

**SB**

**148**

# Fairbanks Hotel & Motel Association

P.O. Box 60377  
Fairbanks, Alaska 99706

February 23, 1993

Mr. Robert Hatfield  
President & Chief Executive Officer  
Alaska Railroad Corporation  
P.O. Box 107500  
Anchorage, Alaska 99510-7500

Dear Mr. Hatfield,

I appreciate the time you and Mr. Burns have taken to familiarize the members of The Fairbanks Hotel & Motel Association (FHMA) with the Alaska Railroad Corporation's (ARRC) plan to develop real estate along the Chena River in Fairbanks. Our concerns about the Chena River project are a result from our review of ARRC's participation in the Ship Creek Redevelopment project and our knowledge of the Fairbanks hotel market. Upon investigation, we find many of your statements about the Ship Creek project to be contrary to the conclusions documented in the *Audit Report* provided by the Alaska State Legislature, Legislative Budget and Audit Committee, May 1, 1992, report number 08-4437-92.

At the January 28, 1993 meeting between ARRC and FHMA I asked you if ARRC had guaranteed the financing for the Comfort Inn. You answered this question with "no". In your letter of February 8, addressed to me, you state "Inn-Vestment Associates of Alaska (IAA) is a private Alaska partnership of which ARRC is a 40% owner. ARRC's standing in the eyes of the bank and law, is no greater or no less than any of the other partners." To learn the facts in their entirety, we have referenced Page 8 of the aforementioned *Audit Report*, which shows "the term of the partnership is 35 years and all partners have UNLIMITED LIABILITY TO THIRD PARTIES for the debts and obligations of the partnership." ARRC is 100% responsible for the debt, jointly and severally. The *Audit Report 'Summary of Auditor's Concerns'* states "ARRC accepted full financial risk for the hotel partnership without documenting the financial capacity of the other partners. This problem was amplified as ARRC was the only partner to initially put tangible assets into the partnership. The other investors were initially scheduled to contribute cash and development/construction services to the partnership in return for their 60% capital interest; however, a \$250,000 cash requirement was subsequently reduced to zero". The contribution, required of the final investor, was amended to include development/construction services only. Our conclusion is that ARRC did guarantee the loan on the Comfort Inn hotel.

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It is your position that ARRC will not need to determine the feasibility of any project proposed for your property. You state that feasibility will be determined by the project proposer as well as the lending institution. Mr. Hatfield, I am compelled to ask why is the feasibility even of concern to the proposer or the lending institution when neither are at risk as ARRC assumes 100% liability for debts and obligations of the partnership and is the only partner to initially invest tangible assets into the project?

Contradictions continue to exist between statements made by yourself and Mr. Burns at the January 28 meeting and the information provided in the *Audit Report* about the Request for Proposal (RFP) procedure followed by ARRC on the Ship Creek Project. You stated ARRC followed the usual competitive bid process; you review each proposal in order received and give fair and equal consideration to each proposal. The *Audit Report* finds the ARRC evaluation process rejected the "highest rated offerer, Intergroup Development Incorporated (IDI). ARRC rejected the IDI offer and directed IDI to submit a fee proposal rather than the master lease proposal initially requested. IDI followed this direction only to find their second proposal also rejected by ARRC. Soon after ARRC rejected the IDI master lease proposal and fee proposal, ARRC once again changed direction and accepted the master lease proposal submitted by LoPatin and Company. "The *Audit* continues; "IDI subsequently filed a lawsuit alleging, among other items, that ARRC violated its own procurement rules and did not fairly and honestly negotiate with IDI". It is my understanding that ARRC gave IDI a substantial amount of money to settle out of court on this issue.

The *Audit Report Summary of Auditor's Concerns* included the following observations;

- ARRC has difficulty complying with its own procurement rules.
- ARRC was unable to provide adequate documentation for its sole source agreement.
- ARRC does not maintain detailed procurement regulations.

During the January 28 meeting you stated The Comfort Inn project had experienced some problems reaching agreement with Labor Unions. You went on to assure our members the issue had been resolved to the satisfaction of the Building Trade in Anchorage. However, a telephone conversation between myself and Mr. Royce Rock, Carpenter Union - Anch. revealed an agreement has been reached on only future construction by ARRC but the Building Trade has filed a law suit against the IAA Comfort Inn project. The *Audit Report* documents the formal opinion from the State Attorney General, released during April, 1992; "due to their belief that the construction was being performed under contract for the State and that the involvement of the State in the project is significant, the project is subject to the provisions of AS 36.05 (Little Davis-Bacon Act). In fact, the labor issues pertaining to the Comfort Inn project were not resolved to the satisfaction of the Unions in Anchorage.

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In their conclusion the *Audit* committee had questions with the decisions made by and actions taken by ARRC on the Ship Creek project. In the Auditor's opinion, these decisions indicate "light regard for the responsibilities and accountability of a publicly owned corporation." The members of the Fairbanks Hotel & Motel Association share the Auditor's opinion and remain opposed to the Chena River Hotel.

Initially, ARRC worked cooperatively with the Municipality of Anchorage (MOA) and Anchorage Economic Development Corporation (AEDC) to conceive the Ship Creek Redevelopment project. The *Audit Report* reveals that in "April 1990 ARRC and AEDC entered into an agreement for AEDC to solicit a private group to act as master developer for 120 acres of Ship Creek land, with the goal being the creation of a tourist-oriented, mixed-use development." With this goal in mind, the RFP was developed and distributed to prospective developers. Pursuant to the distribution of the RFP, and without regard to the original agreement between ARRC and AEDC, ARRC created the partnership known as IAA and constructed the Comfort Inn hotel on the Ship Creek property. The removal of this portion of real estate, as well as the hotel project, effectively altered the original RFP and adversely effected the overall project. With the exception of the Comfort Inn, the Ship Creek real estate remains undeveloped.

On January 28 you stated you hold great respect for public opinion, much as a result of all you learned during the Ship Creek Redevelopment project. You stated you would take care to insure The Chena River Project was in the best interest of the Fairbanks community and Fairbanks would benefit from your experience with the Ship Creek project. If Fairbanks is to benefit from your experience at Ship Creek why have you failed to implement the Auditor's recommendations? Where is the RFP for the Chena River Project? How have you publicly solicited for capable developers for the entire scope of the project or is it your intention to again, complete only the hotel building.

There is no demand for additional hotel rooms in Fairbanks. On January 28, 1993 you stated the project was originally conceived by Princess Tours and presented to ARRC in 1989. Your presentation included a statement that Princess Tours estimated 30% increase in tourism but failed to state this estimated increase will effect only the summer season. Since 1989, Princess Tours has constructed The Fairbanks Princess Hotel; 200 additional rooms scheduled to open in May, 1993. The *Fairbanks Hotel Occupancy Survey*, completed February, 1993, shows that Fairbanks hotel room inventory will meet the need for rooms generated by the estimated summer season increase. The survey also shows Fairbanks hotels will experience decreased occupancy levels during summer seasons as well as a reduction in average annual occupancy. Currently, Fairbanks hotels remove over 450 rooms from available inventory during the winter months, September through May. The survey verifies this practice must continue.

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Although we remain opposed to the ARRC plan as presented January 28, we do support responsible development, by the private sector, of The ARRC Chena River property. This would include a master development plan, similar in nature, to the 'tourist oriented, mixed-use' theme conceived for the Ship Creek Redevelopment Project. An RFP should be designed and distributed fairly, to solicit a project developer. ARRC should offer the property for lease or sale at fair market value and should neither participate with financing nor acquire an equity position in the development. If no viable proposals for development are received by ARRC, it might be concluded that the time for this development has not arrived and it should be postponed to a future year when a comprehensive development plan, proposed by a capable developer, can be achieved.

I hope this letter clarifies our objection to the current ARRC plan to develop the Chena River property. I remain available to you if you have further comments. By phone: 479-3650, by fax: 479-7951, by mail: Sophie Station Hotel - 1717 University Avenue South - Fairbanks, Alaska 99709

Sincerely,



Catherine Schufft  
President Fairbanks Hotel & Motel Association

cc: Alaska Railroad Corporation Board Of Directors  
Interior Alaska Legislative Delegation  
Pamela Held: Greater Fairbanks Chamber of Commerce, Chair  
Margo Goodhue: Greater Fairbanks Chamber of Commerce, ED  
Ralph Nogel: Alaska Hotel & Motel Association, President  
Fairbanks Hotel & Motel Association Members  
Tim Comy: Fountainhead Development, Inc.

# Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701  
(907) 452-3421



While in Juneau  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 417

## Senate

### SPONSOR STATEMENT FOR SB 148

TO: Senator Bert Sharp, Chairman  
Senate Transportation Committee

FROM: Senator Steve Frank, Co-Chairman  
Senate Finance Committee

DATE: 8 March, 1993

Recent actions undertaken by the ARRC have led to widespread concern that this government-owned corporation has overstepped its authority and is competing unfairly with private interests. As a response, Senate Bill 148 is intended to limit the authority of the Alaska Railroad Corporation to actively participate in ventures that are not transportation related and that effectively compete with the private sector. In addition, this bill would increase both the public accountability and accessibility of the ARRC.

SB 148 would effect several changes to rectify this situation. First, the underlying value of land leased by the ARRC to private interests would be subject to municipal taxation; the result of this change would be to equalize costs (and thereby lease prices) among lessors of land. Second, the purpose of the ARRC would be explicitly defined as the provision of railroad and railroad related transportation services. Third, the ARRC would be required to obtain legislative approval in order to incur debt greater than \$1,000,000 (excluding short-term debt and debt incurred for the acquisition/maintenance of railroad rolling stock); this would allow future legislatures to determine if the ARRC was adhering to its defined purpose or not.

SB 148 would also increase the accountability and accessibility of the ARRC. First, the executive officers and board of directors would be subject to statutes requiring disclosure of financial and business interests. Second, in order to maintain impartiality, the two railroad experts/executives required by statute to serve on the ARRC board of directors would be prohibited from simultaneously serving as the board's chair, vice-chair, or chief executive officer of the corporation. Third, the ARRC would be included among those agencies that are subject to the public meetings statute.

The changes proposed by SB 148 would appear to be both timely and necessary, and I strongly urge your support.

## DIVISION OF LEGAL SERVICES

### LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450

FAX (907) 465-2029

Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

#### MEMORANDUM

March 10, 1993

**SUBJECT:** Sectional Summary; SB 148, An Act relating to the Alaska Railroad Corporation (Work Order No. 8-LS0583\K)

**TO:** Senator Steve Frank  
ATTN: David Skidmore

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have requested a sectional summary of SB 148, "An Act relating to the Alaska Railroad Corporation; and providing for an effective date."

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the purpose of the bill.

Section 2 of the bill amends AS 29.45.030(a) to provide that real property of the Alaska Railroad Corporation that is leased for fair value to a municipal, state, or federal agency or to a person is subject to municipal property taxes. "Person" is defined in AS 01.10.060 to include a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

Section 3 of the bill amends AS 29.45.295 to conform to Section 2 of the bill. The amendment provides for the collection of delinquent taxes owed to a municipality by the Alaska Railroad Corporation.

Section 4 of the bill amends AS 39.50.200(b) by adding the members of the board of directors, the chief executive officer, and vice-presidents of the Alaska Railroad Corporation to the list of persons subject to the conflict of interest law.

Section 5 of the bill amends AS 42.40.010 to state that the Alaska Railroad Corporation is established for the purpose of providing railroad and railroad related transportation services in the state.

Section 6 of the bill amends AS 42.40.020 to provide that the members of the board of directors of the Alaska Railroad Corporation are subject to AS 39.50 (Conflict of Interest).

Section 7 of the bill amends AS 42.40.060(a) to prohibit persons who are appointed to certain seats on the board of directors of the Alaska Railroad Corporation from serving as chair or vice-chair of the board.

Section 8 of the bill amends AS 42.40.110(a) to provide that persons who are appointed to certain seats on the board of directors of the Alaska Railroad Corporation may not serve as chief executive officer of the corporation. The amendment also provides that the chief executive officer of the corporation is subject to AS 39.50 (Conflict of Interest).

Section 9 of the bill amends AS 42.40.110 to provide that the persons appointed as vice-presidents of the Alaska Railroad Corporation are subject to AS 39.50 (Conflict of Interest).

Section 10 of the bill amends AS 42.40.250 to state that the Alaska Railroad Corporation may exercise its statutory powers for the purpose of providing railroad and railroad related transportation services in the state. AS 42.40.250 is also amended to provide that the power of the corporation to acquire personal and real property is subject to other provisions of AS 42.40.

Section 11 of the bill amends AS 42.40.285 to require that the Alaska Railroad Corporation receive legislative approval before either incurring debt, other than bonded debt approved by the legislature and debt for certain purposes, exceeding \$1,000,000 or acquiring real or personal property by lease, if the property is valued at more than \$1,000,000 or is to be leased for more than 10 years.

Section 12 of the bill amends AS 42.40.910(a) to provide that certain property of the Alaska Railroad Corporation is subject to taxation as provided in AS 29.45.030(a)(1). This amendment is necessary to conform with the changes made by Section 2 of the bill.

Section 13 of the bill amends AS 42.40.920(b) to provide that the Alaska Railroad Corporation is subject to certain provisions of the "open meetings law."

Section 14 of the bill amends AS 42.40.935 to provide that the Alaska Railroad Corporation shall comply with local building codes, including the obtaining of required permits.

Senator Steve Frank  
March 10, 1993  
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Section 15 of the bill amends AS 44.62.310(a) to include the Alaska Railroad Corporation among the entities that are subject to provisions of the "open meetings law."

Section 16 of the bill amends provisions of temporary law that set out the purposes for which AS 42.40 (Alaska Railroad Corporation Act) was enacted. The amendments to Sec. 1(b), ch. 153, SLA 1984 provide that the Alaska Railroad Corporation is established for the purpose of providing railroad and railroad related transportation services in the state.

Section 17 of the bill provides that those sections of the bill (Sections 2, 3, and 12) relating to the taxation of certain real property of the Alaska Railroad Corporation take effect January 1, 1994. The remaining sections of the bill take effect 90 days after the bill becomes law.

GU:pl  
93-173.plm

# ALASKA STATE AFL-CIO

2501 Commercial Drive · Anchorage, Alaska 99501 · 907-258-6284 · Fax 274-0570

MANO FREY  
Executive President



BRUCE LUDWIG  
Secretary / Treasurer

March 18, 1993

TO: THE HONORABLE MEMBERS OF THE SENATE TRANSPORTATION COMMITTEE

RE: SENATE BILL 148

Many people believe that the relationship between labor and management is always an adversarial one. I would like to tell you that this is not true. Labor does not exist without an employer. It is the employer who provides the jobs which often become organized into bargaining units. Often, the good sides of a relationship between employers and their employees are overshadowed by the turmoil they often find themselves in during negotiations. Labor often finds themselves standing up for its employer when the health of the employer is at risk.

A good example would be a squabble between family members. They may fight between themselves to a noteworthy degree, but woe to those outside the family who try to hurt one or the other. The Alaska Railroad's employees are truly a family.

The introduction of Senate Bill 148 has made the union employees defensive about the health of their employer. It should be obvious why. Anything that even looks like a threat to their employer would cause them to consider what will be the consequences of such action. Will there be layoffs? Will the employer find itself financially unable to live up to the terms of the current labor agreement? Will the employer ask for nothing but concessions during the upcoming negotiations? These questions, and the emotional feelings that go with, them are currently going through the minds of the Alaska Railroad employees union and non-union alike.

The Alaska State AFL-CIO opposed the railroad initiative which tried to restrict the railroad's activities a few years ago. The initiative was overwhelmingly voted down by the public. We oppose the current attempt to restrict the railroad via Senate Bill 148 which has the same tenor as the failed initiative. We believe the railroad is too important, not only to its employees, but also to the citizens of the state to hamper it with such restrictions.

The Alaska State AFL-CIO stands behind the employees of the Alaska Railroad. The railroad provides hundreds of jobs for Alaskan residents while providing necessary transportation services for the state. The railroad has truly been a success story for Alaska. The ability of the railroad to maintain a healthy financial status is extremely important. We encourage the members of the Senate Transportation Committee to listen to, and consider the concerns of, both sides (labor and management) of the railroad's employees.

If you have any questions, please do not hesitate to call me. Thank you.

Sincerely,

Mano Frey  
Executive President

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

March 19, 1993

The Honorable Bert M. Sharp  
Chairman, Senate Transportation Committee  
Alaska State Senate  
State Capitol, Room 514  
Juneau, Alaska 99801

Dear Senator Sharp:

Senate Bill 148, which is presently pending in your committee, raises several concerns relating to the future viability of the Alaska Railroad Corporation (ARRC). This is also the case with the companion House Bill, HB-202. Based on several Juneau trips and in-depth discussions with the Bills' sponsors, concern about the ARRC's decision to assume a 40% equity position in the Comfort Inn Hotel in Anchorage is apparently a major reason underlying the legislation.

An additional factor lending some urgency to this proposal is a perception that ARRC is planning to participate in a similar hotel deal in Fairbanks. Although there are parties expressing interest in locating a hotel on railroad property in Fairbanks, ARRC has no plans to assume an equity position as occurred in Anchorage.

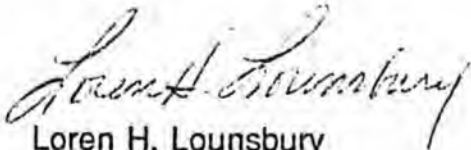
On the basis of my most recent Juneau visit, I have decided to propose a new policy at the next regular Board meeting on April 15, 1993 that would prevent ARRC from assuming an equity position in non-transportation activities in the future. Non-transportation activities will be defined to include hotel projects. While the ARRC Board believes that its action relative to the Comfort Inn was appropriate and consistent with ARRC's enabling legislation, we recognize and wish to be sensitive to the concerns about risk and the perception of unfair competition.

Based on initial discussions with other Board members, I believe there will be sufficient support to enact this policy. If there is interest, we would be happy to circulate the draft proposal for review and comment by interested legislators. It is my hope that the Bills' sponsors will agree that there will be no necessity for this Bill.

The Honorable Bert M. Sharp  
March 19, 1993  
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If there are questions by any members, please do not hesitate to contact me at 277-4334, or Bob Hatfield, ARRC President and CEO, at 265-2403.

Sincerely,



Loren H. Lounsbury  
Chairman of the Board  
Alaska Railroad Corporation

cc: The Honorable Walter J. Hickel, Governor  
The Honorable Drue Pearce, Alaska State Senate  
The Honorable Steve Frank, Alaska State Senate  
The Honorable Jeannette James, Alaska State House  
ARRC Board Members

2652625 HOUSE PASS SECTION 005 P.02 APR 11 1985

Chairman Sharp and Members of the Transportation committee,

My name is Jack Burton, I'm President of The American Federation Of Government Employees, local 183. We are the largest union at the Alaska Railroad, Representing both Blue and White Collar workers.

The employees at the Alaska Railroad are very upset by the unsettling nature of Senate Bill 148.

It was only a few short years back, 1985, that a lot of these employees had to make a decision. This was at the time of the Alaska Railroad Transfer from federal to state ownership. The decision was whether to transfer with the railroad or to continue their federal service career with another agency.

Most of the employees chose to transfer with the railroad only after looking at the state law that set up the state entity that was to operate the railroad.

The law makers at the time, knew that the structure being established had to be attractive to those employees, in order to keep enough experience personnel with the railroad to avoid interrupting the service the railroad was providing to Alaska.

The law also contained a corporate structure designed to allow the railroad to operate and utilize it's thirty six thousand acres of real-estate to maintain it independent from the state treasury.

The Federal Government transferred the lands to the state over a lot of objections. Had it not been for the hard lobbying efforts of the national Federation of this union, the outcome would have certainly been different.

We believed that the present legislature is being very unfair to those people that transferred. Senate Bill 148 is designed to remove the security provided by the railroad's large land holdings, there by undermining the very structure that lured those experience employee to transfer in the first place.

The Alaska Railroad transfer would never have taken place if not for the support of this union. We believed as most of Alaska did at the time, that the railroad could become the single most valuable asset in developing the state's hard mineral resources.

The railroad is in your hands, you may choose among you, to squander the states chances of diversifying it's economy through international exporting or to let the railroad continue to operate without interference, until those markets come on line.

You and I both know The State Legislature is having to strain to justify the spending programs now in existence. How could you ever hope to gain access to money to bail out a failing railroad if it was your action that caused its failure in the first place.

I not sure that what I'm saying to this committee will make a lot of difference. Maybe your agenda is the failure of the railroad. This I can tell you, if the actions of this body result in the failure of The Alaska Railroad, it will overshadow your greatest accomplishments, even your children's children, will never forgive you.

Thank you.

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

March 26, 1993

The Honorable Bert M. Sharp  
Chairman, Senate Transportation Committee  
Alaska State Senate  
State Capitol, Room 514  
Juneau, Alaska 99801

Dear Senator Sharp:

The following provides a line-by-line set of proposed amendments from the Alaska Railroad Corporation (ARRC) in response to the requests made during this week's hearing on Senate Bill 148. This information should be reviewed in concert with the railroad's position paper and Chairman Lounsbury's recent letter relating to taking an equity position in non-transportation activities in the future. Both documents are enclosed for easy reference by committee members.

These suggestions are provided in the interest of responding to the requests from the bill's sponsors and members of your committee. However, even if the proposed changes are made, legislators should bear in mind that the ARRC continues to question the necessity for legislation and will not be in a position to support bill passage.

## SB 148 Amendments

### 1. Section 1:

- \* Page 1, line 5-14 and page 2, lines 1-2:

Delete subsections (1), (2) and (3), and renumber remaining sections accordingly.

- \* Page 2, lines 3-4:

Delete the "," after "board of directors", and delete "chief executive officer, and vice-presidents".

- \* Page 2, lines 5-6:

Delete subsection (5) and renumber accordingly.

These changes to the "Purpose" section conform to the proposed amendments presented below.

2. Sections 2 & 3:

- \* Page 2, lines 11-31, and page 3, lines 1-28:

Delete Sections 2 and 3 in their entirety.

Section 12:

- \* Page 8, lines 8-14:

Delete Section 12 in its entirety.

This amendment removes all sections implementing the proposed increase in taxation exposure for real property of the railroad. In addition to the fiscal concerns described in the enclosed position paper, adoption of these provisions of Senate Bill 148 (which attempts to treat railroad lands as private property) is inconsistent with the other sections of Senate Bill 148 intended to limit and encumber the purposes for which railroad land can be used.

3. Section 4:

- \* Page 3, lines 30-31:

Delete the "," after "board of directors" and delete "the chief executive officer and vice-presidents".

Section 9:

- \* Page 4, lines 23-25:

Delete Section 9 in its entirety.

These changes limit the application of the State's conflict of interest statute (AS 39.50) to the board of directors, who are political appointments of the governor. The existing Alaska Railroad Corporation Act (ARCA) already requires a conflict of interest disclosure mechanism. While the ARRC fails to see a reason to implement any change in this area since it is in large part duplicative of existing law, we believe there is little justification to extend its coverage to the chief executive officer and vice-presidents of the corporation.

4. Section 5:

\* Page 4, lines 1-9:

Delete Section 5 in its entirety.

Section 10:

\* Page 4, lines 26-31, page 5, lines 1-31, page 6, lines 1-31, and page 7, lines 1-17:

Delete Section 10 in its entirety.

Section 11:

\* Page 7, lines 18-31, and page 8, lines 1-7:

Delete Section 11 in its entirety.

Section 16:

\* Page 9, lines 22-31, and page 10, lines 1-23:

Delete Section 16 in its entirety.

It is our understanding that these sections are intended to work together to prevent the ARRC from taking an equity position in a partnership involving non-transportation activities without prior legislative approval, such as occurred recently with the Comfort Inn Hotel in Anchorage. We believe our decision to pursue a board policy to implement this proposal (which is discussed in the enclosed letter from Loren Lounsbury) negates the need for these sections.

Further, it can be argued that the language as presently structured fails to effect the desired change, while concurrently creating a number of disturbing, and apparently unintended impacts on the railroad's transportation activities. The enclosed position paper describes these concerns in greater detail.

If members remain concerned that the Legislature needs to be on record regarding this matter, it might be advisable to add a letter of intent to this legislation that could read as follows:

It is the intent of the Legislature that the ARRC is not to use its real property to obtain an equity position in non-transportation activities without the prior approval of the governor.

This arrangement will avoid a flat prohibition if there is a proposed development that has strong political support, with an appropriate level of government oversight. We suggest the "governor's approval" language because of the necessity for quick response to market opportunities, especially when the Legislature is not in session.

5. Section 7 & 8:

\* Page 4, lines 12-22:

Delete Sections 7 and 8 in their entirety.

The ARRC believes the question of which members should serve as chair and vice-chair should continue to be handled as a board matter, and does not warrant legislative attention. Although the question of whether the chief executive officer (CEO) can fulfill the railroad related experience requirements of ARCA is primarily one for the Administration to address, the ARRC fails to see the need to limit the membership of the board. It is traditional to see the CEO as a member of railroad boards, and is particularly appropriate since a representative of ARRC labor presently sits on the board.

The change eliminating the last sentence of Section 8 is consistent with the proposed amendment under amendment #3 above, limiting the application of the State's conflict of interest law to board members only.

6. Section 17:

\* Page 10, line 24:

Delete this section in its entirety.

This amendment removes the January 1, 1994 effective date, which applies to the proposed taxation provisions. This arrangement is no longer needed if the operative sections are deleted, consistent with our recommendation under amendment #2 above.

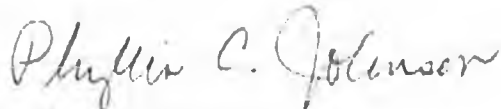
7. Remaining sections should be renumbered accordingly.

The remaining sections if these amendments are adopted would be Section 1 (amended), Section 4 (amended), Section 6, Section 13, Section 14, and Section 15. This would leave the sections implementing the conflict of interest provision, the application of AS 44.62.310(a) of the State's Open Meetings Act, and the section placing all new facilities constructed by the ARRC under local building codes. While we fail to see a need to take these actions given existing arrangement under ARCA, retention of these sections should not present significant problems.

Because of the drafting emphasis that will accompany the upcoming work session, I have asked Ms. Phyllis Johnson, ARRC's General Counsel, and Mr. Mark Hickey, ARRC's legislative representative, to attend that session on ARRC's behalf. They will also be in attendance at the next committee meeting to answer questions and provide additional information. I trust these arrangements will be satisfactory for the committee's needs.

Thank you for your consideration of these proposals. Please let me or my representatives know if additional information is needed.

Sincerely,



for Robert S. Hatfield, Jr.  
President & CEO  
Alaska Railroad Corporation

Enclosure

The Honorable Bert M. Sharp

-6-

March 26, 1993

cc. The Honorable Walter J. Hickel, Governor  
The Honorable Drue Pearce, Alaska State Senate  
The Honorable Steve Frank, Alaska State Senate  
The Honorable Jeannette James, Alaska State House  
Senate Transportation Committee Members  
ARRC Board Members



# Fairbanks Industrial Development Corporation

To: Senator Steve Frank, Co-Chair, Senate Finance Committee, Sponsor SB148  
Jeanette James, Sponsor HB202  
Bert Sharp, Chair, Senate Transportation Committee

cc: Interior Delegation

From: Ronald L. Ricketts *RLR*

Subject: SB148/HB202 Amending Powers of the Alaska Railroad Corporation

Date: March 29, 1992

As some of you are aware, I have not been a great friend of the Alaska Railroad. Our disagreement has been in the area of their freight rate structure, which I believe has been one of the inhibitors of Interior timber resource development.

Nonetheless, I feel compelled to comment on the above-referenced legislation because I see it as a classic case of "throwing the baby out with the bath water".

I understand that this legislation was precipitated, at least in major part, by public concern over the railroad leasing property for hotel purposes and taking an equity interest in the development. Clearly this would unfairly compete with private hotel operations. Had the legislation been limited to this issue, I would have no problem with it.

However, the proposed legislation goes much further. It proposes limiting corporate powers to those which would be "for the purpose of providing railroad and railroad related transportation services in the State". Arguably, this could be interpreted to mean that the railroad could no longer lease its property for any number of business purposes, thus eliminating a source of income now available to it. If such limitation is not intended by the legislation, then the legislation should be amended accordingly.

The other area in which I have a major problem, is with the one million dollar debt limit. This seems to be an arbitrary number which, based upon my understanding of the activities and funding requirements of the railroad, would severely impact its ability to do business. I guess my first question would be: What abuses is this proposal designed to remedy? I am not aware of any.

Lastly, it seems to me that the provision of the legislation which would preclude a person sitting as a board member and as CEO at the same time is aimed strictly at Mr. Hatfield's position. As you all know, the CFO of a corporation is typically also a member of its board. Therefore, I am wondering what abuse or perceived abuse has triggered this provision.

Please consider the foregoing comments as you review this legislation.

Chugiak-Eagle River  
Chamber of Commerce  
(907) 694-4702

P.O. Box 770353  
Eagle River, Alaska 99577

CHUGIAK-EAGLE RIVER  
CHAMBER OF COMMERCE  
BOARD OF DIRECTORS  
RESOLUTION 93-009

12110 Business Blvd.  
Eagle River, Alaska 99577

OPPOSITION TO HB 202 & SB 148

WHEREAS the Chugiak-Eagle River Chamber of Commerce exists to promote the establishment of conditions that enhance economic development potential in the state of Alaska;

WHEREAS the State of Alaska purchased the Alaska Railroad, and established it as a for profit public corporation, whose mission is to effectively manage Alaska Railroad properties and resources and provide a transportation network within the state of Alaska;

WHEREAS Chugiak-Eagle River is a railbelt community and interested in the ability of the Railroad to expand its passenger services;

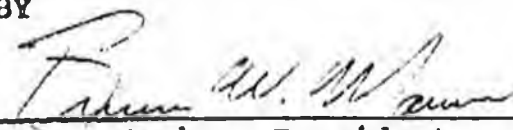
WHEREAS The Chugiak-Eagle River Chamber of Commerce is actively pursuing the relocation of the rail yards to this community;

WHEREAS members of the Alaska Legislature have introduced House Bill 202 and companion Senate Bill 148 for the purpose of substantially limiting normal business activities that the Railroad currently pursues;

NOW THEREFORE BE IT RESOLVED that the Chugiak-Eagle River Chamber of Commerce opposes HB 202 and SB 148 as it is constructed. The Railroad's ability to provide transportation services depends on its ability to freely engage in a variety of activities which create a profitable environment. This pending legislation will severely restrict the Railroad's ability to continue to operate as a viable business in Alaska.

APPROVED by the Chugiak-Eagle River Chamber of Commerce Board of Directors this Friday, 26 day  
of March

BY

  
Bruce Marion, President



**TESTIMONY TO THE SENATE TRANSPORTATION COMMITTEE ON SB148,  
AN ACT RELATING TO THE ALASKA RAILROAD  
MARCH 30, 1993**

My name is Pat Pourchot. I am the Executive Director of Commonwealth North, a non-profit, bi-partisan forum which addresses state and national long-term public policy issues. It involves nearly 400 of Alaska's leaders and concerned citizens representing business, labor, education, public service and the Alaska Native community.

The Board of Commonwealth North would like to voice its strong concern with the intent and many of the provisions contained in SB148. Our organization has undertaken three separate studies of the Alaska Railroad over the past 12 years. The first was initiated in 1981 and addressed the proposed transfer of the Railroad to the State. The second examined the terms of the sale and potential state management of the Railroad in 1984. The latest study, published in 1988, reviewed the Railroad's operations and the desirability of a sale to a private entity.

Common to all these studies was the principal conclusion that the Railroad, though state-owned, or operated like a private business and be allowed to compete fully in the marketplace without artificial restraints. In this way it was believed that the Railroad could be self-sufficient, not require government subsidy and retain its value as a state asset that might be sold someday.

The studies were consistent in their findings that while the Railroad Corporation is a public entity, its operation and management ought to be insulated to the greatest extent possible from special interest and political influences. In general, special restrictions have and can only increase costs, making self-sufficiency more difficult.

Several findings relate specifically to SB148. Stringent limitations on debt, like those contained in the bill, have been opposed by Commonwealth North. The 1984 study concluded "Under a legislative mandate to operate in a self-sufficient manner, all decisions related to such potentially political issues as level and purpose of capital expenditures and the level of debt are the direct function of revenue and the ability to pay."

*Founding Co-Chairmen Governor Walter J. Hickel and the late Governor William A. Egan  
Richard F. Barnes, President • Judith M. Brady, Vice President • Dr. Lee Gorsuch, Vice President  
Perry Fulton, Vice President • Susan Haidy, Secretary • Michael E. Stone, Treasurer • Bill Allen • Jane Angvik  
Robert B. Atwood • Skip Hillartz • William Bittner • Janna Brattum • Julian Darley • Robert Hatfield • Joe L. Hayes  
James Hermillier • Archbishop Francis Hurley • Marc Langland • Logan H. Lounsbury • Stephen McAlpine  
William McHugh • Governor William Sheffield • William J. Tobin • Dr. F. Thomas Trotter*

The Board also opposes the language to limit the Railroad's authority to "railroad related transportation services." In the CWN studies, as well as in the debate surrounding the federal and state transfer laws, it was readily acknowledged that real estate assets, while not directly related to railroad services, were vital to the Railroad. The 1984 Act carried forward all the previous tax exemptions granted the federal railroad, and allowed the new State Corporation to establish a comprehensive, fair and profitable real estate management system. It is no secret that lease revenues have allowed the Railroad to operate consistently in the black. This ability must be preserved to ensure the overall purposes of the Railroad.

Commonwealth North recognizes the need for state oversight of the Railroad Corporation. It also recognizes the need for public protections such as afforded by the conflict-of-interest, open meetings and procurement laws. However, the Board feels these are already adequately addressed in current statute and the policies of the Corporation.

To paraphrase our 1988 report we feel the best way to ensure that the Railroad operates with the independence envisioned in the 1984 Act is to allow the Board and managers to run the Railroad with a positive bottom line. The Alaskan people are fortunate to have the Railroad operating as a viable, profit-making entity. The public must ensure that Alaska's elected officials insulate the Corporation's operations from political meddling.

SENATOR, PLEASE SEE THAT THE MEMBERS OF THE TRANSPORTATION  
COMMITTEE RECEIVES THESE LETTERS CONCERNING SB148, BEING  
HEARD THIS AFTERNOON. Thank you.

*Packet # 2*

MARK E. ROSEVEIR  
P.O. Box 5447  
WASILLA, AK... 99654

MARCH 9, 1993

THE ALASKA STATE SENATE  
C/O THE SENATE ~~FINANCE~~ COMMITTEE  
JUNEAU, AK  
TRANSP.

DEAR CHAIRPERSON,  
IT WOULD BE SILLY TO EVEN CONSIDER  
SENATE BILL SB-148. I URGE YOU,  
PLEASE VOTE NO.

THANK YOU,

mark Roseveir

---

Dear Committee Chairman,

I have just recently become aware of SB148, an act relating to the Alaska Railroad Corporation. The Railroad has been in business in this state since 1924, hauling freight, leasing its real estate, and developing the assets under its control. During this time the Railroad was responsible for the existence of what is now the states largest city, Anchorage. The Railroad has never been in a position of unfair competition, truly the businesses that developed alongside the then Federal Railroad knew of its existence before establishing their enterprise. The special interests who now call foul should re-read their history rather than attempt to rewrite it. Vote against SB148.

Sincerely,

*F. Thomas A. Adams*

DEAR CHAIRMAN:

THE PROPOSED SB 148 IS UNDEFINABLE. PLEASE VOTE NO.  
IT WOULD TAKE ALL THE CONSTITUTIONAL RIGHTS FROM THE PEOPLE  
PLEASE FOR THE PEOPLE AND THE POLICE... PLEASE VOTE NO.  
I AM SURE YOU WILL VOTE NO.

Harold T. Larson

HAROLD T. LARSON

P.O. BOX 547

TALKEETNA AK. 99676

MARCH 8, 93

AK. STATE SENATE

C/O THE SENATE ~~SENATE~~ COMMITTEE  
TRANSP,

JUNEAU AK.

WE ALL READ THIS SENATE BILL 148.

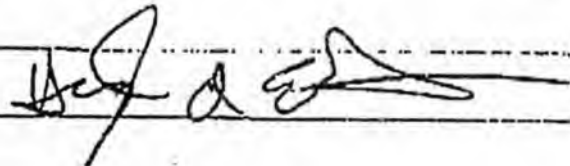
I CANT BELIEVE THE STUFF YOU

TRYING TO PASS WITH IT, I VOTE NO.

Hugh A. EVANS

P.O. BOX 255

TALKEETA AK. 99676



DAVID ROBERTS  
P.O. BOX 872112  
WASILLA, AK 99687

MARCH 8, 1993

THE ALASKA STATE SENATE  
c/o THE SENATE ~~TRANSITATION~~ COMMITTEE  
JUNEAU, AK

DEAR SIR,

I STRONGLY OPPOSE ANY SUPPORT  
OF THE PROPOSED SENATE BILL SB 148.  
I REQUEST YOU VOTE "NO"

SINCERLY

David Roberts

Edward Thompson

po. box . HC-89. box 414

Willow, AK. 99688-9705

March, 9, 1993

Alaska State Senate

c/o The Senate Finance Committee

Juneau, AK.

Dear Sirs,

Having a chance to read over Senate Bill 148 I believe that this would impact the communities railbelt wide. I would like to see a vote of no.

Edward W Thompson

William Bernath JR

3315 Eide St #4

Anch. AK 99503.

MARCH 8, 1993

Dear Committee Chairman,

I'm Appalled to see Special Interest's  
at work. Once again, Senate bill SB 148  
a prime example. As a VOTING member  
of ALASKA I ASK You to VOTE no!

William Bernath JR

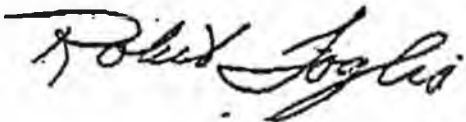
3-9-93

Dear Committee Chairman,

I understand that your Committee will be hearing SB148 this Thursday March 11. I urge you and all committee members to vote against this poorly conceived idea of restructuring the Railroad Act. It should be no surprise to the Legislature of the success of the State owned Railroad to operate without appropriations from the already strained State Treasury. Do we really want to hamstring the Railroad until it is forced to become an extension of the heavily subsidized (\$30 million) State Marine Highway system? I don't believe the Legislature really wants to do that. Please do not support the passage of this bill out of your Committee.

Thank You,

Robert Foglia



3-9-93

The Alaska Railroad provides me and my family with the income necessary to live in this State. If the Railroad is tied up in Legislative chains and can't make a profit it is my job and the men and women I work with that will pay the price. I am told there are over 500 year around jobs supported by the Railroads payroll directly and of course a lot more are affected in the communities along the railbelt. We have worked hard and have already sacrificed a lot to keep our jobs. Don't pass this bill and take away my income and home.

Thank you,

David Coatney

*David Coatney*

Dear Committee Chairman,

I have just recently become aware of SB148, an act relating to the Alaska Railroad Corporation. The Railroad has been in business in this state since 1924, hauling freight, leasing its real estate, and developing the assets under its control. During this time the Railroad was responsible for the existence of what is now the states largest city, Anchorage. The Railroad has never been in a position of unfair competition, truly the businesses that developed alongside the then Federal Railroad knew of its existence before establishing their enterprise. The special interests who now call foul should re-read their history rather than attempt to rewrite it. Vote against SB148.

Sincerely,

Doroteo D. Bumanglag



5-8-93

March 9th, 1993

Dear Committee Member,

Senator Frank (R-Fairbanks) has sponsored Senate Bill 148 which will limit the economics of the Alaska Railroad. The Alaska Railroad is a for profit company, limiting the manner in which the ARRC does business will only cripple the company. As a citizen of the State of Alaska and an employee of the Alaska Railroad, I am opposed to SB 148

A handwritten signature in cursive script, appearing to read "John H. Houchback". The signature is written in dark ink on a white background.

Wayne L. Thompson  
P.O. Box 220129  
Anchorage, Ak. 9952-0129

March 10, 1993

The Alaska State Senate  
C/O Senate ~~Finance~~ *Transportation*  
Juneau, Ak.

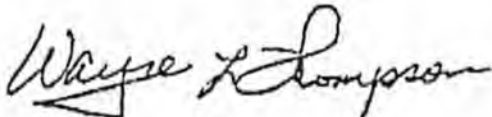
Dear Committee Members,

I just received information today, that a bill had been introduced by Senator Frank of Fairbanks, which if passed, would result in damage to the railroad's ability to be competitive. This is very difficult for me to understand, why would anybody want to destroy a transportation system network that moves goods more economically to the area where he and his family lives.

I can't believe Mr. Frank understand the harm that would be caused should his bill become law. Please do not support this bill.

Thank You,

Wayne L. Thompson



3-10-93

We the undersigned are opposed to the passage of SB 148 and strongly urge the members of the Legislature to defeat this proposal.

Jim Moore Box 140224 Anch AK

Joseph Jones 7800 DeBARRE RD #302 ANCH, AK 99504

Julie Stan PO Box 878624 Wasilla 99687

Don Colwell

9010 Honeysuckle DR ANCH, AK

99592

Robert J. Norman P.O. Box 670376 CHugiAK AK 99567

James E. Roland P O Box 141587 ANCH AK 99501

RICHARD G. COO 24418 PARK DR. CHUGI AK 99567

David J. Quinn HC 83 Box 2406 Eagle Rm. AK 99547

JOHN D. LOBSTRON } 920 LIGHTHOUSE CT ANCH AK 99515  
John B. Fisher }

Dennis Smith

DENNIS W SMITH

HCO 2 BOX 2644

PALMER AK 99645

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

A. Earl Mene  
3135 Tenworth Creek  
Anchorage, Ak 99504

A. Earl Mene

Michael D. Callahan  
1601 E. Tudor #11  
Anchorage AK 99507

Michael D. Callahan

KENNETH M JONES  
HC 83 Box 1758  
Eagle River AK 99577

Kenneth M Jones

JUDY CLAUGUS  
P O BOX 771971  
Eagle River, AK 99577

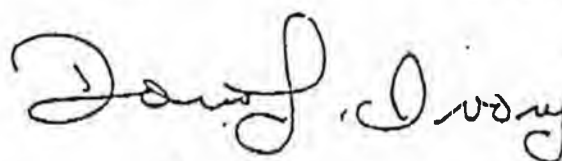
Judith A. Claugus

GERALD H. SWANSON  
P.O. BOX 874027  
WASILLA, AK. 99687-4027

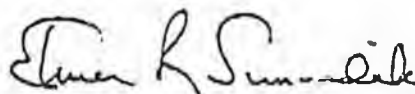
Gerald H. Swanson

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

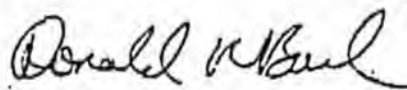
DORIS IVORY  
12220 CRESTED BUTTE  
EAGLE RIVER, AK 99577



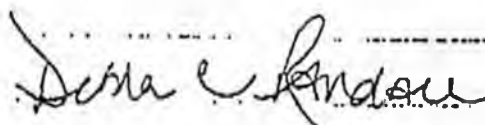
Elmer R. Simurdak  
8130 Bearberry ST  
Anchorage, AK 99502



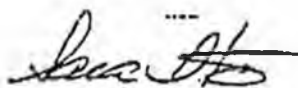
DONALD K BARKER  
901 W KLATT RD  
ANCHORAGE, AK 99502



DEBRA C. RANDALL  
2900 Boniface Hwy, Suite 210 Bx  
Anchorage, AK 408



SARA ITO  
6414 BARCLAY CT  
ANCHORAGE AK 99504



We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

- Margie L. Wheeler P.O. Box 871230 Wasilla AK 99687
- Doris M. Wilbanks 3305 Cassius Ct. Anch. AK 99508
- Zornia G. Bailey PO Box 770695 Eagle River AK 99577
- Sharon deMico 3204 Lee St. Anch. AK 99504
- Carol Fortier 9212 Elgin Cr. Anch. AK 99515
- Althea Shereck Althea Shereck 312 E 15th Terrace 99501
- ~~Roberto~~ Roberto Gonzalez 7700 Lakes Circle 99518
- Kathy Lewis Kathy Lewis 3938 Cope #9 Anch. AK 99503
- Jackie Faco 3023 Kingshew Anch 99515

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

CAESAR W. LAWRENCE  
18855 Citation Road  
EAGLE RIVER, AK 99577

Caesar W. Lawrence

KAREN M. HILLS  
6973 Cutty Sark  
Anchorage AK 99502  
Karen M. Hills

Phil Shibe  
2840 W. 80th  
Anchorage, AK 99502  
Phil Shibe

Don Wright  
HC 31 Box 5079-D  
Wasilla, AK 99654  
Don Wright

Rick L. Rapuzzi  
10320 Chandler St  
Eagle River, AK 99577  
Rick L. Rapuzzi


Leonard Wallner  
P.O. Box 339  
Palmer AK 99645

We the undersigned employees of the Alaska Railroad are opposed to the passage of SE148 and strongly urge the members of the Legislature to defeat this proposal.

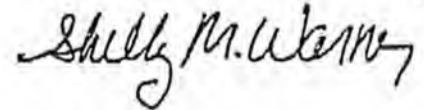
Ronald W. Saker  
HC01 Box 6169 B  
PALMER, AK 99645



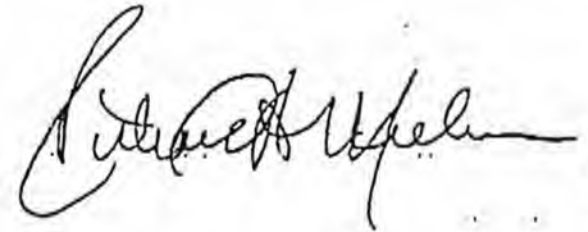
S. Ray Sanderford  
4217 London Circle  
Anchorage, Alaska 99504



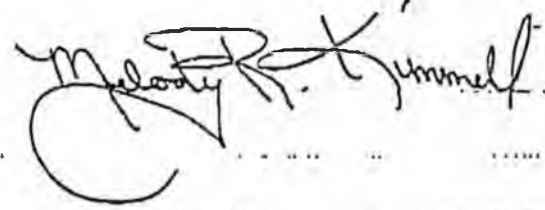
Shelly M. Warner  
8741 Pluto  
Anchorage, AK 99507



Richard H. Weber  
7750 Canal St  
Anchorage, AK 99502



Melody R. Kimmell  
P.O. Box 100844  
Anchorage, AK 99510-0844



We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

Established \_\_\_\_\_  
Ron E. Choek  
1340 Cross RD  
Creech AK 99515  
*Ron E. Choek*

Edward A. Strencha E.D.  
2821 Ascot ST.  
Foch AK 99502  
*Edward A. Strencha*

1. \_\_\_\_\_

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

DARLENE CUDIA  
317 STATE STREET  
ANCHORAGE, AK 99504

*Darlene Cudia*

THOMAS BURKWIST  
18052 TEKLANIKA DR.  
EAGLE RIVER, ALASKA 99577

*Thomas E. Burkist*

KELLEY RECHACEK  
5703 LADD LANE  
ANCHORAGE AK 99504

*Kelley Rechacek*

ELIZABETH S. LOWERY  
6008 WINDING WAY  
ANCHORAGE AK 99504

*Elizabeth S. Lowery*

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

Ed Rivera  
P.O. Box 670208 Ed Rivera  
CHUGIAK AK 99567

Rick Leggett  
3924 Roundtop Circle Rick A. Leggett  
Anchorage AK 99504

AL FYFE Jr Al Fyfe Jr  
11828 Rainbow Ave  
Anchorage, AK 99516

Bill Henderson William Henderson  
P.O. Box 1623  
Palmer AK 99645

Michael Tilling Michael Tilling  
1530 Jensen St.  
Anchorage Ak 99501

We the undersigned employees of the Alaska Railroad are opposed to  
the passage of SB148 and strongly urge the members of the Legislature  
to defeat this proposal.

John K. Brown      John K. Brown  
19126 1st  
Eagle River AK. 99577

Ken B. Smith      K. B. Smith  
300 East Cook  
Anchorage, AK 99501

LAVEL A. Schulerberg  
11906 WILDFRASES DR  
ANCH. AK. 99516  
Lavel A. Schulerberg

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

C. W. White

2603 Junction  
Anch AK 99508

C. W. White

Ray Kiser

24569 Park Dr.  
Chugiak, AK 99507

Ray Kiser

Rocky Munkill

1340 Peck St. Wasilla AK 99654

Rocky Munkill

Tom Brooks

1704 BANWISTER  
ANCHORAGE AK 99508

Tom Brooks

GEORGE NOLAN

3515 SPINNAKER DR.  
ANCH. AK 99516

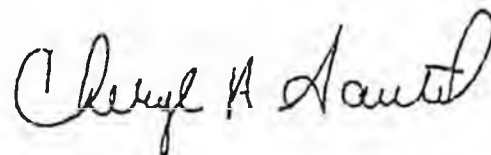
George Nolan

We the undersigned employees are opposed to the passage of SB148 and strongly urge you to not support this Bill.

Steven H. Clapp  
P.O. Box 104571  
Anchorage, AK 99510



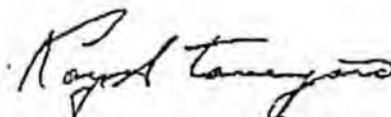
Cheryl A. Sautel  
8531 Rosalind  
Anchorage, AK 99507



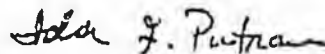
Andy Siebert  
521 Mellow Pl  
Anch AK 99502



Roy STAVENJORD  
7724 BRENTWOOD DR  
ANCH AK 99502



IDA F. PUTNAM  
12239 WINTER PARK  
EAGLE RIVER, ALASKA 99577



*Added from page #1*

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

*Donna Adelfien*  
2600 Loop Barrow Dr.  
Anchorage AK 99517  
*Donna Adelfien*

*Lynn Reitz*  
3701 AKULA DRIVE  
ANCH AK 99516  
*Lynn Reitz*

*KEVIN KERR*  
P.O. BOX 107500  
ANCH AK 99510  
*Kevin Kerr*

*Clinton W Gray*  
1901 ARCTIC BLVD  
ANCHORAGE AK 99503  
*Clinton W Gray*

*Scott Banks*  
4234 Kingston Dr  
Anchorage, AK 99514  
*Scott Banks*

*P C Shuler*  
201 East Newaul  
Anch. AK 99501  
*P C Shuler*

*Debby Davis*  
7321 Buler Dr.  
Anch, AK 99507

*D. Katherine Adams*  
D. KATHERINE ADAMS  
2615 INGRA  
ANCHORAGE, AK 99508  
(PASSENGER SERVICES)

*Fron Coletta*  
1618 Marsh St.  
Fairbanks, AK 99704

*Jennifer Sandell*  
3204 Lee St  
Anchorage AK 99504

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

Randy Ferris  
339 MAUSEL  
E.R. AK 99577  
Randy Ferris

Gary Lund  
3220 Rosella St  
Anchorage, Alaska 99504  
Gary Lund

W. ANTON ABBOTT  
2645 Independence St  
Anchorage AK 99507  
W. Anton Abbott

Charles E Norris  
240 S Bunn St  
Anch. AK. 99508  
Charles E Norris

Patrick E. Lowe  
8017 Lloyd Dr  
Anchorage, Alaska 99502  
Patrick Lowe

Michael Steinmetz  
4610 MARS DRIVE  
Anchorage, AK 99507  
Michael Steinmetz

Robert L. Smith Jr  
804 N. Hoyt  
Anchorage, Alaska 99508  
Robert L. Smith Jr

Chris Brooks  
15888 Birchwood  
Chugiak, AK. 99567

Josy Swanson  
17534 MONTE RD  
EAGLE RIVER AK. 99577  
Josy Swanson

DON FREESTONE  
13408 KARBO ST  
ANCH AK 99515  
Don Freestone

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO



John N. Sturdivant  
National President

Bobby L. Harnage  
National Secretary-Treasurer

Joan C. Welsh  
Director, Women's Department  
1/Alaska Railroad

March 11, 1993

The Honorable Randy Phillips  
Alaska State Senate  
Transportation Committee

Dear Senator Phillips:

I am writing to you concerning S.B. 148 and the negative impact it will have upon the employees of the Alaska Railroad.

We understand that your concern in this area is focused on the abusive style of management, in particularly as it may have been directed toward dismissed management employees. However, reading of the bill indicates that the legislation goes well beyond your concerns and would unduly hamper the ability of the railroad to operate and ultimately will be the cause of significant negative impact upon the railroad employees represented by the American Federation of Government Employees and other AFL-CIO affiliated unions.

We believe that there are better ways to address your concerns than through the proposed legislation. We ask you not to support this legislation.

Sincerely,

John N. Sturdivant  
National President

cc: NVP Angin  
LP Burton/via NVP

SENATOR, PLEASE SEE THAT THE MEMBERS OF THE TRANSPORTATION  
COMMITTEE RECEIVES THESE LETTERS CONCERNING SB143, BEING  
HEARD THIS AFTERNOON. Thank you.

from page #1

We the undersigned employees of the Alaska Railroad are opposed to the passage of SB148 and strongly urge the members of the Legislature to defeat this proposal.

SIGN UP SHEET FOR NO. VOTE ON BILL SB 148.

Signature	Address
<i>[Signature]</i>	4109 Lynd Dr. #217 Anchorage AK 99508
<i>[Signature]</i>	531 Nebula Way Fair AK 99709
<i>[Signature]</i>	1136 SOLITUDE FAIRBANKS AK 99709
MICHAEL E. PARKER	916 JOYCE DR FAIRBANKS AK 99701
Wade F. Procter	1100 Willow Grove Rd Fairbanks AK 99712
Austin H. Hill	8501 Upper Hoffman Anch, AK 99516
Thomas W. Cuning	1354 China Ridge Rd Fairbanks AK 99709
Richard Leedy	3117 Storey North Pole AK 99705
Conrad Garrison	350A Carlton Fairbanks AK 99701
Bill Bailey	1109 Miller Hill Ext. Fairbanks Alaska 99708
John A. Brown	Box 82571 Fairbanks 99708
Robert Hazelton	345 McKinzie St. Fairbanks AK 99705
Hale H. Wicklund	496 McKinley View Dr Fairbank al 99717

SIGN UP SHEET FOR NO VOTE ON BILL SB 148

<u>Signature</u>	<u>Address</u>
-----	-----

Kirby B. Rauter 525 Longspur, Fairbanks, AK 99709

John D. Darnell 1122 Matthew Cir. No Pole, AK, 99705

Wayne D. Swenson 288 Roubalwood Ln. Fair AK 99706

Robert D. Cozzie P.O. Box 57451, Fairbanks, AK 99711

John R. [unclear] P.O. Box 75332 Fairbanks AK 99707

M. J. Hill 1199 Bridge water Fairbanks AK 99701

Kathy [unclear] 1016 27th Ave. Fairbanks AK 99701

[unclear] P.O. Box 10341 Fairbanks AK 99710

[unclear] Box 82132 Fairbanks AK 99708

Chris [unclear] P.O. Box 90770 Fairbanks AK 99708

Earl Sandman 418 FIDWELL AVE Fairbanks AK 99701

Doug [unclear] 4041 Fairbank Fairbanks AK 99709

Paul [unclear] 2008 Central Fairbanks AK 99709

Dindy [unclear] 1216 Central Way Fairbanks AK 99712

Ernie [unclear] P.O. Box 25072, Ester, AK 99725

Jerry W. [unclear] P.O. Box 22502, Fairbanks, AK 99707

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SIGN UP SHEET FOR NO VOTE ON BILL SB 160.

Signature	Address
Steve Perkins	PO Box 52747 North Pole AK 99705
Lynn Coe	PO Box 55420 North Pole AK 99705
Dennis Hill	PO Box 16116 Fairbanks AK 99716
K.M.H.	PO Box 792 Fairbanks AK 99707

SIGN UP SHEET FOR NO VOTE ON BILL SB 148.

<i>[Signature]</i>	<i>[Signature]</i>
<i>[Signature]</i>	4554 Tere Ave, Fairbank
<i>[Signature]</i>	4530 Stevens St. P.O. Box
<i>[Signature]</i>	1244 Cordis Ave W. Fairbank
<i>[Signature]</i>	2031 Otter Drive, Fairbank
<i>[Signature]</i>	312 Wedge Wood Dr. Apt D-5, FKS
<i>[Signature]</i>	P.O. Box 1988, Fairbank 99701

SIGN UP SHEET FOR NO VOTE ON BILL SB 148.

Signature	Address
Daniel Barr	PO Box 25124 Ester AK 99725
Sally VanderStake	1422 7th Ave FAI AK 99701
Jay Bentley	733 RIDGE LOOP NORTH POLE AK 99705
Jim Keeler	95 10th AVE #132 FAI AK 99701
CAROLINE Healer	152 Peperdine Way FBKS AK 99706
Brandon Johnson	P.O. Box 85012 Fairbanks AK 99708
Amy Guilmore	101 Cedar Creek Way FBKS AK 99712
Jeff Smith	1240 Citadel Circle FBKS AK 99709
Tom Guilmore	1261 CEDAR CREEK WAY Fairbanks Alaska 99712
John Healer	152 PEPPERDINE TRKS 99709
Ted Hunter	6000 Bristol Dr Anchorage AK 99516
Dee F. J.	P.O. Box 113194 Anchorage AK 99511-3194
Maria Whisell	P.O. Box 71905 Fairbanks, AK 99707

Thomas Connelly  
1036 Nelchina  
Anchorage, Ak. 99501

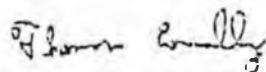
March 9, 1993

The Alaska State Senate  
C/O the ~~Senate Finance~~ Committee  
Juneau, Ak

Dear Senators,

Please don't destroy our railroad with Special Interest politics. I work for the railroad and my family needs my support. I sincerely ask you to vote no on SB 148.

sincerely yours



Thomas C. Connelly

DEAR COMMITTEE CHAIR,

I urge you to oppose the passage of SB 148. This Bill does nothing to improve the performance of the Alaska Railroad nor its responsiveness to the citizens along the railbelt. It is a thinly disguised attack upon a successful state sponsored operation.

Thank you,

Harold L. Fries

Michael J. O'Neil  
P.O. Box 27,  
Moose Pass, Ak 99631

March 10, 1993

The Alaska State Senate  
C/O The Senate ~~Public~~ Committee  
Juneau, Ak. *27th Senatorial*

Dear Senators,

I am opposed to Senate Bill 143. This bill will cause harm to the Alaska Railroad.

The railroad is vital to the community of Moose Pass and I urge you to please vote no on this bill.

Sincerely,

Michael J. O'Neil

*Michael J O'Neil*

3/9/93

Dear Senator Susan Little,

I'm writing this letter in regards to the Senate Finance Committee's proposed Bill (SB148).

I feel the legislative restrictions proposed would only hurt the Alaska Railroad's ability to compete in free enterprise and eventually cause it to run into the red and become a burden to taxpayers. The Alaska Railroad can be a viable corporation if left as is.

Sincerely yours,  
Fellow Democrat,

Box 41  
Moose Pass AK.  
99631

David E. Shafer  
David E. Shafer

Steve Y. Hayes  
2611 west 31 Ave.  
Anchorage, Ak. 99517

March 9, 1993

Alaska State Senate ~~Finance~~ *TRANSP.* Committee  
C/O The Senate ~~Finance~~ Committee  
Juneau, Alaska

Dear Mr. Chairman and Committee Members,

In January 1985, the Alaska Railroad was transferred to the state, I transferred with it as a worker.

In 1985, the legislature set up a corporate structure designed to operate the rail system out side the political reach of the legislature to keep competitors from running to that body in search of relief from the competitive nature of the railroad.

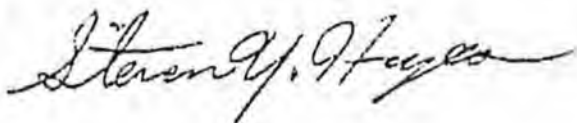
The wisdom of the legislature at the time was, that if every lawmaking body that came after them was allowed to screw around with the railroad corporate structure, the railroad would become like the state ferry system, eating up the state treasury.

The railroad has stayed via-able under this system, proving that the designers were correct in their thinking. However, now, a new legislature wishes to change that to please a special interest.

I urge you not to give into the special interest and ask that you let this Senate Bill 148 die in this committee. Please vote no on SB 148.

Sincerely,

Steven Y. Hayes



3-10-93

Dear Chairman,

I hear that Steve Frank of Fairbanks has introduced a bill to change the way the Alaska Railroad does business by forcing them to go to the Legislature to get approval of loans and leases. This just doesn't make any sense. The Railroad is a business and was intended to operate like one when we citizens bought it from the Federal Government. Now because a couple of people think they might possibly face some small competition in the Hotel business they want to cripple the Railroad. Well you may not be aware that the Railroad has been in the hotel business off and on for a long long time. The Railroad has had at least three operating hotels. They were located at Portage (abandoned after the 1964 earthquake), Curry (destroyed by fire) which was a complete resort with all amenities including a ski hill, and Healy (sold to private individual and operated as a Hotel today). It is unbelievable the Hotel people can holler about fair competition and then attempt through legislation to eliminate it. I urge you to not pass this bill out of Committee. It does a disservice to the people of this State and the employees of the Railroad.

Sincerely,

Brian Schuwlt

Brian Schuwlt

Larry E. Burton  
10145 Salix Circle  
Anchorage, Ak. 99507

March 9, 1993

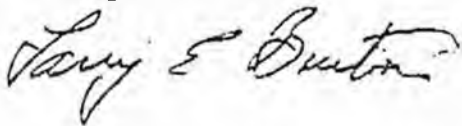
The Alaska State Senate  
C/O The Senate ~~Finance~~ Committee  
Juneau, Ak. *17451*

Dear Committee Members,

I am not at all pleased by the introduction of SB 148. Is it just  
me or does something stink like Special Interest politics?

Shouldn't you be protecting the people's property ? Come on, vote  
this bill down.

Larry Burton



Crickiet O'Neil  
P.O. Box 27,  
Moose Pass, Ak. 99631

March 10, 1993

The Alaska State Senate  
C/O Senate ~~Finance~~ Committee  
Juneau, Alaska *TRANS,*

Dear Committee Members,

I do not favor SB 148. This Bill is bad for the people of the state. I would sincerely urge you not to support this bill.

Say no to SPECIAL INTEREST, vote no.

Sincerely,

Crickiet O'Neil

*Crickiet O'Neil*

June 9, 1993

TO: SENATOR SUSAN LITTLE;

DEAR SENATOR,

I WOULD LIKE TO ASK YOU NOT TO  
SUPPORT THE S.B. 148. THE ALASKA  
RAILROAD HAS ACTED VERY RESPONSIBLE OVER  
THE PAST SIX YEARS AS ITS OWN ENTITY!  
I BELIEVE THIS BILL #S.B. 148 WILL ONLY  
DAMAGE THE RAILROADS ABILITY TO OPERATE  
AS A PRIVATE CARRIER.

Yours Truly, Democrat

MELVIN OLSON  
Melvin Olson  
SEWARD ALASKA.

Dear Committee Chairperson,

Do you people remember ballot measure number 1 in 1990? The citizens of this state approve overwhelmingly of the way the Railroad operates --- it follows the law set out in the Railroad Corporation Act. Surely you have more important issues to deal with. I am requesting that you ~~oppose~~ passage of SB 148 from your committee.

Sincerely,

Robert Hamilton

MARCH 9, 1993

DEAR SENATOR SUSAN LITTLE;

I WOULD LIKE TO ASK YOU TO  
OPPOSE THE S.B. #148. THE  
ALASKA RAILROAD HAS BEEN OPERATING  
VERY WELL SINCE THE TRANSFER  
THE CURRENT SYSTEM IN PLACE  
NOW HAS BEEN RESPONSIBLE TO ALL  
THE TRANSFER ACT. ~~THE~~ THE BOARD  
OF DIRECTORS HAVE SEEN TO THE OPERATION  
OF THIS RAILROAD IN A VERY PROFESSIONAL  
MANNER. "WE DON'T NEED A LEGISLATIVE  
APPROVAL". THE SYSTEM IS WORKING FINE  
AND THE S.B. #148 IS NOT A FINE TUNNING  
TO THE RAILROAD BUT A "DERAILMENT"  
TO IT."

Thank You.

J. B. Gaul / JOHN B. GAUL.  
P.O. Box 62  
MOOSE PASS AK 99631

3-9-93

SENATE ~~FINANCE~~ <sup>TRANS.</sup> COMMITTEE;

I would like to express my  
 CONCERNS OVER THE S.B. 148.

THE ALASKA RAILROAD WAS CREATED  
 WITH THE INTENTIONS OF OPERATING  
 WITH AS LITTLE LEGISLATIVE INVOLVEMENT  
 AS POSSIBLE. THE R.R. HAS PROVEN  
 IT CAN OPERATE UNDER THE DIRECTION  
 OF THE BOARD OF DIRECTORS AND  
 WITHIN THE CURRENT TRANSFER ACT.  
 S.B. #148 WILL DESTROY THE RAILROAD CORP!  
 VOTE NO S.B. 148

Thank you.

Joseph L. Hall  
 Joseph L. Hall

## **Senate Bill 148: An Act Relating to the Alaska Railroad Corporation**

### **I. Introduction.**

Senate Bill 148, introduced by the Senate Finance Committee, 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 seven categories, each of which has been the subject of recent scrutiny by various interest groups throughout the Railbelt.

If enacted, this bill would accomplish the first major revision of ARCA since 1984 when the law was enacted. The following discussion explains the sweeping limitations suggested by this bill to the Alaska Railroad Corporation's ("ARRC's") original State charter. 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 SB 148's abrupt and significant changes threaten to destroy those dynamic characteristics which give ARRC the flexibility it needs to survive economically in today's volatile freight markets. In short, the changes may significantly impair ARRC's ability to maintain its economic self-sufficiency, thereby causing ARRC to become yet another applicant for increasingly limited state budget funds.

ARRC strongly opposes most of the provisions of SB 148 and respectfully recommends that ARCA remain unchanged. The following discussion will summarize the potential impact of various sections of the bill, beginning with those that will most fundamentally alter the Legislature's original philosophy for the state-owned railroad.

### **II. Impact of the Bill.**

A. Limitation to Railroad and Railroad-Related Transportation Services. As originally enacted, ARCA envisioned a quasi-public corporation with broad powers to act in a manner similar to private business corporations. Controls were built into the statutory scheme by requiring legislative approval for certain actions that were deemed to be of public concern (AS

42.40.285) and by requiring an oversight report before the corporation could undertake significant expansion or reduction of services (AS 42.40.280). A further control mechanism was imposed by requiring Board of Directors approval of certain actions (AS 42.40.120(c)), with the Board composed of political appointees and government officials presumably sensitive to public policy concerns.

The current bill would inject a limitation on these corporate powers by adding the following qualification in several sections of ARCA: "for the purpose of providing railroad and railroad related transportation services in the state." This language raises serious interpretive questions and may, in its most restrictive light, limit ARRC's ability to engage in activities that have traditionally supported its core business of transportation.

Use of ARRC real estate is one area that may be seriously impacted. For example, it could be argued that the bill's language would prohibit pipelines or fiber optic cables within the right-of-way. Taken most literally, it could even inhibit straightforward commercial leasing as practiced historically by the Alaska Railroad, by prohibiting leases to tenants who are not also freight customers of the railroad. Marketing activity could also be limited by this proposal, which could be construed to prohibit ARRC's current marketing office in Seattle or the one that existed in Houston, Texas, at transfer in 1985. Arguably, the language could also restrict ARRC's ability to perform consolidation or drayage services either within Alaska or Outside, however desirable that service might be to railroad customers.

All these activities, real estate, marketing and enhanced transportation services, are relied upon by Outside railroads to remain competitive and to make an otherwise marginal business profitable. The restriction expressed by this proposal would arguably violate the Alaska Railroad Transfer Act ("ARTA"), 45 U.S.C. 1207(2), which mandates that ARRC is entitled to engage in "all business opportunities available to comparable railroads." Indeed, ARTA obligated the State of Alaska to accept and operate the Alaska Railroad with all its rights and obligations intact. See 45 U.S.C. 1203(d)(2)(A). From its original establishment in 1914, the Alaska Railroad had the right to engage in all these activities that may now be threatened by the proposed legislation.

B. \$1 Million Debt Limit. The bill requires legislative approval for the corporation to incur debt exceeding a total of

\$1 million. Bonds approved by the Legislature, acquisition and maintenance of rolling stock, and short-term (less than one year) lines of credit are excluded. "Debt" is not defined, and the bill leaves it unclear whether the \$1 million applies on a cumulative annual basis, or whether it applies to separate and discrete events of debt arising. ARRC currently has approximately \$20 million of long-term debt, \$9.8 million of which would not have fallen within the stated exceptions. For example, ARRC financed its 1990 summer work program, consisting of rails, ties and ballast replacement, amounting to approximately \$3.4 million. The recent mainframe computer acquisition of \$1.2 million would also have fallen within this bill's prohibition. And, because locomotives are not within the definition of "rolling stock", another \$5.6 million of that total long-term debt would have required legislative approval.

The bill will have negative impact even for smaller acquisitions that do not themselves reach the \$1 million threshold. ARRC often obtains a more advantageous loan package by consolidating various items into one loan (for example, computers, software, vehicles and rolling stock). If enacted, this bill would eliminate this practice and subject the corporation to less favorable financial terms. Equally important, it will cause uncertainty in the eyes of the financial markets and may create a significant disincentive for lenders to deal with the corporation. Certainly it will create a new host of legal certifications and opinion letters that banks will require before loaning money to ARRC.

Finally, this provision would impede ARRC's reaction in the event of an emergency. ARRC is self-insured for up to \$10 million for property damage, and for \$5 million in general liability. A catastrophic event such as a fire or earthquake would create an immediate need to borrow in excess of the \$1 million limit. An environmental accident could have the same effect and ARRC's ability to mitigate the damage could be seriously delayed by the necessity for legislative approval. For example, the Dunbar derailment near Fairbanks in May, 1990, cost ARRC approximately \$6 million. ARRC's lines of credit are available to be tapped in such events, but permanent arrangements must be made quickly to meet the corporation's ongoing risk management commitments and operational needs. As Dunbar illustrates, this scenario can easily arise outside the legislative session.

Thus, while the likely object of this provision is building projects, it will have far ranging, costly and unforeseeable effects. ARRC will be unable to build or repair docks, bridges,

maintenance buildings or shops when the cost is over \$1 million without legislative approval, nor could the railroad again finance its summer work program which consists of rails, ties and ballast. On the freight side of the operation, such a restriction would make it very difficult for ARRC to respond to market opportunities, where equipment must be purchased or capital otherwise committed quickly or the freight customer will simply find another mode of transportation. For example, an expansion in gravel or coal opportunities would likely require additional locomotives, and under this bill, ARRC would need legislative approval for such a purchase (unless it paid with cash or utilized short-term debt). The same approval would be required if a significant freight opportunity arose that required construction of a warehouse costing over \$1 million. Even if such opportunities arise during the 4-month legislative session, it is unusual for a law to pass so quickly. Outside the session, the ability to react to such a market opportunity would simply not exist.<sup>1</sup>

C. Municipal Taxation. The bill eliminates the existing statutory exemption from municipal taxation for ARRC real property that is leased to third parties for "fair value."<sup>2</sup> It also provides municipalities a mechanism to enforce taxation by authorizing suit in superior court for tax bills unpaid for six months. Ironically, municipalities would become empowered to tax the railroad's fee simple interest in land at the same time as the use of that land becomes seriously encumbered under the proposals just discussed.

Authorizing municipalities to assess property taxes on ARRC property leased for fair value will impose a significant financial and administrative burden on the corporation. The burden is unfair from two perspectives. First, it is a burden that state property does not normally bear, except in the case of property acquired through foreclosure and retained as an investment. ARRC property is treated as state property for many

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<sup>1</sup>The bill also requires legislative approval for leases of real or personal property valued at more than \$1 million or for longer than ten years. This may be intended to prevent ARRC from circumventing the debt limit by leasing rather than buying such property. However, without the minimal protection provided by the "rolling stock" exemption contained in the debt limit language, this section would present even greater difficulties.

<sup>2</sup> Presumably, "fair value" has the same meaning as "fair market value" used elsewhere in ARCA.

purposes; for example, public notice of disposal is given as required by the State constitution. This is a process that truly private property owners need not address.

On the other hand, while private landowners are subject to such taxes, most ground lessors pass taxes and other charges through to the ground lessees. Indeed, the ground lease form in use by ARRC since 1986 includes such "triple net" language, and lessees under that form will find themselves surcharged for any municipal levy. The effect on Anchorage lessees, for example, will range from \$215 to \$36,000 in additional annual charges for representative lessees.

The net effect on ARRC itself is no less striking. ARRC has approximately 233 active leases, of which some 107 are governed by an old lease form inherited from the period of federal ownership of the railroad. Those leases do not commonly provide for recoument of taxes from the lessee, and ARRC is bound by those provisions until each individual term expires. At current appraised value and applying the mill rate in effect for the Ship Creek area of Anchorage, approximately \$426,000 may be assessed Railbelt-wide in property taxes that ARRC cannot recoup from the lessees. While the situation will gradually correct itself over time as those leases expire, in the interim ARRC will be at an unwarranted disadvantage vis-a-vis private land lessors who pass such charges on to their lessees. Moreover, ARRC will face a significant administrative burden in manually reviewing each of the 233 leases to confirm whether the taxes may be charged to the lessees.

The proposed change is troubling from a philosophical standpoint as well as the more obvious financial one. As enacted in 1984, ARCA provided that railroad land was exempt from local property taxes just as other state land. As one balancing factor, the Legislature also authorized the corporation to lease its land to the state and its political subdivisions for less than fair market value. The corporation has taken advantage of this authority to adopt (and apply) its Public Entity Lease Policy, which specifies procedures to obtain such leases, and to issue nominal fee permits such as the Anchorage Coastal Trail. Indeed, ARRC has a considerable number of leases and permits to municipalities at little or no charge. Revoking the municipal tax exemption upsets this delicate balance and calls into question the railroad's financial ability to continue offering leases and permits to public entities at nominal cost.

Finally, it must be noted that municipalities already have the power to tax leasehold interests in ARRC property, as well as

the buildings and other improvements owned by the lessees. Municipalities have different techniques for assessing the value of such interests, some of which fail to recognize the full value of an exclusive right to possess ARRC property for up to 35 years. Some municipalities fail to tax leasehold interests at all. There is therefore an existing mechanism for increasing municipal revenues without making such a fundamental change to ARCA.

D. Conflict of Interest Law. The bill would subject ARRC's Board of Directors, chief executive officer and vice presidents to the state conflict of interest statute, AS 39.50, requiring them to file annual conflict of interest statements with the Alaska Public Offices Commission. These statements must include, among other things, all sources of income in excess of \$100, all business interests, and all creditors for over \$500. ARCA already requires a conflict of interest disclosure mechanism which has been amplified by adoption of Board Rule 14.<sup>3</sup> This disclosure requirement extends to individuals far beyond those required by AS 39.50, to directors and all non-union railroad employees. This is the case even though those same employees are not "state employees" (AS 42.40.710) and would not otherwise be subject to such a requirement. ARRC's disclosure statements for Board members, the CEO and vice presidents are public records and accessible to any legislator or member of the public.

The proposal is in large part duplicative of existing law, and we believe there is little justification to extend its coverage to vice presidents of the corporation. A review of the other boards, commissions and the like which are made subject to the law in AS 39.50.200(b) indicates that it typically covers board members and executive directors, generally appointments most subject to the political process. Examples include the board and executive director of the Alaska Aerospace Development Corporation, the public members of the Alaska Energy Authority board, and the board of the Alaska Housing Finance Corporation. The Alaska State Housing Authority appears to be excluded from the law entirely.

ARRC believes that this provision is unnecessary and redundant to provisions already contained in ARCA. Moreover, to subject vice presidents of the corporation to the more detailed public disclosure requirements would be inconsistent with the

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<sup>3</sup>ARRC Board Rules that affect the public are analogous to state agency regulations and must, under AS 42.40.180-.205, be adopted with public notice and opportunity for public comment.

treatment of employees of other state entities. This level of public disclosure should be reserved for political appointees rather than professional, merit-based employees.

E. Exclusion of "Railroad-Experienced" Director from Serving as Board Chair or as CEO. ARCA specifies seven directors for the corporation. Two are incumbent state commissioners; one seat is reserved for a union employee of the corporation; and the other four seats must fulfill five independent qualifications (one from each judicial district served by ARRC, one with five years' experience as a business owner or manager, one with ten years' railroad management experience, and one who is/has been an executive official of another U.S. railroad). Clearly, one individual may fill one or more of these qualifications. Currently, the CEO is the Board member meeting the last two requirements (railroad experience). This bill would prohibit the current situation and require the CEO to resign from one of his positions. As the paragraph caption indicates, it would also prohibit the "railroad experienced" member from acting as chairperson (or vice-chair) of the Board.

While this issue is primarily one for the Administration to address (in light of its constitutionally based power to appoint officials within the Executive Branch), ARRC believes that there is no reason to so limit the membership of the Board of Directors. It is traditional to find CEOs on railroad boards of directors as well as those of private corporations. It is particularly appropriate for a labor representative to sit on the Board of the state-owned railroad, as is provided by ARCA. Management representation on the same body therefore seems appropriate as well, and is not expressly prohibited by ARCA. Accordingly, we believe this proposal to be unnecessary.

F. Open Meetings Act. ARRC is presently exempt from that portion of AS 44.62 that contains the Open Meetings Act ("OMA"). This bill would add ARRC to the list of entities covered by that statute and make conforming changes to ARCA to carry out that intent. It would seemingly add nothing to ARCA's present scheme, since AS 42.40.150 requires the Board of Directors to meet and take action publicly, with certain exceptions for executive session (AS 42.40.170) that are similar to those contained in the OMA.

ARRC has always evidenced a desire to make its decision-making process meaningfully accessible to the public. It has made a practice of holding open, public Board meetings each year in Seward and Fairbanks as well as at corporate headquarters in Anchorage. Additionally, ARRC has established several citizen

participation groups on specific topics in order to afford the public the ability to express concerns. For example, the Community Briefing Council is composed of mayors of Railbelt municipalities and generally meets quarterly to discuss issues of mutual concern. An Integrated Vegetation Management ("IVM") Advisory Committee was established in 1989 to air concerns regarding the railroad's IVM program.

With the public very much involved in the Board's decision-making process, it seems particularly unnecessary to create yet another body of law within the Alaska Statutes that must be consulted when ARRC is involved. ARCA was envisioned as a completely self-contained document. Scattering clarifications throughout other statutes creates interpretive difficulties.

G. Local Building Codes. The bill would add a provision stating that any new facility construction by ARRC is subject to local building codes, including the necessity of obtaining permits. Legislative concern on this subject is unwarranted; ARRC already adheres to this standard, following local codes and obtaining building permits for numerous projects in the past several years. For example, the current Americans with Disabilities Act restroom remodeling in the Anchorage Passenger Depot and construction of the Fairbanks Operations Center were both done under local permitting procedures. Accordingly, we fail to see the need for this portion of the proposed legislation.

### III. Summary.

This bill presents a radical departure from a legislative philosophy that has withstood the test of over eight years of operation without seeking a legislative subsidy. The state's own analysts projected a continuing deficit for the railroad for at least 4-5 years after transfer, and legislative appropriations were fully expected to be necessary. However, the 12th and 13th Legislatures took great care in drafting ARCA, working for four years in a very public forum to craft a corporation with the latitude and flexibility to respond to market conditions, subject to certain public oversight. Their foresight has borne fruit over the years. Not only has ARRC never sought a legislative appropriation, but it has produced a profit in every year but one since transfer. A better example of prudently directed state investment can hardly be found.


This track record makes SB 148 particularly troubling with its intended restrictions on ARRC's ability to respond to market opportunities. While some of its provisions will work no practical change at ARRC, as discussed above, the major proposals will create a significant impediment to ARRC's continued operations, at least on the same self-sufficient level as before. If this bill is enacted as proposed, ARRC will be forced to reconsider certain aspects of its operations that are not currently profitable. This could lead to elimination or state subsidy of marginal local passenger services (e.g., Hurricane Turn, Whittier Shuttle). Interpreted strictly, it is clear that this legislation could render the railroad unprofitable, and relegate ARRC to seeking appropriations on an annual basis. The corporation could also be forced increase revenues, either by raising rates or lowering some to attract increased overall volume.

In addition to the financial implications for both ARRC and the state, this legislation raises future interpretive issues that no amount of current drafting skill can completely eliminate. It is simply impossible to foresee every avenue of business opportunity that might someday present itself to ARRC and be argued to fall within the restrictions imposed by this bill. Apart from creating an employment bonanza for attorneys, these uncertainties could needlessly subject the corporation to political manipulation based on those interpretive issues.

All these potential consequences could tip the careful balance achieved by the original corporation act, which allowed ARRC to mature into a financially independent entity able to react in private markets with public accountability. We urge the 18th Legislature to carefully consider the ramifications of these changes during the course of its deliberations on SB 148.

Dated:

3/19/93

  
Robert S. Hatfield Jr.  
President & CEO  
Alaska Railroad Corporation

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

March 19, 1993

The Honorable Bert M. Sharp  
Chairman, Senate Transportation Committee  
Alaska State Senate  
State Capitol, Room 514  
Juneau, Alaska 99801

Dear Senator Sharp:

Senate Bill 148, which is presently pending in your committee, raises several concerns relating to the future viability of the Alaska Railroad Corporation (ARRC). This is also the case with the companion House Bill, HB-202. Based on several Juneau trips and in-depth discussions with the Bills' sponsors, concern about the ARRC's decision to assume a 40% equity position in the Comfort Inn Hotel in Anchorage is apparently a major reason underlying the legislation.

An additional factor lending some urgency to this proposal is a perception that ARRC is planning to participate in a similar hotel deal in Fairbanks. Although there are parties expressing interest in locating a hotel on railroad property in Fairbanks, ARRC has no plans to assume an equity position as occurred in Anchorage.

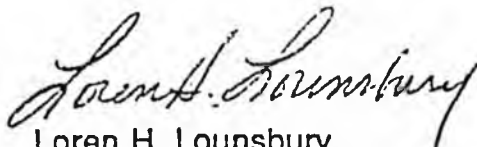
On the basis of my most recent Juneau visit, I have decided to propose a new policy at the next regular Board meeting on April 15, 1993 that would prevent ARRC from assuming an equity position in non-transportation activities in the future. Non-transportation activities will be defined to include hotel projects. While the ARRC Board believes that its action relative to the Comfort Inn was appropriate and consistent with ARRC's enabling legislation, we recognize and wish to be sensitive to the concerns about risk and the perception of unfair competition.

Based on initial discussions with other Board members, I believe there will be sufficient support to enact this policy. If there is interest, we would be happy to circulate the draft proposal for review and comment by interested legislators. It is my hope that the Bills' sponsors will agree that there will be no necessity for this Bill.

The Honorable Bert M. Sharp  
March 19, 1993  
Page Two

If there are questions by any members, please do not hesitate to contact me at 277-4334, or Bob Hatfield, ARRC President and CEO, at 265-2403.

Sincerely,



Loren H. Lounsbury  
Chairman of the Board  
Alaska Railroad Corporation

cc: The Honorable Walter J. Hickel, Governor  
The Honorable Drue Pearce, Alaska State Senate  
The Honorable Steve Frank, Alaska State Senate  
The Honorable Jeannette James, Alaska State House  
ARRC Board Members

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

130 Seward Street, Suite 109  
Juneau, Alaska 99801-2105

**MEMORANDUM**

April 1, 1993

**SUBJECT:** CSSB 148(TRA); Legislative approval of Alaska Railroad Corporation involvement in a proposed solid waste facility (Work Order No. 8-LS0583\R)

**TO:** Senator Bert Sharp  
ATTN: Cam Toohey

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have asked whether the Alaska Railroad Corporation's involvement with a proposed solid waste facility near Nenana would be subject to legislative approval under AS 42.40.285, as amended by CSSB 148(TRA) (version R, dated March 31, 1993).

AS 42.40.285, as amended by CSSB 148(TRA), requires that the Alaska Railroad Corporation obtain legislative approval prior to acquiring an equity position in a nontransportation activity, except under certain circumstances.<sup>1/</sup>

If the Alaska Railroad Corporation merely leases land to the developer/operator of the proposed solid waste facility at Nenana and transports waste to the facility, without obtaining an equity position in the facility, legislative approval of the corporation's involvement with the facility would not be required.

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<sup>1/</sup> For purposes of this memorandum it is assumed that the corporation's involvement in the proposed facility would not invoke legislative approval based on other provisions of AS 42.40.285. Thus, it is assumed that in connection with the proposed facility the corporation will not

- one, convey its entire interest in any land;
- two, issue bonds;
- three, incur any excessive debt, not related to acquisition and maintenance of railroad equipment and railroad related physical plant;
- four, extend railroad lines, other than spurs and other auxiliary track; or
- five, lease land for a period in excess of 35 years, without retaining a right to terminate the lease under certain conditions.

Senator Bert Sharp

April 1, 1993

Page 2

However, should the Alaska Railroad Corporation intend to acquire an equity position in the proposed facility, the corporation will probably have to obtain the appropriate legislative approval. Under AS 42.40.285(6), as amended by CSSB 148(TRA), the corporation may not acquire an equity position in a nontransportation activity, such as a solid waste facility without the approval of the legislature. The provisions exempting investments by the corporation's pension funds and grandfathering existing nontransportation activities of the corporation from the application of AS 42.40.285(6) would presumably be inapplicable, because the corporation's pension funds would not invest in the facility and because the corporation's involvement in the facility would not pre-date the effective date of AS 42.40.285(6)<sup>2/</sup>.

If I may be of further assistance, please advise.

GU:gc

93-295.glc

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<sup>2/</sup> Whether a particular nontransportation activity is "grandfathered" under the proposed AS 42.40.285(6)(A)(ii) will ultimately depend on when the corporation became engaged in the activity and when AS 42.40.285(6)(A)(ii) takes effect.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

June 12, 1992

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
ALASKA RAILROAD CORPORATION  
SHIP CREEK REDEVELOPMENT

May 1, 1992

Audit Control Number

08-4437-92

As stated in the Objectives, Scope, and Methodology section of this report, the audit involved a review of various aspects of the Alaska Railroad Corporation's (ARRC) Ship Creek Redevelopment project. We determined whether ARRC exercised sound business judgement, complied with applicable statutes and legislative intent language, and acted in good faith regarding specific facets of the redevelopment process.

The audit was conducted in accordance with generally accepted government auditing standards. Audit scope and methodology are discussed in the Objectives, Scope, and Methodology section of this report. Audit results can be found in the Report Conclusions section.

A handwritten signature in cursive script, reading "Randy S. Welker".

Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, an audit of various aspects of the Alaska Railroad Corporation's (ARRC) Ship Creek Redevelopment project was conducted. The objectives, scope, and methodology of our review were as follows.

### Objectives

The objectives of the review were to determine if ARRC exercised sound business judgement, complied with applicable statutes and legislative intent language, and acted in good faith with regard to specific aspects of the Ship Creek Redevelopment project.

### Scope and Methodology

Our examination included reviewing, as they related to the Ship Creek Redevelopment, Alaska Statutes, ARRC procurement regulations, procurement files, lease agreements, requests-for-proposals (RFPs), responses to RFPs, proposal evaluations, contracts, funding requests, consultant reports, correspondence between relevant parties, court complaints, procurement protests, press releases, media reports, legislative meeting minutes, board minutes of both ARRC and the Anchorage Economic Development Corporation (AEDC), an opinion of the Attorney General's Office, an ARRC financial analysis, and pertinent loan documentation.

Additionally, we conducted various interviews with management and staff of ARRC, the Alaska Industrial Development and Export Authority, AEDC, the Anchorage Assembly, the Attorney General's Office, the Department of Labor, the Department of Administration, the Department of Transportation and Public Facilities, the Municipality of Anchorage, the Downtown Anchorage Association, private real estate developers/consultants, and a representative of a local trade union.

## ORGANIZATION AND FUNCTION

The Alaska Railroad Corporation (ARRC) was established by AS 42.40 after the railroad was purchased by the State from the federal government in January 1985 for \$22.3 million. ARRC is a public corporation and an instrumentality of the State within the Department of Commerce and Economic Development, but by statute, it has a legal existence independent of, and separate from, the State. The corporation's board of directors is responsible for its management, but has delegated the powers and duties necessary for the administration of daily affairs and operations of the corporation to the chief executive officer (CEO). In turn, the CEO has designated other executive officers to oversee the various departments.

ARRC maintains 661 miles of track stretching from Seward to Fairbanks and provides both passenger and freight service. The railroad also has title to substantial land holdings. While the railroad carried almost 500,000 passengers in 1991, the majority of its revenue since transfer from the federal government has been derived from freight transportation and real estate activities.

The site of the redevelopment project that is the subject of this audit is located north of downtown Anchorage and includes both ARRC's corporate headquarters and the corporation's railyards, as well as adjacent ARRC land that had been leased to private businesses and the Municipality of Anchorage. The expanse is currently either undeveloped or used for commercial and industrial purposes. However, based upon a consultant's study completed in 1989, ARRC envisions redeveloping the land into a multi-use, tourist-oriented, waterfront center. The Ship Creek Redevelopment project is the outgrowth of that plan.

## REPORT CONCLUSIONS

### Background

The Alaska Railroad Corporation (ARRC), seeking to determine the best use for its extensive land holdings in the Ship Creek area of downtown Anchorage, commissioned a land use study of the district in 1988. The resulting report, the Original Townsite Study, was completed the subsequent year and was predicated on the premise that the site could be successfully used by tenants with a mixture of commercial and tourism interests. Based upon the study's findings, ARRC worked with the nonprofit Anchorage Economic Development Corporation (AEDC) to obtain funding from the Legislature in 1990 for infrastructure needs in the area; the Municipality of Anchorage (MOA) received a grant for \$2.5 million.

In April 1990, ARRC and AEDC entered into an agreement for AEDC to solicit a private group to act as master developer for approximately 120 acres of Ship Creek land, with the goal being the creation of a tourist-oriented, mixed-use development. As approximately half of the land in the proposed development was then being leased by ARRC to MOA, discussions began regarding plans to include the land leased to MOA within the project.

AEDC completed and distributed the master developer request-for-proposal (RFP) to prospective developers worldwide in December 1990; responses were due by August 1, 1991. Throughout 1991, AEDC and ARRC met with various development interests and made numerous presentations to introduce the project. Additionally, with ARRC support, AEDC succeeded in gaining an additional \$5.5 million in Ship Creek infrastructure funding for MOA from the 1991 Legislature.

By the due date, two proposals from United States developers and one letter of interest from a local team of architects were received. Both developers submitting proposals had nationwide experience and had worked on a number of large projects.

Also during 1991, but prior to the proposal deadline, ARRC decided to move forward with the new ARRC headquarters building project and a 96-room hotel project, both located within the development area. Ground breaking began in July 1991 on the new headquarters complex and in September 1991 for the hotel project. Both projects were scheduled to be completed in early summer 1992.

### Master Developer Selection

The Ship Creek Redevelopment project was envisioned as an integrated, mixed-use commercial development utilizing an urban waterfront setting that would attract both local and visitor interests and provide ARRC with substantial revenues. To achieve these goals, ARRC entered into an agreement with AEDC whereby the nonprofit corporation prepared

and marketed an RFP to prospective developers. The professional services contract with AEDC was not competitively offered and ARRC was unable to provide adequate documentation to justify this sole source procurement. The agreement provided that AEDC would be given a master lease option on the Ship Creek property in question that would, in turn, be assigned to the successful developer for unspecified consideration from the developer upon the execution of the development agreement. This option was to expire if not exercised prior to December 31, 1991.

By the submittal deadline August 1, 1991, two proposals were received. The Ship Creek Project Committee of AEDC was charged with evaluating the proposals and was comprised of representatives from ARRC, AEDC, and MOA. The evaluation process commenced and the highest rated offeror, Intergroup Development Incorporated (IDI) of Houston, Texas, was notified of the committee's intent to enter into non-binding negotiations; ARRC was to negotiate the financial terms while AEDC would negotiate the remainder of the agreement.

After ARRC and a real estate consultant under contract to the railroad reviewed the initial financial proposal made by IDI, it was rejected by ARRC. The railroad then requested that IDI develop a fee proposal rather than the master lease proposal initially requested; this would essentially place the successful proposer more in the role of a consultant or marketing agent than that of a developer. ARRC, after review with its advisor, also rejected IDI's second proposal, stating it was overly generous to the offeror. In November 1991, ARRC suspended negotiations with IDI and soon after began discussing options with the other proposer, LoPatin and Company of Southfield, Michigan (LoPatin). IDI subsequently filed a lawsuit alleging, among other items, that ARRC violated its own procurement rules and did not fairly and honestly negotiate with IDI.

ARRC and LoPatin came to terms on a master lease, effective February 21, 1992. Of the original 120 acres discussed in the RFP, this lease agreement places 37 acres of ARRC land and 25 acres of MOA-leased land under LoPatin's control. LoPatin's master development plan is required to consider the entire 120 acres constituting the Ship Creek Redevelopment area. The term of the lease is for five years, with two additional five-year options available. Nominal rent is to be paid to ARRC on a per acre basis until a certificate of occupancy (or equivalent) is issued for individual structures; rents increase at that time either to fair market value, a percentage of fair market value plus a negotiated percentage of gross revenues, or a negotiated percentage of net profits where ARRC has elected to participate in an equity position. Rents from existing ARRC lessees will be assigned to LoPatin. In early April 1992, the initial master development plan was unveiled by LoPatin and included a planetarium, a historical museum, a major hotel, a hovercraft launch, upscale residential housing, and an outdoor amphitheater, among other projects. Ground breaking is not anticipated until 1993.

The ability to include MOA's leased acreage in the master lease is contingent upon ARRC and MOA reaching an agreement on the proposed exchange of leased lands in the Ship Creek area. ARRC wants to regain control of approximately 60 acres of Ship Creek acreage

currently leased at a nominal cost to MOA; in 1997 the annual lease payment is scheduled to be adjusted to fair market value, a considerable increase. This leased land desired by the developer includes Ship Creek Point, the site of a small boat launch operated by MOA, and is thought to be among the most promising of the sites for development. As of the date of this report, negotiations between ARRC and MOA are continuing and it appears that, in principle, an agreement has been reached that will allow the waterfront land to be included in the master lease.

As is to be expected, a project of this magnitude has attracted the attention of many interested groups, public and private sector alike. Through correspondence and a lawsuit, parties have voiced their concerns that ARRC's handling of the process of selecting and negotiating with the master developer has violated internal ARRC procurement rules, Alaska Statutes, and the principles of good faith bargaining. As this agreement was for the lease of land, ARRC was not required to competitively bid it. While the railroad's decisions to utilize both an RFP process and AEDC were not required by its procurement rules, we agree that it was to the project's benefit that a competitive environment be fostered and that substantial input be received from the area's local development organization. However, if an RFP process is to be used, it must be accomplished in a structured, defensible manner; well-promulgated guidelines must be followed to ensure fairness and impartiality in both fact and appearance. As such, the obvious structure to follow would be ARRC's procurement rules. AEDC's handling of the development, solicitation, and evaluation of the RFP and ARRC's negotiations with the highest rated offeror should have been accomplished in strict compliance with the ARRC's procurement rules; documented adherence to requirements related to responsiveness of proposals, negotiations, etc., lessens the likelihood of lawsuits and protests.

In ARRC management's opinion, the lease granted to LoPatin was not awarded through the RFP issued, but rather as an ordinary land lease not required to be competitively offered. As the AEDC master lease option that was to be transferred to the successful RFP respondent expired as of December 31, 1991, ARRC has stated that it could not make an award under this RFP. This appears to be a reasonable interpretation.

However, a somewhat troubling feature of the timing of the lease with LoPatin is that the developer had not introduced the proposed master development plan prior to the execution of the lease with ARRC. Good business practices dictate that negotiations and agreement on the proposed development's scope and features would be completed prior to consummating the lease agreement that commits the land.

As noted above, the lawsuit filed by Intergroup alleged that ARRC, among other things, did not negotiate with IDI. ARRC maintains that neither of IDI's proposals were advantageous enough to ARRC and were, therefore, rejected. ARRC appears to have seriously considered each proposal and certainly has the right to reject proposals they determine not to be in the railroad's best interest. ARRC may be faulted for not communicating its intentions

adequately, but discussions and correspondence between ARRC and IDI indicate that some degree of negotiation did occur.

A project the magnitude of the proposed Ship Creek Redevelopment faces many obstacles in its path to success, not the least of which is that the site is owned by a public corporation, ARRC. Due to the railroad's unique stature as a public agency mandated to operate on a self-sustaining basis, ARRC at times finds itself in the awkward position of balancing public perceptions about how an instrumentality of the State should act and its valid self-interest requirements. To be successful, the Ship Creek Redevelopment project will require cooperation from a number of interested parties, including both the public and private sector, none of whom may necessarily have a common agenda. To ensure the success of the project, ARRC and the developer must work with these organizations in an open, communicative manner, and ensure that the spirit and the letter of all applicable requirements are met.

#### Inn-Vestment Associates of Alaska/Comfort Inn Hotel Project

Inn-Vestment Associates of Alaska (IAA) is a partnership comprised of ARRC and four groups of husband and wife investors from Spokane, Washington. The alliance was formed for the purpose of financing, constructing, operating, and maintaining a 96-room Comfort Inn hotel currently being constructed on a site within the Ship Creek basin owned by ARRC. According to ARRC management, the Spokane investors, who own and operate a number of Comfort Inns in the Pacific Northwest, approached the railroad about the project in early 1991.

The partnership agreement was approved by ARRC's board of directors in July 1991 and signed in August 1991. The contract provided that ARRC be given a 40% interest in the hotel project in return for the railroad providing a 35 year lease of approximately 1.6 acres upon which the building would be constructed. The term of the partnership is 35 years and all partners have unlimited liability to third parties for the debts and obligations of the partnership. Major decisions regarding partnership matters are subject to a 61% majority vote, ensuring that ARRC has full veto power. The accord appointed a managing partner to oversee the daily operations of the development. The agreement also provides for additional capital contributions by the partners, in the ratio of their respective equity interests, as considered necessary by the managing partner; requiring these contributions is subject to approval by the other partners.

The other investors were initially scheduled to contribute cash and development/construction services to the partnership in return for their 60% capital interest; however, a \$250,000 cash requirement was subsequently reduced to zero. Their initial contribution was amended to be development/construction services only. The railroad has declined to provide partnership financial statements for our review.

Also in August 1991, the partnership entered into a contract with Hospitality Associates, Incorporated to provide management services for the daily operation of the hotel. The president of this hotel management company is also IAA's managing partner. Ground breaking was in September 1991, with the primary contractor on the construction being a firm owned by one of IAA's partners.

The partnership obtained interim financing for the initial stages of the project, including construction and start-up phases, from an Alaskan bank. While the same bank also has provided a commitment to IAA for permanent financing, as of the date of this report, the partnership has not accepted the offer. Discussions with the Alaska Industrial Development and Export Authority (AIDEA) regarding funding options culminated with IAA rejecting AIDEA's offer of a commitment to provide permanent financing. The partnership is currently examining its options for securing long-term financing from institutions based outside of Alaska.

AIDEA's commitment was offered based upon the financial strength of ARRC and was contingent upon the railroad maintaining its 40% interest in the project throughout the term of the loan. As the partnership agreement provides that all partners have unlimited liability for partnership debts, we reviewed the financial documentation of the Spokane partners provided by ARRC that served as the basis for the railroad's decision to enter into the partnership. As the data was somewhat limited and unaudited, positive verification of the other partners' capacities was not possible; however, the information that was available did not indicate that ARRC should have rejected the partnership. However, neither does the available information clearly justify ARRC's decision to enter the partnership.

When it was initially announced, the hotel development attracted the attention of local trade unions who felt, due to the substantial involvement of the railroad, it should be considered public construction, as defined in AS 36.95.010 and, therefore, be required to comply with prevailing wage standards as stated in AS 36.05, commonly referred to as the state Little Davis-Bacon Act. In essence, this law requires that a contractor or subcontractor performing work on public construction must pay at least the current prevailing wage for work of a similar nature in the region in which the work is done. The state Department of Labor (DOL) is charged with monitoring compliance with, and enforcement of, this Act.

The partnership did not consider the Comfort Inn project construction work to be subject to this law and, consequently, the contractor and subcontractors have not been paying prevailing wages. DOL asked for a formal opinion from the Attorney General (AG). The AG's response was that, due to their belief that the construction was being performed under contract for the State and that the involvement of the State in the project is significant, the project is subject to the provisions of AS 36.05. However, this opinion was not released until mid-April 1992, approximately six months after ground breaking, and the hotel is scheduled to open by June 1, 1992. Discussions with DOL indicate that the partnership, its contractor, and its subcontractors will all be made aware of this determination and these parties will be required to demonstrate compliance with the law; this will entail submission

of certified payrolls to DOL showing prevailing wages have been, or will retroactively be, paid for the entire project from inception through completion.

As the AG concluded that AS 36.05 applies, portions of AS 36.10, requiring a local hire employment preference, were determined by DOL to also be applicable. As such, DOL will also be monitoring compliance with this through the receipt of the certified payrolls that include workers' home addresses. However, due to the late date at which the determination was released, enforcement of the statute will likely be limited to compiling data on previously completed work and ensuring that the current work is in compliance.

LAA has provided a listing of subcontractors utilized on the project and a breakdown of construction labor and materials between Alaskan and non-Alaskan laborers and suppliers. The amounts in the following table have not been audited by us and, accordingly, we do not express any opinion on them.

Non-Alaskan laborers were used for framing and for sheetrock work. According to ARRC management, these individuals had previously worked on other Comfort Inn hotels in the Pacific Northwest and were employed for the sake of efficiency to ensure the hotel would open on schedule.

<b>Comfort Inn Construction Labor and Materials</b>			
<b>Description:</b>		<b>Estimated Cost</b>	<b>Percentage</b>
Alaskan Labor and Purchases		\$3,741,720	80%
Non-Alaskan Labor and Purchases		958,230	20%
<b>Total</b>		<b>\$4,699,950</b>	<b>100%</b>

Like the master developer selection and negotiations, the Comfort Inn hotel project and the IAA partnership have generated a certain amount of controversy. There is a significant concern of whether the project should have been undertaken prior to in-depth land use and feasibility studies to determine if this type of hotel fits into the Ship Creek Redevelopment master plan and, if it does, where it should be located within the basin. While it is impossible to say that expediting the Comfort Inn project has hurt the redevelopment process, removing a significant portion of developable land from the control of the holder of the master lease does limit options and opportunities. While ARRC wanted to proceed with the hotel project to accelerate the redevelopment process, it should not have done so to the extent that the overall project could be adversely affected.

Also, we are concerned with the potential impact of ARRC's equity investments. Given the profit-oriented nature of this public corporation, the power to invest in equities, granted by AS 42.40.250, is appropriate. However, if ARRC is able to exercise significant influence over the operations of a private company doing business in Alaska, our concern is whether Alaskans should be given the benefits of the public process such as procurement and open meetings. This issue arises from the railroad's involvement in the Comfort Inn partnership and ARRC's ability to participate in future redevelopment projects as an equity investor. This is similar to the relationship between the State and ARRC in which the State is able to exercise absolute control over railroad operations through its 100% ownership and the accompanying ability to appoint the board of directors; appropriately, the State's public policies were extended to ARRC's operations. In the railroad's situation, 100% equity investments allowing absolute control will not likely be acquired; yet, lower equity levels may still allow the railroad to exercise significant influence over a company's operations. If this ownership and influence substantially equates to public corporation activity, an extension of ARRC's public policies to the daily operations of such a company may be appropriate.

#### ARRC Headquarters Building

ARRC had been concerned about the condition of the building it owns and its overall office space requirements in Anchorage for a number of years. Shortly before the release of the RFP for the master developer, the railroad decided to obtain new leased space. This was to be accomplished by ARRC providing a land lease in the Ship Creek area upon which a structure would be constructed to the railroad's specifications. The proposed design/build agreement was presented in an RFP released in December 1990. The request required a custom class-A building to be built by the offeror, which would then be leased to ARRC for 20 years. During this lease period, the building owner would provide "turn-key" service to ARRC, meaning such items as parking, utilities, and maintenance would be included in the monthly lease payment. ARRC would provide a long-term ground lease to the successful offeror. The new building was also required to comply with the development guidelines established in the Original Townsite Study in order to ensure it "fit" into the planned Ship Creek Redevelopment motif.

A total of six proposals were received prior to the January 31, 1991 deadline. The proposals were rated by the ARRC evaluation committee based upon the evaluation criteria delineated in the RFP, including price, offeror capabilities and capacities, theme of building and architecture, and economic benefit to the community and the project. The price evaluation consisted of ranking proposed ARRC cash outflow over the life of the project using a present value methodology. However, subsequent to the evaluation committee's work, ARRC was displeased with the proposals received. Though not explicitly stated in the RFP, ARRC requested a monthly lease payment that would remain fixed over the term of the lease; however, all six offerors proposed a payment with both a fixed and a variable component. Through discussions, the offerors convinced ARRC that this type of payment would be the only kind acceptable to the development community. ARRC decided that it was necessary

to declare the price portions of the proposals as non-responsive. The railroad issued an addendum to the RFP requesting new price proposals and describing new evaluation criteria for the price proposals received; no design or other changes were permitted. The addendum also required the submission of Alaska business licenses in accordance with ARRC's procurement rules; this requirement had inadvertently been left out of the RFP.

In April 1991, the new price proposals were evaluated and the results combined with the existing ratings to produce the successful offeror. In late April, an unsuccessful offeror formally protested the ranking and proposed award. Through counsel, the offeror alleged that, among other items, ARRC violated its own procurement rules, the state procurement code, and state procurement regulations. ARRC responded to the protest, denying all claims and in late May issued an Intent to Award to the highest-rated offeror. The unsuccessful offeror filed two protest appeals in June, which were denied by ARRC's manager of procurement in a letter dated August 1, 1991. No protest appeal hearing was requested by the offeror and none was held. In late August the offeror filed a complaint in state Superior Court alleging many of the same claims, but also that ARRC denied the offeror due process and the right to exhaust administrative appeals by not scheduling a hearing. No trial date has been set as of the date of this report.

Many of the unsuccessful offeror's allegations appear to be either unfounded or within ARRC's discretion under the RFP process. Relative to an Invitation-to-Bid for fungible goods, an RFP for a design/build facility may allow greater latitude by the evaluators in determining whether each proposal conforms to the specifications contained in the request. Whether the successful proposal should have been considered nonconforming and dismissed is a matter of judgement and will be addressed by the courts. Based upon our review, we consider ARRC to be at risk with regard to carpeting and shower stall specifications contained in the RFP.

We also consider the railroad to be at risk regarding certain changes to the appearance of the building from the initial proposal submitted by the successful offeror. Finally, ARRC's refusal to resolicit the RFP after deeming the initial price proposals nonresponsive also heightened the railroad's exposure.

Similar to the Comfort Inn hotel project, the new ARRC headquarters building also caused controversy as to whether or not it was considered public construction and, therefore, subject to both local hire and prevailing wage requirements. State DOL determined that the project was subject to AS 36.05 and AS 36.10. DOL stated that it is receiving required documentation and that the project is in compliance with these labor laws.

However, a larger question remains as to whether the new building was necessary. A study done in 1986 by a space planning consultant recommended that ARRC obtain new facilities. However, upon closer inspection, this study provides little support for ARRC's current decision to relocate. The ARRC management prepared an abbreviated analysis for presentation to the ARRC board of directors. This document purportedly compared the cost

*I am also pretty sure significant remodeling  
was done to the old building after 1986*

of remodeling, upgrading, and operating the existing building to the costs associated with a new facility. The study was not intended to be a true cost/benefit review, but did indicate basically a break-even situation.

However, our cursory review of the analysis indicated enough significant problems that the decision to move forward on the project certainly does not appear clear-cut. Within the analysis:

- inflation and present value techniques were not fully taken into account;
- within the new facility scenario in which the old headquarters building was leased out, certain occupancy costs (i.e. fire code, plumbing, roofing, and the like) were overlooked;
- there was no recognition given to the cost of the physical move and related administrative disruption;
- there was no recognition of the lost opportunity value of the site utilized for the new facility; and
- the assumption is made that the existing building will continuously be fully leased.

A complete analysis would need to be performed to determine whether it was in ARRC's best interest to relocate. However, with the new facility nearing completion, whether or not it was in ARRC's best interest is a moot point. It is sufficient to say that the railroad did not prepare an adequate analysis.

Similar to the Comfort Inn project, there is a significant risk in proceeding with the new headquarters building prior to the master developer being selected and the master plan being designed. Without land-use and feasibility studies, ARRC cannot say with surety that the present location of the new headquarters is optimal. Removing the acreage from the master developer's control has the potential to dilute the success of the project and should have been more carefully considered.

ARRC has currently listed the existing headquarters building with a local real estate company; the listing agreement markets the sale or lease of the facility, with the caveat that the first floor lobby is to be leased back to ARRC if sold. However, ARRC, in violation of its procurement rules, did not competitively offer the listing. This listing agreement is a professional services contract that will yield more than \$25,000 in commissions and, therefore, should be subject to competitive offering.

### Legislative Intent and Grant Monies to MOA

The legislation granting MOA \$2.5 million in Chapter 208, SLA 1990 stated that the funding was contingent upon the execution of a long-term, no-cost lease between ARRC and MOA that designates ARRC's Government Hill bluff land as open space or for public use. The legislation continued that the monies should be used for road and bridge improvements for the Ship Creek Redevelopment project, including extending Warehouse Avenue, realigning C Street, and constructing a pedestrian bridge over Ship Creek.

ARRC executed the lease with MOA for the Government Hill Greenbelt on September 6, 1990. The agreement provides for the lease of two parcels for park development and trails for public use, creating a public amenity. The term of the lease is for thirty-five years and does not require payment of fair market rental value to ARRC, unless a tax is levied by MOA against ARRC, and the railroad is still owned by the State. As additional consideration, the agreement also requires MOA to construct certain infrastructure improvements as generally described in the Original Townsite Study. These improvements were specifically defined as design and construction of the Ship Creek Dam Pedestrian Bridge, North C Street Bridge and realignment of C Street, and the extension of Warehouse Avenue to C Street. Such improvements were to be funded from the \$2.5 million grant and were to be completed prior to December 31, 1991.

The current status of the projects is that all have been completed with the exception of the realignment of C Street and the North C Street Bridge; construction on these undertakings will begin this summer, according to MOA's Public Works Department. The intent of the legislature appears to have been met with regard to these monies.

Chapter 96, SLA 1991 provided \$5.5 million in state grant monies to MOA for access, tidelands fill, and utility upgrades for the Ship Creek Redevelopment project. This conditional appropriation states that receiving these funds was contingent upon a development agreement being approved by AEDC and ARRC that included private investment commitments equal to or exceeding the appropriated amount. Accompanying legislative intent language provides that if this agreement was not approved by AEDC and ARRC by April 30, 1992, the funds would then be available for reappropriation.

The development agreement between AEDC and ARRC was executed April 29, 1992 and was segregated into three sections: master developer, status of lands in the project area, and matching private investment.

The master developer portion discussed the master lease, the master plan, and the proposed uses of the grant monies to be received, which includes infrastructure improvements within the basin. The status of lands in the project area refers to the progress made on the objective of including the acreage leased by MOA from ARRC within the scope of LoPatin's master lease. As of the date of this report, ARRC and MOA have reached an agreement in principle, subject to ARRC board of directors' approval, whereby the MOA lease is

terminated with the condition that MOA will continue to maintain and operate the existing boat launch and dock and retain a small portion of the land around this area. A further condition of terminating the lease is that ARRC lease approximately 100 acres of South Tidelands to MOA. The effect of this agreement is that the waterfront land desired to be included in redevelopment is once again under ARRC control and is now includable in the master lease.

The matching private investment section of the development agreement is supposed to provide assurance that the contingency provision of the \$5.5 million conditional appropriation requiring private investment commitments has been met. However, this requirement has not been met. ARRC's master lease requires LoPatin to pursue commitments of not less than \$7 million within three years of the effective date of the lease. ARRC, in the development agreement, warrants that LoPatin will perform on the master lease agreement; the railroad agreed to reimburse the State for the difference between the \$5.5 million grant received and the actual private cash investment if LoPatin does not succeed. However, the development agreement provides that the developer is to be given until December 31, 1997 to gather these commitments. The appropriation language states that the \$5.5 million grant is

*...contingent upon a development agreement being approved by both the [AEDC] and the [ARRC] that includes private investment commitments equal to or exceeding this appropriation.*

Further, the accompanying intent holds that

*...this appropriation be available for reappropriation if it is not encumbered by the approval of a development agreement by both the [AEDC] and the [ARRC] by April 30, 1992.*

Over \$10 million in new construction has taken place recently, or is taking place currently, in the Ship Creek basin, including ARRC's headquarters, the Comfort Inn hotel, and a microbrewery project. A portion of this \$10 million could be considered to include some degree of private investment. However, ARRC and AEDC agreed that these projects are not to be included in determining if sufficient matching investment has occurred.

The provision in the development agreement stating that ARRC is, in effect, guaranteeing the State grant money by agreeing to repay to the State any shortfall in required private investment is not sufficient to provide for the release of the funds. As ARRC is wholly-owned by the State, the transaction would essentially be transferring public funds within a single public entity. The private commitment requirement helps ensure that someone, in addition to the State and its railroad, has a financial stake in this redevelopment.

The binding appropriation language is quite specific in that it requires an approved development agreement with sufficient matching private investment commitments to be in

place as a condition of the appropriation. The non-binding accompanying intent language states that the appropriation may be rescinded if this has not occurred by April 30, 1992.

The development agreement does not provide for \$5.5 million in private investment commitments as of the date of its execution; therefore, the grant monies should be available for reappropriation. While we do not recommend that these funds be reappropriated from the Ship Creek Redevelopment project, we do question their availability until the time that sufficient matching investment commitments are received and documented.

#### Summary of Auditor's Concerns

ARRC is owned by the State of Alaska. Although it operates in the private sector with a profit-making orientation, this public ownership necessarily places certain responsibilities and constraints on how ARRC makes decisions. The history of this development project to date, as set out in this report, raises serious concerns regarding this decision-making process when viewed in the context of ARRC's status as a publicly owned corporation. The points summarized below highlight our concerns regarding ARRC's decisions and actions involved with this project. When considered individually or strictly in the context of a privately held corporation, they may appear to be minor and niggling. However, in our opinion, when viewed as a series of events and decisions in the context of ARRC's corporate status, they indicate light regard for the responsibilities and accountability that are a necessary part of a publicly owned corporation.

- ARRC accepted full financial risk for the hotel partnership without documenting the financial capacity of the other partners; this was amplified as ARRC was the only partner to initially put tangible assets into the partnership.
- ARRC did not realize, until the proposals were received, that no design/build proposers for the new headquarters building would accept a fixed lease payment schedule. The RFP had to be amended after the responses were received.
- Construction on both the new headquarters building and the hotel began while negotiations were underway with the master developer but before a developer was selected. This pre-designation of land serves to limit the development options and opportunities.
- The lease agreement with LoPatin was executed before this developer provided the master development plan. This should have been completed before ARRC committed the land.
- ARRC only allowed four months from the master development RFP deadline to the expiration of the applicable lease option to accomplish the negotiations

and to obtain a signed contract. More time was needed, so the entire RFP process was abandoned.

- ARRC did not prepare an adequate cost/benefit analysis to justify their move to the new headquarters building.
- ARRC did not make the effort necessary to fully comply and clearly document compliance with their procurement code. This is discussed in more detail below, as a separate concern.

ARRC has difficulty complying with its own procurement rules. We noted the following in our review.

- ARRC was unable to provide adequate documentation for its sole source agreement with AEDC regarding the marketing of the master developer RFP.
- ARRC did not competitively offer the listing agreement to market the sale or lease of its existing headquarters building; the undocumented sole source professional services contract was given to a local real estate firm.
- Unsuccessful offerors for both the master developer RFP and the new ARRC headquarters complex filed lawsuits alleging numerous improprieties related to ARRC's procurement procedures.
- ARRC does not maintain detailed procurement regulations similar to those followed by executive branch agencies of the State. Such detailed guidelines help agencies ensure procurement compliance.

While this review did not focus on procurement, our results are consistent with those discussed in the Division of Legislative Audit's A Special Report on Statewide Procurement, January 1, 1991 - December 31, 1991, dated May 4, 1992. That report recommends that the legislature consider revocation of ARRC's procurement authority until such time that ARRC can demonstrate it can comply with its own substantially equivalent code.

We are also concerned that the \$5.5 million grant to MOA for infrastructure improvements is not available for use until, as required by the appropriation language, sufficient matching private investment commitments are received and documented. While this delay may cause problems in the redevelopment process, the appropriation language as written is clear; without sufficient commitments in place, the money is not accessible. If this is deemed to be a significant hinderance to the development, ARRC should consider petitioning the legislature to change the appropriation condition.

Finally, we are concerned with the potential impact of ARRC's equity investments. Given the profit-oriented nature of this public corporation, the power to invest in equities, granted

by AS 42.40.250, is appropriate. However, if ARRC is able to exercise significant influence over the operations of a private company doing business in Alaska, our concern is whether Alaskans should be given the benefits of the public process such as procurement and open meetings. This issue arises from the railroad's involvement in the Comfort Inn partnership and ARRC's ability to participate in future redevelopment projects as an equity investor. This is similar to the relationship between the State and ARRC in which the State is able to exercise absolute control over railroad operations through its 100% ownership and the accompanying ability to appoint the board of directors; appropriately, the State's public policies were extended to ARRC's operations. In the railroad's situation, 100% equity investments allowing absolute control will not likely be acquired; yet, lower equity levels may still allow the railroad to exercise significant influence over a company's operations. If this ownership and influence substantially equates to public corporation activity, an extension of ARRC's public policies to the daily operations of such a company is warranted. However, as the procedures and documentation required to administer this public policy would likely reduce the profitability of a company, we are concerned about such a company's obligation to its non-public owners. One possible solution would be to obtain consent for adoption of this public policy from all non-public owners of a given company. Perhaps the most practical solution to this problem is avoidance; ARRC could simply refrain from acquiring substantial equity ownership of private companies doing business in Alaska.

#### Events Subsequent to Report Date

Subsequent to the completion of audit fieldwork, two noteworthy events related to the audit's scope occurred:

- ARRC and IDI, in an out-of-court agreement, settled the lawsuit brought by IDI charging that ARRC violated its procurement rules and did not fairly and honestly negotiate with the developer. While no admission of liability, negligence, or responsibility was assumed by either party, ARRC did agree to pay IDI the sum of \$50,000.
- Inn-Vestment Associates of Alaska filed suit against the state Department of Labor, charging that the determination that the Comfort Inn hotel project is public construction and, therefore, subject to prevailing wage and local hire requirements was made in error. The partnership is requesting a declaratory judgement concluding that the project is not public construction and, therefore, is not subject to AS 36.05 and 36.10.

# ALASKA RAILROAD CORPORATION



P.O. Box 107500 • Anchorage, Alaska 99510-7500

July 1, 1992

JUL 1 1992  
LEGISLATIVE AUDIT

Mr. Randy S. Welker  
Legislative Auditor  
State of Alaska  
Legislative Budget & Audit Committee  
Post Office Box W  
Juneau, Alaska 99811-3300

Re: Department of Commerce & Economic Development, Alaska Railroad Corporation Ship Creek Redevelopment, May 1, 1992

Dear Mr. Welker:

Thank you for the opportunity to review your findings pertaining to the above referenced audit. While your audit made no recommendations which need to be addressed, your report contained several factual errors. In addition, several conclusions about the development were drawn by your auditors which could be classified as "sharpshooting" and provide little or no value to the uninformed reader. The following specific instances come immediately to mind.

First, on Page 10, the audit states, "...while it is impossible to say that expediting the Comfort Inn project has hurt the redevelopment process, removing a significant portion of developable land from the control of the holder of the master lease does limit options and opportunities." (Emphasis added) The land under lease to the Comfort Inn project totals 1.77 acres or a total developable acreage of 120 acres. This hardly classifies as a significant portion of developable land.

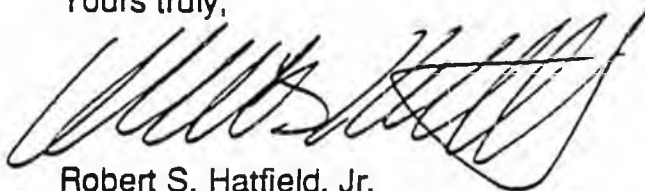
Secondly, on Page 16, one of the auditor's concerns is that ARRC accepted full financial risk for the hotel partnership which was amplified by ARRC being the only partner to initially put tangible assets into the partnership. We can only conclude the auditors believe that the land on which the hotel sits is now the property of the partnership. This is not correct and in fact, as required by statute, ARRC retains ownership of the land throughout the life of the lease.

I know a significant portion of time was spent by your staff in preparing this audit. I believe the conclusions drawn by the auditors were "minor and niggling

Mr. Randy S. Welker  
July 1, 1992  
Page Two

when viewed in the light of a privately held corporation" (Page 16). The Alaska Railroad Corporation is mandated by AS 42.40 to be a self-sufficient, for-profit company as well as to assist in the economic development of the State. The Ship Creek Development provides an excellent example of ARRC's ability to ensure its self-sufficiency as well as assist in the economic development of the State by generating over 35 full-time jobs during this past year alone. I believe we are doing what the Legislature mandated the Corporation to accomplish.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert S. Hatfield, Jr.", written in a cursive style.

Robert S. Hatfield, Jr.  
President and Chief Executive Officer

cc: L. Lounsbury  
ARRC Chairman of the Board

Marvin J. Yetter  
ARRC V/P Finance

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347

July 10, 1992

### Members of the Legislative Budget and Audit Committee:

We have reviewed the Alaska Railroad Corporation's (ARRC) response to our preliminary audit report on the Ship Creek Redevelopment project. Nothing contained in their response gives us cause to reconsider our findings. ARRC states that the report contains "several factual errors"; however, they failed to identify these alleged mistakes. Further, the response indicates discomfort with several of our conclusions; however, only two specific instances are cited. Neither challenge has merit.

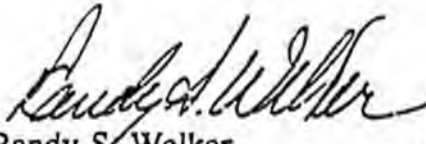
The first instance takes issue with our finding that ARRC's proceeding with the Comfort Inn hotel project prior to adequate land-use and feasibility studies limited the options and opportunities of the master development in whole. ARRC states that the land in the Comfort Inn project totalled only 1.77 acres of a total developable acreage of 120 acres and therefore should not be considered significant. Unfortunately, the railroad did not grasp the overriding concept behind this finding. It is not simply a ratio of the leased land to total developable land that determines whether or not options and opportunities of the total development have been impacted. The development of prime acreage with a theme or motif selected prior to a master plan being approved has considerably greater consequences. Further, the building of a hotel undeniably affects the prospects of other hotels that might be considered in Ship Creek. A facility's purpose, placement, and design can substantially affect the entire direction of subsequent development and should have been examined more closely before proceeding with both the Comfort Inn project and the new ARRC headquarters building.

The second instance pertains to our concern that ARRC accepted full financial risk for the hotel partnership without adequately documenting the financial capacity of the other partners; our concern was heightened as ARRC was the only partner to initially contribute specific assets to the partnership. While ARRC does not dispute our findings that they accepted full financial responsibility and that they did not adequately document the other partners' financial capacity, they do question the asset contribution finding. ARRC concludes that we believe that the land upon which the hotel sits is now the property of the partnership. This is incorrect; under the Inn-Vestment Associates of Alaska/Comfort Inn Hotel Project

subsection in the Auditor's Findings section of the report, we explicitly state that ARRC was granted a 40% interest in the project in return "for the railroad providing a 35 year lease... upon which the building would be constructed." We were well aware of the structure of this transaction; our finding that ARRC was the only partner to contribute a specific identified asset (in the form of a land lease) to the partnership was accurate.

The final paragraph of ARRC's response illustrates the underlying cause of many of the difficulties they encountered throughout this development. The railroad states that our conclusions were minor and niggling when viewed in the light of a privately held corporation. However, ARRC is not a privately held corporation. Alaska Statute 42.40.010 created ARRC as a public corporation and an instrumentality of the State within the Executive Branch. As such, the railroad is to be held to standards of responsibility and accountability that exceed those of privately held corporations. When, and if, ARRC is sold by the State, these standards will change accordingly; however, until that time, ARRC should ensure that they meet their public obligation.

In summary, we reaffirm our findings presented in the report.



Randy S. Welker  
Legislative Auditor

## Sectional Analysis

### CS SB 148 (TRA)

#### **Section 1:**

Purposes section, self explanatory. *Several changes in CS, the bill sections below show changes.*

#### **Section 2.**

Provides that real property of the Alaska Railroad Corporation that is leased for fair value is taxable. *Note: Senate Finance Committee will look at this issue based on information provided by the Railroad.*

#### **Section 3.**

Provides that a municipality may sue the Alaska Railroad Corporation in superior court to compel the payment of property taxes. *Note: Senate Finance Committee will look at this issue based on information provided by the Railroad.*

#### **Section 4.**

Adds the board of directors and the chief operating officer of the Alaska Railroad Corporation to the conflict of interest statute, AS 39.50. *CS deletes references to vice-presidents, from March 27 worksession.*

#### **Section 5.**

Provides that the purpose of the Alaska Railroad Corporation is to provide railroad and railroad related transportation services, those services performed by the Alaska Railroad at the time of transfer to the state, and other services as may be authorized by law. *The underlined wording change in the CS, from March 27 worksession. same wording also appears in sections 10 and 13.*

#### **Section 6.**

Provides that members of the board of ARRC are subject to AS 39.50 (conflict of interest reports)

#### **Section 7.**

Provides that the chair or vice-chair of the ARRC board may not serve as the chief executive of the corporation. *Change in the CS from March 27 work session.*

#### **Section 8.**

Provides that the chief executive of the ARRC may not serve as the chair or vice-chair of the board. *Change in the CS, from March 27 work session.*

**Section 9.**

Provides that the ARRC board shall provide for teleconference participation in board meetings. *New section in CS , replaces Public Meetings Act compliance section.*

**Section 10.**

Adds the changes in the purposes of the corporation, as provided in Section 5, to the general powers of the corporation

**Section 11.**

Requires legislative approval of:

- any borrowing in excess of \$10 million in one year or \$50 million in the aggregate.
- use of corporate assets to obtain an equity position in a non transportation activity with certain exceptions.

*New language in the CS from March 27 work session.*

**Section 12.**

Refers back to Section 2, municipal taxation of leased land.

*Note: Senate Finance Committee will look at this issue based on information provided by the Railroad.*

**Section 13.**

Amends Ch 153 of SLA 1984 to add the purposes of the Alaska Railroad Corporation as stated in Section 5.

**Section 14.**

Defines "non transportation activity" *New provision in CS, from March 27 work session.*

**Section 15.**

Provides that the next person appointed to the board of the Alaska Railroad Corporation is a railroad experienced director. *New provision in the CS, from Senator Pearce.*

**Section 16.**

Effective date clause for taxation of railroad property, January 1, 1994.

## INFORMATION REQUESTED AT SENATE TRANSPORTATION COMMITTEE WORK SESSION

### 1. Information on typical debt incurred in a year.

Attached is a cash flow history for ARRC that indicates a fairly broad range of long-term debt amounts. In only two years has the corporation exceeded the proposed \$10 million limit, once in 1985 and once in 1992. The 1992 amount arose due to conversion of 1991 short term debt to longer term, with favorable interest rates. In turn, the large 1991 short term debt was incurred to pay off older long term debt because the short term funds were available at lower interest rates. This illustrates the advantage of flexibility to take advantage of market rate variation. While it is clearly unusual to exceed \$10 million on an annual basis, it does occur. In light of ARRC's proposed 1993 capital improvements budget of \$12-14 million, the possibility exists that a \$10 million limit could be met this year. This possibility would be less likely if either the limit is raised to \$15 million annually, or if the expanded exemption for rolling stock and other "railroad" items is retained along with the \$10 million figure.

### 2. Quantify competitive advantage of current municipal tax exemption.

It is difficult to provide an overall figure for this perceived advantage, primarily because taxation by municipalities within the Railbelt is so disparate. Hopefully, some specific examples will illustrate the situation.

The Municipality of Anchorage ("MOA") taxes the so-called "rent savings" for leaseholds under its local ordinance. This is the aspect analogous to taxing the fee owner of the real estate. [It also taxes the improvements separately, and in this regard there is no competitive advantage for ARRC lessees.] As to the rent savings, the tax is calculated as follows: The municipality determines the appraised value of the fee simple interest in the land, the average lease rate within the municipality (currently, 8%), the lessee's annual rent and lease rate, the lease term, the municipality's discount rate (currently, 10%), and the municipality's tax mil rate (currently .01798 for Ship Creek area). It then performs a set of calculations with these figures as outlined on the attached sheet.

Applying this procedure to the Comfort Inn lease, MOA has assessed a tax of \$963 for this property (in addition to a substantial tax on the building). If the land were taxed as if in fee simple ownership, the mil rate of .01798 would be applied directly to the assessed value of \$211,200, for a tax of \$3,797.38.

The Fairbanks-North Star Borough ("FNSB") uses a different procedure called the "reversionary method". An outline of this procedure is also attached; in the case of a property appraised at \$100,000 with a 10-year lease term, the current leasehold tax would be \$679.16. If taxed as the full fee interest, the tax would be \$1,957.30.

We understand that the Kenai Peninsula Borough uses a method similar to that used by FNSB. We have been unable to contact the Matanuska-Susitna Borough today to determine its approach.

3. Top 10 revenue sources.

Attached is a summary from ARRC's December 31, 1992 financial statements that itemizes the corporation's revenue streams. In descending order, the top ten sources are petroleum, passengers, interline, TOFC/COFC, local coal, export coal, real estate, gravel, reimbursables, and miscellaneous local traffic.

### MOA TAXATION PROCEDURE FOR LEASEHOLD INTERESTS

MOA property tax policy consists of two components: tax on personal property and tax on rent savings of the leasehold.

- 1) MOA tax on personal property is based on the appraised value of the property multiplied by a tax mil rate.
- 2) MOA tax on the rent savings of the leasehold is based on a multi-step analysis. The components of the analysis are as follows:
  - a. appraised value of fee simple interest of the land
  - b. average lease rate for the Municipality of Anchorage (8%)
  - c. Lessee's annual rent
  - d. Lessee's lease term
  - e. MOA's discount rate (10%)
  - f. MOA tax mil rate

#### STEP 1: Determine Market Rent For Land

(appraised value of land) x (MOA average lease rate) = market rent

#### STEP 2: Determine Rent Savings

(Market Rent) - (Lessee's Annual Rent) = Rent Savings  
(if greater than Zero (0) taxable)

#### STEP 3: Determine Tax on Rent Savings

- a. Calculate Present Value of Rent Savings based on remaining Term of the Lease discounted at 10%
- b. (Present Value of Rent Savings) x (tax mil rate) = tax on leasehold

EXAMPLE: Inn-Investment Associates of Alaska (Comfort Inn)

a) Appraised value of land	\$211,200
Tax Appraised value of Bid.	\$3,712,200
b) MOA's average lease rate	8%
c) Lessee's annual rent	\$1.00
d) Lessee's lease term	4 years
e) MOA's discount rate	10%
d) MOA's tax mil rate	.01798

#### STEP 1: Determine Market Rent For Land

$\$211,200 \times 8\% = \$16,896$

#### STEP 2: Determine Rent Savings

$\$16,896 - \$1.00 = \$16,895$

#### STEP 3: Determine Tax on Rent Savings

- a. PV of \$16,895 for four years discounted at 10% = \$53,555
- b.  $\$53,600 \times .01798 = \underline{\$963}$

Total Tax on Real Property and Rent Savings = \$67,708

Building Tax Value  $\$3,712,200 \times .01798 = \$66,745$

Rent Savings  $\$53,600 \times .01798 = \$963$

FAIRBANKS NORTH STAR BOROUGH TAX METHODSteps:

1. Appraise property.
2. Discount appraisal value 10%-this discount represents the fee simple rights retained by landlord.
3. Determine length of lease (including any option to extend) and life of the improvement (e.g. building) and take the greater of the two.
4. Determine present value of the discounted appraised value (the discounted appraised value is assumed to be value at expiration of lease).
5. Apply mil rate (19.573) against present value determined in Step 4.
6. Revised annually.

Example:

1. Appraised value = \$100,000.
2. Discount for interest retained by landlord 10% (\$100,000 - \$10,000 = \$90,000).
3. Length of lease, say 5 years plus 5 year option = 10 years.
4. Present value = \$34,699 (\$90,000 for 10 years at 10% discount).
5. Apply mil rate (\$34,699 x .019573) = \$679.16.

MAY 29 '93 17:45

## CASH FLOW HISTORY

	1985	1986	1987	1988	1989	1990	1991	1992
Beginning Cash	10,978	1,911	3,133	1,915	1,862	814	2,346	5,934
Cash Generated By Operating Activities	2,040	4,053	7,775	9,699	10,176	5,468	11,194	5,917
Cash Generated By Short Term Loans	0	7,325	0	0	4,000	4,000	6,000	3,000
Cash Generated By Long Term Loans	11,269	8,155	2,939	2,402	4,837	6,633	798	10,455
Total Cash Available	24,287	21,444	13,847	14,016	20,875	16,915	20,338	25,306
Cash Used In Financing Activities	(858)	(3,504)	(6,908)	(4,252)	(3,433)	(8,138)	(10,656)	(10,758)
Cash Used In Capital Activities	(21,518)	(14,807)	(5,024)	(7,902)	(16,628)	(6,431)	(3,748)	(12,556)
Total Cash Used	(22,376)	(18,311)	(11,932)	(12,154)	(20,061)	(14,569)	(14,404)	(23,314)
Cash At Year End	1,911	3,133	1,915	1,862	814	2,346	5,934	1,992

## Debt Analysis

Amount Borrowed	11,269	25,891	25,326	20,820	25,405	32,605	31,265	34,064
Amount Repaid During Year	(858)	(3,504)	(6,908)	(4,252)	(3,433)	(8,138)	(10,656)	(10,758)
Debt At December 31	10,411	22,387	18,418	16,568	21,972	24,467	20,609	23,306

APRC. LEGAL FNCH. BK

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## ALASKA RAILROAD CORPORATION

## REVENUE ANALYSIS

DECEMBER 31, 1992

(In Thousands)

Category	Month				Year To Date				Latest Annual Estimate			
	Actual	Budget	Variance	%	Actual	Budget	Variance	%	Estimate	Budget	Variance	%
Pipe	255	53	202	381%	1,228	1,085	143	13%	1,228	1,085	143	13%
Coal: Local	688	478	210	44%	5,826	5,930	(104)	-2%	5,826	5,930	(104)	-2%
Export	338	1,081	(743)	-69%	5,733	7,265	(1,532)	-21%	5,733	7,265	(1,532)	-21%
Petroleum	1,548	1,426	122	9%	19,608	19,870	(262)	-1%	19,608	19,870	(262)	-1%
Gravel	0	0	0	0%	3,922	2,865	1,057	37%	3,922	2,865	1,057	37%
TOFC/COFC	414	394	20	5%	5,916	6,805	(889)	-13%	5,916	6,805	(889)	-13%
Interline	376	612	(236)	-39%	8,418	9,905	(1,487)	-15%	8,418	9,905	(1,487)	-15%
Miscellaneous Local	61	127	(66)	-52%	1,580	1,420	160	11%	1,580	1,420	160	11%
Prior Periods	(59)	0	(59)	-100%	(23)	0	(23)	-100%	(23)	0	(23)	-100%
Total Freight	3,621	4,171	(550)	-13%	52,208	55,145	(2,937)	-5%	52,208	55,145	(2,937)	-5%
Passenger: North	16	20	(4)	-20%	5,050	6,150	(1,100)	-18%	5,050	6,150	(1,100)	-18%
South	23	19	4	21%	2,670	2,970	(300)	-10%	2,670	2,970	(300)	-10%
Other	13	8	5	63%	740	790	(50)	-6%	740	790	(50)	-6%
Total Pass.	52	47	5	11%	8,460	9,910	(1,450)	-15%	8,460	9,910	(1,450)	-15%
Reimbursable	116	100	16	16%	1,674	1,965	(291)	-15%	1,674	1,965	(291)	-15%
Misc. Operating	21	83	(62)	-75%	1,172	1,340	(168)	-13%	1,172	1,340	(168)	-13%
Total Railroad	137	183	(46)	-25%	2,846	3,305	(459)	-14%	2,846	3,305	(459)	-14%
Real Estate	346	340	6	2%	4,043	4,000	43	1%	4,043	4,000	43	1%
All Other	32	59	(27)	-46%	507	695	(188)	-27%	507	695	(188)	-27%
Total Other	378	399	(21)	-5%	4,550	4,695	(145)	-3%	4,550	4,695	(145)	-3%
TOTAL	4,188	4,800	(612)	-13%	68,064	73,055	(4,991)	-7%	68,064	73,055	(4,991)	-7%

[N.B. Figures are unaudited.]

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB-143

Revision Date: \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title: An Act Relating to the SAU: \_\_\_\_\_  
Alaska Railroad Corporation Components: \_\_\_\_\_  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impacts: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: John O'Meara  
 Division: \_\_\_\_\_  
 Approved by Commissioner: Robert S. Harris

Phone: (907) 265-2574  
 Date: March 19, 1993  
 Date: March 19, 1993

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

Revision Date: \_\_\_\_\_ Dept. Affected: None  
 Title: SB 148:Relating to the BRU: \_\_\_\_\_  
Alaska Railroad Corp. Component: \_\_\_\_\_  
 Sponsor: Sen. Finance  
 Requestor: Senate Transportation Comte. COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*
<b>CAPITAL</b>	*	*	*	*	*	*
<b>REVENUE FUND SOURCE:</b>	*	*	*	*	*	*

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts	::					
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	*	*	*	*	*	*

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY	*	*	*	*	*	*

Estimate of current year (FY93) impact \$ \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary)

\*\*\*See attached analysis\*\*\*

Prepared by: Senate Transportation Comte  
 Division: Alaska State Senate by CWT  
 Approved by Commissioner: \_\_\_\_\_  
 Agency: Senator Sharp, Chair, Sen. Trans Comte

Phone: X 3004  
 Date: 4/1/93  
 Date: 4/1/93

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## FISCAL NOTE ANALYSIS SENATE BILL 148

The provisions of Senate Bill 148 will likely have a significant impact on the profitability of the Alaska Railroad Corporation (ARRC) because the bill will reduce the ARRC's revenue and increase its expenses. As a result, the ARRC will not continue to meet one of its intended purposes, that is, operate on a self-sustaining basis. In addition, state subsidies will be required to support the current level of capital programs and the employment provided by those programs.

The railroad has operated under state ownership for eight years. The average profit during this period is \$3.7 million annually. This profit is generated mainly from the railroad's real estate. For example, while the average net profit during the eight year period was \$3.7 million, the average real estate income during the period was \$4.4 million.

The ARRC uses this profit, its borrowing capability and other cash flow items to perform its capital programs. During the eight year period, the ARRC has invested nearly \$100 million, or slightly more than \$12 million annually, in the railroad. Railroad's are capital intensive industries. The State was able to purchase the railroad for a mere \$22 million because of the years of deferred maintenance and capital dollars needed to modernize the railroad. Without a profit these expenditures and the resulting jobs created by them would only be possible through a State subsidy.

Time did not permit the detailed analysis required to determine how much SB 148 would reduce the ARRC's net income and thus its capital programs. There is no question that the bill's passage would reduce the ARRC's net income. The ARRC's position paper on this bill cites the major areas of the bill that would affect the railroads net income.

8-LS0583R  
Utermohle  
3/31/93

**CS FOR SENATE BILL NO. 148(TRA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE FINANCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to legislative approval of certain acts of the Alaska Railroad  
2 Corporation; taxation of certain property of the Alaska Railroad Corporation;  
3 members of the board and chief executive officer of the Alaska Railroad  
4 Corporation; meetings of the board of directors of the Alaska Railroad  
5 Corporation; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 \* **Section 1. PURPOSE.** This Act provides that

8 (1) the Alaska Railroad Corporation shall obtain approval of the legislature  
9 before

10 (A) incurring debt, except in certain circumstances, in excess of  
11 \$10,000,000 in a year or in excess of a total of \$50,000,000; or

12 (B) obtaining an equity position in certain nontransportation activities;

13 (2) the real property of the Alaska Railroad Corporation that is leased to an

1 agency or a person for fair value is subject to real property taxes imposed by municipalities;  
2 the real property of the corporation that is subject to municipal property taxes is excepted from  
3 the exemption from taxation granted to property of the state by art. IX, sec. 4, Constitution  
4 of the State of Alaska;

5 (3) members of the board of directors and chief executive officer of the Alaska  
6 Railroad Corporation are subject to AS 39.50 (Conflict of Interest);

7 (4) the chair or vice-chair of the board of directors may not serve as chief  
8 executive officer of the Alaska Railroad Corporation;

9 (5) the board of directors of the Alaska Railroad Corporation shall provide for  
10 meetings of the board by teleconference during legislative sessions.

11 \* Sec. 2. AS 29.45.030(a) is amended to read:

12 (a) The following property is exempt from general taxation:

13 (1) municipal property, including property held by a public corporation  
14 of a municipality, or state property, except that

15 (A) a private leasehold, contract, or other interest in the  
16 property is taxable to the extent of the interest;

17 (B) notwithstanding any other provision of law, property  
18 acquired by an agency, corporation, or other entity of the state through  
19 foreclosure or deed in lieu of foreclosure and retained as an investment of a  
20 state entity is taxable; this subparagraph does not apply to federal land granted  
21 to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land  
22 granted to the university by the state to replace land that had been granted  
23 under AS 14.40.380 or 14.40.390;

24 (C) an ownership interest of a municipality in real property  
25 located outside the municipality acquired after December 31, 1990, is taxable  
26 by another municipality; however, a borough may not tax an interest in real  
27 property located in the borough and owned by a city in that borough;

28 (D) the real property of the Alaska Railroad Corporation  
29 that is leased for fair value to a municipal, state, or federal agency or a  
30 person is taxable;

31 (2) household furniture and personal effects of members of a

1 household;

2 (3) property used exclusively for nonprofit religious, charitable,  
3 cemetery, hospital, or educational purposes;

4 (4) property of a nonbusiness organization composed entirely of persons  
5 with 90 days or more of active service in the armed forces of the United States whose  
6 conditions of service and separation were other than dishonorable, or the property of  
7 an auxiliary of that organization;

8 (5) money on deposit;

9 (6) the real property of certain residents of the state to the extent and  
10 subject to the conditions provided in (e) of this section;

11 (7) real property or an interest in real property that is exempt from  
12 taxation under 43 U.S.C. 1620(d), as amended;

13 (8) property of a political subdivision, agency, corporation, or other  
14 entity of the United States to the extent required by federal law; except that a private  
15 leasehold, contract, or other interest in the property is taxable to the extent of that  
16 interest;

17 (9) natural resources in place including coal, ore bodies, mineral  
18 deposits, and other proven and unproven deposits of valuable materials laid down by  
19 natural processes, unharvested aquatic plants and animals, and timber.

20 \* Sec. 3. AS 29.45.295 is amended to read:

21 Sec. 29.45.295. COLLECTION OF DELINQUENT TAXES ON CERTAIN  
22 GOVERNMENTAL PROPERTY. AS 29.45.300 - 29.45.490 do not apply to property  
23 taxable under AS 29.45.030(a)(1)(B) - (D) [AS 29.45.030(a)(1)(B) OR (C)] or to  
24 federal property not exempted under AS 29.45.030(a)(8). A municipality may bring  
25 an action in the superior court to compel payment of property taxes due from the state,  
26 municipal, or federal entity if the entity does not pay the amount due within six  
27 months after the date that the taxes are due. In this section, "state entity" includes  
28 the Alaska Railroad Corporation.

29 \* Sec. 4. AS 39.50.200(b) is amended by adding a new paragraph to read:

30 (55) the board of directors and the chief executive officer of the Alaska  
31 Railroad Corporation (AS 42.40.010).

1 \* Sec. 5. AS 42.40.020 is amended by adding a new subsection to read:

2 (c) Members of the board are subject to AS 39.50.

3 \* Sec. 6. AS 42.40.060(a) is amended to read:

4 (a) The board shall elect from its membership a chair [CHAIRMAN] and  
5 vice-chair [VICE-CHAIRMAN] and prescribe their duties by rule. The chair or vice-  
6 chair of the board may not serve as the chief executive officer of the corporation.

7 \* Sec. 7. AS 42.40.110(a) is amended to read:

8 (a) The board shall appoint the chief executive officer of the corporation who  
9 serves at the pleasure of the board. The board shall fix compensation for the chief  
10 executive officer. The chief executive officer of the corporation may not serve as  
11 chair or vice-chair of the board. The chief executive officer of the corporation is  
12 subject to AS 39.50.

13 \* Sec. 8. AS 42.40.150 is amended by adding a new subsection to read:

14 (d) The board shall provide for attendance and participation at meetings by  
15 members of the board by teleconference during legislative sessions. Materials that are  
16 to be considered at a meeting must be available at teleconference locations. The vote  
17 at a meeting held by teleconference shall be taken by roll call.

18 \* Sec. 9. AS 42.40.285 is amended to read:

19 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the  
20 legislature approves the action by law, the corporation may not

21 (1) exchange, donate, sell, or otherwise convey its entire interest in  
22 land;

23 (2) issue bonds;

24 (3) incur debt in an amount exceeding \$10,000,000 in any fiscal  
25 year or have at any time an outstanding aggregated debt exceeding \$50,000,000;  
26 this paragraph does not apply to debt incurred for the acquisition and  
27 maintenance of railroad rolling stock, locomotives, construction and maintenance  
28 equipment, track structure, and other railroad related physical plant;

29 (4) extend railroad lines; this paragraph does not apply to a spur,  
30 industrial, team, switching, or side track;

31 (5) [(4)] lease land for a period in excess of 35 years unless the

1 corporation reserves the right to terminate the lease if the land is needed for railroad  
2 purposes;

3 (6) use assets of the corporation to obtain an equity position in a  
4 nontransportation activity; this paragraph

5 (A) does not apply to

6 (i) the purchase of stocks or other forms of equity  
7 participation by the pension funds of the corporation; or

8 (ii) specific activities in which the corporation is  
9 engaged on the effective date of this section of this Act, or to  
10 routine maintenance and upkeep for those activities or to routine  
11 appreciation in value of those existing activities;

12 (B) applies to increases in the corporation's respective share  
13 of equity in a specific activity in which the corporation is engaged on the  
14 effective date of this section of this Act and to substantial physical  
15 expansions of that activity.

16 \* Sec. 10. AS 42.40.910(a) is amended to read:

17 (a) The exercise of the powers granted by this chapter shall be in all respects  
18 for the benefit of the people of the state, for their well-being and prosperity, and for  
19 the improvement of their social and economic conditions. Except as provided in  
20 AS 29.45.030(a)(1) and in [SUBJECT TO] (b) of this section, the real and personal  
21 property of the corporation and its assets, income, and receipts are exempt from all  
22 taxes and special assessments of the state or a political subdivision of the state.

23 \* Sec. 11. AS 42.40.980 is amended by adding a new paragraph to read:

24 (11) "nontransportation activity" means

25 (A) a hotel or other lodging facilities; or

26 (B) an activity not

27 (i) related to the movement, handling, or distribution of  
28 people or personal property; or

29 (ii) conducted by the railroad on the date of transfer to  
30 the state.

31 \* Sec. 12. Sections 2, 3, and 10 of this Act take effect January 1, 1994.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 148(TRA)

Page 5, after line 30:

Insert a new bill section to read:

"\* Sec. 12. LEGISLATIVE APPROVAL. In accordance with AS 42.40.285(6), the Alaska Railroad Corporation is authorized to acquire an equity position in a regional sanitary land fill at mile 388 of the Alaska Railroad or at Totchaket Road west of Nenana."

Renumber the following bill section accordingly.

SENATE FINANCE  
COMMITTEE  
Amendment Number: ①  
Bill Number: CSSB 148(TRA)  
Sponsor: FRANIK Date: 4/7/93  
Logged In By: BM