

**HB**

**234**

Article #2

Testimony  
Rep Mike Miller

May 2, 1989

On December 28, 1987, Mayor Carleta Lewis received a letter from a railbelt mayor that contained the following statement: "... I believe we both have a mutual problem, the Alaska Railroad". This statement sums up much of the frustration that exists between many municipal leaders and property owners along the railbelt and the Alaska Railroad Corporation.

Much of this frustration stems from requirements contained in the current railroad crossing permit which property owners are forced to sign in order to have access across the railroad right-of-way. Under this system, the permit holders are required to bear 100% of the cost of maintaining permitted crossings while the railroad corporation makes 100% of the decisions regarding what maintenance work needs to be done, when it will be done, and who will do it.

HB 234 and SB 233 were introduced in an attempt to bring a sense of balance back to the issue of safe access across the Alaska Railroad right-of-way. The bills establish a system by which all future standardized crossing agreements must be brought before the Legislature for review before they can be implemented by the railroad corporation. In addition, the bills direct the railroad to renegotiate all the existing crossing permits once the first standardized permit is approved in 1990.

STATE OF ALASKA  
THE LEGISLATURE

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

Mary Van Nimwegen

HB 234

House Transportation

5/2/89

# HOUSE COMMITTEE REPORT

(5)

Date Referred: March 21, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5/2/89

The TRANSPORTATION Committee considered:

HB 234

HOUSE BILL NO. 234

[ALASKA RAILROAD CROSSING AGREEMENTS]

"An Act relating to standardized railroad crossing permit agreements of the Alaska Railroad Corporation; and providing for an effective date."

### RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] have 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):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [  ] fiscal impact \_\_\_\_\_  
[ ] zero fiscal note \_\_\_\_\_  
[ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Bette Cate  
Bar ...  
Richard ...  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

	Do Not Pass	No Rec	Amend
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_____			

Bette Cate  
Chairman's Signature

# ALASKA RAILROAD CORPORATION



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

## FACSIMILE COVER SHEET

TO: Terry w/ the office of Senator Lloyd Jones

Wendy w/ the office of Representative Bette Cato

FROM: Larry D Wood

General Counsel

General Counsel's Office  
Alaska Railroad Corporation

DATE: April 12, 1989

NUMBER OF PAGES (including cover sheet): 13

If you have any questions/problems with transmittal, please call (907) 265-2461.

4796L

Terry and/or Wendy

Please distribute copies to the committee members.  
Thanks.

# ALASKA RAILROAD CORPORATION



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

April 12, 1989

The Honorable Lloyd Jones, Chairman  
Senate Transportation Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

The Honorable Bette Cato, Chairman  
House Transportation Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 233/HB 234 An Act Relating to Standardized Railroad  
Crossing Permit Agreements of the Alaska Railroad  
Corporation

Dear Senator Jones and Representative Cato,

Thank you for providing this opportunity for the Alaska Railroad Corporation ("ARRC") to respond to SB 233 and HB 234 which, as you know, relate to railroad/highway crossing permit agreements. I understand that your committees will consider this legislation during the course of a joint hearing on April 13. We are hopeful that the attached analysis, fiscal note, and press release provide helpful information concerning these bills and ARRC's responses to recent crossing issues.

ARRC strongly opposes SB 233 and HB 234. We believe that the legislation will create serious and unwarranted administrative difficulties for the railroad corporation. It also unjustifiably interferes with the sound management of ARRC operations by a previously appointed Board of Directors.

The heart of the dispute concerns municipal dissatisfaction with preexisting commitments to accept crossing maintenance costs and liabilities. In response, ARRC has already helped develop a statewide Alaska Railroad/Highway Crossing Policy to more effectively administer crossing development and maintenance needs. It has also standardized annual signal maintenance fees and waived annual permit fees in an effort to mitigate municipal financial concerns. Finally, ARRC recently invited the state Ombudsman to review its railroad/highway

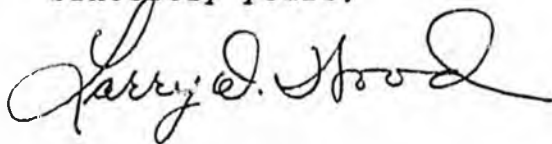
Page 2

Letter to Senator Jones and Representative Cato

crossing permit process in an attempt to resolve differences between the railroad and local communities regarding crossing liability and crossing maintenance costs. Hence, we believe that legislative intervention is unnecessary, inconsistent with ARRC's original mission, and usurps the good faith negotiations which have previously led to the execution of valid and reasonable grade crossing agreements.

Thank you very much.

Sincerely yours,

A handwritten signature in cursive script that reads "Larry D. Wood". The signature is written in dark ink and is positioned above the typed name and title.

Larry D. Wood  
General Counsel

cc: ARRC Board of Directors  
F. G. Turpin, President & CEO

8165L

# ALASKA RAILROAD CORPORATION



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

April 12, 1989

## SENATE BILL 233/HOUSE BILL 234

An Act Relating to Standardized Railroad Crossing  
Permit Agreements of the Alaska Railroad Corporation;  
and Providing for an Effective Date

### I. Introduction.

Identical proposals, Senate Bill 233 and House Bill 234, have been introduced to regulate the use of standard crossing permit agreements by the Alaska Railroad Corporation ("ARRC"). A proposed revision of the railroad's enabling legislation will prohibit ARRC from using a crossing agreement form unless the form has been reviewed by the Legislature. In addition, ARRC will be required to submit a crossing permit form to legislative review before January 20, 1990. Unless the proposed agreement is disapproved during the 60 days which follow, ARRC must use it to renegotiate all existing crossing agreements within 12 months. Legislative disapproval will presumably delay the beginning of this renegotiation period.

ARRC strongly opposes this legislation. The bills may have been filed at the request of several municipalities, Wasilla and North Pole in particular, which have publicly and privately expressed dissatisfaction with their preexisting obligations to handle all costs and liabilities associated with railroad/highway crossings in their respective communities. Importantly, these crossings were installed over existing rail lines for the sake of community convenience and growth. In the past, community leaders have recognized that certain costs associated with crossing safety and maintenance would be regularly incurred, and they accepted those responsibilities as part of the price to be paid for economic expansion and an enlarged tax base.

Despite the historical development of community/railroad crossing relations and in the wake of a state-wide fiscal crisis, some public leaders have suggested that crossing maintenance expenses be shifted to ARRC, a previously self-sufficient, state-owned business. By fettering ARRC

operations with unnecessary government regulation of its railroad/highway crossing program and permits, a few municipal leaders may be assuming that the railroad's standard crossing permit will be amended to their satisfaction, a result which would otherwise depend upon good faith negotiations. This political solution also represents an effort to hogtie ARRC's administrative and operational autonomy, despite the previously expressed spirit and philosophy of its unique enabling legislation.

The following discussion underscores ARRC's efforts to responsibly manage railroad affairs by continuing to insist that municipal authorities be accountable for the maintenance of crossings which have been installed at their request and for their convenience. However, ARRC has also been sensitive to municipal financial concerns and sponsored the development of the Alaska Railroad/Highway Crossing Policy which sets forth clear standards relating to the development and maintenance of grade crossings. It has also standardized signal maintenance costs and waived permit fees. In hopes that his observations will help resolve ongoing controversy, ARRC has recently invited a neutral third party, the state Ombudsman, to review and comment upon crossing liability and maintenance costs issues.

## II. Present Procedures.

An overview of ARRC's railroad/highway crossing statistics and permitting process is a prerequisite to a clearer understanding of the potential impact of these bills on railroad operations.

a. Crossing Statistics. Few members of the public realize that ARRC has 359 road crossings. All but 40 are covered by written permits and agreements which in most cases were negotiated and issued by the federal Alaska Railroad. The Department of Transportation and Public Facilities ("DOT/PF") owns 106 of the crossings and local governments own a total of 108. The remaining crossings are permitted to various other entities, both private (commercial and residential) and public (university, military, etc.). Only 76 of the 359 crossings are signalized.

b. Permit Process. To better preserve and protect its resources, ARRC insists that entry onto its lands will be governed by written permits, whatever the proposed use (road crossings, water and sewer lines, bike paths, etc.). ARRC retains approval authority for development activities within its right-of-way to insure compatibility with railroad operations. ARRC has also retained the prerogative to permit other consistent uses within the right-of-way to allow

utilities, roadways, and rail lines to safely co-exist within the same "permit area." In order to provide for its long-term needs on railroad lands, ARRC retains the right to terminate such permits on reasonable notice.

Railroad, state, and municipal representatives agreed many years ago that the entity which benefits from a crossing facility will bear all attendant costs. The railroad predated roads in most locations, and both the federal and state-owned railroads have insisted that state and local governments accept all responsibility for crossings which have been developed to access government and private lands. Similarly, where the railroad has been the latecomer and developed rail extensions over existing highways, it bears those responsibilities and costs.

Liability is addressed in two ways in ARRC's present permit form. The permit holder must have general liability insurance or, in the case of public entities, self-insurance is accepted. In addition, the road owner must agree to indemnify ARRC for all claims arising out of the operation of its railroad crossing. As noted, a permit holder pays for all construction and maintenance costs related to its crossing. Maintenance costs are primarily composed of three categories, sight triangle clearance, roadway and crossing surface maintenance, and signal maintenance.

Sight triangles are established to provide an area clear of vegetation and other obstructions so that an oncoming motorist and an approaching train crew can see each other. While the permit holder must perform clearing work, ARRC does provide flag protection without cost if it is arranged in advance.

State and local governments also install and maintain highway signs and roadway surfaces in accord with state regulations.

Signal maintenance is performed by ARRC employees, but railroad costs are reimbursed by permittees. Signal maintainers have at least four years of classroom and on-the-job training. Their work is based on industry standards and includes a weekly visit to signalized crossings for inspection, testing, and servicing. "Trouble calls" are sometimes necessary to perform repairs after accidents or vandalism. ARRC has standardized the routine maintenance charges for signalized crossings. These charges are also audited by DOT/PF personnel under Federal Highway Administration guidelines. ARRC is simply reimbursed for its personnel, materials, and overhead costs: it does not reap profits from performing signal maintenance work. For the current year, these charges amount to \$3,192 per crossing. Trouble calls average an additional \$500 per crossing.

ARRC waives annual administrative fees related to the handling of federal, state, and municipal crossing permits.

c. Alaska Railroad/Highway Crossing Policy. The Alaska Railroad/Highway Crossing Policy has been developed and implemented with extensive local government participation. It was drafted by a joint DOT/PF, ARRC, and Federal Highway Administration Task Force, and was formally adopted by the DOT/PF Commissioner and ARRC's Board of Directors. The policy defines "public" and "private" crossings and establishes a diagnostic team to evaluate proposed crossings and major improvements of existing crossing facilities. Made up of DOT/PF, ARRC and local government representatives, the team recommends the level of safety protection needed at evaluated crossings and prioritizes them for improvements based on relative hazard rankings.

### III. Impact of SB 233/HB 234.

a. Management Functions. Negotiation of railroad/highway crossing agreement terms has historically been conducted between railroad management and state and local government authorities. The Alaska Railroad Corporation Act vested exclusive responsibility for management of railroad affairs in a Board of Directors and its management team. Both have been charged to operate a self-sustaining, successful railroad in a responsible and business-like manner. The formula has worked well in the four years since transfer. Subjecting corporate contracts to unnecessary legislative review will fly in the face of an effective railroad management plan and hamstring ARRC's efforts to balance the need for community access with adequate protection of railroad assets and financial resources.

All railroads and most commercial property owners use standard form permits and leases to more effectively manage corporate properties. Governmental agencies employ the same approach to avoid administrative nightmares. Similarly, ARRC's crossing agreement form clearly sets forth and assigns construction and maintenance responsibilities which have been negotiated over many years. The form has been previously reviewed and approved by railroad management. In light of preexisting legislation which has already directed that such railroad affairs be handled by responsible managers who are subject to ARRC board oversight, the devotion of substantive legislative time to further examine railroad right-of-way agreements appears to be duplicitous and perhaps wasteful in light of more pressing issues currently faced by state government.

b. Public Stalemate. The public cannot afford further delays in gaining access across railroad rights-of-way. The bills do not differentiate between permits for road crossings,

and other public facilities which also require "access" to or across ARRC lands. In addition to the 359 road crossing permits mentioned above, ARRC issues scores of utility permits affecting its right-of-way and terminal yards.

Until the legislative review process is completed, ARRC will be effectively prevented from issuing any permits. There is insufficient time to comply with the bills' legislative review period this year, and, hence, no form permit could be issued until March 20, 1990, at the very earliest. While the bills refer to "standardized" agreements, it is impossible to devise a "non-standardized" contract for interim use. Over the years, crossing agreement terms and conditions have become quite clear and generally uniform. Simply changing a few words in each paragraph will not comply with the spirit, or indeed the letter, of this legislation. The public may be seriously inconvenienced depending upon the extent of community development plans. Important state highway projects could also be seriously delayed.

d. Public vs. Private Crossings. The bills also make no distinction between public and private crossings. Of a total 359 crossings, forty-eight are private residential and commercial crossings. There is no prudent reason to offer concessions to private individuals and businesses which may be impressed upon ARRC in new local government crossing permits. Conferring unsupportable benefits on private interests may also contravene the railroad's enabling legislation. See AS 42.40.300. To the extent they impair private contract rights, SB 223 and HB 224 may also violate constitutional guarantees.

e. One-Year Renegotiation Deadline. The legislation requires all preexisting permits to be renegotiated within a year of completion of legislative review of a new standard crossing agreement form. Since all federal ARR and state ARRC permits are based on a standard form, all existing crossing permits must be renegotiated within a narrow time frame. Additional real estate personnel must be hired and trained as ARRC attempts to meet the one-year deadline. Costs also include engineering and legal reviews and administrative expenses. Some permit holders may refuse to renegotiate or will delay in hopes of gaining more favorable terms as the deadline approaches. The scheme underestimates the time and resources which must be committed to a good faith attempt to satisfy its requirements.

f. Federal Constraints. The state's legislature has previously agreed with federal authorities that all revenues generated by the railroad shall be retained and managed by the railroad for railroad and related purposes. 45 U.S.C. §1207(a)(5). Accordingly, ARRC has been chartered as a

quasi-private business directed to expend its revenues on a self-sustaining basis under the watchful eye of a group of experienced business leaders selected by the governor. SB 233 and HB 234 hope to frustrate and possibly violate those constraints by usurping the rail board's oversight responsibilities. If the legislature requires ARRC to assume crossing maintenance costs and liabilities as a part of a new crossing agreement form, it will have effectively managed significant railroad revenues and committed them to municipal, as opposed to, railroad purposes in contravention of its earlier promise and federal law.

#### IV. Conclusion.

This legislation will create serious and unwarranted administrative difficulties for the railroad corporation. It also unjustifiably, and perhaps illegally, interferes with the sound management of ARRC operations and resources by an appointed Board of Directors. The heart of the dispute concerns municipal unhappiness with preexisting commitments to accept crossing maintenance costs and liabilities. In response, ARRC has already helped develop a statewide policy to more effectively administer crossing development and maintenance needs, standardized annual signal maintenance fees, waived annual permit fees, and recently invited the state Ombudsman to review its railroad/highway crossing permit process with an eye toward further solutions. Hence, legislative intervention is unnecessary, inconsistent with ARRC's original mission, and usurps the good faith negotiations which have previously led to the execution of valid and reasonable grade crossing agreements.

\*\*\*

8161L

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 233  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Alaska Railroad Corporation  
Title: Relating to Standardized  
Crossing Permit Agreements BRU: \_\_\_\_\_  
Sponsor: Sen. Coghill Components: \_\_\_\_\_  
Requester: DCED

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	\$10.0	\$110.0				
TRAVEL						
CONTRACTUAL						
SUPPLIES		1				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$10.0	\$111.0				

\*ARRC operates on a calendar fiscal year.

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER ARRC	\$10.0	\$111.0				
TOTAL						

POSITIONS:

FULL-TIME		1				
PART-TIME		1				
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This fiscal note is for informational purposes only, as the Alaska Railroad is not subject to the Executive Budget Act.

(CONTINUED - NEXT PAGE)

Prepared by: Larry D. Wood  
Division: Alaska Railroad Corporation

Phone: 265-2461  
Date: 4-10-89

Approved by Commissioner: Larry Merculieff  
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: 4/11/89

Distribution (by preparer):

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Requestor  
Office of Management and Budget  
Impacted Agency(ies)

page 1 of 2

STATE OF ALASKA LEGISLATIVE SESSION

FISCAL NOTE

ANALYSIS:

The legislation requires the Alaska Railroad Corporation (ARRC) to develop a new railroad crossing permit form by January 20, 1990. Development of a new form will cost approximately \$8,000 to \$10,000. The existing form will be revised by real estate staff and reviewed by attorneys. Revision costs will vary sharply if public comments are to be solicited as a result of an extensive hearing process. Once the form is authorized by legislative action or inaction, the bill next requires renegotiation of all railroad crossing permit agreements. There are approximately 273 crossings under permit to federal, state, university and private entities which would be affected by this requirement. Existing agreements have been negotiated over the course of many years and involve many different permittees. Consequently, a real estate leasing specialist position would be added to commit full-time personnel resources to the enormous task of renegotiating all of these agreements within a 12-month period. The engineering department will commit the equivalent of one-half man year of time to various levels of internal review, comment, and analysis. The estimate includes the expenses associated to an additional leasing specialist position and associated benefits, legal and engineering review, and printing, word processing, and supply costs.

The estimate does not include any other expenses which may be assessed against the ARRC after a new form is prepared. For example, if, as a result of legislative review, ARRC is required to pay for signal maintenance costs under revised permit terms, such costs will accrue at the rate of approximately \$3,700 per signalized crossing. Sight triangle, sign, and road surface maintenance costs are additional expenses associated with grade crossing which also have previously been the financial responsibility of requesting agencies. Finally, the shifting of grade crossing liabilities to ARRC will add less ascertainable, but certainly significant, costs to the other burdens imposed by this legislation.



## News Release

No. 79

April 4, 1989

For Immediate Release

Contact: Vivian Hamilton (907) 265-2675

or: Ombudsman 's Office (800) 478-4970

### Ombudsman To Review Railroad/Highway Crossing Issues

The Alaska Railroad Corporation has asked the state ombudsman to review its railroad/highway crossing permit process in an attempt to resolve differences between the railroad and local communities regarding crossing liability and crossing maintenance costs.

"The ombudsman is an impartial third party who can review both sides of the issue objectively and suggest solutions that might be acceptable to all of us," explained Frank Turpin, railroad president and CEO.

Recently several Railbelt communities have expressed concerns about accepting liability for railroad/highway crossings in their communities and about what they consider high maintenance costs for crossings and automatic crossing signals.

It is the railroad's position that all costs relating to highway crossings on the railroad right-of-way should be the responsibility of the road owner.

There are 359 crossings along the Alaska Railroad, the majority of which are public crossings permitted to local, state or federal

(more)

## ADD ONE--Railroad Seeks Ombudsman Review

governmental agencies. The railroad's crossing permits require road owners to have liability insurance or be self-insured to cover crossings. Some communities have argued that crossing liability should be the responsibility of the railroad.

Of the 359 crossings, 76 have signals which are inspected weekly by a specialized maintenance team. The cost for signal maintenance is billed to the signal owners. In addition, any maintenance required for crossing upkeep is charged to the road owner. Some communities have argued that the cost of maintenance for crossings and automatic signals should be borne by the railroad.

The Alaska Railroad is a state-owned corporation which is operated as a for-profit business without state funding. In 1988 the railroad reported \$58 million in revenue and a net income of \$5.8 million, which is being reinvested in capital improvements during 1989.

###

### RAILROAD/HIGHWAY CROSSING PERMITS IN ALASKA

	Number of <u>Crossings</u>	Number with <u>Signals</u>
DOT/PF	106	48
Anchorage	55	16
Fairbanks	20	0
Other Local Gov't	33	3
Alaska Railroad	27	2
Military	19	5
University of Alaska Fairbanks	2	0
Other State/Federal Agencies	9	1
Private/Commercial	48	1
Unpermitted	<u>40</u>	<u>0</u>
TOTAL	359	76

Effect of amendments. — The 1987 amendment inserted "rotor" in paragraph (3).

## \*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

10. Establishment of the corporation
20. Board of directors
30. Term of office

#### Section

40. Vacancies
50. Compensation and expenses
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)

**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:

**Sec. 42.40.300. Use of corporation assets.** The corporation shall apply all money, property, other assets, and credit of the corporation toward activities authorized by this chapter. The corporation may not issue shares of stock, pay dividends, make private distributions of assets, make loans to board members or employees, or engage in business for private benefit. The use of money, property, another asset, or credit of the corporation for a purpose not authorized by law by a person having the possession or control of it is prohibited. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.310. Indemnification.** (a) The corporation may defend and indemnify a current or former member of the board, employee, or agent of the corporation against all costs, expenses, judgments, and liabilities, including attorney's fees, incurred by or imposed upon that person in connection with a civil or criminal action in which the person is involved by affiliation with the corporation, if the person acted in good faith on behalf of the corporation and within the scope of official duties or powers.

(b) The corporation may purchase insurance to protect and hold personally harmless its employees, agents, and board members from an action, claim, or proceeding arising out of the performance, purported performance, or failure of performance, in good faith, of duties for, or employment with, the corporation and to hold them harmless from expenses connected with the defense, settlement, or monetary judgments from that action, claim, or proceeding. The purchase of insurance is discretionary with the board and insurance is not considered to be compensation to the insured person. (§ 2 ch 153 SLA 1984)

#### Article 5. Corporation Property.

Section	Section
350. Land	400. Vacation of easements
355. Prohibition	410. Federal land
360. Request for land	420. Public use of railroad land
370. Conveyance of land	430. Acquisition of government property
380. Use of state land	435. Exchange of land
385. Eminent domain	440. Use of pesticides and herbicides
390. Land use rules	450. Adverse possession

★ **Sec. 42.40.350. Land.** (a) The corporation shall receive from the United States and, in its own name, take title to all rail property transferred under 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982). All land that is transferred or acquired by the corporation is designated as follows:

- (1) railroad rights-of-way are railroad utility corridors;
  - (2) land outside railroad utility corridors is rail land.
- (b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, unless

the corporation does not own or control sufficient land to allow a corridor of that width. Railroad utility corridors may be surveyed by the metes and bounds method. The corporation may not convey its entire interest in land within a utility corridor except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.355. Prohibition.** Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

**Sec. 42.40.360. Request for land.** (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

**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 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;

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to Standardized  
Crossing Permit Agreements  
Sponsor: \_\_\_\_\_ Rep. Miller  
Requester: DCED

Agency Affected: Alaska Railroad Corporation  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	\$10.0	\$110.0				
TRAVEL						
CONTRACTUAL						
SUPPLIES		1				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$10.0	\$111.0				

\*ARRC operates on a calendar fiscal year.

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER ARRC	\$10.0	\$111.0				
TOTAL						

POSITIONS:

FULL-TIME		1				
PART-TIME		1				
TEMPORARY						

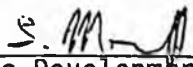
ANALYSIS: (Attach a separate page if necessary.)

This fiscal note is for informational purposes only, as the Alaska Railroad is not subject to the Executive Budget Act.

(CONTINUED - NEXT PAGE)

Prepared by: Larry D. Wood  
Division: Alaska Railroad Corporation

Phone: 265-2461  
Date: 4-10-89

Approved by Commissioner: Larry Merculieff   
Agency: Department of Commerce & Economic Development

Phone: 465-2500  
Date: \_\_\_\_\_

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Office of Management and Budget  
Impacted Agency(ies)

# STATE OF ALASKA LEGISLATIVE SESSION

## FISCAL NOTE

### ANALYSIS:

The legislation requires the Alaska Railroad Corporation (ARRC) to develop a new railroad crossing permit form by January 20, 1990. Development of a new form will cost approximately \$8,000 to \$10,000. The existing form will be revised by real estate staff and reviewed by attorneys. Revision costs will vary sharply if public comments are to be solicited as a result of an extensive hearing process. Once the form is authorized by legislative action or inaction, the bill next requires renegotiation of all railroad crossing permit agreements. There are approximately 273 crossings under permit to federal, state, university and private entities which would be affected by this requirement. Existing agreements have been negotiated over the course of many years and involve many different permittees. Consequently, a real estate leasing specialist position would be added to commit full-time personnel resources to the enormous task of renegotiating all of these agreements within a 12-month period. The engineering department will commit the equivalent of one-half man year of time to various levels of internal review, comment, and analysis. The estimate includes the expenses associated to an additional leasing specialist position and associated benefits, legal and engineering review, and printing, word processing, and supply costs.

The estimate does not include any other expenses which may be assessed against the ARRC after a new form is prepared. For example, if, as a result of legislative review, ARRC is required to pay for signal maintenance costs under revised permit terms, such costs will accrue at the rate of approximately \$3,700 per signalized crossing. Sight triangle, sign, and road surface maintenance costs are additional expenses associated with grade crossing which also have previously been the financial responsibility of requesting agencies. Finally, the shifting of grade crossing liabilities to ARRC will add less ascertainable, but certainly significant, costs to the other burdens imposed by this legislation.