisions be approved by the Board and legislature in public, and with advance notice, adequately safeguard individual concerns and protect the public's confidence in railroad management decisions.

SB 160 also requires a detailed inventory of land, interests in land, and natural resources in ARRC's annual report to the legislature. This detailing of inventory, future development plans, known resource development potential, pending lease proposals, and proposed land and natural resources disposals 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 be and is being developed to respond effectively to market needs. However, 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.

Railroad real estate staff is already committed to careful management of leasing resources. As noted, site specific and area planning is pursued to best position the corporation in the marketplace. Land management planning is already supplemented by the Board's long-range or five-year capital improvement and program plan and its yearly updates which are intended by ARCA to explain the manner in which the corporation will accomplish its purposes. Oversight of railroad land and natural resources management is also provided by ARCA's annual performance audit requirement. The audit insures that the railroad is being managed and operated effectively and efficiently. Finally, ARCA's oversight reports also duplicate the oversight aspects of SB 160's proposals by requiring the corporation to report to the governor and legislature before undertaking significant and permanent changes in services. Presumably, proposed large-scale development of natural resources are contemplated by the section since these services were not provided upon the date of transfer.

Finally, the Board has already construed ARCA to allow less than fair market leases of rail land to state political subdivisions (municipalities) for public purposes and has adopted an appropriate rule. SB 160's clarification of ARCA therefore also appears unnecessary.

### III. Conclusion

SB 160 proposes modifications to ARCA which measurably change the corporation's flexibility to react meaningfully in highly competitive real estate markets. To the extent Board management has led to the adoption of land rules which substantially alleviate the concerns addressed by the legislation, the bill is also largely duplicative. The focus set by ARCA's framers upon a viable, self-sustaining railroad should not be re-oriented. Experience has shown that the prudent operation of the railroad by an experienced Board according to sound business management practices offers the most promise for the corporation's financial success. To that end, the balance the legislature and the Board have already drawn between public accountability and railroad flexibility will most assuredly lead to safe, efficient, and economical rail transportation in Alaska. We respectfully submit that SB 160 detracts from this important formula.

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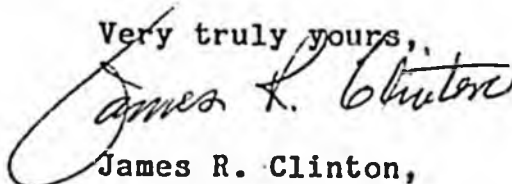
THE ALASKA RAILROAD LEASEHOLDERS ASSOCIATION

Representative Cato  
Page 2  
March 10, 1987

What happens to the Alaska Railroad has its effect on every Alaskan.

We have been reviewing H. B. 47. This bill appears to us to add a layer of regulation with its inevitable attendant bureaucracy to the administration of railroad land. In the light of the new leasing policy our association does not believe this additional regulation to be necessary or desirable. We urge you to eliminate the provisions of H. B. 47 which would require further additional time and effort in the administration of railroad lands beyond what is presently required.

Very truly yours,

A handwritten signature in cursive script that reads "James R. Clinton". The signature is written in dark ink and is positioned above the typed name.

James R. Clinton,  
President