

HB

23

HOUSE TRANSPORTATION COMMITTEE
THURSDAY, FEBRUARY 11, 1993
CAPITOL, ROOM 17
5:00 P.M.

HB 23 - "AN ACT MANDATING THE SALE OF THE ALASKA RAILROAD; AND
PROVIDING FOR AN EFFECTIVE DATE."

I N D E X:

- I. ORIGINAL VERSION, HB 23
- II. SPONSOR STATEMENT, HB 23
- III. SECTIONAL ANALYSIS, HB 23
- IV. MEMO DATED NOV. 9, 1992 FROM GEORGE UTERMOHLE TO REP. MARTIN
RE: ALASKA RAILROAD TRANSFER ACT:RESTRICTION ON SALE
- V. POSITION PAPERS, HB 23 - (A.) ALASKA RAILROAD CORPORATION
(B.) COMMERCE & ECON. DEVP.
- VI. FISCAL NOTES - HB 23 / (A.) ALASKA RAILROAD CORPORATION
(B.) COMMERCE & ECON. DEVP.
- VII. MEMO DATED JANUARY 23, 1992 TO ALL LEGISLATORS FROM REP.
CHOQUETTE
- VIII. LETTER DATED JANUARY 27, 1993 TO REP. MARTIN FROM MR.
MCDONALD/CARLILE ENTERPRISES, INC.

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

Terry II

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

DURING SESSION
P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

Alaska House of Representatives

SPONSOR STATEMENT

HB 23

"An Act mandating the sale of the Alaska Railroad."

Under the Alaska Railroad Transfer Act of 1983, the Alaska Railroad was transferred to the State of Alaska on January 6, 1985. Within ten years of the date of transfer, railroad-owned land may be purchased by a private entity, subject to restrictions on the state by the federal government. The provision preventing disposal of the land will expire on January 7, 1995.

In view that the federal restrictions on transfers will cease to apply, this will be an opportune time to work with private bidders at selling the Alaska Railroad. In that light, HB 23 provides the mechanism through which the process of the sale can be initiated. The parameters which are set in the bill distinguish a clear relationship between the governor and the legislature with regards to the bidding, overview and sale process.

In reference to the reasoning and justification of the sale, the bottom line is that the State's powers should not be broadened in such a manner that private enterprise activity is infringed upon. The recent profit disclosed by the railroad resulted from a \$4 million earning through real estate transactions. With respect to the transportation operations, which is realistically the underlying purpose for its inception, there was a \$2 million loss reported in 1992.

A recent audit by Mercer Management Consulting of Lexington found "the ARRC management to be somewhat fragmented, without a team focus, and apparently comfortable with the status quo", as stated in the February 8th Alaska Journal of Commerce. In addition, business clientele of the railroad, as well as competing enterprises have expressed concerns towards the ARRC (a state owned corporation), possessing the ability to generate revenues through real estate payments. Hence, it is time to privatize this arm of state government, allowing private bidders to purchase the organization, thereby allowing our free market system to flourish, while successfully reducing another segment of our oversized governmental bureaucracy.

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

Item III

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

DURING SESSION
P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

Alaska House of Representatives

SECTIONAL ANALYSIS

HB 23

"An Act mandating the sale of the Alaska Railroad."

Section 1.

States that the governor shall issue a request by July 1, 1994, for proposals to purchase the Alaska Railroad after January 7, 1995. The governor will evaluate the proposals and will oversee that the State receives adequate compensation.

By January 6, 1996, the governor will enter into an agreement for the sale with the most responsive offeror. In addition, the governor shall contract with an appraiser and the report submitted will be distributed to the legislature by the 10th day of the Second Session of the Eighteenth State Legislature. During each legislative session, by the 10th legislative day he shall give a report regarding the progress of the sale. Upon the completion of the sale, the governor shall dissolve the Alaska Railroad Corporation.

Section 2.

Requires the Act to take effect immediately.

DIVISION OF LEGAL SERVICES**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

November 9, 1992

SUBJECT: Alaska Railroad Transfer Act: Restriction on the sale of the Alaska Railroad (Work Order No. 18-LS0177)

TO: Representative Terry Martin
ATTN: Tom Anderson

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum summarizes the provision of the federal Alaska Railroad Transfer Act (P.L. 97-468, Title VI) that restricts the ability of the legislature to sell the state-owned Alaska Railroad.

The Alaska Railroad Transfer Act became law January 14, 1983. The Act set out the terms under which the Alaska Railroad would be transferred to the State of Alaska. Ownership of the railroad was transferred to the state January 6, 1985.

The federal Act contains two provisions restricting the ability of the state to profitably dispose of the railroad within certain time periods following the transfer of the railroad to the state. One of those provisions has already expired; the other provision will expire in a few more years.

If, within ten years after the date of transfer to the State . . . , the Secretary finds that all or part of the real property transferred to the State under this title, . . . , is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property . . . shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

P.L. 97-468, sec. 610(a); 45 U.S.C. 1209(a).

Representative Terry Martin
November 9, 1992
Page 2

The apparent purpose of this provision is to discourage the state from disposing of railroad land in a manner that will cause the state-owned railroad to cease operation during the first ten years following the transfer. It is unclear as to what events would cause this provision to become operative. The phrase "prevent the State-owned railroad from continuing to operate" is particularly unclear. Does the phrase refer just to disposals of real property that would prevent the entire railroad from operating or just part of the railroad, such as between Anchorage and Whittier or Fairbanks and Eielson Air Force Base? Does this provision prevent the disposal of revenue producing land not used for the actual operation of the railroad if the disposal would endanger the long term financial viability of the railroad or does it refer only to disposal of land actually used for railroad operations?

It is evident that this provision virtually precludes any transfer of the railroad to private ownership that included a transfer of railroad land, because the transfer of the railroad to private ownership would prevent the state-owned railroad from continuing to operate. Though this provision is triggered only by the disposal of real property and thus could be avoided by not disposing of real property, it is difficult to envision anyone wanting to buy the railroad if they did not also get the land and buildings used by the railroad.

The ambiguity of this provision places a cloud over any disposal of railroad land until January 7, 1995 when this provision expires.

I am providing this information to you so that you are aware of this temporary impediment to profitable disposal of the Alaska Railroad.

If I can provide further assistance, please advise.

GU:gc
92-508.glc

Position Paper

HB-23

"An Act mandating the sale of the Alaska Railroad; and providing for an effective date."

The Alaska Railroad Corporation was created by an act of the Alaska State Legislature in 1984 (AS.42.40). This statute, as it was originally crafted provided that the Railroad be a self-sustaining entity, operated without state subsidy and wholly-owned by the State of Alaska. As mandated by the statute, the corporation is managed by a seven member Board of Directors appointed by the Governor. The Board has a fiduciary responsibility to manage the Corporation's legal and financial obligations and to ensure prudent operation of the Railroad according to sound business practices.

The Alaska Railroad Corporation Act (ARCA) embodied a public policy to create a legal and financially independent railroad. Eight years following transfer, that vision has proved to be attainable, accurate and well designed.

HB-23, as it is currently proposed, mandates that the Governor shall enter into an agreement to sell the Alaska Railroad to the most responsive offeror by January 6, 1996. The present statute (AS.42.40.940) currently provides for the sale or lease of the Railroad. Sale under this section of the law also requires approval by the Legislature. Accordingly HB-23 is redundant - the Governor is already empowered to sell or lease the Railroad (Sec. 42.40.940), subject to legislative approval.

Apart from redundancies, introduction of legislation of this nature has several undesirable peripheral effects. It tends to erode the Corporation's ability to negotiate effective long-term contractual arrangements with its large shippers. Financial institutions would view the corporation less favorably. Finally it sends a mixed message to employees who endured the anxieties of the transfer from Federal to State ownership in 1984-85.

Moreover, when ownership of the Alaska Railroad was transferred from the federal government, the State agreed to abide by the provisions of the transfer law passed by Congress in 1983. This law required the railroad to be 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 the Railroad enough independence to conduct its activities as a separate economic entity from the State.

Certain controls were imposed in recognition of state ownership and essential governmental accountability: open meetings requirements; Governor appointed board members; procurement and ethical codes substantially equivalent to State models; submission of financial and management audits, annual reports, oversight reports and legislative approval of land disposals.

This blend of substantial financial and operational 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, operational needs and financial resources.

In the event that the Legislature enacts a law which would require sale of the Railroad, several questions should be answered:

Operational

What conditions, if any, will be added to the sale terms to insure continued rail operations as required by the federal transfer act? Will the new owner have the option to close unprofitable segments of the rail line in the interest of maximizing short term profits elsewhere? Will the new owner be required to service future state-funded expansions of the rail system?

Marketing

What will assure at least informal State oversight of anti-competitive railroad operations under private ownership? Will a private owner be required to be responsive to serving local freight and municipal needs? To what extent will a privately owned Railroad participate in unprofitable traffic flows based solely upon "economic development and jobs"?

Passenger Service

Will the State retain control of rail passenger service? Will it be economically feasible for the new owner to operate a passenger service? Will the State subsidize any loss which the new owner may endure? Will the State regulate rates for passenger service? What level or frequency of passenger service will the State require?

Real Estate

Will the sale agreement include sale of all rail lands including the right-of-way (ROW)? Will the State allow the lessee to purchase their leasehold interest prior to sale of the Railroad? If the rail lands are sold, what happens to those lease agreements between the Railroad and local governmental entities for those properties set aside for bike trails, parks, cemeteries etc.? Will the new owner receive surface rights, mineral rights or both?

Employee Concerns

Will the new owner be required to honor existing labor agreements? Will there be job protection clauses for current employees? And how will they affect the final sales price?

Summary

Through its ownership of the Alaska Railroad, the State and Municipalities receive many benefits that are not readily apparent; such as dollar per year leases for parks and trails, passenger services to Whittier and outlying points without State subsidy, and support for resource development that otherwise would have to come from public monies.

A bill to sell the Railroad on a date certain is nothing more than an auction, and the highest value may not be realized. Also, any conditions of sale relating to support of public services will reduce sale income accordingly.

In the final analysis, the Legislature will have to determine for itself whether the benefits of state ownership of a producing asset outweigh the burden of having to occasionally sort out some rather complex competitive issues. If under State ownership, the Railroad cannot enjoy the flexibility to react to market conditions using private business principles, then it should be sold. Otherwise, such a valuable investment should remain in State hands.

HB 23: "An Act mandating the sale of the Alaska Railroad; and providing for an effective date."

The Alaska Railroad Corporation was created by an act of the Alaska State Legislature in 1984 (AS 42.40). This statute, as it was originally crafted provided that the railroad be a self-sustaining entity, operated without state subsidy and wholly-owned by the State of Alaska. As mandated by the statute, the corporation is managed by a seven-member Board of Directors appointed by the Governor. The board has a fiduciary responsibility to manage the corporation's legal and financial obligations and to ensure prudent operation of the railroad according to sound business practices.

The Alaska Railroad Corporation Act (ARCA) embodied a public policy to create a legal and financially independent railroad. Eight years following transfer, that vision was proved to be attainable, accurate and well-designed.

HB 23, as it is currently proposed, mandates that the Governor shall enter into an agreement to sell the Alaska Railroad to the most responsive offeror by January 6, 1996. The present statute (AS 42.40.940) currently provides for the sale or lease of the railroad. Sale under this section of the law also requires approval by the Legislature. Accordingly, HB 23 is redundant - the Governor is already empowered to sell or lease the railroad (Sec. 42.40.940) subject to legislative approval.

Apart from redundancies, introduction of legislation of this nature has several undesirable peripheral effects. It tends to erode the corporation's ability to negotiate effective long-term contractual arrangements with its large shippers. Financial institutions would view the corporation less favorably. Finally, it sends a mixed message to employees who endured the anxieties of the transfer from federal to state ownership in 1984-85.

Moreover, when ownership of the Alaska Railroad was transferred from the federal government, the state agreed to abide by the provisions of the transfer law passed by Congress in 1983. This law required the railroad to be 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 the railroad enough independence to conduct its activities as a separate economic entity from the state.

Certain controls were imposed in recognition of state ownership and essential governmental accountability; open meetings requirements; Governor-appointed board members; procurement and ethical codes substantially equivalent to

POSITION PAPER

HB 23

Page 2

state models; submission of financial and management audits, annual reports, oversight reports and legislative approval of land disposals.

This blend of substantial financial and operational 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, operational needs and financial resources.

In the event that the Legislature enacts a law which would require sale of the railroad, several questions should be answered:

Operational

What conditions, if any, will be added to the sale terms to insure continued rail operations as required by the federal transfer act? Will the new owner have the option to close unprofitable segments of the rail line in the interest of maximizing short-term profits elsewhere? Will the new owner be required to service future state-funded expansions of the rail system?

Marketing

What will assure at least informal state oversight of anticompetitive railroad operations under private ownership? Will a private owner be required to be responsive to serving local freight and municipal needs? To what extent will a privately-owned railroad participate in unprofitable traffic flows based solely upon "economic development and jobs"?

Passenger Service

Will the state retain control of rail passenger service? Will it be economically feasible for the new owner to operate a passenger service? Will the state subsidize any loss which the new owner may endure? Will the state regulate rates for passenger service? What level of frequency of passenger service will the state require?

Real Estate

Will the sale agreement include sale of all rail lands, including the right-of-way (ROW)? Will the state allow the lessee to purchase their leasehold interest prior to sale of the railroad? If the rail lands are sold, what happens to those

lease agreements between the railroad and local governmental entities for those properties set aside for bike trails, parks, cemeteries, etc.? Will the new owner receive surface rights, mineral rights, or both?

Employee Concerns

Will the new owner be required to honor existing labor agreements? Will there be job protection clauses for current employees? And how will they affect the final sales price?

Summary

Through its ownership of the Alaska Railroad, the state and municipalities receive many benefits that are not readily apparent, such as dollar per year leases for parks and trails, passenger services to Whittier and outlying points without state subsidy, and support for resource development that otherwise would have to come from public monies.

A bill to sell the railroad on a date certain is nothing more than an auction, and the highest value may not be realized. Also, any conditions of sale relating to support of public services will reduce sale income accordingly.

In the final analysis, the Legislature will have to determine for itself whether the benefits of state ownership of a producing asset outweigh the burden of having to occasionally sort out some rather complex competitive issues. If under state ownership, the railroad cannot enjoy the flexibility to react to market conditions using private business principles, then it should be sold. Otherwise, such a valuable investment should remain in state hands.



Paul Fuhs, Commissioner

2-11-93

Date

Ham VI (2)

FISCAL NOTE

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

BILL NO. HB-23

Revision Date: _____ Dept. Affected: _____
 Title: MANDATE TO SELL THE ALASKA RAILROAD BRU: _____
 Sponsor: REPRESENTATIVE MARTIN Component: _____
 Requester: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY84	FY85	FY86	FY87	FY88	FY89
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

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

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1008 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY89) impact: \downarrow

ANALYSIS:

(Attach a separate page if necessary)

THE COSTS TO SELL THE ALASKA RAILROAD ARE UNKNOWN. HOWEVER, DURING THE TRANSFER PROCESS IN 1984-85, THE U.S. GOVERNMENT SPENT AN ESTIMATED \$1.7 MILLION FOR VARIOUS STUDIES, APPRAISALS AND FINANCIAL ASSESSMENT. THE STATE OF ALASKA EXPENDED AN ESTIMATED \$2.0 MILLION FOR ACQUISITION ASSESSMENTS, FACILITIES ASSESSMENTS, LEGAL ADVICE, ANALYSIS OF USRA EVALUATION, AND TRANSFER REPORT.

Prepared by: JAMES B. BLASINGAME
 Division: _____
 Approved by Commissioner: ROBERT S. HARTFIELD

Phone: (907) 265-2680
 Date: 2/8/93
 Date: 2/8/93

FISCAL NOTE

BILL NO. HB 23

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: _____

Title: Mandate to sell the Alaska Railroad

Sponsor: Representative Martin

Requestor: _____

Department Affected: Commerce and Economic Development

BRU: _____

Component: _____

COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

The costs to sell the Alaska Railroad are unknown. However, during the transfer process in 1984-85, the U.S. Government spent an estimated \$1.7 million for various studies, appraisals and financial assessment. The State of Alaska expended an estimated \$2.0 million for acquisition assessments, facilities assessments, legal advice, analysis of U.S.R.A. evaluation, and transfer report.

Prepared by: James B. Blasingame

Division: Alaska Railroad Corporation

Phone: 265-2680

Date: 2/8/93

Approved by Commissioner: Paul Fuhs

Agency: Commerce and Economic Development

Date: 2/8/93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Alaska State Legislature
House of Representatives

Item VII

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032



SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

To: All Legislators
From: Representative Dave Choquette
Date: January 23, 1992
Re: Alaska Railroad Corporation

The attached letter from the Alaska Railroad Corporation President, Bob Hatfield, Jr., is a result of a meeting Representative Hanley and I had in December with Mr. Hatfield, Mr. Yetter and Mr. Lounsbury. He has addressed my concerns regarding the Alaska Railroad Corporation competing with the private sector, the sale of the Alaska Railroad, and their compliance with Alaska Statutes.

I found this information informative and trust you will too.

January 2, 1992
Page Four

SALE OF ARRC

Alaska Statute 42.40 (Attachment III) establishing the ARRC was amended in 1988 to delete from its annual report specific "documentation of at least three offers to sell the corporation during the last five years." The language relating to "at least three offers" and "five years" has been deleted.

The intent of the change was to allow the legislature to make the decision when the Corporation should be offered for sale, thus not mandating the ARRC to offer or promote a sale situation. Of course, if an offer were received, then full disclosure would be provided appropriately. To date, we have not had any formal offers to purchase the Corporation.

For the Corporation and its employees, there are obvious advantages to placing the Corporation into private hands, such as increased profits, more flexibility, less governmental regulations/oversight and the ability to shed unprofitable segments (passenger services) which far outweigh the \$1 million in annual taxes.

* * *
* * *

Carlisle

ENTERPRISES, INC.

1524 Ship Avenue • Anchorage, AK 99501 • (907) 276-7797

January 27, 1993

Rep. Terry Martin
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Rep. Terry Martin:

I want to express my support for your HB23 regarding selling the Railroad. Unfortunately, I feel that regardless of Legislative direction, the Railroad will not let itself be sold. There will be continuous roadblocks to the Sale even if your bill were to pass. As an alternative, I would suggest that all real estate and the lease income from the properties which are not directly related to the railroad operations be removed from Railroad ownership. In addition, Port facilities at Seward and Whittier could be separately sold or transferred to the municipalities. This would leave the railroad with all the essential assets for operation and would present a very clear picture to the legislature and Alaska Tax payers of the Railroads true operating profits and losses. We could then make a rational decision to subsidize, sell or let the railroad stand alone. Now, the railroad is being subsidized to the tune of millions (6) per year with real estate revenues totally unrelated to the operation of the Railroad.

Again, I commend your efforts to privatize the Railroad and hope your are successful to some degree.

Sincerely,



Harry McDonald
President

HM/klc